

# AGENDA

## CANBY CITY COUNCIL REGULAR MEETING

March 17, 2010

7:30 PM

Council Chambers

155 NW 2<sup>nd</sup> Avenue

*Mayor Melody Thompson*

*Council President Walt Daniels*

*Councilor Richard Ares*

*Councilor Robert Bitter*

*Councilor John Henri*

*Councilor Brian Hodson*

*Councilor Jason Padden*

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## CITY COUNCIL REGULAR MEETING

### 1. CALL TO ORDER

A. Pledge of Allegiance and Moment of Silence

### 2. COMMUNICATIONS

### 3. CITIZEN INPUT & COMMUNITY ANNOUNCEMENTS

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

### 4. MAYOR'S BUSINESS

### 5. COUNCILOR COMMENTS & LIAISON REPORTS

### 6. CONSENT AGENDA

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

A. Approval of Minutes of the March 3, 2010 City Council Regular Meeting

B. Appointment to City Budget Committee

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### 7. RESOLUTIONS & ORDINANCES

A. Res. 1053, Adopting an Updated Document Entitled Policies & Operating Guidelines Document for the Canby City Council to Reference as it Conducts the Business of the City

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B. Res. 1056 Adopting a Ground Lease Between the City of Canby and Canby School Dist. No. 86

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### 8. NEW BUSINESS

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

**10. CITIZEN INPUT**

**11. ACTION REVIEW**

**12. EXECUTIVE SESSION:** ORS 192.660(2)(h) 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 at 503.266.4021 ext. 233. A copy of this Agenda can be found on the City's web page at [www.ci.canby.or.us](http://www.ci.canby.or.us). City Council and Planning Commission Meetings are broadcast live and can be viewed on OCTS Channel 5. For a schedule of the playback times, please call 503.263.6287.

**CITY OF CANBY  
APPLICATION  
BOARD/COMMITTEES/COMMISSIONS/COUNCIL**

*Instructions: By using either your tab key or arrow keys, navigate to each field and type in your information. When complete, save the document to your computer and either mail, fax or email to the addresses listed below.*

Date: February 23, 2010

Name: Greg Kluever

Occupation: Fire Fighter

Home Address:

Employer: Clackamas Fire Dist #1

Position: Apparatus Operator

Daytime Phone:

Evening Phone:

E-Mail Address:

For which position are you applying? Budget Committee

What are your community interests (committees, organizations, special activities)? Committee

Experience and educational background: Presently working on my Bachelors in Fire Service Administration through Eastern Oregon University

Reason for your interest in this position: Community Involvement

List any other City or County positions on which you serve or have served:

Information on any special membership requirements:

Referred by (if applicable):

**RECEIVED**

**FEB 23 2010**

**CITY OF CANBY**

**RESOLUTION NO. 1053**

**A RESOLUTION ADOPTING AN UPDATED DOCUMENT ENTITLED POLICIES AND  
OPERATING GUIDELINES FOR THE CANBY CITY COUNCIL TO REFERENCE AS IT  
CONDUCTS THE BUSINESS OF THE CITY**

**WHEREAS**, in 2005 the Mayor and City Council determined that there was a need for a standardized set of policies and operating guidelines to guide the City Council as it deliberates on public policy matters and conducts the business of the City of Canby; and

**WHEREAS**, on March 16, 2005 Resolution 892 was passed adopting said policies and guidelines; and

**WHEREAS**, on July 1, 2009 Resolution 1035 was passed adopting an updated version of this document; and

**WHEREAS**, the Canby City Council believes the current Policies & Operating Guidelines document needs to be updated to include provisions regulating meeting decorum and social media policies; now therefore

**IT IS HEREBY RESOLVED** by the City of Canby Council that the updated document entitled *Policies and Operating Guidelines*, attached hereto as Exhibit “A” and by this reference incorporated herein, is adopted by the Canby City Council.

This resolution is effective March 17, 2010.

**ADOPTED** by the Canby City Council on the 17<sup>th</sup> day of March 2010.

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Melody Thompson  
Mayor

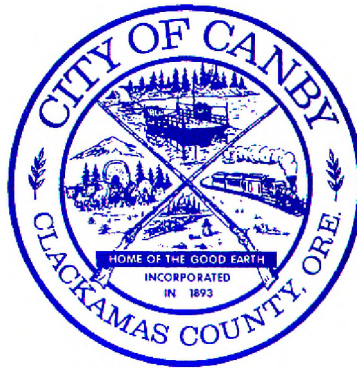
ATTEST:

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Kimberly Scheafer, CMC  
City Recorder

# *City of Canby*

## ***POLICIES & OPERATING GUIDELINES***



*Updated March 2010*

# City of Canby

## ***POLICIES & OPERATING GUIDELINES***

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# **POLICIES & OPERATING GUIDELINES**

*For members of Canby City Council,  
Boards and Commissions*

## **Introduction**

In January 2003, the newly elected Mayor and City Council determined the need to develop a standardized set of policies and operating guidelines to guide the City Council as it deliberates on public policy matters and conducts the business of the City. In addition, the Mayor and Council believed it was important to articulate a vision of those values and principles that set the cornerstone for the type of governance that the citizens of Canby were entitled to from their elected officials.

The results of that vision for governance are included in the Policies and Operating Guidelines that appear in the following pages. In addition to being the over-riding procedural document for the City Council, these Policies and Operating Guidelines are also intended to assist those volunteer-based advisory boards and commissions that provide the Mayor and City Council with valuable policy recommendations and serve as a sounding board in the community for a wide array of public issues. With this in mind, these Policies and Operating Guidelines were reviewed by those respective City advisory boards and commissions and the City Council actively sought input on the document from these important groups.

Last, but not least, this document is intended to educate the citizens of this community on the mechanism around which the governing body of the City of Canby and its appointed advisory boards and commissions work together to address community issues, develop proactive and responsible public policy and attend to the affairs of the City.

### **1. Act in the Public Interest**

Recognizing that stewardship of the public interest must be their primary concern, members will work for the common good of the people of Canby and not for any private or personal interest, and they will assure fair and equal treatment of all persons, claims and transactions coming before the Canby City Council, boards and commissions.

### **2. Comply with the Law**

Members shall comply with the laws of the nation, the State of Oregon and the City of Canby in the performance of their public duties. These laws include, but are not limited to: the United States and Oregon constitutions; the Canby City Charter; laws pertaining to conflicts of interest, election campaigns, financial disclosures, employer responsibilities, and open processes of government; and City ordinances and policies.

### **3. Conduct of Members**

The professional and personal conduct of members must be above reproach and avoid even the appearance of impropriety. Members shall refrain from abusive conduct, personal charges or verbal attacks upon the character or motives of other members of Council, boards and commissions, the staff or public.

### **4. Respect for Process**

Members shall perform their duties in accordance with the processes and rules of order established by the City Council and board and commissions governing the deliberation of public policy issues, meaningful involvement of the public, and implementation of policy decisions of the City Council by City staff.

### **5. Conduct of Public Meetings**

Members shall prepare themselves for public issues; listen courteously and attentively to all public discussions before the body; and focus on the business at hand. They shall refrain from interrupting other speakers; making personal comments not appropriate to the business of the body; or otherwise interfering with the orderly conduct of meetings.

### **6. Decorum in Council Meetings**

Requirements – while the Council is in session, all persons shall preserve order and decorum. Any person making personal, impertinent, or slanderous remarks, or becoming boisterous shall be barred by the presiding officer from further attendance at said meeting unless permission for continued attendance is granted by a majority vote of the Council

Every member of the public and every Council member desiring to speak shall address the president officer, and upon recognition by the presiding officer, shall confine comments to the question under debate, avoiding all indecorous language and references to personalities and abiding by the following rules of civil debate.

- A. We may disagree, but we will be respectful of one another
- B. All comments will be directed to the issue at hand
- C. Personal attacks should be avoided.

Enforcement – The Chief of Police (or representative) shall act as ex-officio sergeant-at-arms of the Council. The Police Chief shall carry out all orders and instructions of the presiding officer for the purpose of maintaining order and decorum in the Council Chambers.

