

CANBY CITY COUNCIL

REGULAR MEETING

AUGUST 15, 1979

Mayor Robert E. Rapp presiding. Councilmembers present: Beryl Brown, Beauford Knight, Robert Swayze, Richard Nichols and Robert Westcott.

Also present: Administrator H.A. Wyman, Attorney Wade P. Bettis, Public Works Director Ken Ferguson, Public Works Supervisor Bud Atwood, Treasurer Myra Weston, Judge Jon Henriksen, Attorneys David Vuihkola and Martin Cohen, Lt. Jerry Giger, Officers Larry Grandfield and Fred Eastlick, Secretary Marilyn Perkett, Canby Herald Editor Jeff Durham, Oregonian Reporter Dianna Schmid, Sewage Treatment Plant Operator Charles Tooley, H.G.E. Inc. Patrick Curran, David Bury, Mr. and Mrs. Ronald Rhoden, Mr. and Mrs. Bobbie Fisher, Ernie Graham, Leadman Brian Towell, Larry Whitman, John Tatone, Stu Davis, Lee Engineering Jim Smith and Duane Lee and Compass Engineering Tom Tye.

Meeting was called to order at 7:30 p.m., followed by flag salute and roll call,

Councilman Swayze moved to approve minutes of August 1, 1979, Regular Meeting as distributed. Seconded by Councilman Knight, approved 4-0.

Under Citizen In-Put on Non-Agenda Items: Bud Atwood, Public Works Supervisor introduced Brian Towell the new Leadman for the Public Works Department. Lt. Jerry Giger introduced to Council the two new Police Officers, Larry Grandfield and Fred Eastlick.

Ordinances and Resolutions: Attorney Wade P. Bettis read Resolution No. 270. Councilman Knight noted on the Exhibit A of Agreement, page 1 and article 1, the address should read North Grant and Northwest First Avenue, with this correction Councilman Knight moved to approve Resolution No. 270, A RESOLUTION APPROVING AND AUTHORIZING MUTUAL AID CONTRACT WITH CLACKAMAS COUNTY TO MOVE, RELOCATE, IMPROVE AND MAINTAIN A HISTORIC BUILDING, I.E. CANBY RAILROAD DEPOT. Seconded by Councilman Nichols. Councilman Swayze expressed his concern that this was a good preservation and movement, however, he felt too much tax money would be spent according to the agreement to maintain the building. Mayor Rapp noted that this was a standard type contract and Council didn't enter this as a long term maintenance and the intention is for either the Chamber of Commerce or Historical Society to maintain the building. Attorney Bettis noted the terms in the agreement for termination if Council desired. Resolution No. 270 was approved by Council vote, 3 - 1, with Councilman Swayze voting nay.

Attorney Bettis read Ordinance No. 654 for first reading. Councilman Swayze moved to make appropriate postings for two full weeks and the final reading for approval to be September 5, 1979, after 7:30 p.m. for Ordinance No. 654, AN ORDINANCE AMENDING THE ZONING MAP OF THE CITY OF CANBY (APPLICATION OF MARTIN CLARK CONSTRUCTION INC., COUNTY R-20 TO CITY R-1 ZONE). Seconded by Councilwoman Brown, approved 4-0.

Ordinance No. 655 was read for first reading by Attorney Wade Bettis. Councilman Swayze moved that Ordinance No. 655, AN ORDINANCE AMENDING THE ZONING MAP OF THE CITY OF CANBY (APPLICATION OF GRO. ENTERPRISES, INC., COUNTY R-20 TO CITY R-1 ZONE). be approved for the appropriate postings of two full weeks and second and final reading be September 5, 1979, after 7:30 p.m. Seconded by Councilwoman Brown, approved by Council 4-0.

August 15, 1979

Under Communications: Administrator Wyman read a letter from Larry Whitman of Canby Taxi, requesting a rate increase due to rising costs. Councilman Swayze moved to grant Mr. Whitman an increase from 80¢ to \$1.00 per mile and to keep the flag drop at \$1.00 as it is now, effective immediately. Councilman Nichols seconded and Council approved motion unanimously.

Administrator Wyman read a letter from the newly appointed Judge Jon Henricksen expressing his appreciation of the appointment and his intention to serve the community 100%. Also, requesting Council to permit his law partners to Pro Tem in his absence. Councilman Swayze moved to approve and accept the following, Jon S. Henricksen, Esq., member of the Oregon State Bar, is hereby appointed, as of 9:00 o'clock p.m., Oregon Daylight Savings Time, on Wednesday, August 1, 1979, as Municipal Judge in and for the City of Canby, Clackamas County, State of Oregon. He shall serve at the pleasure of the Canby City Council and shall be paid a salary of \$7,560 for fiscal year 1979-80. It is further Ordered that David T. Viuhkola, Esq., and Martin R. Cohen, Esq., also members of the Oregon State Bar, are appointed judges pro tem of the Canby Municipal Court to act in the absence of Judge Henricksen. Dated this 15th day of August, 1979, nunc pro tunc August 1, 1979, and to be signed by the Council and City Administrator. Seconded by Councilman Nichols and approved 4-0. Administrator Wyman noted that former Judge Warren had been paid one month's salary, therefore, the agreement should be revised to \$6,930 salary for the remainder of the fiscal year. Councilman Swayze moved to amend the agreement to read "Shall be paid a salary of \$6,930 for the remainder of the fiscal year 1979-80. Councilwoman Brown seconded and Council approved unanimously. A copy of the order will be sent to Judge Henricksen and one attached to the minutes of this meeting. Judge Henricksen was in the audience and was introduced to Council and in turn introduced his associates who will pro tem for him, David T. Viuhkola and Martin R. Cohen. Judge Henricksen also wanted to reiterate the statements in his letter as to his service to the Council and the community. Judge Henricksen also wished to present a problem to Council. Canby utilizes the Clackamas County Jail facilities with himself and Court Clerk, JoAnne Emery, as the two initial people who now release prisoners on recognizance. If these two people can't be reached to recog and a prisoner has to be kept over, the city must pay additional unnecessary costs. The Judge explained that the County Jail has a 24 hour Recog Officer on duty to do this service at no cost to the city. Councilman Swayze moved that the Council give Judge Henricksen permission to sign an order for the City of Canby to utilize the services of the Clackamas County Recog Officer at no cost to the City. Seconded by Councilman Knight and passed 4-0. (NOTE: Councilman Westcott arrived at chambers at 8:10 p.m.)

A letter from Jack Hollenbeck was presented requesting permission to use Wait Park on August 18, 1979, for the finish area for the Second Annual Fair Run at about 10:30 a.m. Councilman Swayze moved to grant permission to Jack Hollenbeck of Canby Sporting Center to be allowed to use Wait Park as finish area for the Second Annual Fair Run on August 18, 1979, and request the administration to ask for a route map for the Police Department. Seconded by Councilwoman Brown, approved 5-0.

A letter from Attorney Wade P. Bettis was presented in reference to renewal of a permit to Pacific Northwest Bell Telephone Company. After some Council discussion, Councilman Westcott moved that the existing permit to Pacific Northwest Bell Telephone Company be extended through January 1980, at which time Canby Telephone Association will take over. Seconded by Councilman Swayze and approved 5-0.

