



AMENDED AGENDA

CANBY CITY COUNCIL MEETING

September 7, 2016

7:30 PM

Council Chambers
155 NW 2nd Avenue

Mayor Brian Hodson

*Council President Tim Dale
Councilor Clint Coleman
Councilor Tracie Heidt*

*Councilor Traci Hensley
Councilor Greg Parker
Councilor Todd Rocha*

CITY COUNCIL MEETING

1. CALL TO ORDER

- A. Invocation
- B. Pledge of Allegiance
- C. POW/MIA Recognition Day Proclamation
- D. Canby Public Library Day Proclamation

Pg. 1

Pg. 2

2. COMMUNICATIONS

3. CITIZEN INPUT & COMMUNITY ANNOUNCEMENTS

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

4. MAYOR'S BUSINESS

5. COUNCILOR COMMENTS & LIAISON REPORTS

6. CONSENT AGENDA

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

- A. Approval of Minutes of the August 3, 2016, 2016 City Council Work Session & Regular Meeting
- B. Appointment to Historic Review Board

Pg. 3

7. PUBLIC HEARING

- A. Transfer of Public Property Ownership from the City of Canby to the Canby Urban Renewal Agency for the following property: Pg. 4

<u>Street Address</u>	<u>Map Number</u>	<u>Tax Lot Number</u>
111 NW 2 nd Avenue	3S-1E-33CA	6300
122 N Holly	3S-1E-33CA	5900
133 NW 2 nd Avenue	3S-1E-33CA	6200
133 NW 2 nd Avenue	3S-1E-33CA	5600
182 N Holly	3S-1E-33CA	6000

8. RESOLUTIONS & ORDINANCES

- A. Res. 1250, Authorizing the Transfer of Public Real Property, Located in the Canby Downtown Core from City Ownership to the Canby Urban Renewal Agency (URA) Pg. 6
- B. Ord. 1446, Authorizing Contract with Jarrett Walker & Associates, LLC for Providing Professional Services to Facilitate Community Engagement and Develop a Transit Master Plan for Canby Area Transit; and Declaring an Emergency Pg. 11
- C. Ord. 1447, Amending Canby Municipal Code Chapter 5.04.190 Regarding Business License Exemptions in the City of Canby (**2nd Reading**) Pg. 34
- D. Ord. 1448, Authorizing Contract with Canby Excavating, Inc. in the Amount of \$482,400.00 for NW Territorial Road Street and Sanitary Sewer Improvements; and Declaring an Emergency Pg. 36

9. NEW BUSINESS

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 Kim Scheafer at 503.266.0733. A copy of this Agenda can be found on the City's web page at www.ci.canby.or.us. 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.



Office of the Mayor

Proclamation

POW/MIA RECOGNITION DAY

WHEREAS, The United States of America has participated in many wars, calling upon its sons and daughters to fight for their country; and

WHEREAS, American men and women have been held captive by hostile powers during their military service; and

WHEREAS, Many American prisoners of war were subjected to harsh and inhumane treatment by their captors which often resulted in death; and

WHEREAS, Americans are still listed as missing and unaccounted for, and the families and friends of these missing Americans, as well as their fellow veterans, still endure uncertainty concerning their fate; and

WHEREAS, The sacrifices of Americans still missing are deserving of national recognition and support for continuing priority efforts to determine their fate; and

WHEREAS, the City of Canby is proud to join with other cities in the State of Oregon and nation in honoring those still missing.

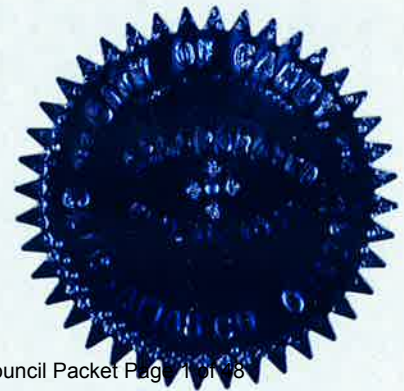
NOW, THEREFORE, I, Brian Hodson, Mayor of the City of Canby, hereby proclaim September 16, 2016 as:

POW/MIA Recognition Day in Canby

and encourage all citizens to join in this observance.

Given unto my hand this 7th day of September 2016.

Brian Hodson
Mayor





Office of the Mayor

Proclamation

CANBY PUBLIC LIBRARY DAY

WHEREAS, the origins of our library reach back to 1937, when three members of the Canby Women's Civic Club went door to door gathering donations and books to start a community library; and

WHEREAS, thanks to their diligent efforts, the Canby Public Library was established in Canby's newly built City Hall on September 16, 1937; and

WHEREAS, since 1937 the library has improved the quality of life in Canby by serving as a center of community life and discourse, offering opportunities for people to enrich their lives through educational, cultural, and artistic experiences; and

WHEREAS, libraries create better citizens and safeguard the future of our community, by enabling individuals to make informed decisions about their self-governance; by promoting unrestricted access to information; by supporting print and technological literacy, lifelong learning, and the free expression of ideas; and

WHEREAS, Over the course of many years, Canby has been well-served by its public library, which continues to make Canby a great place to live and work.

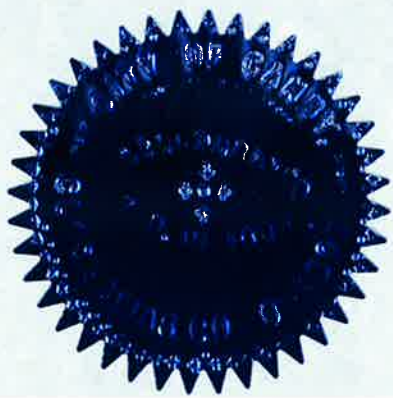
NOW THEREFORE, I, Mayor Hodson, by virtue of the authority vested in me as Mayor of the City of Canby, do hereby proclaim September 16, as

Canby Public Library Day

and encourage all residents to take advantage of the many resources the library offers, and to take part in the many activities being held to commemorate Canby Public Library Day.