Upon instructions of the presiding officer it shall be the duty of the sergeant-at-arms or any police officer present to eject from the Council Chambers any person in the audience who uses boisterous or profane language, or language tending to bring the Council or any Council member into contempt, or any person who interrupts and refuses to keep quiet or take a seat

when ordered to do so by the presiding officer or otherwise disrupts the proceedings of the Council.

#### **7. Decisions Based on Merit**

Members shall base their decisions on the merits and substance of the matter at hand, rather than on unrelated considerations.

#### **8. Communication**

Members shall publicly share substantive information that is relevant to a matter under consideration by the Council or boards and commissions, which they may have received from sources outside of the public decision-making process.

#### **9. Conflict of Interest**

In order to assure their independence and impartiality on behalf of the common good, members shall not use their official positions to influence government decisions in which they have a material financial interest, or where they have an organizational responsibility or personal relationship which may give the appearance of a conflict of interest.

In accordance with the law, members shall disclose investments, interests in real property, sources of income, and gifts; and they shall abstain from participating in deliberations and decision-making where conflicts may exist.

#### **10. Gifts and Favors**

Members shall not take any special advantage of services or opportunities for personal gain, by virtue of their public office that are not available to the public in general. They shall refrain from accepting any gifts, favors or promises of future benefits which might compromise their independence of judgment or action or give the appearance of being compromised.

#### **11. Confidential Information**

Members shall respect the confidentiality of information concerning the property, personnel or affairs of the City. They shall neither disclose confidential information without proper legal authorization, nor use such information to advance their personal, financial or other private interests.

#### **12. Use of Public Resources**

Members shall not use public resources not available to the public in general, such as City staff time, equipment, supplies or facilities, for private gain or personal purposes.

### **13. Representation of Private Interests**

In keeping with their role as stewards of the public interest, members of Council should not appear on behalf of the private interests of third parties (i.e. agent for a friend or neighbor) before the Council or any board, commission or proceeding of the City. This does not prohibit a member of the Council from appearing before a board or commission to represent his/her personal interests.

### **14. Advocacy**

Members shall represent the official policies or positions of the City Council, board or commission to the best of their ability when designated as delegates for this purpose. When presenting their individual opinions and positions, members shall explicitly state they do not represent their body or the City of Canby, nor will they allow the inference that they do.

### **15. Policy Role of Members**

Members shall respect and adhere to the council-manager structure of Canby City government as outlined by the Canby City Charter. In this structure, the City Council determines the policies of the City with the advice, information and analysis provided by the public, boards and commissions, and City staff.

Except as provided by the Canby City Charter, members therefore shall not interfere with the administrative functions of the City or the professional duties of City staff; nor shall they impair the ability of staff to implement Council policy decisions.

### **16. Independence of Boards and Commissions**

Because of the value of the independent advice of boards and commissions to the public decision-making process, members of Council shall refrain from using their position to unduly influence the deliberations or outcomes of board and commission proceedings.

### **17. Positive Work Place Environment**

Members shall support the maintenance of a positive and constructive work place environment for City employees and for citizens and businesses dealing with the City. Members shall recognize their special role in dealings with City employees to in no way create the perception of inappropriate direction to staff.

### **18. Implementation**

As an expression of the standards of conduct for members expected by the City, the Policies & Operating Guidelines is intended to be self-enforcing. It therefore becomes most effective when members are thoroughly familiar with it and embrace its provisions.

For this reason, ethical standards shall be included in the regular orientations for candidates for City Council, applicants to board and commissions, and newly elected and appointed officials. Members entering office shall sign a statement affirming they read and understood the City of Canby Policies & Operating Guidelines. In addition, the Policies & Operating Guidelines shall be annually reviewed by the City Council, boards and commissions, and the City Council shall consider recommendations from boards and commissions and update it as necessary.

## **19. Compliance and Enforcement**

The Policies & Operating Guidelines expresses standards of ethical conduct expected for members of the Canby City Council, boards and commissions. Members themselves have the primary responsibility to assure that ethical standards are understood and met, and that the public can continue to have full confidence in the integrity of government.

The chairs of boards and commissions and the Mayor have the additional responsibility to intervene when actions of members that appear to be in violation of the Policies & Operating Guidelines are brought to their attention.

The City Council may impose sanctions on members whose conduct does not comply with the City's ethical standards as set forth in the City of Canby Charter, Chapter IV, Section 2.

A violation of the Policies & Operating Guidelines shall not be considered a basis for challenging the validity of a Council, board or commission decision.

### **CITY COUNCIL WORKSHOP GUIDELINES**

Workshops with our boards and committees should have an agenda, or list of items that are to be discussed.

1. Who leads the meeting and conducts the general discussion of attendees should be established ahead of time.
2. If different staff or leaders will be addressing different points, this should be indicated on the agenda and will greatly help to organize the time and make it efficient.
3. If there are many items to be discussed, setting an “estimated time” of discussion for each point may help to move things along.

Workshop seating should be conducive to group discussion, presentations, and a general feeling of equalization among the boards, commissions, citizens, and council/mayor.

1. Seating arranged in such a way as to diminish “power” roles is a good idea to encourage active participation by all.

The goal is to have Workshops with our boards and committees attended by all (or at least a large majority) of committee members.

The Council, board or commission, or City staff originating the workshop should come to meetings prepared.

1. If boards, committees, or City staff are generating the workshop, the Council would like a few written proposals that we all can discuss and decide on. Likewise, if the Council is presenting material to a group, there should be options or proposals.
2. If a more general, or “big picture” discussion needs to take place, it would still help to have printed discussion items to keep us on track.

The Council, board or commission, or City staff making the presentation should summarize and simplify any handouts, support documentation, statistics, facts and figures that are going to be discussed at the meeting.

1. Any information more than a couple of pages should be distributed in the days prior to the meeting so the Mayor and Council have the opportunity to familiarize itself with the information.

Meetings should end with everyone feeling a sense of accomplishment and a clear direction (even if everyone does not agree with the outcome).

### **CITY COUNCIL EXECUTIVE SESSION NEWS MEDIA ATTENDANCE POLICY**

Oregon public meetings law provides that representatives of the news media shall be allowed to attend certain executive sessions of public bodies, but may be required to not disclose specified information (ORS 192.660(4)).

Because at the time state law relating to media attendance at executive session was adopted “news media” consisted of entities that were institutionalized and structured to support compliance with the requirements of ORS 192.660(4), the law includes no express mechanism for enforcing those requirements.

Technological advances since the time the public meetings law was initially adopted have resulted in development of communication mechanisms allowing virtually any individual or entity to disseminate information widely.

The City of Canby finds that in that absence of a statutory definition of “news media” as that term is used in ORS 192.660(4) it is necessary to adopt a policy that implements the intent of the public meetings law relating to executive session attendance without precluding attendance by Internet-based or other “non-traditional” information disseminators that are institutionalized and committed to compliance with ORS 192.660(4).

The City of Canby recognizes that this policy is solely for the purpose of determining eligibility to attend executive sessions, which requires non-disclosure of specified information from executive sessions, and is not intended to otherwise define “news media” or to determine eligibility to report on City of Canby’s activities or to limit access to other City of Canby meetings by any person.

The City of Canby hereby adopts the following policy:

1. Currently Recognized News Media Organizations. The following entities are hereby recognized as news media organizations eligible to attend executive sessions because they have an established history of meeting the requirements of this policy:
  - a. Canby Herald Newspaper
  - b. Oregonian Newspaper

No other entity shall be permitted to attend an executive session unless it is recognized through the process described in Section 2 below.

