

# AGENDA

## CANBY CITY COUNCIL REGULAR MEETING

October 21, 2009

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 Jason Padden*

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## CITY COUNCIL REGULAR MEETING

### 1. CALL TO ORDER

- A. Pledge of Allegiance and Moment of Silence
- B. Swearing In of New City Councilor
- C. State of the College Presentation

### 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 October 7, 2009 City Council Regular Meeting
- B. Approval of Quitclaim Deed to Canby Utility

Pg. 1

### 7. RESOLUTIONS & ORDINANCES

- A. Ord. 1320, Authorizing Contract with Canby Excavating, Inc. for the Knights Bridge Rd. Sanitary Sewer Pump Station Reconstruction

Pg. 17

### 8. NEW BUSINESS

- A. Adoption of City Administrator Position Profile
- B. Committee Liaison Assignments

Pg. 24

Pg. 27

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

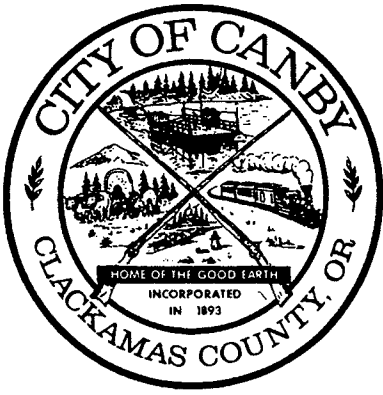
**10. CITIZEN INPUT**

**11. ACTION REVIEW**

**12. EXECUTIVE SESSION:** 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](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.

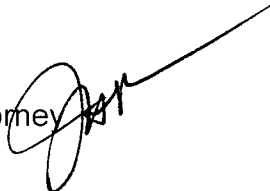


# City of Canby

Office of the City Attorney

October 13, 2009

Memo to: Mayor/City Council

From: John H. Kelley, City Attorney 

Re: Request for Council to execute a Deed granting Canby Utility an interest in 54.3% of the real property where the City shops are located (1470 NE Territorial Road.)

As you can see from the enclosed staff report drafted by Matt Michel, Asst General Manager of the Canby Utility, at the time the public works/Canby Utility shop buildings were constructed on NE Territorial Road, it was agreed that the purchase price of the property (contributed by the City) would be divided according to an IGA entered into in 1986. That Agreement established an ownership allocation formula of 54.3% Canby Utility and 45.7% City of Canby. The Agreement provided that Canby Utility was to pay the sum of \$14,784.00 for its portion of the real property to the City of Canby. No deed however, was ever created recognizing the undivided percentage of ownership between the two parties at that time.

The proposed Quit-Claim Deed included in the packet recognizes that agreement and provides for an undivided ownership according to the percentage agreement of the IGA of 1986.

There was one unresolved issue about what the total acreage of the "project" included as it is referred to in the IGA. By using an extrapolation formula based upon the original purchase price and tax assessed value of real property in 1985-86, Matt Michel had calculated that the total acreage of the "project" was approximately 6.50 acres. Kim located a memo from Bud Atwood, Canby City Administrator, dated March 11, 1986 also referencing the area of the City owned real property as 6.50 acres. I've attached a copy of that memo as well. Therefore, Matt and I have agreed that the acreage of the "project" should be 6.50 acres and have included that figure in the description contained in the Quit-claim Deed.

This matter having been successfully resolved by the parties, the only issue left is the approval of the Quit-claim Deed recognizing the CUB interest as set forth in the original IGA of 1986. The approval of the Deed under the Consent Agenda will authorize the Mayor to sign on behalf of the City. If there are questions, you can call me, or if you think this deserves more review and discussion by the Council, you may remove it from the Consent Agenda to review it in more detail.



MEMORANDUM

TO: John Kelley, City Attorney  
City of Canby

FR: Matt Michel, Assistant General Manager *Matt*  
Canby Utility

DT: July 1, 2009

RE: Request to Record Conveyance to Canby Utility Board of 54.3% Real Property  
Ownership in the Shops Project at 1470 NE Territorial

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SUMMARY

In 1986, the Canby City Council agreed to convey to the Canby Utility Board a 54.3% fee simple interest in real property located at 1470 NE Territorial Road in Canby—the shared “Shops” facility currently occupied by both the City and the Utility. However, as you and I have discovered, that conveyance was never recorded.

On behalf of the Utility I request that the City record the conveyance to the Utility of a 54.3% joint ownership in the Shops property. I have provided you a draft quitclaim deed for your review and the relevant deeds for the property that contain the applicable legal description of the property on which the Shops exists.

You’ll note that the draft deed references two intergovernmental agreements (IGAs) between the City and Utility to define the conveyed property as the “Project,” and not an actual acreage amount. This is because we do not know the exact acreage conveyed. There is an undated drawing of the Project facility that does not reference the extent of the real property used by the Project. The existing Shops operations footprint necessarily defines the Project.

Without being able to re-construct the actual acreage conveyed, I propose the conveyance instead reference the Project as defined in the IGAs. If and when either the City or Utility wants to buy the other’s ownership share, the sale price can be negotiated on the basis of the actual Shops operations footprint without having to create a fictional acreage amount sold to the Utility in 1986.