Given unto my hand this 7th day of September 2016 in the City of Canby, Oregon.

Brian Hodson
Mayor



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

Date: _____
 Name: Pam Judy Occupation: Retired
 Home Address: _____ Canby
 Employer: _____ Position: _____
 Daytime Phone: _____ Evening Phone: _____
 E-Mail Address: _____
 For which position are you applying? Historical Review Board

What are your community interests (committees, organizations, special activities)?
Coach for Special Olympics. Past asst coach for
Canby Soccer. Hospice volunteer. Friends of the
Library. Sat on site committee, Knight Elementary.

Experience and educational background: Bachelors English literature
from Willamette University.

Reason for your interest in this position: I have always been interested in
old homes and historical sites. I grew up in an old
farmhouse in Trask. Now live in one of Canby's
Older homes. Would like to preserve the past because
it is very important for our future!

List any other City or County positions on which you serve or have served:
Parks and Rec, city of Canby

Information on any special membership requirements: _____

Referred by (if applicable): _____

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

THANK YOU FOR YOUR WILLINGNESS TO SERVE CANBY

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

Phone: 503.266.0733 Fax: 503.266.7961 Email: Scheaferk@ci.canby.or.us

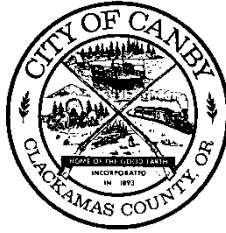
RECEIVED

AUG 25 2016

CITY OF CANBY

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

1-4-13



MEMORANDUM

DATE: SEPTEMBER 7, 2016
TO: CANBY CITY COUNCIL
FROM: RICK ROBINSON, CITY ADMINISTRATOR
RE: RESOLUTION NO 1250 TRANSFER OF REAL PROPERTY TO URBAN RENEWAL AGENCY FROM THE CITY OF CANBY

Issue: Should the City of Canby transfer its fee simple interest in real property it owns in the City's downtown core to the Urban Renewal Agency (URA) to facilitate the construction of a mixed use development consisting of a combination of apartments and commercial/retail/restaurant space, and the remodel of Canby City Hall and the former Police Department building?

Background: The City of Canby is completing the construction of a new Library/Civic Building which will house all City offices currently located on property in the City's downtown core. The properties being vacated will no longer be required to house City services and The City is proposing to transfer the real property to the Urban Renewal Agency.

The Urban Renewal Agency is interested in entering into a development agreement with a master developer for the construction of a mixed use project consisting of first floor commercial/retail space with upper floor apartments. The project would also include the renovation of the old Police Department building and the historic City Hall. Staff believe that the addition of housing and retail/commercial space in the Downtown Core will have a significant positive impact on the business climate in downtown Canby, and will improve the walkability of our downtown business district.

The subject real property proposed for transfer from City ownership to the Canby Urban Renewal Agency is Downtown Commercial Property. The addresses, map, and tax lot numbers are as follows:

Street Address	Map Number	Tax Lot Number
111 NW 2nd Avenue	3S-1E-33CA	6300
122 N Holly	3S-1E-33CA	5900
133 NW 2nd Avenue	3S-1E-33CA	6200
133 NW 2nd Avenue	3S-1E-33CA	5600
182 N Holly	3S-1E-33CA	6000

To facilitate development of the property, staff recommends the transfer by Statutory Warranty Deed the City's fee simple interest in the real property to the URA. The Urban renewal agency will pay to the City \$200 in consideration for the purchase. Other consideration for the transfer will be the benefit to the City of having the Urban Renewal Agency participate in the funding and development of a new mixed use project in the City's downtown core.

The estimated fair market value of the Industrial Park property is \$1.827 million dollars. This value has been determined through the appraisal process for the current Planning and Finance buildings, and by estimate for the City Hall and former Police Department Building.

Recommendation: It is recommended that the City Council approve the transfer of the above listed real property from City ownership to Agency ownership by warranty deed, for consideration of \$200 and the added value to the City of having the Urban Renewal Agency participate in the funding and development of a new mixed use project in the City's downtown core. A copy of a sample warranty deed is also included herein. The adoption of Resolution No. 1250 will authorize the City Attorney and City Administrator to take any actions required to complete the transfer of the property from the City to the Agency.

Motion: ***"I move to adopt Resolution No. 1250, A RESOLUTION OF THE CITY OF CANBY, (CITY) OREGON AUTHORIZING THE TRANSFER OF PUBLIC REAL PROPERTY, LOCATED IN THE CANBY DOWNTOWN CORE FROM CITY OWNERSHIP TO THE CANBY URBAN RENEWAL AGENCY (URA).***

Attached: Resolution No. 1250

Sample Warranty Deed

RESOLUTION NO. 1250

A RESOLUTION OF THE CITY OF CANBY, (CITY) OREGON AUTHORIZING THE TRANSFER OF PUBLIC REAL PROPERTY, LOCATED IN THE CANBY DOWNTOWN CORE FROM CITY OWNERSHIP TO THE CANBY URBAN RENEWAL AGENCY (URA).

