

# AGENDA

## CANBY CITY COUNCIL MEETING

January 2, 2008, 7:30 P.M.

Council Chambers

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

*Mayor Melody Thompson*

*Council President Walt Daniels*

*Councilor Teresa Blackwell*

*Councilor Paul Carlson*

*Councilor Randy Carson*

*Councilor Tony Helbling*

*Councilor Wayne Oliver*

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## CITY COUNCIL MEETING

### 1. CALL TO ORDER

- A. Pledge of Allegiance and Moment of Silence
- B. Appreciation Presentation to Retiring Planning Commission Members

### 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 December 5, 2007 City Council Regular Meeting
- B. New Wholesale Malt Beverage and Wine Liquor License Application for Pacific Rim Commodities Group Pg. 1
- C. Amended Attachment "A" to Interagency Agreement with Canby Swim Club Pg. 3

### 7. RESOLUTIONS & ORDINANCES

- A. Res. 969, Adopting an IGA with Canby School District No. 86 for the Purpose of Collecting a Construction Excise Tax on Behalf of the District on New Construction in the City of Canby Pursuant to Oregon Laws 2007 Chapter 829 Pg. 5
- B. Res. 970, Requesting Clackamas County to Surrender Jurisdiction of Approximately 0.27 Miles of NW Territorial Rd. and Approximately 0.48 Miles of S. Township Rd. to the City of Canby Pg. 12

- C. Ord. 1261, Creating and Imposing a Tax on Motor Vehicle Fuel Dealers; Providing for Enforcement, Administration, and Collection of the Tax; and Amending the Canby Municipal Code by Adding a New Chapter 3.40 “Motor Vehicle Fuel Tax” (2<sup>nd</sup> Reading) Pg. 14
- D. Ord. 1262, Amending the Canby Municipal Code by Adding a New Chapter 3.30, “Street Maintenance Program,” and Requiring Payment of a Street Maintenance Fee Pg. 26
- E. Ord. 1264, Authorizing Contract with Curran-McLeod, Inc. for Engineering Services on the Reconstruction of Approximately 2,500 Lineal Feet of Knights Bridge Rd. Pg. 38
- F. Ord. 1265, Authorizing Contract with Parker Northwest Paving Co. for Construction of Sequoia Parkway Stages 5 & 6 and Township Rd. Street Improvements Pg. 55
- G. Ord. 1266, Authorizing Contract with Canby Sand & Gravel/South County Asphalt for Supplying Rock Product Pg. 66
- H. Ord. 1268, Authorizing Contract with Canby Sand & Gravel/South County Asphalt for Supplying Hot Mix Asphaltic Concrete Materials Pg. 73
- I. Ord. 1269, Ratifying Contract with Peterson Equipment Services LLC for the Purchase of a Mixing Screw Conveyor for the Wastewater Treatment Facility Pg. 78

## **8. NEW BUSINESS**

- A. Discussion Regarding Failure of Measure 3-271 Adopting a Revised Home Rule Charter Pg. 87
- B. Discussion Regarding Construction Excise Tax Pg. 5
- C. Creation of No Parking Area on Easterly Side of N. Redwood St. Beginning at the Northerly Side of NE 11<sup>th</sup> Avenue and Extending 100’ North Pg. 88

## **9. CITY ADMINISTRATOR’S BUSINESS & STAFF REPORTS**

## **10. CITIZEN INPUT**

## **11. ACTION REVIEW**

## **12. EXECUTIVE SESSION: 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.



# Memo

**To:** Mayor Thompson & Members of City Council  
**From:** Chief Greg A. Kroeplin  
**CC:** Kim Scheafer, General Administration  
**Date:** December 10, 2007  
**Re:** Liquor License Application / Pacific Rim Commodities Group

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I have reviewed the attached liquor license application completed by the applicant(s), Keenan Booher and Xiaodong Qui. They will be conducting their business in Canby at 320 NE 19<sup>th</sup> Avenue, Canby, Oregon.

In addition, I met with the applicant, Keenan Booher, where we discussed laws involving the sale of alcoholic beverages. Mr. Booher told me that he would be working closely with OLCC as it relates to training on pertinent laws involving alcohol related violations and crimes.

I recommend that the Canby City Council recommend approval of this application to the Oregon Liquor Control Commission (OLCC).

RECEIVED RECEIVED

Pd \$400 11/30/07  
VK

NOV 16 2007 NOV 30 2007

OREGON LIQUOR CONTROL COMMISSION

## LIQUOR LICENSE APPLICATION

Take these attached forms to the governing body in which your business is located for Endorsement.

PLEASE PRINT OR TYPE

Application is being made for:

## LICENSE TYPES

- ☐ Full On-Premises Sales (\$402.60/yr)
- ☐ Commercial Establishment
- ☐ Caterer
- ☐ Passenger Carrier
- ☐ Other Public Location
- ☐ Private Club
- ☐ Limited On-Premises Sales (\$202.60/yr)
- ☐ Off-Premises Sales (\$100/yr)
- ☐ with Fuel Pumps
- ☐ Brewery Public House (\$252.60)
- ☐ Winery (\$250/yr)
- ☒ Other: WMBW

## ACTIONS

- ☐ Change Ownership
- ☒ New Outlet
- ☐ Greater Privilege
- ☐ Additional Privilege
- ☐ Other \_\_\_\_\_

The city council or county commission:

City of Canby  
(name of city or county)

recommends that this license be:

Granted ☐ Denied ☐By: \_\_\_\_\_  
(signature) (date)Name: Melody ThompsonTitle: Mayor

## OLCC USE ONLY

Application Rec'd by: HudsonDate: 10/16/0790-day authority: ☐ Yes ☒ No

Applying as:

- ☐ Individuals ☐ Limited Partnership ☐ Corporation ☒ Limited Liability Company

1. Applicant(s): [See SECTION 1 of the Guide]

① Keenan Wynn Boohar ③ Pacific Rim Commodities Grp LLC

② Xiaodong Liu ④ \_\_\_\_\_

2. Trade Name (dba): Pacific Rim Commodities Group, LLC3. Business Location: 320 NE 19th Ave, Canby, Clackamas, Oregon 97013  
(number, street, rural route) (city) (county) (state) (ZIP code)4. Business Mailing Address: 19210 SW Martinazzi Ave #208 Tualatin, Oregon 97062  
(PO box, number, street, rural route) (city) (state) (ZIP code)5. Business Numbers: 503-342-3009 503-342-3009  
(phone) (fax)6. Is the business at this location currently licensed by OLCC? ☐ Yes ☒ No7. If yes to whom: N/A Type of License: N/A8. Former Business Name: N/A9. Will you have a manager? ☐ Yes ☒ No Name: N/A  
(manager must fill out an individual history form)10. What is the local governing body where your business is located? Canby  
(name of city or county)11. Contact person for this application: Keenan Wynn Boohar 503-806-3732  
(name) (phone number(s))  
19210 SW Martinazzi Ave, #208, Tualatin OR 97062 503-342-3009  
(address) (fax number) (e-mail address)

I understand that if my answers are not true and complete, the OLCC may deny my license application.

Applicant(s) Signature(s) and Date:

① Keenan Wynn Boohar Date 9/4/07 ③ N/A Date N/A

② Xiaodong Liu Date 9/4/07 ④ N/A Date N/A

1-800-452-OLCC (6522)  
www.olcc.state.or.us

2



**AMENDED ATTACHMENT "A"**  
**CITY OF CANBY INTERAGENCY AGREEMENT**  
**CANBY SWIM CLUB, INC.**

**For the budget year 2007-2008** the base cost for operating the Canby Swim Center is \$48.00 per hour. This is the cost to "open the doors." Further, a cost of service study has determined that the cost of servicing the Swim Club is \$15,285 for the year. In Section I, items A through C are options for in-kind service that can be performed to offset the cash portion of this agreement. The Swim Club must notify the City in writing by October 1, 2007 which option(s), if any, they will utilize. The balance will be due in three equal payments December 15, 2007; February 15, 2008; and May 15, 2008.

- I. A. Pool maintenance: Each year the pool closes for extensive maintenance. The Club could provide four people, each subject to the facility manager's approval, for one forty-hour period to assist with this maintenance. This would deduct \$1,440 from the above total.

Corporate sponsorships: Both the Swim Club and the Swim Center could benefit from cultivating sponsorship opportunities in the community, but the Swim Center staff resources have prevented us from providing the legwork necessary for the support of such a venture. The Club could work with Swim Center staff and the Library and Park Director to develop and implement a plan with resulting revenue divided in some manner agreeable to each party.

Distribution of schedules: The club could distribute swim schedules to area clinics for their waiting rooms. This would deduct \$9.00 per hour that will be calculated at each payment due date.

- II. The Canby Swim Club will pay \$300.00, as well as providing their own paper for use of the pool copy machine.
- III The Canby Swim Club may have a fifth swim meet that will affect the Canby Swim Center Schedule.
- IV. The current rate to purchase extra time using the facility is \$48.00 per hour.
- V. The current wages and benefits for lifeguards is \$11.00 per hour.
- VI. The Canby Swim Club may have 10 meets on Saturdays or Sundays that are completed and cleaned up by 12:45pm.

VII. STORAGE SPACE:

The CITY will provide free storage space for the SERVICE AGENCY, as has been done for several years. This storage will be approximately 200 square feet and will be located in a storage shed outside the Swim Center building.

The storage area will be kept neat and orderly by the SERVICE AGENCY. Nothing flammable or of an unsafe nature will be stored. No structural changes can be made to the storage facility without permission of the CITY.

Any keys that are given to the SERVICE AGENCY for access to this building will be the responsibility of the President of the SERVICE AGENCY and will not be given out to anyone other than persons who are authorized to access the storage facility. The Swim Center staff will be provided with a list of authorized persons.

Should the CITY require the storage area for CITY purposes, the SERVICE AGENCY will be notified at least 90 days in advance of the change. The CITY will endeavor to work with the SERVICE AGENCY to find alternative storage space.

VIII. SHARED EQUIPMENT:

The CITY and SERVICE AGENCY share equipment whenever it makes sense to do so. Shared equipment is purchased and maintained on a 50-50 basis. The parties will meet annually during **September** to discuss the shared equipment and plan for maintenance and replacement so that both parties can budget the needed funds. A list of shared equipment will be maintained by both the CITY and the SERVICE AGENCY and updated annually.

SERVICE AGENCY:

Janis Haederman, name

12-10-07, title

DATE:

CITY OF

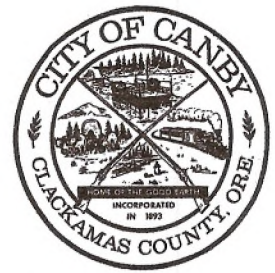
CANBY:

\_\_\_\_\_,  
Mayor

\_\_\_\_\_,  
City Administrator

\_\_\_\_\_  
DATE:





# MEMORANDUM

**TO:** *Honorable Mayor Thompson and City Council*  
**FROM:** *John R. Williams, Community Development & Planning Director*  
*John Kelley, City Attorney*  
**DATE:** *December 21, 2007*  
**THROUGH:** *Mark C. Adcock, City Administrator*  
**RE:** *School Construction Excise Tax*

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## ***Synopsis***

On December 2, the Council directed staff to return with an Intergovernmental Agreement setting terms for the City to collect a Construction Excise Tax on behalf of the Canby School District. Resolution 969 adopts this agreement.

## ***Recommendation***

Based on the Council's decision on December 2, staff recommends the City Council adopt Resolution 969.

## ***Background***

The new excise tax allows the School District to collect up to \$1 per square foot for new residential construction and \$0.50 per square foot for non-residential construction. For non-residential construction only the excise tax is limited to \$25,000 per building permit or \$25,000 per structure, whichever is less. A variety of different construction types are exempted from the tax (see attached informational sheet).

This tax would thus add about 20%, or \$2,500, to the permit cost of a new 2,500 s.f. house, which currently requires payments of about \$12,750 at our counter. Commercial/industrial project fees would vary, but there are a number of large commercial/industrial projects over 50,000 s.f., such as American Steel, that would pay the \$25,000 maximum. We would try to make clear that revenues go to the School District, but we know customers will inevitably leave our office with the perception that they're paying more money to the City.

The attached intergovernmental agreement keeps the work fairly simple for the City. The School District will prepare forms and information sheets and review all exemption and appeal requests. The City will be responsible for calculating the fee for each project, collecting revenues, and issuing payments quarterly to the District. In exchange, the City will receive 1% of total collected funds (as provided by the state law). Since the City already collects an excise tax, calculating and collecting the new fee should not take too much time and our internal review suggests that 1% may just about cover our costs. This can be tracked and reviewed after implementation.

## ***Attached***

- School District's informational handout on the Construction Excise Tax
- Draft Intergovernmental Agreement with the City



# **Canby School District**

## **Construction Excise Tax**

### **What is the Construction Excise Tax for the Canby School District?**

The Oregon Legislature passed a law (SB 1036) that provides a financial tool to help school districts pay for a portion of the cost for new or expanded facilities needed due to growth in the community. The law authorizes a school district, in cooperation with cities and counties, to tax new residential and non-residential development. Specifically, the tax applies to improvements to real property that result in a new structure or additional square footage in an existing structure.

### **What does the tax pay for?**

The excise tax revenue could be used for capital improvements such as acquiring property, construction of facilities, related architect and engineering expenses, and for additional fixtures, furnishings and equipment. The excise revenue would allow the district to purchase and prepare sites for future school facilities, and/or to help defray the cost of new school facilities.

### **Who has to pay and when?**

The tax is required to be paid by the developer or property owner who is developing property in the Canby School District at the time when they wish to have a permit issued by the City. A permit will not be issued unless the tax is paid or unless an approved exemption is submitted on the Exemption Form.

### **Who is exempt from paying the tax?**

The following are exempt from the Construction Excise Tax: (1) Private school improvements; (2) Public improvements as defined in ORS 279A.010; (3) Residential housing that is guaranteed to be affordable (under guidelines established by the United States Department of Housing and Urban Development, to households that earn no more than 80% of the median household income for the area in which the construction tax is imposed, for a period of at least 60 years following the date of construction for residential house); (4) Public or private hospital improvements; (5) Improvements to religious facilities primarily used for worship or education associated with worship; (6) Agricultural building as defined by 455.315; (7) Improvements to real property that result in a new structure or additional square feet totaling 1,000 square feet or less.

### **How much is the tax?**

The tax is \$1 per square foot on residential construction and 50 cents per square foot on non-residential construction. For non-residential construction only, the excise tax is limited to \$25,000 per building permit or \$25,000 per structure, whichever is less.

### **Is this a permanent tax?**

No. The 2007 Act is automatically repealed on January 2, 2018.

### **Who can I contact for more information?**

If you have additional questions, you may contact the Canby School District's Business Manager, David Moore, via e-mail at [moored@canby.k12.or.us](mailto:moored@canby.k12.or.us) or by phone: (503) 266-0020.

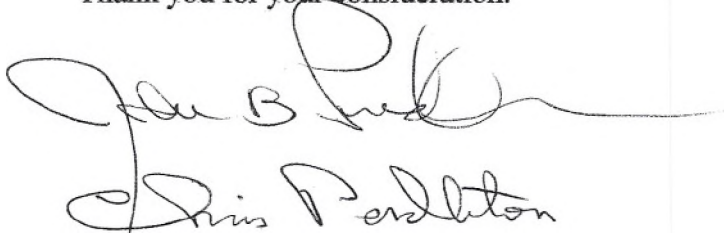
Jack & Chris Pendleton  
686 NW 13<sup>th</sup> Ave.  
Canby, OR 97013  
November 26, 2007

To: Canby City Council

Re: Collection of the Construction Excise Tax for Schools by the City of Canby

It is our understanding that at the December 5, 2007 meeting the City Council will discuss and perhaps vote on collection of the Construction Excise Tax for Schools by the City of Canby on behalf of the Canby School District. We are writing to express our strong support of the Construction Excise Tax as a means to help to spread the cost of new schools to new development. Our understanding is that the City Council must approve the City of Canby collect to tax on behalf of the school district. We urge the council to adopt a resolution to collect this tax at the earliest date possible so that funds can be collected to provide for construction of the new school facilities that will be needed in the future.

Thank you for your consideration.

The block contains two handwritten signatures in dark ink. The top signature is for Jack Pendleton, featuring a large, stylized 'J' and 'P'. The bottom signature is for Chris Pendleton, with a more fluid, cursive style.

Jack Pendleton  
Chris Pendleton

**RECEIVED**  
**NOV 26 2007**  
**CITY OF CANBY**



**RESOLUTION NO. 969**

**A RESOLUTION ADOPTING AN INTERGOVERNMENTAL AGREEMENT (IGA) BETWEEN THE CITY OF CANBY (CITY) AND CANBY SCHOOL DISTRICT NO. 86 (DISTRICT) FOR THE PURPOSE OF COLLECTING A CONSTRUCTION EXCISE TAX (CET) ON BEHALF OF THE DISTRICT ON NEW CONSTRUCTION IN THE CITY OF CANBY PURSUANT TO OREGON LAWS 2007 CHAPTER 829.**

**WHEREAS**, the 2007 Oregon legislature drafted and approved Oregon Laws 2007, Chapter 829 (the "Act") which creates a construction excise tax on new construction throughout the State of Oregon to be paid to school districts to be used to help offset the cost of new education facilities necessitated by new growth in its district; and

**WHEREAS**, the Act authorizes school districts to enter into an intergovernmental agreements (IGA) with each local government to collect the tax for the district; and

**WHEREAS**, the Canby School District No. 86 wishes to enter into such an IGA with the City for such purpose and the City is willing to collect the CET on behalf of the District; and

**WHEREAS**, the District has proposed a form of IGA that is acceptable to the City; now therefore

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

1. That the attached IGA, marked as Exhibit "A" and by this reference incorporated here, by and between the District and the City is hereby adopted. The Mayor is authorized to sign the IGA on behalf of the City.
2. This resolution shall take effect on January 2, 2008.

ADOPTED this 2<sup>nd</sup> day of January, 2008, by the Canby City Council.

\_\_\_\_\_  
Melody Thompson - Mayor

ATTEST:

\_\_\_\_\_  
Kimberly Scheafer, CMC  
City Recorder - Pro-Tem

## **CONSTRUCTION EXCISE TAX INTERGOVERNMENTAL AGREEMENT**

**Date:** December 20, 2007

**Parties:**

Canby School District No. 86, a school district as defined under ORS 330.005. ("School District").

City of Canby, a political subdivision of the State of Oregon. ("City").

