

AGENDA

CANBY CITY COUNCIL REGULAR MEETING

April 15, 2009

7:30 PM

Council Chambers
155 NW 2nd Avenue

Mayor Melody Thompson

Council President Walt Daniels

Councilor Robert Bitter

Councilor Tony Helbling

Councilor John Henri

Councilor Wayne Oliver

Councilor Jason Padden

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 April 1, 2009 City Council Work Session & Regular Meeting

B. Reappointment to City Budget Committee

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7. RESOLUTIONS & ORDINANCES

A. Ord. 1305, Authorizing Canby Urban Renewal Agency to Execute a Contract with Northwest Earthmovers, Inc for NE 2nd Avenue Reconstruction and Parking Lot Improvements; and Authorizing City to Reimburse the Urban Renewal Agency for a Portion of the Project Costs for Public Street Improvements on SE 2nd Avenue (2nd Reading)

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8. NEW BUSINESS

- A. Discussion Regarding Measures 3-338 and 3-339
- B. Selection of Rural Reserves PAC Liaison

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9. CITY ADMINISTRATOR'S BUSINESS & STAFF REPORTS

10. CITIZEN INPUT

11. ACTION REVIEW

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

13. ADJOURN

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

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

Date: April 2, 2009

Name: Ronald S. Berg "R.S." Occupation: Retired CPA

Home Address: _____

Employer: Was Self-Employed Position: Owner

Daytime Phone: 5 Evening Phone: Same

E-Mail Address: _____

For which position are you applying? Member of City Budget Committee

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

Canby Utility (was on Board of Directors), historical, school activities
including sports, Canby Community Concerts, active member of Zoar
Lutheran Church

Experience and educational background: I have spent 47 years in public accounting.
I attended Canby Grade School (8 yrs), Canby High School (4 yrs), and
graduated from Lewis and Clark College with a BS in Business Administration
(emphasis in Accounting).

Reason for your interest in this position: I am interested in and concerned about
Canby. I have lived here all of my life. I feel that my accounting
background is a good fit for a position on the Budget Committee

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

Canby Utility Board of Directors, March 1994 thru December 2001.

Urban Renewal District Advisory Committee (2 yrs- chairman 2th year).

Canby Budget Committee January 2003 thru June 30, 2008.

Information on any special membership requirements: _____

Referred by (if applicable): Walt Daniels

Feel free to attach a copy of your resume and use additional sheets if necessary

Ronald S. Berg

RECEIVED

APR 2 2009

CITY OF CANBY

THANK YOU FOR YOUR WILLINGNESS TO SERVE CANBY

Please return to:

City of Canby

Attn: City Recorder

182 N. Holly Street

PO Box 930

Canby, OR 97013

Phone: 503.266.4021 Fax: 503.266.7961 Email: Scheaferka@ci.canby.or.us

Note: Please be advised that this information may be made available to anyone upon a public records request and may be viewable on the City's web site.

12-4-07

ORDINANCE NO. 1305

AN ORDINANCE AUTHORIZING THE CANBY URBAN RENEWAL AGENCY TO EXECUTE A CONTRACT WITH NORTHWEST EARTHMOVERS, INC. FOR NE 2nd AVENUE RECONSTRUCTION AND PARKING LOT IMPROVEMENTS; AND AUTHORIZING THE CITY TO REIMBURSE THE URBAN RENEWAL AGENCY FOR A PORTION OF THE PROJECT COSTS FOR PUBLIC STREET IMPROVEMENTS ON SE 2ND AVENUE;AND DECLARING AN EMERGENCY.

