



AGENDA

CANBY CITY COUNCIL MEETING

June 19, 2019

7:00 PM

Council Chambers

222 NE 2nd Avenue, 1st Floor

Mayor Brian Hodson

Council President Tim Dale

Councilor Tracie Heidt

Councilor Traci Hensley

Councilor Greg Parker

Councilor Sarah Spoon

Councilor Shawn Varwig

CITY COUNCIL MEETING – 7:00 PM

1. CALL TO ORDER

A. Invocation

B. Oregon Impact Community Service Award Presentation to Kiwanis Thrift Store

2. COMMUNICATIONS

3. CITIZEN INPUT & COMMUNITY ANNOUNCEMENTS

(This is an opportunity for audience members to address the City Council on items not on the agenda. Each person will be given 3 minutes to speak. You 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. For Agenda items, please fill out a testimony/comment card and give to the City Recorder noting which item you wish to speak on.)

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 June 5, 2019 City Council Regular Meeting

B. Amendment to City Attorney Employment Contract

7. PUBLIC HEARINGS

A. State Revenue Sharing Funds

B. 2019-2020 FY Budget as Approved by Budget Committee

8. RESOLUTIONS & ORDINANCES

A. Res. 1315, Adopting Budget Appropriation Transfers for the 2018-2019 FY Pg. 1

B. Res. 1316, Verifying City Has Met Requirements to Receive State-Shared Revenue Money Pg. 4

C. Res. 1317, Declaring City's Election to Receive State Revenue for the 2019-2020 FY Pg. 6

- D. Res. 1318, Adopting Budget, Making Appropriations and Imposing and Categorizing Tax for the 2019-2020 FY Pg. 8
- E. Res. 1319, Authorizing an Interfund Loan from the Cemetery Perpetual Care Fund to the Library Fund in the Amount of \$500,000.00 and Authorizing Repayment of the Interfund Loan in Fiscal Year 2019-2020 Pg. 12
- F. Ord. 1511, Authorizing the City of Canby to Enter into a Purchase and Sale Agreement with Pioneer Property, LLC for the Purchase of Real Property; and Declaring an Emergency Pg. 14
- G. Ord. 1513, Authorizing the Mayor and City Administrator to Enter into a Contract with Heard Farms for Wastewater Sewage Sludge Removal, Repealing all Other Ordinances Authorizing a Contract with Heard Farms; and Declaring an Emergency (2nd Reading) Pg. 23

9. NEW BUSINESS

- A. Cancellation of July 3, 2019 City Council Meeting
- B. Appointment of City Recorder Pro-Tem

10. CITY ADMINISTRATOR'S BUSINESS & STAFF REPORTS

11. CITIZEN INPUT

12. ACTION REVIEW

13. EXECUTIVE SESSION: ORS 192.660(2)(h) Litigation

14. 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 Joshua Davis at 503.266.0733. A copy of this Agenda can be found on the City's web page at www.canbyoregon.gov. City Council and Planning Commission Meetings are broadcast live and can be viewed on CTV Channel 5. For a schedule of the playback times, please call 503.263.6287.



City of Canby

PO Box 930 Phone: 503.266.4021
222 NE 2nd Ave Fax: 503.266.7961
Canby, OR 97013 www.canbyoregon.gov

DATE: JUNE 19, 2019

TO: CANBY CITY COUNCIL

FROM: RICK ROBINSON, CITY ADMINISTRATOR

RE: AMENDMENT TO CITY ATTORNEY EMPLOYMENT CONTRACT

Issue: The City Attorney position is one of only two full-time, non-represented employees currently not receiving periodic cost of living salary adjustments. If approved, the attached Amendment to the City Attorney Employment Contract would establish a cost of living adjustment consistent with that received by other non-represented employees.

Summary: As the Mayor and Council are aware, it can be difficult to attract and retain quality professionally trained employees into the public sector. Currently the City Attorney position is one of only two full-time, non-represented employees currently not receiving periodic cost of living salary adjustments. Council approval of the proposed amendment to the City Attorney employment contract will help the City remain competitive in our efforts to attract and retain high quality professional staff. If approved, the attached Amendment to the City Attorney Employment Contract would establish a cost of living adjustment consistent with that received by other non-represented employees.

Attachments: Amendment to City Attorney Employment Contract

Recommendation: Approve the Amendment to the City Attorney Employment Contract.

AMENDMENT TO EMPLOYMENT CONTRACT
City Attorney

This Amendment, dated June 19, 2019 to the Employment Agreement dated March 12, 2012, between the City of Canby, Oregon, a Municipal Corporation, and Joseph A. Lindsay, is intended to establish a periodic cost of living salary adjustment consistent with that received by other non-represented employees.

Section 5 of the current employment agreement is amended by adding the following language at the end of the paragraph; *Employee shall be eligible for a cost of living adjustment effective the first full pay period of July, consistent with other City of Canby non-represented employees. Annual cost of living adjustments shall continue until further amended in accordance with the provisions of this paragraph.*

Effective July 1, 2019, Section 5 of the current employment agreement is amended by adding a 3.3% cost of living adjustment and changing the amount of the base salary to \$131,191.00 per year, which represents a comparable and competitive salary for the City Attorney position.

All other terms and conditions of the current employment agreement remain in full force and effect, including a full time, five-day workweek.

IN WITNESS WHEREOF, the undersigned have executed this Amendment to Employment Agreement the day and year first written above.

CITY OF CANBY:

Brian Hodson
Mayor

ATTEST:

Rick Robinson
City Recorder Pro-Tem

Joseph A. Lindsay,
Canby City Attorney

M E M O R A N D U M

DATE: June 19, 2019
TO: Honorable Mayor Hodson and City Council
FROM: Julie Blums, Finance Director
CC: Rick Robinson, City Administrator
RE: **A RESOLUTION ADOPTING BUDGET APPROPRIATION TRANSFERS FOR FISCAL YEAR 2018-2019.**

Issue: Adoption of Budget Appropriation Transfers for the 2018-2019 fiscal year.