WHEREAS, the City of Canby is completing the construction of a new Library/Civic Building which will house all City offices currently located on property in the City's downtown core; and

WHEREAS, the real property being vacated will no longer be required to house City services; and

WHEREAS, The City is proposing to transfer the real property to the Canby Urban Renewal Agency; and

WHEREAS, The Canby Urban Renewal Agency is interested in acquiring the real property in order to enter into a development agreement with a master developer for the purpose of constructing a mixed use project consisting of first floor commercial/retail space with upper floor apartments; and

WHEREAS, the project would also include the renovation of the old Police Department building and the historic City Hall; and

WHEREAS, the City of Canby real property it is proposing to transfer is described as follows:

Street Address	Map Number	Tax Lot Number
111 NW 2nd Avenue	3S-1E-33CA	6300
122 N Holly	3S-1E-33CA	5900
133 NW 2nd Avenue	3S-1E-33CA	6200
133 NW 2nd Avenue	3S-1E-33CA	5600
182 N Holly	3S-1E-33CA	6000

WHEREAS, the City Council believes it is in the best interests of the citizens of Canby, and that the public interest will be furthered, through the transfer of ownership of its fee simple interest in the real property to the Canby Urban Renewal Agency, so that the Canby Urban Renewal Agency may participate in the development of a downtown core mixed use project consisting of: first floor commercial/retail space with upper floor apartments, and the renovation of the old Police Department building and the historic City Hall; and

WHEREAS, It is recommended that the City Council approve the transfer of the above listed real property from City ownership to Canby Urban Renewal Agency ownership by warranty deed, for consideration of \$200 and the added value to the City of having the Canby Urban Renewal Agency participate in the funding and development of a new mixed use project in the City's downtown core; and

WHEREAS, in accordance with ORS 271.310 and ORS 221.725, the City finds it necessary and convenient to transfer the property to the Canby Urban Renewal Agency.

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

1. The Canby City Council authorizes the transfer to the Canby Urban Renewal Agency of the City's fee simple interest in the real property described as:

Street Address	Map Number	Tax Lot Number
111 NW 2nd Avenue	3S-1E-33CA	6300
122 N Holly	3S-1E-33CA	5900
133 NW 2nd Avenue	3S-1E-33CA	6200
133 NW 2nd Avenue	3S-1E-33CA	5600
182 N Holly	3S-1E-33CA	6000

2. The City Attorney and City Administrator are hereby authorized to take any and all actions necessary to transfer the property from the City of Canby to the Canby Urban Renewal Agency.

This resolution will take effect on September 7, 2016.

ADOPTED this 7th day of September, 2016 by the City of Canby City Council.

Brian Hodson
Mayor

ATTEST:

Kimberly Scheafer, MMC
City Recorder

STATUTORY SPECIAL WARRANTY DEED

After Recording Return to and
Tax Statements to be sent to:
Urban Renewal Agency of
City of Canby, Oregon
Attn: Agency Director
PO Box 930
Canby, OR 97013

STATUTORY SPECIAL WARRANTY DEED

KNOW ALL PEOPLE, that the CITY OF CANBY, OREGON a municipal corporation of the State of Oregon (which, together with any successor public agency designated by or pursuant to law, is herein called the “City”), conveys and specially warrants to the URBAN RENEWAL AGENCY OF THE CITY OF CANBY, OREGON (the “Agency”), and unto its successors and assigns, all the following described real property, with the tenements, hereditaments and appurtenances (herein called the “Property”), situated in the County of Clackamas and State of Oregon:

Street Address	Map Number	Tax Lot Number
111 NW 2nd Avenue	3S-1E-33CA	6300
122 N Holly	3S-1E-33CA	5900
133 NW 2nd Avenue	3S-1E-33CA	6200
133 NW 2nd Avenue	3S-1E-33CA	5600
182 N Holly	3S-1E-33CA	6000

free of liens or encumbrances created or suffered by City except as set forth on the attached Exhibit A.

The Agency has given other value as consideration for this conveyance.

The conveyance is subject to the exceptions of record as stated in Exhibit A attached hereto.

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, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010. THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE

IN WITNESS WHEREOF, the City of Canby, Oregon, a municipal corporation of the State of Oregon, has caused this Deed to be executed this ____ day of September, 2016.

By: Richard Robinson
Its: City Administrator

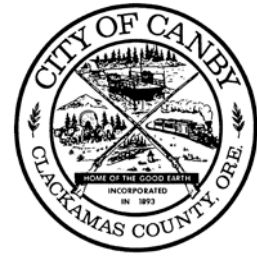
This instrument was acknowledged before me on September __, 2016, by Richard Robinson of the CITY OF CANBY, OREGON.

Notary Public for Oregon
My commission expires:_____

By: Tim Dale
Its: Chair
Date:

EXHIBIT A
EXCEPTIONS TO TITLE

MEMORANDUM



TO: *Honorable Mayor Hodson and City Council*
FROM: *Julie Wehling, Transit Director*
DATE: *July 25, 2016*
THROUGH: *Rick Robinson, City Administrator*

Issue:

Canby Area Transit's Transit Plan is dated May of 2001. There have been several unsuccessful efforts to update the 2001 plan. The latest effort was in 2010 during the Transportation System Plan (TSP) update process. We were notified, during the budget process for fiscal year 11-12, that reliable funding from the Business Energy Tax Credit program would end. Also, our payroll tax revenues had been uneven and declining. Based on this information we were forced to very quickly reduce CAT services by a third. The 2010 Transit Master Planning (TMP) effort was suspended and public engagement efforts were focused on cutting CAT services to a level the budget could support. By the time the dust settled from the service cuts much of what was in 2010 TMP draft was outdated or no longer reflected reality.

A Transit Master Planning process will provide CAT with an objective evaluation of the services we currently provide and recommendations for change; an opportunity to hear from our riders and the community about the services they would like CAT to provide; and a specific roadmap for the future.