WHEREAS, the Canby Urban Renewal Agency has heretofore advertised and received bids for the NE 2nd Avenue Reconstruction and Parking Lot improvement project; and

WHEREAS, the notice of call for bids was duly and regularly published in the Oregon Daily Journal of Commerce on March 12th, 2009; and

WHEREAS, eleven bids were received and opened on March 31, 2009 at 2:00 pm in Canby City Planning Department and the following bids were read aloud:

	BIDDER	ADDRESS	BID PRICE
1.	Northwest Earthmovers, Inc.	Sherwood, OR	\$877,750.00**
2.	Canby Excavating, Inc.	Canby, OR	\$891,502.00
3.	Parker Northwest Paving Co.	Canby, OR	\$927,212.00
4.	R & R General Contractors	Wilsonville, OR	\$975,946.02
5.	NW Kodiak Construction	Sherwood, OR	\$988,645.33
6.	Excel Excavation, Inc.	Tualatin, OR	\$980,119.50
7.	Landis & Landis Const.	Marylhurst, OR	\$997,696.50
8.	Brown Contracting Inc.	Eugene, OR	\$1,031,256.50
9.	Gelco Construction Co.	Salem, OR	\$1,089,746.50
10.	Kerr Contractors, Inc.	Woodburn, OR	\$1,246,261.00
11.	Roy Houck Construction Co.	Salem, OR	\$1,293,972.50

**with the Alternative Bid Item 'AB' total contract amount will be \$874,491.00

2nd Reading

WHEREAS, the Canby City Council, acting as the City's Contract Review Board, met on Wednesday, April 1, 2009, and considered the bids and reports and recommendations of the City staff, including the staff recommendation that the low responsive bid be selected; and

WHEREAS, the Canby City Council determined that the low responsive bid was that of Northwest Earthmovers, Inc.; and

WHEREAS, the City of Canby has committed to contribute a portion of the project costs to pay for public street improvements on NE 2nd Avenue; now therefore

THE CITY OF CANBY ORDAINS AS FOLLOWS:

Section 1. The Canby Urban Renewal Agency is hereby authorized and directed to make, execute, and declare in the name of the City of Canby and on its behalf, an appropriate contract with Northwest Earthmovers, Inc. for NE 2nd Avenue Reconstruction and Parking Lot Improvements, for the bid amount of \$874,491.00. A copy of the contract with Northwest Earthmovers, Inc. is attached hereto and marked as Exhibit "A" and by this reference incorporated herein.

Section 2. The City of Canby will reimburse the Canby Urban Renewal Agency the cost of eligible street improvements for NE 2nd Avenue, estimated to be in the amount of \$246,280 from the Street Capital Reserve account.

Section 3. Inasmuch as it is in the best interest of the citizens of Canby, Oregon, to complete this project as soon as possible, an emergency is hereby declared to exist and this ordinance shall therefore take effect immediately upon its enactment after final reading.

SUBMITTED to the Canby City Council and read the first time at a regular meeting therefore on Wednesday, April 1, 2009; ordered posted as required by the Canby City Charter and scheduled for second reading on Wednesday, April 15th, 2009, after the hour of 7:30 pm at the Council Chambers located at 155 NW 2nd Avenue, Canby, Oregon.

Kimberly Scheafer, CMC, City Recorder Pro Tem

2nd Reading

PASSED on second and final reading by the Canby City Council at a regular meeting thereof on the 15th day of April, 2009, by the following vote:

YEAS _____

NAYS _____

Melody Thompson, Mayor

ATTEST:

Kimberly Scheafer, CMC, City Recorder Pro Tem

2nd Reading

CONTRACT FOR CONSTRUCTION

THIS AGREEMENT is dated as of the ____ day of ____ in the year 2009 by and between

URBAN RENEWAL AGENCY of the CITY OF CANBY

(hereinafter called OWNER) and

NORTHWEST EARTHMOVERS, INC.

(hereinafter called CONTRACTOR)

OWNER and CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

ARTICLE 1 - WORK

CONTRACTOR shall complete all Work as specified or indicated in the Contract Documents:

**URBAN RENEWAL AGENCY of the CITY OF CANBY
NE 2ND AVENUE RECONSTRUCTION
AND PARKING LOT IMPROVEMENTS**

The project consists of approximately 750 lineal feet of street reconstruction to include curbs, concrete sidewalks, ADA ramps, unit pavers, asphaltic concrete paving, infiltration trenches, planters and landscaping. The work also includes the construction of a new parking lot, INCLUDING THE ALTERNATIVE BID 'AB'.

ARTICLE 2 - ENGINEER

The Project has been designed by CURRAN-McLEOD, INC., Consulting Engineers, who is hereinafter called ENGINEER and who will assume all duties and responsibilities and will have the rights and authority assigned to ENGINEER in the Contract Documents in connection with completion of the Work in accordance with the Contract Documents.