Background: Court collection costs are higher due to the collection agency collecting more delinquent accounts than projected. Also, the General Fund non-allocated personnel services budget needs to be increased due to an increase in retirements and the resignation of key staff.

The Library collects funds from the sales of items in the Friends of the Library (FOL) area and then issues payment to the FOL. The amount of FOL sales has exceeded expectations which mean the corresponding expense needs to be increased also. The net outcome will be \$0 to the library for the year.

An appropriations increase is needed in the Sewer Fund to cover the costs of sewer billing.

An appropriations increase is needed in the Facilities Fund to cover higher costs of utilities.

To maintain compliance with local budget law, an appropriation transfer resolution must be adopted to allow for the increase and decrease in expenditure appropriations. Total fund appropriations are not changing, just the allocation between departments is being adjusted.

Recommendation: Staff recommends that Council adopt Resolution No. 1315

Recommended Motion: ***“I move to adopt Resolution 1315, A RESOLUTION ADOPTING BUDGET APPROPRIATION TRANSFERS FOR THE 2018-2019 FISCAL YEAR.”***

Attached: Resolution No. 1315

RESOLUTION NO. 1315

A RESOLUTION ADOPTING BUDGET APPROPRIATION TRANSFERS FOR THE 2018-2019 FISCAL YEAR.

WHEREAS, the City of Canby budget for the 2018-2019 fiscal year was adopted by the City Council at a regular meeting thereof on Wednesday, June 19, 2018; and

WHEREAS, the City of Canby has the need to transfer existing appropriations between departments; and

WHEREAS, a transfer appropriation is required.

NOW, THEREFORE, BE IT RESOLVED by the City of Canby City Council as follows:

Section 1. Appropriations for the 2018-19 budget year are transferred in the following amounts.

	Current Appropriation	Change	Revised Appropriation
General Fund			
Court	\$484,937	\$15,000	\$499,937
Not allocated personnel services	105,000	40,000	145,000
Contingency	302,000	(55,000)	247,000
	<hr/> \$891,937	\$0	<hr/> \$891,937
Library Fund			
Transfers Out/Special Payments	\$625,778	\$2,000	\$627,778
Contingency	3,370	(2,000)	1,370
	<hr/> \$629,148	\$0	<hr/> \$629,148
Sewer Fund			
Not allocated materials & services	\$367,500	\$7,000	\$374,500
Collections	1,464,017	(7,000)	1,457,017
	<hr/> \$1,831,517	\$0	<hr/> \$1,831,517
Facilities Fund			
Facilities	\$384,295	\$10,000	\$394,295
Contingency	30,047	(10,000)	20,047
	<hr/> \$414,342	\$0	<hr/> \$414,342

This resolution shall take effect on June 19, 2019.

ADOPTED by the Canby City Council at a regular meeting thereof on June 19, 2019.

Brian Hodson
Mayor

ATTEST:

Rick Robinson
City Recorder Pro-Tem

M E M O R A N D U M

DATE: June 19, 2019
TO: Honorable Mayor Hodson and City Council
FROM: Julie Blums, Finance Director
CC: Rick Robinson, City Administrator
RE: **A RESOLUTION VERIFYING THAT THE CITY OF CANBY HAS MET THE REQUIREMENTS TO RECEIVE STATE-SHARED REVENUE MONEY.**

Issue: Annual verification that the City has met the requirements to receive revenues from intergovernmental taxes.

Background: ORS 221.760 Prerequisites for cities in counties over 100,000 population to receive revenues from cigarette, gas and liquor taxes. (1) The officer responsible for disbursing funds to cities shall disburse such funds in the case of a city located within a county having more than 100,000 inhabitants, according to the most recent federal decennial census, only if the officer reasonably is satisfied that the city meets the requirements or if the city provides four or more of the following municipal services; (a) Police protection, (b) Fire protection, (c) Street construction, maintenance and lighting, (d) Sanitary sewers, (e) Storm sewers, (f) Planning, zoning and subdivision control, or (g) One or more utility services.

Recommendation: That council adopts Resolution No. 1316 certifying that the city has met the requirements to receive state-shared revenue money.

Recommended Motion: ***“I move to adopt Resolution No. 1316, A RESOLUTION VERIFYING THAT THE CITY OF CANBY HAS MET THE REQUIREMENTS TO RECEIVE STATE-SHARED REVENUE MONEY.”***

Fiscal Impact: The city estimates amounts to be received are \$20,200 for cigarette taxes, \$290,000 for liquor taxes, and \$1,252,000 from highway taxes.

Attached: Resolution No. 1316

RESOLUTION NO. 1316

A RESOLUTION VERIFYING THAT THE CITY OF CANBY HAS MET THE REQUIREMENTS TO RECEIVE STATE-SHARED REVENUE MONEY.

WHEREAS, ORS 221.760 provides as follows:

Section 1. The officer responsible for disbursing funds to cities under ORS 323.455, 366.785 to 366.820, and 471.805 shall, in the case of a city located within a county having more than 100,000 inhabitants according to the most recent federal decennial census, disburse such funds only if the city provides four or more of the following services:

1. Police protection
2. Fire protection
3. Street construction, maintenance, and lighting
4. Sanitary sewer
5. Storm sewers
6. Planning, zoning, and subdivision control
7. One or more utility services and:

WHEREAS, City officials recognize the desirability of assisting the state officer responsible for determining the eligibility of cities to receive such funds in accordance with ORS 221.760.

