

# **AGENDA**

## **CANBY CITY COUNCIL MEETING**

**June 4, 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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### **WORK SESSION**

**6:30 P.M.**

**City Hall Conference Room**

**182 N Holly**

This Work Session will be attended by the Mayor and City Council to hear a presentation on the financial component of the street maintenance fee program.

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### **CITY COUNCIL MEETING**

#### **1. CALL TO ORDER**

- A. Pledge of Allegiance and Moment of Silence
- B. Hometown Hero Award Presentation

#### **2. COMMUNICATIONS**

#### **3. CITIZEN INPUT & COMMUNITY ANNOUNCEMENTS**

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

#### **4. MAYOR'S BUSINESS**

#### **5. COUNCILOR COMMENTS & LIAISON REPORTS**

#### **6. CONSENT AGENDA**

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

- A. Approval of Minutes of the May 21, 2008 Regular Meeting
- B. Reappointment to Parks & Recreation Advisory Board

Pg. 1

## **7. RESOLUTIONS & ORDINANCES**

- A. Res. 979, Approving Plan for “Clackamas County Use of Deadly Physical Force by Police Officers” Pg. 2
- B. Res. 984, Authorizing Transfer of Appropriations Between Departments Within the General Fund Pg. 17
- C. Res. 985, Authorizing Transfer of Appropriations from Existing Categories to Other Existing Categories Within the Tech Services and Transit Fund Pg. 19
- D. Res. 986, Authorizing an Interfund Loan of \$150,000 from the Parks Development Fund to the Capital Reserve Fund Pg. 22
- E. Res. 987, Authorizing the Expenditure of a Special Purpose Grant Received by the Police Department Pg. 24
- F. Res. 988, Authorizing the Transfer of General Operating Contingency in the General Fund Pg. 26
- G. Res. 989, Restricting Vehicle Parking on the East and West Side of South Lupine Street Between SE 13<sup>th</sup> Avenue and SE 13<sup>th</sup> Place Pg. 28
- H. Ord. 1276, Authorizing Reimbursement of Funds Not to Exceed \$41,063.25 from the Transportation SDC Fund to Willamette Falls Hospital for Completion of Certain Sequoia Parkway Improvements at the Intersection of 1<sup>st</sup> Avenue and Sequoia Parkway (2<sup>nd</sup> Reading) Pg. 31
- I. Ord. 1277, Authorizing Contract with Lincoln Equipment, Inc. for a Stark Horizontal High Rate Sand Filter for the Canby Swim Center Pg. 33
- J. Ord. 1279, Revising and Replacing Canby Municipal Code Chapter 15.12 Entitled “Flood Hazard Protection”; Repealing Former Chapter 15.12 in its Entirety Pg. 36
- K. Ord. 1280, Authorizing Purchase of Utility Billing Software Including Conversion and Set Up Services Pg. 56
- L. Ord. 1281, Authorizing Contract for Purchase of Real Property for Future Park Land Pg.60

## **8. NEW BUSINESS**

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

## **10. CITIZEN INPUT**

## **11. ACTION REVIEW**

## **12. EXECUTIVE SESSION: ORS 192.660(2)(h) Pending Litigation**

## **13. ADJOURN**

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

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

Date: 5/19/08  
Name: MARK TRIEBWASSER Occupation: NURSERY MGR.

Home Address: \_\_\_\_\_

Employer: WEYERHAEUSER Position: NURSERY MGR.

Daytime Phone: \_\_\_\_\_ Evening Phone: L

E-Mail Address: \_\_\_\_\_

For which position are you applying? Park + Rec Board

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

Park + Rec Board

Experience and educational background: \_\_\_\_\_

BS - UC Berkeley - Forestry  
MFS - YALE UAW - Forestry

Reason for your interest in this position: Want to work for  
completion of new recreation district

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

Park + Rec

Information on any special membership requirements: \_\_\_\_\_

Referred by (if applicable): \_\_\_\_\_

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

**THANK YOU FOR YOUR WILLINGNESS TO SERVE CANBY**

Please return to: City of Canby  
Attn: City Recorder  
182 N Holly Street  
PO Box 930  
Canby, OR 97013

Phone: 503.266.4021 Fax: 503.266.7961 Email: [Scheaferk@ci.canby.or.us](mailto:Scheaferk@ci.canby.or.us)

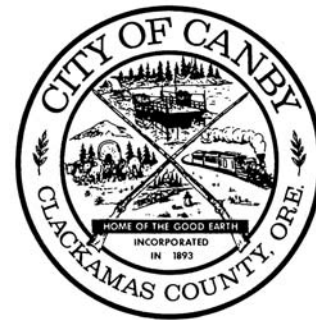
Note: Please be advised that this information may be made available to anyone upon a public records request and may be viewable on the City's web site.

**RECEIVED**

**MAY 27 2008**

**CITY OF CANBY**

12-4-07



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

***TO: Honorable Mayor Thompson and City Council***  
***FROM: Chief Greg A. Kroeplin***  
***THROUGH: Mark C. Adcock, City Administrator***  
***DATE: May 7, 2008***

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Issue: Approve plan for Clackamas County law enforcement agencies on Use of Deadly Physical Force by Police Officers.

Synopsis: Pursuant to Senate Bill 111, Clackamas County District Attorney John Foote and Clackamas County Sheriff Craig Roberts co-chaired a planning committee that developed a plan regarding the use of deadly force by law enforcement in Clackamas County.

Recommendation: Adopt a resolution to approve the plan pursuant to Senate Bill 111.

Rationale: To be in compliance with Senate Bill 111

Background: The new law directs the planning authority in each county to develop a plan to meet specific criteria. Some of the criteria include proper training on the use of deadly force; adequate support for officers and civilian members of the community involved in a deadly force incident; and a process for investigating a deadly force incident and determining whether the use of deadly force complied with state law and department policy.

The process requires the plan be submitted to the governing body of each enforcement agency in Clackamas County for an approval or disapproval vote by July 1, 2008.

## **RESOLUTION NO. 979**

### **A RESOLUTION APPROVING PLAN FOR “CLACKAMAS COUNTY USE OF DEADLY PHYSICAL FORCE BY POLICE OFFICERS.”**

**WHEREAS**, Senate Bill 111 (2007) directs a planning authority in each county to develop a plan to meet specific criteria with regard to use of deadly force by police officers; and

**WHEREAS**, The plan must include criteria for proper training on the use of deadly force, adequate support for officers involved in a deadly force incident; adequate support for families and civilian members in the community involved in such incidents; and a process for investigating a deadly force incident and determining whether the use of deadly force complied with state law and department policy; and

**WHEREAS**, Clackamas County’s planning authority has drafted a plan to meet the requirements of Senate Bill 111; and

**WHEREAS**, the process requires that the plan be submitted to the governing body of each law enforcement agency in Clackamas County for approval or disapproval by July 1, 2008; and

**WHEREAS**, as the duly elected governing body of the City of Canby having been presented with the final plan for the Clackamas County Use of Deadly Physical Force by Police Officers Plan, as required by Senate Bill 111, the Canby City Council has thoroughly reviewed the plan in its entirety.

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

- (1) Section 1: Finds that the Clackamas County Use of Deadly Physical Force by Police Officers Plan as presented meets the needs of the citizens of Clackamas County and the City of Canby.
- (2) Section 2: The City of Canby approves and adopts the Clackamas County Use of Deadly Physical Force by Police Officers Plan as presented.

This resolution will take effect on June 4, 2008.

ADOPTED this 4<sup>th</sup> day of June, 2008 by the Canby City Council.

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Melody Thompson – Mayor

ATTEST:

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Kimberly Scheafer, CMC  
City Recorder Pro-Tem



# **Plan for Response to Deadly Force Incidents by Clackamas County Law Enforcement Agencies**

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as mandated by Senate Bill 111,  
74th Oregon Legislative Assembly

**DRAFT PLAN (Version 1.11)**

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## **PREAMBLE**

Law enforcement has the vitally important responsibility of protecting the public from crime. The use of deadly physical force by law enforcement personnel is a matter of critical concern to both the public and the law enforcement community. The purpose of this plan is to provide a framework for a consistent response to, and a thorough investigation of, the use of deadly physical force by law enforcement officers within Clackamas County.

This plan will not set specific standards for the use of deadly physical force in each law enforcement agency, nor will it function as a substitute for their individual policies. The goal of this plan is to maintain public confidence in the criminal justice system through open communication about deadly physical force incidents and the advancement of thorough and fair investigations.

## **EXPLANATION OF PROCEEDINGS**

In 2007, the 74th Oregon Legislative Assembly passed Senate Bill 111, which Governor Ted Kulongoski signed into law on July 27. It requires each of Oregon's 36 counties to develop a plan addressing the use of deadly physical force by police officers.

In Clackamas County, District Attorney John Foote and Sheriff Craig Roberts convened a six-member planning authority, as prescribed by law, including: a representative of the Oregon State Police, a police chief from a local city, a representative of a local police union and a member of the public.

The planning authority has developed the following plan. As required by the Senate Bill 111, it addresses the investigation of deadly physical force incidents and their immediate aftermath, a system for gathering and reporting information about such incidents, a description of the district attorney's discretion in resolving questions of criminal responsibility, and a program of education, outreach and training for police officers, government attorneys and the public at large, as well as an estimate of the financial impact of the plan itself.

To become effective, two-thirds of the government bodies in Clackamas County with jurisdiction over a police force must approve this plan as written, along with Oregon Attorney General Hardy Meyers. The law requires final approval of this plan no later than July 1, 2008.

## **MEMBERS OF THE PLANNING AUTHORITY**

John Foote	Co-Chair, Clackamas County District Attorney
Craig Roberts	Co-Chair, Clackamas County Sheriff
Rich Evans	Oregon State Police
Terry Timeus	West Linn Police Chief
Jeff Smith	Clackamas County Peace Officers' Association
Elaine Krause	Private Citizen

## **ADMINISTRATIVE PROCEDURES**

- 1) In the event that a member of the planning authority becomes unavailable, a replacement shall be appointed as provided in Section 2 (1) of Senate Bill 111, Oregon Laws 2007.
- 2) There shall be six voting members of the planning authority. The approval of the plan, or any elements or revisions thereof, shall be by majority vote.
- 3) The presences of two-thirds of the voting members shall be required in order to hold any vote.
- 4) Any meeting of a quorum of the voting members of the planning authority shall be subject to Oregon's open meeting law.

## **APPLICABILITY OF THIS PLAN**

- 1) All law enforcement agencies to which this plan applies are required to adopt a policy dealing with the use of deadly physical force. At a minimum, the policy must include guidelines for the use of deadly physical force. Each agency must adopt such a policy no later than July 1, 2008.
- 2) Having been approved as required by Senate Bill 111, this plan shall be applicable, as set forth herein, to any use of deadly physical force by a police officer acting in the course of and in furtherance of his/her official duties, occurring within Clackamas County, on or after July 1, 2008.

## **TERMS AND DEFINITIONS**

For the purposes of this plan, the following terms and definitions will be used:

**Law Enforcement Agency** means the Oregon Department of State Police, the Oregon Department of Justice, the district attorney's office, the sheriff's office or a municipal police department, or any other division of government that maintains a law enforcement unit.

The **Plan** is the final document, approved by the planning authority, as well as two-thirds of the governing bodies in Clackamas County having jurisdiction over law enforcement agencies and the Oregon attorney general. All revisions approved by the planning authority shall become part of the plan.

**Deadly Physical Force** means physical force that, under the circumstances in which it is used, is readily capable of causing death or serious physical injury, as described in ORS 161.015 (3).

**Serious Physical Injury** means a physical injury which creates a substantial risk of death or which causes serious and protracted disfigurement, protracted impairment of health or protracted loss or impairment of the function of any bodily organ, as described in ORS 161.015 (8).

**Physical Injury** refers to an impairment of physical condition or substantial pain that does not rise to the standard of a "serious physical injury," as described in ORS 161.015 (7).

**Police Officer** means a person who is a police officer or a reserve officer as defined by ORS 181.610 and is employed by a law enforcement agency to enforce the criminal laws of Oregon.

**Involved Officer** means the person whose official conduct or official order to use deadly physical force was the cause in fact of the death of a person. Involved officer also means an officer whose official conduct was not the cause in fact of the death of a person, but who was involved in the incident before or during the use of deadly physical force and this involvement was reasonably likely to expose the officer to a heightened level of stress or trauma.