Recommendation:

Staff recommends that the Council authorize the City Administrator to execute an agreement with Jarrett Walker & Associates for providing professional services to engage the public and develop a Transit Master Plan for Canby Area Transit.

Rationale:

Staff issued a Request for Proposal (RFP) on May 18, 2016 to solicit proposals from qualified firms. Four qualified firms responded with proposals: Jarrett Walker & Associates (JWA), Kittelson & Associates (KAI), LSC Transportation Consultants (LSC) and Nelson Nygaard Consulting Associates (NN). A three member Selection Committee met on June 21, 2016 and selected Jarrett Walker & Associates as the most qualified, experienced and the best fit for Canby. The firms received the following scores:

	A	B	C	Total
JWA	98	100	98	296
KAI	91	85	96	272
LSC	85	78	80	243
NN	85	69	78	232

Fiscal Impact:

The City has received a grant for \$60,000 from ODOT – Rail and Public Transit Division to

provide 80 percent of the project's total cost. The current budget includes the grant funds and \$15,000 in matching funds for the project. Although, the Transit Director's time spent on this project qualifies as in-kind match so the cash match requirement will likely be less than \$15,000.

Recommended Motion:

"I move that we approve Ordinance 1446, AN ORDINANCE AUTHORIZING THE MAYOR AND CITY ADMINISTRATOR TO EXECUTE A CONTRACT WITH JARRETT WALKER & ASSOCIATES, LLC OF PORTLAND, OREGON FOR PROVIDING PROFESSIONAL SERVICES TO FACILITATE COMMUNITY ENGAGEMENT AND DEVELOP A TRANSIT MASTER PLAN FOR CANBY AREA TRANSIT; AND DECLARING AN EMERGENCY to come up for second reading on September 21, 2016.

Attachments:

Ordinance 1446 and Exhibits

ORDINANCE NO. 1446

AN ORDINANCE AUTHORIZING THE MAYOR AND CITY ADMINISTRATOR TO EXECUTE A CONTRACT WITH JARRETT WALKER & ASSOCIATES, LLC OF PORTLAND, OREGON FOR PROVIDING PROFESSIONAL SERVICES TO FACILITATE COMMUNITY ENGAGEMENT AND DEVELOP A TRANSIT MASTER PLAN FOR CANBY AREA TRANSIT; AND DECLARING AN EMERGENCY.

WHEREAS, the City of Canby on behalf of Canby Area Transit received grant contract no. 30111 from ODOT – Rail and Public Transit Division for \$60,000 in (49 U.S.C 5305) funds to provide 80% of the funding to engage the public and develop a Transit Master Plan for Canby Area Transit; and

WHEREAS, City issued a Request for Proposal (RFP) on May 18, 2016 to solicit proposals from qualified firms to provide professional services to facilitate community and stakeholder engagement and develop a Transit Master Plan for Canby Area Transit; and

WHEREAS, the City of Canby received proposals from four (4) potential companies as follows on or before 5:00 p.m. on June 15, 2016:

Company Name:

Jarrett Walker & Associates, LLC
Kittelson & Associates, Inc.
LSC Transportation Consultants, Inc.
Nelson Nygaard Consulting Associates, Inc.

WHEREAS, following an interview process, a three (3) member Selection Committee met on June 21, 2016, to score the proposals in accordance with the Evaluation Criteria detailed in the RFP.

WHEREAS, Jarrett Walker & Associate received the top score of 296 and was identified unanimously by the Selection Committee as the most able, experienced and cost efficient proposer; now therefore

THE CITY OF CANBY ORDAINS AS FOLLOWS:

Section 1. The Mayor and the City Administrator are hereby authorized and directed to make, execute and declare in the name of the City of Canby and on its behalf, an appropriate contract with Jarrett Walker & Associates of Portland, Oregon to

provide professional services to facilitate community and stakeholder engagement and develop a Transit Master Plan for Canby Area Transit. A copy of said contract is attached hereto as Exhibit "A" and by this reference incorporated herein.

Section 2. Inasmuch as it is in the best interest of the citizens of Canby, Oregon, to complete this project as soon as possible, an emergency is hereby declared to exist and this ordinance shall therefore take effect immediately upon its enactment after final reading.

SUBMITTED to the Canby City Council and read the first time at a regular meeting thereof on Wednesday, September 7, 2016, and ordered posted in three (3) public and conspicuous places in the City of Canby as specified in the Canby City Charter and to come before the City Council for final reading and action at a regular meeting thereof on Wednesday, September 21, 2016 commencing at the hour of 7:30 p.m. in the Council Chambers located at 155 NW 2nd Avenue, Canby, Oregon.

Kimberly Scheafer, MMC
City Recorder

PASSED on second and final reading by the Canby City Council at a regular meeting thereof on September 21, 2016 by the following vote:

YEAS _____

NAYS _____

Brian Hodson, Mayor

ATTEST:

Kimberly Scheafer, MMC
City Recorder

Exhibit “A”

PERSONAL SERVICES AGREEMENT TMP2016

THIS AGREEMENT is made and entered into as of the date first indicated on the signature page, by and between the CITY OF CANBY, Canby Oregon, a municipal corporation of the State of Oregon, hereinafter called “City” and Jarrett Walker & Associates, hereinafter called “Contractor”.