Under New Business: Councilman Knight noted that due to the fact that Southern Pacific had cancelled 2 of our leases, one for the garbage dump site for \$1.00 and a storage yard for \$50, therefore, the accounts payable will be \$51 less than present-ed. Councilman Knight moved to approve accounts payable in the amount of \$58,825.08

be paid. Seconded by Councilman Nichols and approved 5-0 by roll call. Councilman Knight moved to approve and pay John McDonald and James M. Montgomery Engineering \$11,415.07, to be paid on water bond warrant drawn from the Clackamas County Treasury. Seconded by Councilman Westcott and approved by roll call vote 5-0.

Ken Ferguson, Public Works Director, presented a staff report on the L.I.D. #10 Bids. Staff recommended that the low bid from Parker-Northwest in the amount of \$204,993.05 be accepted conditional to Parker-Northwest submitting a revised bid figure for Sanitary Sewer Construction which will be within 10% of the Engineers estimate of \$140,893.81. This was due to the fact that original bids included granular landfill in all trench excavations which will not be necessary, soil conditions permit water jetting. A revised bid copy will be attached to these original minutes. Councilman Swayze moved to accept the low bid from Parker-Northwest for LID #10, Alternate A of \$145,579. Seconded by Councilman Westcott, approved 5-0. Attorney Bettis reminded Council an Ordinance must be approved before the contract can be signed.

Unfinished Business: Administrator Wyman read the staff report in reference to extension of the sewer line at N. Pine Street and N.E. 4th. Staff recommendation was to follow the precedent established with other developments and require the applicant to extend the sewer line from its present location to the intersection of N. Pine and N.E. 4th. Councilman Knight inquired as to the Ordinance requirements. Ordinance states that developers must bring the sewer line through the property benefited, this is the existing Ordinance and was not in effect in 1971 when this area was developed. Applicants, Mr. and Mrs. Fisher and Mr. and Mrs. Rhoden, felt that it was unfair for them to have to pay to have the additional 180 feet of sewer line to their property line plus their own 237 feet of sewer line. Council realized that applicants were a victim of circumstances and were proposing a worthwhile business for our area and discussed several suggestions to help assist the applicants. Councilman Westcott suggested that the City share the cost of extending the sewer line the 180 feet to the edge of applicants property with the possibility of using sewer reserve funds. Mr. Rhoden requested time to discuss this with his partners. Mayor Rapp called for a 5 minute recess at 8:53 p.m. and reconvened at 9:00 p.m. Mr. Rhoden asked Council if they agreed to the share plan of expenses on the sewer extension would the Council consider reimbursing their share at a later date if the area were annexed? Council felt that due to unforeseen changes which may occur this would not be possible. Councilman Swayze requested a recess to work on the wording of the motion. Mayor Rapp recessed at 9:11 p.m. and reconvened Regular Meeting at 9:20 p.m. Councilman Westcott moved that the City share equally in the costs of the extension of an 8 inch sewer line approximately 180 feet long from existing sewer stub on North Pine to the Northeast corner of the Twilight Investors property located at the corner of North Pine at its southernly end, commonly referred to as the Jackson property. In as much as there is no possibility for a LID in that area to extend a sewer line needed by the City for development of property in that vicinity. Seconded by Councilman Swayze. Applicants also requested to do their own bidding, staff agreed with the stipulation that all phases be checked by and approved by City staff. Council approved motion 5-0.

Two orders were presented for Council approval. Councilman Nichols moved to approve the order of Dave J. Boland and Harold S. Jeans, request for approval of a preliminary plot of a subdivision to be called Willamette Green #2, as prepared by the City Attorney under direction of Council and to be signed this date, August 15, 1979. Seconded by Councilwoman Brown and approved by roll call vote 5-0. Due to a conflict of interest, Councilman Westcott abstained from voting on the following motion. Councilman Nichols moved to approve the order for Martin Clark for a minor land partition as prepared by the City Attorney under direction of Council and to be signed this date, August 15, 1979. Seconded by Councilwoman Brown and approved 4-0 by roll call. Copies will be sent to the applicants of both orders and copies attached to the minutes of this meeting.

August 15, 1979

Other Reports: Administrator Wyman informed Council that Phase III of Maple Street Park is now ready to start and bid calls may be released for lighting on the two ball fields and tennis courts. Councilman Westcott expressed his concern of the need to have a control or time-clocks to be included. Councilman Nichols moved that the City Administrator be authorized to call for bids on tennis court lighting with a time control and the ball fields lighting with an alternate in the bid call for timing devices for the ball fields. Seconded by Councilman Swayze, approved 5-0.

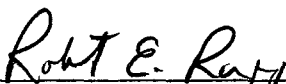
Mayor Rapp announced a Special Meeting for August 29, Wednesday, with Council to consider any matters that may come before the Council and members will be notified as to what will be covered in the workshop.

Councilman Westcott asked Council to consider what he felt was a turn of events in the Sewage Plant Engineering Consultant issue. The committee met several times and were instructed by staff to meet with certain engineers and look at their projects and then make a preliminary selections. The Public Works staff contacted other cities that had engineering done by this firm. However, some phone calls and personal contacts to some of the Council was made by some of the considered firms. Ken Ferguson, Public Works Director, had asked the firms to work through his office and not to contact any of the Council, as he felt it would only cloud the issue. Lee Engineers, the firm the committee selected, didn't contact any of the Council. Councilman Swayze commented that he felt a workshop should be held with perhaps 3 firms to be interviewed. After considerable Council discussion, Councilman Westcott moved that Council hear Lee Engineerings presentation tonight. Seconded by Councilwoman Brown, approved 4-1, by roll call with Councilman Swayze voting nay. Duane Lee, Lee Engineering, introduced his associates, Jim Smith a member of his staff and Tom Tye of Compass Engineering. Mr. Lee gave a short summary of their firm and also went over a preliminary report on their services that they would offer. Each phase will be approved by the Public Works Department. This report will be attached to the original minutes of this meeting. Councilman Westcott moved to table, due to circumstances surrounding this whole issue and to give Council time to consider this until next meeting on September 5, 1979. Seconded by Councilwoman Brown. Mr. Lee requested, on grounds of professional courtesy, that his firm either be totally accepted or rejected before going into any negotiations with any other firm. Council vote on motion was approval 5-0.

Ken Ferguson, Public Works Director, informed Council that the Traffic Safety Commission of the State of Oregon notified him that our traffic study was approved and funds are available with work to commence after September 1, 1979.

Mr. Ferguson also relayed to Council that two appeals would be coming before the Building Appeals Board, Friday morning, August 17, 1979. Two local contractors, Martin Clark and Otto Fintel are appealing a decision of a ruling by our building inspector, Mr. Godon. Mr. A.E. Gerber has resigned from the Appeals Board and a new member should be appointed soon, preferably a contractor since the rest of the board are suppliers. Council suggested that staff request Mr. Gerber to send in a letter of resignation.

Meeting adjourned at 10:32 p.m.