2. Recognition of Other News Media Organizations.
  - a. The following entities are recognized as news media organizations eligible to attend executive sessions:
    - i. A general or associate member newspaper of the Oregon Newspaper Publishers Association, a broadcast member of the Oregon Association of Broadcasters or a member of the Associated Press; or
    - ii. A newspaper that the City of Canby uses for publication of public notices and that meets the requirements of ORS 193.020; or
    - iii. An entity recognized by the City of Canby as being a news source that:
      1. is organized and operated to regularly and continuously publish, broadcast, transmit via the Internet or otherwise disseminate news to the public, and that regularly reports on activities of the City of Canby or matters of the nature under consideration by the City of Canby; and
      2. Is determined by the City of Canby to be a business entity that is institutionalized<sup>1</sup> and that is committed to, and is structured to support, the terms of ORS 192.660(4).<sup>2</sup> In making this determination, the City of Canby may consider and weigh any factors that it deems to be relevant, including, without limitation, the existence of any of the following factors:
        1. The entity has multiple personnel with defined roles within its organizational structure;

2. The names of news-reporting personnel, and responsible entity management personnel, together with addresses and contact telephone numbers, are readily available;
  3. The entity has an available process for correcting errors, including violations of executive session statutes, by a person with authority to take corrective measures.
- b. It shall be the entity's burden to persuade the City of Canby by substantial evidence that it should be recognized as a news media organization meeting the criteria in Section 2(a) of this policy. Such evidence must be submitted [time period] in advance of the first executive session that the entity desires to attend. The City of Canby shall make a determination within [time period] of receiving the evidence submitted by the entity. The City of Canby may elect to forgo this procedure in cases where the City of Canby, in its sole discretion, determines that it can immediately recognize that an entity qualifies under this policy, or in cases where the public body, in its sole discretion, determines that other good cause exists for making an expedited determination. A determination that the entity is not recognized shall be based upon written findings addressing the criteria in Section 2(a).
3. Attendance at Executive Sessions. Representatives of news media organizations recognized pursuant to Sections 1 and 2 of this policy shall be allowed to attend executive sessions, except as described in ORS 192.660(4) and 192.660(5), pursuant to the following process:
- a. The representative must provide substantial evidence persuading the City of Canby, that he or she is a news reporter for the recognized news media organization. In making its determination whether to recognize the person as a representative of the news media organization, the City of Canby shall require:
    - i. A press badge or identification issued by the recognized news media organization, plus proof of identity (such as a driver's license); or
    - ii. A recently published news article in the recognized news media organization publication or broadcast, with the person's byline, or a masthead showing the person's name as a member of the news gathering staff of the news media organization, plus proof of identity; or
    - iii. A letter on letterhead from an editor of the recognized news media organization in which the editor states that the reporter is covering the meeting for the news media organization, plus proof of identity.

- b. Representatives of the news media are not permitted to attend executive sessions involving deliberations with persons designated to carry on labor negotiations. ORS 192.660(4). If the executive session is being held for the purpose of conferring with counsel about current litigation or litigation likely to be filed, the City of Canby shall exclude any member of the news media from attending if the member is a party to the litigation to be discussed or is an employee, agent or contractor of a news media organization that is a party to the litigation. ORS 192.660(5).
  - c. The City of Canby may require that a request to attend an executive session be made in writing on a form provided by the City of Canby. The form shall require disclosure of the person's name, and the entity for which he or she is a news reporter, and shall require submission of evidence described in Subsections 3(a) (1), (2) or (3) of this policy. The form shall also include a signature line whereby the person certifies that they are gathering news for a recognized news media organization, that the information given is true and that they agree to comply with ORS 192.660(4).
  - d. The City of Canby may consider any relevant evidence provided or gathered in making its decision as to whether a person shall be recognized as a representative of a recognized news media organization.
4. Recording Devices Prohibited. Cameras, tape recorders and other recording devices shall not be used in executive sessions, except for the official executive session tapes made by City of Canby staff.
  5. Exclusion Based on a Direct Personal Interest. A representative if a news media organization that has a direct personal interest in the subject of the executive session that would frustrate the purpose of the executive session may be barred from attending.
  6. Application to Boards and Commissions. These policies and procedures shall apply to the City of Canby and all of its boards and commissions.

<sup>1</sup> For the purposes of this policy, "institutionalized" means long-established or well-established

<sup>2</sup> ORS192.660 (4). Representatives of the news media shall be allowed to attend executive sessions other than those held under subsection (2)(d) of this section relating to labor negotiations or executive session held pursuant to ORS 332.061 (2) but the governing body may require that specified information be undisclosed.

## **MODEL OF EXCELLENCE**

Canby City Council, Boards and Commissions

### **MEMBER STATEMENT**

As a member of the Canby City Council or of a Canby board or commission,  
I agree to uphold the Policies & Operating Guidelines for elected and appointed officials  
adopted by the City and conduct myself by the following model of excellence. I will:

Recognize the worth of individual members and appreciate their individual talents,  
perspectives and contributions;

Help create an atmosphere of respect and civility where individual members, City staff and  
the public are free to express their ideas and work to their full potential;

Conduct my personal and public affairs with honesty, integrity, fairness and respect for  
others;

Respect the dignity and privacy of individuals and organizations;

Keep the common good as my highest purpose and focus on achieving constructive solutions  
for the public benefit;

Avoid and discourage conduct which is divisive or harmful to the best interests of  
Canby;

Treat all people with whom I come in contact in the way I wish to be treated;

I affirm that I have read and understood the City of Canby Policies & Operating Guidelines.

Date: \_\_\_\_\_

Printed Name & Office: \_\_\_\_\_

Signature: \_\_\_\_\_

## **FORM OF GOVERNMENT**

The City of Canby operates under the Council-Manager form of government. All Oregon cities over 2,500 population have the Council-Manager form except Portland, Beaverton, Burns, Lakeview and Junction City. The chief characteristic of this form is that the Council appoints a qualified person as City Administrator to take charge of the daily supervision of the City affairs

**COUNCIL MEMBERS** - At each biennial general election after this Charter takes effect, three Council members shall be elected each for a term of four years; and each biennial general election the number of Council members required to fill vacancies pursuant to Chapter VII. Section 2.

**COUNCIL LIAISONS** - Council liaisons are selected on an annual basis. The designation is flexible based upon the needs of the Council. Liaisons are encouraged to attend committee meetings on a regular basis. Liaisons will report back to the Council on committee activities not included in the committee minutes. Liaisons are not voting members of committees. Liaisons will clarify personal opinion and differentiate that from Council opinion.

**MAYOR** - At each biennial general election a Mayor shall be elected for a term of two years.

**ADMINISTRATOR, JUDGE, CITY ATTORNEY AND OTHER OFFICERS** - Additional officers of the City shall be a City Administrator, Municipal Judge, and City Attorney, each of whom the Council shall appoint, and such other officers as the Council deems necessary. Appointed officers shall hold their office during the pleasure of the Council or until their successors are appointed and qualified. Appointed officers are subject to removal at any time by the Council with or without cause and may be suspended in accordance with the provisions of Chapter V, Section 2(c)(3) of the City of Canby Charter. The duties of all officers not defined in this Chapter may be prescribed by the Council. The Council may combine any two or more appointive offices.

**MAYOR** - The Mayor shall be chairperson of the Council and preside over its deliberations and shall have no vote on any questions before it except in the case of tie. The Mayor shall have authority to preserve order, enforce the rules of the Council and determine the order of business under the rules of the Council. The Mayor shall appoint the committees provided by the rules of the Council; and shall sign all records of proceedings approved by the Council. The Mayor shall have no veto power. In the Mayor's absence, the President of the Council, shall sign all Ordinances passed by the Council within five days after their passage. After the Council approves a bond of a City officer or a bond for a license, contract or proposal, the Mayor shall endorse the bond.

**PRESIDENT OF THE COUNCIL** - At its first meeting after this Charter takes effect and thereafter at its first meeting of each odd-number year the Council by vote shall elect a President from its membership. In the Mayor's absence from a Council meeting, the

President shall preside over it. Whenever the Mayor is unable to perform the functions of the office, the President shall act as Mayor.

**CITY ADMINISTRATOR** - The City Administrator shall be the administrative head of the government of the City and shall be appointed by the Council without regard to political considerations and solely with reference to executive and administrative qualifications. A City Administrator need not be a resident of the City of Canby or the State at the time of appointment, but promptly thereafter shall become and remain a resident of the City during the term of the office. Before taking office, the City Administrator shall give a bond in such amount and with such surety as may be approved by the Council. The premiums on such bond shall be paid by the City. The Administrator shall be appointed for an indefinite term and may be removed at the pleasure of the Council.