WHEREAS, Contractor specializes in providing technical transit planning with public engagement; has led transit network design, stakeholder outreach and policy development efforts; conducted trainings and workshops on transit network design and policy; and has led consulting teams in both local and regional transit planning projects; and

WHEREAS, City issued a Request for Proposal (RFP) on May 18, 2016 to solicit proposals from qualified firms to provide professional services to facilitate community and stakeholder engagement and develop a Transit Master Plan for Canby Area Transit; and Contractor submitted its proposal dated June 15, 2016 in response thereto; and Contractor was selected from a field of qualified competitors; and

WHEREAS, City has determined that Consultant is qualified and capable of performing the services outlined in the RFP; and Consultant has presented a work plan and cost proposal; under the terms and conditions set forth hereafter;

THEREFORE, the parties agree as follows:

1. Scope of Services. Contractor’s services under this Agreement are set forth in Exhibit “A”, attached hereto.
2. Contractor Identification. Contractor shall furnish to City its employer identification number as designated by the Internal Revenue Service, or Contractor’s Social Security Number, as City deems applicable. **Contractor understands it is required to obtain a City of Canby Business License for conducting business in the City. 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 \$70,000 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 and FTA 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.

By entering into this agreement, contractor represents and warranties that they have complied with the tax laws of the State of Oregon and the City of Canby. Further, for the

duration of this contract, Contractor promises to continue to comply with said State and local tax laws. Any failure to comply with tax laws will be considered a default of this contract and could result in the immediate termination of this agreement and/or other sought damages or other such relief under applicable law.

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

A. For Comprehensive General Liability Insurance, Contractor shall provide a Certificate of Insurance naming the City of Canby as an additional named 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 named 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, electronically, faxed, 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.
15. Indemnification: Contractor shall defend, save, hold harmless, and indemnify the authorized purchaser, the Federal Transportation Administration, the State of Oregon and its officers, employees and agents from and against all claims, suits, actions, proceedings, losses, damages, liabilities, awards and costs of every kind and description (including reasonable attorney's fees and expenses at trial, on appeal and in connection with any petition for review) (collectively, "claim") which may be brought or made against any authorized purchaser, the state, or their agents, officials, employees and arising out of or related to (i) any personal injury, death or property damage caused by any alleged act, omission, error, fault, mistake or negligence of contractor, its employees, agents, related to this contract, (ii) any act or omission by contractor that constitutes a material breach of this contract, including without limitation any breach of warranty, or (iii) the infringement of any patent, copyright, trade secret or other proprietary right of any third party by delivery or use of the goods. Authorized purchaser or state shall promptly notify contractor in writing of any claim of which authorized purchaser or state becomes aware. Contractor's obligation under this section shall not extend to any claim primarily caused by (i) the negligent or willful misconduct of authorized purchaser, or (ii) authorized purchaser's modification of goods without contractor's approval and in a manner inconsistent with the purpose and proper usage of such goods.

However, the Oregon Attorney General must give written authorization to any legal counsel purporting to act in the name of, or represent the interests of, the State or its officers, employees and agents prior to such action or representation. Further, the State, acting by and through its department of justice, may assume its own defense, including that of its officers, employees and agents, at any time when in the State's sole discretion it determines that (i) proposed counsel is prohibited from the particular representation contemplated; (ii) counsel is not adequately defending or able to defend the interests of the State, its officers, employees or agents; (iii) important governmental interests are at stake; or (iv) the best interests of the State are served thereby. Contractor's obligation to pay for all costs and expenses shall include those incurred by the state in assuming its own defense and that of its officers, employees, or agents under (i) and (ii) above.

16. Federal Terms and Conditions. This project is funded in part with grant funds from the Federal Transit Administration via contract with the Oregon Department of Transportation's Rail and Public Transit Division which requires third party contractors to comply with the federal terms and conditions detailed in Exhibit "B" attached hereto. The Contractor agrees to comply with all

applicable federal regulations.

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

CONTRACTOR: Jarrett Walker & Associates
1327 SE Tacoma Street, #166
Portland, OR 97202

Please submit invoices to: Attn: Julie Wehling
City of Canby
PO Box 930
Canby, OR 97013
wehlingj@ci.canby.or.us

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

CONTRACTOR:

CITY OF CANBY

By: Authorized Agent of Contractor

By: City Administrator

Printed Name

Printed Name

Date:

Date:

Subcontractors will be used ____Yes ____No (If Yes, please complete List of Subcontractors attached to this Agreement)

Approved as to Form:

Joseph Lindsay
City Attorney

11/6/15

LIST OF SUBCONTRACTORS

As per Section 5 of the Personal Services Agreement, the following businesses will be subcontractors. Subcontractors are required to have a City of Canby Business License prior to commencing work under this contract.

[illegible]

The City hereby approves the above listed subcontractors.

City of Canby

Date _____

Scope of Work (Workplan)						
Project Scope	Task Deliverable	JWA Proposed Workplan	JWA	MCC	AMMA	Estimated Date
as per RFP	as per RFP	July 15, 2016	Hours of effort			*tentative date
		1. Work Plan Development				
Task 1	Work Plan	1.1. Project Scope and Work Plan	2	6	0	July-August
Task 1		1.2. Coordination Calls (8)	8	8	0	Ongoing
Task 2	Public Engagement Plan	1.3. Public Involvement Plan and Early Outreach	1	12	0	September 19-30
		2. Kickoff				
Tasks 1 & 2	Service Analysis and Recommendations	2.1. Project Kickoff Meeting	8	4	2	September 19*
Tasks 2 & 3		2.2. Field Work and Interviews	10	0	0	September 19-23*
		3 Data Organization				
Task 3	Service Analysis and Recommendations	3.1. Organization of agency data	8	0	0	September
Task 3		3.1.1 CAT Route 99 data collection	2			September 19-20*
Task 3		3.2. Analysis of agency data	18	0	0	September-October
		4. Choices Report and Future Alternatives				
Task 3	Service Analysis and Recommendations	4.1. Maps	14	0	0	October 3-7
Task 3		4.2. Charts	8	0	0	October 3-7
Task 3		4.3. Transit Performance Analysis	16	0	0	October 3-7
Task 3		4.5. Network Structure Analysis	14	0	0	October 3-7
Task 3		4.6. DAR Existing Conditions	6	0	16	October 3-7
Task 3		6.1. Retreat prep	23	0	1	October 10-14
Task 3		6.2. Core Design Retreat (1 Day)	18	0	10	October 18*
Task 3		6.3. Draft Future Alternatives (2)	19	0	0	October 24-November 4
Task 3		6.3.1 Talk with neighboring providers	6	0	0	October 24-November 4
Task 3		6.4. Performance Analysis	11	0	4	October 24-November 4