Robert E. Rapp, Mayor


Harold A. Wyman, Administrator/Recorder

August 15, 1979

SCHEDULE OF CONTRACT PRICES

PROPOSAL FOR THE CONSTRUCTION
OF THE PROPOSED LOCAL IMPROVEMENT DISTRICT NO. 10
FOR THE CREST VIEW REPLAT SUBDIVISION
IN THE CITY OF CANBY, OREGON

<u>ITEM</u>	<u>UNIT</u>	<u>ESTIMATED QUANTITY</u>	<u>UNIT COST</u>	<u>COST</u>
1. STREET				
A. Clearing and Grubbing	Lump Sum		\$ <u>1800⁰⁰</u>	\$ <u>1800⁰⁰</u>
B. Roadway excavation (unclassified)				
B 1. Juniper	L.F.	670	<u>3⁰⁰</u>	<u>2010⁰⁰</u>
B 2. Territorial	L.F.	430	<u>2⁰⁰</u>	<u>860⁰⁰</u>
B 3. Locust	L.F.	740	<u>3⁵⁰</u>	<u>2590⁰⁰</u>
C. Embankment and compaction				
C 1. Juniper	L.F.	670	<u>3⁰⁰</u>	<u>2010⁰⁰</u>
C 2. Territorial	L.F.	430	<u>2⁰⁰</u>	<u>860⁰⁰</u>
C 3. Locust	L.F.	740	<u>3⁵⁰</u>	<u>2590⁰⁰</u>
D. Concrete curb	L.F.	2,397	<u>2⁷⁵</u>	<u>6591⁷⁵</u>
E. Base course 1 1/2" x 0 - 6-inches	S.Y.	6,620	<u>2¹⁰</u>	<u>13,902⁰⁰</u>
F. Leveling course 3/4" x 0 - 2-inches	S.Y.	6,620	<u>\$ 0.88</u>	<u>5825⁶⁰</u>
G. A.C. Pavement - 2-inches	S.Y.	6,620	<u>2⁶⁰</u>	<u>17,212⁰⁰</u>
H. Sidewalks, 4'-6" wide 4" thick (along Territorial Road only)	L.F.	335	<u>7⁰⁰</u>	<u>2345⁰⁰</u>
STREET TOTAL.				\$ <u>58,596³⁵</u>

1A. STREET ALTERNATE

A. Clearing and Grubbing	Lump Sum		\$ <u>1800⁰⁰</u>	\$ <u>1800⁰⁰</u>
B. Roadway excavation (unclassified)				
B 1. Juniper	L.F.	670	<u>2⁰⁰</u>	<u>1340⁰⁰</u>
B 2. Territorial	L.F.	430	<u>1⁷⁵</u>	<u>752⁵⁰</u>
B 3. Locust	L.F.	740	<u>3⁰⁰</u>	<u>2220⁰⁰</u>

Item	Unit	Estimated Quantity	Unit Cost	Cost
C. Embankment and compaction				
C 1. Juniper	L.F.	670	\$ <u>200</u>	\$ <u>1340.00</u>
C 2. Territorial	L.F.	430	<u>175</u>	<u>752.50</u>
C 3. Locust	L.F.	740	<u>300</u>	<u>2220.00</u>
D. Concrete curb	L.F.	2,397	<u>275</u>	<u>6591.75</u>
E. A.C. Pavement - 4-inches	S.Y.	6,620	<u>520</u>	<u>34424.00</u>
F. Sidewalks, 4'-6" wide 4" thick (along Territorial Road only)	L.F.	335	<u>700</u>	<u>2345.00</u>
				<u>53,785.25</u>

2. STORM DRAINAGE

Total = Alternate 1A →

A. Trench Excavation (unclassified) and bedding	L.F.	966	<u>210</u>	<u>20286.00</u>
B. Trench backfill				
B 1. Gravel backfill Native	L.F.	666	<u>105</u>	<u>69930.00</u>
B 2. Native backfill	L.F.	300	<u>105</u>	<u>31500.00</u>
C. Pipe				
C 1. 8-inch concrete	L.F.	50	<u>525</u>	<u>26250.00</u>
C 2. 12-inch concrete	L.F.	916	<u>725</u>	<u>66410.00</u>
D. Catch basins				
D 1. Canby Standard	Each	4	<u>250.00</u>	<u>1000.00</u>
D 2. G-1, O.S.H.D.	Each	4	<u>300.00</u>	<u>1200.00</u>
D 3. G-2, O.S.H.D.	Each	1	<u>350.00</u>	<u>350.00</u>
E. Drywells				
E 1. Drywells to 24 feet	Each	4	<u>3076.50</u>	<u>12306.00</u>
E 2. Each additional foot	L.F.	8	<u>120.00</u>	<u>960.00</u>
F. Trench pavement restoration	L.F.	80	<u>425</u>	<u>34000.00</u>

STORM DRAINAGE TOTAL. . . \$ 261024.00

3. SANITARY SEWER

A. Trench Excavation (unclassified) and bedding 0 - 8 feet	L.F.	703	\$ <u>210</u>	\$ <u>147630.00</u>
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Item	Unit	Estimated Quantity	Unit Cost	Cost
3. Sanitary Sewer cont'd				
8 - 12 feet	L.F.	1,206	\$ 315	\$ 379890
12 - 16 feet	L.F.	2,386	470	1121420
B. Trench backfill				
B 1. Granular Native				
0 - 8 feet	L.F.	553	115	63595
8 - 12 feet	L.F.	1,206	140	168840
12 - 16 feet	L.F.	2,386	195	465270
B 2. Native Material	L.F.	150	150	22500
C. Pipe (Indicate Concrete or PVC)				
C 1. 6-inch	L.F.	702	390	273780
C 2. 8-inch	L.F.	1,860	520	967200
C 3. 10-inch	L.F.	1,743	700	1220100
D. Pipe fittings				
D 1. 8" x 6" tees	Each	21	1900	39900
D 2. 1/8th bends	Each	21	1900	39900
E. Manholes				
E 1. Manholes to 8 feet	Each	9	83000	747000
E 2. Each additional foot	L.F.	38	10500	399000
F. Cleanouts - 8-inch	Each	4	5500	22000
G. Tap to existing manhole	Each	1	10000	10000
SANITARY SEWER TOTAL.				\$ 6088025
BID TOTAL.				\$ 14557900

Total Bid
Alternate #19 140,76840

The above quantities are estimates based on the construction plans with revisions to the date indicated below. All data should be verified by the contractor prior to submitting a bid. Above unit costs include labor and materials to complete the project. Any material or work not specifically listed that may be required to complete this project shall be included in the various items listed.

For plans with revisions to July 12, 1979.

140,06240

DATE: August 10, 1979

TO: Honorable Mayor and City Council

FROM: Ken Ferguson, P.E.
Public Works Director

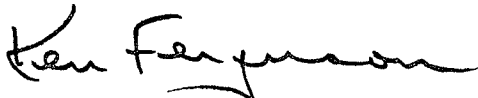
SUBJECT: Bids Received on L.I.D. #10, Territorial Road, North Locust Street
and North Juniper Street, for Street and Sanitary Sewer Improvements

Bids were opened and read publicly on August 9, 1979 for the above Local Improvement District No. 10. Attached is a tabulation of bids received.

The low bid from Parker Northwest was substantially higher than the Engineer's Estimate. This is due to two factors: (1) Bids on the sanitary sewer system were submitted with granular backfill in all trench excavation. Granular backfill is not required and was not in the Engineer's Estimate. This bid figure amounted to \$46,436.00. (2) As seen in the bid tabulation; the Engineer's Estimate for street and storm sewer construction was close to the bid figure of the low bidder. The bid for sanitary sewer construction was considerably in excess of the estimate even after the \$46,436.00 is deleted. The reason for this excess is not known.

It is recommended that the low bid from Parker-Northwest in the amount of \$204,993.05 be accepted conditional to Parker-Northwest submitting a revised bid figure for Sanitary Sewer construction which will be within 10% of the Engineer's Estimate of ~~\$128,085.29~~. 140,893.81

This has been discussed with Parker-Northwest and agreed to. This new bid figure is not available at the time of the writing of this report but will be presented at the meeting of August 15, 1979 to be made a part of this report.