NOW, THEREFORE, BE IT RESOLVED, by the City of Canby City Council, Clackamas County, Oregon hereby certifies that it provides the following four or more municipal services enumerated in Section 1, ORS 221.760:

1. Police protection
2. Street construction, maintenance and lighting
3. Sanitary sewers
4. Storm sewers
5. Planning, zoning and subdivision control

This Resolution shall take effect on June 19, 2019.

ADOPTED this 19th day of June 2019 by the Canby City Council.

Brian Hodson
Mayor

ATTEST:

Rick Robinson
City Recorder Pro-Tem

M E M O R A N D U M

DATE: June 19, 2019
TO: Honorable Mayor Hodson and City Council
FROM: Julie Blums, Finance Director
CC: Rick Robinson, City Administrator
RE: **A RESOLUTION DECLARING THE CITY'S ELECTION TO RECEIVE STATE REVENUE FOR FISCAL YEAR 2019-2020.**

Issue: A resolution declaring the City's election to receive state revenues for fiscal year 2019-2020.

Background: State Revenue Sharing Law, ORS 221.770, requires cities to annually pass an ordinance or resolution requesting state revenue sharing money. The law mandates public hearings be held by the city, both before the budget committee to discuss possible uses of the funds and before the city council on the proposed uses of the funds in relation to the entire budget. Certification of these hearings are required. This has to be done and filed with the Oregon Department of Administrative Services prior to July 31.

Recommendation: That council adopt Resolution No. 1317 declaring the city's election to receive state revenue for fiscal year 2019-2020.

Recommended Motion: ***"I move to adopt Resolution No. 1317, A RESOLUTION DECLARING THE CITY'S ELECTION TO RECEIVE STATE REVENUE FOR FISCAL YEAR 2019-2020."***

Fiscal Impact: The amount estimated by the city to receive is approximately \$192,400.

Attached: Resolution No. 1317

RESOLUTION NO. 1317

A RESOLUTION DECLARING THE CITY'S ELECTION TO RECEIVE STATE REVENUE FOR FISCAL YEAR 2019-2020.

WHEREAS, public hearings, giving citizens an opportunity to comment on the use of state revenue sharing funds were held before the Budget Committee on May 16, 2019 and before City Council on June 19, 2019.

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

Section 1 Pursuant to ORS 221.770, the City of Canby hereby elects to receive state revenues for fiscal year 2019-2020.

This Resolution shall be effective on June 19, 2019.

ADOPTED this 19th day of June 2019 by the Canby City Council.

Brian Hodson
Mayor

ATTEST:

Rick Robinson
City Recorder Pro-Tem

M E M O R A N D U M

DATE: June 19, 2019
TO: Honorable Mayor Hodson and City Council
FROM: Julie Blums, Finance Director
CC: Rick Robinson, City Administrator
RE: A RESOLUTION ADOPTING THE BUDGET, MAKING
APPROPRIATIONS, AND IMPOSING AND CATEGORIZING
TAXES FOR THE 2019-2020 FISCAL YEAR.

Issue: Oregon budget law requires adoption of an annual budget by June 30 of each year. ORS 294.453 requires the City to hold a public hearing, and ORS 294.458 requires the City to submit tax certification documents to the County Assessor by July 15th.

Background: The City passed a local option levy of \$0.49 per \$1,000 of assessed property value on November 08, 2016 to fund Swim Center operations. The City levies the taxes provided for in the adopted budget at the permanent rate of 3.4886 per \$1,000 of assessed property value. These taxes are hereby levied upon all taxable property within the district as of July 1, 2019. The allocation and categorization are subject to the limits of section 11b, Article XI of the Oregon Constitution.

Recommendation: Staff recommends City Council adopt Resolution No. 1318

Recommended Motion: ***“I move to adopt Resolution No. 1318, A RESOLUTION ADOPTING THE BUDGET, MAKING APPROPRIATIONS, AND IMPOSING AND CATEGORIZING TAX FOR THE 2019-2020 FISCAL YEAR.”***

Attached: Resolution No. 1318

RESOLUTION NO. 1318

A RESOLUTION ADOPTING THE BUDGET, MAKING APPROPRIATIONS, AND IMPOSING AND CATEGORIZING TAX FOR THE 2019-2020 FISCAL YEAR

WHEREAS, a public hearing for the 2019-2020 City Budget as approved by the Budget Committee was duly and regularly advertised and held on June 19, 2019; and

WHEREAS, the City Council of Canby proposes to levy the taxes provided for in the adopted budget at the permanent rate of 3.4886 per \$1,000 and a local option levy of 0.49 per \$1,000 of assessed property value and that these taxes be levied upon all taxable property within the district as of July 1, 2019; and

WHEREAS, the following allocation and categorization subject to the limits of section.11b, Article XI of the Oregon Constitution make up the above aggregate levy.

RESOLUTION IMPOSING AND CATEGORIZING THE TAX

NOW, THEREFORE, BE IT RESOLVED by the City of Canby City Council that the following ad valorem property taxes are hereby imposed and categorized for the tax year 2019-2020 upon the assessed value of all taxable property within the district:

General Government Limitation

- (1) At the rate of \$3.4886 per \$1,000 of assessed value for permanent rate tax;
- (2) At the rate of \$0.4900 per \$1,000 of assessed value for local option tax; and

Excluded from Limitation

- (3) In the amount of \$0 for debt service for general obligation bonds;

RESOLUTION ADOPTING THE BUDGET

BE IT RESOLVED that the City Council of the City of Canby hereby adopts the budget for fiscal year 2019-20 in the total of \$51,769,326. This budget is now on file at City Hall, 222 NE 2nd Ave., Canby, Oregon.