Project Scope	Task Deliverable	JWA Proposed Workplan	JWA	MCC	AMMA	Estimated Date	City and MV effort
as per RFP	as per RFP	July 15, 2016	Hours of effort			*tentative date	
Task 3		4.7. Draft Report	40	4	0	November 14-25	JWA will produce a draft report, which includes Existing Conditions analysis AND the (already-reviewed) alternatives. JWA will need CAT and its colleagues to read it carefully before it is finalized for the public.
Task 3		4.8. Final Report	8	0	0	December 16	
		5. Public and Stakeholder Engagement					
Task 2	Public Engagement	5.1. Stakeholder workshop recruiting	4	16	0	October-December	CAT will provide contact people and organizations, and perhaps some introductions.
Task 2		5.2. Public Survey(s)	11	6	1	January	
Task 2		5.3. Stakeholder Workshop Prep	20	5	3	December	
Task 2		5.4. Stakeholder Workshop	14	14	0	January	Big event.
Task 2		5.5. Council Presentation	7	0	0	Flexible	
		6. Draft and Final Plan					
Task 3	Service Analysis and Recommendations	6.1. Transit Network and Service Recommendations (aka "Preferred Alternative")	29	0	3	February	
Task 3		6.2. Performance Analysis	11	0	4	February	
Task 5	Policy	6.3. Recommended Policies	0	0	0	February	
Task 5		6.3.1. Expansion/Improvement priorities	9	1	0	February	
Task 5		6.3.2. Land use, walkability, TOD policies	4	0	0	February	
Task 5		6.3.3. Service Standards and Performance Measures	9	1	3	February	
Task 3	Service Analysis and Recommendations	6.4. Draft Schedules for Fixed Route(s)	8	0		February	
Task 4	Capital Needs Assessment	6.5. Capital Needs Assessment	15	0	2	February	
Task 6	Potential Funding Sources	6.6. Future Funding Sources	12	0	4	February	
Task 7	Draft document	6.7. Draft TMP	48	4	0	March	Big plan to review.
Task 7	Final Transit Master Plan Document	6.8. Final TMP	14	0	0	April	