## **SECTION 1 — INVESTIGATIVE PROTOCOL**

- 1) The use of deadly physical force by police officers may or may not result in a person sustaining a physical injury, a serious physical injury or death. The severity of the outcome will determine the investigative protocol to be followed in each case.
  - a) If deadly physical force is employed by an officer, but no person sustains a physical injury or a serious physical injury, the law enforcement agency shall, at a minimum, require the officer to make a report to his or her superior regarding the incident.
  - b) If deadly physical force is employed by an officer and a person sustains either a physical injury or a serious physical injury, the law enforcement agency shall, at a minimum, conduct an investigation of the incident. This section does not preclude the agency from seeking the assistance of an outside law enforcement agency in the conduct of that investigation.
- 2) Officer-involved deadly physical force incidents that result in the death of a person in Clackamas County are investigated by the Major Crimes Team, an established inter-agency working group that employs investigators from different police agencies across the county. The Clackamas County Major Crimes Team protocol provides specific details as to the makeup of the team and the conduct of such investigations.
- 3) The involvement of the Major Crimes Team automatically commits investigators from several different agencies to the case, fulfilling the Senate Bill 111 requirement that at least one officer from an outside agency be involved in the investigation.

## **SECTION 2 — AFTERMATH**

- 1) For a minimum of 72 hours immediately following an incident in which a police officer uses deadly physical force that results in the death of a person, as defined by this plan, the law enforcement agency employing that officer shall not return the involved officer to duties that might again require them to employ deadly physical force. The agency may not reduce the involved officer's pay or benefits as a result of its compliance with this requirement.

A law enforcement agency that employs 40 or fewer police officers and complies with this requirement may be eligible for a grant to reimburse the resulting expenses from the Oregon Department of Justice.

- 2) The law enforcement agency that employs the involved officer shall pay for at least two sessions with a mental health professional that are attended by the officer. The sessions must be held within six months of the incident in which the officer was involved, and these sessions may not be substituted for a fitness for duty examination required or requested as a condition of employment by the law enforcement agency that employs the involved officer.

The involved officer shall attend at least one of these sessions, or be subject to the suspension or revocation of his/her certification by the Department of Public Safety Standards and Training, consistent with the provisions of ORS 181.662.

### **SECTION 3 — DEBRIEFING**

- 1) All law enforcement agencies shall, where appropriate, conduct a debriefing following the use of deadly physical force by its officers.
- 2) Following all deadly physical force incidents that result in the death of a person, the law enforcement agency employing the involved officer is required to promptly provide the following information, at a minimum, to the Oregon Department of Justice:
  - a) The name, gender, race, ethnicity and age of the decedent, and;
  - b) The date, time and location of the incident, and;
  - c) A brief description of the incident and the circumstances surrounding it.
- 3) The planning authority shall meet once each year, at a minimum, to consider the information gained from debriefings and the information submitted to the Oregon Department of Justice, as described in paragraphs 2 and 3, to revise this plan, if necessary, as described in Section 7.

#### **SECTION 4 — EXERCISE OF DISTRICT ATTORNEY DISCRETION**

- 1) When an incident occurs involving the use of deadly physical force by a police officer in the line of duty which results in death or serious physical injury, the police agency shall promptly notify the District Attorney's office. Notification shall be made to the District Attorney, the Chief Deputy or the Major Crimes Team Coordinator. The District Attorney's office shall consult directly with the Major Crimes Team and the involved police agency regarding the investigation and implementation of the elements of this plan.
- 2) The District Attorney has the sole statutory and constitutional responsibility to make all decisions regarding the review of incidents involving deadly physical force by a police officer that results in death or serious physical injury. The District Attorney shall establish a clear and consistent policy for the review of incidents of the use of deadly physical force by a police officer in the line of duty which results in death or serious physical injury, including the use or non-use of the Grand Jury process. Pursuant to that policy, if the District Attorney determines that a grand jury review is not appropriate, the District Attorney shall conduct a thorough review of the facts to determine if the use of deadly physical force was justified under Oregon law. The purposes of presenting an officer involved shooting case involving death to a grand jury is to determine if any criminal laws have been violated and to maintain public confidence through an independent review of the facts by an impartial body of private citizens. However, grand jury proceedings are strictly confidential and the details of the grand jury review are not to public inspection. The grand jury may only return a criminal indictment if all the evidence taken together would warrant a conviction of a specific crime by a trial jury.
- 3) Preliminary Hearings (ORS 135.070) may not be used to review an officer's use of deadly physical force. The District Attorney may order an inquest (ORS 146.135-65) to obtain a jury finding of the cause and manner of any death within the county. However, if the District Attorney determines that an inquest is appropriate, it should not be conducted until after the grand jury has conducted its hearing or the District Attorney has determined that no crimes have been committed.

## **SECTION 5 — EDUCATION, OUTREACH AND TRAINING**

- 1) To provide for the education of police officers, government attorneys and the community regarding the use of deadly physical force by the police, as required by Section 4 of Senate Bill 111, the Clackamas County Sheriff's Office will produce and share with other law enforcement agencies within the county such materials as may be useful for this purpose, including a video presentation and accompanying written material.
  - a) Said material will be disseminated to all police officers throughout the county at a time and place each agency deems convenient, provided it occurs within 90 days of this plan's final approval by the Oregon Attorney General, or within 1 year of a new officer's date of hire.
  - b) Said material will be sent within 90 days of this plan's final approval to all attorneys employed by the county, its constituent cities, or the State of Oregon within Clackamas County, to include public defenders.
  - c) Said material will be made available to the community at large through whatever means the sheriff and other chief law enforcement officers deem appropriate and feasible, which are to include, but are not limited to:
    - i) Broadcast on cable access and, if possible, commercial television stations, and;
    - ii) Websites belonging to the Clackamas County Sheriff's Office and other law enforcement agencies, and;
    - iii) Live presentations before the board of county commissioners, as well as the city council or city commission of each constituent city, and;
    - iv) Direct distribution to public safety partners throughout the region, such as fire districts and ambulance companies, and;
    - v) Live presentations before community groups, service organizations and quasi-governmental entities, such as local Rotary Clubs, Community Planning Organizations, Clackamas Community College, and other bodies.



- d) Said material will be provided to members of the media at the Public Safety Training Center. In addition to receiving the material, reporters will be given the opportunity to use the force options simulator and any other available facilities to provide them with a “hands on” experience related to the use of deadly physical force by police officers. Furthermore, the material will be transmitted to the media on all future occasions when a deadly physical force incident occurs in Clackamas County, to provide context for the incident.
- 2) All major public outreach efforts by all of the law enforcement agencies in Clackamas County, such as the Citizens Informational Sheriff’s Academy, shall include an educational component dealing with the use of deadly physical force by police officers.

## **SECTION 6 — FINANCIAL IMPACT**

At the conclusion of each fiscal year following the adoption of the plan, each agency shall submit to the planning authority a report outlining the fiscal element of each aspect of the plan as described in sections (a) through (e) of section 2, paragraph 4 of Senate Bill 111.

## **SECTION 7 — REVISION OF THE PLAN**

The planning authority will meet once each year, at a minimum, to review the functioning of the plan. If revisions to the plan become advisable, the planning authority shall meet to consider such a revision. If the planning authority adopts a revision, it shall be submitted for approval as provided by statute.

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



***TO:*** ***Honorable Mayor Thompson and City Council***  
***FROM:*** ***Sue Engels, Interim Finance Director***  
***DATE:*** ***May 27, 2008***  
***THROUGH:*** ***Mark C. Adcock, City Administrator***

---

Issue: Resolution transfer of Personal Services appropriations within the General Fund

Synopsis: The total payout of accumulated leave and severance pay for the former finance director will cause the Personal Services budget category to be overspent in both the Finance and Court departments of the General Fund. Because of unfilled positions in Planning and Building, the Personal Services budget category in those departments will not be fully spent. A transfer of appropriation from Planning and Building to Court and Finance will allow all the Personal Services expenditures in the General Fund to be within budget.

Recommendation: Approval of Resolution 984

Attached: Resolution 984

## RESOLUTION NO. 984

### A RESOLUTION AUTHORIZING TRANSFER OF APPROPRIATIONS BETWEEN DEPARTMENTS WITHIN THE GENERAL FUND

**WHEREAS**, the Finance and Court departments of the General Fund are likely to exceed their Personal Services budgets before year end due to the payout of accumulated leave and other compensation of a departing employee; and

**WHEREAS**, the Finance and Court departments of the General Fund do not have sufficient funds available from other appropriations categories within their departments to cover these expenditures; and

**WHEREAS**, the Building and Planning departments of the General Fund, due to unfilled positions, will not expend all of their Personal Services budgets before year end; and

**WHEREAS**, the City wants all departments in the General Fund to limit expenditures in each category to amounts appropriated,

#### **NOW THEREFORE, BE IT RESOLVED THAT:**

Section 1. The City Administrator shall transfer or cause to be transferred the following appropriation amounts between departments in the General Fund:

<b><u>FROM</u></b>		<b><u>TO</u></b>	
Building Dept. Pers. Serv.	20,000	Court Dept. Pers. Serv.	7,000
Planning Dept. Pers. Serv.	35,000	Finance Dept. Pers. Serv.	48,000
<b>TOTAL</b>	<b>55,000</b>		<b>55,000</b>

This resolution shall take effect on June 4, 2008.

**ADOPTED** by the Canby City Council at a regular meeting thereof on June 4, 2008.

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Melody Thompson  
Mayor

ATTEST:

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Kimberly Scheafer, CMC  
City Recorder Pro-Tem

# MEMORANDUM



**TO:** *Honorable Mayor Thompson and City Council*  
**FROM:** *Sue Engels, Interim Finance Director*  
**DATE:** *May 27, 2008*  
**THROUGH:** *Mark C. Adcock, City Administrator*

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Issue: Resolution transfer of appropriations in Tech Services fund from Capital Outlay to Personal Services and Materials and Services; and in Transit fund from Capital Outlay to Personal Services

Synopsis: Personal Services budget category in Tech Services fund will be overspent by year end due to payout of accumulated leave and severance pay to the former finance director. Materials and Services will be overspent due to higher than expected technical consultant costs. Personal Services in Transit fund will be overspent due to higher than expected part-time help costs and the charging to Transit of a portion of the General Services Director's salary. Appropriation transfers from Capital Outlay in both funds will balance their budgets.

Recommendation: Approval of Resolution 985

Attached: Resolution 985

## RESOLUTION NO. 985

### A RESOLUTION AUTHORIZING TRANSFER OF APPROPRIATIONS FROM EXISTING CATEGORIES TO OTHER EXISTING CATEGORIES WITHIN THE TECH SERVICES FUND AND TRANSIT FUND

**WHEREAS**, the City's expenditures in the Personal Services and Materials and Services categories in the Tech Services Fund and in the Personal Services category in the Transit Fund will have exceeded appropriations for those categories by year end; and

**WHEREAS**, the City's expenditures in the Capital Outlay category in both the Tech Services Fund and Transit Fund have been less than appropriations for that category; and

**WHEREAS**, the City wishes to keep expenditures within authorized appropriations for all funds,

#### **NOW THEREFORE, BE IT RESOLVED THAT:**

Section 1. The City Administrator shall transfer or caused to be transferred the following appropriations.

#### **FROM**

##### **TECH SERVICES FUND**

Capital Outlay                      25,000

**TOTAL                                      25,000**

##### **TRANSIT FUND**

Capital Outlay                      10,000

**TOTAL                                      10,000**

#### **TO**

##### **TECH SERVICES FUND**

Personal Services                      12,000

Materials and Services                      13,000

**25,000**

##### **TRANSIT FUND**

Personal Services                      10,000

**10,000**

This resolution shall take effect on June 4, 2008.

**ADOPTED** by the Canby City Council at a regular meeting thereof on June 4, 2008.

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Melody Thompson  
Mayor

ATTEST:

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Kimberly Scheafer, CMC  
City Recorder Pro-Tem

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



**TO:** *Honorable Mayor Thompson and City Council*  
**FROM:** *Sue Engels, Interim Finance Director*  
**DATE:** *May 27, 2008*  
**THROUGH:** *Mark C. Adcock, City Administrator*

---

Issue: A grant of \$100,000 from the Oregon Department of Transportation for the Logging Road bridge repainting project needs to be matched with \$150,000 of City funds.