**Recitals:**

A. ORS 190.003-.030 allows units of local government to enter into agreements for performance of any or all functions and activities which such units have authority to perform.

B. In accordance with Oregon Laws 2007, chapter 829 (the "Act"), on December 13, 2007, School District adopted a resolution establishing the Construction Excise Tax (the "CET") throughout its regional jurisdiction (the "Resolution"). The Resolution provides that City shall collect CET and remit payment of the collected CET, minus City's administrative fee, to School District in accordance with this Intergovernmental Agreement ("Agreement").

C. This Agreement establishes, among other things, (i) collection duties and responsibilities, (ii) the specific School District account into which tax revenues are to be deposited and the frequency of such deposits, and (iii) the amount of the administrative fee that City may retain to recoup its expenses in collecting the tax.

**Agreement:**

1. *Information and Forms.* School District shall create and provide: (i) information, forms, and assistance explaining the CET; (ii) information and forms for CET exemptions and appeals from CET exemption denials; and, (iii) any other forms or information necessary for implementation of the CET.

2. *Staffing.* City shall provide sufficient staff to calculate and collect the CET along with the collection of other permit fees. School District shall provide sufficient staff to review exemption applications and conduct exemption decision appeals.

3. *Collection; Start date.* City shall collect the CET on behalf of the School District for those properties that are within the City limits of the City. City shall begin



assessing and collecting the CET upon (a) receipt of a certified copy of the School District's resolution establishing the CET which is in compliance with the CET law, and (b) receipt of a fully-executed original copy of this IGA. City will continue collection until the CET expires, the underlying statutory authority is repealed, the program is terminated by the School District, or this IGA is terminated by either party hereto. If City determines that the Resolution adopted by School District does not meet the requirements of the Act, City may not collect the CET until such time as the Resolution meets the requirements of the Act.

4. *Exemptions.* School District shall determine the validity of any proposed exemption. If a building permit applicant asserts that the applicant is exempt from the CET and presents a CET exemption form signed by the School District, the City will recognize the exemption.

5. *Remittance.* Following the effective date of this Agreement, City shall pay School District 99% of the CET collected by the City. City shall make CET payments quarterly and no later than thirty (30) days after the end of each quarter.

6. *Failure to Pay CET.* Construction taxes shall be paid by the person undertaking construction at the time that the permit authorizing the construction is issued. If a person refuses or fails to pay the CET when due, City shall not issue a permit authorizing construction. In no event shall City be liable for failure to collect CET when due.

7. *Records.* City shall make all records related to building permit activity, CET collections, and CET exemptions available to School District or its designated auditors, as necessary for School District to audit CET collections.

8. *Administrative Fee.* As full consideration for the above described services, City shall be entitled to 1% of the CET collected by the City.

9. *Successors and Assigns.* This Agreement is binding on and inures to the benefit of the parties and their successors, and assigns. Except with the other party's prior written consent, a party may not assign any rights or delegate any duties under this Agreement.

10. *Amendment.* This Agreement may be amended only by an instrument in writing executed by all the parties.

11. *Entire Agreement.* This Agreement sets forth the entire understanding of the parties with respect to the subject matter of this Agreement and supersedes any and all prior or contemporaneous understandings and agreements, whether written or oral, between the parties with respect to such subject matter.

12. *Waiver.* A provision of this Agreement may be waived only by a written instrument executed by the party waiving compliance. No waiver of any provision of this Agreement shall constitute a waiver of any other provision, whether or not similar, nor



shall any waiver constitute a continuing waiver. Failure to enforce any provision of this Agreement shall not operate as a waiver of such provision or any other provision.

13. *Time is of the Essence.* From time to time, each of the parties shall execute, acknowledge, and deliver any instruments or documents necessary to carry out the purposes of this Agreement. Time is of the essence for each and every provision of this Agreement.

14. *No Third-Party Beneficiaries.* Nothing in this Agreement, express or implied, is intended to confer on any person, other than the parties to this Agreement, any right or remedy of any nature whatsoever.

15. *Effective Date.* This Agreement shall become effective upon the approval of School District's Board of Directors and the City Council.

16. *Other Agreements.* This Agreement does not affect or alter any other agreements between School District and City.

17. *School District's Defense and Indemnification.* School District agrees to indemnify, hold harmless, reimburse and defend City, and its officers, agents and employees, from, for and against all claims, suits, actions, damages, and expenses, including but not limited to attorneys' fees, related to or arising out of School District's performance of this Agreement, but only to the extent caused by the negligence, breach of contract, breach of warranty (express or implied), or other improper conduct of School District, its employees, subconsultants, or anyone for whose acts School District is responsible.

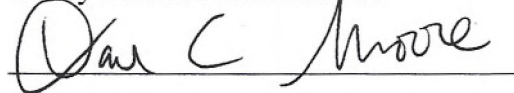
18. *City's Defense and Indemnification.* City agrees to indemnify, hold harmless, reimburse and defend School District, and its officers, agents and employees, from, for and against all claims, suits, actions, damages, and expenses, including but not limited to attorneys' fees, related to or arising out of City's performance of this Agreement, but only to the extent caused by the negligence, breach of contract, breach of warranty (express or implied), or other improper conduct of City, its employees, subconsultants, or anyone for whose acts City is responsible.

19. *Termination.* Either party may terminate this Agreement with or without cause five business days after delivering notice of termination to the other party.

Dated this 20TH day of DECEMBER 2008 Dated this \_\_\_\_ day of \_\_\_\_ 2008

Canby School District No. 86

Canby City Council



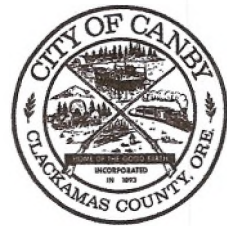
\_\_\_\_\_

By: DAVID MOORE

By Chair \_\_\_\_\_

Its: BUSINESS MANAGER





## **M E M O R A N D U M**

**TO:** *Honorable Mayor Thompson and City Council*  
**FROM:** *John R. Williams, Community Development & Planning Director*  
**DATE:** *December 21, 2007*  
**THROUGH:** *Mark C. Adcock, City Administrator*

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### ***Issue***

Resolution 970, to transfer parts of NW Territorial Road and S. Township Road from county to city jurisdiction.

### ***Synopsis***

S. Township Road lies within the Canby Pioneer Industrial Park, and is scheduled for improvement by American Steel and by the URD as part of the Sequoia Parkway project. In order to qualify for State of Oregon financing, we must have jurisdiction of the road. NW Territorial is undergoing development and we are having difficulties with permitting due to conflicts between City and County road standards.

### ***Recommendation***

Staff recommends that the Council approve Resolution 970.

### ***Rationale***

Our agreement with Clackamas County allows road transfers when pavement surface is fully improved, or when funds are transferred to cover needed improvements. Both road surfaces have been inspected and approved for transfer by the Canby Public Works Department. The transfer of NW Territorial Road will be accompanied by a \$9,625.00 payment to the City to cover approximately 620 lineal feet of needed road improvements.

Development is occurring along both of these roads, and has been difficult for developers due to conflicts between the County's rural road standards and our more urban standards. We would prefer to be in control of the road for permitting and design purposes as these actions take place.

The transfer on Township Road is required immediately in order for the City's loan application for Sequoia Parkway and Township improvements to proceed. This must be approved on January 2 or the project timeline will be impacted.

The down side, of course, is that we will be responsible for pavement maintenance on both of these roads. But on the whole, staff believes that Canby should eventually have jurisdiction over all roads (except 99E) within City limits. This would clear up jurisdictional issues relating to construction standards, access limitations, and maintenance responsibilities. The County does not prioritize maintenance on roads within City limits.

### ***Background***

The proposed transfer on Township extends from the RR tracks to Mulino Road. The transfer on NW Territorial extends from just west of Holly to Birch Street.

### ***Option***

1. Do not accept jurisdiction of these roads. This will save the city maintenance costs in the future but may make it more difficult to quickly make needed infrastructure improvements for the Pioneer Industrial Park.

***Attached*** Resolution 970



## **RESOLUTION NO. 970**

### **A RESOLUTION REQUESTING CLACKAMAS COUNTY TO SURRENDER JURISDICTION OF APPROXIMATELY 0.27 MILES OF NW TERRITORIAL ROAD AND APPROXIMATELY 0.48 MILES OF S. TOWNSHIP ROAD TO THE CITY OF CANBY.**

**WHEREAS**, development in Canby will require widening and improvement of certain portions of S. Township Road and NW Territorial Road; and

**WHEREAS**, the City Council has determined that it would be advantageous to have local control over the design and permitting of these improvements since the roads and development will be within the City of Canby; and

**WHEREAS**, S. Township Road is improved to acceptable standards for jurisdictional transfer and will be further improved through development of the Canby Pioneer Industrial Park; and

**WHEREAS**, NW Territorial Road requires improvements valued at \$9,625.00 and Clackamas County has agreed to transfer this amount to the City per the existing agreement between the County and City governing jurisdictional transfers; and

**WHEREAS**, pursuant to ORS 373.270(6)(a), the City Council may initiate the surrender of county jurisdiction over a county road by passage of appropriate municipal legislation;

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

- (1) Clackamas County is hereby requested to surrender jurisdiction over S. Township Road from Mulino Road west to the railroad tracks, a distance of approximately 0.48 miles.
- (2) Clackamas County is hereby requested to surrender jurisdiction over NW Territorial Road from the current end of County jurisdiction just west of Holly Street to Birch Street, a distance of approximately 0.27 miles.

This resolution will take effect on January 2, 2008.

ADOPTED this 2<sup>nd</sup> day of January, 2008 by the Canby City Council.

---

Melody Thompson, Mayor

ATTEST:

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Kimberly Scheafer, CMC  
City Recorder, Pro-Tem

**ORDINANCE NO. 1261**

**AN ORDINANCE CREATING AND IMPOSING A TAX ON MOTOR VEHICLE FUEL DEALERS; PROVIDING FOR ENFORCEMENT, ADMINISTRATION, AND COLLECTION OF THE TAX; AND AMENDING THE CANBY MUNICIPAL CODE BY ADDING A NEW CHAPTER 3.40, "MOTOR VEHICLE FUEL TAX."**

**WHEREAS**, revenues from existing sources, including the State Motor Fuel Tax and the City's Construction Excise Tax, are not adequate to maintain the City of Canby's street system; and

**WHEREAS**, the condition of the City of Canby's street system has been declining each year as demonstrated by detailed inventories performed in 2000, 2002, and 2005; and

**WHEREAS**, poorly maintained streets create a variety of problems including increased wear on vehicles and increased safety hazards; and

**WHEREAS**, regular maintenance of streets is cost-effective for the City and for citizens because deteriorated streets are expensive to repair and maintain and cause increased wear on vehicles; and

**WHEREAS**, a well-maintained street system provides for increased safety, supports property value appreciation, prolongs the life of public and private vehicles, and contributes to a more attractive community; and

**WHEREAS**, the City of Canby has prepared a Street Maintenance Program, attached as Exhibit A, working with a citizen Task Force and professional consultants, to address these issues; and

**WHEREAS**, additional funding is required in order to fund increased maintenance of the City of Canby's street system; and

**WHEREAS**, Canby is an Oregon home-rule municipal corporation having the authority and power under the terms of its Charter to exercise all the powers and authority that the Constitution, statutes, and common law of the United States and Oregon expressly or implicitly grant or allow as though each such power was specifically enumerated therein; and

**WHEREAS**, the City's authority and power includes the authority to impose a tax on the sale of motor vehicle fuel sold within the City limits of Canby; and

**WHEREAS**, the City Council wishes to exercise that power and to limit the use of any revenues generated by the tax to purposes associated with the administration, construction, reconstruction, improvement, repair, maintenance, operation, and use of the public highways, streets, and roads within the City limits of Canby; now therefore



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

Section 1. The City of Canby's Municipal Code is amended by adding a new Chapter 3.40, "Motor Vehicle Fuel Tax," to read as shown in the attached Exhibit A.

Section 2. This ordinance shall take effect 30 days after passage. The taxation imposed by Section 1 shall commence July 1, 2008.

**SUBMITTED** to the Canby City Council and read the first time at a regular meeting therefore on Wednesday, December 5, 2007; ordered posted in three (3) public and conspicuous places in the City of Canby as specified in the Canby City Charter and scheduled for second reading before the City Council for final reading and action at a regular meeting thereof on Wednesday, January 2, 2008, commencing at the hour of 7:30 pm at the Council Meeting Chambers at the Canby City Hall, 155 NW 2<sup>nd</sup> Avenue, Canby, Oregon.

\_\_\_\_\_  
Kimberly Scheafer, CMC  
City Recorder Pro-Tem

**PASSED** on second and final reading by the Canby City Council at a regular meeting thereof on the 2<sup>nd</sup> day of January, 2008, by the following vote:

YEAS \_\_\_\_\_

NAYS \_\_\_\_\_

\_\_\_\_\_  
Melody Thompson  
Mayor

ATTEST:

\_\_\_\_\_  
Kimberly Scheafer, CMC  
City Recorder Pro-Tem



**Chapter 3.40**  
**MOTOR VEHICLE FUEL TAX**

**Sections:**

3.40.020	Definitions
3.40.030	Tax Imposed
3.40.040	Amount and Payment
3.40.050	Permit Requirements
3.40.060	Permit Applications and Issuance
3.40.070	Failure to Secure Permit
3.40.080	Revocation of Permit
3.40.090	Cancellation of Permit
3.40.100	Remedies Cumulative
3.40.110	Payment of Tax and Delinquency
3.40.120	Monthly Statement of Dealer and Fuel Handler
3.40.130	Failure to File Monthly Statement
3.40.140	Billing Purchasers
3.40.150	Failure to Provide Invoice or Delivery Tag
3.40.160	Transporting Motor Vehicle Fuel in Bulk
3.40.170	Exemption of Export Fuel
3.40.180	Sales to Armed Forces Exempted
3.40.190	Fuel in Vehicle Coming into City Not Taxed
3.40.200	Refunds
3.40.210	Examination and Investigations
3.40.220	Limitation on Credit for Refund or Overpayment and on Assessment of Additional Tax
3.40.230	Examining Books and Accounts of Carrier of Motor Vehicle Fuel
3.40.240	Records to be Kept by Dealers and Fuel Handlers
3.40.250	Records to be Kept Three Years
3.40.260	Use of Tax Revenues
3.40.270	Administration
3.40.280	Severability

**3.40.020 Definitions**

As used in this chapter, unless the context requires otherwise:

(A) "City" means City of Canby and any person, agency or other entity authorized by the City to act as its agent related to administration of the Motor Vehicle Fuel Tax Ordinance or collection of the Motor vehicle fuel tax.

(B) "Dealer" means any person who: (1) Supplies or imports motor vehicle fuel for sale, use or distribution in, and after the same reaches the City, but "dealer" does not include any person who imports into the City motor vehicle

fuel in quantities of 500 gallons or less purchased from a supplier who is permitted as a dealer hereunder and who assumes liability for the payment of the applicable motor vehicle fuel tax to the City; or (2) Produces, refines, manufactures or compounds motor vehicle fuels in the City for use, distribution or sale in the City; or (3) Acquires in the City for sale, use or distribution in the City motor vehicle fuels with respect to which there has been no motor vehicle fuel tax previously incurred.

(C) "Motor Vehicle Fuel-Handler" means any person who acquires or handles motor vehicle fuel within the City through a storage tank facility with storage tank capacity that exceeds 500 gallons of motor vehicle fuel.

(D) "Distributor" means, in addition to its ordinary meaning, the deliverer of motor vehicle fuel by a dealer to any service station or into any tank, storage facility or series of tanks or storage facilities connected by pipelines, from which motor vehicle fuel is withdrawn directly for sale or for delivery into the fuel tanks or motor vehicles whether or not the service station, tank or storage facility is owned, operated or controlled by the dealer.

(E) "Motor Vehicle" means all vehicles, engines or machines, moveable or immovable, operated or propelled by the use of motor vehicle fuel.

(F) "Motor Vehicle Fuel" Includes gasoline, diesel, and any other flammable or combustible gas or liquid, by whatever name that gasoline, gas or liquid is known or sold, usable as fuel for the operation of motor vehicles. Propane fuel and motor vehicle fuel used exclusively as a structural heating source are excluded as a taxable motor vehicle fuel.

(G) "Person" includes every natural person, association, firm, partnership, or corporation.

(H) "Service Station" means and includes any place operated for the purpose of retailing and delivering motor vehicle fuel into the fuel tanks of motor vehicles.

### **3.40.030 Tax Imposed**

A motor vehicle fuel tax is hereby imposed on every dealer operating within the corporate limits of Canby. The City of Canby motor vehicle fuel tax imposed shall be paid monthly to the City.

(A) A person who is not a permitted dealer or permitted motor vehicle fuel-handler shall not accept or receive motor vehicle fuel in this City from a person who supplies or imports motor vehicle fuel who does not hold a valid motor vehicle fuel dealers permit in this City. If a person is not a permitted dealer or permitted motor vehicle fuel-handler in this City and accepts or receives motor vehicle fuel, the purchaser or receiver shall be responsible for all taxes, interests and penalties prescribed herein.

(B) A permitted dealer or fuel-handler who accepts or receives motor vehicle fuel from a person who does not hold a valid dealer or fuel-handler permit in this City, shall pay the tax imposed by this Ordinance to the City, upon the sale, use or distribution of the motor vehicle fuel.



### **3.40.040 Amount and Payment**

(A) Subject to subsections (B) and (C) of this section, by law, every dealer engaging in his own name, or in the name of others, or in the name of his representatives or agents in the City, in the sale, use or distribution of motor vehicle fuel, shall: (1) Not later than the 25th day of each calendar month, render a statement to the City or to its authorized agent, of all motor vehicle fuel sold, used or distributed by him in the City as well as all such fuel sold, used or distributed in the City by a purchaser thereof upon which sale, use or distribution the dealer has assumed liability for the applicable motor vehicle fuel tax during the preceding calendar month. (2) Pay a motor vehicle fuel tax computed on the basis of three (3.0) cents per gallon of such motor vehicle fuel so sold, used or distributed as shown by such statement in the manner and within the time provided in this ordinance.

(B) In lieu of claiming refund of the tax as provided in Section 3.40.200, or of any prior erroneous payment of motor vehicle fuel tax made to the City by the dealer, the dealer may show such motor vehicle fuel as a credit or deduction on the monthly statement and payment of tax.

(C) The motor vehicle fuel tax shall not be imposed wherever it is prohibited by the Constitution or laws of the United States or of the State of Oregon.