Canby TMP Cost Proposal	JWA			AMMA			MCC			Task Subtotals
	Labor Subtotal	Labor Cost	Direct Costs	Labor Subtotal	Labor Cost	Direct Costs	Labor Subtotal	Labor Cost	Direct Costs	
1. Work Plan Development										
1.1. Project Scope and Work Plan	2	\$ 210		0	\$ -		6	\$ 805		
1.2. Coordination Calls (8)	8	\$ 840		0	\$ -		8	\$ 840		
1.3. Public Involvement Plan and Early Outreach	1	\$ 105		0	\$ -		12	\$ 1,205		
<i>1. Work Plan subtotals</i>	11	\$ 1,155	\$ -	0	\$ -	\$ -	26	\$ 2,850	\$ -	\$ 4,005
2. Kickoff										
2.1. Project Kickoff Meeting	8	\$ 780	\$ 24	2	\$ 260		4	\$ 420	\$ 24	
2.2. Field Work and Interviews	10	\$ 930	\$ 24	0	\$ -		0	\$ -		
<i>2. Kickoff subtotals</i>	18	\$ 1,710	\$ 48	2	\$ 260	\$ -	4	\$ 420	\$ 24	\$ 2,462
3 Data Organization										
3.1. Organization of agency data	10	\$ 930		0	\$ -		0	\$ -		
3.2. Analysis of agency data	18	\$ 1,650		0	\$ -		0	\$ -		
<i>3. Data Organization subtotals</i>	28	\$ 2,580	\$ -	0	\$ -	\$ -	0	\$ -	\$ -	\$ 2,580
4. Choices Report and Future Alternatives										
4.1. Maps	14	\$ 1,290		0	\$ -		0	\$ -		
4.2. Charts	8	\$ 750		0	\$ -		0	\$ -		
4.3. Transit Performance Analysis	16	\$ 1,470		0	\$ -		0	\$ -		
4.5. Network Structure Analysis	14	\$ 1,290		0	\$ -		0	\$ -		
4.6. DAR Existing Conditions	6	\$ 570		16	\$ 1,606		0	\$ -		
6.1. Retreat prep	23	\$ 2,260		1	\$ 130		0	\$ -		
6.2. Core Design Retreat (1 Day)	18	\$ 3,195	\$ 24	10	\$ 1,300	\$ 615	0	\$ -		
6.3. Draft Future Alternatives (2)	19	\$ 1,755		0	\$ -		0	\$ -		
6.3.1 Talk with neighboring providers	6	\$ 920	\$ 24	0	\$ -		0	\$ -		
6.4. Performance Analysis	11	\$ 1,005		4	\$ 362		0	\$ -		
4.7. Draft Report	40	\$ 3,950		0	\$ -		4	\$ 565	\$ 500	
4.8. Final Report	8	\$ 750		0	\$ -		0	\$ -		
<i>4. Choices Report and Alternatives subtotals</i>	183	\$ 19,205	\$ 48	31	\$ 3,398	\$ 615	4	\$ 565	\$ 500	\$ 24,331
5. Public and Stakeholder Engagement										
5.1. Stakeholder workshop recruiting	4	\$ 390		0	\$ -		16	\$ 1,565		
5.2. Public Survey(s)	11	\$ 1,035		1	\$ 130		6	\$ 580	\$ 500	
5.3. Stakeholder Workshop Prep	20	\$ 2,005		3	\$ 311		5	\$ 595		
5.4. Stakeholder Workshop	14	\$ 1,365	\$ 24	0	\$ -		14	\$ 1,470	\$ 2,749	
5.5. Council Presentation	7	\$ 850	\$ 24	0	\$ -		0	\$ -		
<i>5. Public and Stakeholder Engagement subtotals</i>	56	\$ 5,645	\$ 48	4	\$ 441	\$ -	19	\$ 4,210	\$ 3,249	\$ 13,593
6. Draft and Final Plan										
6.1. Transit Network and Service Recommendations	29	\$ 2,890		3	\$ 311		0	\$ -		
6.2. Performance Analysis	11	\$ 1,005		4	\$ 362		0	\$ -		
6.3. Recommended Policies	0	\$ -		0	\$ -		0	\$ -		
6.3.1. Expansion/Improvement priorities	9	\$ 1,030		0	\$ -		1	\$ 175		
6.3.2. Land use, walkability, TOD policies	4	\$ 390		0	\$ -		0	\$ -		
6.3.3. Service Standards and Performance Measures	9	\$ 1,030		3	\$ 311		1	\$ 175		
6.4. Draft Schedules for Fixed Route(s)	8	\$ 1,070					0	\$ -		
6.5. Capital Needs Assessment	15	\$ 1,540		2	\$ 260		0	\$ -		
6.6. Future Funding Sources	12	\$ 1,140		4	\$ 441		0	\$ -		
6.7. Draft TMP	48	\$ 5,140		0	\$ -		4	\$ 610		
6.8. Final TMP	14	\$ 1,290		0	\$ -		0	\$ -		
<i>6. Draft and Final Plan subtotals</i>	159	\$ 16,525	\$ -	16	\$ 1,685	\$ -	6	\$ 960	\$ -	\$ 19,170
Subtotals for all Tasks	455	\$ 46,820	\$ 144	53	\$ 5,784	\$ 615	81	\$ 9,005	\$ 3,773	\$ 66,141

Exhibit B: Federal Transit Administration Required Terms and Conditions

No Obligation by the Federal Government

1. The Purchaser and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Purchaser, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.
2. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

Program Fraud and False or Fraudulent Statements or Related Acts

1. The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § § 3801 et seq . and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.
2. The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.
3. The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

Access to Records and Reports

Access to Records - The following access to records requirements apply to this Contract:

1. Where the Purchaser is not a State but a local government and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C. F. R. 18.36(i), the Contractor agrees to provide the Purchaser, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C. F. R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.
2. Where the Purchaser is a State and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 633.17, Contractor agrees to provide the Purchaser, the FTA Administrator or his authorized representatives, including any PMO Contractor, access to the Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311. By definition, a major capital project excludes contracts of less than the simplified acquisition threshold currently set at \$100,000.
3. Where the Purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 19.48, Contractor agrees to provide the Purchaser, FTA Administrator, the Comptroller General of the United States or any of their duly authorized representatives with access to any books, documents, papers and record of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.
4. Where any Purchaser which is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a)1) through other than competitive bidding, the Contractor shall make available records related to the contract to the Purchaser, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.
5. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
6. The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).

Federal Changes

Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between Purchaser and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

Termination

1. **Termination for Convenience (General Provision).** The (Recipient) may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the Government's best interest. The Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to (Recipient) to be paid the Contractor. If the Contractor has any property in its possession belonging to the (Recipient), the Contractor will account for the same, and dispose of it in the manner the (Recipient) directs.
2. **Termination for Default [Breach or Cause] (General Provision).** If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, the (Recipient) may terminate this contract for default. Termination shall be effected by serving a notice of termination on the contractor setting forth the manner in which the Contractor is in default. The contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.

If it is later determined by the (Recipient) that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, the (Recipient), after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

3. **Opportunity to Cure (General Provision).** The (Recipient) in its sole discretion may, in the case of a termination for breach or default, allow the Contractor [an appropriately short period of time] in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions

If Contractor fails to remedy to (Recipient)'s satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within [ten (10) days] after receipt by Contractor of written notice from (Recipient) setting forth the nature of said breach or default, (Recipient) shall have the right to terminate the Contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude (Recipient) from also pursuing all available remedies against Contractor and its sureties for said breach or default.

4. **Waiver of Remedies for any Breach.** In the event that (Recipient) elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Contract, such waiver by (Recipient) shall not limit (Recipient)'s remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.
5. **Termination for Convenience (Professional or Transit Service Contracts).** The (Recipient), by written notice, may terminate this contract, in whole or in part, when it is in the Government's

interest. If this contract is terminated, the Recipient shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

6. **Termination for Default (Supplies and Service).** If the Contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, the (Recipient) may terminate this contract for default. The (Recipient) shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Recipient.