RESOLUTION MAKING APPROPRIATIONS

BE IT RESOLVED that the amounts for the fiscal year beginning July 1, 2019, and for the purposes shown below are hereby appropriated:

Total APPROPRIATIONS , All Funds	\$29,691,315
Total Unappropriated and Reserve Amounts, All Funds	<u>22,078,011</u>
TOTAL ADOPTED BUDGET	\$51,769,326

General Fund	
Administration	\$ 631,616
HR/Risk Mgmt.	569,412
Court	533,897
Planning	390,470
Parks	1,527,640
Building	29,099
Police	5,968,766
Cemetery	134,916
Finance	563,853
Economic Dev.	394,062
Not Allocated	
Personnel Services	75,000
Materials & Services	43,917
Special Payments	25,000
Transfers Out	125,586
Contingency	200,000
Total	\$ 11,213,234

Library Fund	
Library	\$ 992,916
Special Payments	15,000
Transfers Out	636,707
Contingency	9,461
Total	\$ 1,654,084

Transit Fund	
Transit	\$ 2,527,386
Transfers Out	190,668
Contingency	100,000
Total	\$ 2,818,054

Swim Levy Fund	
Swim	\$ 988,528
Transfers Out	124,096
Contingency	41,126
Total	\$ 1,153,750

Transient Room Tax Fund	
Tourism Promotion	\$ 30,270
Tourism Enhancement	12,915
Total	\$ 43,185

Streets Fund	
Streets	\$ 4,147,835
Transfers Out	184,653
Contingency	53,240
Total	\$ 4,385,728

SDC Fund	
Transfers Out	\$ 910,000

Cemetery Perpetual Care Fund	
Transfers Out	\$ 500,000

Forfeiture Fund	
Forfeiture	\$ 41,504

Facilities Fund	
Facilities	\$ 328,509
Contingency	16,325
Total	\$ 344,831

Fleet Fund	
Fleet	\$ 623,534
Contingency	31,177
Total	\$ 654,711

Tech Services Fund	
Tech Services	\$ 409,091
Contingency	16,252
Total	\$ 418,343

Sewer Fund	
WWTP	\$ 2,826,101
Collections	1,379,280
Stormwater	275,070
Not Allocated	
Personnel Services	38,375
Materials & Services	336,000
Transfers Out	464,065
Contingency	235,000
Total	\$ 5,553,891

The above resolution statements were approved and declared adopted on this 19th day of June 2019.

Brian Hodson
Mayor

ATTEST:

Rick Robinson
City Recorder Pro-Tem

M E M O R A N D U M

DATE: June 19, 2019
TO: Honorable Mayor Hodson and City Council
FROM: Julie Blums, Finance Director
CC: Rick Robinson, City Administrator
RE: **A RESOLUTION AUTHORIZING AN INTERFUND LOAN FROM THE CEMETERY PERPETUAL CARE FUND TO THE LIBRARY FUND IN THE AMOUNT OF \$500,000 AND AUTHORIZING REPAYMENT OF THE INTERFUND LOAN IN FISCAL YEAR 2019-20.**

ISSUE: Authorizing an interfund loan from the Cemetery Perpetual Care Fund to the Library Fund in an amount not to exceed \$500,000 and authorizing the repayment of said loan from the Library Fund to the Cemetery Perpetual Care Fund with interest in FY 2019-2020.

SYNOPSIS: On June 19, 2019 the Canby City Council adopted a budget that included and interfund loan from the Cemetery Perpetual Care Fund to the Library Fund for operational purposes.

The Library Fund has used the majority of their reserve balances and will not receive the bulk of their annual revenue until January 2020. Oregon Budget Law does not allow a Fund to run a deficit balance, therefore an interfund loan is needed to cover the operations costs until property tax revenue is received from Clackamas County in January 2020.

This interfund loan will be repaid in FY2019-20 with interest at the rate earned by the Oregon State Local Investment Pool.

Without a long term funding strategy for the Library it is likely that an interfund loan will be needed every year to cover costs until revenue is received.

RECOMMENDATION: Staff recommends that Council adopt Resolution No. 1319

RECOMMENDED MOTION: **“I move to adopt Resolution No. 1319, A RESOLUTION AUTHORIZING AN INTERFUND LOAN FROM THE CEMETERY PERPETUAL CARE FUND TO THE LIBRARY FUND IN THE AMOUNT OF \$500,000 AND AUTHORIZING REPAYMENT OF THE INTERFUND LOAN IN FISCAL YEAR 2019-2020.”**

ATTACHED: Resolution No. 1319

RESOLUTION NO. 1319

A RESOLUTION AUTHORIZING AN INTERFUND LOAN FROM THE CEMETERY PERPETUAL CARE FUND TO THE LIBRARY FUND IN THE AMOUNT OF \$500,000 AND AUTHORIZING REPAYMENT OF THE INTERFUND LOAN IN FISCAL YEAR 2019-2020.

WHEREAS, the City of Canby adopted a budget and appropriated funds for Fiscal Year 2019-20 by Resolution 1319, which provided for an interfund loan from the Cemetery Perpetual Care Fund to the Library Fund, and provided for repayment of the interfund loan; and

WHEREAS, ORS 294.460 provides that one fund may loan funds to another fund for operational purposes, provided that the loan is approved by resolution of the governing body and that such loan is scheduled to be repaid no later than the subsequent fiscal year; and

WHEREAS, The Library Fund does not have sufficient reserves to cover the anticipated operating costs prior to the receipt of property tax revenue from Clackamas County in January 2020; and

WHEREAS, it is the intent of the City to loan these funds at the rate earned by the State of Oregon Local Investment Pool during the period these funds are outstanding.

NOW, THEREFORE, BE IT RESOLVED by the City of Canby City Council:

1. The Cemetery Perpetual Care Fund is authorized to loan to the Library Fund an amount up to \$500,000 in FY 2019-20.
2. The loan shall be repaid in fiscal year 2019-20 with interest bearing at the rate earned by the State of Oregon Local Investment Pool.
3. The Library Fund is authorized to repay to the Cemetery Perpetual Care Fund the principal amount borrowed in FY 2019-20 plus interest at the rate earned by the State of Oregon Local Investment Pool.