ARTICLE 3 - CONTRACT TIME

- 3.1 The Work will be substantially completed within 120 calendar days after the date when the Contract Time commences to run as provided in paragraph 2.03 of the

General Conditions, and completed and ready for final payment in accordance with Paragraph 14.07 of the General Conditions within 30 days after the date when the issuance of the Certificate of Substantial Completion including punch list items.

- 3.2 Liquidated Damages: OWNER and CONTRACTOR recognize that time is of the essence of this Agreement and that OWNER will suffer financial loss if the Work is not substantially complete within the time specified in paragraph 3.1 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. They also recognize the delays, expense and difficulties involved in proving in a legal proceeding the actual loss suffered by OWNER if the Work is not substantially complete on time.

Accordingly, instead of requiring any such proof, OWNER and CONTRACTOR agree that as liquidated damages for delay (but not as a penalty) CONTRACTOR shall pay OWNER or the OWNER may withhold from amounts due the CONTRACTOR Four Hundred Dollars (\$400.00) for each day that expires after the time specified in paragraph 3.1. for Substantial Completion until the Work is substantially complete AND/OR for each day of delay beyond the deadline for Final Completion.

ARTICLE 4 - CONTRACT PRICE

- 4.1 OWNER shall pay CONTRACTOR for performance of the Work in accordance with the Contract Documents in current funds by check, an amount totaling

Eight Hundred Seventy Four Thousand Four Hundred Ninety One
Dollars (\$874,491),

as shown in the attached Bid Proposal.

ARTICLE 5 - PAYMENT PROCEDURES

CONTRACTOR shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Applications for Payment will be processed by ENGINEER as provided in the General Conditions.

- 5.1 Progress Payments: OWNER shall make progress payments on account of the Contract Price on the basis of CONTRACTOR'S Applications for Payment as recommended by ENGINEER, on or about the 25th day of each month during construction as provided below. All progress payments will be on the basis of the progress of the Work measured by the schedule of values provided for in paragraph 14.01 of the General Conditions.

5.1.1 Prior to Substantial Completion progress payments will be in an amount equal to:

- (a) 95 % of the Work completed; and
- (b) 95 % of materials and equipment not incorporated in the Work but delivered and suitably stored, less in each case the aggregate of payments previously made.

5.1.2 Upon Substantial Completion, OWNER shall pay an amount sufficient to increase total payments to CONTRACTOR to 95% of the value of the Contract Work completed, less such amounts as ENGINEER shall determine in accordance with paragraph 14.02 of the General Conditions.

5.2 Final Payment: Upon final completion and acceptance of the Work in accordance with paragraph 14.07 of the General Conditions, OWNER shall pay the remainder of the value of the Contract Work completed, as recommended by ENGINEER as provided in said paragraph 14.07.

ARTICLE 6 - INTEREST

All monies not paid when due hereunder shall bear interest at the maximum rate allowed by law at the place of the Project, when requested in accordance with ORS 279C.570

ARTICLE 7 - CONTRACTOR'S REPRESENTATIONS

In order to induce OWNER to enter into this Agreement CONTRACTOR makes the following representations:

- 7.1 CONTRACTOR has familiarized himself with the nature and extent of the Contract Documents, Work, locality, and with all local conditions and federal, state and local laws, ordinances, rules and regulations that in any manner may affect cost, progress or performance of the Work.
- 7.2 CONTRACTOR has studied carefully all reports of investigations and tests of subsurface and latent physical conditions at the site or otherwise affecting cost, progress or performance of the Work which were relied upon by ENGINEER in the preparation of the Drawings and Specifications and which have been identified in the Supplementary Conditions.
- 7.3 CONTRACTOR has made or caused to be made examinations, investigations and tests and studies of such reports and related data in addition to those referred to in paragraph 7.2 as he deems necessary for the performance of the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents; and no additional examinations,

investigations, tests, reports or similar data are or will be required by CONTRACTOR for such purposes.