Ken Ferguson

BID RESULTS OPENED AUG. 9, 1979

L.I.D. #10

Contractor	Street	Street Alt. A	Storm Drainage	Sanitary Sewer	Total	Total Alt. A
Parker Northwest	\$58,596.35	\$53,785.75	\$31,574.00	\$119,633.30	\$209,803.65	\$204,993.05
Pepper Construction, Inc.	58,512.60	53,702.00	47,740.00	155,079.39	261,331.99	256,521.39
Engineer's Estimate	57,052.78	57,052.78	29,700.00	41,332.50	128,085.29	128,085.29

\$145,579.00

BEFORE THE CANBY CITY COUNCIL OF CANBY, CLACKAMAS COUNTY, OREGON

In the Matter of the Appointment }
of a Municipal Judge. } ORDER

JON S. HENRICKSEN, Esq., member of the Oregon State Bar, is hereby appointed as of 9:00 o'clock P.M., Oregon Daylight Savings Time, on Wednesday, August 1, 1979, as Municipal Judge in and for the City of Canby, Clackamas County, State of Oregon. He shall serve at the pleasure of the Canby City Council and shall be paid a salary of \$6,930 for the remainder of fiscal year 1979-80.

It is further ORDERED that DAVID T. VIUHKOLA, Esq., and MARTIN R. COHEN, Esq., also members of the Oregon State Bar, are appointed judges pro tem of the Canby Municipal Court to act in the absence of Judge Henricksen.

DATED this 15th day of August, 1979, nunc pro tunc August 1, 1979.

Robt E Rapp
Robt. E. Rapp, Mayor

Robert D. Westcott
Robert Westcott, Councilperson

Beryl Brown
Beryl Brown, Councilperson

Robert Swayze
Robert Swayze, Councilperson

W. Beauford Knight
W. Beauford Knight, Councilperson

Richard Nichols
Richard Nichols, Councilperson

ATTEST:

Harold A. Wyman
Harold A. Wyman, City Administrator/Recorder

ATTORNEYS AT LAW
160 N.W. THIRD AVENUE
CANBY, OREGON 97013
266-1113 - 655-1674

1 BEFORE THE CANBY CITY COUNCIL OF CANBY, CLACKAMAS COUNTY, OREGON
2 In the Matter of the Application of }
3 MARTIN L. CLARK, for a minor land }
4 partition. } ORDER

5 The application of Martin L. Clark for a minor land partition
6 to divide a 10.02 acre parcel of land into three parcels at the
7 northwest corner of N.W. Baker Drive and N.W. Third Avenue, described
8 as Tax Lot 800 in Section 32D, Township 3 South, Range 1 East, of the
9 Willamette Meridian, was first considered by the Canby City Planning
10 Commission on April 25, 1979. The Planning Commission approved the
11 request but subject to conditions and the applicant filed a timely
12 notice of appeal to the Canby City Council.

13 The appeal hearing was duly and regularly scheduled for June 6,
14 1979, and proper notice of the time, place and purpose of the hearing
15 was given in the manner and for the time required by City ordinance.
16 At the time of hearing on June 6, 1979, the hearing was continued for
17 a full de novo evidentiary hearing on July 18, 1979. For lack of a
18 council quorum on July 18, 1979, said hearing was continued again
19 until after 7:30 o'clock P.M. at the Council Chambers on Wednesday,
20 August 1, 1979. Notice of said hearing was given to the applicant
21 and all interested parties.

22 On August 1, 1979, said hearing was convened and held and the
23 applicant appeared in person and the City of Canby was represented
24 by City Attorney, Wade P. Bettis. After the hearing was closed the
25 Council, as the hearing body, considered staff reports, recommendations
26 of the Planning Commission, presentations and oral arguments of the

Page

-1- Order.

1 applicant, and the entire record and file of this matter.

2 The Canby City Council, being fully advised in the matter, made
3 the following

4 FINDINGS

5 (1) The application complies with the applicable state-wide
6 planning goals and guidelines.

7 (2) The application conforms with the City's adopted
8 Comprehensive Development Plan and Map.

9 (3) The application meets the requirements of local ordinances.

10 (4) N. W. Baker Drive in the vicinity of the subject property
11 has now been reduced to a 50 foot street width according to the City's
12 new Zoning Ordinance No. 659, enacted August 1, 1979.

13 (5) There is a public need for the proposed partition and this
14 particular partition is the best method of meeting the public need.

15 (6) All of the findings made by the Planning Commission are the
16 same findings made by this hearing body and adopted as its findings
17 even though not set forth verbatim or in their entirety.

18 BASED ON THE EVIDENCE adduced at said hearing, and the records and
19 file of this matter, and the findings of the hearing body, it is hereby

20 ORDERED that

21 (1) The application of Martin L. Clark to partition Tax Lot 800
22 in Section 32D, Township 3 South, Range 1 East, of the Willamette
23 Meridian, in Canby, Clackamas County, State of Oregon, into three (3)
24 parcels of approximately two (2), three (3), and five (5) acres, is
25 approved subject to the following CONDITIONS:

26 (A) Furnish to or provide the Canby Telephone Association with

Page

1 (a) One copy of the proposed plat vicinity map showing
2 the property, location and type of subdivision being proposed and the
3 date the subdivider is proposing completion of project.

4 (b) Two approved copies of the completed plat vicinity
5 map no later than fifteen (15) days after final plat approval.

6 (c) A written agreement setting forth the amount and
7 condition for prepayment to the Association of the cost of utility
8 line construction before any work begins.

9 (d) Contact Canby Telephone Association at least 15
10 days before telephone facilities are to be placed within the subdivision.

11 (e) 6' utility easement on all interior lot lines.

12 (f) 12' utility easement on all exterior lot lines.

13 (g) Install 2" conduits under all existing and proposed
14 roadways, sidewalks, or any other areas covered by asphalt or cement
15 where telephone facilities are to be placed.

16 (h) Open all trenches for telephone utility lines
17 with a minimum depth of 30" of cover on final grade. The routing of
18 all trenches will be at the option of the Telephone Association.
19 Trenches will be opened in such a manner that telephone facilities can
20 be placed without delay.

21 (i) Assume responsibility for any damage that occurs
22 to the telephone facilities during the construction of other utilities
23 within the subdivision.

24 (B) N.W. Baker Drive is to have a full 50 foot right-of-way
25 dedicated for full frontage along the subject property and N.W. Baker
26 Drive shall be improved to full City standards without cost to the City.

Page

-3- Order.

1 (C) A municipal sanitary sewer line shall be extended,
2 without expense to the City of Canby, from the present location on
3 N.W. Third Avenue to a point on N.W. Baker Drive which is adjacent
4 to the northerly property line of the subject property.

5 (D) The frontage portion of N.W. Third Avenue (as deter-
6 mined necessary by the City Council) shall be dedicated to the City
7 for street purposes and then improved to City street standards with-
8 out cost to the City.

9 It is further ORDERED that City building or other use or
10 occupancy permits shall not be issued for any development or use
11 of the said property, or any partitioned part thereof, until the
12 City Engineer has certified to the Canby City Council that the
13 conditions imposed by this order have been complied with or met or
14 that satisfactory assurance for completion of them have been filed
15 with and approved by the City Engineer.