DISCUSSION

Canby Utility paid the City of Canby for joint ownership of the Shops facilities and real property. The exact acreage that equates to a 54.3% ownership interest is lost to history. There is

no record of what acreage the City sold to the Utility by way of a May 1986 IGA and a September 1986 Addendum to that IGA.

The May 1986 IGA defines the relevant real property as follows (emphasis in bold added):

[the 54.3% CUB and 45.7% City] allocation formula will be used for the following purposes:

(b) to allocate joint ownership between the parties of the Project facilities, including the shop facility and **adjacent and underlying real property within the Project boundaries**. Each party shall have joint ownership of the Project in direct proportion to their share derived from the allocation formula.

(c) to determine the monetary consideration that CUB shall pay Canby to acquire joint ownership of the **unimproved pre-Project real property included within the Project**. It is assumed that all real property needed for the Project is in the initial ownership of Canby. Any value of the pre-allocated real property shall be assumed to be equivalent to the assessed value of the property as determined by the Clackamas County Assessor for the tax year 1985-1986.

We do not know the acreage of the “adjacent and underlying real property within the Project boundaries” and “unimproved pre-Project real property included within the Project”. Further, there may have been other consideration given at the time or other project costs negotiated and not memorialized.

The terms of the May 1986 IGA provide a vague clue to the value of the land conveyed. Section 3(c) of the IGA provides:

Any value of the pre-allocated real property shall be assumed to be equivalent to the assessed value of the property as determined by the Clackamas County Assessor for the tax year 1985-1986.

Even so, tax years are a calendar year—January through December—so the term “tax year 1985-1986” in the IGA appears vague. Does the 1985 tax year value apply? Does the 1986 tax year value apply? Does an average of the 1985 and 1986 tax year values apply? There is no clear answer to re-formulate the amount of acreage conveyed in 1986.

The Shops project as it operates currently is the best estimate of what the City conveyed the Utility. As such, the conveyance should reference the conveyed property operationally as the “Project” defined by the two IGAs and not create a fiction of a specific acreage conveyed. I believe that the draft deed language I’ve provided to you does just that.

In conclusion, Canby Utility owns 54.3% of the Shops Project property. That conveyance needs to be recorded by the City.

INTERGOVERNMENTAL COOPERATIVE AGREEMENT  
BETWEEN CITY OF CANBY AND CANBY UTILITY BOARD

This agreement is made and entered into by and between the CITY OF CANBY, an Oregon municipal corporation (hereinafter "Canby") and the CANBY UTILITY BOARD, an independent governmental subdivision of the City of Canby (hereinafter "CUB").

WITNESSETH:

RECITALS:

1. Canby and CUB are desirous of entering into an intergovernmental cooperative agreement to provide for the joint ownership and operation of a proposed City/CUB shop facility (hereinafter "Project"). The proposed shop facility would be constructed on real property presently owned by Canby and would be jointly owned and utilized by both Canby and CUB. The parties are desirous that the percentage of ownership of the facility and the proportionate responsibility for construction, operation and maintenance expenses between the parties be generally proportionate to the respective use of the property by Canby and CUB.

2. The parties acknowledge that they have authority to execute this cooperative intergovernmental agreement pursuant to the powers granted to them from the Canby Municipal Charter and pursuant to ORS 190.010.

NOW, THEREFORE, the premises being in general as stated in the foregoing recitals, it is agreed by and between the parties hereto as follows:

1. Plans and Specifications. Canby and CUB shall share equally the cost of preparation of plans and specifications for the Project. It is estimated that the total cost will be approximately \$28,500. The parties agree to commit funding for their share of these costs prior to entering into a contract with the Project designer. After completion of the plans and specifications and at any time prior to final acceptance of construction bids for the Project, if either Canby or CUB declines to proceed with construction of the Project, the Project will be abandoned.

2. Determination of Allocation of Use Formula. If the Project is not abandoned pursuant to Section 1 of this agreement, the parties, after submission of and before acceptance of bids for the construction of the Project, shall

attempt to determine an allocation between the parties of interior square footage usage of the shop facility. If both parties can agree on such an allocation formula, their decision shall be memorialized in an amendment to this agreement. If the parties are unable to agree on such an allocation formula, the project will be abandoned. In no event shall construction bids be accepted for the project until an allocation formula is agreed upon by both parties. Construction bids must be accepted by both parties to be valid.

3. Use of the Allocation Formula. If the parties agree upon an allocation formula of usage of the interior floor space of the shop facility, and further if both parties accept a construction bid submitted for the Project, then that allocation formula will be used for the following purposes:

(a) to allocate responsibility for all construction costs of the Project between the parties, excluding costs relating to preliminary land clearing and leveling of the Project site, which latter costs shall be shared equally by the parties.

(b) to allocate joint ownership between the parties of the Project facilities, including the shop facility and adjacent and underlying real property within the Project boundaries. Each party shall have joint ownership of the Project in direct proportion to their share derived from the allocation formula.