### **3.40.050 Permit Requirements**

No dealer or fuel handler, shall sell, use or distribute any motor vehicle fuel until he has secured a dealer or fuel-handler permit as required herein.

### **3.40.060 Permit Applications and Issuance**

(A) Every person, before becoming a dealer or fuel handler in motor vehicle fuel in this City shall make an application to the City or its duly authorized agent, for a permit authorizing such person to engage in business as a dealer or fuel-handler.

(B) Applications for the permit must be made on forms prescribed, prepared and furnished by the City or its duly authorized agent.

(C) The applications shall be accompanied by a duly acknowledged certificate containing: (1) The business name under which the dealer or fuel-handler is transacting business. (2) The place of business and location of distributing stations in the City and in areas adjacent to the City limits in the State of Oregon. (3) The name and address of the managing agent, the names and addresses of the several persons constituting the firm or partnership and, if a corporation, the corporate name under which it is authorized to transact business and the names and addresses of its principal officers and registered agent, as well as primary transport carrier.



(D) The application for a motor vehicle fuel dealer or fuel-handler permit having been accepted for filing, the City, shall issue to the dealer or fuel-handler a permit in such form as the City or its duly authorized agent may prescribe to transact business in the City. The permit so issued is not assignable, and is valid only for the dealer or fuel handler in whose name issued.

(E) The City Recorder's Office shall keep on file a copy of all applications and/or permits.

(F) No fee(s) shall be charged by the City for securing said permit as described herein.

### **3.40.070 Failure to Secure Permit**

(A) If any dealer sells, distributes or uses any motor vehicle fuel without first filing the certificate and securing the permit required by Section 3.40.060, the motor vehicle fuel tax shall immediately be due and payable on account of all motor vehicle fuel so sold, distributed or used.

(B) The City shall proceed forthwith to determine, from the best available sources, the amount of such tax, and it shall assess the tax in the amount found due, together with a penalty of 200 percent of the tax, and shall make its certificate of such assessment and penalty, determined by City Administrator or the City's duly authorized agent. In any suit or proceeding to collect such tax or penalty or both, the certificate is prima facie evidence that the dealer therein named is indebted to the City in the amount of the tax and penalty therein stated.

(C) Any fuel-handler who sells, handles, stores, distributes, or uses any motor vehicle fuel without first filing the certificate and securing the permit required by Section 3.40.060, shall be assessed a penalty of \$250.00 unless modified by Section 3.40.270(a), determined by the City Manager or the City's duly authorized agent. In any suit or proceeding to collect such penalty, the certificate is prima facie evidence that the fuel-handler therein named is indebted to the City in the amount of the penalty therein stated.

(D) Any tax or penalty so assessed may be collected in the manner prescribed in Section 3.40.110 with reference to delinquency in payment of the tax or by Court action.

### **3.40.080 Revocation of Permit**

The City shall revoke the permit of any dealer or fuel-handler refusing or neglecting to comply with any provision of this Ordinance. The City shall mail by certified mail addressed to such dealer or fuel-handler at his last known address appearing on the files, a notice of intention to cancel. The notice shall give the reason for the cancellation. The cancellation shall become effective without further notice if within 10 days from the mailing of the notice the dealer or fuel-handler has not made good its default or delinquency.



### **3.40.090 Cancellation of Permit**

(A) The City may, upon written request of a dealer or fuel-handler cancel any permit issued to such dealer or fuel-handler, the cancellation to become effective 30 days from the date of receipt of the written request.

(B) If the City ascertains and finds that the person to whom a permit has been issued is no longer engaged in the business of a dealer or fuel-handler, the City may cancel the permit of such dealer or fuel-handler upon investigation after 30 days' notice has been mailed to the last known address of the dealer or fuel handler.

### **3.40.100 Remedies Cumulative**

Except as otherwise provided in Sections 3.40.110 and 3.40.130, the remedies provided in Sections 3.40.070, 3.40.080, and 3.04.090 are cumulative. No action taken pursuant to those sections shall relieve any person from the penalty provisions of this Ordinance.

### **3.40.110 Payment of Tax and Delinquency**

(A) The motor vehicle fuel tax imposed by Sections 3.40.030 and 3.40.040 shall be paid on or before the 25th day of each month to the City which, upon request, shall receipt the dealer or fuel-handler therefor.

(B) Except as provided in subsection (D) of this section, to any motor vehicle fuel tax not paid as required by subsection (A) of this section, there shall be added a penalty of one percent (1.0%) of such motor vehicle fuel tax.

(C) Except as provided in subsection (D) of this section, if the tax and penalty required by subsection (B) of this section are not received on or before the close of business on the last day of the month in which the payment is due, a further penalty of ten percent (10.0%) shall be paid in addition to the penalty provided for in subsection (B) of this section.

(D) If the City, determines that the delinquency was due to reasonable cause and without any intent to avoid payment, the penalties provided by subsections (B) and (C) of this section may be waived. Penalties imposed by this section shall not apply when the penalty provided in Section 3.40.070 has been assessed and paid.

(E) If any person fails to pay the motor vehicle fuel tax or any penalty provided for by this Ordinance, the amount thereof shall be collected from such person for the use of the City. The City shall commence and prosecute to final determination in any court of competent jurisdiction an action to collect the same.

(F) In the event any suit or action is instituted to collect the motor vehicle fuel tax or any penalty provided for by this ordinance, the City shall be entitled to recover from the person sued reasonable attorney's fees at trial or upon appeal of such suit or action, in addition to all other sums provided by law.



(G) No dealer who collects from any person the tax provided for herein, shall knowingly and willfully fail to report and pay the same to the City, as required herein.

### **3.40.120 Monthly Statement of Dealer and Fuel-Handler**

Unless modified by Section 3.40.270(b), every dealer and fuel-handler in motor vehicle fuel shall render to the City, on or before the 25th day of each month, on forms prescribed, prepared and furnished by the City, a signed statement of the number of gallons of motor vehicle fuel sold, distributed, used or stored by him during the preceding calendar month. The statement shall be signed by the permit holder. All statements as required in this section are public records.

### **3.40.130 Failure to File Monthly Statement**

If any dealer or fuel-handler fails to file the report required by Section 3.40.120, the City, shall proceed forthwith to determine from the best available sources the amount of motor vehicle fuel sold, distributed, used or stored by such dealer or fuel-handler for the period unreported, and such determination shall be prima facie evidence of the amount of such fuel sold, distributed, used or stored. The City, immediately shall assess the motor vehicle fuel tax in the amount so determined, as pertaining to the reportable dealer, adding thereto a penalty of 10 percent for failure to report. Fuel-handlers failing to file a monthly statement of motor vehicle fuel shall be assessed a penalty of \$50.00. The penalty shall be cumulative to other penalties provided in this Ordinance. In any suit brought to enforce the rights of the City under this section, the above determination showing the amount of tax, penalties and costs unpaid by any dealer or fuel-handler and that the same are due and unpaid to the City is prima facie evidence of the facts as shown.

### **3.40.140 Billing Purchasers**

Bills shall be rendered to all purchasers of motor vehicle fuel by dealers in motor vehicle fuel. The bills shall separately state and describe to the satisfaction of the City the different products shipped thereunder and shall be serially numbered except where other sales invoice controls acceptable to the City are maintained. The bills required hereunder may be the same as those required under ORS 319.210.

### **3.40.150 Failure to Provide Invoice or Delivery Tag**

No person shall receive and accept any shipment of motor vehicle fuel from any dealer, or pay for the same, or sell or offer the shipment for sale, unless



the shipment is accompanied by an invoice or delivery tag showing the date upon which shipment was delivered and the name of the dealer in motor vehicle fuel.

### **3.40.160      Transporting Motor Vehicle Fuel in Bulk**

Every person operating any conveyance for the purpose of hauling, transporting or delivering motor vehicle fuel in bulk shall, before entering upon the public streets of the City with such conveyance, have and possess during the entire time of his hauling or transporting such motor vehicle fuel an invoice, bill of sale or other written statement showing the number of gallons, the true name and address of the seller or consignor, and the true name and address of the buyer or consignee, if any, of the same. The person hauling such motor vehicle fuel shall at the request of any officer authorized by the City to inquire into or investigate such matters, produce and offer for inspection the invoice, bill of sale or other statement.

### **3.40.170      Exemption of Export Fuel**

(A) The license tax imposed by Sections 3.40.030 and 3.40.040 shall not be imposed on motor vehicle fuel:(1) Exported from the City by a dealer; or (2) Sold by a dealer in individual quantities of 500 gallons or less for export by the purchaser to an area or areas outside the City in containers other than the fuel tank of a motor vehicle, but every dealer shall be required to report such exports and sales to the City in such detail as may be required.

(B) In support of any exemption from motor vehicle fuel taxes claimed under this section other than in the case of stock transfers or deliveries in his own equipment, every dealer must execute and file with the City an export certificate in such form as shall be prescribed, prepared and furnished by the City, containing a statement, made by some person having actual knowledge of the fact of such exportation, that the motor vehicle fuel has been exported from the City, and giving such details with reference to such shipment as may be required. The City may demand of any dealer such additional data as is deemed necessary in support of any such certificate, and failure to supply such data will constitute a waiver of all right to exemption claimed by virtue of such certificate. The City may, in a case where it believes no useful purpose would be served by filing of an export certificate, waive the certificate.

(C) Any motor vehicle fuel carried from the City in the fuel tank of a motor vehicle shall not be considered as exported from the City.

(D) No person shall, through false statement, trick or device, or otherwise, obtain motor vehicle fuel for export as to which the City motor vehicle fuel tax has not been paid and fail to export the same, or any portion thereof, or cause the motor vehicle fuel or any portion thereof not to be exported, or divert or cause to be diverted the motor vehicle fuel or any portion thereof to be used, distributed or sold in the City and fail to notify the City and the dealer from whom the motor vehicle fuel was originally purchased of his act.



(E) No dealer or other person shall conspire with any person to withhold from export, or divert from export or to return motor vehicle fuel to the City for sale or use so as to avoid any of the fees imposed herein.

(F) In support of any exemption from taxes on account of sales of motor vehicle fuel in individual quantities of 500 gallons or less for export by the purchaser, the dealer shall retain in his files for at least three years an export certificate executed by the purchaser in such form and containing such information as is prescribed by the City. This certificate shall be prima facie evidence of the exportation of the motor vehicle fuel to which it applies only if accepted by the dealer in good faith.

#### **3.40.180 Sales to Armed Forces Exempted**

The motor vehicle fuel tax imposed by Sections 3.40.030 and 3.40.040 shall not be imposed on any motor vehicle fuel sold to the Armed Forces of the United States for use in ships, aircraft or for export from the City; but every dealer shall be required to report such sales to the City, in such detail as may be required. A certificate by an authorized officer of such Armed Forces shall be accepted by the dealer as sufficient proof that the sale is for the purpose specified in the certificate.

#### **3.40.190 Fuel in Vehicles Coming Into City Not Taxed**

Any person coming into the City in a motor vehicle may transport in the fuel tank of such vehicle motor vehicle fuel for his own use only and for the purpose of operating such motor vehicle without securing a license or paying the tax provided in Sections 3.40.030 and 3.40.040, or complying with any of the provisions imposed upon dealers herein, but if the motor vehicle fuel so brought into the City is removed from the fuel tank of the vehicle or used for any purpose other than the propulsion of the vehicle, the person so importing the fuel into the City shall be subject to all provisions herein applying to dealers.

#### **3.40.200 Refunds**

Refunds will be made pursuant to ORS. 319.280 to 319.320.

#### **3.40.210 Examination and Investigations**

The City, or its duly authorized agent, may make any examination of accounts, records, stocks, facilities and equipment of dealers, fuel-handlers, service stations and other persons engaged in storing, selling or distributing motor vehicle fuel or other petroleum products within this City, and such other investigations as it considers necessary in carrying out the provisions of this ordinance. If the examinations or investigations disclose that any reports of dealers or other persons theretofore filed with the City pursuant to the



requirements herein, have shown incorrectly the amount of gallons of motor vehicle fuel distributed or the tax accruing thereon, the City may make such changes in subsequent reports and payments of such dealers or other persons, or may make such refunds, as maybe necessary to correct the errors by its examinations or investigations.

**3.40.220      Limitation on Credit for or Refund of Overpayment and on Assessment of Additional Tax**

(A) Except as otherwise provided in this ordinance, any credit for erroneous overpayment of tax made by a dealer taken on a subsequent return or any claim for refund of tax erroneously overpaid filed by a dealer must be so taken or filed within three years after the date on which the overpayment was made to the City or to its authorized agent.

(B) Except in the case of a fraudulent report or neglect to make a report, every notice of additional tax proposed to be assessed under this ordinance shall be served on dealers within three years from the date upon which such additional taxes become due.

**3.40.230      Examining Books and Accounts of Carrier Motor Vehicle Fuel**

The City or its duly authorized agent may at any time during normal business hours examine the books and accounts of any carrier of motor vehicle fuel operating within the City for the purpose of checking shipments or use of motor vehicle fuel, detecting diversions thereof or evasion of taxes in enforcing the provisions of this ordinance.

**3.40.240      Records to be Kept by Dealers and Fuel Handlers**

Every dealer and fuel-handler in motor vehicle fuel shall keep a record in such form as may be prescribed by the City of all purchases, receipts, sales and distribution of motor vehicle fuel. The records shall include copies of all invoices or bills of all such sales and purchases, and shall at all times during the business hours of the day be subject to inspection by the City or its authorized officers or agents.

**3.40.250      Records to be Kept Three Years**

Every dealer and fuel-handler shall maintain and keep, for a period of three years, all records of motor vehicle fuel used, sold and distributed within the City by such dealer or fuel handler, together with stock records, invoices, bills of lading and other pertinent papers as may be required by the City. In the event such records are not kept within the State of Oregon, the dealer shall reimburse the City or its duly authorized agents for all travel, lodging, and related expenses



incurred in examining such records. The amount of such expenses shall be an additional tax imposed hereunder.

#### **3.40.260 Use of Tax Revenues**

(A) The City Administrator shall be responsible for the disposition of the revenue from the tax imposed by this ordinance in the manner provided by this section.

(B) For the purposes of this section, net revenue shall mean the revenue from the tax imposed by this ordinance remaining after providing for the cost of administering the motor vehicle fuel tax to motor vehicle fuel dealers and any refunds and credits authorized herein. The program administration costs of revenue collection and accounting activities shall not exceed 10.5% for the first year, and 10% thereafter, of annual tax revenues.

(C) The net revenue shall be used only for the activities related to the construction, reconstruction, improvement, repair, and maintenance of public highways, roads and streets within the City of Canby.

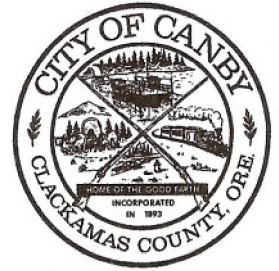
(D) The net revenue shall be used for the street maintenance program established under Chapter 3.30.

#### **3.40.270 Administration**

The City Administrator or his designate is responsible for administering this ordinance. In addition, the City Administrator may enter into an agreement with the Motor Vehicle Division of the Department of Transportation as an authorized agent for the implementation of certain sections of this ordinance. If the Motor Vehicles Division is chosen as an authorized agent of the City, then the modifications outlined below shall apply: (a) The fuel handler's penalty of Section 3.40.070(C) shall be reduced to \$100.00. And if the Division determines that the failure to obtain the permit was due to reasonable cause and without any intent to avoid obtaining a permit, then the penalty provided in Section 3.40.070 and this section may be waived. (b) The fuel handler's monthly reporting requirements of Section 3.40.120 and 3.40.130 shall be waived.

#### **3.40.280 Severability**

If any portion of this ordinance is for any reason held invalid or unconstitutional by a court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions of this ordinance.



## **M E M O R A N D U M**

**TO:** *Honorable Mayor Thompson and City Council*  
**FROM:** *John R. Williams, Community Development & Planning Director*  
**DATE:** *December 10, 2007*  
**THROUGH:** *Mark C. Adcock, City Administrator*  
**RE:** *Revised Ordinance 1262*

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### ***Synopsis***

The City Council held a hearing on Ordinances 1261 and 1262 on December 5. The Mayor & Council approved Ordinance 1261, creating a local Motor Vehicle Fuel Tax, on first reading. Staff was directed to return with several changes to Ordinance 1262, creating a Street Maintenance Fee.

### ***Recommendation***

Based on previous Council direction, staff recommends that the City Council adopt Ordinance 1262.

### ***Rationale***

Following the Council's December 5 hearing, staff was directed to bring Ordinance 1262 back for first reading with the following changes:

- Delete the Street Maintenance Advisory Committee proposed by the Task Force. The work of this Committee will now be done by the City Council and Budget Committee.
- Remove reference to a street cutting moratorium in Section 3.30.030(D). Instead, staff will work to toughen the City's street repair regulations.

Exhibit A of Ordinance 1262 has been revised accordingly. If you have any questions, please contact me.



**ORDINANCE NO. 1262**

**AN ORDINANCE AMENDING THE CANBY MUNICIPAL CODE BY ADDING A NEW CHAPTER 3.30, "STREET MAINTENANCE PROGRAM," AND REQUIRING PAYMENT OF A STREET MAINTENANCE FEE.**

**WHEREAS**, revenues from existing sources, including the State Motor Fuel Tax and the City's Construction Excise Tax, are not adequate to maintain the City of Canby's street system; and

**WHEREAS**, the condition of the City of Canby's street system has been declining each year as demonstrated by detailed inventories performed in 2000, 2002, and 2005; and

**WHEREAS**, poorly maintained streets create a variety of problems including increased wear on vehicles and increased safety hazards; and

**WHEREAS**, regular maintenance of streets is cost-effective for the City and for citizens because deteriorated streets are expensive to repair and maintain and cause increased wear on vehicles; and

**WHEREAS**, a well-maintained street system provides for increased safety, supports property value appreciation, prolongs the life of public and private vehicles, and contributes to a more attractive community; and

**WHEREAS**, the City of Canby has prepared a Street Maintenance Program, attached as Exhibit A, working with a citizen Task Force and professional consultants, to address these issues; and

**WHEREAS**, additional funding is required in order to fund increased maintenance of the City of Canby's street system; now therefore

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

Section 1. The City of Canby's Municipal Code is amended by adding a new Chapter 3.30, "Street Maintenance Program," to read as shown in the attached Exhibit A.