The powers and duties of the Administrator shall be as follows:

- A. Devote full time to the discharge of official duties, attend all meeting of the Council unless excused there from by the Council or the Mayor, keep the Council advised at all times of the affairs and needs of the City, and make reports annually, or more frequently if requested by the Council, of all the affairs and departments of the City.
- B. See that all Ordinances are enforced and that the provisions of all franchises, leases, contracts, permits and privileges ranted by the City are observed.
- C. Hire or remove all City employees and have general supervision and control over them and their work, with power to transfer an employee from one department to another. The administrator shall supervise the departments to the end of obtaining the utmost efficiency in each of them.
- D. Act as purchasing agent for all departments of the City.
- E. Be responsible for preparing and submitting to the Budget Committee the annual budget estimates and such reports as the body requests.
- F. Supervise the operation of all public utilities owned and operated by the City excepting the electric utility department for which the Canby Utility Board has exclusive jurisdiction, control and management as provided in the following Chapter X.
- G. The City Administrator shall have general supervision over all City property.
- H. Perform such other duties as may be prescribed from time to time by the Council

**AUTHORITY TO CONTRACT FOR PROFESSIONAL SERVICES** - The Council shall have authority to contract for the professional services of those whose professional skills, training and knowledge may be required at any time or from time to time for the administration of City affairs and municipal government. The duties and responsibilities of such persons engaged for their professional skills, knowledge and ability shall be specified in their respective contracts with the City by the contracts for the services of the following persons shall include the following particular duties, services and responsibilities:

- A. Municipal Judge. The Municipal Judge shall hold within the City a court known as the Municipal Court for the City of Canby, Clackamas County, Oregon. All areas

within the City shall be within the territorial jurisdiction of the Court. The Municipal Judge shall exercise original and exclusive jurisdiction of all offenses defined and made punishable by the Ordinances of the City and of all actions brought to recover or enforce forfeitures or penalties defined or authorized by Ordinances of the City. The Municipal Judge shall have authority to issue process for the arrest of any person accused of an offense against the Ordinances of the City, to commit any such person to jail or admit to bail pending trial, to issue subpoenas, to compel witnesses to appear and testify in court on the trial of any cause, to compel obedience to such subpoenas, to issue any process necessary to carry into effect the judgments of the Court, and to punish witnesses and others for contempt of Court. Men not governed by Ordinances or this Charter, all proceeding in the Municipal Court for the violation of a City ordinance shall be governed by the applicable general laws of the State governing Justices of the Peace and Justice Courts, except that the Municipal Court shall not exercise any civil jurisdiction.

- B. City Attorney. The City Attorney is a legal adviser of the officials of the City of Canby and shall be retained by the Council. It shall be the duty of such Attorney to attend all regular Council meetings and such special meetings as may be required unless excused there from by the Council. The City Attorney shall represent and defend the City in all suits, actions at law and all matters and things in which the City of Canby may be legally interested. The City Attorney, or a deputy appointed by him, shall also represent the City in the Municipal Court including violations of any City Ordinances or for the violation of all other laws under which the Municipal Court has jurisdiction.

### **Boards, Committees & Commissions**

These boards, committees and commissions are advisory to the City Council and assist the Council in forming policy and making law. Committees are encouraged to make an annual presentation to the City Council. Selection of Committee Chairs are decided annually by each committee (except Budget Committee). Committee members who have three unexcused absences from meetings are subject to removal from the committee.

**Bike & Pedestrian Committee** – The Bicycle and Pedestrian Committee consists of five (5) members. Members serve three (3) year terms. *Members are appointed by City Council upon recommendation by the Committee Chairperson and assigned Council Liaison. The Mayor may vote only when necessary to break a tie.*

The duties of the committee shall include:

- A. Keeping informed about current trends in bicycle and pedestrian services and administration;
- B. Studying growth and needs in the City and its vicinity for bicycle and pedestrian facilities;

- C. Developing long-range plans for bicycle and pedestrian services and facilities, consistent with City priorities;
- D. Investigating sources of funding for bicycle and pedestrian services and facilities;
- E. Recommending policies for the acceptance and use of gifts for bicycle and pedestrian purposes;
- F. Participating in the annual budgetary process of the City as that process pertains to the bicycle and pedestrian facilities and services;
- G. Recommending policies and procedures conducive to efficient and effective operation of the bicycle and pedestrian transportation system;
- H. Reviewing and recommending terms of contracts and working relationships with other public agencies regarding bicycle and pedestrian facilities and services;
- I. Encouraging widespread public support and use of bicycle and pedestrian facilities and services; and performing other duties as authorized by the City Council; and
- J. Performing other duties as authorized by the City Council.

**Budget Committee** – The Budget Committee consists of the members of the City Council and six (6) citizens-at-large. Members serve three (3) year terms. *Citizens-at-large are appointed and confirmed by the City Council. The Mayor may vote only when necessary to break a tie.*

**Canby Public Library Board** – The Library Board consists of five (5) members. Not less than three members shall be residents of the City. Members serve four (4) year terms. *Members are appointed by City Council upon recommendation by the Board Chairperson and assigned Council Liaison. The Mayor may vote only when necessary to break a tie.*

The duties of the Library Board shall include:

- A. Keeping informed about current trends in the library services and administration;
- B. Studying library growth and needs in the City and its vicinity;
- C. Developing long-range plans for library service and facilities, consistent with City priorities and with state, regional and national goals pertinent to libraries;
- D. Recommending types of library service for the City and its vicinity;
- E. Investigating sources of funding for library service and facilities;
- F. Recommending policies for the acceptance and use of gifts for library purposes;
- G. Participating in the annual budgetary process of the City as that process pertains to the library;
- H. Recommending policies and procedures conducive to efficient and effective operation of the library;
- I. Reviewing and recommending terms for contracts and working relationships with other public agencies regarding library service;
- J. Encouraging widespread public support and use of the library;
- K. Submitting an annual report to the City Council and the state library; and
- L. Performing other duties as authorized by the City Council.

**Canby Urban Renewal Budget Committee** – The Urban Renewal Budget Committee consists of members of the Urban Renewal Agency, six (6) citizens-at-large from the City Budget Committee, and one (1) additional citizen-at-large. Members serve three (3) year terms. *Citizens-at-large are appointed and confirmed by the Urban Renewal Agency.*

**Canby Utility Board** – The Canby Utility Board consists of five (5) members. Members serve three (3) year terms. *Members are appointed by the Mayor and confirmed by the City Council following an interview panel consisting of the Mayor, City Council Liaison, and Canby Utility Board Chairperson. No Board member may serve more than two successive terms. The Mayor may vote only when necessary to break a tie.*

The Board, in the efficient and economical operation of the Electric Department and Water Department, both inside and outside the City limits, may:

- A. Purchase and sell electric power and energy and services to the public and private corporations and to other consumers;
- B. Construct plants, transmission lines and other facilities;
- C. Purchase real estate and franchises in its name;
- D. Enter into all contracts, leases and agreements in furtherance thereof; and
- E. Through an inter-governmental agreement with the City, management of the Water Department and all of its operations and facilities.

The Board may contract with any public or private corporation or any individual, both inside and outside the City limits:

- A. For the joint use of poles and other property belonging either to the Electric Department or to the other contracting party or jointly to both parties; and
- B. For the joint acquisition of real property and franchises and the joint financing, construction and operation of plants, transmission lines and other facilities, whereby any property acquired may become the property of both the Electric Department and other contracting party, for the purchase of energy.

**Historic Review Board** – The Historical Review Board consists of seven (7) members. Members serve three (3) year terms. *Members are appointed by City Council upon recommendation by the Board Chairperson and assigned Council Liaison. The Mayor may vote only when necessary to break a tie. (This text update will be contained within Title 16 of the Planning Code the next time a text amendment occurs.)*

It is the responsibility of the Historic Review Board to ensure that the purposes of this section are implemented, and to perform the following duties:

- A. Adopt rules to govern its deliberations and decisions, including a method to record its proceedings;
- B. Carry out the duties described for it in this ordinance and assist the Planning Director, Planning Commission and Canby City Council on historic preservation matters;
- C. Maintain and update an inventory of historic resources within the City, as provided under section 16.110.035;
- D. Review and render decisions on all historic landmark and historic district applications, as provided under section 16.110.045;
- E. Review and make recommendations on application of the Historical Protection Overlay Zone, as provided under section 16.110.045;
- F. Review and render decisions on proposals to alter the exterior of a Historic Landmark subject to the procedures and criteria set forth in section 16.110.080;
- G. Review and render decisions on all proposed new construction on property where a Historic Landmark is located, or within a Historic District, subject to the procedures and criteria set forth in section 16.110.080;
- H. Review all requests for demolition of a historic landmark or contributing resource, as provided under section 16.110.075;
- I. Review and make recommendations to the Planning Commission on all Conditional Use applications under section 16.38;
- J. Review and make recommendations on all partitions and subdivisions of designated properties, as provided under section 16.110.085;
- K. Disseminate information to educate the public as to local, state and federal laws protecting antiquities and historic places;
- L. Act as consultant for local preservation groups, educational workshops, signage and monumentation projects, and other similar projects;
- M. Advise interest groups, agencies, boards, commissions, and citizens on matters relating to historic preservation within the City; and
- N. Provide design guidance for historic property owners.