(c) to determine the monetary consideration that CUB shall pay Canby to acquire joint ownership of the unimproved pre-Project real property included within the Project. It is assumed that all real property needed for the Project is in the initial ownership of Canby. Any value of the pre-allocated real property shall be assumed to be equivalent to the assessed value of the property as determined by the Clackamas County Assessor for the tax year 1985-86. If any additional real property is required for the Project, which property is neither owned by Canby nor CUB, the acquisition costs of that real property shall be shared by the parties in proportion to their respective share derived from the allocation formula.

(d) to allocate responsibility between the parties as to continuing maintenance and operational expenses of the Project, excluding utility expenses, which will be shared equally by the parties. Each party shall be responsible for budgeting sufficient funds to meet its anticipated share of continuing maintenance and operational expenses for each succeeding fiscal year.



(e) to allocate the right to use portions of the interior and exterior of the shop facility. Each party's allocated share of the interior square footage and exterior square footage of the facility shall be reflected on a diagram which will be made a part of this agreement by amendment. Each party shall have primary use of the allocated areas, but may allow temporary use by the other party.

4. Operational Control of the Project. The parties shall share equally operational control of the Project, including the construction phases thereof. All operational decisions must be concurred in by both parties. The governing body of each party may delegate to an official of that party the right to make operational decisions on its behalf.

5. Periodic Review of Allocation Formula. The parties will periodically review the actual use of the interior and exterior square footage of the shop facility and the needs of both parties to determine if it is necessary to adjust the allocation formula because of changing conditions. If it is found necessary to do so, the parties shall agree upon a satisfactory method for monetary adjustment of ownership interests. If such an agreement cannot be reached by the parties, the allocation formula shall not be changed and the parties will retain primary use of the allocated areas pursuant to the existent allocation formula. Changes to the allocation formula shall be memorialized by amendment to this agreement.

6. Amendment Provisions. The terms of this agreement may be amended by mutual agreement of the parties. Any amendment shall be in writing and shall refer specifically to this agreement and shall be executed by the parties.

7. Attorney's Fees. In the event any suit or action is instituted to enforce any of the provisions of this agreement, the parties agree that prevailing party shall receive from the other party such sum as the trial court may adjudge reasonable as attorney's fees to be allowed in said suit or action and if an appeal is taken from any judgment or any decree of such trial court, the parties further agree to pay such sum as the appellate court shall adjudge reasonable as the prevailing party's attorney's fees on such appeal.

8. Written Notice Addresses. All written notices required under this agreement shall be sent to:

Canby: City Administrator  
City of Canby  
P.O. Box 930  
Canby, Oregon 97013

CUB: Manager  
Canby Utility Board  
P.O. Box 470  
Canby, Oregon 97013

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals this 27<sup>th</sup> day of May, 1986.

The Canby City Council has acted in this matter by unanimous motion at a regular City Council meeting on the 21st day of May, 1986.

The Canby Utility Board has acted in this matter by unanimous motion at a regular board meeting on the 27th day of May, 1986.

CITY OF CANBY, by and through  
its City officials.

BY: William F. Pulver  
William F. Pulver, Mayor

BY: Marilyn K. Perkett  
Marilyn K. Perkett, City Recorder

CANBY UTILITY BOARD, by and through  
its appointed officials.

BY: Robert D. Westcott  
Chairman

BY: Spencer Culmore  
Board Secretary

ADDENDUM TO INTERGOVERNMENTAL  
COOPERATIVE AGREEMENT  
BETWEEN CITY OF CANBY  
AND CANBY UTILITY BOARD

THIS AGREEMENT is made and entered into by and between the CITY OF CANBY, an Oregon municipal corporation (hereinafter "Canby") and the CANBY UTILITY BOARD, an independent governmental subdivision of the City of Canby (hereinafter "CUB").

W I T N E S S E T H:

RECITALS:

1. Canby and CUB have previously entered into an intergovernmental relating to joint ownership and operation of a proposed City/CUB shop facility (hereinafter "Project"). The parties have solicited competitive bids for the construction of the aforesaid Project and the apparent low bidder for the Project appears to be Elliott & Jochimsen of Salem, Oregon. The apparent low bid is in the amount of \$818,000. The intergovernmental cooperative agreement previously entered into by the parties provides that before acceptance of bids for the construction of the Project, the parties must by an addendum to this agreement determine an allocation between the parties of interior square footage usage of the shop facility. The allocation formula so chosen, among other things, shall allocate construction costs for the Project between the parties and shall allocate the percent of joint ownership between the parties of the Project facilities. The purpose of this addendum is to reflect the agreement of the parties as to this allocation formula.

2. The parties acknowledge that they have authority to execute this cooperative intergovernmental agreement pursuant to the powers granted to them from the Canby Municipal Charter and pursuant to ORS 190.010.