Section 2. This ordinance shall take effect 30 days after passage. The fee imposed by Section 1 shall commence July 1, 2008.

**SUBMITTED** to the Canby City Council and read the first time at a regular meeting therefore on Wednesday, January 2, 2008; ordered posted in three (3) public and conspicuous places in the City of Canby as specified in the Canby City Charter and scheduled for second reading before the City Council for final reading and action at a regular meeting thereof on Wednesday, January 16,

2008, commencing at the hour of 7:30 pm at the Council Meeting Chambers at the Canby City Hall,  
155 NW 2<sup>nd</sup> Avenue, Canby, Oregon.

\_\_\_\_\_  
Kimberly Scheafer, CMC  
City Recorder Pro-Tem

**PASSED** on second and final reading by the Canby City Council at a regular meeting thereof  
on the 16<sup>th</sup> day of January, 2008, by the following vote:

YEAS \_\_\_\_\_

NAYS \_\_\_\_\_

\_\_\_\_\_  
Melody Thompson  
Mayor

ATTEST:

\_\_\_\_\_  
Kimberly Scheafer, CMC  
City Recorder Pro-Tem



Chapter 3.30

**STREET MAINTENANCE PROGRAM**

**Sections:**

- 3.30.010 Definitions**
- 3.30.020 Administrative Officers**
- 3.30.030 Dedication of Revenues**
- 3.30.040 Annual Street Maintenance Program Report**
- 3.30.050 Street Maintenance Fee**
- 3.30.060 Determination of Street Maintenance Fee**
- 3.30.070 Administration of Street Maintenance Fee**
- 3.30.080 Waiver of Street Maintenance Fee in Case of Vacancy**
- 3.30.090 Street Maintenance Fee Appeal Procedure**
- 3.30.100 Exceptions to Street Maintenance Fee**
- 3.30.110 Severability**

**3.30.010 Definitions**

As used in this Chapter, unless the context requires otherwise:

(A) "Community Development Director." The City of Canby Community Development Director or the Director's designee.

(B) "Developed Property." A parcel or portion of real property on which an improvement exists or has been constructed. Improvement on developed property includes, but is not limited to buildings, parking lots, landscaping and outside storage.

(C) "Dwelling Unit." One or more rooms designed for occupancy by one family and not having more than one cooking facility.

(D) "Gross Square Footage." The area of all structures, located on a developed property, measured along the exterior walls of the structures, and including but not limited to enclosed courtyards and stairwells, but not including fences and parking areas which are not enclosed within a building.

(E) "Multi-unit Residential Property." Residential property consisting of two or more dwelling units. For the purposes of this ordinance, condominiums, attached single-family residences, and individual mobile home units are also classified as multi-unit residential properties.

(F) "Non-Residential Property." Any property that is not residential property.

(G) "Residential Property." A property that is primarily for personal, domestic accommodation, including single single-family, multi-unit residential property and group homes, but not including hotels and motels.

(H) "Responsible Party." The person or persons who by occupancy or contractual arrangement are responsible to pay for utility and other services provided to an occupied unit. Unless another party has agreed in writing to pay and a copy of the writing is filed with the City, the person(s) paying the sewer bill for an occupied unit shall be deemed the responsible party as to that occupied unit. For any occupied unit not otherwise required to pay a sewer bill, "responsible party" shall mean the person or persons legally entitled to occupancy of the occupied unit, unless another responsible party has agreed in writing to pay and a copy of the writing is filed with the City. Any person who has agreed in writing to pay is considered the responsible person if a copy of the writing is filed with the City.

(I) "Single Family Residential." Residential property that has only detached dwelling units.

(J) "Street." A public street or right-of-way within the City of Canby that is under the jurisdiction or control of the City. For purposes of this ordinance, county, state, and federal roads are excluded.

(K) "Street Maintenance Program." Program established by this chapter to maintain, repair and reconstruct City of Canby streets. Activities include the administration and collection of the Street Maintenance Fee; preventive maintenance, rehabilitation and reconstruction projects; design and inspection of such projects; street condition monitoring and assessment, including inspection of street repairs; and staff training and consultant services in support of the above activities.

(L) "Trip Generation." The average number of vehicle trips, as determined by reference to the Manual entitled, Trip Generation, published by the Institute of Transportation Engineers (ITE) ("ITE Manual"), 7th edition.

(M) "Use Category or Category of Use." The Code number and resulting trip generation estimate determined with reference to the ITE Manual, and applicable to a particular developed property.

### **3.30.020 Administrative Officers**

(A) Except as provided below, the Community Development Director shall be responsible for the administration of this ordinance.

(B) The Community Development Director shall annually develop and update a five-year Street Maintenance Program project schedule. This schedule



shall be properly integrated into the City's Capital Improvement Program, to ensure that it is coordinated with other City capital projects and projects of other agencies.

(C) The Community Development Director shall provide an annual report on the Street Maintenance Program to the City Council and Budget Committee.

(D) The Community Development Director shall be responsible for implementation and enforcement of steps to minimize utility cut damage to streets.

(E) The Finance Director shall be responsible for the administration and collection of fees under this ordinance.

#### **3.30.030 Dedication of Revenues**

(A) All funds and all proceeds from funds collected pursuant to this chapter shall be used for the Street Maintenance Program.

#### **3.30.040 Annual Street Maintenance Program Report**

(A) Each year the Community Development Director shall prepare and present to the Budget Committee and City Council the "Annual Street Maintenance Program Report." This document is a public record.

(B) The report shall include a narrative description of the overall condition of the street network, the findings of any new condition assessments, a detailed project schedule for the upcoming year, an updated 5-year project schedule, the project selection criteria employed, and a report on the previous year projects, workload impacts, and overall program progress. The report shall include revenues received relative to revenue projections, project cost inflation trends, and any other new developments that impact the adequacy of the program funds to meet program goals.

#### **3.30.050 Street Maintenance Fee**

(A) A Street Maintenance Fee is imposed and levied upon the responsible party for all developed property within the City. The fee shall be based on the direct and indirect use of or benefit derived from the use of public streets generated by the developed property, to be calculated as described in Section 3.30.060.

(B) The Street Maintenance Fee is also imposed and levied on the property owner of the developed property in the event of non-payment by the responsible party.

### **3.30.060 Determination of Street Maintenance Fee**

#### **(A) Residential Fees.**

1. Detached Single Family Residences shall be charged \$5.00 per month. ITE Code 210.
2. Multi-Family Residences, except for Senior Housing, mobile home parks, and Congregate Care, shall be charged \$3.34 per month for each dwelling unit. ITE Codes 220, 221, 222, 223, 224, 230, 231, 232, 233.
3. Detached Senior Housing and mobile home parks will be charged \$2.09 per month for each dwelling unit. ITE Codes 240, 250, 251.
4. Attached Senior Housing and Congregate Care facilities will be charged \$1.04 per month for each dwelling unit. ITE Codes 252, 253, 254.

#### **(B) Non-residential fees.**

1. Category Assignment. Each Non-Residential Developed Property in the City shall be assigned to a Category of Use according to the land use type listed in sub-section C.
2. Upon request of the customer, the Community Development Director shall review the Category of Use assignment. The Community Development Director shall consider evidence provided by the customer that relates to the actual trip generation patterns of the property in question. The determination of Category of Use shall not be considered a land use decision as that term is defined in ORS 197.015.
3. Fee calculation. The Street Maintenance Fee shall be calculated by multiplying the number of Units (listed in subsection C) by the trip rate per unit for that assigned Category of Use and then by the monthly per trip charge of \$0.522 to establish the monthly fee to be billed.
4. Fee minimum. The minimum monthly Street Maintenance Fee for non-residential accounts shall be \$5.00.

#### **(C) Category of Use.**

1. Category 0 shall be estimated at 1.00 trip per Unit. Land Uses include city park, state park, waterslide park, movie theater, military base, wholesale market, furniture store, general heavy industrial,



mini-warehouse, high cube warehouse, utilities. ITE Codes 411, 413, 414, 444, 501, 860, 890, 120, 151, 152.

2. Category 1 shall be estimated at 2 trips per Unit. Land Uses include county park, nursing home, discount club, light rail transit station w/ parking, all suite hotel, business hotel. ITE Codes 93, 311, 312, 412, 620, 861.
3. Category 2 shall be estimated at 4 trips per Unit. Land Uses include general aviation airport, general light industrial, industrial park, manufacturing, warehouses, hotel, motel, resort hotel, regional park, golf course, prison, general office, corporate headquarters, single tenant office, office park, research center, auto care center, self-service car wash, tire store, wholesale tire store, supermarket, discount supermarket, and toy/children's superstore. ITE Codes 22, 110, 130, 140, 150, 310, 320, 330, 417, 430, 571, 710, 714, 715, 750, 760, 840, 947, 848, 849, 850, 854 and 864.
4. Category 3 shall be estimated at 8 trips per Unit. Land Uses include water port/marine terminal, truck terminals, casino/video lottery establishment, tennis club, racquet club, elementary school, middle/junior high school, high school, church, hospital, business park, building materials/lumber, specialty retail center, nursery-retail (garden center), nursery-wholesale, shopping center, factory outlet center, quality restaurant, quick lubrication, auto parts sales, gasoline/service station, gasoline/service station w/convenience market, gasoline/service station w/convenience market and car wash, convenience market (16 hr), home improvement superstore, and video rental. ITE Codes 10, 30, 473, 491, 492, 520, 522, 530, 560, 610, 770, 812, 814, 817, 818, 820, 823, 931, 837, 843, 944, 945, 946, 852, 862 and 896.
5. Category 4 shall be estimated at 16 trips per Unit. Land Uses include beach park, marina, junior/community college, day care center/preschool, library, clinic, medical-dental office building, free-standing discount superstore, free-standing discount store, hardware/paint stores, high turnover sit-down restaurant, fast food restaurant w/drive through, new car sales, convenience market (24 hr), electronics superstore, apparel store, bank/savings w/walk-in, bank savings w/drive-in, bus depot, and racquetball club. ITE Codes 415, 420, 540, 565, 590, 630, 720, 813, 815, 816, 932, 934, 841, 851, 863, 870, 911, 912.
6. Category 5 shall be estimated at 32 trips per Unit. Land Uses are fast food restaurant w/out drive-through, convenience market w/gas pump, pharmacy/drug store w/out drive through, and



pharmacy/drug store w/drive-through. ITE Codes 933, 853, 880, and 881.

7. Category 6 shall be estimated at 64 trips per Unit. Land Uses include commercial airport, truck terminal, utilities, campground/recreational vehicle, multi-purpose recreational facility, government office building, US post office, and amusement (theme) park. ITE Codes 21, 30, 170, 416, 435, 730, and 732.
8. Category 7 shall be estimated at 128 trips per Unit. Land Uses include state motor vehicles department. ITE Codes 731.
9. Category 8 shall be estimated at 256 trips per Unit. Land Uses include park and ride lot with bus service. ITE Codes 90.

(D) Units. The Unit used in calculating the Non-Residential Street Maintenance Fee shall be one (1) thousand square gross square feet of building area, with the following exceptions. The Unit for parks, golf courses, park and ride facilities with bus service, cemeteries, marinas, and multi-purpose recreational facilities shall be one (1) acre. The Unit for lodges shall be one (1) member. The Unit for hotels or motels shall be one (1) room. The Unit for self-service car washes shall be one (1) wash stall. The Unit for tennis courts or racquet clubs shall be one (1) court. The Unit for quick lubrication vehicle stops or gas stations shall be one (1) fueling or service position. The Unit for movie theaters shall be one (1) seat.

(E) Unlisted uses. In the event that a property is occupied by a use that is not expressly listed in any of the above categories, the Community Development Director shall determine which category the property should be placed in, based on similarity in expected trip generation. If no category is appropriate, the Community Development Director shall determine the trips per unit shall be based on a transportation study, the Trip Generation Manual, or any other method of determining trips. Any determination by the Community Development Director under this section may be reviewed under the procedure described in section 3.30.090, sub-section (B). The result of the review may be appealed to the City Council by filing a notice of appeal within 10 days of the date notice of the result of the review is mailed to the property owner.

### **3.30.070 Administration of Street Maintenance Fee**

(A) The Street Maintenance Fee shall be billed and collected with and as part of the monthly sewer bill for those lots or parcels utilizing City sewer and billed and collected separately for those Developed Properties not utilizing City sewer. In the event of non-payment, the City may bill the property owner or take other action as authorized by law to collect from the responsible party.



(B) In the event funds received from City utility billings are inadequate to satisfy in full all of the sanitary sewer and Street Maintenance fees, credit shall be given first to the Street Maintenance fee and second to the sanitary sewer service charges.

(C) Notwithstanding any provision herein to the contrary, the City may institute any necessary legal proceedings to enforce the provisions of this ordinance, including, but not limited to injunctive relief and collection of charges owing. The City's enforcement rights shall be cumulative.

### **3.30.080 Waiver of Street Maintenance Fee in Case of Vacancy**

(A) When any property within the City becomes vacant and utility services are discontinued (if applicable), a waiver of the Street Maintenance Fee may be granted by the Finance Director upon written application of the person responsible, including a signed statement, affirming under penalty of perjury that the property is vacant, and upon payment of all outstanding sanitary sewer and street maintenance charges.

(B) For purposes of this section, "vacant" shall mean that an entire building or utility billing unit has become vacant or continuously unoccupied for at least 30 days. "Vacant" shall not mean that only a portion of a property without a separate water meter has become vacant or unoccupied.

(C) Fees shall be waived in accordance with this section only while the property remains vacant. The person responsible shall notify the City within 5 days of the premises being occupied, partially occupied or used, regardless of whether utility service is restored.

### **3.30.090 Street Maintenance Fee Appeal Procedure**

(A) Any owner who disputes any interpretation given by the City as to the Category of Use assigned to such owner's property pursuant to this ordinance may request a review and appeal such interpretation, but only in accordance with this section. The dispute must first be presented to the Community Development Director for review and thereafter may be appealed to the City Council in accordance with this section. Failure to appeal an interpretation made under this ordinance within the time and in the manner provided shall be sufficient cause to deny the relief requested. Except in cases of hardship as determined by the Council, disputes which result in changes in the Street Maintenance Fee charged under this ordinance shall become effective with the next billing cycle.

(B) A utility customer may request a review of the Category of Use assigned. The Community Development Director shall conduct the review, considering all relevant evidence presented by the customer related to their



actual trip generation patterns. Such evidence may include business records, parking lot usage, or traffic studies. The Community Development Director shall make a determination based on the evidence provided and provide notice to the customer.

(C) A customer who wishes to dispute an interpretation made by the Community Development Director as to the assigned Category of Use under this ordinance shall submit a written appeal to the City Administrator within 10 days from the date of notice of the Community Development Director's determination under subsection B of this section, together with a filing fee in the amount of \$300. The application for appeal shall specify the reasons therefore and include an engineering study prepared by a licensed professional engineer in conformance with the methodology outlined in the ITE Manual. Appeals shall be limited to the issue of whether the appropriate Category of Use has been assigned to the property.

(D) The City Administrator shall schedule the matter for City Council review and notify the appellant not less than 10 days prior to the date of such Council review. The Council shall conduct a hearing during a public meeting and determine whether there is substantial evidence in the record to support the interpretation given by the Community Development Director. The Council may continue the hearing for purposes of gathering additional information bearing on the issue. The Council shall make a tentative oral decision and shall adopt a final written decision together with appropriate findings in support. The decision of the Council with respect to the Category of Use shall be limited to whether the appellant has been assigned to the appropriate Category of Use. If the Council should determine that a different Category of Use should be assigned, it shall so order, provided no refund of prior Street Maintenance Fees shall be given. Only where the Council decision results in a change in Category of Use will the filing fee on the appeal be refunded. The Council decision shall be final.

### **3.30.100 Exceptions to Street Maintenance Fee**

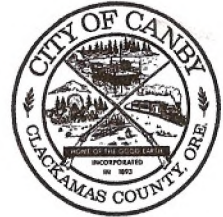
The following shall not be subject to the Street Maintenance Fee:

- (A) City of Canby public parking lots.
- (B) Publicly owned parkland, open spaces, and greenways, unless public off-street parking designed to accommodate the use of such areas is provided.
- (C) Areas encompassed by railroad and public rights-of-way, except for developed railroad property such as maintenance areas, non-rolling storage areas and areas used for the transfer of rail-transported goods to non-rail transport, which areas shall be subject to Street Maintenance Fees.



### **3.30.110 Severability**

In the event any section, subsection, paragraph, sentence or phrase of this chapter is determined by a court of competent jurisdiction to be invalid or unenforceable, the validity of the remainder of the chapter shall continue to be effective. If a court of competent jurisdiction determines that this ordinance imposes a tax or charge, which is therefore unlawful as to certain but not all affected properties, then as to those certain properties, an exception or exceptions from the imposition of the Street Maintenance Fee shall be created and the remainder of the ordinance and the fees imposed thereunder shall continue to apply to the remaining properties without interruption. Nothing contained herein shall be construed as limiting the City's authority to levy special assessments in connection with public improvements pursuant to applicable law.



# MEMORANDUM

**TO:** *Honorable Mayor Thompson and City Council*  
**FROM:** *John R. Williams, Community Development & Planning Director*  
**DATE:** *December 13, 2007*  
**THROUGH:** *Mark C. Adcock, City Administrator*

---

Issue: Engineering services for Knights Bridge Road reconstruction.

Synopsis: Knights Bridge Road is our next priority project for Transportation System Development Charge funds. This ordinance authorized Curran-McLeod, Inc. to undertake design and construction engineering services for this project. The \$102,000 contract includes surveying, roadway design, contract bid preparation, construction oversight, and related services.

Recommendation: Staff recommends that the City Council approve Ordinance 1264, awarding the design engineering contract for the Knights Bridge Road reconstruction to Curran-McLeod, Inc.

Rationale: Curran-McLeod, Inc. has provided contract engineering services to the City for many years. They have successfully designed and completed numerous road projects for the City, including most recently S. Berg Parkway, SE 2<sup>nd</sup> Avenue, S. Sequoia Parkway, and S. Hazel Dell Way. Their proposal for this project has been reviewed and approved by our new Public Works Operations Manager, Dwayne Barnes.

Background: The proposed contract will be paid for by System Development Charges. Based on initial project estimates, funds are available for both the engineering and construction of this project. As the Council will recall, letters have been sent to property owners to advise them that the project is scheduled for fall 2008. We are working to coordinate this project with all property owners and utility providers.