Synopsis: To be able to provide the City's match for an ODOT grant the Council approved Ordinance 1254 on July 25, 2008. The ordinance authorized payment from the Capital Reserve fund to ODOT of \$150,000. The Capital Reserve fund needs to borrow the \$150,000 from Park Development fund. The Council can approve a short-term interfund loan without a supplemental budget process.

Recommendation: Approval of the short-term loan by passing Resolution 986

Attached: Resolution 986



**RESOLUTION NO. 986**

**A RESOLUTION AUTHORIZING AN INTERFUND LOAN OF \$150,000 FROM THE PARKS DEVELOPMENT FUND TO THE CAPITAL RESERVE FUND.**

**WHEREAS**, the City recognizes the Logging Road bridge repainting project will enhance livability for the citizens of Canby; and

**WHEREAS**, the City has entered into an intergovernmental agreement with the Oregon Department of Transportation and received funds of \$100,000 to repaint the Logging Road bridge; and

**WHEREAS**, the City wishes to provide City matching funds for the project as required by the governmental agreement; and

**WHEREAS**, the resources are available in the Park Development Fund and ORS 294.460 permits short-term interfund loans,

**NOW THEREFORE, THE CITY OF CANBY RESOLVES AS FOLLOWS:**

Section 1: The council authorizes a loan from the Park Development Fund to the Capital Reserve Fund in the amount of \$150,000. The loan shall bear interest at the rate of 5.2%. The term of the loan shall not exceed five years. The portion of the loan and interest paid in the current and each subsequent fiscal year will be budgeted as a source of funds in the Park Development Fund and a use of funds in the Capital Reserve Fund.

This resolution shall take effect on June 4, 2008.

**ADOPTED** by the Canby City Council at a regular meeting thereof on June 4, 2008.

---

Melody Thompson  
Mayor

ATTEST:

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Kimberly Scheafer, CMC  
City Recorder Pro-Tem

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



**TO:** *Honorable Mayor Thompson and City Council*  
**FROM:** *Sue Engels, Interim Finance Director*  
**DATE:** *May 27, 2008*  
**THROUGH:** *Mark C. Adcock, City Administrator*

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Issue: Receipt by the Police Department of an unanticipated grant

Synopsis: The Police Department applied for and received a homeland security grant of \$33,872 for interoperable communications equipment after the current year budget was adopted. The funds need to be appropriated in order that they may be expended on the equipment. Unanticipated special purpose grants may be expended in the year they are received if the Council passes an authorizing resolution.

Recommendation: Pass Resolution 987

Attached: Resolution 987

**RESOLUTION NO. 987**

**A RESOLUTION AUTHORIZING THE EXPENDITURE OF A SPECIAL PURPOSE GRANT RECEIVED BY THE POLICE DEPARTMENT.**

**WHEREAS**, the City's police department has received a State Homeland Security Grant in the amount of \$33,872 from the State of Oregon for the purchase of interoperable communications equipment; and

**WHEREAS**, this grant was unanticipated at the time the 2007/2008 budget was adopted; and

**WHEREAS**, ORS 294.326(3) permits a governing body to spend an unanticipated special purpose grant during the current fiscal year without a supplemental budget process,

**NOW THEREFORE BE IT RESOLVED THAT:**

Section 1. The council authorizes the police department to expend \$33,872 for interoperable communications equipment before the end of the current fiscal year.

This resolution shall take effect on June 4, 2008.

**ADOPTED** by the Canby City Council at a regular meeting thereof on June 4, 2008.

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Melody Thompson  
Mayor

ATTEST:

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Kimberly Scheafer, CMC  
City Recorder Pro-Tem

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



**TO:** *Honorable Mayor Thompson and City Council*  
**FROM:** *Sue Engels, Interim Finance Director*  
**DATE:** *May 27, 2008*  
**THROUGH:** *Mark C. Adcock, City Administrator*

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Issue: A transfer from general operating contingency to a budgeted expense category is needed to balance the General fund.

Synopsis: Contingency funds are available for unforeseen expenses. However, expenditures are not made directly from contingency. Transfers must be made to an existing appropriation category. This can be accomplished by resolution of the Council.

Recommendation: Approve Resolution 988 which transfers general operating contingency in the General Fund to the correct existing appropriation to cover expenditures approved by motion of the Council.

Attached: Resolution 988

**RESOLUTION NO. 988**

**A RESOLUTION AUTHORIZING THE TRANSFER OF GENERAL OPERATING  
CONTINGENCY IN THE GENERAL FUND**

**WHEREAS**, the City has received requests for donations to or financial participation in beneficial activities that were unforeseen at the time the budget was adopted; and

**WHEREAS**, these requests granted by motions of the council total \$13,209.39; and

**WHEREAS**, the City wishes to transfer general operating contingency to cover these expenditures,

**NOW THEREFORE, BE IT RESOLVED THAT:**

Section 1. The City Administrator shall transfer or caused to be transferred \$13,209.39 in general operating contingency in the General Fund to the Administration Department Materials and Services appropriation in the General Fund.

This resolution shall take effect on June 4, 2008.

**ADOPTED** by the Canby City Council at a regular meeting thereof on June 4, 2008.

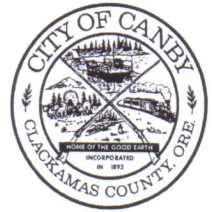
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Melody Thompson  
Mayor

ATTEST:

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Kimberly Scheafer, CMC  
City Recorder Pro-Tem



# MEMORANDUM

**TO:** *Honorable Mayor Thompson and City Council*  
**FROM:** *Dwayne Barnes, Director of Public Works*  
**DATE:** *May 27, 2008*  
**THROUGH:** *Mark C. Adcock, City Administrator*

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Issue: Create a no parking area on the east and west sides of South Lupine Street between SE 13<sup>th</sup> Avenue and SE 13<sup>th</sup> Place.

Synopsis: This council action has been requested by the Tofte Farms Home Owners Associations.

Recommendation: Staff recommends that the City Council adopt resolution 989 creating a no parking area on the east and west sides of South Lupine Street between SE 13<sup>th</sup> Avenue and SE 13<sup>th</sup> Place.

Rationale: The no parking area was requested in writing by the Tofte Farms Home Owners Association Board of Directors. The request has been reviewed by the Director of Public Works and Planning Department Staff.

Background: Residents of the Tofte Farms development have had discussions with Planning Staff for some time now regarding the creation of a no parking area as outlined above. Their letter (attached) states "Due to sight line issues, topography and congestion the Lupine entrance into Tofte Farms becomes a safety hazard when cars park on Lupine St. between 13<sup>th</sup> Ave. and 13<sup>th</sup> Pl. For this reason the Tofte Farms HOA Board of Directors is requesting the City of Canby paint the curbs yellow on both sides of this entrance".

May 12, 2008

Dear Mr. Barnes,



Due to sight line issues, topography and congestion the Lupine entrance into Tofte Farms becomes a safety hazard when cars park on Lupine St. between 13<sup>th</sup> Ave. and 13<sup>th</sup> Pl. For this reason, the Tofte Farms HOA Board of Directors is requesting the City of Canby paint the curbs yellow on both sides of this entrance. We understand the City plans on painting just the Stop sign side of the street, and we would like to see both sides painted yellow the full length of this short block wrapping around onto 13<sup>th</sup> Ave. to provide improved sight clearance. Below is a picture of the intersection:



Please let Winston Fairbrother know if you need further details regarding this request. He can be reached on his cell at 503-312-0695, e-mail at [or\\_wa@yahoo.com](mailto:or_wa@yahoo.com) or home at 503-266-5630. Thank you very much for your time.

Regards,

Tim Dale  
President, Tofte Farms HOA Board of Directors



**RESOLUTION NO. 989**

**A RESOLUTION RESTRICTING VEHICLE PARKING ON THE EAST AND WEST SIDES OF SOUTH LUPINE STREET BETWEEN SE 13<sup>TH</sup> AVENUE AND SE 13<sup>TH</sup> PLACE.**

**WHEREAS**, § 10.04.130 of the Canby Municipal Code sets forth the duties of the Public Works Director relative to installation of specific new traffic control devices and subject to the approval of the City Council by resolution or motion; and

**WHEREAS**, § 10.04.130 D. of the Canby Municipal Code provides that the Director of Public Works designate areas in which no parking shall be permitted; and

**WHEREAS**, the Tofte Farms Home Owners Association has requested in writing that the East and West sides of South Lupine Street between SE 13<sup>th</sup> Avenue and SE 13<sup>th</sup> Place be designated as no parking areas; and

**WHEREAS**, The Director of Public Works and the Canby Planning Department concur with the creation of the restricted parking area; now therefore,

**BE IT RESOLVED** that the East and West sides of South Lupine Street between 13<sup>th</sup> Avenue and 13<sup>th</sup> Place be designated as a no parking area by a method approved by the Director of Public Works.

This resolution shall take effect on June 4, 2008.

**ADOPTED** this 4<sup>th</sup> day of June, 2008, by the Canby City Council.

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Melody Thompson - Mayor

ATTEST:

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Kimberly Scheafer, CMC  
City Recorder, Pro-Tem



## **ORDINANCE NO. 1276**

**AN ORDINANCE AUTHORIZING REIMBURSEMENT OF FUNDS NOT TO EXCEED \$41,063.25 FROM THE TRANSPORTATION SYSTEM DEVELOPMENT CHARGE FUND TO WILLAMETTE FALLS HOSPITAL FOR THE COMPLETION OF CERTAIN SEQUOIA PARKWAY IMPROVEMENTS AT THE INTERSECTION OF 1<sup>ST</sup> AVENUE AND SEQUOIA PARKWAY AND DECLARING AN EMERGENCY.**

**WHEREAS**, during the construction of Willamette Falls Health Center located at 1<sup>st</sup> Avenue and Sequoia Parkway, the City entered into an agreement with the Willamette Falls Hospital to reimburse it for certain street improvements that were the responsibility of the City of Canby to complete at the above mentioned intersection; and

**WHEREAS**, Willamette Falls Hospital, through its contractor, Jeff Kersey Construction completed the aforementioned street improvements and has submitted a letter to the City of Canby requesting reimbursement in the amount of \$41,063.25 for the costs it has incurred; and

**WHEREAS**, the City Engineer has reviewed the completed improvements and believes that they are reasonable and necessary and therefore recommends approval of the request for reimbursement to Willamette Falls Hospital; now therefore,

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

Section 1. The City Council hereby authorizes payment not to exceed \$41,063.25 from Transportation System Development Charge Improvement funds to reimburse Willamette Falls Hospital of Oregon City, Oregon for its costs in completing street improvements located at 1<sup>st</sup> Avenue and Sequoia Parkway.

Section 2. Inasmuch as it is in the best interest of the citizens of Canby, Oregon, to authorize this payment within the 2007-2008 fiscal year, 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, May 21, 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, June 4, 2008, commencing at the hour of 7:30 pm at the Council Meeting Chambers located at 155 NW 2<sup>nd</sup> Avenue, Canby, Oregon.

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Kimberly Scheafer, CMC  
City Recorder Pro-Tem

**PASSED** on second and final reading by the Canby City Council at a regular meeting thereof on the 4<sup>th</sup> day of June, 2008, by the following vote:

YEAS\_\_\_\_\_

NAYS\_\_\_\_\_

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Melody Thompson, Mayor

ATTEST:

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Kimberly Scheafer, CMC  
City Recorder Pro-Tem

**DATE: May 27, 2008**

**MEMO TO: Honorable Mayor Thompson and City Councilors**

**FROM: Beth Saul, General Services Director**

**Through: Mark Adcock, City Administrator**

**RE: Need for new sand filters at Swim Center**

**Issue:**

The sand filters at the Swim Center are about 25 years old and in need of replacement. Staff obtained quotes for replacement and Ordinance 1277 will authorize the purchase of the new filters.

**Recommendation:**

*Staff recommends approval of Ordinance 1277, an ordinance authorizing the Mayor and/or City Administrator to execute a contract with Lincoln Equipment, Inc. of Concord, California for a Stark horizontal high rate sand filter for the Canby Swim Center; and declaring an emergency.*

**Background:**

The current filters are about 25 years old and last summer when the pool was closed for maintenance they were inspected. Staff noticed a lot of rust forming on the insides of the filters. There is nothing staff can do to prevent them from getting worse and they don't want a leak to form because the pool would have to be closed for about 8 to 10 weeks until the new filters could be delivered. These Stark filters are the same filter staff would recommend using if and when we build a new facility, and they could be moved and used at a new pool.