**Parks and Recreation Advisory Board** – The Parks and Recreation Advisory Board consists of seven (7) members. Members serve for three (3) years. ***Members are appointed by City Council upon recommendation by the Board Chairperson and assigned Council Liaison. The Mayor may vote only when necessary to break a tie.***

- A. Keeping informed about current trends in parks and recreation services and administration;
- B. Studying growth and needs in the City and its vicinity for parks and recreation services;
- C. Developing long-range plans for parks and recreation services and facilities, consistent with City priorities;
- D. Recommending types of parks and recreation services for the City and its vicinity, including marketing of such services;
- E. Investigating sources of funding for parks and recreation services and facilities;
- F. Recommending policies for the acceptance and use of gifts for parks and recreation purposes;
- G. Participating in the annual budgetary process of the City as that process pertains to parks and recreation services;
- H. Recommending policies and procedures conducive to efficient and effective operation of parks and recreation services;
- I. Reviewing and recommending terms of contracts and working relationships with other public agencies regarding parks and recreation services;
- J. Encouraging widespread public support and use of parks and recreation services and facilities;
- K. Submitting an annual report to the City Council;
- L. Advising the Planning Department regarding park land dedication and other park planning issues to meet the public needs identified in the Park Master Plan and Park Acquisition Plan; and
- M. Performing other duties as authorized by the City Council.

**Planning Commission** – The Planning Commission consists of seven (7) members. Members serve three (3) year terms. ***Members are appointed by the City Council upon recommendation of the Mayor, Council Liaison, and Planning Commission Chairperson. The Mayor may vote only when necessary to break a tie. (This text update will be contained within Title 16 of the Planning Code the next time a text amendment occurs.)***

Except as otherwise provided by law, it shall be the duty of the commission and it shall have power to:

- A. Recommend and make suggestions to the City Council and to all other public authorities concerning laying out, widening, extending, and locating of streets, parking, sidewalks and boulevards, relief of traffic congestion, betterment of housing and sanitation conditions and establishing of zones of districts limiting the use, height, area and bulk of buildings and structures;

- B. Recommend to the City Council and all other public authorities plans for regulation of the future growth, development and beautification of the municipality in respect to its public and private buildings and works, streets, parks, grounds and vacant lots, and plans consistent with future growth and development of the City in order to secure to the City and its inhabitants sanitation, proper service of all public utilities, and transportation facilities;
- C. Act as the City's official citizen involvement entity, hearing any and all comments, criticisms, and suggestions concerning City planning policies, procedures, or regulations as members of the public may wish to convey to the City;
- D. Do and perform all other acts and things necessary or proper to carry out the provisions of City ordinances and of Oregon Revised Statutes, Chapter 227, and all amendments thereto;
- E. Study and propose in general such measures as may be advisable for promotion of the public interest, health, safety and welfare of the City and of the surrounding area;
- F. Perform such acts as are now, or may hereafter be, specified in the Land; and
- G. Development and Planning Ordinance or otherwise authorized by the City Council.  
(Ord. 740 section 10.2.60, 1984)

**Traffic Safety Commission** – The Traffic Safety Commission consists of a seven (7) member voting board with non-voting liaisons representing the Canby Police Department, the Public Works Department, and the City Council. Members serve three (3) year terms. *Members are appointed by City Council upon recommendation by the Commission Chairperson and assigned Council Liaison. The Mayor may vote only when necessary to break a tie.*

The Traffic Safety Commission is specifically responsible for, but not limited to the following:

- A. Developing and implementing coordinated traffic safety programs that meet local needs;
- B. Act in an advisory capacity to the City Council in the coordination of traffic safety activities of the official agencies and departments of Canby;
- C. Reviewing and recommending project applications for funding to the City Council;
- D. Serving as liaison between the City of Canby, the Clackamas County Safety Commission, and the Oregon Traffic Safety Commission in developing the State Highway Safety Programs and in meeting the National Highway Safety Programs Standards;
- E. Promoting public acceptance of official programs authorized or instigated by the City;
- F. Fostering public knowledge and support of traffic law enforcement and traffic engineering problems;
- G. Cooperating with Canby schools in promoting educational traffic safety aids; and
- H. Educating the public in traffic safety aids.

**Transit Advisory Committee** – The Transit Advisory Committee consists of seven (7) members. Members serve three (3) year terms. *Members are appointed by City Council upon recommendation by the Committee Chairperson and assigned Council Liaison. The Mayor may vote only when necessary to break a tie.*

The Canby Transit Advisory Committee is specifically responsible for, but not limited to the following:

- A. Developing and assessing, on an ongoing basis, the transportation needs of the citizens of Canby;
- B. Acting in an advisory capacity to the Transit Director in the coordination of transit services;
- C. Promoting and educating the public regarding acceptance and usage of the transit system; and
- D. Promoting and educating the public regarding special problems associated with the use of the transit system by youth, elderly and disable citizens.

**RESOLUTION NO. 1056**

**A RESOLUTION ADOPTING A GROUND LEASE BETWEEN THE CITY OF CANBY  
AND CANBY SCHOOL DISTRICT NO. 86.**

**WHEREAS**, the City of Canby and the Canby School District No. 86 wish to enter into a Ground Lease for property that the Canby Swim Center and Canby Adult Center are built on, and

**WHEREAS**, the Canby City Council believes it is in the best interests of the citizens of Canby to enter into such a lease, now therefore

**IT IS HEREBY RESOLVED** by the City of Canby Council as follows:

1. That the attached Ground Lease, marked as Exhibit "A" and by this reference incorporated herein, by and between the City of Canby and the Canby School District No. 86 is hereby adopted. The Mayor is authorized to sign the Ground Lease on behalf of the City.
2. This resolution shall take effect on March 17, 2010.

ADOPTED this 17<sup>th</sup> day of March 2010, by the Canby City Council.

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Melody Thompson - Mayor

ATTEST:

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Kimberly Scheafer, CMC  
City Recorder

## GROUND LEASE

THIS GROUND LEASE ("Lease") is entered into this \_\_\_\_ day of \_\_\_\_\_, 2010, by and between the following parties:

**LANDLORD:**

**Canby School District No. 86**  
1130 South Ivy Street  
Canby OR 97013

and

**TENANT:**

**City of Canby, an Oregon municipal corporation**  
PO Box 930  
Canby OR 97013

Landlord owns the fee title to the following property (the "**Property**");

Legally described in **Exhibit "A"** attached hereto and incorporated herein by reference.

NOW, THEREFORE, Landlord hereby leases the Property to Tenant, and Tenant leases the Property from Landlord, on the terms and conditions set forth in this Lease:

**1. Lease of Property to Tenant; Lease Term; Possession**

**1.1 Lease of Property to Tenant.** Landlord hereby leases the Property to Tenant, and Tenant leases the Property from Landlord, for the term, at the rental, and upon all of the conditions set forth in this Lease.

**1.2 Term of Lease.** This Lease shall commence on the 1st day of July 2010 (the "Commencement Date") for **one (1)** full lease year (plus the partial month, if any, in which this Lease commences), unless sooner terminated or extended as provided in this Lease.

**1.3 Option to Renew.** This Lease shall automatically renew for successive periods of one (1) year each on the following terms and conditions, unless either party wishing to terminate the Lease provides the other party notice of such intent to terminate the Lease on or before January 1st, prior to the expiration of the then existing Lease Term.

1.3.1 In the event of notification of cancellation, the Lease shall terminate thereafter on June 30<sup>th</sup> of such year;

1.3.2 Landlord may increase the amount of base rent for any renewal term by providing notice to Tenant on or before January 1<sup>st</sup> prior to the expiration of the then existing Term of Lease. Any increase in base rent shall become effective July 1<sup>st</sup> of that year.