The engineering design phase, budgeted at \$48,000, includes surveys, roadway design, graphics, and bid document preparation. The engineering construction phase, budgeted at \$54,000, includes advertisements, bidding, staking, field testing, contract administration, and inspections. Construction phase services will be billed on an hourly basis as needed.

\$90,000 will come from 420-420-431-7600 (Transportation SDC) while \$12,000 will come from 306-318-434-7615 (Sanitary Sewer SDC) to pay for needed improvements and relocation of the Knights Bridge sewer pump station.

Attached: Ordinance 1264; engineering report including cost estimates; proposed contract.

Reviewed by Finance Department: Charmee Sigurd



**ORDINANCE NO. 1264**

**AN ORDINANCE AUTHORIZING THE MAYOR AND CITY ADMINISTRATOR TO EXECUTE A CONTRACT WITH CURRAN-MCLEOD, INC. CONSULTING ENGINEERS FOR ENGINEERING SERVICES ON THE RECONSTRUCTION OF APPROXIMATELY 2,500 LINEAL FEET OF KNIGHTS BRIDGE ROAD.**

**WHEREAS**, the City of Canby has heretofore advertised and received proposals for municipal engineering services, completed oral interviews and selected CURRAN-McLEOD, INC. for the City's Engineer of Record; and

**WHEREAS**, the City of Canby anticipates the need to reconstruct approximately 2,500 lineal feet of Knights Bridge Road from N. Baker Drive to N. Holly Street; and

**WHEREAS**, this project will be funded by Transportation System Development Charges and funds are available to undertake the engineering phase of the project; now therefore,

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

Section 1. The Mayor and 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 CURRAN-MCLEOD, INC for engineering services in an amount not to exceed \$102,000.

**SUBMITTED** to the Canby City Council and read the first time at a regular meeting therefore on Wednesday, January 2, 2008; ordered posted as required by the Canby City Charter and scheduled for second reading on Wednesday, January 16, 2008, at the hour of 7:30 pm in the Council Chambers at 155 NW 2nd, Canby, Oregon.

\_\_\_\_\_  
Kimberly Scheafer, CMC  
City Recorder Pro-Tem

**PASSED** on second and final reading by the Canby City Council at a regular meeting thereof on the 16<sup>th</sup> day of January, 2008, by the following vote:

YEAS \_\_\_\_\_

NAYS \_\_\_\_\_

\_\_\_\_\_  
Melody Thompson, Mayor

ATTEST:

\_\_\_\_\_  
Kimberly Scheafer, CMC  
City Recorder Pro-Tem

November 23, 2007

CURRAN-McLEOD, INC.  
CONSULTING ENGINEERS

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

Mr. John Williams  
Community Development Director  
City of Canby  
170 NW 2<sup>nd</sup> Avenue  
Canby, OR 97013

EXHIBIT "A"

**RE: CITY OF CANBY  
KNIGHTS BRIDGE ROAD RECONSTRUCTION**

Dear John:

This letter is to summarize the scope of engineering and construction services for the City of Canby Knights Bridge Road project, funded through the Transportation System Development Charge and scheduled for construction in the summer of 2008. We have reviewed the scope of work and prepared detailed estimate of design and construction engineering costs.

Our work scope includes payment of all plan review fees for water and wastewater improvements, and project advertising costs. We do not anticipate the need for any geotechnical work or other specialty subcontractors.

The scope of the proposed work will extend from N. Baker Drive to N. Grant Street, with a total length of approximately 2,500 lineal feet. The Transportation System Plan calls for Knights Bridge Road to be widened by 4 feet to 44 feet total. This expansion is very costly for the minimal benefit. Expanding the street the two additional feet on each side will require two additional feet of landscape disruption and the removal and replacement of all curbs and sidewalks, some of which were placed relatively recently by private developers as well as through various City projects.

Regardless of the width being 40 feet or 44 feet, there is adequate room for parking on one side only if we intend to provide painted bike lanes. As a result, we recommend the street width not be increased the additional 4 feet, and we have based our scope of engineering services on this recommendation.

The scope of work will include construction of all remaining 4.5 foot sidewalks on both sides of the roadway, removing and replacing the travel surface with 4 inches of AC over 12" of base rock, and striping for two 12-foot traffic lanes, two 6-foot bike lanes and an 8-foot parking on one side only.



No additional utility lines appear to be needed as this area is served with existing sanitary sewer and domestic water. Water and franchise utilities will most likely, however, want to make upgrades as a component of the work. The sanitary sewer pumping station will also require a substantial upgrade. This station has been problematic for years due to the grease build-up in the shallow wet well, odd configuration and difficult access. The work scope will include negotiating for an easement to set the station further off-street and install a new deeper wet well, new controls and landscaping. We do not anticipate adding an engine generator, however, the City should confirm this. A generator is a basic necessity that should be added if funding is available.

Our approach would be to either grind the existing asphalt surface and apply 6% cement to the subbase, or remove all of the existing failed AC and rock section to replace with new. This selection will be determined on the cost and efficiencies of each option. It is more difficult to restore with cement additives when the AC elevations are limited by existing curbs and where there is an abundance of existing utilities to incorporate into the work, as in this case.

A preliminary estimate of construction costs is attached and totals approximately \$835,000 including \$100,000 in contingencies.

According to the County assessors maps, the existing right-of-way on Knights Bridge Rd is 110-foot at the Molalla River, reduces to 60-foot at North Aspen Drive and remains 60-foot until North Holly Street. The existing right-of-way width is adequate to construct the sidewalks without any additional dedications or easements. We will need to secure additional area for the pumping station.

**Design Phase Engineering Cost Estimate:**

Research, Field Surveys	\$6,000
Base Drawings, 5 sheets	3,000
Roadway & Sidewalk Design	10,000
Pump Station Design, 3 sheets	8,000
Electrical Design	4,000
Graphics, 11 sheets	8,000
Contract Documents & specifications	5,000
Permitting, Approvals, Reproduction	<u>4,000</u>

Total Engineering Design    \$48,000

Design costs will be based on a lump sum and billed as a percent complete. Construction Phase Engineering is as-needed and will be billed hourly based on our standard hourly rates.

Mr. John Williams  
November 23, 2007  
Page 3

Following is an estimate of all construction phase engineering costs to be used as a budget guideline:

**Construction Engineering Cost Estimate:**

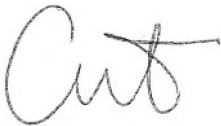
Advertisement & Bid Procedure	\$6,000
Construction Staking	6,000
Geotechnical / Field Testing	4,000
Contract Administration	14,000
Inspection, (total 20 weeks)	20,000
As-Built & Project Closeout	<u>4,000</u>

**Construction Phase Engineering** **\$ 54,000**

We have enclosed a draft contract for this work for your review. If you would like any revisions or have any questions, please call.

Sincerely,

**CURRAN-McLEOD, INC.**



Curt J. McLeod, PE

Enclosure:    Engineering Contract  
                  Preliminary Construction Cost Estimate

cc:    Mr. Dan Mickelsen  
       Mr. Dwayne Barnes  
       Mr. John Kelley, Esq.



## PRELIMINARY COST ESTIMATE (October 2007)

### **Knights Bridge Road reconstruction**

between N. Baker Drive and N. Grant Street (2,500 LF, 40-foot wide paved surface)

Item No.	Description	Quantity	Unit	Unit Price	Total
<b>A. Site Preparation</b>					
A.1	Mobilization	All	Lump Sum	\$23,500.00	\$23,500.00
A.2	Temporary Protection & Direction of Traffic	All	LS	10,000.00	10,000.00
A.3	Erosion Control	All	LS	3,000.00	3,000.00
A.4	Clearing & Grubbing	All	LS	5,000.00	5,000.00
A.5	Common Excavation	5,000	CY	10.00	50,000.00
A.7	Subgrade/ Trench Stabilization	100	CY	40.00	4,000.00
A.8	Sawcut Asphalt/ Concrete Pavement	1,000	LF	2.00	2,000.00
A.9	Signs Relocation	15	Each	100.00	1,500.00
Subtotal					\$99,000.00
<b>B. Paving and Surfacing</b>					
B.1	1"-0" Crushed Rock (12" deep)	11,100	SY	9.00	\$99,900.00
B.2	Type "C" Concrete Curb	500	LF	12.00	6,000.00
B.3	Asphalt Grinding (0"- 4" Deep)	0	SY	2.75	0.00
B.4	Rototill 6% Cement into Subbase	0	SY	4.25	0.00
B.5	6" Concrete Driveway w/ Leveling Rock & WWF or Reinforced Fiber Mesh	400	SY	45.00	18,000.00
B.6	4" Concrete Sidewalk w/ Leveling Rock	1,200	SY	35.00	42,000.00
B.7	Detectable Warning Cast-in-Place Tile (ADA Ramp )	12	Each	500.00	6,000.00
B.8	½" Dense Mix Asphalt Pavement (4" thickness)	2,500	Tons	70.00	175,000.00
B.9	Site Restoration	All	LS	15,000.00	15,000.00
B.10	Pavement Striping	All	LS	10,000.00	10,000.00
B.11	Fence Relocation or Replacement	1,000	LF	20.00	20,000.00
Subtotal					\$391,900.00
<b>C. Storm Drainage</b>					
C.1	12" Diameter HDPE Detention Pipe including Trench Excavation & Crushed Rock Backfill	200	LF	50.00	\$25,000.00
C.2	48" Diameter Sedimentation Manhole	3	Each	5,000.00	25,000.00
C.3	Type G-2 Catch Basins	10	Each	1,200.00	12,000.00
Subtotal					\$62,000.00

<b>D. Sanitary Sewer</b>					
D.1	KB Pump Station Rehabilitation	All	LS	\$150,000	\$150,000
D.2	Adjust 48" Diameter Standard Manhole to Grade	10	Each	500.00	5,000.00
Subtotal					\$155,000.00
<b>E. Waterlines</b>					
E.1	Adjust Water Valves to Grade	20	Each	100.00	2,000.00
Subtotal					\$2,000.00
<b>F. Utilities</b>					
F.1	Relocate Existing power/Light Poles	20	Each	1,500.00	\$25,000.00
Subtotal					\$25,000.00
TOTAL CONSTRUCTION COST					\$734,900.00

Construction Cost	\$735,000
Engineering Design	48,000
Engineering Construction Management	<u>54,000</u>

Subtotal Cost	\$837,000
Contingencies	<u>103,000</u>

<b>Total Construction Cost</b>	<b>\$ <u>940,000</u></b>
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**CITY OF CANBY  
KNIGHTS BRIDGE ROAD RECONSTRUCTION  
AGREEMENT FOR ENGINEERING SERVICES**

This Agreement is made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the CITY OF CANBY, Oregon, hereafter referred to as the OWNER, and CURRAN-McLEOD, INC. Consulting Engineers, Portland, Oregon, hereafter referred to as the ENGINEER.

The OWNER intends to reconstruct Knights Bridge Road from North Baker Drive to North Grant Street including constructing new travel surface, concrete sidewalks, sanitary sewer pumping station upgrade and site restoration for approximately 2,500 feet, and for which the ENGINEER agrees to perform the various professional engineering services for the design and construction of said improvements.

**WITNESSETH**

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

**SECTION A - ENGINEERING SERVICES**

The ENGINEER shall furnish engineering services to accomplish the work identified above and as more specifically identified in the correspondence dated November 23, 2007, attached as Exhibit "A":

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

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

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



4. Prior to the advertisement for bids, the ENGINEER will provide for each Construction Contract, not to exceed 10 copies of detailed Drawings, Specifications, and Contract Documents for use by the OWNER, and for appropriate Federal, State, and local agencies from whom approval of the project must be obtained. The cost of such drawings, Specifications, and Contract Documents shall be included in the basic compensation paid to the ENGINEER. The OWNER pays the cost of any permits and review fees as provided in Section F-2 of this Agreement. The ENGINEER shall advertise for construction bids one time only in the Portland Daily Journal of Commerce and one time only in a regional publication promoting minority business involvement on behalf of the OWNER.
5. The drawings prepared by the ENGINEER under the provisions of Section A-2 above shall be in sufficient detail to permit the actual location of the proposed improvements on the ground. The ENGINEER shall prepare and furnish to the OWNER without any additional compensation, three copies of a map(s) showing the general location of needed construction easements and permanent easements and the land to be acquired. Property surveys, property plats, property descriptions, abstracting and negotiations for land rights shall be provided by the OWNER, unless the OWNER requests, and the ENGINEER agrees to provide those services. In the event the ENGINEER is requested to provide such services, the ENGINEER shall be additionally compensated as set out in Section D hereof, unless this task is identified and included in the proposed scope of work herein..
6. The ENGINEER will furnish additional copies of the Drawings, Specifications and Contract Documents as required by prospective bidders, materials suppliers, and other interested parties, but may charge them for the reasonable cost of such copies. Upon award of each contract, the ENGINEER will furnish to the OWNER three sets of the Drawings, Specifications and Contract Documents for execution. The cost of these sets shall be included in the basic compensation paid to the ENGINEER. Drawings and Specifications as instruments of service are and shall remain the property of the ENGINEER whether the project for which they are made is executed or not. They are not to be used by the OWNER on other projects or extensions to this project except by agreement in writing and with appropriate compensation to the ENGINEER.
7. The ENGINEER will require prospective contractors to file an approved Pre-qualification Form with the Oregon Department of Transportation and will require a Bid Bond not to exceed 10% in the Bidding Documents to secure the Bid.
8. The ENGINEER will attend the bid opening and tabulate the bid proposals, make an analysis of the bids, make recommendations for awarding contracts for construction.
9. The ENGINEER will assist in the Preconstruction Conference, and will review and approve, for conformance with the design concept, any necessary shop and working drawings furnished by Contractors.
10. The ENGINEER will interpret the drawings and specifications to protect the OWNER against defects and deficiencies in construction on the part of the Contractor. The ENGINEER will not, however, guarantee the performance of any Contractor. Planning and design of the project and construction engineering services shall be accomplished with due diligence and in conformance with accepted industry standards of the practice of professional engineering.
11. The ENGINEER will provide general engineering review of the work of the contractors as construction progresses to assure conformance with the design concept, including completion of all geotechnical testing required to confirm compaction efforts.



12. The ENGINEER will establish baselines and grades for locating the work together with a suitable number of bench marks adjacent to the work as shown in the Contract Documents.
13. The ENGINEER, as representative of the OWNER during the construction phase, shall advise and consult with the OWNER and all of the OWNER'S instructions to the Contractor shall be issued through the ENGINEER. The ENGINEER shall have the authority to act on behalf of the OWNER to the extent provided in this Agreement.
14. Unless otherwise requested by the OWNER in writing, the ENGINEER will not provide Resident Construction Inspection. The ENGINEER'S undertaking construction inspection hereunder shall not relieve the Contractor of Contractor's obligation to perform the work in conformity with the Drawings and Specifications and in a workmanlike manner; shall not make the ENGINEER an insurer of the Contractor's performance; and shall not impose upon the ENGINEER any obligation to see that the work is performed in a safe manner.
15. The ENGINEER will review the Contractor's applications for progress and final payment and, when approved, submit same to the OWNER for payment.
16. The ENGINEER will prepare and review necessary contract Change Orders on a timely basis for consideration of approval by the OWNER.
17. The ENGINEER and a representative of the OWNER will make an inspection of the project or project element to determine the status of completion. The ENGINEER may issue a Certificate of Substantial Completion consistent with the General Conditions of the Construction Contract Documents.
18. The ENGINEER will provide the OWNER with one set of reproducible record drawings and two sets of prints at no additional cost to the OWNER. Such drawings will be based upon construction records provided by the Contractor during construction, as specifically required in the Construction Contract, and reviewed by the ENGINEER, and from the ENGINEER'S construction data.
19. If State statutes require notices and advertisements of final payment, the ENGINEER shall assist in their preparation.
20. The ENGINEER will be available for site visits to furnish engineering services and consultations necessary to correct unforeseen project operation difficulties for a period of one year after the date of Statement of Substantial Completion of the facility. The ENGINEER will assist the OWNER in performing a review of the project during the 11th month after the date of initiation of the 12 month warranty period.

## SECTION B - COMPENSATION FOR ENGINEERING SERVICES

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

### **Design Phase Engineering**

(as identified in the attached letter dated November 23, 2007 marked exhibit 'A'):

Forty Eight Thousand Dollars (\$48,000)

### **Construction Phase Engineering:**

(as identified in the attached letter dated November 23, 2007 marked exhibit 'A'):

Fifty four Thousand Dollars (\$54,000)

2. The compensation for the above Engineering Services shall be as follows:
  - a. Design Services shall include items A-1 through A-5.
  - b. Billings shall be submitted monthly by the ENGINEER for Design Services during the previous month. Payments shall be made for these billings within 30 days. Billings shall be based on percent of completion of Design Services. The ENGINEER will provide a status report with the billing as requested.
  - c. Construction Engineering Services and Construction Inspection shall include items A-6 through A-20 and shall be billed by the ENGINEER on an hourly basis. The total shall not exceed the budget figures under Article B.1 above without the express written authorization of the OWNER.
  - d. Where hourly rates are used, they shall be in accordance with the Standard Hourly Rate Schedule, attached herewith and referenced Exhibit B.
  - e. In the event of multiple construction contracts, the ENGINEER may negotiate revised figures under Article B.1.
3. The budget figures shown above shall not be exceeded except by express written authorization of the OWNER.
4. Billings for Engineering Services shall be submitted in a format consistent with the payment provisions and format of the Agreement.



## **SECTION C - RESIDENT CONSTRUCTION INSPECTION**

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

## **SECTION D - ADDITIONAL ENGINEERING SERVICES**

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

1. Financial feasibility or other special studies.
2. Record boundary surveys or other similar surveys, excepting surveys required to locate the construction project, or as identified in the scope of work.
3. Laboratory tests, borings, specialized geological, soil, hydraulic, or other studies recommended by the ENGINEER.
4. Record property surveys, detailed descriptions of sites, maps, drawings, or estimates related thereto; assistance in negotiating for land and easement rights.
5. Necessary data and filing maps for storm water discharge permits, water rights, adjudication, and litigation.
6. Redesigns not initiated by the ENGINEER after final Plans and Specifications have been approved by the OWNER, except redesigns to reduce the project cost to within the funds available.
7. Appearances before courts or boards on matters of litigation or hearings related to the project and providing services as an expert witness in connection with any public hearing, arbitration proceeding, or the proceedings of a court of record.
8. Preparation of Environmental Assessments or Environmental Impact Statement (E.I.S.).
9. Performance of detailed staking necessary for construction of the project in excess of the control staking set forth in Section A-12.
10. Preparing documents for alternate bids requested by the OWNER.
11. Providing consultation concerning replacement of any work damaged by fire or other cause during construction, and furnishing professional services of the type set forth as previously mentioned in this Agreement as may be required in connection with the replacement of such work.
12. Providing professional services made necessary by the default of the Contractor in the Construction Contract.