**Fiscal Impact:**

Funding is available in the Swim Center Levy fund for this maintenance need.

## **ORDINANCE NO. 1277**

### **AN ORDINANCE AUTHORIZING THE MAYOR AND/OR CITY ADMINISTRATOR TO EXECUTE A CONTRACT WITH LINCOLN EQUIPMENT, INC OF CONCORD, CALIFORNIA FOR A STARK HORIZONTAL HIGH RATE SAND FILTER FOR THE CANBY SWIM CENTER; AND DECLARING AN EMERGENCY.**

**WHEREAS**, the City of Canby wishes to purchase a Stark Horizontal High Rate Sand Filter, and

**WHEREAS**, the cost of the filter will be paid by the City of Canby Swim Center Levy fund with funds budgeted and approved for this purpose in the 2007-2008 fiscal year budget; and

**WHEREAS**, in accordance with ORS Chapter 279 and Canby Public Purchasing Rules as set forth in Ordinance No. 1170 and Resolution No. 897, three written bids were obtained for the sand filter:

1. Lincoln Equipment, Inc., Concord, CA	\$31,544.15
2. Aquatic Specialty Services, Seattle, WA	\$36,935.74
3. Pool & Spa House, Portland, OR	\$32,481.57

**WHEREAS**, Lincoln Equipment, Inc. of Concord, California submitted the lowest quote of \$31,544.15 for the filter; and

**WHEREAS**, the City Council meeting and acting as the Contract Review Board for the City of Canby has reviewed this quote, reviewed the staff report and believes it to be in the best interest of the City to contract with Lincoln Equipment, Inc., to purchase a sand filter; and

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

Section 1. The Mayor and/or 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 Lincoln Equipment, Inc. to purchase a sand filter for the Canby Swim Center for a total of \$31,544.15.

Section 2. In so much as it is in the best interest of the citizens of the City of Canby, Oregon to provide the Canby Swim Center a sand filter 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 June 4, 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 June 18, 2008, commencing at the hour of 7:30 P.M. in the Council Meeting Chambers at 155 NW 2<sup>nd</sup> Avenue in Canby, Oregon.

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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 18<sup>th</sup> day of June, 2008, by the following vote:

YEAS \_\_\_\_\_

NAYS \_\_\_\_\_

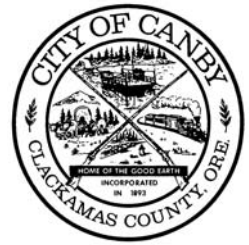
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Melody Thompson, Mayor

**ATTEST:**

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Kimberly Scheafer, CMC  
City Recorder - Pro Tem



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

**TO:** *Honorable Mayor Thompson and City Council*  
**FROM:** *Melissa Hardy, Associate Planner*  
**THROUGH:** *Mark C. Adcock, City Administrator*  
**DATE:** *June 04, 2008*  
**RE:** *Ordinance No. 1279*

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## **Summary**

Attached is Ordinance No. 1279, which repeals and replaces Canby Municipal Code (CMC) Chapter 15.12. The purpose of this amendment is to update the City's "Flood Hazard Protection" chapter to ensure the Canby regulations meet National Flood Insurance Program standards.

## **Recommendation**

Staff recommends that the City Council pass Ordinance No. 1279.

## **Background**

On June 15, 1984, the Federal Emergency Management Agency (FEMA) issued a Flood Insurance Rate Map (FIRM) that identified the special flood hazard areas subject to inundation by the base (1-percent-annual-chance) flood in the City of Canby. Recently, FEMA completed a re-evaluation of flood hazards, and has completed a new Flood Insurance Study (FIS) report, including an updated FIRM, that will become effective on June 17, 2008. Communities are required, as a condition of continued eligibility in the National Flood Insurance Program (NFIP), to show evidence of adoption of floodplain management regulations that meet the NFIP standards, including adoption of the new FIS and FIRM.

The ordinance repeals the current CMC Chapter 15.12 code language, and replaces it with updated code language to reflect the new updated model floodplain management code developed by the Oregon Department of Land Conservation and Development (DLCD) to meet the NFIP standards.

## **Alternatives**

1. The City Council may choose not to pass Ordinance No. 1279, in which case CMC Chapter 15.12 will remain unchanged. Staff does not recommend this alternative because communities must show evidence that updated floodplain management regulations that meet NFIP standards have been adopted in order to continue to be eligible for the National Flood Insurance Program.

## **Attachments**

1. Ordinance No. 1279 including exhibits

## **ORDINANCE NO. 1279**

### **AN ORDINANCE REVISING AND REPLACING CANBY MUNICIPAL CODE CHAPTER 15.12 ENTITLED “FLOOD HAZARD PROTECTION”; REPEALING FORMER CHAPTER 15.12 IN ITS ENTIRETY; AND DECLARING AN EMERGENCY.**

**WHEREAS**, the Federal Emergency Management Agency (FEMA) recently completed a re-evaluation of flood hazards and has completed a new Flood Insurance Study (FIS) that will become effective June 17, 2008; and

**WHEREAS**, communities are required, as a condition of continued eligibility in the National Flood Insurance Program (NFIP), to show evidence of floodplain management regulations that meet NFIP standards, including adoption of the new FIS and FIRM; and

**WHEREAS**, the City of Canby’s Planning Department has revised and replaced the current flood hazard protection chapter of the current Chapter 15.12 of the Canby Municipal Code with the provisions necessary to comply with the FIRP requirements. A copy of the new regulations are set forth as Exhibit “A” to this ordinance; and

**WHEREAS**; the current chapter 15.12 is therefore no longer valid and must be repealed; now therefore,

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

Section 1. The City Council hereby repeals and replaces Canby Municipal Code Chapter 15.12 with the new regulations as set forth in Exhibit “A”, attached to this ordinance and by reference incorporated herein.

Section 2. Inasmuch as it is in the best interest of the citizens of Canby, Oregon, to implement these provisions as soon as possible for the good of 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 therefore on Wednesday, June 4, 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, June 18, 2008, commencing at the hour of 7:30 pm at the Council Meeting Chambers located at 155 NW 2<sup>nd</sup> Avenue, Canby, Oregon.

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Kimberly Scheafer, CMC  
City Recorder Pro-Tem

**PASSED** on second and final reading by the Canby City Council at a regular meeting thereof on the 18<sup>th</sup> day of June, 2008, by the following vote:

YEAS\_\_\_\_\_

NAYS\_\_\_\_\_

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Melody Thompson, Mayor

ATTEST:

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Kimberly Scheafer, CMC  
City Recorder Pro-Tem



## **Title 15 – BUILDINGS AND CONSTRUCTION**

### **Chapter 15.12**

#### **FLOOD HAZARD PROTECTION**

##### **Sections:**

- 15.12.010 Purpose.**
- 15.12.020 Findings and objectives.**
- 15.12.030 Definitions.**
- 15.12.040 Applicability.**
- 15.12.050 Basis for establishing the areas of special flood hazard.**
- 15.12.060 Penalties for noncompliance.**
- 15.12.070 Abrogation and greater restrictions.**
- 15.12.080 Interpretation.**
- 15.12.090 Warning and disclaimer of liability.**
- 15.12.100 Designation of the local administrator.**
- 15.12.110 Duties and responsibilities of the local administrator.**
- 15.12.120 Development permit required.**
- 15.12.130 Variance and appeal procedure.**
- 15.12.140 Provisions for flood hazard protection, generally.**
- 15.12.150 Specific standards.**
- 15.12.160 Before regulatory floodway.**
- 15.12.170 Floodways.**
- 15.12.180 Standards for shallow flooding areas (AO Zones).**
- 15.12.190 Critical facility.**

##### **15.12.010 Purpose.**

The State of Oregon has delegated the responsibility to local governmental units to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry. It is the purpose of this Title to promote the public health, safety, and general welfare, and to minimize public and private losses due to flood conditions in specific areas by provisions designed to:

- A. Protect human life and health; and
- B. Minimize expenditure of public money and costly flood control projects; and
- C. Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public; and
- D. Minimize prolonged business interruptions; and

- E. Minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets, and bridges located in areas of special flood hazard; and
- F. Help maintain a stable tax base by providing for the sound use and development of areas of special flood hazard so as to minimize future flood blight areas; and
- G. Ensure that potential buyers are notified that property is in an area of special flood hazard; and
- H. Ensure that those who occupy the areas of special flood hazard assume responsibility for their actions.

**15.12.020 Findings and objectives.**

- A. Flood hazard areas are subject to periodic inundation which results in loss of life and property, health, and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare.
- B. These flood losses are caused by the cumulative effect of obstructions in areas of special flood hazards which increase flood heights and velocities, and when inadequately anchored, damage uses in other areas. Uses that are inadequately floodproofed, elevated, or otherwise protected from flood damage also contribute to the flood loss.
- C. In order to accomplish its purposes, this Title includes methods and provisions for:
  - 1. Restricting or prohibiting uses which are dangerous to health, safety, and property due to water or erosion hazards, or which result in damaging increases in erosion or in flood heights or velocities;
  - 2. Requiring that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;
  - 3. Controlling the alteration of natural flood plains, stream channels, and natural protective barriers, which help accommodate or channel flood waters;
  - 4. Controlling filling, grading, dredging, and other development which may increase flood damage;
  - 5. Preventing or regulating the construction of flood barriers which will unnaturally divert flood waters or may increase flood hazards in other areas;
  - 6. Coordinating and supplementing the provisions of the State building code with local provisions.

### **15.12.030 Definitions.**

Unless specifically defined below, words or phrases used in this Title shall be interpreted so as to give them the meaning they have in common usage and to give this Title its most reasonable application.

Appeal means a request for a review of the interpretation of any provision of this Title or a request for a variance.

Area of shallow flooding means a designated AO, or AH Zone on the Flood Insurance Rate Map (FIRM). The base flood depths range from one to three feet; a clearly defined channel does not exist; the path of flooding is unpredictable and indeterminate; and velocity flow may be evident. AO is characterized as sheet flow and AH indicates ponding.

Area of special flood hazard means the land in the flood plain within a community subject to a one percent or greater chance of flooding in any given year. Designation on maps always includes the letters A or V.

Base flood means the flood having a one percent chance of being equaled or exceeded in any given year. Also referred to as the "100-year flood". Designation on maps always includes the letters A or V.

Basement means any area of the building having its floor subgrade (below ground level) on all sides.

Below-grade crawl space means an enclosed area below the base flood elevation in which the interior grade is not more than two feet below the lowest adjacent exterior grade and the height, measured from the interior grade of the crawlspace to the top of the crawlspace foundation, does not exceed 4 feet at any point.

Breakaway wall means a wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces, without causing damage to the elevated portion of the building or supporting foundation system.

Coastal high hazard area means an area of special flood hazard extending from offshore to the inland limit of a primary frontal dune along an open coast and any other area subject to high velocity wave action from storms or seismic sources. The area is designated on the FIRM as Zone V1-V30, VE or V.

Critical facility means a facility for which even a slight chance of flooding might be too great. Critical facilities include, but are not limited to schools, nursing homes, hospitals, police, fire, and emergency response installations, installations which produce, use or store hazardous materials or hazardous waste.

Development means any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving,

excavation or drilling operations, or storage of equipment or materials located within the area of special flood hazard.

Elevated building means for insurance purposes, a non-basement building which has its lowest elevated floor raised above ground level by foundation walls, shear walls, post, piers, pilings, or columns.

Existing manufactured home park or subdivision means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of the adopted floodplain management regulations.

Expansion to an existing manufactured home park or subdivision means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

Flood or Flooding means a general and temporary condition of partial or complete inundation of normally dry land areas from:

- A. The overflow of inland or tidal waters, and/or
- B. The unusual and rapid accumulation of runoff of surface waters from any source.

Flood insurance rate map (FIRM) means the official map on which the Federal Insurance Administration has delineated both the areas of special flood hazards and the risk premium zones applicable to the community.

Flood insurance study means the official report provided by the Federal Insurance Administration that includes flood profiles, the Flood Boundary-Floodway Map, and the water surface elevation of the base flood.

Floodway means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot.

Lowest floor means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access, or storage, in an area other than a basement area, is not considered a building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this Title.