1.3.3 If the increase in base rent referenced above cannot be mutually agreed on by the parties hereto, the amount of increased base rent shall be fixed by three arbiters whose decision shall be binding on the parties. One arbiter shall be appointed by the Landlord, one by the Tenant, and one appointed by the other two arbiters. The fees and costs of such arbiters shall be shared equally by the parties.

1.4 **Possession.** Tenant will be entitled to possession of the Property for purposes of this Lease upon the mutual execution of this Lease.

1.5 **Property Leased "As Is"**. Except as otherwise expressly set forth in this Lease, the Property is leased to Tenant in its "As Is" condition, subject to any and all patent and latent defects and faults, without reliance upon any representation by Landlord as to the condition or suitability of Property for any intended use or purpose by Tenant and without any representation or warranty by Landlord as to its compliance with applicable Legal Requirements (as defined below) or other matters, and Tenant further acknowledges that Tenant will be relying solely on its own skill, judgment and discretion in deciding whether to lease the property.

## 2. **Rental**

2.1 **Annual Base Rent (Initial Term).** Tenant shall pay to Landlord as rent for the Property the sum of \$20,000 per year, in the form of monthly Lease payments of \$1,666.66, with the first payment due on or before July 31, 2010, and a similar payment to be made on or before the last day of each month thereafter through the entire Term of the Lease (the "rent" or sometimes referred to as the "base rent"). Rent for any partial month or partial year during the Term shall be a pro rata portion of the monthly or annual installment. Rent shall be payable in lawful money of the United States to Landlord at the address stated herein or to such other persons or at such other place as Landlord may designate in writing. Rent will commence as of the Commencement Date. The parties acknowledge that the rent payable under this Lease has been established to reflect the savings of below-market rent resulting from Landlord's and Tenant's respective exemption from taxation.

2.2 **Additional Rent, No Offsets.** All payments required to be paid by Tenant under this Lease, other than base rent, will constitute additional rent. All rent (including base and additional rent) shall be received by Landlord without set-off, offset, abatement, or deduction of any kind.

2.3 **Net Lease.** The rental paid by Tenant shall be a fully net (sometimes referred to as "triple net" or "absolute net") return to Landlord, so that from and after the Commencement Date, this Lease shall yield the base rent to Landlord net of all operating costs, maintenance and repair costs, taxes, insurance charges, assessments, governmental charges, utility costs and fees, and all other expenses of whatever kind or nature pertaining to the operation of the Property. All such costs and expenses accruing after the Commencement Date shall be paid by Tenant as to the Property.

## 3. **Use of Property**

3.1 **Permitted Use.** Tenant shall use the Property primarily for the purpose of maintaining a community swimming pool thereon and for other related community recreation

projects, including the Canby Adult Center, but for no other purposes. Tenant shall not cause or permit candy or other food products to be sold on the pool premises to school children during school hours; and Tenant shall not allow school aged children to smoke or loiter on the Property and will cooperate with Landlord or its agents in controlling any such activities. If Tenant proposes to change the use of the property, Tenant will not do so without first obtaining the prior consent of Landlord to such change in use, which consent may be withheld in Landlord's sole discretion.

**3.2 Parking Overflow.** Tenant may utilize the parking lot of Landlord's district office/Ackerman building when necessary to accommodate overflow parking from Tenant's use of the property after hours, on non-school days, and at other times when such use would not interfere with Landlord's school day parking needs.

**3.3 Compliance with Legal Requirements.** In connection with its use, Tenant shall keep and maintain the Property in compliance with all applicable laws, rules, regulations and ordinances of all federal, state, county, municipal and other public authorities having or claiming jurisdiction, and other recorded covenants, conditions and restrictions affecting the Property (collectively, the "**Legal Requirements**").

**3.4 Nondisturbance.** The rights of Tenant to the Property shall not be disturbed, cancelled, terminated or otherwise interfered with by Landlord during the Term of this Lease.

**3.5 Hazardous Substances.** Landlord represents and warrants that, as of the date of this Lease, and to the best of Landlord's knowledge, no hazardous substances have been generated, released, stored or deposited over, beneath, or on the Property from any source whatsoever by Landlord, its agents, independent contractors or invitees, other than Permitted Products (as defined below).

Tenant (as to the Property, during the Term) and Landlord (as to any adjoining property owned or operated by it, if any), have not, and shall not, allow or permit any Hazardous Substances to be generated, released, used, stored or deposited on or in the Property or adjoining property, except in the ordinary course of maintaining and operating such property and in strict compliance with applicable Environmental Laws (as defined below).

Tenant will indemnify, hold harmless, and defend Landlord, and its successors and assigns, from any and all claims, losses, damages, response costs and expenses arising out of or in any way relating to the presence of hazardous substances in, on, or beneath the Property that first occurred or accrued from and after the date of turnover of possession of the Property to Tenant, whether caused by Tenant or third parties.

The term "**hazardous substances**" is used in its very broadest sense, and refers to materials which because of their quantity, concentration, or physical, chemical, or infectious characteristics may cause or pose a present or potential hazard to human health or the environment when improperly handled, treated, stored, transported, disposed of, or otherwise managed. The term shall include, but is not limited to, all hazardous substances, hazardous materials and hazardous wastes listed by the U.S. Environmental Protection Agency and the state in which the Property is located under the Comprehensive Environmental Response,

Compensation and Liability Act (CERCLA), the Resource Conservation and Recovery Act (RCRA), the Toxic Substances Control Act (TSCA), and the Federal Water Pollution Control Act (FWPCA), the Emergency Planning and Community Right-to-Know Act (EPCRA), the Clean Air Act (CAA) and any and all other federal, state and local statutes or ordinances applicable to the protection of human health or the environment (the “**Environmental Laws**”). However, the foregoing requirements and limitations will not apply to products such as landscape fertilizer, cleaning and other products and materials that are in ordinary quantities and customarily used in the cleaning, maintenance and operation of residential and commercial facilities (the “**Permitted Products**”), but each party will in any event cause any Permitted Products to be held or used in accordance with all applicable Environmental Laws.

#### **4. Maintenance; Taxes; Utilities**

**4.1 Maintenance.** Tenant will be responsible for maintaining the Property in good order, condition, repair, operating condition, working order and appearance, and in accordance with all applicable Legal Requirements and Environmental Laws, including (without limitation) those requiring any structural or nonstructural alteration of the Property (subject to any requirement of Tenant to obtain Landlord’s consent herein) including, without limitation, all landscaping, buildings, driveways, parking lots, fences and signs located in the Property and all sidewalks and parkways adjacent to the Property.

**4.2 Taxes and Assessments.** Tenant shall pay (or cause to be paid) any property taxes, assessments and public charges (“**taxes**”) on the land, and on the improvements thereon, subject to the provisions of this Lease.

**4.3 Tenant’s Election to Contest.** Tenant may withhold payment of any tax or assessment on the Property if a good faith dispute exists as to the obligation to pay, so long as Landlord’s property interest is not jeopardized. If the Property is subjected to a lien as a result of nonpayment, Tenant shall provide Landlord with assurances reasonably acceptable to Landlord that Tenant can and will satisfy the lien before enforcement against the Property.

**4.4 Utilities.** Tenant will be responsible for causing to be paid all charges for services and utilities incurred in connection with the use, occupancy and operation of the Property, including (without limitation) charges for electricity, gas, telephone service, water and sewer.

#### **5. Liens and Indemnification**

**5.1 Liens.** Tenant shall pay (or caused to be paid) as due all claims for work done on or for services rendered or material furnished to the Property, and shall keep the Property free from any liens which could result in foreclosure of Landlord’s or Tenant’s interest in the Property, except for financing by Tenant on its leasehold estate (which will bind Tenant’s interest but not constitute a lien against Landlord’s fee title). If Tenant fails to pay such claim or to discharge any lien, Landlord may elect (in its discretion) to do so after at least ten (10) days’ written notice to Tenant of Landlord’s intention to do so, and in that event, Landlord may collect back from Tenant the amount so paid, as additional rent. Amounts paid by Landlord shall bear interest and be repaid by Tenant as provided in **paragraph 10.4** below. Such payment by

Landlord shall not constitute a waiver of any right or remedy Landlord may have because of Tenant's default.