This Resolution shall take effect on July 1, 2019.

ADOPTED this 19th day of June 2019 by the Canby City Council.

Brian Hodson
Mayor

ATTEST:

Rick Robinson
City Recorder Pro-Tem



City of Canby

PO Box 930 Phone: 503.266.4021
222 NE 2nd Ave Fax: 503.266.7961
Canby, OR 97013 www.canbyoregon.gov

DATE: June 19, 2019
TO: CANBY CITY COUNCIL
FROM: RICK ROBINSON, CITY ADMINISTRATOR
RE: ORDINANCE NO. 1511: AN ORDINANCE AUTHORIZING THE CITY OF CANBY TO ENTER INTO A PURCHASE AND SALE AGREEMENT WITH PIONEER PROPERTY, LLC FOR THE PURCHASE OF REAL PROPERTY.

Issue: The City of Canby offers transit services through Canby Area Transit. In 2016 the City acquired, for the benefit of Canby Area Transit, an approximately one acre parcel for use as a Transit Bus Yard.

Canby Area Transit currently leases office space used for administrative and dispatch services. As part of its long term planning for transit services, the City has identified a need to acquire property to locate administrative offices in close proximity to the transit bus yard.

An approximately one acre parcel immediately adjacent to the transit bus yard is currently available for sale that would serve the long term needs of Canby Area Transit.

Summary: The City is currently leasing office space near Wilco on Hazel Dell Way. The cost of leasing property is continuing to increase each year and the City has no assurance that the property will continue to be available in the future. A parcel approximately one acre in size and immediately adjacent to the Canby Area Transit bus yard is available for purchase.

Acquisition of this property would provide the City the opportunity to construct a permanent home for its Transit Administrative and Dispatch services, guarantee that Canby Area Transit administrative services and bus yard would be in close proximity to one another, and lock in the cost of the land during a period of escalating real estate values. Staff is requesting the declaration of an emergency as the scheduling of inspections is time sensitive and could adversely impact the City's ability to meet the time constraints in the agreement.

Attachments: Ordinance 1511 and the Purchase and Sale Agreement attached as Exhibit "A"

Recommendation: Authorize the Purchase and Sale Agreement.

Motion: *"I move to approve Ordinance No. 1511, AN ORDINANCE AUTHORIZING THE CITY OF CANBY TO ENTER INTO A PURCHASE AND SALE AGREEMENT WITH PIONEER PROPERTY, LLC FOR THE PURCHASE OF REAL PROPERTY to come up for second reading on July 17, 2019."*

ORDINANCE NO. 1511

AN ORDINANCE AUTHORIZING THE CITY OF CANBY TO ENTER INTO A PURCHASE AND SALE AGREEMENT WITH PIONEER PROPERTY, LLC FOR THE PURCHASE OF REAL PROPERTY; AND DECLARING AN EMERGENCY.

WHEREAS, the City of Canby offers transit services known as Canby Area Transit; and

WHEREAS, the City of Canby acquired, for the benefit of Canby Area Transit, certain property on Hazel Dell Way for use as a Transit Bus Yard; and

WHEREAS, Canby Area Transit currently leases office space used for administrative and dispatch services; and

WHEREAS, Canby Area Transit desires to construct office space in a permanent location; and

WHEREAS, suitable land immediately adjacent to the City-owned transit bus yard property is currently available for purchase; and

WHEREAS, the City of Canby would like to have a more permanent location for Canby Area Transit administrative and dispatch services close to the Canby Area Transit bus yard.

NOW, THEREFORE, THE CITY OF CANBY ORDAINS AS FOLLOWS:

Section 1. The City Administrator is hereby authorized on behalf of the City to enter into a Purchase and Sale Agreement for the purchase of real property from Pioneer Property, LLC. A copy of the Purchase and Sale Agreement is attached hereto as Exhibit "A."

Section 2. Due to to the difficulty of scheduling an environmental review and time restraints, 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 June 19, 2019, and 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 July 17, 2019, commencing at the hour of 7:00 PM at the Council Meeting Chambers located at 222 NE 2nd Avenue, 1st Floor, Canby, Oregon.

Rick Robinson
City Recorder Pro-Tem

PASSED on second and final reading by the Canby City Council at a regular meeting thereof on the July 17, 2019, by the following vote:

YEAS _____

NAYS _____

Brian Hodson
Mayor

ATTEST:

Rick Robinson
City Recorder Pro-Tem

PURCHASE AND SALE AGREEMENT

Effective Date: July 17, 2019

SELLER: Pioneer Property, LLC
an Oregon limited liability company
1012 Island View
Kemah, TX 77565
ATTN: Manager
281-772-5249
281-957-9233 (fax)

BUYER: City of Canby
an incorporated Oregon municipality
PO Box 930
Canby, OR 97013
ATTN: City Administrator
503-266-0745
503-266-7961 (fax)

Recital

Seller desires to sell to Buyer and Buyer desires to purchase from Seller certain real property with all improvements located on Hazel Dell Way, Canby, Oregon, having the following legal description (the "Property"):

Lot 19 S Hazel Dell Way
APN – 5030908
Tax Lot 4507
Section 34, T3S, R1E, W.M.
City of Canby,
County of Clackamas,
State of Oregon.

Agreement

Now, therefore, for valuable consideration, the parties agree as follows:

- 1. Sale and Purchase.**
 - 1.1 Buyer agrees to purchase the Property from Seller and Seller agrees to sell the Property to Buyer for the sum of \$380,000 (the "Purchase Price").