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

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

#### **SECTION E - OWNER'S RESPONSIBILITIES**

1. The OWNER shall provide full information regarding his requirements for the project.
2. The OWNER shall designate, when necessary, a representative authorized to act in his behalf with respect to the project. The OWNER or his representative shall examine documents submitted by the ENGINEER and shall render decisions pertaining thereto promptly, to avoid unreasonable delay in the progress of the ENGINEER'S work.
3. The OWNER shall furnish all pertinent existing mechanical, chemical or other laboratory tests, inspections and reports as required by law or the Contract Documents, and which may impact the design.
4. The OWNER shall furnish such legal, accounting and insurance counseling services as may be necessary for the project, and such auditing services as he may require to ascertain how or for what purposes the CONTRACTOR has used the moneys paid to him under the Construction Contract.
5. If the OWNER observes or otherwise becomes aware of any fault or defect in the project or non-conformance with the Contract Documents, he shall give prompt oral notice with written confirmation thereof to the ENGINEER.
6. The OWNER shall furnish information required of him as expeditiously as necessary for the orderly progress of the work.

#### **SECTION F - SPECIAL PROVISIONS**

The following is agreed to by both parties:

1. That the OWNER reserves the right to request replacement of any Resident Inspector(s) furnished by the ENGINEER or to furnish the Resident Inspector(s) from the OWNER'S own forces, subject to the approval of the ENGINEER regarding the qualifications of the Resident Inspector(s). If the OWNER furnishes the Resident Inspector(s), the OWNER agrees that the Resident Inspector(s) will be under the direction and supervision of the ENGINEER.
2. That the OWNER shall pay for advertisement for bids, building or other permits, licenses, technical review fees, etc., as may be required by local, State or Federal authorities, and shall secure the necessary land easements and rights-of-way.
3. The ENGINEER will endeavor to assure compliance of his work with applicable State and Federal requirements.



4. That insofar as the work under this Agreement may require, the OWNER shall furnish the ENGINEER all existing maps, field survey data, grades and lines of streets, pavements, and boundaries, rights-of-way, and other surveys presently available, which will be returned upon project completion. ENGINEER will provide the OWNER a copy of survey notes establishing bench marks and location of improvements.
5. That if the engineering work covered in this Agreement has not been completed on or after the expiration of a Twelve (12) month period from the date of execution of this Agreement, the OWNER or ENGINEER may, at the option of either, on written notice, request a renegotiation of Sections B, C, and D (providing for the compensation to be paid the ENGINEER for services rendered) to allow for changes in the cost of services. Such new schedule of compensation is to apply only to work performed by the ENGINEER after delivery date of such written notice.
6. That this Agreement is to be binding on the heirs, successors and assigns of the parties hereto and is not to be assigned by either party without first obtaining the written consent of the other. At least fifteen (15) days shall be allowed for such consent.
7. Attorney's fees: In the event a suit, arbitration or other legal action is required by either the OWNER or the ENGINEER to enforce any provision of this Agreement, the prevailing parties shall be entitled to all reasonable costs and reasonable attorney's fees upon litigation or upon appeal.
8. Termination
  - a. This Agreement may be terminated in whole or in part in writing by either party in the event of substantial failure by the other party to fulfill its obligations under this Agreement through no fault of the terminating party, provided that no termination may be effected unless the other party is given (1) not less than ten (10) calendar days' written notice (delivered by certified mail, return receipt requested) of intent to terminate, and (2) an opportunity for consultation with the terminating party prior to termination.
  - b. The Agreement may be terminated in whole or in part in writing by the OWNER for its convenience, provided that the ENGINEER is given (1) not less than ten (10) calendar days' written notice, (delivered by certified mail, return receipt requested) of intent to terminate, and (2) opportunity for consultation with the terminating party prior to termination.
  - c. If termination for default is effected by the OWNER an equitable adjustment in the price provided for in the Agreement shall be made, but (1) no amount shall be allowed for anticipated profit on unperformed services or other work, and (2) any payment due to the ENGINEER at the time of termination may be adjusted to cover any additional costs to the OWNER because of the ENGINEER'S default. If termination for default is effected by the ENGINEER, or if termination for convenience is effected by the OWNER, the equitable adjustment shall include a reasonable profit for services or other work performed. The equitable adjustment for any termination shall provide for payment to the termination, in addition to termination settlement costs reasonably incurred by the ENGINEER relating to commitments which had become firm prior to the termination.



- d. Upon receipt of a termination action under paragraphs a. or b. above, the ENGINEER shall (1) promptly discontinue all affected work (unless the notice directs otherwise), and (2) deliver or otherwise make available to the OWNER reproducible data, drawings, specifications, reports, estimates, summaries and such other information and materials as may have been accumulated by the ENGINEER in performing this Agreement whether completed or in process.
  - e. Upon termination under paragraphs a. or b. above, the OWNER may take over the work and may award another party a contract to complete the work under this Agreement.
  - f. If, after termination for failure of the ENGINEER to fulfill contractual obligations, it is determined that the ENGINEER had not failed to fulfill contractual obligations, the termination shall be deemed to have been for the convenience of the OWNER. In such event, adjustment of the Agreement price shall be made as provided in paragraph c. of this clause.
9. The ENGINEER agrees to insure, hold harmless and indemnify the OWNER against all claims, damages, losses and costs, including costs of defense, arising out of the negligent performances of engineering services under this Agreement. OWNER may make claim under applicable law against ENGINEER or ENGINEER'S insurance carriers for any loss, damage or cost arising out of ENGINEER'S negligent performance of services under this Agreement.
10. The ENGINEER agrees to acquire and maintain for the duration of this Agreement, Professional Liability Insurance in the nominal amount of \$1,000,000. The ENGINEER further agrees to obtain and maintain, at the ENGINEER'S expense, such insurance as will protect the ENGINEER from claims under the Worker's Compensation Act and such comprehensive general liability insurance as will protect the OWNER and the ENGINEER from all claims for bodily injury, death, or property damage which may arise from the performance by the ENGINEER or by the ENGINEER'S employees of the ENGINEER'S functions and services required under this Agreement.
11. The ENGINEER will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The ENGINEER will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin, such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; lay off or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.
12. ENGINEER covenants that he presently has no interest and shall not acquire interest, direct or indirect, which would conflict in any manner or degree with the performance of his services under this Agreement. Any interest on the part of the ENGINEER or his employees must be disclosed to the OWNER.
13. INDEPENDENT CONTRACTOR. It is agreed that ENGINEER is providing the services hereunder as an independent contractor and not as an employee of OWNER.

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



14. The records and documents with respect to all matters covered by the Agreement shall be subject at all times to inspection, review or audit by the OWNER, County, Federal or State officials so authorized by law during the performance of this contract. Required records shall be retained for a period of three (3) years after termination of this Agreement
15. No member or delegate to the Congress of the United States and no Resident Commissioner or City Official shall be admitted to any share or part of this Agreement or to any benefit that may arise hereunder.
16. This CONTRACT shall be construed according to the laws of the Sate of Oregon. Any litigation between the OWNER and the ENGINEER or out of work performed under this CONTRACT shall occur, if in the state courts, in the Clackamas County Court having jurisdiction thereof, and if in the federal courts, in the United States District Court for the District of Oregon.
17. This Agreement, including Exhibits A and B, represents the entire integrated agreement between the OWNER and the ENGINEER and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the OWNER and ENGINEER.

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

OWNER:

ENGINEER:

CITY OF CANBY

CURRAN-McLEOD, INC.

BY: \_\_\_\_\_

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

# STANDARD HOURLY RATES

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EXHIBIT 'B'

Effective February 25, 2007

Senior Principal Engineer	\$ 120.00
Principal Engineer/Manager	110.00
Project Engineer/Project Manager	100.00
Design Engineer	92.00
Design Technician	70.00
Graphics Technician	55.00
Word Processing	50.00
Resident Project Representative	60.00

## REIMBURSABLE EXPENSES

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Reproduction expenses are at cost.

Auto expenses reimbursed at 48.5¢ per mile.

Per diem expense at cost.

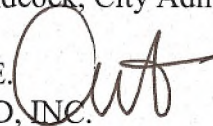
CURRAN-MCLEOD, INC., Consulting Engineers



CURRAN-McLEOD, INC.  
CONSULTING ENGINEERS

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

**TO:** Honorable Mayor and City Council  
City of Canby  
ATTN: Mr. Mark Adcock, City Administrator

**FROM:** Curt J. McLeod, P.E.   
CURRAN-McLEOD, INC.

**DATE:** December 26, 2007

**ISSUE:** SEQUOIA PARKWAY STAGES 5 & 6 AND  
TOWNSHIP ROAD STREET IMPROVEMENTS  
APPROVAL OF CONSTRUCTION CONTRACT ORDINANCE 1265

**SYNOPSIS:** On December 18th, 2007, the City of Canby received twenty three (23) bids for construction of Sequoia Parkway Stages 5 & 6 and Township Road Street Improvements. This staff report is to request Council approval for award of the contract to the low responsive bidder.

**RECOMMENDATION:**

That the Council approve Ordinance 1265 authorizing the Mayor and City Administrator to execute a contract with Parker Northwest Paving Company in the amount of \$1,159,784.35 for construction of Sequoia Parkway Stages 5 & 6 and Township Road Street Improvements; 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 twenty three bids received, Parker Northwest Paving Company submitted the low responsible and responsive bid.

**BACKGROUND:**

This project includes two phases of street improvements and is a continuation of previous improvements in the Logging Road Industrial Park. In the past few years the name of the industrial park has been modified to now be the Canby Pioneer Industrial Park. This contract is the fifth and sixth stage of phase II development in the park. Phase V of the project will extend from the terminus of Sequoia Parkway/ Walnut



Street/ SE 4<sup>th</sup> Avenue to Township Road approximately 1,150 feet while phase VI will extend 650 feet south of Township Road. These improvements will include reconstruction of approximately 600 feet of Township Road to 44-foot width. The southerly half of the Township Road improvements are funded by American Steel Corporation as conditioned by the City of Canby Planning Commission, Findings, Conclusions & Final Order DR.

This project has been placed on a fast track for construction in an effort to meet American Steel Corporation's accelerated schedule for operations. Dedication of the needed right-of-ways are still in process but will be accomplished within the time frame allowed in the construction contract.

Funding for the project is provided by a loan from the Oregon Economic and Community Development Department. OECDD has approved of the City's actions to proceed as final loan documents are being prepared. Final loan documents will be executed at the first meeting in January 2008.

Debt service is anticipated to be through formation of a Local Improvement District with the benefitted properties. The LID formation was acknowledged and approved in a Memorandum of Understanding executed by the benefitted property owners.

Attached to this staff report is a bid tabulation of the twenty three bids received. The third lowest bidder did not acknowledge the second addendum and seven of the bidders ranking between fifteen and twenty one did not submit the First Tier Sub-Contractor Disclosure Forms which deems their bids as non-responsive. Five of the bidders (third, fourth, eighth, sixteenth and eighteenth) had mathematical errors on their bids but did not affect the bid outcome. All bidders were pre-qualified for this project and correctly executed the documents except as stated above.

Attached is Ordinance 1265 and the proposed contract for execution. Our recommendation is to accept the low responsive bid from Parker Northwest Paving Company and execute a contract for construction in the amount of \$1, 159,784.35.

**FISCAL IMPACT:**

This project will be funded through an OECDD loan, with debt service provided through the Urban Renewal District tax increment financing (40%) and through a Local Improvement District of benefitted properties (60%). Sufficient revenues are available from the current Tax Increment Financing to support the City's share of the required debt service.



Honorable Mayor & City Council  
December 26, 2007  
Page 3

The total project cost estimate is \$2,840,000. This total is comprised of award of the construction contract to the low bidder for \$1,159,784.35 (of which approximately \$289,600 of the bid amount will be reimbursed to the City by American Steel Development for constructing half street improvements on Township Rd as conditioned by the City of Canby Planning Commission Findings) plus approximately \$180,000 estimated for electrical infrastructure by Canby Utility, plus approximately \$187,000 for total engineering and surveying expenses and approximately \$1,600,000 for right-of-way acquisition and uncommitted contingencies.

ENCLOSURES:

- Bid Summary
- Ordinance Number 1265
- Exhibit 'A' Construction Contract

cc: John Williams  
Dwayne Barnes  
Kim Scheafer  
John Kelley, Esq.

**ORDINANCE NO. 1265**

**AN ORDINANCE AUTHORIZING THE MAYOR AND CITY ADMINISTRATOR TO EXECUTE A CONTRACT WITH PARKER NORTHWEST PAVING COMPANY FOR CONSTRUCTION OF SEQUOIA PARKWAY STAGES 5 & 6 AND TOWNSHIP ROAD STREET IMPROVEMENTS; AND DECLARING AN EMERGENCY.**

**WHEREAS**, the City of Canby has heretofore advertised and received twenty three (23) bids for the Sequoia Parkway Stages 5 & 6 and Township Road Street Improvements; and

**WHEREAS**, the notice of call for bids was duly and regularly published in the Oregon Daily Journal of Commerce on November 27th, 2007; and

**WHEREAS**, bids were received and opened on December 18th, 2007 at 2:00 pm in the Council Chamber of the Canby City Hall and the twenty three (23) bids were read aloud:

**WHEREAS**, the six lowest bidders are as listed below and a list of all bidders is attached herein:

<b>Parker NW Paving Company</b>	1105 Abernathy Road Oregon City, OR 97045	\$1,159,784.35
<b>Dow Bros., Inc.</b>	1045 N. 4 <sup>th</sup> Avenue Cornelius, OR 97113	\$1,186,104.52
<b>L.S. Henrickson Construction</b>	P.O. Box 230639 Tigard, OR 97281	\$1,191,381.70
<b>Northwest Earthmovers, Inc.</b>	P.O. Box 1467 Tualatin, OR 97062	\$1,286,916.00
<b>C&amp;M Construction, Inc.</b>	21287 SW Oregon Street Sherwood, OR 97140	\$1,301,445.75
<b>Camrock Excavation, Inc.</b>	P.O. Box 644 Gresham, OR 97030	\$1,322,793.00



**WHEREAS**, the Canby City Council, acting as the City's Contract Review Board, met on Wednesday, January 2, 2008, 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 Parker Northwest Paving Company; now therefore

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

Section 1. The Mayor and 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 Parker Northwest Paving Company for Sequoia Parkway Stages 5 & 6 and Township Road Street Improvements, for the bid amount of \$1,159,784.35. A copy of the contract with Parker Northwest Paving Company 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, January 2nd, 2008; ordered posted as required by the Canby City Charter and scheduled for second reading on Wednesday, January 16th, 2008, after the hour of 7:30 pm at the Council Meeting Chambers located at 155 NW 2<sup>nd</sup> Avenue, Canby, Oregon.

\_\_\_\_\_  
Kimberly Scheafer, CMC  
City Recorder Pro Tem

**PASSED** on second and final reading by the Canby City Council at a regular meeting thereof on the 16th day of January, 2008, by the following vote:

YEAS \_\_\_\_\_ NAYS \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Melody Thompson, Mayor

\_\_\_\_\_  
Kimberly Scheafer, CMC  
City Recorder Pro Tem

**City of Canby****Project: Sequoia Parkway Stages 5 & 6 and Township Road Street Improvements Summary of Bids**

Bid Date: 12/18/2007

	<b>Bidder</b>	<b>Bid Amount</b>	
1	Parker NW Paving	\$1,159,784.35	
2	Dow Brothers	\$1,186,104.52	
3	L.S. Henricksen	\$1,191,381.70	
4	NW Earthmovers	\$1,286,916.00	
5	C&M Construction	\$1,301,445.75	
6	Camrock Excavation	\$1,322,793.00	
7	Emery & Sons	\$1,327,986.00	
8	K&E Excavating	\$1,328,579.50	
9	Kerr Contractors	\$1,331,471.00	
10	Canby Excavating	\$1,352,375.50	
11	Dirt & Aggregate	\$1,397,997.75	
12	Coffman Excavation	\$1,398,854.75	
13	Nutter Corp.	\$1,404,000.00	
14	Eagle-Elsner	\$1,423,770.70	
15	WesTech Construction	\$1,424,639.00	
16	Moore Underground	\$1,443,657.32	
17	Integrity Excavating	\$1,458,995.50	
18	Moore Excavation	\$1,510,519.00	
19	Goodfellow Bros.	\$1,549,440.00	
20	Landis & Landis	\$1,553,464.50	
21	Tri-State Construction	\$1,598,535.00	
22	Gelco Construction	\$1,608,456.15	
23	N. Santiam Paving Co.	\$1,790,851.20	



## CONTRACT FOR CONSTRUCTION

THIS AGREEMENT is dated as of the \_\_\_\_ day of \_\_\_\_ in the year 2008 by and between

CITY OF CANBY

(hereinafter called OWNER) and

PARKER NORTHWEST PAVING COMPANY

(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 SEQUOIA PARKWAY STAGES 5 & 6 AND TOWNSHIP ROAD STREET IMPROVEMENTS**

The Work is generally described as follows:

- Construction of approximately 1,700 lineal of 50 foot roadway and approximately 600 lineal of 44 foot roadway including grading, curbs, pavement, striping, signing and sidewalks.
- Construction of approximately 1,800 lineal feet of 14-inch diameter and 1,200 lineal feet of 8-inch diameter Ductile Iron water lines with associated valving, hydrants and services.
- Construction of approximately 2,100 lineal feet of 8-inch diameter, 10-inch diameter and 12-inch diameter PVC sanitary sewer with associated manholes, stub outs and services.
- Construction of approximately 3,600 lineal feet of storm drainage infiltration trenching with associated catch basins.
- Phase 1, construction of approximately 1,600 lineal feet of utility trenching on Township Rd including excavation for utility vaults.
- Phase 2, construction of approximately 1,200 lineal feet of utility trenching on Sequoia Parkway including excavation for utility vaults and street lights.

## 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 All Work must 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 Additionally, the CONTRACTOR agrees to meet the interim deadlines established for utility services in the Special Requirements of Division 1.
- 3.3 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 or 3.2 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) for each day that expires after the time specified in paragraph 3.1. for Substantial Completion, and/or for each day of delay beyond the deadline for Final Completion, and/or each day that expires past the interim deadlines established for utility services.