16 DATED this 15 day of August, 1979.

17 Robt E. Rapp
18 Robt. E. Rapp, Mayor

Robert Westcott, Councilperson

19 Beryl Brown
20 Beryl Brown, Councilperson

Robert Swayze
Robert Swayze, Councilperson

21 W. Beauford Knight
22 W. Beauford Knight, Councilperson

Richard Nichols
Richard Nichols, Councilperson

AGREEMENT
between
CITY OF CANBY
and
LEE ENGINEERING, INC.
for
PROFESSIONAL ENGINEERING SERVICES

THIS IS AN AGREEMENT made this _____ day of _____, in the year Nineteen Hundred Seventy Nine by and between the City of Canby, County of Clackamas County, State of Oregon, a Municipal Corporation, (hereinafter called OWNER), and Lee Engineering, Inc., Clackamas County, State of Oregon, a Corporation, (hereinafter called ENGINEER).

The OWNER has reviewed the qualifications of various engineers and has selected Lee Engineering, Inc. to provide professional engineering services to upgrade its sewerage system. The project is to include, and may not be limited to, the studies, design and construction review of improvements to its sewage treatment plant.

OWNER and ENGINEER, in consideration of their mutual covenants herein, agree in respect of the performance of professional engineering services by ENGINEER and the payment for those services by OWNER, as set forth below.

ENGINEER shall serve as OWNER'S professional engineering representative in those phases of the PROJECT to which this Agreement applies, and will give consultation and advice to OWNER during the performance of this services.

SECTION 1
BASIC SERVICES OF ENGINEER

1.1 General

1.1.1 ENGINEER shall perform professional services as hereinafter stated which shall include normal civil, structural and sanitary engineering services. The ENGINEER shall provide, through subcontracting, surveying, and normal architectural services incidental thereto.

Since the OWNER intends to authorize the ENGINEER to perform limited services for each of its future projects, and since those projects may not yet be defined, the services to be performed under this Agreement may include for each project one or more of the phases listed below.

LEE
PRELIMINARY
FOR DISCUSSION ONLY

1.2 Study and Report Phase

After authorization to proceed, ENGINEER shall follow the general outline below for the study and report phase of the project:

A. Introduction

Study Purpose & Scope

Planning & Service Areas (Including Maps)

B. Effluent Limitations

With regards to the City's present NPDES permit and any modifications which may be necessary to the permit to implement the proposed projects.

C. Current Situation, including discussions with the planning area, organizational operation of the City's sewerage system, population data and existing land use policies, water quality and uses and environmental inventory.

Inventory of Waste Water Flows & Treatment Systems

Preliminary Infiltration/Inflow Data with specific emphasis on reviewing the present flow measuring devices and verifying their accuracies.

A Review of the Performance of the Existing System and the Ultimate Capability of the existing treatment facility.

D. Future Situation

Land-use Basis for Future Considerations

Future Population and Economic Growth

Forecast of Flow & Wasteload

E. Full Development of Alternatives & Screening of Alternatives

F. Review of the above information with the City Council and presentation to the public at a regular Council meeting.

After preparation of the above information and responses from the Council and the public, the Engineer shall prepare a second report which shall include the following:

A. Introduction Statement indicating the interface of this phase of the project with the first phase.

B. Develop a detailed analysis of selected alternatives. The detailed development shall include an evaluation of cost estimates, environmental impacts, institutional feasibility and other factors

relating to at least two separate feasibility alternative solutions to correcting the sewage treatment plant situation.

- C. A Comparative Summary outlining the various alternatives and to submit this for Council and public review without recommendations.

Following the completion of development of the detailed alternatives and the results of Council and public input, a detailed final report shall be prepared which shall include the findings in the first two phases of the project and further develop the final alternative. The final report shall include:

- A. An introduction giving the background information for the development of the final alternative.
- B. Predesign information for the selected alternative including a flow diagram, a description of the various unit processors, a drawing showing the plant site layout, and various design data including detention times, flow rates, efficiency of operations, etc.
- C. Cost estimates including estimates for the final design, preparation of plans and specifications, construction costs, and other costs which may be necessary for a complete and operable system.
- D. A final schedule for completion of the project.
- E. A final financial plan for implementing the project.

Section 1.3 Not Used.

1.4 Final Design Phase

After authorization to proceed with the Final Design Phase, ENGINEER shall:

1.4.1 On the basis of the accepted preliminary design documents, prepare for incorporation in the Contract Documents final drawings to show the character and scope of the work to be performed by contractors on the PROJECT (hereinafter called "DRAWINGS"), and Specifications.

1.4.2 Furnish to OWNER such documents and design data as may be required for, and assist in the preparation of, the required documents so that OWNER may obtain approvals of such governmental authorities as have jurisdiction over design criteria applicable to the PROJECT, and assist in obtaining such approvals by participating in submissions to and negotiations with appropriate authorities.

1.4.3 Advise OWNER of any adjustments to his latest opinion of probable PROJECT COST caused by changes in scope, design requirements or construction costs and furnish a revised opinion of probable PROJECT COST based on the DRAWINGS and Specifications.

1.4.4 Prepare bid forms, Notice to Bidders, Instructions to Bidders, General Conditions and Supplementary Conditions and assist in the preparation of other related documents.

1.4.5 Furnish five copies of the above documents and present and review them in person with OWNER.

1.5 Bidding or Negotiating Phase

After authorization to proceed with the bidding or negotiating phase, ENGINEER shall:

1.5.1 Assist OWNER in obtaining bids or negotiating proposals for each separate prime contract for construction or equipment.

1.5.2 Consult with and advise OWNER as to the acceptability of subcontractors and other persons and organizations proposed by the prime contractor(s) (hereinafter called "CONTRACTOR[S]") for those portions of the work as to which such acceptability is required by the Contract Documents.

1.5.3 Consult with and advise OWNER as to the acceptability of substitute materials and equipment proposed by CONTRACTOR(S) when substitution is permitted by the Contract Documents.

1.5.4 Assist OWNER in evaluating bids or proposals and in assembling and awarding contracts.

1.6 Construction Phase

During the Construction Phase ENGINEER shall:

1.6.1 Consult with and advise OWNER and act as his representative as provided in Article 1 through 17, inclusive, of the Standard General Conditions of the Construction Contract, National Society of Professional Engineers document 1910-8, 1974 edition; the extent and limitations of the

duties, responsibilities and authority of ENGINEER as assigned in said Standard General Conditions shall not be modified without ENGINEER'S written consent; all of OWNER'S instructions to CONTRACTOR(S) will be issued through ENGINEER who will have authority to act on behalf of OWNER to the extent provided in said Standard General Conditions except as otherwise provided in writing.

1.6.2 Make periodic visits to the site to observe as an experienced and qualified design professional the progress and quality of the executed work and to determine in general if the work is proceeding in accordance with the Contract Documents; he shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of work; he shall not be responsible for the means, methods, techniques, sequences or procedures or construction selected by CONTRACTOR(S) or the safety precautions and programs incident to the work of CONTRACTOR(S). His efforts will be directed toward providing assurance for OWNER that the completed PROJECT will conform to the Contract Documents, but he shall not be responsible for the failure of CONTRACTOR(S) to perform the construction work in accordance with the Contract Documents. During such visits and on the basis of his onsite observations he shall keep OWNER informed of the progress of the work, shall endeavor to guard OWNER against defects and deficiencies in the work of CONTRACTOR(S) and may disapprove or reject work as failing to conform to the Contract Documents.

1.6.3 Review and approve Shop Drawings (as that term is defined in the aforesaid Standard General Conditions) and samples, the results of tests and inspections and other data which any contractor is required to submit, but only for conformance with the design concept of the PROJECT and compliance with the information given in the Contract Documents; determine the acceptability of substitute materials and equipment proposed by CONTRACTOR(S); and receive and review (for general content as required by the Specifications) maintenance and operating instructions, schedules, guarantees, bonds and certificates of inspection which are to be assembled by CONTRACTOR(S) in accordance with the Contract Documents.