- 7.4 CONTRACTOR has correlated the results of all such observations, examinations, investigations, tests, reports and data with the terms and conditions of the Contract Documents.
- 7.5 CONTRACTOR has given ENGINEER written notice of all conflicts, errors or discrepancies that he has discovered in the Contract Documents and the written resolution thereof by ENGINEER is acceptable to CONTRACTOR.

ARTICLE 8 - CONTRACT DOCUMENTS

- 8.1 This Agreement
- 8.2 Exhibits to this Agreement.
- 8.3 Performance and other Bonds
- 8.4 Notice of Award.
- 8.5 General Conditions of the Construction Contract
- 8.6 Supplementary Conditions
- 8.7 Technical Specifications as listed in the Table of Contents.
- 8.8 Drawings bearing the following general title:

URBAN RENEWAL AGENCY of the CITY OF CANBY
NE 2ND AVENUE RECONSTRUCTION
AND PARKING LOT IMPROVEMENTS

- 8.9 Addenda numbers 1 of 1.
- 8.10 CONTRACTOR'S Bid
- 8.11 Any Modification, including Change Orders, duly delivered after execution of Agreement.

There are no Contract Documents other than those listed above in this ARTICLE 8. The Contract Documents may only be altered, amended or repealed by a Modification (as defined in Article 1 of the General Conditions).

ARTICLE 9 - MISCELLANEOUS

- 9.1 Terms used in this Agreement which are defined in Article 1 of the General Conditions shall have the meanings indicated in the General Conditions.
- 9.2 No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and specifically by without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.
- 9.3 OWNER and CONTRACTOR each binds himself, his partners, successors, assigns and legal representatives to the other party hereto, his partners, successors, assigns and legal representatives in respect to all covenants, agreements and obligations contained in the Contract Documents.
- 9.4 In the event a suit, arbitration or other legal action is required by either the OWNER or the CONTRACTOR to enforce any provisions of this Agreement, the prevailing parties shall be entitled to all reasonable costs and reasonable attorney's fees upon trial or subsequent appeal.

IN WITNESS WHEREOF, the parties hereto have signed three counterparts of this Agreement.

This Agreement will be effective on _____, 2009.

OWNER:

**URBAN RENEWAL AGENCY
of the CITY OF CANBY
170 NW 2nd Avenue
Canby, OR 97013**

By: _____

Name: _____

Title: _____

CONTRACTOR:

**NORTHWEST EARTHMOVERS, INC.
13600 SW Galbreath Drive
Sherwood, OR 97140**

By: _____

Name/Title: _____

Attest: _____

Address for giving notices:

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April 1, 2009

**CURRAN-McLEOD, INC.
CONSULTING ENGINEERS**

6655 S.W. HAMPTON STREET, SUITE 210
PORTLAND, OREGON 97223

Ms. Catherine Comer
Economic Development Manager
City of Canby
182 N Holly Street
Canby, OR 97013

**RE: CITY OF CANBY
NE 2nd AVENUE BUDGET RECAP**

Dear Catherine;

This is to provide an updated cost summary of the NE 2nd Avenue and Parking Lot improvements now that we have received bids. The low bid from Northwest Earthmovers Inc. (NEI) has no flaws apparent, and their first tier subcontractors are, similar to NEI, large and reputable.

Following this construction we will need to contract for electrical lighting and service, security and for landscaping, including the three focal points. Following is a breakdown of all remaining expenses we foresee:

NE 2 nd Avenue Construction	\$407,926
Street Lighting & electrical	25,000
Landscaping Improvements	<u>30,000</u>

Construction Subtotal	\$462,926
Engineering	17,600
Contingencies	<u>46,794</u>
TOTAL NE 2nd AVENUE	\$527,320

Parking Lot Improvements	\$466,565
Street lighting & electrical	40,000
Landscaping Improvements	30,000
Security Monitoring System	<u>8,000</u>

Construction Subtotal	\$544,565
Engineering	17,600
Contingencies	<u>46,795</u>
TOTAL PARKING LOT	\$608,960

TOTAL PROJECT COST	<u>\$1,136,280</u>
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Ms. Catherine Comer
April 1, 2009
Page 2

Revenues to support these expenditures are estimated as follows:

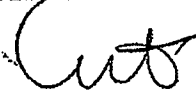
Balance of Klohe & URA Funds	\$890,000
Street Reserves	<u>246.280</u>
TOTAL REVENUES	<u>\$1,136.280</u>

Construction schedules should integrate fine with the cinema. This contract should break ground the third week of April with completion scheduled for late August. This will permit finishing touches to be completed on landscaping and street furniture prior to the completion of the Cinema, which is scheduled for late October.