## 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 Million, One Hundred Fifty Nine Thousand, Seven Hundred Eighty Four and 35/100 Dollars (\$1,159,784.35) 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  
Sequoia Parkway Stages 5 & 6  
and Township Road Street Improvements
- 8.9 Addenda number(s) 1 and 2.
- 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 \_\_\_\_\_, 2008.

OWNER:

**CITY OF CANBY**  
**170 NW 2<sup>nd</sup> Avenue**  
**P.O. Box 930**  
**Canby, OR 97013**

CONTRACTOR:

**PARKER NORTHWEST**  
**PAVING COMPANY**  
**1105 Abernathy Road**  
**Oregon City, OR 97045**

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

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

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

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

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

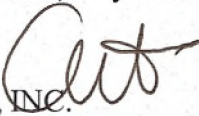
Address for giving notices:

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

CURRAN-McLEOD, INC.  
CONSULTING ENGINEERS

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

**TO:** Honorable Mayor and City Council  
CITY OF CANBY  
ATTN: Mr. Mark Adcock, City Administrator

**FROM:** Curt J. McLeod, P.E.   
CURRAN-McLEOD, INC.

**DATE:** December 26, 2007

**ISSUE:** ANNUAL ROAD DEPARTMENT MATERIAL PURCHASE  
ORDINANCE No. 1266 CRUSHED ROCK PRODUCTS  
ORDINANCE No. 1268 HOT-MIX ASPHALTIC CONCRETE

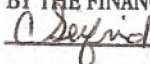
**SYNOPSIS:** This staff report accompanies contracts for the purchase of street construction materials to be used by the City for projects undertaken by the Street Department during the 2008 construction season. These contracts provide a fixed material price to be used as needed through December 31, 2008 and may be extended by mutual agreement up to five years with an escalation factor based on the ENR Construction Cost Index or other mutually agreed adjustment.

**RECOMMENDATION:** That the Council approve ordinances that authorize the Mayor and City Administrator to execute a contract with Canby Sand & Gravel/South County Asphalt for purchase of rock products under Ordinance 1266; and a contract with Canby Sand & Gravel/South County Asphalt for purchase of hot asphaltic concrete materials under Ordinance 1268.

**RATIONALE:** In order to assure compliance with the City's material procurement guidelines, comply with ORS 279B.065 and identify fixed pricing, the City staff prepared contract documents to solicit proposals from material suppliers for rock products and hot mix asphaltic concrete materials. These Ordinances simplify the procurement process for the 2008 construction season.

**BACKGROUND:** The Street Department undertakes numerous construction projects annually and is able to complete these projects at a substantial cost savings over preparing plans and securing a contractor by public bid. The Street Department has equipment and trained staff to complete these projects.

THIS HAS BEEN REVIEWED  
BY THE FINANCE DIRECTOR





The projects associated with these contracts are anticipated to be undertaken in the approved 2007-8 budget and future 2008-12 budgets to be approved by the Council. In order to streamline the process to accomplish these projects, Staff is requesting approval of these two ordinances that provide for fixed unit pricing for the needed materials.

The solicitation documents were prepared in accordance with procurement guidelines in ORS 279B.065. As a result of following the statute guidelines, the value of each contract is limited only by the City's budget process. No total dollar value was established for either contract.

The intent of these annual contracts was to establish unit pricing for asphalt, crushed rock and concrete. Staff prepared a solicitation document in December 2007 and requested three quotes for each material contract. Firms solicited included:

Canby Sand & Gravel  
Morse Brothers  
Rinker Materials  
Quality Concrete  
Wilsonville Concrete Products  
Eagle Elsner, Inc.

Only one bid was received for each of the asphalt and crushed rock contracts, and no bids were received for concrete materials. As a result, Ordinances are herein submitted for hot mix asphalt and crushed rock only. A separate concrete contract will be submitted when pricing is secured.

**FISCAL IMPACT:**

This project is funded through the Street Department Budget line item. This procedure will reduce the project costs by eliminating the need to solicit multiple bids and complete multiple Council actions throughout the year. The bid prices are reasonable and are guaranteed until the end of the calendar year.

**ENCLOSURES:**

- Ordinance No. 1266 & Exhibit 'A' Crushed Rock Contract
- Ordinance No. 1268 & Exhibit 'A' Hot Mix Asphaltic Concrete Contract

cc: John Williams  
Dwayne Barnes  
Kim Scheafer  
John Kelley, Esq.

## **ORDINANCE NO. 1266**

### **AN ORDINANCE AUTHORIZING THE MAYOR AND CITY ADMINISTRATOR TO EXECUTE A CONTRACT WITH CANBY SAND & GRAVEL / SOUTH COUNTY ASPHALT FOR SUPPLYING ROCK PRODUCT; AND DECLARING AN EMERGENCY.**

**WHEREAS**, the City of Canby has heretofore solicited bids for an annual material supply contract for rock products; and

**WHEREAS**, the solicitation documents were sent to at least three local suppliers on December 7, 2007; and

**WHEREAS**, one bid was received and opened on December 20<sup>th</sup>, 2007 at 2:00 PM by the City of Canby in the City Planning Department from Canby Sand & Gravel / South County Asphalt; and

**WHEREAS**, the Canby City Council, acting as the City's Contract Review Board, met on Wednesday, January 2<sup>nd</sup>, 2008, and considered the bid 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 Sand & Gravel / South County Asphalt; now therefore

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

Section 1. The Mayor and 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 Sand & Gravel / South County Asphalt, to supply rock products (1 ½" minus crushed rock, 1" minus crushed rock, ¾" minus crushed rock, ¾"- 1 ½" clean drain rock or ¼" minus sand and gravel) for the bid amount of \$8.90 per ton. A copy of the contract with Canby Sand & Gravel / South County Asphalt 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, January 2nd, 2008; ordered posted as required by the Canby City Charter and scheduled for second reading on Wednesday, January 16th, 2008, after the hour of 7:30 pm at the Council Meeting Chambers located at 155 NW 2<sup>nd</sup> Avenue, Canby, Oregon.

\_\_\_\_\_  
Kimberly Scheafer, CMC  
City Recorder Pro Tem

**PASSED** on second and final reading by the Canby City Council at a regular meeting thereof on the 16th day of January, 2008, by the following vote:

YEAS \_\_\_\_\_

NAYS \_\_\_\_\_

\_\_\_\_\_  
Melody Thompson, Mayor

ATTEST:

\_\_\_\_\_  
Kimberly Scheafer, CMC  
City Recorder Pro Tem

**CONTRACT FOR CONSTRUCTION (Ordinance 1266)**

THIS AGREEMENT is dated as of the \_\_\_\_\_ day of \_\_\_\_\_ in the year 2008 by and between the

CITY OF CANBY

(hereinafter called OWNER) and

CANBY SAND & GRAVEL / SOUTH COUNTY ASPHALT

(hereinafter called CONTRACTOR)

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

**ARTICLE 1 - WORK**

CONTRACTOR shall supply materials as required for the duration of the contract as specified in the Contract Documents. The Work is generally described as providing crushed rock products.

**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 performance period is to begin upon issuance of Notice to Proceed and continue through December 31, 2008.
- 3.2 The performance period may be extended by mutual agreement for up to a total five year contract, with an escalation factor based on the ENR Construction Cost Index or other mutually agreed adjustment.



#### **ARTICLE 4 - CONTRACT PRICE**

- 4.1 OWNER shall pay CONTRACTOR for providing material in accordance with the bid schedules in current funds by check,

EIGHT AND 90/100 Dollars (\$ 8.90 ) per ton as shown in the attached Bid.

#### **ARTICLE 5 - PAYMENT PROCEDURES**

Upon delivery of any material the CONTRACTOR may submit Applications for Payment in accordance with the bid price. Applications for Payment will be processed by the Owner and paid within 30 days of presentation.

#### **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 certifies that he has familiarized himself with the nature and extent of the Contract Documents, 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.

#### **ARTICLE 8 - CONTRACT DOCUMENTS**

- 8.1 Contractor's Bid
- 8.2 This Agreement.
- 8.3 Exhibits to this Agreement.
- 8.4 Standard General Conditions for Procurement Contracts.
- 8.5 Technical Specifications
- 8.6 Addenda numbers NA Through NA.
- 8.7 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 written modification.

## ARTICLE 9 - MISCELLANEOUS

- 9.1 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.
- 9.2 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.
- 9.3 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 two counterparts of this Agreement.

This Agreement will be effective on \_\_\_\_\_, 2008.

OWNER:

\_\_\_\_\_  
CITY OF CANBY  
\_\_\_\_\_  
170 NW 2<sup>nd</sup> Avenue  
\_\_\_\_\_  
P.O. Box 930  
\_\_\_\_\_  
Canby, OR 97013

By \_\_\_\_\_

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

CONTRACTOR

\_\_\_\_\_  
Parker Northwest Paving Co /  
\_\_\_\_\_  
South County Asphalt  
\_\_\_\_\_  
1105 Abernathy Road  
\_\_\_\_\_  
Oregon City, OR 97045

By \_\_\_\_\_

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

Attest \_\_\_\_\_



## **ORDINANCE NO. 1268**

### **AN ORDINANCE AUTHORIZING THE MAYOR AND CITY ADMINISTRATOR TO EXECUTE A CONTRACT WITH CANBY SAND & GRAVEL / SOUTH COUNTY ASPHALT FOR SUPPLYING HOT MIX ASPHALTIC CONCRETE MATERIALS; AND DECLARING AN EMERGENCY.**

**WHEREAS**, the City of Canby has heretofore solicited bids for an annual material supply contract for asphaltic concrete; and

**WHEREAS**, the solicitation documents were sent to three local hot mix asphaltic concrete suppliers on December 7<sup>th</sup>, 2007; and

**WHEREAS**, one bid was received and opened on December 20<sup>th</sup>, 2007 at 2:00 PM by the City of Canby in the Canby City Hall from Canby Sand & Gravel / South County Asphalt; and

**WHEREAS**, the Canby City Council, acting as the City's Contract Review Board, met on Wednesday, January 2<sup>nd</sup>, 2008, and considered the bid 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 Sand & Gravel / South County Asphalt; now therefore

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

**Section 1.** The Mayor and 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 Sand & Gravel / South County Asphalt, to supply hot mix asphalt as follows: (½" dense mix, Modified ½" dense mix or 3/8" dense mix) for the bid amount of \$45.00 per ton. A copy of the contract with Canby Sand & Gravel / South County Asphalt 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, January 2nd, 2008; ordered posted as required by the Canby City Charter and scheduled for second reading on Wednesday, January 16th, 2008, after the hour of 7:30 pm at the Council Meeting Chambers located at 155 NW 2<sup>nd</sup> Avenue, Canby, Oregon.

\_\_\_\_\_  
Kimberly Scheafer, CMC  
City Recorder Pro Tem

**PASSED** on second and final reading by the Canby City Council at a regular meeting thereof on the 16th day of January, 2008, by the following vote:

YEAS \_\_\_\_\_

NAYS \_\_\_\_\_

\_\_\_\_\_  
Melody Thompson, Mayor

ATTEST:

\_\_\_\_\_  
Kimberly Scheafer, CMC  
City Recorder Pro Tem



**CONTRACT FOR CONSTRUCTION (Ordinance 1268)**

THIS AGREEMENT is dated as of the \_\_\_\_\_ day of \_\_\_\_\_ in the year 2008 by and between the

\_\_\_\_\_  
CITY OF CANBY  
(hereinafter called OWNER) and

\_\_\_\_\_  
CANBY SAND & GRAVEL / SOUTH COUNTY ASPHALT  
(hereinafter called CONTRACTOR)

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

**ARTICLE 1 - WORK**

CONTRACTOR shall supply materials as required for the duration of the contract as specified in the Contract Documents. The Work is generally described as Hot Mix Asphaltic Concrete products.

**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 performance period is to begin upon issuance of Notice to Proceed and continue through December 31, 2008.
- 3.2 The performance period may be extended by mutual agreement for up to a total five year contract, with an escalation factor based on the ENR Construction Cost Index or other mutually agreed adjustment.

#### **ARTICLE 4 - CONTRACT PRICE**

- 4.1 OWNER shall pay CONTRACTOR for providing material in accordance with the bid schedules in current funds by check,

FORTY FIVE AND NO/100 Dollars (\$ 45.00 ) per ton as shown in the attached Bid.

#### **ARTICLE 5 - PAYMENT PROCEDURES**

Upon delivery of any material the CONTRACTOR may submit Applications for Payment in accordance with the bid price. Applications for Payment will be processed by the Owner and paid within 30 days of presentation.

#### **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 certifies that he has familiarized himself with the nature and extent of the Contract Documents, 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.

#### **ARTICLE 8 - CONTRACT DOCUMENTS**

- 8.1 Contractor's Bid
- 8.2 This Agreement.
- 8.3 Exhibits to this Agreement.
- 8.4 Standard General Conditions for Procurement Contracts.
- 8.5 Technical Specifications
- 8.6 Addenda numbers NA Through NA.
- 8.7 Any Modification, including Change Orders, duly delivered after execution of



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 written modification.

#### ARTICLE 9 - MISCELLANEOUS

- 9.1 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.
- 9.2 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.
- 9.3 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 two counterparts of this Agreement.

This Agreement will be effective on \_\_\_\_\_, 2008.

OWNER:

\_\_\_\_\_  
CITY OF CANBY  
\_\_\_\_\_  
170 NW 2<sup>nd</sup> Avenue  
\_\_\_\_\_  
P.O. Box 930  
\_\_\_\_\_  
Canby, OR 97013

By \_\_\_\_\_

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

CONTRACTOR

\_\_\_\_\_  
Parker Northwest Paving Co /  
\_\_\_\_\_  
South County Asphalt  
\_\_\_\_\_  
1105 Abernathy Road  
\_\_\_\_\_  
Oregon City, OR 97045

By \_\_\_\_\_

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

Attest \_\_\_\_\_



# City of Canby

## Public Works Department

### MEMORANDUM

TO: Mark Adcock, City Administrator  
FROM: Dwayne Barnes, Public Works Operations Manager  
SUBJECT: WWTP Sludge Equipment Repair  
DATE: December 5, 2007

#### Recommendation

Staff requests that emergency procurement procedures outlined in Public Purchasing Contract Resolution 897, Exhibit A, Section 5,G,4 be implemented allowing the City Administrator to authorize staff to implement repairs to Wastewater Treatment Plant equipment estimated at approximately \$33,000.

#### Background

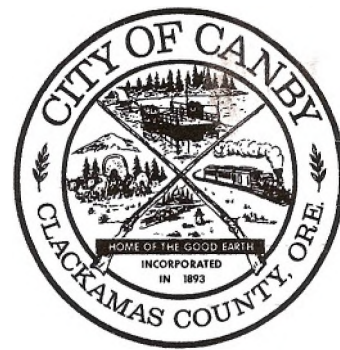
November 28, 2007 while processing sludge at the Wastewater Treatment Plant a process pump broke down. The pump mixes lime with the treated sludge and moves the mixture to a holding area prior to disposal in a farmer's field. The cost to repair the pump is approximately \$20,000, but the current configuration has been problematic from startup (approximately four years). Staff would like to eliminate the current pumping system and replace it with a conveyor system, which is a change proposed in the next upgrade project. The benefits of a conveyor system are that repairs and repair parts can be obtained locally. The current system would take up to six weeks to get repair parts and a special contractor would be required to complete the repairs. This project is requested by Darvin Tramel, WWTP Supervisor and has been approved by City Engineer, Curt McLeod.

A local company, Peterson Equipment Services, can fabricate a conveyor system for an estimated \$35,000 that will take care of the current problem and fit into a future upgrade project. The repairs are estimated to take three to four weeks following the notice to proceed. The funds for this repair are available in budget line item 306-318-434-7810.

THIS HAS BEEN REVIEWED  
BY THE FINANCE DIRECTOR

*[Signature]* 12/12/07





## MEMORANDUM

**TO:** *Honorable Mayor Thompson and City Council*  
**FROM:** *Darvin Tramel, Wastewater Treatment Plant Supervisor*  
**DATE:** *December 5, 2007*  
**THROUGH:** *Mark C. Adcock, City Administrator*

---

Issue: Ordinance 1269, contract with Peterson Equipment Services for the repair of the wastewater Seepex pump and replacement of Seepex auger with a fabricated conveyor belt.

Synopsis: In the last week of November our Biosolids Seepex pump and lime mixer broke down. After the staff dismantled the pump and auger unit the lime had eaten away a major portion of the shaft causing sever and irreplaceable damage. The Seepex pump and auger unit was scheduled for replacement during the Phase III upgrade, but now was in need of a rebuild. The initial bid from Seepex was estimated at over \$20,000, and we would be out of service for at least eight weeks.

Staff and I looked into what it would cost to utilize part of the Seepex pump for lime mixing and then have a conveyor built that would replace the Seepex auger unit. It should be noted that the Seepex auger has been problematic since we went on line four years ago. The new lime mixing and conveyor system would be compatible with the Phase III upgrade, and all the parts and any future repairs would be from a local vendor. The estimate from Peterson Equipment Services of Canby Oregon is approximately \$30,000 to \$35,000 with a three to four week replacement.

Recommendation: Staff recommends the Council adopt Ordinance 1269.

Rationale: The treatment facility can only store liquid Biosolids for about eight weeks. In order to keep our storage from becoming full we have set up a temporary conveyor and are currently processing biosolids without lime and hauling the biosolids to the Hillsboro landfill. Time and storage is limited and we believe this to be an emergency.

After thorough review, staff and I believe that it would be an appropriate expenditure of funds to replace the Seepex unit with a conveyor system that will function in the Phase III upgrade. Funds are available in the Sewer Capital Reserve.

Options: 1. Reject the ordinance and we will repair the old Seepex pump and auger for \$20,000, and then replace the unit in the Phase III upgrade.