NOW, THEREFORE, the premises being in general as stated in the foregoing recitals, it is agreed by and between the parties hereto as follows:

(1) Determination of Allocation Formula. The allocation of use formula for the shop facility is determined to be as follows:

City of Canby	45.7%
Canby Utility Board	54.3%

This formula is based upon Canby's agreement to pay \$374,000 toward the \$818,000 construction bid for the Project and CUB's agreement to pay \$444,000. The formula represents the percentage of each party's contribution toward the construction bid price. In addition, the parties are responsible equally for architect's fees, grading and compaction related costs in the approximate amount of \$37,000. The parties further acknowledge that pursuant to the allocation formula, CUB shall pay to Canby the additional sum of \$14,784 representing 54.3% of the value of the real property which Canby is providing to the Project. The parties further agree that the allocation formula so determined shall be used by the parties pursuant to paragraph 3 of the intergovernmental cooperative agreement dated May 27, 1986, to which this agreement is an addendum thereof.

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals this \_\_\_\_\_ day of \_\_\_\_\_, 1986.

The Canby City Council has acted in this matter by motion at a regular City Council meeting on the 17<sup>th</sup> day of September 1986.

The Canby Utility Board has acted in this matter by motion at a regular board meeting on the 23<sup>rd</sup> day of September, 1986.

CITY OF CANBY, by and  
through its City officials

By: William F. Pulver  
William F. Pulver, Mayor

By: Marilyn K. Perkett  
Marilyn K. Perkett,  
City Recorder

CANBY UTILITY BOARD, by and  
through its appointed officials

By: Robert D. Westcott  
Chairman

By: Donna Belmore  
Board Secretary

MEMO TO: Stephan Lashbrook, CUB Manager  
FROM: Bud Atwood, City Administrator *Bud*  
SUBJECT: Proposed City/CUB Shop Facility Cost Rationale  
DATE: March 11, 1986

Based on the shop facility cost estimates presented to the City Council on February 19, 1986, by Bob Rapp and Rusty Klem, I have the following comments concerning building area requirements and the estimated costs. Also, I have addressed the City owned real property.

The real property value and the building areas I have listed provide the following cost differential:

One half of the City owned real property value, \$13,614; and additional building space required by CUB estimated at \$49,250 for a total of \$62,864.

JUSTIFICATION

Proposed 65' x 75' office equally shared with the exception of 450 sq. ft. designated for CUB meter rooms and electrical gear drying room.  
450 sq. ft. @ \$35.00 sq. ft. \$15,750

Proposed 50' x 75' covered storage for CUB supplies \$21,375

Proposed CUB/City 175' x 50' enclosed lockable warehouse area.

CUB 5,000 sq. ft. @ \$9.70 sq. ft. = \$48,500  
City 3,750 sq. ft. @ \$9.70 sq. ft. = \$36,375  
DIFFERENCE OF \$12,125

City owned real property, 6.5 acres assessed value of \$4,189 per acre.

One half value for lease agreement \$13,614

I will recommend that if Council approves construction of the project, they should require that CUB fund the additional building area required and one half of the assessed value of the City owned property, plus one half of the remaining cost estimate.

If the project is to be constructed in 1986, the Board and Council should provide financing and approve construction within the next forty-five (45) days if possible.

I hope this letter clarifies the financing concerns I have expressed in our prior discussions.

**AFTER RECORDING, RETURN TO:**

Attn:

**UNTIL A CHANGE IS REQUESTED, ALL  
TAX STATEMENTS SHALL BE SENT TO  
THE FOLLOWING ADDRESS:**

City of Canby

PO Box 930

Canby, OR 97013

### **QUIT-CLAIM DEED STATUTORY FORM**

CITY OF CANBY, an Oregon municipal corporation as Grantor, releases and quitclaims to the CANBY UTILITY BOARD, an Oregon municipal corporation as Grantee, all right, title and interest in and to the following described real property:

An undivided 54.3 per cent interest in that portion of land comprising 6.50 acres and referred to as the "Project" in an Intergovernmental Cooperative Agreement Between City of Canby and Canby Utility Board, signed May 27, 1986 and the subsequent Addendum last dated September 23, 1986 to said Agreement, each together attached hereto as EXHIBIT A, a parcel of land situated in the Northwest quarter of Section 27, Township 3 South, Range 1 East of the Willamette Meridian and more particularly described as follows:

Beginning at the Southeast corner of that certain tract of land conveyed to Mary L. Collins, et al. by deed recorded in Deed Book 377, page 429, Record of Deeds, Clackamas County, Oregon;

Thence from the Southeast corner of said Collins tract North along the East line of said tract a distance of 1677.89 feet to the most southerly Southeast corner of the tract conveyed to the City of Canby by instrument recorded May 29, 1970 as Rec. Fee Nos. 70-10260 through 70-10262, Film Records;

Thence West 740.42 feet along the southerly line of said City of Canby tract to the East line of the Molalla Forest Road as described in instrument recorded April 26, 1967 in Book 689, page 101, Deed Records;

Thence Southerly along the Easterly line of said Molalla Forest Road to a point in the center of the Oregon City-Salem Territorial Road in said Section 27;

Thence Northeasterly along said center line 852.00 feet, more or less, to the point of beginning.