1.2 Buyer agrees to pay all costs required for closing of this transaction. Costs shall include but not be limited to legal document preparation, inspections if initiated by Buyer, environmental reports if initiated by Buyer, surveys, title policies, escrow fees, recording fees, and Buyer's prorated portion of real estate taxes.

2. **Payment of Purchase Price.** The Purchase Price and costs must be paid at closing.

3. **Closing.** Time is of the essence. Closing must take place on a mutually agreed on date, but in no event later than August 31, 2019. The terms *closed*, *closing* or *closing date* mean when the deed or contract is recorded and funds are available to Seller. The Escrow Agent shall close this transaction and act as escrow agent. .

4. **Preliminary Title Report.** Seller will furnish to Buyer a preliminary title report showing the condition of title to the Property, together with copies of all exceptions listed therein (the "Title Report"). Buyer will have 10 days from the execution of this Agreement to review the Title Report and to notify Seller, in writing, of Buyer's disapproval of any special exceptions shown in the Title Report. Those exceptions the Buyer does not object to are referred to below as the "Permitted Exceptions." Mortgages, delinquent taxes or other financial obligations secured by the Property are automatically deemed Unacceptable Exceptions. If Buyer notifies Seller in writing of Unacceptable Exceptions, Seller will have 15 days after receiving the Unacceptable Exceptions notice to either remove the exceptions or provide Buyer with reasonable assurances of the manner in which the exceptions will be removed before the transaction closes (the "Seller Assurance Period"). If Seller does not remove the Unacceptable Exceptions or provide Buyer with such assurances, Buyer may terminate this Agreement by written notice to Seller given within 15 days after expiration of the Seller Assurance Period, and, when applicable, this Agreement will be of no further binding effect.

5. **Seller's Delivery of Documents.** Within 15 days after the Effective Date, Seller shall deliver to Buyer any and all material information and documentation in the Seller's possession or control pertaining to the Property (the Due Diligence Documents).

If Seller is aware of the existence of any material information and documentation pertaining to the Property that are not within Seller's possession or control, the Seller shall notify Buyer of the existence of such information within fifteen (15) days after the Effective Date or two (2) business days after learning of such information

6. **Property and Environmental Inspections.** Buyer and its agents including but not limited to consultants, surveyors, engineers, home inspectors, appraisers, and other professionals hired by the Buyer shall have the right to access the Property to conduct environmental studies (including but not limited to Phase I and II

assessments), and any other inspections and testing Buyer deems necessary. Seller shall cooperate with Buyer making such inspections. Any area disturbed by Buyer's inspections shall be restored by Buyer at Buyer's sole cost and expense to its pre-inspection condition. To the extent allowed under state law, Buyer agrees to indemnify and hold Seller harmless from all loss, damage, or liability caused as a result of Buyer or Buyer's agents' access to the Property under this section. If Buyer is not satisfied, in its sole discretion, with the result of Buyer's inspections, Buyer may terminate this Agreement by written notice to Seller given at any time before the date set forth in Section 7.1.1 below.

7. Conditions

7.1 Buyer's obligation to purchase the Property is contingent on satisfaction of each of the following conditions:

7.1.1 Buyer's approval of its inspection of the Property under Section 6 above. Buyer will have until August 1, 2019, to complete its inspection of the Property. *If Buyer fails to give any notices of termination per Section 6 above, by August 1, 2019, the condition shall be satisfied or waived.*

7.1.2 Buyer must be satisfied in its sole and absolute discretion with its review of the Due Diligence Documents *by August 1, 2019 or the condition shall be deemed satisfied or waived.*

7.1.3. *If notification of material information as provided in Section 5 is made to Buyer on or after July 16, 2019, the August 1, 2019 Conditions satisfaction or waiver as described in this section 7 shall be extended by one day for each day beyond July 16, 2019 that the notification is provided to Buyer.*

7.1.4 At Closing, the Seller shall remove all Unacceptable Exceptions from the Title Report as reflected in a Pro Forma Title Policy provided by the Escrow Agent.

8. Marketable Title; Deed. On the Closing Date, unless agreed otherwise herein, Seller will convey fee simple title to the Property by statutory special warranty deed, free and clear of all liens of record, except the Permitted Exceptions.

9. Title Insurance. Within 15 days after Closing, Seller must furnish Buyer with an American Land Title Association owner's policy of title insurance in the amount of the purchase price, insuring Buyer as the owner of the Property subject only to the usual printed exceptions and the Permitted Exceptions.

10. Taxes; Prorates. Real property taxes for the current tax year and other usual items must be prorated as of the Closing Date. At Closing, Buyer shall pay or reimburse Seller for transfer taxes, all recording and escrow fees, and all other normal Closing costs, including the Title policy *set forth in Section 9 above.*

11. Possession. Buyer will be entitled to exclusive possession immediately on Closing.

12. Property Included. All improvements on the Property.

13. Personal Property. N/A

14. Seller's Representations. Seller hereby warrants and represents to Buyer the following:

14.1 Authority. The Seller has full power and authority to enter into this Agreement and to sell, transfer, and convey all right, title, and interest in and to the Property in accordance with this Agreement.

14.2 Seller warrants and represents to its knowledge without further investigation, Seller has not brought onto, stored, buried, used on, emitted or released from or allowed to be brought onto, stored on, buried, used on, emitted, released from, or produced or disposed of, from or on the Property any Hazardous Substances as defined under ORS 456.200 in violation of any environmental laws of the state or federal government.

15. Buyer's Representations. Buyer hereby warrants and represents to Seller the following:

15.1 Buyer represents that it has accepted and executed this Agreement on the basis of its own examination and personal knowledge of the Property; that Seller and Seller's agents have made no representations, warranties, or other agreements concerning matters relating to the Property; that Seller and Seller's agents have made no agreement or promise to alter, repair, or improve the Property; and that Buyer takes the Property in the condition, known or unknown, existing at the time of the Closing, "AS IS" subject only to the conditions set forth in Section 5 and Section 7.