Attached: Ordinance 1269



## **ORDINANCE NO. 1269**

### **AN ORDINANCE RATIFYING A CONTRACT WITH PETERSON EQUIPMENT SERVICES LLC OF CANBY, OREGON FOR THE PURCHASE OF A MIXING SCREW CONVEYOR FOR THE WASTE WATER TREATMENT FACILITY OF THE CITY; AND DECLARING AN EMERGENCY.**

**WHEREAS**, on November 28, 2007, a mixer screw conveyor used by the City of Canby's Waste Water Treatment Facility (WWTF) malfunctioned and needed to be replaced; and

**WHEREAS**, the Canby City Administrator declared that emergency conditions existed requiring prompt action to purchase a new mixer screw conveyor as soon as possible to replace the malfunctioning conveyor; and

**WHEREAS**, in accordance with ORS Chapter 279 and Canby Public Purchasing Rules as set forth in Ordinance No. 1170 and Resolution No. 897, Exhibit B (4) an emergency contract was entered into and signed on behalf of the City by the Canby Public Works Operations Manager on December 12, 2007 a copy of which is attached hereto as Exhibit "A" and by this reference incorporated herein; and

**WHEREAS**, within 30 days of the date of this contract, the City Council meeting and acting as the Contract Review Board for the City of Canby has reviewed this contract and the staff report and believes it to be in the best interest of the City to ratify this contract; now therefore

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

Section 1. The Contract, marked as Exhibit "A" hereto, with Peterson Equipment Services LLC of Canby, Oregon executed on December 12, 2007 by the City Public Works Operations Manager is hereby authorized and ratified as an emergency contract entered into under circumstances that created a substantial risk of interruption of services to the City of Canby, Oregon and the Council finds that awarding the contract in this manner was unlikely to encourage favoritism in the awarding of public contracts or substantially diminish competition for public contracts and will result in a substantial cost savings to the City.

Section 2. In so much as it is in the best interest of the citizens of the City of Canby, Oregon to ratify the new contract without further delay, and to better serve the citizens of Canby, 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 thereof on January 2, 2008, and ordered posted in three (3) public and conspicuous places in the City of Canby as specified in the Canby City Charter and to come before the City Council for final reading and action at a regular meeting thereof on January 16, 2008, commencing at the hour of 7:30 P.M. in the Council Meeting Chambers at 155 NW 2<sup>nd</sup> Ave in Canby, Oregon.

\_\_\_\_\_  
Kimberly Scheafer, CMC  
City Recorder - Pro Tem

**PASSED** on second and final reading by the Canby City Council at a regular meeting thereof on the 16<sup>th</sup> day of January, 2008, by the following vote:

YEAS \_\_\_\_\_ NAYS \_\_\_\_\_

\_\_\_\_\_  
Melody Thompson, Mayor

**ATTEST:**

\_\_\_\_\_  
Kimberly Scheafer, CMC  
City Recorder - Pro Tem

## EXHIBIT "A"

### PERSONAL SERVICES AGREEMENT

THIS AGREEMENT is between the CITY OF CANBY and PETERSON EQUIPMENT SERVICES.

- A. City requires services which Contractor is capable of providing, under terms and conditions hereinafter described.
- B. Contractor is able and prepared to provide such services as City requires, under those terms and conditions set forth.

The Parties Agree as Follows:

- 1. Scope of Services. Contractor's services under this Agreement are set forth in Exhibit "A", attached hereto.
- 2. Contractor Identification. Contractor shall furnish to City its employer identification number as designated by the Internal Revenue Service, or Contractor's Social Security Number, as City deems applicable. **Contractor understands it is required to obtain a City of Canby business license for conducting business in the City.**
- 3. Compensation:
  - A. City agrees to pay Contractor according to the proposed rate schedule submitted with the Contractor's proposal. See Exhibit "A" attached hereto. Contractor agrees that \$33,000 is the not to exceed price of this contract, without prior written approval from the City.
  - B. City agrees to pay Contractor within 30 days after receipt of Contractor's itemized statement. Amounts disputed by the City may be withheld pending settlement.
  - C. City certifies that sufficient funds are available and authorized for expenditure to finance costs of the Agreement.
- 4. Contractor is Independent Contractor.
  - A. Contractor's services shall be provided under the general supervision of the City Administrator. Contractor shall be an independent contractor for all purposes and shall be entitled to no compensation other than the



compensation provided for under Paragraph #3 of this Agreement.

- B. Contractor certifies that it is either a carrier-insured employer or a self-insured employer as provided in Chapter 656 of the Oregon Revised Statutes.
  - C. Contractor hereby represents that no employee of the City, or any partnership or corporation in which a City Employee has an interest, will or has received any remuneration of any description from Contractor, either directly or indirectly, in connection with the letting or performance of this contract, except as specifically declared in writing.
5. Subcontractors and Assignment. Contractor shall neither subcontract any of the work, nor assign any rights acquired hereunder, without obtaining prior written approval from City. City, by this Agreement, incurs no liability to third persons for payment of any compensation provided herein to Contractor. Any subcontract between Contractor and subcontractor shall require the subcontractor to comply with all applicable OSHA regulations and requirements.
6. Work is Property of City. All work performed by Contractor under this Agreement shall be the property of the City. City agrees that the Contractor may use its work in other assignments if all City of Canby data and references are removed.
7. Term.
- A. This Agreement may be terminated by:
    - 1. Mutual written consent of the parties.
    - 2. Either party, upon thirty (30) days written notice to the other, delivered by certified mail or in person.
    - 3. City, effective upon deliver of written notice to Contractor by certified mail, or in person, under any of the following:
      - a. If Contractor fails to provide services called for by this Agreement within the time specified or any extension thereof.
      - b. If services are no longer required.
8. Professional Standards. Contractor shall be responsible to the level of competency presently maintained by others practicing the same type of work in

City's community, for the professional and technical soundness, accuracy and adequacy of all work and materials furnished under this authorization.

9. Insurance. Insurance shall be maintained by the Contractor with the following limits:
  - A. Liability - \$1,000,000.00 combined single limit, including automobile coverage for any vehicle used for City business. Property damage per occurrence, \$250,000.00.
  - B. Professional liability – errors and omissions - \$1,000,000.00.

The Contractor shall provide City with copy of insurance certificate within 30 days of the date of this contract. Contractor shall name the City as an additional insured for the period of the contract. Procuring of such required insurance shall not be construed to limit Contractor's liability hereunder. Notwithstanding said insurance, Contractor shall be obligated for the total amount of any damage, injury or loss caused by Contractor's negligence or neglect connected with the Agreement.

9. Legal Expense. In the event legal action is brought by City or Contractor against the other to enforce any of the obligations hereunder or arising out of any dispute concerning the terms and conditions hereby created, the losing party shall pay the prevailing party such reasonable amounts for attorneys fees, costs, and expenses as may be set by the court both at trial and all appeals therefrom.
10. Modifications. Any modification of the provisions of this Agreement shall be in writing and signed by the parties.
11. Notices. Any notice, bills, invoices, reports, or other documents required by this Agreement shall be sent by the parties by United States mail, postage paid, or personally delivered to the address below. All notices shall be in writing and shall be effective when delivered. If mailed, notices shall be deemed effective forty-eight(48) hours after mailing unless sooner received.

CITY:

Dwayne Barnes  
City of Canby  
PO Box 930  
182 N. Holly Street  
Canby, OR 97013

CONTRACTOR:

Mike Peterson (Owner)  
Peterson Equipment Services  
1075 SE 2<sup>nd</sup> ST  
Canby, Oregon 97013  
503-266-1825



IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly appointed officers.

CONTRACTOR:

CITY OF CANBY:

By: 

By: 

Date: 12-12-07

Date: 12-12-07


Approved as to form:  


EXHIBIT A

PETERSON EQUIPMENT SERVICES LLC

1075 SE 2ND ST  
CANBY, OR 97013

PHONE (503) 266-1825  
FAX (503) 266-6748  
PES97013@AOL.COM  
Petersonequipment.net

December 5, 2007

To: Canby Water Treatment Plant,

Attn: Darvin Tramel

Peterson Equipment Services will remove existing mixer screw conveyor and chute feeding conveyor. Cut and raise approximately 42". Disassemble mixer screw conveyor. Repair and machine screw for modification of discharge of waste by adding a bearing machining housing to accommodate bearing. Raise Approximately 42" add leg install.

Add 1 thirty two ft long belt conveyor under discharge screw conveyor 5/16 thick by 20" wide belt formed stainless steel pans 10ft long sections 3/16 thick with 10" sides 22" wide bottom 3/4" V in bottom of pan for tracking 9" drive pulley stainless steel with lagging for shur grip 1-15/16 Drive shaft sprocket driven 3 HP Inline. Gear box 78 final rpm. tefc Motor inverter ready if need be. Tail pulley 8" Diam with 1-15/16 shaft with belt take ups for belt tension, installed through wall and anchored in place.

Water treatment plant responsible for all electrical and hole threw existing wall for belt conveyor to travel threw.

Quote \$33,000.00

Quote good for 30days

Thank you,

Mike Peterson





# CLACKAMAS COUNTY

RECEIVED

DEC 21 2007

CITY OF CANBY

Office of the County Clerk

SHERRY HALL  
CLERK

2051 KAEN ROAD, 2<sup>ND</sup> FLOOR  
OREGON CITY, OR 97045  
503.650.8698  
FAX 503.650.5687

December 19, 2007

Kim Scheafer  
City of Canby  
PO Box 930  
Canby, OR 97013

Dear Kim:

Listed hereunder is the cost of your November 6, 2007 Special Election. This charge includes personnel, supplies, ballot printing, voters' pamphlet printing, computer services, postage and any miscellaneous expenses incurred by this office in conducting the election by mail.

**TOTAL: \$ 2,648.77**

**Please remit to:** Clackamas County Elections  
1710 Red Soils Court, Suite 100  
Oregon City, OR 97045

Sincerely,  
SHERRY HALL  
COUNTY CLERK

  
By: Margaret Wu  
Elections Manager

*Special election - no charge as it is a primary election.*

87

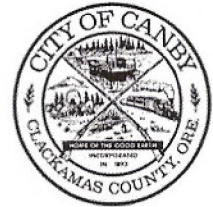
BOARD OF PROPERTY TAX APPEALS  
2051 KAEN ROAD, 2<sup>ND</sup> FLOOR  
OREGON CITY, OR 97045  
503.655.8662  
FAX 503.650.5687

ELECTIONS DIVISION  
1710 RED SOILS COURT, SUITE 100  
OREGON CITY, OR 97045  
503.655.8510  
FAX 503.655.8461

RECORDING DIVISION  
2051 KAEN ROAD, 2<sup>ND</sup> FLOOR  
OREGON CITY, OR 97045  
503.655.8551  
FAX 503.650.5688

RECORDS MANAGEMENT DIVISION  
270 BEAVERCREEK ROAD, SUITE 200  
OREGON CITY, OR 97045  
503.655.8323  
FAX 503.655.8195

# MEMORANDUM



**TO:** *Honorable Mayor Thompson and City Council*  
**FROM:** *Dwayne Barnes, Public Works Operations Manager*  
**DATE:** *December 19, 2007*  
**THROUGH:** *Mark C. Adcock, City Administrator*

---

Issue: Create a no parking area on the easterly side of North Redwood Street beginning at the northerly side of NE 11<sup>th</sup> Ave. and extending 100-feet north.

Synopsis: This council action is needed to improve safety at the intersection of North Redwood Street at NE 11<sup>th</sup> Ave.

Recommendation: Staff recommends that the City Council authorize the installation of signage and yellow curb paint to create a no parking area on the easterly side of North Redwood Street beginning at the northerly side of the intersection with 11<sup>th</sup> Ave. and extending 100-feet north.

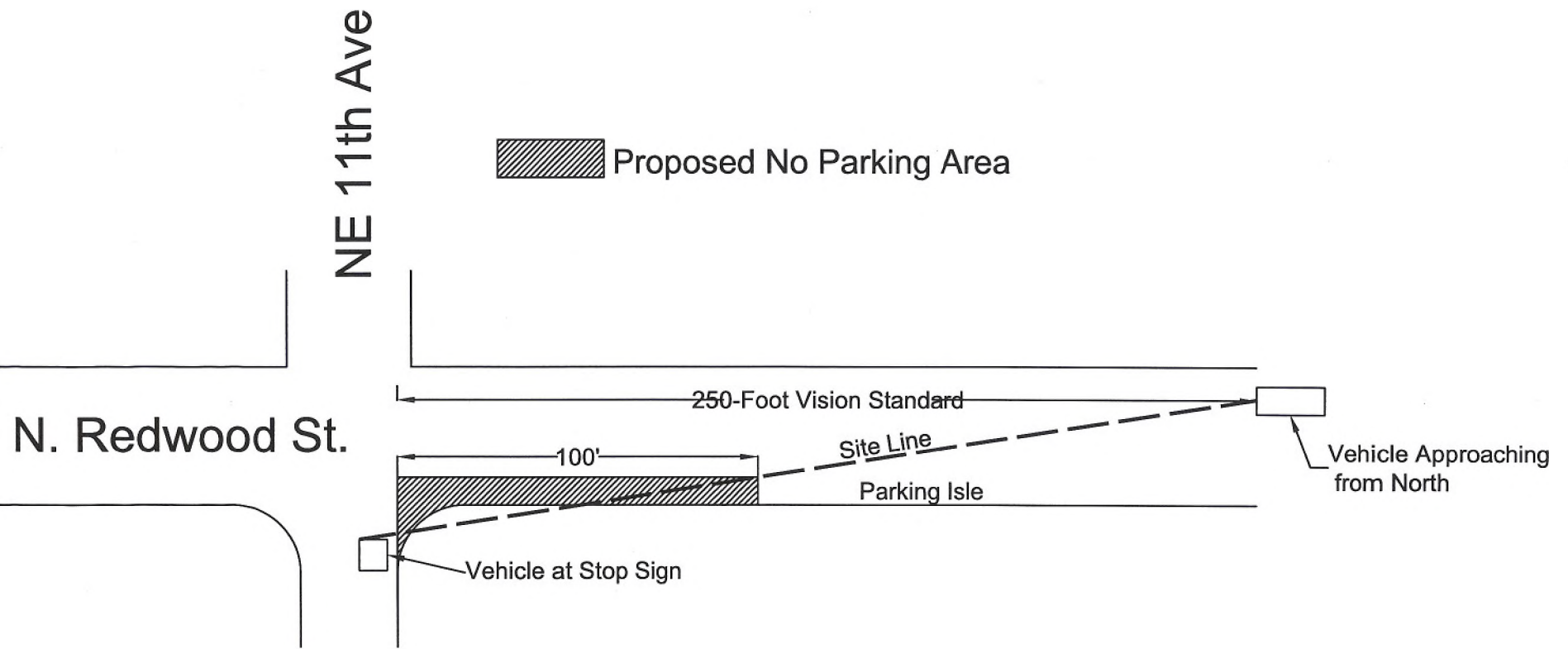
Rationale: The extent of the proposed no parking area was determined by a site investigation conducted by Public Works and Canby Police Staff as well as site standards contained in the AASHTO (American Association of State Highway and Transportation Officials) Design Manual as relayed to staff from Curran-McLeod Engineering.

Background: November 13, 2007, staff received an email from Ms. Chris Taylor 1127 NE Spruce Court (attached). Chris lives in the Garden Crossing development off North Redwood Street at NE 11<sup>th</sup> Ave. Chris is also the President of the Garden Crossing Home Owners Associations. She stated that they have a safety concern when pulling out of NE 11<sup>th</sup> Ave. onto Redwood because they cannot see around cars parked on the easterly side of Redwood Street and they have had several close calls. She requests that the first two spaces on N. Redwood (north of 11<sup>th</sup> St.) be painted yellow to improve visibility.

November 27, 2007, Public Works Staff met with Canby PD Traffic Officer Green. The area was visually inspected and both Dwayne Barnes and Officer Green agree that on-street parking on Redwood Street north of 11<sup>th</sup> should be eliminated for a distance of 100-feet beginning at the northerly side of 11<sup>th</sup>. Please see the attached photo of the area.

Staff also contacted Curran-McLeod Engineering to get site distance criteria for the situation and was told that a clear line of site is needed for a distance of 250-feet. Staff prepared a drawing that outlines the site standard as it relates to the intersection in question (attached).





CEDAR CROSSING DEVELOPMENT

City of Canby Public Works
Proposed Parking Revision N. Redwood at NE 11th Ave.

## Dwayne Barnes

---

**From:** Christian Taylor [christiantaylor@gmail.com]  
**Sent:** Wednesday, November 14, 2007 5:44 AM  
**To:** John Williams  
**Cc:** Dwayne Barnes; Robin Barnhart; Kathy Hass; Tracey Dudley  
**Subject:** Re: Regarding street parking on Redwood at 11th (Garden Crossing)

Mr. Williams

On behalf of the residents of Garden Crossing, thank you for your quick response and consideration in looking into this matter.

We look forward to hearing from Mr. Barnes.

Thank you  
Chris Taylor

On Nov 13, 2007 5:44 PM, John Williams <[WilliamsJ@ci.canby.or.us](mailto:WilliamsJ@ci.canby.or.us)> wrote:

> Yes, we can certainly take a look at this location. We've done this  
> type of thing before. I'm forwarding this message to Dwayne Barnes,  
> our new Public Works Operations Manager. Dwayne, could you and/or one  
> of your crew consider this request and get back to these folks with a response?  
> Thank you,

>

> John Williams  
> Community Development & Planning Director City of Canby, OR

>

>

> -----Original Message-----

> From: Christian Taylor [mailto:[christiantaylor@gmail.com](mailto:christiantaylor@gmail.com)]  
> Sent: Tuesday, November 13, 2007 1:35 PM  
> To: John Williams  
> Cc: Robin Barnhart; Kathy Hass; Tracey Dudley  
> Subject: Regarding street parking on Redwood at 11th (Garden Crossing)

>

> Good Afternoon Mr. Williams;

>

> I am not sure if you are the person I should be sending this email to or  
> not but if it should go to another department please forward on for me.

>

> I live in Garden Crossing off Redwood and am the President of our Home  
> Owner's Association. We are having issues with vehicles parking on  
> Redwood. When we pull out of Garden Crossing and attempt to make a left  
> off of 11th onto Redwood you can not see around the cars parked there  
> closest to the stop sign. We have had some close calls due to having to  
> be out in the oncoming traffic lane to be able to see if cars are coming  
> down Redwood from Territorial.

>

> Is there anyway to have the first two spaces on Redwood painted yellow  
> to allow more visibility for cars pulling out to give a better visual of  
> oncoming cars?

>



> Any help that you might be able to provide our development would be  
> greatly appreciated.  
>  
> Thank you  
>  
> Chris Taylor  
> 1127 NE Spruce Court  
> Canby, OR 97013  
> 503-407-2155  
> [christiantaylor@gmail.com](mailto:christiantaylor@gmail.com) or [ctaylor@ci.oregon-city.or.us](mailto:ctaylor@ci.oregon-city.or.us)  
>



REDWOOD STREET