TOGETHER WITH a permanent non-exclusive easement, including the terms and provisions thereof, as set forth in instrument recorded April 26, 1967 in Book 689, page 101, Deed Records, and a permanent non-exclusive easement from the Oregon City-Salem Territorial Road in said Section 27 to the Project along the East line of that certain tract of land conveyed to Mary L. Collins, et al. by deed recorded in Deed Book 377, page 429, Record of Deeds, Clackamas County, Oregon.

SUBJECT TO:

1. The 1975-76 taxes and possible prior year's taxes have included relief by reason of "Potential Forest Land" pursuant to ORS 321.605 to 321.680. If the land becomes disqualified for the special assessment, an additional tax may be levied.
2. The rights of the public in and to that portion of the above property lying within the boundaries of roads.
3. Easement for Sewer purposes, 10 feet in width as contained in Deed, from Mary L. Collins, a single woman, et al., to the City of Canby, a municipal corporation of Clackamas County, recorded on June 6, 1955 in Book 496, page 579, Deed Records.
4. 18 inch sewer trunk line and 10 foot access road easement as disclosed by Public Survey No. 3460

The true consideration for this conveyance was \$14,784.00 (fourteen thousand seven hundred and eighty-four dollars and no cents).

BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007. THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF

ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007.

Dated this \_\_\_\_ day of \_\_\_\_, 20\_\_.

By: \_\_\_\_\_  
On behalf of CITY OF CANBY, Grantor

STATE OF OREGON            )  
                                      ) ss.  
County of Clackamas        )

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, personally appeared before me, the above named person, \_\_\_\_\_, known to me to be the person whose signature is above subscribed, and acknowledged to me that this is a free act and deed, for the uses and purposes therein expressed. In witness whereof, I have hereunto set my hand and affixed by official seal on the day and year last above written.

\_\_\_\_\_  
(Notary Signature)

Notary Public for Oregon  
My Commission Expires: \_\_\_\_\_

CONVEYANCE APPROVED:

By: \_\_\_\_\_  
On behalf of CANBY UTILITY BOARD, Grantee

\_\_\_\_\_  
Date

STATE OF OREGON            )  
                                      ) ss.  
County of Clackamas        )

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, personally appeared before me, the above named person, \_\_\_\_\_, known to me to be the person whose signature is above subscribed, and acknowledged to me that this is a free act and deed, for the uses and purposes therein expressed. In witness whereof, I have hereunto set my hand and affixed by official seal on the day and year last above written.

\_\_\_\_\_  
(Notary Signature)

Notary Public for Oregon  
My Commission Expires: \_\_\_\_\_



THIS HAS BEEN REVIEWED  
BY THE FINANCE DIRECTOR  
*Sue Engle*

**TO:** Honorable Mayor and City Council  
CITY OF CANBY  
ATTN: Ms. Amanda Klock, HR Director/ Interim City Administrator

**FROM:** Hassan Ibrahim, P.E.  
CURRAN-McLEOD, INC.

**DATE:** October 9, 2009

**ISSUE:** KNIGHTS BRIDGE ROAD SANITARY SEWER PUMP STATION  
RECONSTRUCTION  
APPROVAL OF CONSTRUCTION CONTRACT ORDINANCE 1320

**SYNOPSIS:** On October 8, 2009, the City of Canby solicited and received eight (8) bids for the Knights Bridge Road Sanitary Sewer Pump Station Reconstruction Project. This staff report is to request Council approval for award of the contract to the low responsive bidder.

**RECOMMENDATION:**

That the Council approve Ordinance 1320 authorizing the Mayor and Human Resources Director/Interim City Administrator to execute a unit price contract with Canby Excavating, Inc. in the amount of \$167,550.00 for the Knights Bridge Road Sanitary Sewer Pump Station Reconstruction Project; and declaring an emergency.

**RATIONALE:**

Competitive sealed bids were solicited in compliance with the City of Canby's Rules for Public Purchasing and the requirements of Oregon Revised Statutes. Of the bids received, Canby Excavating, Inc. submitted the low responsible and responsive bid.

The current location of the existing pump station is a safety concern to the City maintenance staff as it lies in the center of the westbound travel lane of Knights Bridge Road and hinders maintenance efforts and causes delays to residents turning from N. Cedar Street intersection. The new location will place the pump station outside the travel lanes and provide a safer working area for the City maintenance crew.

Honorable Mayor & City Council  
October 9<sup>th</sup>, 2009  
Page 2

**BACKGROUND:**

This project is part of the System Development Charges Program.

**FISCAL IMPACT:**

Attached are Ordinance 1320 and the proposed contract for execution. Our recommendation is to accept the low responsive bid from Canby Excavating, Inc. and execute a contract for construction in the bid amount of \$167,550.00.

This work is funded from the Sanitary Sewer SDC reserves.