Let me know if you have any concerns.

Very truly yours,

CURRAN-McLEOD, INC.



Curt J. McLeod, P.E.

cc: Mr. Dwayne Barnes



PROPOSED CHANGES TO THE CITY OF CANBY'S MUNICIPAL CHARTER MAY 19, 2009 SPECIAL ELECTION

The Canby City Charter is the governing document for the City. In 1984, the City of Canby electorate voted to approve a revised City Charter. Except for a few Amendments over the past 23 years, the 1984 Charter has been the governing document for the City of Canby.

In January, 2004, the League of Oregon Cities (LOC) distributed a "Model Charter for Oregon Cities" to those cities in Oregon seeking to revise and update their charters. In the past three years, several cities did adopt new charters using the LOC model as a reference.

The Canby City Council recently decided that it needed to revise and update its 1984 Charter and requested staff compare and contrast Canby's Charter with the LOC model Charter. Following several workshop sessions, the Council and staff revised the Canby Charter to reflect changes in the law and other streamlining that brought the 1984 Charter more in line with the LOC model. The City Council approved the proposed revisions following a public meeting on January 21, 2009. These changes must be submitted to City voters for approval.

Measure 3-336: Amends Charter Removing Term Limits for Canby Utility Board Members – Canby Utility Board members are appointed by the City Council. In Chapter X, section 4(a) of the current charter discussing organization and membership of the Canby Utility Board the following language appears: "No Board member may serve more than two successive terms." Each term is for a three year period. Removal of this restriction, if approved by the voters, would allow current Utility Board members to continue to serve as long as they are reappointed by the City Council, rather than requiring them to step down after two successive terms, or six years.

Measure 3-337: Amends Charter Removing City Treasurer and Recorder as Officers – In Chapter III and Chapter V of the current charter, the positions of City Treasurer and City Recorder are listed as officers of the City. As such, they are under the management of the City Council. The City Council feels these positions should be under the management of the City Administrator who normally oversees their work on a daily basis and is therefore, in a better position to evaluate and manage their work. In the revised charter, these positions would be management level director positions similar to existing director positions, such as the public works director and human resources director. The LOC Model Charter does not list the Recorder and Treasurer as officers. This change, if approved, would bring the City's charter more in line with the LOC Model Charter.

Measure 3-338: Amends Charter to Update Provisions Required by Oregon Law – Chapter VI, sections 1-8 of the current Charter would be revised by adopting recent changes in Oregon’s Election Law. Chapter IX, sections 1 would be revised by adopting current Oregon laws regarding condemnation of private property for public purposes. Chapter IX, section 4 would be revised to adopt current Oregon law and Canby Municipal code regarding public contracting for public projects. Chapter XI, section 1 would be revised to require Canby’s floating indebtedness to conform to current Oregon law setting debt limitations; and Chapter XI, section 2 would be revised to require Canby to conform to the current State of Oregon’s tort liability limitations.

Measure 3 –339: Amends Charter Revising Limit for Contract Approved by Ordinance – In Chapter XI, section 4 of the current charter, it provides that expenditures of sums not budgeted, or expenditures of budgeted funds in excess of \$15,000.00 shall be authorized by an Ordinance. The City Council, by a majority vote, must approve all ordinances involving the single purchase or contract in excess of \$15,000.00. It takes two separate Council meetings, at least a week apart, to approve an ordinance. The City Council is proposing to amend the Charter to raise the single purchase or contract amount for already budgeted funds from \$15,000.00 to \$50,000.00 before an ordinance is required for approval. This amendment, if approved, would allow the City staff to purchase already budgeted items up to \$50,000.00 without having to get approval by ordinance.

The current Charter and the proposed Charter with revisions are available to view in their entirety on the City’s web page located www.ci.canby.or.us.