Manufactured home means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term "manufactured home" does not include a "recreational vehicle".

Manufactured home park or subdivision means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

New construction means structures for which the “start of construction” commenced on or after June 17, 2008.

New manufactured home park or subdivision means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of adopted floodplain management regulations.

Recreational vehicle means a vehicle which is:

- A. Built on a single chassis;
- B. 400 square feet or less when measured at the largest horizontal projection;
- C. Designed to be self-propelled or permanently towable by a light duty truck; and
- D. Designed primarily not for use as a permanent dwelling but as a temporary living quarters for recreational, camping, travel, or seasonal use.

Start of construction includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, placement or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading, and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

State building code means the combined specialty codes.

Structure means a walled and roofed building including a gas or liquid storage tank that is principally above ground.

Substantial damage means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

Substantial improvement means any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure either:

- A. Before the improvement or repair is started; or

B. If the structure has been damaged and is being restored, before the damage occurred. For the purposes of this definition, “substantial improvement” is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure.

The term does not, however, include either:

A. Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions; or

B. Any alteration of a structure listed on the National Register of Historic Places or a State Inventory of Historic Places.

Variance means a grant of relief from the requirements of this ordinance which permits construction in a manner that would otherwise be prohibited by this ordinance.

Water dependent means a structure for commerce or industry which cannot exist in any other location and is dependent on the water by reason of the intrinsic nature of its operations.

#### **15.12.040 Applicability.**

This Title shall apply to all areas of special flood hazards within the jurisdiction of the City of Canby.

#### **15.12.050 Basis for establishing areas of special flood hazard.**

The areas of special flood hazard identified by the Federal Insurance Administration in a scientific and engineering report entitled “The Flood Insurance Study for Clackamas County, Oregon and Incorporated Areas,” dated June 17, 2008, with accompanying Flood Insurance Rate Maps, are hereby adopted by reference and declared to be a part of this Title. The Flood Insurance Study is on file at the City of Canby. The best available information for flood hazard area identification as outlined in subsection 15.12.110.B shall be the basis for regulation until a new FIRM is issued which incorporates the data utilized under subsection 15.12.110.B.

#### **15.12.060 Penalties for noncompliance.**

No structure or land shall hereafter be constructed, located, extended, converted, or altered without full compliance with the terms of this Title and other applicable regulations. Violations of the provisions of this Title by failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with conditions) shall constitute a misdemeanor. Nothing herein contained shall prevent the City of Canby from taking such other lawful action as is necessary to prevent or remedy any violation.

#### **15.12.070 Abrogation and greater restrictions.**

This title is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this Title and another Title of the Canby Municipal Code, State building code, easement, covenant, or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

#### **15.12.080 Interpretation.**

In the interpretation and application of this Title, all provisions shall be:

- A. Considered as minimum requirements;
- B. Liberally construed in favor of the governing body; and
- C. Deemed neither to limit or repeal any other powers granted under State statutes and rules, including the State building code.

**15.12.090 Warning and disclaimer of liability.**

The degree of flood protection required by this Title is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes. This Title does not imply that land outside the areas of special flood hazards or uses permitted within such areas will be free from flooding or flood damages. This Title shall not create liability on the part of the City of Canby, any officer or employee thereof, or the Federal Insurance Administration, for any flood damages that result from reliance on this Title or any administrative decision lawfully made hereunder.

**15.12.100 Designation of the local administrator.**

The City of Canby Building Official is hereby appointed to administer and implement this Title by granting or denying development permit applications in accordance with its provisions.

**15.12.110 Duties and responsibilities of the local administrator.**

Duties of the Building Official shall include, but not be limited to:

A. Permit review.

1. Review all development permits to determine that the permit requirements and conditions of this Title have been satisfied.
2. Review all development permits to determine that all necessary permits have been obtained from those Federal, State, or local governmental agencies from which prior approval is required.
3. Review all development permits to determine if the proposed development is located in the floodway. If located in the floodway, assure that the encroachment provisions of subsection 15.12.170.A are met.

B. Use of other base flood data (in A and V zones).

When base flood elevation data has not been provided (A and V zones) in accordance with Section 15.12.050, the Building Official shall obtain, review, and reasonably utilize any base flood elevation and floodway data available from a Federal, State, or other source, in order to administer Sections 15.12.150 and 15.12.170.

C. Information to be obtained and maintained.

1. Where base flood elevation data is provided through the Flood Insurance Study, FIRM, or required as in subsection 15.12.110.B above, obtain and record the actual elevation (in relation to mean sea level) of the lowest floor (including

basements and below-grade crawlspaces) of all new or substantially improved structures, and whether or not the structure contains a basement.

2. For all new or substantially improved floodproofed structures where base flood elevation data is provided through the Flood Insurance Study, FIRM, or as required in subsection 15.12.110.B:
  - a. Verify and record the actual elevation (in relation to mean sea level), and
  - b. Maintain the floodproofing certifications required in Section 15.12.120.B.3.
3. Maintain for public inspection all records pertaining to the provisions of this Title.

D. Alteration of watercourses.

1. Notify adjacent communities, the Department of Land Conservation and Development, and other appropriate state and federal agencies, prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Insurance Administration.
2. Require that maintenance is provided within the altered or relocated portion of said watercourse so that the flood carrying capacity is not diminished.

E. Interpretation of FIRM boundaries.

Make interpretations where needed, as to exact location of the boundaries of the areas of special flood hazards (for example, where there appears to be a conflict between a mapped boundary and actual field conditions). The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in Section 15.12.130.

**15.12.120 Development permit required.**

A. A development permit shall be obtained before construction or development begins within any area of special flood hazard established in Section 15.12.050. The permit shall be for all structures including manufactured homes, and for all development including fill and other activities.

B. Application for a development permit shall be made on forms furnished by the City of Canby Building Official, and may include but not be limited to plans in duplicate drawn to scale showing the nature, location, dimensions, and elevations of the area in question; existing or proposed structures, fill, storage of materials, drainage facilities, and the location of the foregoing. Specifically, the following information is required:

1. Elevation in relation to mean sea level of the lowest floor (including basement) of all structures;
2. Elevation in relation to mean sea level of floodproofing in any structure;



3. Certification by a registered professional engineer or architect that the floodproofing methods for any nonresidential structure meet the floodproofing criteria in subsection 15.12.150.B; and
4. Description of the extent to which a watercourse will be altered or relocated as a result of proposed development.

**15.12.130 Variance and appeal procedure.**

A. Appeal board. The Planning Commission is established as an appeal board and shall hear and decide appeals and requests for variances from the requirements of this Title. In review of such applications, the Planning Commission shall consider all technical evaluations, all relevant factors, standards specified in other sections of this Title, and:

1. The danger that materials may be swept onto other lands to the injury of others;
2. The danger to life and property due to flooding or erosion damage;
3. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
4. The importance of the services provided by the proposed facility to the community;
5. The necessity to the facility of a waterfront location, where applicable;
6. The availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;
7. The compatibility of the proposed use with existing and anticipated development;
8. The relationship of the proposed use to the comprehensive plan and flood plain management program for that area;
9. The safety of access to the property in times of flood for ordinary and emergency vehicles;
10. The expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site; and
11. The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.

B. Appeal. Those aggrieved by a decision of the Building Official may appeal such decision to the Planning Commission as provided herein. The Planning Commission shall hear and decide appeals when it is alleged there is an error in any requirement, decision, or determination made in the enforcement or administration of this Title.

C. Variance. The Planning Commission shall hear and decide variances. Variances as interpreted in the National Flood Insurance Program are based on the general zoning law principle that they pertain to a physical piece of property, they are not personal in nature, and do not pertain to the structure, its inhabitants, economic, or financial circumstances. They primarily address small lots in densely populated residential neighborhoods. As such, variances from the flood elevations should be quite rare.

1. Approval criteria. Variances shall only be issued upon:
  - a. A showing of good and sufficient cause;
  - b. A determination that failure to grant the variance would result in exceptional hardship to the applicant; and
  - c. A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public as identified in subsection 15.12.130.A, or conflict with existing local laws or ordinances.
2. Conditions for variances.
  - a. Generally, the only condition under which a variance from the elevation standard may be issued is for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing items in subsection 15.12.130.A have been fully considered. As the lot size increases, the technical justification required for issuing the variance increases. Variances may be issued for nonresidential buildings in very limited circumstances to allow a lesser degree of floodproofing than watertight or dry-floodproofing, where it can be determined that such action will have low damage potential and otherwise complies with Sections 15.12.140.A and 15.12.140.B.
  - b. Variances may be issued for the reconstruction, rehabilitation, or restoration of structures listed on the National Register of Historic Places or the Statewide Inventory of Historic Properties without regard to the procedures set forth in this section.
  - c. Variances shall not be issued within a designated floodway if any increase in flood levels during the base flood discharge would result.
  - d. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
3. Upon consideration of the factors in subsection 15.12.130.A, and the purposes of this Title, the Planning Commission may attach such conditions to the granting of variances as it deems necessary to further the purposes of this Title.
4. Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with a lowest floor elevation below the base flood elevation and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.

D. The Building Official shall maintain the records of all appeal actions and report any variances to the Federal Insurance Administration upon request.

**15.12.140 Provisions for flood hazard protection, generally.**

In all areas of special flood hazards the following standards are required to be met:

A. Anchoring.

1. All new construction and substantial improvements shall be anchored to prevent flotation, collapse, or lateral movement of the structure.
2. All manufactured homes must likewise be anchored to prevent flotation, collapse, or lateral movement, and shall be installed using methods and practices that minimize flood damage. Anchoring methods may include, but are not limited to, use of over-the-top or frame ties to ground anchors (reference FEMA's "Manufactured Home Installation in Flood Hazard Areas" guidebook for additional techniques).

B. AH Zone drainage.

Adequate drainage paths are required around structures on slopes to guide floodwaters around and away from proposed structures.

C. Construction materials and methods.

1. All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.
2. All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damage.
3. Electrical, heating, ventilation, plumbing, and air-conditioning equipment and other service facilities shall be designed and/or otherwise elevated or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

D. Utilities.

1. All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system.
2. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharge from the systems into flood waters.
3. On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding consistent with the Oregon Department of Environmental Quality.

E. Subdivision.

1. All subdivision proposals shall be consistent with the need to minimize flood damage.
2. All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize or eliminate flood damage.
3. All subdivision proposals shall have adequate drainage provided to reduce exposure to flood damage.
4. Where base flood elevation data has not been provided or is not available from another authoritative source, it shall be generated for subdivision proposals and other proposed developments which contain at least 50 lots or 5 acres (whichever is less).

F. Review of building permits.

Where elevation data is not available either through the Flood Insurance Study, FIRM, or from another authoritative source as detailed in Section 15.12.110.B, applications for building permits shall be reviewed to assure that proposed construction will be reasonably safe from flooding. The test of reasonableness is a local judgment and includes use of historical data, high water marks, photographs of past flooding, etc., where available. Failure to elevate the lowest floor at least two feet above grade in these zones may result in higher insurance rates.

**15.12.150 Specific standards.**

In all areas of special flood hazards where base flood elevation data has been provided (Zones A1-30, AH, and AE) as set forth in Section 15.12.050 or Section 15.12.110.B, the following standards are required to be met:

A. Residential construction.

1. New construction and substantial improvement of any residential structure shall have the lowest floor, including basement, elevated to a minimum of one foot above the base flood elevation.
2. Fully enclosed areas below the lowest floor that are subject to flooding are prohibited, or shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must be either certified by a registered professional engineer or architect or must meet or exceed the following minimum criteria:
  - a. A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided.
  - b. The bottom of all openings shall be no higher than one foot above grade.
  - c. Openings may be equipped with screens, louvers, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

B. Nonresidential construction.

New construction and substantial improvement of any commercial, industrial or other nonresidential structure shall either have the lowest floor, including basement, elevated at or above the base flood elevation; or together with attendant utility and sanitary facilities, shall:

1. Be floodproofed so that below the base flood level the structure is watertight with walls substantially impermeable to the passage of water.
2. Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.
3. Be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting provisions of this subsection based on their development and/or review of the structural design, specifications, and plans. Such certifications shall be provided to the official.
4. Nonresidential structures that are elevated, not floodproofed, must meet the same standards for space below the lowest floor as described in 15.12.150.A.2.
5. Applicants floodproofing nonresidential buildings shall be notified that flood insurance premiums will be based on rates that are one foot below the floodproofed level (e.g., a building floodproofed to the base flood level will be rated as one foot below).