1.6.4 Issue all instructions of OWNER to CONTRACTOR(S); prepare routine change orders as required; he may, as OWNER'S representative, require special inspection or testing of the work; he shall act as interpreter of the requirements of the Contract Documents and judge of the performance thereunder by the parties thereto and shall make decisions on all claims of OWNER and CONTRACTOR(S) relating to the execution and progress of the work and all other matters and questions related thereto; but ENGINEER shall not be liable for the results of any such interpretations or decisions rendered by him in good faith.

1.6.5 Based on his one-site observations as an experienced and qualified design professional and on his review of CONTRACTOR'S(S') applications for payment and the accompanying data and scheduled, determine the amounts owing to CONTRACTOR(S) and approve in writing payments to CONTRACTOR(S) in such amounts; such approvals of payment will constitute a representation to OWNER; based on such observations and review, that the work has progress to the point indicated and that, to the best of his knowledge, information and

belief, the quality of the work is in accordance with the Contract Documents (subject to an evaluation of the work as a functioning PROJECT upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents, and to any qualifications stated in his approval), but by approving an application for payment, ENGINEER will not be deemed to have represented that he has made any examination to determine how or for what purposes any CONTRACTOR has used the monies paid on account of the

Contract Price, or that title to any of the CONTRACTOR'S(S') work, materials or equipment has passed to OWNER free and clear of any lien, claims, security interests or encumbrances.

1.6.6 Conduct an inspection to determine if the PROJECT is substantially complete and a final inspection to determine if the PROJECT has been completed in accordance with the Contract Documents and if each CONTRACTOR has fulfilled all of his obligations thereunder so that ENGINEER may approve, in writing, final payment to each CONTRACTOR.

1.6.7 ENGINEER shall not be responsible for the acts or omissions of any CONTRACTOR, any subcontractor or any of the CONTRACTOR'S(S') or subcontractor's agents or employees or any other persons (except his own employees and agents) at the PROJECT site or otherwise performing any of the work of the PROJECT.

SECTION 2
ADDITIONAL SERVICES OF ENGINEER

2.1 General

If authorized by OWNER, ENGINEER shall furnish or obtain from others Additional Services of the following types which are not considered normal or customary Basic Services; these will be paid for by OWNER as indicated in Section 5.

2.1.1 Preparation of applications and supporting documents for governmental grants, loans or advances in connection with the PROJECT; preparation or review of environmental assessments and impact statements; and assistance in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of the PROJECT.

2.1.2 Services to make measured drawings of or to investigate existing conditions of facilities, or to verify the accuracy of drawings or other information furnished by OWNER.

2.1.3 Services resulting from significant changes in general scope of the PROJECT or its design including, but not limited to, changes in size, complexity, OWNER'S schedule, or character of construction; and revising previously accepted studies, reports, design documents or Contract Documents when such revisions are due to causes beyond ENGINEER'S control.

2.1.4 Providing renderings or models for OWNER'S use.

2.1.5 Preparing documents for alternate bids requested by OWNER for work which is not executed or documents for out-of-sequence work.

2.1.6 Investigations involving detailed consideration of operations, maintenance and overhead expenses; and the preparation of rate schedules, earnings and expense statements, feasibility studies, appraisals and valuations; detailed quantity surveys of material, equipment and labor; and audits or inventories required in connection with construction performed by OWNER.

2.1.7 Furnishing the services of special consultants for other than the normal civil, structural, mechanical and electrical engineering and normal architectural design incidental thereto, such as consultants for interior design, selection of furniture and furnishings, communications, acoustics, kitchens and landscaping.

2.1.8 OMITTED

2.1.9 Services in connection with change orders to reflect changes requested by OWNER if the resulting change in compensation for Basic Services is not commensurate with the Additional Services rendered, and services resulting from significant delays, changes or price increases occurring as a direct or indirect result of material, equipment or energy shortages.

2.1.10 Services during out-of-town travel required of ENGINEER other than visits to the PROJECT site as required by Section 1.

2.1.11 Preparing for OWNER, on request, a set of reproducible record prints of DRAWINGS showing those changes made during the construction process, based on the marked-up prints, drawings and other data furnished by CONTRACTOR(S) to ENGINEER and which ENGINEER considers significant.

2.1.12 Additional or Extended Services during construction made necessary by (1) work damaged by fire or other cause during construction, (2) a significant amount of defective or neglected work of any Contractor, (3) prolongation of the contract time of any prime contract by more than sixty (60) days, (4) acceleration of the work schedule involving services beyond normal working hours, and (5) default by any CONTRACTOR.

2.1.13 Preparation of operating and maintenance manuals, extensive assistance in the utilization of any equipment or system (such as initial start-up, testing, adjusting and balancing); and training personnel for operation and maintenance.

2.1.14 Services after completion of the Construction Phase, such as inspections during any guarantee period and reporting observed discrepancies under guarantees called for in any CONTRACT for the PROJECT.

2.1.15 Preparing to serve or serving as a consultant or witness for OWNER in any litigation, public hearing or other legal or administrative proceeding involving the PROJECT.

2.1.16 Additional services in connection with the PROJECT, including services normally furnished by OWNER and services not otherwise provided for in this Agreement.

2.2. Resident Services During Construction

2.2.1 If requested by OWNER or recommended by ENGINEER and agreed to in writing by the other, a Resident Project Representative and assistants will be furnished and will act as directed by ENGINEER in order to provide more extensive representation at the PROJECT site during the Construction Phase. Such services will be paid for by the OWNER as indicated in Paragraph 5.1.1.

2.2.2 The duties and responsibilities and the limitations on the authority of the Resident Project Representative and assistants will be set forth in Exhibit A which is to be identified, attached to and made a part of this Agreement before such services begin.

2.2.3 Through more extensive on-site observations of the work in progress and field checks of materials and equipment by the Resident Project Representative (if furnished) and assistants, ENGINEER shall endeavor to provide further protection for OWNER against defects and deficiencies in the work, but the furnishing of such Resident Project Representation will

not make ENGINEER responsible for construction means, methods, techniques, sequences or procedures or for safety precautions of programs, or for CONTRACTOR'S(S') failure to perform the construction work in accordance with the Contract Documents.

SECTION 3
OWNER'S RESPONSIBILITIES

OWNER shall:

3.1 Provide full information as to his requirements for the PROJECT.

3.2 Assist ENGINEER by placing at his disposal all available information pertinent to the PROJECT including previous reports and any other data relative to design and construction of the PROJECT.

3.3 Furnish to ENGINEER, as required by him for performance of his Basic Services, data prepared by or services of others, such as core borings, probings and subsurface explorations, hydrographic surveys, laboratory tests and inspections of samples, materials and equipment; appropriate professional interpretations of all of the foregoing; property, boundary, easement, right-of-way, topographic and utility surveys and property descriptions; zoning and deed restriction; and other special data or consultations not covered in Paragraph 2.1; all of which ENGINEER may rely upon in performing his services.

3.4 Provide engineering surveys to enable CONTRACTOR(S) to proceed with his (their) work.

3.5 Guarantee access to and make all provisions for ENGINEER to enter upon public and private property as required for ENGINEER to perform his services.