**5.2 Indemnification.** Tenant (the "Indemnitor") shall indemnify the Landlord (the "Indemnatee") from any loss, liability, claim of liability or expense (including reasonable attorneys' fees and litigation expenses) arising out of or related to the Property or Building and arising out of or related to (i) any violation of law by the Indemnitor or its owners, agents, independent contractors, invitees, trespassers and employees (the "Covered Persons"), (ii) for any loss, injury or damage to Tenant or to any other person, or to its or their property, caused upon or about the Property, irrespective of the cause of such injury, damage or loss except to the extent caused by or resulting from the intentional torts of Landlord, or (iii) any negligent action or inaction of the Indemnitor or its Covered Persons. Further, Landlord shall not be liable: (i) for any damage caused by other persons in, upon or about the Property, or caused by operations in construction of any work on the Property; or (ii) in any event for consequential damages, including lost profits of Tenant or any person claiming through or under Tenant. The provisions of this section shall survive the expiration or earlier termination of this Lease.

**5.3 Disclaimer of Landlord's Responsibilities.** Landlord shall not under any circumstances be liable to pay for any work, labor or services rendered or materials furnished to or for the account of Tenant, and no construction lien or other lien for such work, labor or services or material furnished shall attach to or affect the reversionary interest of Landlord in any building(s) or any construction, alteration, repair, or improvement erected or made by Tenant on the Property. Nothing contained in this Lease shall be deemed or construed in any way as constituting the request of consent of Landlord, either express or implied, to any contractor, subcontractor, laborer or materialman for the performance of any labor or the furnishing of any materials for any specific construction, alteration, repair or improvement to or on the Property or any part thereof, nor as giving Tenant any right, power or authority to contract for or permit the rendering of any services or the furnishing of any materials on behalf of Landlord that would give rise to the filing of any lien against Landlord's interest in the Property.

## **6. Insurance; Restoration of Damage**

**6.1 Liability Insurance.** Tenant (as to the Property, during the Term) shall continuously maintain, at its expense, commercial general liability ("CGL") insurance with a combined single limit initially of \$2,000,000, or such greater amount approved by the parties as may from time to time customarily be furnished by tenants under comparable leases. Tenant shall name the Landlord as an additional insured, and the liability insurance will otherwise comply with **paragraph 6.2** below.

**6.2 Form of Insurance.** All policies may be part of blanket coverage relating to properties owned or leased by Tenant. Tenant will deliver to Landlord certificates of such insurance coverage prior to or concurrent with Tenant's obtaining possession of the Property and thereafter, as to policy renewals, Tenant will deliver to Landlord certificates of coverage (or other confirmation of arrangements for coverage) within 15 days prior to the expiration of the term of each such policy. Tenant's insurance shall name Landlord as an additional insured. All of Tenant's insurance shall provide for thirty (30) days' written notice to Landlord prior to cancellation, non-renewal or material modification.

**7. Condemnation**

If the entire Property is condemned, or if a portion is taken which causes the remainder to be reasonably unusable for the use permitted hereunder, then this Lease shall terminate as of the date upon which possession of the Property is taken by the condemning authority. The net condemnation proceeds shall be divided between Landlord and Tenant in proportion to the value of their respective interests in the Property immediately prior to the taking. If only a portion of the Property is taken and this Lease is not terminated, then (i) Tenant shall use the condemnation proceeds to make necessary repairs and alterations to the Property to permit Tenant to continue its operations thereon, and (ii) the remaining balance, if any, of the condemnation award attributable to the Property and Building shall be divided between Landlord and Tenant in proportion to the value of their respective interests in the Property immediately prior to the taking.

Tenant will be entitled to retain any award specifically made to Tenant for interruption of business, moving expenses, or the taking of Tenant's improvements, equipment or fixtures. Landlord will be entitled to any award specifically made to Landlord as severance damages for the effect of any taking on any adjoining property owned by Landlord that is not part of the Property under this Lease.

In the event of condemnation, rent shall be abated during the period of restoration, and shall be reduced for the remainder of the lease Term to the extent and in the same proportion as the reduction in the fair market rental value of the Property caused by the Property. Sale of all or a part of the Property to a purchaser with the power of eminent domain in the face of a threat or the probability of the exercise of the power shall be treated as a taking by condemnation.

**8. Transfers by Tenant.**

**8.1 Transfers Prohibited Without Consent.** Tenant shall not assign, pledge, hypothecate, encumber or otherwise transfer its leasehold interest and interest in the improvements on the Property without the written consent of Landlord, which consent may be withheld in Landlord's sole discretion. An unauthorized transfer under this section shall be deemed a default of this Lease and entitle Landlord to terminate this Lease.

**9. Events of Default**

The following shall be "Events of Default":

**9.1 Unauthorized Transfer.** Tenant's assignment, pledge, sublease, encumbrance or other transfer of Tenant's leasehold interest or the building on the Property without the prior written consent of Landlord.

**9.2 Payment Default.** Failure of Tenant to make any rent or other payment to be made to Landlord under this Lease within 20 days after receipt of written notice of nonpayment.

**9.3 Default in Other Covenants.** Failure of Tenant to comply with any other term or condition or fulfill any other obligation of this Lease within 30 days after written notice by Landlord specifying the nature of the default with reasonable particularity. If the default is of

such a nature that it cannot be remedied fully within the 30-day period, this requirement shall be satisfied if Tenant begins correction of the default within the 30-day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable.

**9.4 Notice of Action to Retake or File Suit.** Prior to taking any action to re-enter or retake possession of the Property, or to sue Tenant for damages for default, Landlord will provide Tenant with at least ten days' notice of Landlord's intent to pursue the particular remedy or remedies if the default is not cured within such time period. Such notice may be given concurrently with or separately from the notices specified above.

## **10. Remedies on Default**

Upon default, after expiration of notice and cure periods provided in Section 9, Landlord may exercise any one or more of the following remedies:

**10.1 Termination.** In the event of a default the Lease may be terminated at the option of Landlord by written notice to Tenant. Whether or not the Lease is terminated by election of Landlord or otherwise, Landlord shall be entitled to recover damages from Tenant for the default, and Landlord may reenter, take possession of the Property and remove any persons or personal property by legal action or by self-help with the use of reasonable force and without liability for damages and without having accepted a surrender.

**10.2 Re-letting.** Following reentry or abandonment, Landlord may re-let the property and in that connection may make any suitable alterations or refurbish the Property, or both, or change the character or use of the Property, but Landlord shall not be required to re-let for any use or purpose other than that specified in the lease or which Landlord may reasonably consider injurious to the Property or to any tenant that Landlord may reasonably consider objectionable. Landlord may re-let all or part of the Property, alone or in conjunction with other properties for a term longer or shorter than the term of this lease, on any reasonable terms and conditions, including the granting of some rent-free occupancy or other rent concession.

**10.3 Damages for Default.** Landlord may recover all damages caused by the default. Landlord may sue periodically to recover damages as they accrue during the remainder of the lease term without barring a later action for further damages. Landlord may at any time bring an action for accrued damages plus damages for the remaining lease term equal to the difference between the rent specified in this Lease and the reasonable rental value of the Property for the remainder of the term, discounted to the time of judgment at the rate of 9 percent per annum.

**10.4 Cure of Tenant's Default.** Without prejudice to any other remedy for default, Landlord may perform any obligation or make any payment required to cure a default by Tenant. The reasonable cost of performance, including reasonable attorneys' fees and all disbursements, shall immediately be repaid by Tenant upon demand, together with interest from the date of expenditure until fully paid at the rate of 12 percent per annum, but not in any event at a rate greater than the maximum rate of interest permitted by law.

**10.5 Other Remedies.** Landlord may exercise any other remedy available under applicable law. Landlord may terminate this Lease and take possession of the Property, and Landlord may pursue any other legal remedy for breach of contract, including (without

limitation) specific performance, collection of damages, and collection of attorneys' fees and other costs and expenses.

## **11. General Provisions**

**11.1 Modifications.** This Lease may not be modified except by endorsement in writing attached to this Lease, dated and signed by the parties. Neither party shall not be bound by any statement of any agent or employee modifying this Lease, except for any person which the party has specifically designated in writing as its representative.