**ENCLOSURES:**

- Bid Summary
- Ordinance Number 1320
- Exhibit 'A' Construction Contract

## **ORDINANCE NO. 1320**

### **AN ORDINANCE AUTHORIZING THE MAYOR AND INTERIM CITY ADMINISTRATOR TO EXECUTE A CONTRACT WITH CANBY EXCAVATING, INC. FOR THE KNIGHTS BRIDGE ROAD SANITARY SEWER PUMP STATION RECONSTRUCTION; AND DECLARING AN EMERGENCY.**

**WHEREAS**, the City of Canby has heretofore advertised and received eight (8) bids for the Knights Bridge Road Sanitary Sewer Pump Station Reconstruction; and

**WHEREAS**, the notice of call for bids was duly and regularly published in the Oregon Daily Journal of Commerce on September 17, 2009; and

**WHEREAS**, bids were received and opened on October 8, 2009 at 2:00 pm in the Planning Department Conference Room and the bids were read aloud:

**WHEREAS**, the bidders are as listed below and a detailed tabulation of all items is attached herein:

<b>No.</b>	<b>Bidder</b>	<b>Total Basic Bid</b>
1.	Canby Excavating, Inc.	\$167,550.00
2.	HPS Construction	\$172,500.00
3.	Alpine Construction	\$188,970.00
4.	NW Kodiak Construction	\$193,520.00
5.	Jeff Kersey Construction, Inc.	\$199,564.00
6.	Gelco Construction Company	\$199,739.00
7.	PCR, Inc.	\$222,600.00
8.	Schneider Equipment, Inc.	\$256,885.00

**WHEREAS**, the Canby City Council, acting as the City's Contract Review Board, met on Wednesday, October 21, 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 Canby Excavating, Inc.; now therefore

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

Section 1. The Mayor and/or Interim City Administrator are hereby authorized and directed to make, execute, and declare in the name of the City of Canby and on its behalf, an appropriate contract with Canby Excavating, Inc. for the Knights Bridge Road Sanitary Sewer Pump Station Reconstruction, for the bid amount of \$167,550.00. A copy of the contract with Canby Excavating, Inc. is attached hereto and marked as Exhibit "A" and by this reference incorporated herein.

Section 2. 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, October 21, 2009; ordered posted as required by the Canby City Charter and scheduled for second reading on Wednesday, November 4, 2009, after the hour of 7:30 pm at the Council Meeting Chambers located at 155 NW 2<sup>nd</sup> Avenue, Canby, Oregon.

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Kimberly Scheafer, CMC  
City Recorder

**PASSED** on second and final reading by the Canby City Council at a regular meeting thereof on the 4<sup>th</sup> day of November, 2009, by the following vote:

YEAS\_\_\_\_\_

NAYS\_\_\_\_\_

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Melody Thompson, Mayor

ATTEST:

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Kimberly Scheafer, CMC  
City Recorder

## **CONTRACT FOR CONSTRUCTION**

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

CITY OF CANBY

(hereinafter called OWNER) and

CANBY EXCAVATING, 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:

#### **CITY OF CANBY KNIGHTS BRIDGE ROAD Sanitary Sewer Pump Station Reconstruction and Gravity Sewer Improvements**

The project consists of the following work:

- Replacing an existing submersible duplex sanitary sewer pump station, valve vault and wet well. The new station shall have Hydromatic pumps similar to all existing stations in the City, with a capacity of 325 gpm at 22' TDH. The pumps shall be installed in a prefabricated fiberglass wet well with integral valve vault.
  - New electrical controls mounted remotely in a fiberglass enclosure.
  - Temporary curb and crushed rock surfacing restoration.
  - Construction of 2-8" laterals with manholes and one 6" sanitary sewer lateral only, and reconstruction of one mainline manhole

### **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 for each schedule will be substantially completed within 150 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 Two Hundred Fifty Dollars (\$250.00) 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

One Hundred Sixty-Seven Thousand Five Hundred Fifty and no/100-----Dollars

(\$167,550) 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:

**CITY OF CANBY  
KNIGHTS BRIDGE ROAD  
Sanitary Sewer Pump Station Reconstruction  
and Gravity Sewer Improvements**

- 8.9 Addenda numbers -0-.
- 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 four counterparts of this Agreement.

This Agreement will be effective on \_\_\_\_\_, 2009.

OWNER:

**CITY OF CANBY**  
**170 NW 2<sup>nd</sup> Avenue**  
**Canby, OR 97013**

By: \_\_\_\_\_

Name/Title: \_\_\_\_\_

CONTRACTOR:

**CANBY EXCAVATING, INC.**  
**P.O. BOX 848**  
**Canby, OR 97013**

By: \_\_\_\_\_

Name/Title: \_\_\_\_\_

Attest: \_\_\_\_\_

Address for giving notices:

**CANBY EXCAVATING, INC.**

**P.O. BOX 848**

**Canby, OR 97013**

**(503) 266-2792**

<b>ORGANIZATION:</b>	<b>City of Canby</b>	<b>DATE:</b>	<b>October 2009</b>
<b>DEPARTMENT:</b>	<b>Administration</b>	<b>UNION:</b>	<b>Non-Represented</b>
<b>TITLE:</b>	<b>City Administrator</b>	<b>FLSA STATUS:</b>	<b>Exempt</b>

**PURPOSE OF POSITION:** Plan, organize, and direct the overall administrative activities and operations of the City government in accordance with policies determined by the City Council. Advise and assist the City Council and represent the City's interests with other levels and agencies of government, business interests, and the community at large.