3.6 Examine all studies, reports, sketches, drawings, Specifications, proposals and other documents presented by ENGINEER, obtain advice of an attorney, insurance counselor and other consultants as he deems appropriate for such examination and render in writing decisions pertaining thereto within a reasonable time so as not to delay the services of ENGINEER.

3.7 Pay all costs incidental to obtaining bids or proposals from CONTRACTORS.

3.8 Provide such legal, accounting, independent cost estimating and insurance counseling services as may be required for the PROJECT, and such auditing service as OWNER may require to ascertain how or for what purpose any CONTRACTOR has used the monies paid to him under the construction contract.

3.9 Designate in writing a person to act as OWNER'S representative with respect to the work to be performed under this Agreement. Such person shall have complete authority to transmit instructions, receive information, interpret and define OWNER'S policies and decisions with respect to materials, equipment, elements and systems pertinent to ENGINEER'S services.

3.10 Give prompt written notice to ENGINEER whenever OWNER observes or otherwise becomes aware of any defect in the PROJECT.

3.11 Furnish approvals and permits for all governmental authorities having jurisdiction over the PROJECT and such approvals and consents from others as may be necessary for completion of the PROJECT.

3.12 Furnish, or direct ENGINEER to provide necessary Additional Services as stipulated in Section 2 of this Agreement or other services as required.

3.13 Bear all costs incidental to compliance with the requirements of this Section 3.

SECTION 4
PERIOD OF SERVICE

4.1 The provisions of this Agreement, and the various rates of compensation for ENGINEER'S services provided for elsewhere in this Agreement have been agreed to in anticipation of the orderly and continuous progress of the PROJECT through completion of the Construction Phase. ENGINEER'S obligation to render services hereunder will extend for a period which may reasonably be required for the design, award of contracts and construction of the PROJECT including extra work and required extensions thereto.

4.2 It is the intent of the OWNER to have the work completed as rapidly as possible. The ENGINEER shall maintain reasonable time schedules as established by the OWNER. However, the ENGINEER has no control over the CONTRACTOR'S scheduling of work, availability of materials, strikes, weather conditions, or similar matters.

4.3 Completion of the Study and Report Phase of the project will be affected by the results of the preliminary work. The first report shall be completed within thirty (30) days after OWNER issues a notice to proceed and subsequent reports shall be submitted on a schedule mutually agreed upon by the OWNER and ENGINEER.

4.4. It is anticipated that the PROJECT may be constructed under phases with more than one CONTRACTOR or subcontractor involved. Also, the OWNER may elect to do certain portions of the work. The ENGINEER shall perform his work so as to minimize delays between various phases. The OWNER and ENGINEER shall, prior to commencement of the final design phase of the PROJECT, develop a schedule or performance of ENGINEER services during the final design, negotiating and construction phases in order to sequence and coordinate properly such services as applicable to the work under such separate contracts. This schedule is to be prepared whether or not the work under such contracts is to proceed concurrently and is to be attached as an exhibit to and made a part of this Agreement.

SECTION 5
PAYMENTS TO ENGINEER

5.1 Methods of Payment for Services and Expenses of ENGINEER

5.1.1 Engineering Services. OWNER shall pay ENGINEER for services rendered under Section 1.2 on the basis of the hourly rate schedule shown on the attached Exhibit B. Maximum payment shall not exceed \$14,000 without approval of the OWNER. The ENGINEER and OWNER may agree to other provisions of payment at the time of authorization to proceed with the PROJECT.

5.1.2 Additional Services. OWNER shall pay ENGINEER for Additional Services rendered under Section 2 on an hourly basis. Services for outside consultants for the soils investigations and for services which the ENGINEER may perform under Section 2.1.4 and Section 3 shall be reimbursed at cost plus 10 percent.

5.1.3 Reimbursable Expenses. In addition to payments provided for in Paragraphs 5.1.1 and 5.1.2, OWNER shall pay ENGINEER the actual cost of all reimbursable expenses incurred in connection with engineering services.

5.2 Times of Payment

5.2.1 ENGINEER shall submit monthly statements for services rendered and for reimbursable expenses incurred. These monthly statements will be based upon ENGINEER'S payroll records. OWNER shall make prompt monthly payments in response to ENGINEER'S monthly statements.

5.3 General

5.3.1 Reimbursable expenses mean the actual expenses incurred directly or indirectly in connection with the PROJECT for: transportation and subsistence incidental thereto; obtaining bids or proposals from CONTRACTOR(S); furnishing and maintaining field office facilities; subsistence and transportation of Resident Project Representatives and their assistants; toll telephone calls and telegrams, reproduction of reports, drawings and specifications and similar PROJECT-related items in addition to those required under Section 1; computer time, including an appropriate charge for previously established programs; and, if authorized in advance by OWNER, overtime work requiring higher than regular rates.

5.3.2 If OWNER fails to make any payment due ENGINEER for services and expenses within sixty (60) days after receipt of ENGINEER'S bill therefor, the amounts due ENGINEER shall include a charge at the rate of 1% per month from said sixtieth (60th) day, and in addition, ENGINEER may, after giving seven (7) days' written notice to OWNER, suspend services under this Agreement until he has been paid in full all amounts due him for services and expenses.

5.3.3 If this Agreement is terminated by OWNER upon the completion of any phase of the services, progress payments due ENGINEER for services rendered

through such phase shall constitute total payment for such services. If this Agreement is terminated by OWNER during any phase of the services, ENGINEER will be paid for services rendered during that phase on the basis of hourly rates for services rendered during that phase to date of termination by principals and employees assigned to the PROJECT. In the event of any termination, ENGINEER will be paid for all unpaid additional services and unpaid reimbursable expenses, plus all termination expenses. Termination expenses mean reimbursable expenses directly attributable to termination, which shall include an amount computed as a percentage of total compensation for services earned by ENGINEER to the date of termination as follows: 20% if termination occurs after commencement of the Preliminary Design Phase, but prior to commencement of the Final Design Phase; or 10% if termination occurs after commencement of the Final Design Phase.

SECTION 6
GENERAL CONSIDERATIONS

6.1 Termination

This Agreement may be terminated by either party upon seven (7) days' written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.

6.2 Reuse of Documents

All documents including Drawings and Specifications furnished by ENGINEER pursuant to this Agreement are instruments of his services in respect to the PROJECT. They are not intended or represented to be suitable for reuse by OWNER or others on extensions of the PROJECT or on any other project. Any reuse without specific written verification or adaptation by ENGINEER will be at OWNER'S sole risk and without liability or legal exposure to ENGINEER, and OWNER shall indemnify and hold harmless ENGINEER for all claims, damages, losses and expenses including attorney's fee arising out of or resulting therefrom. Any such verification or adaptation will entitle ENGINEER to further compensation at rates to be agreed upon by OWNER and ENGINEER.

6.3 Estimates of Cost

6.3.1 Since ENGINEER has no control over the cost of labor, materials or equipment, or over the CONTRACTOR'S(S') methods of determining prices, or over competitive bidding or market conditions, his opinions of probable PROJECT COST or Construction Cost provided for herein are to be made on the basis of his experience and qualifications and represent his best judgment as a design professional familiar with the construction industry, but ENGINEER cannot and does not guarantee that proposals, bids or the Construction Cost will not vary from opinions of probable cost prepared by him. If prior to the Bidding or Negotiating Phase OWNER wishes greater assurance as to the Construction Cost, he shall employ an independent cost estimator as provided in Paragraph 3.8.