**11.2 Proration of Rent.** If this Lease starts or ends during a rental period, the rent (including taxes and any other charges) shall be prorated as of such date. Upon termination other than for default, prepaid rent shall be refunded, if applicable.

**11.3 Nonwaiver.** Waiver of performance of any provision shall not be a waiver of nor prejudice the party's right otherwise to require performance of the same provision or any other provision.

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

**11.5 Entry by Landlord.** Except as otherwise provided herein, Landlord or its authorized representatives may enter the Property at any time without any restrictions from Tenant; however, Landlord or its authorized representatives may enter any building or improvement constructed on the Property under Tenant's exclusive control only upon 24 hours' notice to Tenant.

**11.6 Estoppel Certificates.** Within 10 days after receipt of written request, each party shall deliver a written statement to the requesting party stating the date to which the rent and other charges have been paid, whether the Lease is unmodified and in full force and effect, and any other matters that may reasonably be requested.

**11.7 Surrender of Premises; Demolition.** Upon the termination of this Lease, for any reason whatsoever, Tenant shall promptly vacate the property and deliver the same to Landlord in as good order and repair as said Property was at the commencement of this Lease, ordinary wear and tear accepted. Notwithstanding the foregoing, upon termination of this Lease and vacation of the Property by Tenant, Tenant shall cause the demolition and removal of the swimming pool improvement on the property, and the re-grading of the property as necessary, prior to Tenant's surrender of the Property to Landlord. Except as provided above, all additions to or alterations of the Property, whether installed by Landlord or By Tenant, excluding any trade fixtures, shall at once become part of the realty and belong to Landlord. Tenant agrees to restore any damage caused by the removal of any property Tenant is entitled to remove, pursuant to this Section.

**11.8 Notices.** Unless otherwise specifically provided herein, all notices, consents, directions, approvals, instructions, requests and other communications required or permitted by the terms hereof to be given (collectively "**Notices**") shall be given in writing and effective upon receipt. Notices may be served: by certified or registered mail, postage paid with return receipt

requested; by private courier, prepaid; by telex, facsimile, or other telecommunication device capable of transmitting or creating a written record; or personally. Mailed Notices shall be deemed received three business days after mailing, properly addressed. Couriered Notices shall be deemed received when delivered as addressed, or if the addressee refuses delivery, when presented for delivery notwithstanding such refusal. With respect to any notice sent by telex, facsimile or other telecommunication device, the term "receipt" will mean electronic verification that transmission to the recipient was completed, if such transmission occurs during the normal business hours, or otherwise on the next business day after the date of transmission. Personal delivery of Notices shall be effective when accomplished. Unless a party changes its address by giving notice to the other party as provided herein, Notices shall be delivered to the parties at the following addresses:

If to Tenant, to it at:

**City of Canby, an Oregon municipal corporation**  
PO Box 930  
Canby OR 97013

**With a copy to:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If to Landlord, to it at:

**Canby School District No. 86**  
1130 South Ivy Street  
Canby OR 97013

**With a copy to:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

From time to time any party may designate a new address for purposes of Notices hereunder by Notice to the other party. Delivery of the copy of any notice to the places to which copies are to be sent is not a precondition to the effectiveness of the notice as to the parties to this Lease. As used in this Lease, the term "**business day**" means a day, other than Saturday or Sunday and national holidays, on which banking institutions in Portland, Oregon are generally open for business to the public, and "**normal business hours**" means 9:00 a.m. to 5:00 p.m. on any such business day.

**11.9 Attorneys' Fees.** In the event suit or action is instituted to interpret or enforce the terms of this Lease, the prevailing party shall be entitled to recover from the other party such sum as the court may adjudge reasonable as attorneys' fees at trial, upon appeal and on any petition for review, in addition to all other sums provided by law.

**11.10 Relationship of Parties.** The relationship of the parties to this Lease is that of landlord and tenant. Landlord is not a partner or joint venturer with Tenant in any respect or for any purpose in the conduct of Tenant's business or otherwise.

**11.11 Applicable Law.** The Property is located in the State of Oregon. The parties agree that the law of such State shall be applicable for purposes of construing and determining the validity of this Lease.

**11.12 Prior Agreements.** This Lease (including all exhibits, incorporated herein) is the entire, final, and complete agreement of the parties with respect to the matters set forth in this Lease, and supersedes and replaces all written and oral agreements previously made or existing by and between the parties or their representatives with respect to such matters.

**11.13 Validity of Provisions.** If any of the provisions contained in this Lease shall be invalid, illegal, or unenforceable in any respect, the validity of the remaining provisions contained in this Lease shall not be affected.

**11.14 Recording; Quitclaim.** Tenant shall not file or record this Lease without the specific prior written consent of Landlord, but the parties may execute a good and sufficient memorandum of lease for purposes of recording in a form acceptable to Landlord. Upon expiration or earlier termination of this Lease, Tenant shall promptly execute, acknowledge and deliver to Landlord any quitclaim deed or other document required by Landlord or a title company to remove the cloud of this Lease from the Property and to evidence the termination of Tenant's interests in the Property and improvements that will remain on the Property.

**11.15 Merger of Estates.** In the event and at such time as Landlord may own and hold both the landlord's and tenant's interest under this Lease, this Lease will terminate automatically by merger of estates.

**11.16 Authorization of Lease; Facsimile Signatures.** Each party covenants and warrants to the other that the person(s) executing this Lease on behalf of the party is duly authorized to execute and bind the party under this Lease. Facsimile transmission of any signed original document, and retransmission of any signed facsimile transmission, shall be the same as delivery of an original. At the request of either party, the parties shall confirm facsimile-transmitted signatures by signing an original document.

**11.17 Brokers.** Neither party has used a real estate broker in connection with this transaction. Each party will defend, indemnify, and hold harmless from any claim, loss, or liability made or imposed by any other party claiming a commission or fee in connection with this transaction and arising out of its own conduct.

**11.18 Section Headings.** The headings to the sections and paragraphs of this Lease are included only for the convenience of the parties and shall not have the effect of enlarging, diminishing, or affecting the interpretation of its terms.

**11.19 Joinder in Instruments.** Upon reasonable request from time to time, Landlord shall join with Tenant in any conveyance, dedication, grant of easement or license or other instrument as shall be reasonably necessary or convenient to provide public utility service to the Property or in order to allow development or use of the Property by Tenant. Landlord shall not be required to incur any cost or expense by virtue of the provision of this paragraph.

**11.20 Exhibits.** All exhibits and attachments to the Lease are hereby incorporated as part of the body of this instrument.

**IN WITNESS WHEREOF**, the undersigned has caused this Ground Lease to be duly executed under seal by an officer thereunto duly authorized as of the date and year first above written.

**LANDLORD:**

**CANBY SCHOOL DISTRICT NO. 86**

By: \_\_\_\_\_  
Name: \_\_\_\_\_ (Date)  
Title:

**TENANT:**

**CITY OF CANBY, an Oregon municipal  
corporation**

By: \_\_\_\_\_  
Name: \_\_\_\_\_ (Date)  
Title:

## **EXHIBIT "A"**

### **DESCRIPTION OF PROPERTY**

A Parcel of land located in the Northeast one-quarter of Section 4, Township 4 South, Range 1 East of the Willamette Meridian, in the City of Canby, Clackamas County, Oregon. Said parcel of land being more particularly described as follows:

Commencing at the intersection of the Northerly line of that Tract of land dedicated for road purposes in that Deed recorded as Document No. 97-023967, Clackamas County Deed Records, with the East right-of-way line of South Ivy Street, said point being North 89°16'09" West a distance of 1259.47 feet and North 00°31'13" East a distance of 67.35 feet from the East one-quarter corner of said Section 4, said intersection point being the true point of beginning of the Parcel of land herein described; thence North 00°31'13" East, along said East right-of-way line, a distance of 484.94 feet to a point; thence South 89°33'00" East a distance of 220.19 feet to a point; thence South 00°50'30" West a distance of 513.36 feet to a point on said North line of said Document No. 97-023967 Tract; thence North 89°16'09" West, along said North line, a distance of 190.17 feet to an angle point in said North line; thence continuing along said North line, North 44°09'45" West a distance of 38.60 feet to the true point of beginning of the Parcel of land herein described.

Said Parcel of land contains an area of 2.5668 acres more or less.

**EXHIBIT "B"**  
**Map**