**ESSENTIAL JOB FUNCTIONS:**

Develop, plan, and implement goals and objectives for the City; recommend and administer policies and procedures necessary to provide municipal services; approve new or modified programs, systems, administrative and personnel policies and procedures.

Provide highly responsible administrative staff assistance to the City Council; direct specific and comprehensive analyses of a wide range of municipal policies; prepare and submit to City Council annual reports of financial and administrative activities.

Provide management and oversight and to the Economic Development Department and Urban Renewal Agency.

Plan for future development of City infrastructure to service population growth and expansion of public services.

Advise the Council of the City's financial condition, and current and future needs. Direct the development, presentation, and administration of the City budget; prepare and oversee the financial forecast of funding needed for staffing, equipment, materials, and supplies; manage and control revenues and expenditures; implement midyear adjustments.

Negotiate contracts and solutions on a variety of administrative, fiscal, and special projects; participate in the preparation of program or special project budgets; analyze and prepare recommendations on budget requests; monitor appropriate budget accounts.

Act as the purchasing agent for all departments of the City.

Provide supervision and manage staff to ensure City goals and objectives are met. Hire or remove City employees and have general supervision and control over them and their work, with power to transfer an employee from one department to another. Provide opportunities for developmental training and performance coaching to employees. Conduct performance evaluations. Respond to employee grievances and oversee disciplinary processes according to the collective bargaining agreement and City policy. Hear and rule on employee appeals to disciplinary actions.

Exhibit leadership to staff and fellow employees. Serve as a model for accomplishing the City's vision and goals. Create an environment in which employees are focused on producing excellent quality results. Set standards for excellence in internal and external customer service. Promote professional and courteous behavior.

Direct and confer with executive staff concerning administrative and operational problems; make appropriate decisions or recommendations for City Council adoption. Administer specific program activities by planning, organizing, and supervising activities; establish and implement, with approval, operating policies and procedures.

Oversee the enforcement of all City ordinances; monitor all contractual agreements with franchises, leases, contracts, permits and privileges granted by the City.

Represent the City in the community and at professional meetings; participate on a variety of boards and commissions; attend all Council meetings, prepare and present staff reports and recommendations. Represent the City before the media, in legal or administrative proceedings, and to other departments, organizations or entities as required.

Confer with residents, businesses, and other individuals, groups, and outside agencies having an interest or potential interest in affairs of City concern; interpret, analyze, and explain policies, procedures, and programs. Respond to and resolve difficult and sensitive citizen inquiries and complaints.

Coordinate City activities with other governmental agencies and outside organizations; appoint administrative committees for coordination of services and activities.

Ensure implementation of and adherence to the City's Affirmative Action and Diversity Work Plans. Coordinate the implementation of effective processes and models to produce organization-wide diversity initiatives. Facilitate staff development on such issues as diversity and creating a respectful working environment.

Perform all duties as may be prescribed by City Council action. Perform other duties as assigned that support the overall objective of the position. Provide effective leadership and coordinate the activities of the municipal organization. Serve effectively as the administrative agent of the City Council.

Maintain cooperative working relationships with City staff, other organizations and the general public.

Follow all safety rules and procedures for work areas.

**AUXILIARY JOB FUNCTIONS:** Undertake special projects and research as directed by the Council. Provide assistance to other staff as workload and staffing levels dictate. Maintain proficiency by attending training and meetings, reading materials, and meeting with others in areas of responsibility. Maintain work areas in a clean and orderly manner.

**JOB QUALIFICATION REQUIREMENTS:**

**MANDATORY REQUIREMENTS:**

**Knowledge & Skills:** Broad knowledge of modern and highly complex principles and practices of municipal administration, organization, and economic development functions and services. Current social, political and economic trends and operating issues of municipal government. Organizational and management practices as applied to the analysis and evaluation of programs, policies, and operational needs. Principles and practices of municipal government budget preparation and administration. Principles and practices of organization, administration, and personnel management. Research and reporting methods, techniques, and procedures. Principles of effective public relations and interrelationships with community groups and agencies, private business and firms, and other levels of government. Sources of information related to a broad range of municipal programs, services, and administration. City organizational goals and council policy. Pertinent Federal, State, and local laws, codes, and regulations. Principles of supervision, training, and performance evaluation. Knowledge of word processing and spreadsheet software.

**Abilities:** Provide effective leadership and coordinate the activities of the municipal organization. Serve effectively as the administrative agent of the City Council. Analyze problems, identify alternative solutions, project consequences of proposed actions, and implement recommendations in support of goals to improve operations, procedures, policies, or methods. Effectively administer a variety of citywide programs, administrative and budgetary activities. Identify and respond to public and City Council issues and concerns. Interpret and apply Federal, State, and City policies, procedures, laws, and regulations. Effectively and fairly negotiate appropriate solutions and contracts. Gain cooperation through discussion and persuasion. Select, supervise, train, and evaluate assigned staff. Develop, prepare, and administer a large municipal budget. Analyze, interpret, summarize, and present administrative and technical information and data in an effective manner. Communicate clearly and concisely, both orally and in writing. Establish and maintain cooperative working relationships with those contacted in the course of work including City Council members, staff, committee members, public officials, business leaders, and the general public. Requires the ability to work as contributing member of a team, work productively and cooperatively with other teams and external customers, and convey a positive image of the City and its services.