C. Manufactured homes.

1. All manufactured homes to be placed or substantially improved on sites that are:
  - a. outside of a manufactured home park or subdivision, or
  - b. in a new manufactured home park or subdivision, or
  - c. in an expansion to an existing manufactured home park or subdivision, or
  - d. in an existing manufactured home park or subdivision on which a manufactured home has incurred "substantial damage" as the result of a flood;shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated to a minimum of one foot above the base flood elevation and be securely anchored to an adequately designed foundation system to resist flotation, collapse, and lateral movement.
2. Manufactured homes to be placed or substantially improved on sites in an existing manufactured home park or subdivision within Zones A1-30, AH, and AE on the community's FIRM that are not subject to the above manufactured home provisions be elevated so that either:
  - a. the lowest floor of the manufactured home is elevated to a minimum of one foot above the base flood elevation, or
  - b. the manufactured home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than 36

inches in height above grade and be securely anchored to an adequately designed foundation system to resist flotation, collapse, and lateral movement.

D. Recreational vehicles.

Recreational vehicles placed on sites are required to either:

1. Be on the site for fewer than 180 consecutive days
2. Be fully licensed and ready for highway use, on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions; or
3. Meet the requirements of Section 15.12.150.C and the elevation and anchoring requirements for manufactured homes.

E. Below-grade crawl spaces

Below-grade crawlspaces are allowed subject to the following standards as found in FEMA Technical Bulletin 11-01, *Crawlspace Construction for Buildings Located in Special Flood Hazard Areas*.

1. The building must be designed and adequately anchored to resist flotation, collapse, and lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy. Hydrostatic loads and the effects of buoyancy can usually be addressed through the required openings stated in subsection 15.12.150.E.2 below. Because of hydrodynamic loads, crawlspace construction is not allowed in areas with flood velocities greater than five (5) feet per second unless the design is reviewed by a qualified design professional, such as a registered architect or professional engineer.
2. The crawlspace is an enclosed area below the base flood elevation and, as such, must have openings that equalize hydrostatic pressures by allowing the automatic entry and exit of floodwaters. The bottom of each flood vent opening can be no more than one (1) foot above the lowest adjacent exterior grade.
3. Portions of the building below the base flood elevation must be constructed with materials resistant to flood damage. This includes not only the foundation walls of the crawlspace used to elevate the building, but also any joists, insulation, or other materials that extend below the base flood elevation. The recommended construction practice is to elevate the bottom of joists and all insulation above the base flood elevation.
4. Any building utility systems within the crawlspace must be elevated above base flood elevation or designed so that floodwaters cannot enter or accumulate within the system components during flood conditions. Ductwork in particular must either be placed above the base flood elevation or sealed from floodwaters.

5. The interior grade of a crawlspace below the base flood elevation must not be more than two (2) feet below the lowest adjacent exterior grade.
6. The height of the below-grade crawlspace, measured from the interior grade of the crawlspace to the top of the crawlspace foundation wall must not exceed four (4) feet at any point. The height limitation is the maximum allowable unsupported wall height according to the engineering analyses and building code requirements for flood hazard areas.
7. There must be an adequate drainage system that removes floodwaters from the interior area of the crawlspace. The enclosed area should be drained within a reasonable time after a flood event. The type of drainage system will vary because of the site gradient and other drainage characteristics, such as soil types. Possible options include natural drainage through porous, well-drained soils and drainage systems such as perforated pipes, drainage tiles or gravel or crushed stone drainage by gravity or mechanical means.
8. The velocity of floodwaters at the site should not exceed five (5) feet per second for any crawlspace. For velocities in excess of five (5) feet per second, other foundation types should be used.
9. For more detailed information refer to FEMA Technical Bulletin 11-01.

**15.12.160 Before regulatory floodway.**

In areas where a regulatory floodway has not been designated, no new construction, substantial improvements, or other development (including fill) shall be permitted within Zones A1-30 and AE on the community's FIRM, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community.

**15.12.170 Floodways.**

Located within areas of special flood hazard established in Section 15.12.050 are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of floodwaters which carry debris, potential projectiles, and erosion potential, the following provisions apply:

- A. Prohibit encroachments, including fill, new construction, substantial improvements, and other development unless certification by a registered professional civil engineer is provided demonstrating through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.
- B. If subsection 15.12.170.A is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of Sections 15.12.140 through 15.12.190.

C. New installation of manufactured dwellings are prohibited (2002 Oregon Manufactured Dwelling and Park Specialty Code). Manufactured dwellings may only be located in floodways according to one of the following conditions:

1. If the manufactured dwelling already exists in the floodway, the placement was permitted at the time of the original installation, and the continued use is not a threat to life, health, property, or the general welfare of the public; or
2. A new manufactured dwelling is replacing an existing manufactured dwelling whose original placement was permitted at the time of installation and the replacement home will not be a threat to life, health, property, or the general welfare of the public and it meets the following criteria:
  - a. As required by 44 CFR Chapter 1, Subpart 60.3(d)(3), it must be demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practices that the manufactured dwelling and any accessory buildings, accessory structures, or any property improvements (encroachments) will not result in any increase in flood levels during the occurrence of the base flood discharge;
  - b. The replacement manufactured dwelling and any accessory buildings or accessory structures (encroachments) shall have the finished flood elevated a minimum of 18 inches (46 cm) above the base flood elevation as identified on the FIRM;
  - c. The replacement manufactured dwelling is placed and secured to a foundation support system designed by an Oregon professional engineer or architect and approved by the authority having jurisdiction;
  - d. The replacement manufactured dwelling, its foundation supports, and any accessory buildings, accessory structures, or property improvements (encroachments) do not displace water to the degree that it causes a rise in the water level or diverts water in a manner that causes erosion or damage to other properties; and
  - e. The location of a replacement manufactured dwelling is allowed by the local planning department's ordinances.

**15.12.180 Standards for shallow flooding areas (AO Zones).**

Shallow flooding areas appear on FIRMs as AO zones with depth designations. The base flood depths in these zones range from 1 to 3 feet above ground where a clearly defined channel does not exist, or where the path of flooding is unpredictable and where velocity flow may be evident. Such flooding is usually characterized as sheet flow. In these areas, the following provisions apply:

A. New construction and substantial improvements of residential structures and manufactured homes within AO zones shall have the lowest floor (including basement) elevated above the highest grade adjacent to the building, a minimum of one foot above the depth number specified on the FIRM (at least two feet if no depth number is specified).

B. New construction and substantial improvements of nonresidential structures within AO zones shall either:



1. Have the lowest floor (including basement) elevated above the highest adjacent grade of the building site, one foot or more above the depth number specified on the FIRM (at least two feet if no depth number is specified); or
2. Together with attendant utility and sanitary facilities, be completely flood proofed to or above that level so that any space below that level is watertight with walls substantially impermeable to the passage of water and the structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. If this method is used, compliance shall be certified by a registered professional engineer or architect as in subsection 15.12.150.B.3.

C. Require adequate drainage paths around structures on slopes to guide floodwaters around and away from proposed structures.

D. Recreational vehicles placed on sites within AO zones on the community's FIRM must either:

1. Be on the site for fewer than 180 consecutive days,
2. Be fully licensed and ready for highway use, on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions; or
3. Meet the requirements of Section 15.12.180 and the elevation and anchoring requirements for manufactured homes.

**15.12.190 Critical facility.**

Construction of new critical facilities shall be, to the extent possible, located outside the limits of the Special Flood Hazard Area (SFHA) (100-year floodplain). Construction of new critical facilities shall be permissible within the SFHA if no feasible alternative site is available. Critical facilities constructed within the SFHA shall have the lowest flood elevated three feet or to the height of the 500-year flood, whichever is higher. Access to and from the critical facility should also be protected to the height utilized above. Floodproofing and sealing measures must be taken to ensure that toxic substances will not be displaced by or released into floodwaters. Access routes elevated to or above the level of the base flood elevation shall be provided to all critical facilities to the extent possible.

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



***TO:*** *Honorable Mayor Thompson and City Council*  
***FROM:*** *Sue Engels, Interim Finance Director*  
***DATE:*** *May 27, 2008*  
***THROUGH:*** *Mark C. Adcock, City Administrator*

---

Issue: Purchase of utility billing software and setup.

Synopsis: Council authorization is required to purchase the utility billing software package from Caselle which includes license, setup, records conversion and training.

Recommendation: Approval. Acquisition of the software is the first step in the process of implementing City billing of sewer charges and the street maintenance fee. There are funds available in the current year's budget for the purchase.

Attached: Ordinance 1280

## **ORDINANCE NO. 1280**

### **AN ORDINANCE AUTHORIZING PURCHASE OF UTILITY BILLING SOFTWARE INCLUDING CONVERSION AND SET UP SERVICES AND DECLARING AN EMERGENCY.**

**WHEREAS**, the City of Canby passed Ordinance No.1262, effective July 1, 2008, establishing a street maintenance fee (SMF) and now wishes to begin the process of implementing that fee; and

**WHEREAS**, a software program is necessary for the finance department to modify and establish accounts to collect the SMF assessment; and

**WHEREAS**, Caselle currently provides copyrighted accounting software to the City of Canby and has a copyrighted program available that will implement the SMF protocol; and

**WHEREAS**, in accordance with ORS Chapter 279 and Canby Public Purchasing Rules set forth in Ordinance No. 1170 and Resolution No. 897, Exhibit A, Section 5 G (9), the City may enter into a contract to purchase copyrighted materials, including software, which is exempted from formal competitive selection under ORS 279B.085; and

**WHEREAS**, the City Council meeting and acting as the Contract Review Board for the City of Canby has reviewed this proposal, reviewed the staff recommendation and finds that the contract to purchase copyrighted software from Caselle is in the best interest of the City to enter into; now therefore,

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

Section 1 Purchased Authorized. The City of Canby is hereby authorized to purchase from Caselle software and services as follows:

See Exhibit "A"

Section 2 Purchase Price. The total purchase price to be the sum of Nineteen Thousand Seven Hundred Fifty and No/100 dollars (\$19,750.00).

Section 3 Funds To Pay Purchase. The total sum of \$19,750.00 shall be paid from the City's current fiscal budget, account number 231-232-457-7459 titled "Computer Equipment-Finance".

Section 4 Emergency Declared. Inasmuch as it is necessary to proceed as quickly as possible to set up the City's utility billing capability, an emergency is hereby declared to exist and this ordinance shall take effect immediately upon final reading and enactment by the Canby City Council.

**PASSED** on second and final reading by the Canby City Council at a regular meeting thereof on the 18<sup>th</sup> day of June, 2008, by the following vote:

YEAS\_\_\_\_\_

NAYS\_\_\_\_\_

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

ATTEST:

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

## EXHIBIT "A"

**Caselle® Software & Services Proposal**  
**City of Canby**  
**February 27, 2008**

### Proposal Summary

Total Software License	\$4,000
Total Training	2,250
Total Setup	500
Total Conversion	13,000
<b>Total Investment</b>	<b>\$19,750</b>

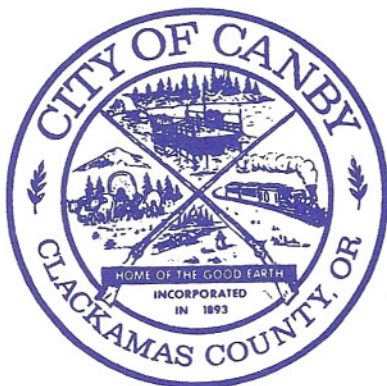
Your Software Maintenance & Support will increase by \$75 per month.

**Caselle® Software & Services Proposal**  
**City of Canby**  
**February 27, 2008**

### Proposal Detail

Application Software	License Fees	Training (One Person)	Training Days	Setup	Conversion	History Conversion	Total
Utility Management	\$4,000	\$2,250	3 Days	\$500	\$13,000	-	\$19,750
Three (3) Concurrent User Licenses	Included	-	-	-	-	-	Included
<b>Grand Total</b>	<b>\$4,000</b>	<b>\$2,250</b>	<b>3 Days</b>	<b>\$500</b>	<b>\$13,000</b>	<b>-</b>	<b>\$19,750</b>

**Note:** Training will take place at Caselle.



# City of Canby

Office of the City Attorney

May 28, 2008

Memo to: Mayor/City Council

From: John H. Kelley, City Attorney 

Re: Ordinance No. 1281 – Authorizing the purchase of real property for future park purposes (Simnitt property).