16. Risk of Loss. Seller bears the risk of all loss or damage to the Property from all causes through Closing except those caused by the Buyer.

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

18. Attorney Fees. If an action is instituted to enforce or interpret any term of this Agreement, the prevailing party will recover from the losing party reasonable attorney fees incurred in the action as set by the trial court or arbitrators, as the case may be, and, in the event of appeal, as set by the appellate courts.

19. Notices. All notices and communications in connection with this Agreement must be given in writing and will be transmitted by certified or registered mail, return receipt requested, to the appropriate party at the address first set forth above. Any notice so transmitted will be deemed effective on the date it is placed in the

United States mail, postage prepaid. Either party may, by written notice, designate a different address for purposes of this Agreement.

20. Entire Agreement. This Agreement sets forth the entire understanding of the parties with respect to the purchase and sale of the Property. This Agreement supersedes any and all prior negotiations, discussions, agreements, and understandings between the parties. This Agreement may not be modified or amended except by a written agreement executed by both parties.

21. Survival of Representations. The covenants, agreements, representations and warranties made herein shall survive Closing and will not merge into the Deed upon recordation in the official real property records.

22. Applicable Law. This Agreement will be construed, applied, and enforced in accordance with the laws of the state of Oregon.

23. No Brokers. Each Party warrants to the other Party that no broker or agent was consulted or engaged in connection with this transaction, and each Party will indemnify, defend, and hold harmless the other from and against all claims, losses, and liabilities made or imposed for any commission or finder's fee to any broker or agent and arising out of the actions of such party.

24. Recitals. The statements and information set forth in the Recitals are hereby incorporated as if fully set forth herein and shall be used for the purposes of interpreting this Agreement.

25. Governing Law. The parties acknowledge that this Agreement has been negotiated and entered into in the state of Oregon. The parties hereby expressly agree that this Agreement is governed by and should be interpreted in accordance with the laws of the state of Oregon.

26. Acceptance. This Agreement will be null and void unless accepted by Seller, by Seller's execution of it, on or before July 17, 2019.

28. Statutory Warning. 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 THAT, IN FARM OR FOREST ZONES, MAY NOT AUTHORIZE CONSTRUCTION OR SITING OF A RESIDENCE AND THAT LIMIT LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, IN ALL ZONES. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007 AND SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009. BEFORE SIGNING OR ACCEPTING THIS

INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO VERIFY THE EXISTENCE OF FIRE PROTECTION FOR STRUCTURES AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, AND SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.

SELLER:
PIONEER PROPERTY, LLC
an Oregon limited liability company

BUYER:
CITY OF CANBY,
an incorporated Oregon municipality

Gerald E. Turner, Member

Richard Robinson, City Administrator

Dated: _____, 2019

Dated: _____, 2019

ORDINANCE NO. 1513

AN ORDINANCE AUTHORIZING THE MAYOR AND CITY ADMINISTRATOR TO ENTER INTO A CONTRACT WITH HEARD FARMS FOR WASTEWATER SEWAGE SLUDGE REMOVAL, REPEALING ALL OTHER ORDINANCES AUTHORIZING A CONTRACT WITH HEARD FARMS; AND DECLARING AN EMERGENCY.

WHEREAS, the City of Canby requires the hauling of tonnage of wet sewage sludge as part of its wastewater treatment; and

WHEREAS, the City of Canby desires to secure a cost-effective contract for this integral service.

NOW, THEREFORE, THE CITY OF CANBY, OREGON, ORDAINS AS FOLLOWS:

Section 1. The City Administrator is hereby authorized on behalf of the City to enter into a Personal Services Agreement with Heard Farms to haul sewage sludge for the City. A copy of the Personal Services Agreement is attached hereto as Exhibit "A."

Section 2. The effective date of this Ordinance shall be July 1, 2019.

Section 3. In so much as it is in the best interest of the citizens of the City of Canby, Oregon to provide wastewater sewage sludge removal 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 therefore on Wednesday, June 5, 2019 ordered posted as required by the Canby City Charter; and scheduled for second reading on Wednesday, June 19, 2019, commencing at the hour of 7:00 PM in the Council Chambers located at 222 NE 2nd Avenue, 1st Floor Canby, Oregon.

Rick Robinson
City Recorder Pro-Tem

2nd Reading

PASSED on second and final reading by the Canby City Council at a regular meeting thereof on the 19th day of June 2019, by the following vote:

YEAS _____

NAYS _____

Brian Hodson
Mayor

ATTEST:

Rick Robinson
City Recorder Pro-Tem

EXHIBIT "A"

PERSONAL SERVICES AGREEMENT

THIS AGREEMENT is between the CITY OF CANBY (City) and Heard Farms (Contractor).

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

The Parties Agree a Follows:

- 1. Scope of Services. Contractor's services under this Agreement are set forth in Exhibit "A", attached hereto.
- 2. Contractor Identification. Contractor shall furnish to City its employer identification number as designated by the Internal Revenue Service, or Contractor's Social Security Number, as City deems applicable. **Contractor understands it is required to obtain a City of Canby Business License for conducting business in the City. Contractor agrees to obtain a Canby Business License prior to commencing work under this contract.**
- 3. Compensation:
 - A. City agrees to pay Contractor according to the proposed rate schedule submitted with the Contractor's proposal. See Exhibit "A" attached hereto. Contractor agrees that \$149,000 is the not to exceed price of this contract, without prior written approval from the City.
 - B. City agrees to pay Contractor within 30 days after receipt of Contractor's itemized statement reporting completed work. Amounts disputed by the City may be withheld pending settlement.
 - C. City certifies that sufficient funds are available and authorized for expenditure to finance costs of the Agreement.
- 4. Contractor is Independent Contractor.
 - A. Contractor's services shall be provided under the general supervision of the City Administrator. Contractor shall be an independent contractor for all purposes and shall be entitled to no compensation other than the compensation provided for under Paragraph #3 of this Agreement.
 - B. Contractor certifies that it is either a carrier-insured employer or a self-insured employer as provided in Chapter 656 of the Oregon Revised

Statutes.