**Education & Experience:** Equivalent to a Bachelors degree from a four-year college or university in public administration, business management, or closely related field and ten years experience with a minimum five years related experience as a City Manager, Assistant City Manager, or exempt level department head; or any satisfactory combination of experience and training which demonstrates the knowledge, skills and abilities to perform the above duties.

**SPECIAL REQUIREMENTS/LICENSES:** Valid Oregon Drivers License or ability to obtain within six months.

**DESIRABLE REQUIREMENTS:** Masters degree in a related field. Previous Oregon experience in a City Administrator/Manager position.

**PHYSICAL DEMANDS OF POSITION:** While performing the duties of this position, the employee is frequently required to stand, bend, kneel, stoop, communicate, reach, and manipulate objects. The position requires mobility. Duties involve moving materials weighing up to 10 pounds on a regular basis and may infrequently require moving materials weighing up to 25 pounds while responding to non-routine situations. Manual dexterity and coordination are required over 50% of the work period while operating equipment such as computer keyboard, calculator, standard office equipment, and motorized equipment.

**WORKING CONDITIONS:** Usual office working conditions. The noise level in the work area is typical of most office environments with telephones, personal interruptions, and background noises. Attendance at evening meetings and weekend events is required.

**SUPERVISORY RESPONSIBILITIES:** Supervise subordinate managers who supervise employees in all City departments, including the Urban Renewal Agency. Responsible for the overall direction, coordination, and evaluation of these units. Also directly supervise non supervisory employees. Carry out supervisory responsibilities in accordance with the organization's policies and applicable laws.

**SUPERVISION RECEIVED:** Appointed by the City Council for an indefinite term and may be removed at the pleasure of the Council.

### **BIKE AND PEDESTRIAN COMMITTEE**

Meets 3<sup>rd</sup> Tuesday of each month at 7:00 PM. **(HAS NOT MET IN SEVERAL MONTHS)**

5 members, 3 year terms.

Committee Chair: Kevin Batridge  
Council Liaison: Jason Padden

### **BUDGET COMMITTEE**

Meets as needed.

City Council plus 6 members at large, 3 year terms.

Committee Chair: Walt Daniels  
Staff Liaison: Sue Engels

### **CANBY PUBLIC LIBRARY BOARD**

Meets 2nd Tuesday of each month at 5:45 PM in the City Hall Conference Room.

5 members, 4 year terms.

Committee Chair: Cathleen Whiting  
Council Liaison: Jason Padden  
Staff Liaison: Penny Hummel

### **CANBY UTILITY BOARD**

Meets 2<sup>nd</sup> & 4<sup>th</sup> Tuesday of each month at 7:30 PM in the CUB Board Room.

5 members, 3 year terms.

Committee Chair: Virginia Molamphy  
Council Liaison: Robert Bitter

### **HISTORICAL REVIEW BOARD (NOT ACTIVE – NO MEMBERS)**

Meets as needed.

Committee Chair:  
Staff Liaison:  
**Council Liaison:**

### **PARKS AND RECREATION ADVISORY BOARD**

Meets 3<sup>rd</sup> Tuesday of each month at 7:00 PM PM in the City Hall Conference Room.

7 members, 3 year terms.

Committee Chair: Ryan Oliver  
**Council Liaison:**  
Staff Liaison: Beth Saul

## **PLANNING COMMISSION**

Meets 2<sup>nd</sup> and 4<sup>th</sup> Monday of each month at 7:00 PM in the Council Chambers.

7 members, 3 year terms.

Committee Chair: Dan Ewert

**Council Liaison:**

Staff Liaison: Bryan Brown

## **TRAFFIC SAFETY COMMISSION (NOT ACTIVE - NO MEMBERS)**

7 members, 3 year terms.

Committee Chair:

**Council Liaison:**

Staff Liaison: Matilda Deas

## **TRANSIT ADVISORY COMMITTEE**

Meets 2<sup>nd</sup> Wednesday of each month at 5:30 PM in the City Hall Conference Room.

7 members, 3 year terms.

Committee Chair: Clair Kuppenbender

Council Liaison: Walt Daniels

Staff Liaison: Cynthia Thompson

## **OTHER LIAISONS:**

Canby Adult Center

**Council Liaison:**

Canby Historical Society/Canby Depot Museum

Council Liaison: Walt Daniels

Canby School District

Council Liaison: John Henri

Clack Co. Coordinating Committee

Council Liaison: Melody Thompson w/  
John Henri as alternate

Main Street Program

Council Liaison: Robert Bitter

Rural Reserves PAC

Council Liaison: John Henri w/Melody  
Thompson as alternate

Riverside Neighborhood Association

Council Liaison: Jason Padden

NE Canby Neighborhood Association

Council Liaison: John Henri

SE Canby Neighborhood Association

**Council Liaison:**

SW Canby Neighborhood Association

**Council Liaison:**