If you recall, the Council, by resolution in June of 2005, purchased an option on 2.35 acres of land located on North Locust Street for possible future park development. Last year, the City exercised its option to purchase the parcel and we are now in the closing stages of that purchase.

Attached is Ordinance No. 1281 which authorizes the City Administrator to execute a contract for the purchase of the property. It is set to close shortly after second reading on June 18<sup>th</sup>. The total purchase price is \$414,200.00. There is sufficient cash in the Parks Development Fund to cover the purchase.

The property does contain a residence that Dwayne believes we can demolish, either by burning, or similar to the demolition of the Marshall house on Maple Street. We won't know that until we talk to the Fire Department and get inside the house itself. It is currently being rented, however, the renters are supposed to leave the end of May.

A motion to approve Ordinance No. 1281 would be in order.

Any questions, please contact me.

60

## **ORDINANCE NO. 1281**

### **AN ORDINANCE AUTHORIZING THE CITY ADMINISTRATOR TO EXECUTE A CONTRACT FOR THE PURCHASE OF REAL PROPERTY FOR FUTURE PARK LAND; AND DECLARING AN EMERGENCY.**

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

Section 1. Purchase Authorized. The Canby City Administrator is hereby authorized and directed to make, execute and declare in the name of the City of Canby and on its behalf, a contract with Janice R. Simnitt, Jerome A. Simnitt, Jr. and Roberta A. Simnitt the following described real property for a future park land:

The North one-half of Lot 25, PRUNELAND, in the County of Clackamas and State of Oregon

Section 2. Purchase Price. The total purchase price to be the sum of Four Hundred Fourteen Thousand Two Hundred and no/100 dollars (\$414,200.00). The total price is to be paid in full at closing. A copy of the Option Agreement and Agreement of Purchase and Sale entered into between the parties is attached hereto and marked as Exhibit "A" thereto. The City Administrator is authorized to complete the transaction according to the terms of Exhibit "A".

Section 3. Budgeted Funds to Pay Purchase Price. The purchase price is to be paid from the City's current fiscal budget line item number 215-215-455-7640, entitled "Parks Development Fund".

Section 4. City Attorney to Approve Title Report and Deed. The City Attorney shall first approve the preliminary title report and form of deed for the City's purchase of said property. Purchase price insuring the City's vendee interest in said property is to be furnished at the expense of the seller and free and clear of all liens or encumbrances except for the usual printed exceptions.

Section 5. City Administrator to Execute Deed. The City Administrator is hereby authorized and directed to execute and deliver in the name of and on behalf of the City of Canby, as purchaser, the required deed and any other documents as may be required for closing the transaction.

Section 6. Emergency Declared. Inasmuch as it is necessary to proceed as quickly as possible with the plans for the construction and development of a new police and municipal court facility for the use and benefit of the City and since the seller of said property intends to sell this property immediately, and for the general welfare of the

residents, an emergency is hereby declared to exist and this ordinance shall take effect immediately after final reading and enactment by the Canby City Council.

**SUBMITTED** to the Canby City Council and read the first time at a regular meeting thereof on June 4<sup>th</sup>, 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 June 18<sup>th</sup>, 2008, commencing at the hour of 7:30 P.M. in the Council Meeting Chambers 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 18th day of June, 2008, by the following vote:

YEAS \_\_\_\_\_

NAYS \_\_\_\_\_

---

Melody Thompson, Mayor

**ATTEST:**

---

Kimberly Scheafer, CMC  
City Recorder - Pro Tem



Exhibit "A"

**OPTION AGREEMENT  
AND  
AGREEMENT OF PURCHASE AND SALE**

DATE: June 2, 2005 ("Effective Date")  
FROM: JANICE R. SIMNITT, JEROME A. SIMNITT, JR.  
and ROBERTA A. SIMNITT ("Owner")  
TO: CITY OF CANBY ("Optionee")

**RECITALS**

A. Owner owns fee simple title to the real property located at 2041 N. Locust Street, Canby, Oregon and more particularly described as follows ("Property"):

The North one-half of Lot 25, PRUNELAND, in the County of Clackamas and State of Oregon

B. Optionee desires to acquire an option to purchase the Property on the terms and conditions herein stated.

C. Owner has agreed to grant Optionee an exclusive option to purchase the Property and the parties desire to evidence their agreement regarding the option.

The parties therefore agree as follows:

**AGREEMENT**

1. **Grant of Option.** Owner, for and in consideration of the Option Money to be paid to Owner by Optionee in cash, grants to Optionee the sole and exclusive option to purchase the Property (excluding all Stock, as hereinafter defined) in the manner and for the price stated in this Agreement ("Option").

2. **Exercise of Option.**

2.1 **Exercise of Option.** The Option shall be exercised, if at all, by written notice ("Exercise Notice") given by Optionee to Owner at any time prior to the second anniversary of the Effective Date. The Option must be exercised with respect to all of the Property. Upon exercise of the Option, Optionee shall be obligated to purchase the Property from Owner, and Owner shall be obligated to sell the Property to Optionee, for the price and in the manner herein set forth.

**2.2 Failure to Exercise Option.** If Optionee fails for any reason to exercise the Option within the time period permitted under Section 2.1, Optionee shall have no further claim against or interest in the Property or the Option Money, unless Optionee is entitled to a refund of the Option Money under another provision of this Agreement. In the event of the failure to exercise the Option, Optionee shall provide Owner with any instruments that Owner reasonably may deem necessary for the purpose of removing from the public record any cloud on title to the Property which is attributable to the grant or existence of the Option.

**3. Option Money.** In payment for Owner's grant of the Option, Optionee shall pay Owner in cash, simultaneously with the parties' execution hereof, the sum of \$50,000 as option money ("Option Money"). If the Option is exercised and the Property is acquired by Optionee, then the Option Money paid by Optionee shall be credited against the Purchase Price at Closing (as those terms are defined below).

#### **4. Purchase Price.**

**4.1 Purchase Price.** A recent appraisal conducted by PGP Valuation Inc. values the Property at \$380,000 ("Appraised Value"). Owner and Optionee hereby agree that the purchase price for the Property ("Purchase Price") will be equal to the Appraised Value, increased \$11,400 per year, to and including the year in which Closing occurs. Accordingly, because Closing will occur (if the Option is exercised) on June 2, 2008, the Purchase Price will be \$414,200.

**4.2 Payment of Purchase Price.** The Purchase Price for the Property shall be payable as follows:

4.2.1 Optionee shall be given credit for the Option Money actually paid by Optionee to Owner.

4.2.2 The entire balance of the Purchase Price shall be paid in cash at Closing.

#### **5. Remedies.**

**5.1 Optionee.** If Owner breaches any term or provision of this Agreement, then Optionee, as its exclusive remedy and in lieu of any other relief, may either (1) terminate this Agreement and obtain the return of the Option Money previously paid to Owner, or (2) tender performance of the obligations of Optionee and specifically enforce all obligations of Owner. Except as noted in Section 5.3 and any specific remedies reserved elsewhere in this Agreement, Optionee waives the right to pursue any remedy in law or equity against Owner other than the remedies specified above, including any action for damages, in the event of a default by Owner.

**5.2 Owner.** If Optionee breaches any term or provision of this Agreement, and regardless of whether the breach occurs before or after Optionee notifies Owner of the exercise



of the Option, then Owner, as its exclusive remedy and in lieu of any other relief, shall be entitled to terminate this Agreement by giving Optionee written notice of termination and to retain the Option Money paid by Optionee. Owner acknowledges (1) the adequacy of this exclusive remedy and (2) that this limitation of remedies is an essential part of this Agreement from the perspective of Optionee. Except as noted in Section 5.3 and any specific remedies reserved elsewhere in this Agreement, Owner expressly waives the right to pursue any other right or remedy in law or equity other than the remedy specified above, including the right of specific performance and the right to sue for damages, in the event of a default by Optionee. Optionee and Owner have established the foregoing remedy in favor of Owner because of the difficulty and inconvenience of ascertaining the actual damages Owner may suffer as a result of a breach of this Agreement by Optionee.

**5.3 Other Remedies.** The limitations on remedies set forth in this section shall not preclude either party from seeking or obtaining injunctive relief or from seeking recovery against the other under any contractual indemnity set forth herein or for causing physical damage or injury to persons or property.

**6. Conditions Precedent to Closing.** In addition to any other conditions contained in this Agreement, set forth below are certain conditions precedent for the benefit of Optionee ("Conditions"). The Conditions are intended solely for the benefit of Optionee and Optionee shall have the right to waive, by written notice, any of the Conditions, at its sole discretion; giving the Exercise Notice shall not constitute such a waiver. If any Condition is not satisfied or waived on or before the deadline for satisfaction specified herein, then Optionee shall have the right to terminate this Agreement, at its sole election, by giving Owner notice of termination before the deadline expires, to obtain the return of the Option Money paid, and to exercise any remedy available to Optionee if the subject Condition was not satisfied by reason of a breach of this Agreement by Owner. If Optionee does not give Owner notice of termination before the applicable deadline, then Optionee shall be deemed to have waived the termination privilege with respect to the Condition in question. The Conditions are the following:

6.1 On the Closing Date, the Title Company (defined in Section 8.1) shall be ready, willing, and able to issue the title insurance policy required by Section 8.6.

6.2 On or before the Closing Date, Owner shall have performed all of the covenants, conditions, agreements, and promises to be performed by it under this Agreement.

## **7. Title.**

7.1 Within 15 days following the Effective Date, Owner shall deliver to Optionee, at Owner's expense, a preliminary title report ("Title Report") covering the Property. The Title Report shall be issued by the Title Company. The Title Report shall be accompanied by legible copies of all exceptions to title referenced in the Title Report ("Exceptions"). Within 45 days of receiving the Title Report and the Exceptions documents, Optionee shall give written notice ("Initial Notice") to Owner of the Exceptions that Optionee shall require Owner to remove of



record at or before Closing. If Optionee fails to give Owner the Initial Notice, then Optionee shall be deemed to have approved the Title Report. Owner shall have 30 days after receipt of the Initial Notice ("Cure Period") to have any disapproved Exceptions cured, either by the removal of such disapproved Exceptions or by the procurement of the agreement of the Title Company to insure over or issue title insurance endorsements providing coverage against loss or damage as a result of such disapproved Exceptions, in the form generally in use by the Title Company. If Owner is unable or unwilling to cure such disapproved Exceptions within the Cure Period, Optionee may, at its sole discretion, either (1) terminate this Agreement upon written notice to Owner within 30 days after expiration of the Cure Period, in which event the Option Money shall be returned to Optionee and neither party shall have any further liability or obligation to the other, except those obligations which expressly survive termination of this Agreement; or (2) accept title subject to such disapproved Exceptions. Exceptions that are shown on the Title Report and to which Optionee does not object or to which Optionee agrees, in writing, to waive objection, are referred herein to as the "Permitted Exceptions." In addition, taxes, interest and penalties in connection with removal or disqualification of the Property from any special assessment or program, and those matters approved by Optionee pursuant to the terms of this Agreement shall be "Permitted Exceptions."

7.2 Owner shall not cause, permit, or suffer any matter to be recorded with respect to the Property during the term of the Option, except (1) the Memorandum referenced in Section 14, (2) a pipeline easement in the form attached hereto as **Exhibit A** ("Pipeline Easement"); and (3) any other matter that Optionee approves, in writing, before recordation. All such documents and matters are deemed "Permitted Exceptions."

7.3 Owner shall reserve in the Deed a right of first refusal to purchase the Property from Optionee in the event Optionee desires to sell the Property within a period of twenty (20) years after the Closing Date ("Right of First Refusal"). The Right of First Refusal shall be a "Permitted Exception."

## **8. Closing.**

8.1 **Time and Place.** If the Option is exercised, closing of the sale and purchase of the Property ("Closing") shall occur on June 2, 2008 ("Closing Date"). The escrow for the Closing shall be established at the office of Chicago Title Company ("Title Company"), at 888 SW Fifth Avenue, Suite 930, Portland, Oregon 97204, but execution of documents for Closing shall occur in the Title Company's Canby office.