6.3.2 If a Construction Cost limit is established as a condition to this Agreement, the following shall apply:

6.3.2.1 The acceptance by OWNER at any time during the Basic Services of a revised opinion of probable PROJECT COST in excess of the then established cost limit will constitute a corresponding increase in the Construction Cost limit.

6.3.2.2 Any Construction Cost limit established by this Agreement will include a bidding contingency of ten percent (10%) unless another amount is agreed upon in writing.

6.3.2.3 ENGINEER will be permitted to determine what materials, equipment, component systems and types of construction are to be

included in the Drawings and Specifications and to make reasonable adjustments in the scope of the PROJECT to bring it within the cost limit.

6.3.2.4 If the Bidding or Negotiating Phase has not commenced within six (6) months of the completion of the Final Design Phase, the established Construction Cost limit will not be effective or binding on ENGINEER, and OWNER shall consent to an adjustment in such cost limit commensurate with any applicable change in the general level of prices in the construction industry between the date of completion of the Final Design Phase and the date on which proposals or bids are sought.

6.3.2.5 If the lowest bona fide proposal or bid exceeds the established Construction Cost limit, OWNER shall (1) give written approval to increase such cost limit, (2) authorize negotiating or rebidding the PROJECT within a reasonable time, or (3) cooperate in revising the PROJECT scope or quality. In the case of (3), ENGINEER shall, without additional charge, modify the Contract Documents as necessary to bring the Construction Cost within the cost limit. The providing of such service will be the limit of ENGINEER'S responsibility in this regard and, having done so, ENGINEER shall be entitled to payment for his services in accordance with this Agreement.

6.4 Arbitration

6.4.1 All claims, counter-claims, disputes and other matters in question between the parties hereto arising out of or relating to this Agreement or the breach thereof will be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then obtaining, subject to the limitations stated in Paragraphs 6.4.3 and 6.4.4 below. This Agreement so to arbitrate and any other Agreement or consent to arbitrate entered into in accordance therewith as provided below, will be specifically enforceable under the prevailing law of any court having jurisdiction.

6.4.2 Notice of demand for arbitration must be filed in writing with the other parties to this Agreement and with the American Arbitration Association. The demand must be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event may the demand for arbitration be made after the time when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations.

6.4.3 All demands for arbitration and all answering statements thereto which include any monetary claim must contain a statement that the total sum or value in controversy as alleged by the party making such demand or answering statement is not more than \$200,000 (exclusive of interest and costs). The arbitrators will not have jurisdiction, power or authority to consider, or make findings (except in denial of their own jurisdiction) concerning any claim, counter-claim, dispute or other matter in question where the amount in controversy thereof is more than \$200,000 (exclusive of interest and costs), or to render a monetary award in response thereto against any party which totals more than \$200,000 (exclusive of interest and costs).

6.4.4 No arbitration arising out of or relating to this Agreement may include by consolidation, joinder or in any other manner, any additional party not a party to this Agreement.

6.4.5 By written consent signed by all the parties to this Agreement and containing a specific reference hereto, the limitations and restrictions contained in Paragraphs 6.4.3 and 6.4.4 may be waived in whole or in part as to any claim, counter-claim, dispute or other matter specifically described in such consent. No consent to arbitration in respect of a specifically described claim, counter-claim, dispute or other matter in question will constitute consent to arbitrate any other claim, counter-claim, dispute or other matter in question which is not specifically described in such consent or in which the sum or value in controversy exceeds \$200,000 (exclusive of interest or costs) or which is with any party not specifically described therein.

6.4.6 The award rendered by the arbitrators will be final and not subject to appeal, and judgment may be entered upon it in any court having jurisdiction thereof.

6.5 Successors and Assigns

OWNER and ENGINEER each binds himself and his partners, successors, executors, administrators and assigns to the other party of this Agreement and to the partners, successors, executors, administrators and assigns of such other party, in respect to all covenants of this Agreement; except as above, neither OWNER nor ENGINEER shall assign, sublet or transfer his interest in this Agreement without the written consent of the other. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of any public body which may be a party hereto, nor shall it be construed as giving any rights or benefits hereunder to anyone other than OWNER and ENGINEER.

6.6 Limitation of Liability

The OWNER agrees to limit the ENGINEER'S liability to the OWNER and to all construction CONTRACTOR(S) and subcontractors on the PROJECT arising from the Design Professional's negligent acts, errors or omissions, such that the total aggregate liability of the Design Professional to all those named shall not exceed \$50,000 or the Design Professional's total fee for the services rendered on this PROJECT, whichever is greater. The OWNER further agrees to require of the CONTRACTOR a similar limitation of the liability of the Design Professional and of the OWNER, to the CONTRACTOR and his subcontractors due to the Design Professional's negligent acts, errors or omissions.

SECTION 7
SPECIAL PROVISIONS

7.1 Notice to Proceed . ENGINEER will not proceed with any work covered by this Agreement until verbal or written notice to do so has been received from the OWNER.

7.2 Renegotiation of Agreement. Inasmuch as this Agreement is for an indefinite period, the OWNER or ENGINEER may, at the option of either on written notice, request a renegotiation of sections of this Agreement providing for the compensation to be paid the ENGINEER for services rendered to allow for changes in the cost of services. Such new schedule of compensation is to apply only to work performed by the ENGINEER after delivery date of such written notice. The ENGINEER and the OWNER also agree to renegotiate this CONTRACT as may be required by changes in Federal, State or local law.

7.3 OWNER'S Reservations. OWNER reserves the right to request replacement of any resident inspectors furnished by the ENGINEER. The OWNER further reserves the right to furnish the field survey personnel and other personnel to perform the work which may be required for design information, preparation of easement descriptions, or assistance in staking or inspecting construction, but such work shall be performed under the ENGINEER'S direction and control.

7.4 Cost to OWNER. The OWNER shall pay the cost of publishing advertisements for bids and for permits and licenses that may be required by local, State or Federal authorities and shall secure the necessary land, easements, and rights-of-way.

7.5 Surveys Presently Available. Insofar as the work under this Agreement may require, the OWNER shall furnish the ENGINEER all existing maps, field survey data, grades and lines of streets, pavements and boundaries, rights-of-way and other surveys presently available.

7.6 Covenant Against Contingent Fee. ENGINEER warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the ENGINEER, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the ENGINEER, any fee, commission, percentage, brokerage fee, gift or any other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, the OWNER shall have the right to annul this Agreement without liability.

7.7 Prohibition Against Hiring Personnel. ENGINEER shall not engage on a full or part-time basis during the period of this Agreement any professional or technical personnel who are or have been at any time during the period of this Agreement in the employ of any State, County or City, except regularly retired employees, without the written consent of the public employer of such person.

7.8 General Compliance with Laws. It is understood that all work shall be performed in compliance with Federal, State and local laws.

7.9 Patents. ENGINEER shall hold and save harmless OWNER and its agents from any and all claims for infringement by reason of the use of any patented device, design, material process, trademark or copyright.

7.10 Subletting. The services to be performed under this Agreement shall not be assigned, sublet or transferred without the written approval of the OWNER.

7.11 Litigation Expense. In the event that it is necessary for an action at law or suit in equity to be brought to establish, obtain or enforce any right by either of the parties under this Agreement, or in event of appeal from judgment or decree therein, then the prevailing party in such action or suit, or on such appeal, shall be entitled to a reasonable attorney's fee allowance as well as the costs and disbursements of the action, suit or appeal.

IN WITNESS WHEREOF the parties hereto have made and executed this Agreement as of the day and year first above written.

OWNER: CITY OF CANBY

ENGINEER: LEE ENGINEERING, INC.