C. Contractor hereby represents that no employee of the City, or any partnership or corporation in which a City Employee has an interest, will or has received any remuneration of any description from Contractor, either directly or indirectly, in connection with the letting or performance of this contract, except as specifically declared in writing.

5. **Subcontractors and Assignment.** Contractor shall neither subcontract any of the work, nor assign any rights acquired hereunder, without obtaining prior written approval from City. City, by this Agreement, incurs no liability to third persons for payment of any compensation provided herein to Contractor. Any subcontract between Contractor and subcontractor shall require the subcontractor to comply with all terms and conditions this agreement as well as applicable OSHA regulations and requirements.

6. Work is Property of City. All work performed by Contractor under this Agreement shall be the property of the City. City agrees that the Contractor may use its work in other assignments if all City of Canby data and references are removed.

7. Term.

A. This Agreement may be terminated by:

1. Mutual written consent of the parties.
2. Either party, upon thirty (30) days written notice to the other, delivered by certified mail or in person.
3. City, effective upon deliver of written notice to Contractor by certified mail, or in person, under any of the following:
 - a. If Contractor fails to provide services called for by this Agreement within the time specified or any extension thereof.
 - b. If Contractor fails to abide by the terms of this Agreement.
 - c. If services are no longer required.

8. Professional Standards. Contractor shall be responsible to the level of competency presently maintained by others practicing the same type of work in City's community, for the professional and technical soundness, accuracy and adequacy of all work and materials furnished under this authorization.

9. Insurance. Insurance shall be maintained by the Contractor with the following limits:

A. For General Liability Insurance, Contractor shall provide a Certificate of Insurance naming the City of Canby as an additional insured showing policy limits of not less than \$1,000,000 Combined Single Limit for Bodily

Injury/Property Damage on an occurrence basis.

B. For Automobile Insurance, Contractor shall provide a Certificate of Insurance naming the City of Canby as an additional insured showing policy limits of not less than \$1,000,000 Combined Single Limit for Bodily Injury/Property Damage on an occurrence basis for any vehicle used for City business or use otherwise related to this contract.

C. For Professional Liability—errors and omissions—a \$1,000,000 Combined Single Limit for Bodily Injury/Property Damage limit. **(Required for Architects, Appraisers, Attorneys, Consultants, Engineers, Planners, Programmers, etc.)**. For purposes of professional liability, Contractor shall provide proof of a Certificate of Insurance naming the City of Canby as a Certificate Holder.

D. For Worker's Compensation, Contractor shall provide a Certificate of Insurance naming the City of Canby as a Certificate Holder showing Worker's Compensation Insurance with statutory limits of coverage.

Procuring of such required insurance at the above-stated levels shall not be construed to limit the Contractor's liability hereunder. Notwithstanding said insurance, Contractor shall be obligated for the total amount of any damage, injury, loss, or related costs caused by or related to Contractor's negligence or neglect connected with this Agreement.

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

14. Savings Clause. Should any provision of this Agreement be found to be in conflict with any federal or Oregon state law, or final controlling decision of any Court of competent jurisdiction, or ruling or decision of any controlling administrative agency, all other provisions of this Agreement shall remain in full force and effect.

CITY: Rick Robinson, City Administrator
City of Canby
PO Box 930
Canby, OR 97013

CONTRACTOR: Richard Heard
Heard Farms, Inc.
578 Rogers Road
Roseburg, OR 97471

Please submit invoices to: **Attn: Accounts Payable**
City of Canby
PO Box 930
Canby, OR 97013
ap@canbyoregon.gov

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

CONTRACTOR: **CITY OF CANBY**

By: By:

Date: Date:

Subcontractors will be used _____ No (If Yes, please complete List of Subcontractors attached to this Agreement)

Approved as to Form:

Joseph Lindsay
City Attorney

EXHIBIT "A"

Memorandum of Agreed Terms for Personal Services Agreement between City of Canby, Oregon (City) and Heard Farms, Inc. for Sewage Sludge Pickup and Disposal

In addition to the terms agreed upon in the signed Personal Services Agreement, the City of Canby, Oregon (City) and Heard Farms, Inc. agree to the following:

1. Heard Farms will pick up and dispose of sewage sludge from the City of Canby Wastewater Treatment Plant located at 1480 NE Territorial Road in Canby, Oregon, at a price of \$61.00 per ton.
2. The above-stated price of \$61.00 per ton will remain fixed for a one year period. Any subsequent change to the \$61.00 per ton price will require a new agreement.
3. The Personal Services Agreement shall be effective from July 1, 2019 through June 30, 2020.
4. Sewage sludge is not required to meet the Class B standard in order for Heard Farms to haul them off and dispose of them. The sewage sludge shall be in the range of 5 to 9 on the pH scale. Any testing of the sewage sludge for disposal purposes will be the responsibility of Heard Farms and will be done at the Heard Farms facility. The City is not responsible for this testing at all.
5. Containers and/or trailers will be hauled off by Heard Farms within 24 hours of the load being ready.
6. The City does not guarantee a specific amount of sewage sludge each month, but parties assume that amounts should be fairly consistent from month to month.
7. The City continues to reserve the right to haul off or have any excess sludge removed that Heard Farms cannot pick up and dispose of in a timely manner (by the end of each work week). The goal is to not store any sewage sludge over the weekends.
8. Ownership of the sewage sludge transfers to Heard Farms upon pick-up by Heard Farms.