8.2 **Closing Obligations.** On the Closing Date, Owner and Optionee shall deposit the following documents and funds in escrow, and the Title Company shall close escrow in accordance with the instructions of Owner and Optionee.

8.2.1 Owner shall deposit the following:

acknowledged;

(a) The Deed described in Section 9, duly executed and

(b) A duly executed affidavit certifying that Owner is not a foreign person, trust, partnership, or corporation in compliance with the requirements of IRC §1445;

(c) Such documents as Optionee or the Title Company may require to evidence the authority of Owner to consummate this transaction; and

(d) Such other documents and funds, including (without limitation) escrow instructions, as are required of Owner to close the sale in accordance with this Agreement.

8.2.2 Optionee shall deposit the following:

(a) The cash payment specified in Section 4, minus any credits available to Optionee under the terms of this Agreement;

(b) Such documents as Owner or the Title Company may require to evidence the authority of Optionee to consummate the transaction contemplated; and

(c) Such other documents and funds, including (without limitation) escrow instructions, as are required of Optionee to close the sale and purchase of the Property in accordance with this Agreement. In addition, Optionee shall execute the Deed to acknowledge its approval of the Deed, including the Right of First Refusal reserved therein.

8.3 **Costs.** Optionee and Owner each shall pay one-half of the escrow fee of the Title Company with respect to the Closing and the fees for recording the Deed. Owner shall pay the premium for the title insurance policy that Owner is obligated to provide to Optionee. Optionee shall pay the fees for recording the Memorandum of Option.

8.4 **Prorations.** All items of expense incurred by Owner with respect to the Property prior to the Closing Date shall be paid by Owner at Closing, without proration. All real property taxes and assessments payable with respect to the tax year in which Closing occurs shall be prorated between Owner and Optionee as of the Closing Date. Optionee will be responsible for payment of all taxes, interest and penalties in connection with removal or disqualification of the Property from any special assessment or program.

8.5 **Farm Tax Deferral.** Owner has advised Optionee that the Property has been classified as farm use property and therefore has been given an ad valorem tax deferral. Optionee shall be responsible for payment of all taxes associated with the removal or disqualification of the Property from any special assessment or program.



**8.6 Title Insurance Policy.** As soon as practicable after Closing, and in any event no later than fifteen (15) days after the Closing Date, Owner shall cause the Title Company to issue its standard form Owner's ALTA Title Insurance Policy, in the amount of the Purchase Price, insuring fee simple title to the Property vested in Optionee, subject only to the Permitted Exceptions and the preprinted exceptions that are ordinarily part of an owner's standard title insurance policy.

**9. Conveyance.** At the Closing, Owner shall execute, acknowledge, and deliver to Optionee a statutory special warranty deed conveying the Property to Optionee, subject only to the Permitted Exceptions and the Right of First Refusal reserved therein ("Deed"). The Deed (including the Right of First Refusal) shall be in the form attached hereto as **Exhibit B**.

**10. Possession.** Owner is retaining ownership of all growing crops and nursery stock on the Property ("Stock") and shall have the right to harvest the Stock prior to Closing in Owner's discretion. In addition, Owner shall have the right to harvest the Stock for a period of sixty (60) days following Closing ("Removal Period"). During the Removal Period, Owner shall be entitled to exclusive possession of the Property for purposes of removing all of Owner's Stock. Optionee acknowledges and agrees that Owner shall have no responsibility or liability for minor damage to the Property caused by digging up or otherwise removing the Stock; provided, however, Owner will disk the property after removing its Stock.

**11. Access to Property.** Optionee and its agents shall have the right to enter on the Property at reasonable times before the Closing Date upon not less than forty-eight (48) hours notice to Owner for the purpose of conducting tests or studies that Optionee may deem necessary or appropriate in connection with its acquisition of the Property. Optionee shall conduct all its required Property inspections in a manner that is not disruptive to the operation of the Property; provided, however, that Owner shall reasonably cooperate with Optionee in connection therewith. No soil tests or drilling shall be undertaken without first obtaining Owner's approval with respect to the agents retained to perform such work and the location and purpose of the tests or drilling. Optionee shall deliver to Owner a legible copy of any reports, studies, and drawings owned by Optionee that relate to the Property. Optionee shall not interfere with or disturb the rights of any tenants of Owner in possession of any portion of the Property. Optionee shall protect, defend, and hold Owner harmless from any loss, liability, or damage to persons or property arising out of or related to Optionee's activities on the Property. Optionee shall fully compensate Owner for any physical damage to the Property or any lien, encumbrance, or charge on it attributable to Optionee's activities pursuant to this Section and shall obtain, or cause its consultants or agents who enter upon and inspect the Property to obtain, public liability insurance policies with an insurer reasonably satisfactory to Owner and in an amount not less than \$1,000,000.00 per occurrence and \$1,000,000.00 in the aggregate insuring against claims arising from or relating to Optionee's entry and inspection of the Property. Optionee shall deliver to Owner insurance certificates naming Owner Seller as an additional insured and reflecting the coverage required in this Section prior to entry on the Property.

**12. Maintenance of Property.** Before the Closing Date, and subject to the provisions of Section 10, Owner shall maintain the Property in the same condition as it now exists, ordinary wear and tear and damage from casualty or other cause reasonably beyond the control of Owner excepted.

**13. Application of ORS 105.465.** Pursuant to ORS 105.465, Optionee represents to Owner that Optionee will use the Property for purposes other than a residence. Accordingly, the provisions of 105.462 to 105.490 regarding sellers' disclosure statements do not apply to the transaction contemplated by this Agreement. Optionee further represents to Owner that the home on the Property will be demolished after Optionee acquires the Property and will not be occupied by any person at any time. Owner is relying on these representations and is not providing Optionee with a lead paint disclosure or testing the well on the Property.

**14. Recording.** On the Effective Date, Owner shall execute, acknowledge, and deliver to Optionee a Memorandum of Option in the form attached as **Exhibit C**. If Optionee fails to exercise the Option within the time period permitted by this Agreement, Optionee shall execute, acknowledge, and deliver to Owner a statutory quitclaim deed releasing any interest in the Property.

**15. Waiver.** Failure by Owner or Optionee to enforce any right under this Agreement shall not be deemed to be a waiver of that right or of any other right.

**16. Binding Effect; Assignment Prohibited.** This Agreement is binding on and will inure to the benefit of Owner, Optionee and their respective heirs, legal representatives, successors and assigns. Nevertheless, Optionee will not assign its rights under this Agreement without Owner's prior written consent, which may be withheld in Owner's sole discretion.

**17. Notices.** All notices required or permitted to be given shall be in writing and shall be deemed given and received on personal service or deposit in the United States Mail, certified or registered mail, postage prepaid, return receipt requested, addressed as follows:

To Owner: Simnitt Group  
c/o Jerome A. Simnitt, Sr.  
138 NE 22<sup>nd</sup> Avenue  
Canby, OR 97013

With Copy to: Jodee Kelly and J. David Bennett  
Landye Bennett Blumstein LLP  
1300 SW Fifth Ave., Ste. 3500  
Portland, OR 97201



To Optionee: City of Canby  
Attn: City Attorney  
182 N. Holly Street  
Canby, OR 97013

**18. Attorney Fees.** If litigation or arbitration is instituted with respect to this Agreement, the prevailing party shall be entitled to recover from the losing party, in addition to all other sums and allowable costs, its reasonable attorney fees, both in preparation for and at trial or arbitration and any appeal or review, such amount to be set by the court or arbitrator before which the matter is heard.

**19. Risk of Loss.** Owner shall bear the risk of all loss or damage to the Property from all causes, through the Closing Date. If, before the Closing Date, and regardless of whether the Exercise Notice has yet been given or is subsequently given, all or part of the Property is damaged by fire or by any other cause of any nature, Owner shall give Optionee written notice of such event. Optionee may terminate this Agreement by giving written notice to Owner within 15 days after receipt by Optionee of written notice from Owner of such casualty, and Owner will return to Optionee the Option Money previously paid. If Optionee does not elect to terminate this Agreement, then this Agreement shall continue in force and, if Optionee exercises the Option and the Property is conveyed to Optionee, then all interest of Owner in and to any insurance proceeds that may be payable to Owner on account of such casualty shall be assigned to Optionee at Closing.

**20. Integration, Modification, or Amendments.** This Agreement contains the final and entire understanding between Owner and Optionee with respect to its subject matter and is intended to be an integration of all prior negotiations and understandings. Owner and Optionee shall not be bound by any terms, conditions, statements, warranties, or representations not contained in this Agreement. No change or modification of this Agreement shall be valid unless it is in writing, signed by both Owner and Optionee and states that it is intended to modify or amend this Agreement.

**21. Representation.** Owner and Optionee have each been represented by separate legal counsel of choice with respect to this transaction. Except as otherwise provided in Section 18, each party shall be responsible for all attorney fees incurred by it with respect to this Agreement.

**22. AS-IS.** The sale of the Property as provided for herein shall be made on a strictly "AS-IS" "WHERE-IS" basis as of the Closing Date. Optionee expressly acknowledges that, in consideration of the agreements of Owner herein, and except as expressly provided herein, OWNER MAKES NO WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, OR ARISING BY OPERATION OF LAW, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF QUANTITY, QUALITY, CONDITION, HABITABILITY, MERCHANTABILITY, SUITABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE PROPERTY, ANY IMPROVEMENTS LOCATED THEREON OR ANY SOIL CONDITIONS RELATED THERETO.



**23. Release of Owner.** Optionee hereby expressly waives, releases and relinquishes any and all claims, causes of action, rights and remedies Optionee may now or hereafter have against Owner, whether known or unknown, with respect to any past, present or future presence or existence of hazardous materials on, under or about the Property, and with respect to any past, present or future violations of any rules, regulations or laws, now or hereafter enacted, regulating or governing the use, handling, storage, release or disposal of hazardous materials. The waivers and releases by Optionee contained herein shall survive the close of escrow and the recordation of the Deed and shall not be deemed merged into the Deed upon its recordation.

**24. Counterparts.** This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same Agreement and shall be effective when one or more counterparts have been signed and delivered by Owner and Optionee.

**25. Governing Law; Interpretation.** This Agreement shall be governed by the laws of Oregon. If a court of competent jurisdiction holds any portion of this Agreement to be void or unenforceable as written, Owner and Optionee intend that (1) that portion of this Agreement be enforced to the extent permitted by law, and (2) the balance of this Agreement remain in full force and effect.

**26. Time Is of the Essence.** Time is of the essence of this Agreement.

**26. Authority to Execute.** Each person executing this Agreement on behalf of Owner and Optionee, respectively, warrants his or her authority to do so.


**27. Statutory Disclaimer.** THIS INSTRUMENT WILL NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES AND TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930. THE PROPERTY DESCRIBED IN THIS INSTRUMENT MAY NOT BE WITHIN A FIRE PROTECTION DISTRICT PROTECTING STRUCTURES. THE PROPERTY IS SUBJECT TO LAND USE LAWS AND REGULATIONS, WHICH, IN FARM OR FOREST ZONES, MAY NOT AUTHORIZE CONSTRUCTION OR SITING OF A RESIDENCE AND WHICH LIMIT LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930 IN ALL ZONES. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES AND EXISTENCE OF FIRE PROTECTION FOR STRUCTURES.

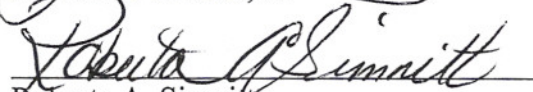
**28. Satisfaction of Condition of Approval for Auburn Farms-Phase II.** This Agreement, when executed on behalf of Owner and Optionee, satisfies Condition No. 11 in the Findings, Conclusion & Final Order SUB 05-01 (Auburn Farms – Phase II) (Formerly Simnitt Estates) issued on May 9, 2005.

Executed on the day and year first above written.

OWNER:

  
Janice R. Simnitt

  
Jerome A. Simnitt, Jr.

  
Roberta A. Simnitt


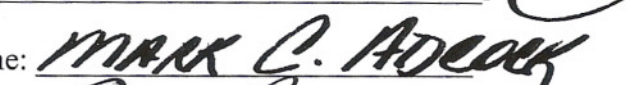

OPTIONEE:

City of Canby

By:

Name:

Title:

Attachments:

Exhibit A      Form of Pipeline Easement  
Exhibit B      Form of Deed (including Right of First Refusal)  
Exhibit C      Form of Memorandum