7. **Termination for Default (Transportation Services).** If the Contractor fails to pick up the commodities or to perform the services, including delivery services, within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, the (Recipient) may terminate this contract for default. The (Recipient) shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of default. The Contractor will only be paid the contract price for services performed in accordance with the manner of performance set forth in this contract.

If this contract is terminated while the Contractor has possession of Recipient goods, the Contractor shall, upon direction of the (Recipient), protect and preserve the goods until surrendered to the Recipient or its agent. The Contractor and (Recipient) shall agree on payment for the preservation and protection of goods. Failure to agree on an amount will be resolved under the Dispute clause.

8. If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the (Recipient).
9. **Termination for Default (Construction).** If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified in this contract or any extension or fails to complete the work within this time, or if the Contractor fails to comply with any other provisions of this contract, the (Recipient) may terminate this contract for default. The (Recipient) shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. In this event, the Recipient may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to the Recipient resulting from the Contractor's refusal or failure to complete the work within specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the Recipient in completing the work.

The Contractor's right to proceed shall not be terminated nor the Contractor charged with damages under this clause if:

- a. The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include:

acts of God, acts of the Recipient, acts of another Contractor in the performance of a contract with the Recipient, epidemics, quarantine restrictions, strikes, freight embargoes; and

- b. The contractor, within [10] days from the beginning of any delay, notifies the (Recipient) in writing of the causes of delay. If in the judgment of the (Recipient), the delay is excusable, the time for completing the work shall be extended. The judgment of the (Recipient) shall be final and conclusive on the parties, but subject to appeal under the Disputes clauses.

If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of the Recipient.

10. **Termination for Convenience or Default (Architect and Engineering).** The (Recipient) may terminate this contract in whole or in part, for the Recipient's convenience or because of the failure of the Contractor to fulfill the contract obligations. The (Recipient) shall terminate by delivering to the Contractor a Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the Contracting Officer all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process.

If the termination is for the convenience of the Recipient, the Contracting Officer shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services.

If the termination is for failure of the Contractor to fulfill the contract obligations, the Recipient may complete the work by contract or otherwise and the Contractor shall be liable for any additional cost incurred by the Recipient.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Recipient.

11. **Termination for Convenience or Default (Cost-Type Contracts).** The (Recipient) may terminate this contract, or any portion of it, by serving a notice of termination on the Contractor. The notice shall state whether the termination is for convenience of the (Recipient) or for the default of the Contractor. If the termination is for default, the notice shall state the manner in which the contractor has failed to perform the requirements of the contract. The Contractor shall account for any property in its possession paid for from funds received from the (Recipient), or property supplied to the Contractor by the (Recipient). If the termination is for default, the (Recipient) may fix the fee, if the contract provides for a fee, to be paid the contractor in proportion to the value, if any, of work performed up to the time of termination. The Contractor shall promptly submit its termination claim to the (Recipient) and the parties shall negotiate the termination settlement to be paid the Contractor.

If the termination is for the convenience of the (Recipient), the Contractor shall be paid its contract close-out costs, and a fee, if the contract provided for payment of a fee, in proportion to the work performed up to the time of termination.

If, after serving a notice of termination for default, the (Recipient) determines that the Contractor has an excusable reason for not performing, such as strike, fire, flood, events which are not the fault of and are beyond the control of the contractor, the (Recipient), after setting up a new work schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

Civil Rights

The following requirements apply to the underlying contract:

1. **Nondiscrimination.** In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
2. **Equal Employment Opportunity.** The following equal employment opportunity requirements apply to the underlying contract:

Race, Color, Creed, National Origin, Sex. In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 *et seq.*, (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

- b. *Age* - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

- c. *Disabilities* - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

Disadvantaged Business Enterprise

1. This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The agency's overall, race-neutral goal for DBE participation is 8%. A separate contract goal has not been established for this procurement.
2. The contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as {insert agency name} deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).
3. The successful bidder/offeror will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.

Incorporation of Federal Transit Administration (FTA) Terms

The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any (name of grantee) requests which would cause (name of grantee) to be in violation of the FTA terms and conditions.

Suspension and Debarment

This contract is a covered transaction for purposes of 49 CFR Part 29. As such, the contractor is required to verify that none of the contractor, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

The contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.

By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by {insert agency name}. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in

addition to remedies available to {insert agency name}, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

Rights in Data

The following requirements apply to each contract involving experimental, developmental or research work:

1. The term "subject data" used in this clause means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the contract. The term includes graphic or pictorial delineation in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to: computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term "subject data" does not include financial reports, cost analyses, and similar information incidental to contract administration.
2. The following restrictions apply to all subject data first produced in the performance of the contract to which this Attachment has been added:
 - a. Except for its own internal use, the Purchaser or Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Purchaser or Contractor authorize others to do so, without the written consent of the Federal Government, until such time as the Federal Government may have either released or approved the release of such data to the public; this restriction on publication, however, does not apply to any contract with an academic institution.
 - b. In accordance with 49 C.F.R. § 18.34 and 49 C.F.R. § 19.36, the Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for "Federal Government purposes," any subject data or copyright described in subsections (2)(b)1 and (2)(b)2 of this clause below. As used in the previous sentence, "for Federal Government purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party.
 - (1) Any subject data developed under that contract, whether or not a copyright has been obtained; and
 - (2) Any rights of copyright purchased by the Purchaser or Contractor using Federal assistance in whole or in part provided by FTA.
 - c. When FTA awards Federal assistance for experimental, developmental, or research work, it is FTA's general intention to increase transportation knowledge available to the public, rather than to restrict the benefits

resulting from the work to participants in that work. Therefore, unless FTA determines otherwise, the Purchaser and the Contractor performing experimental, developmental, or research work required by the underlying contract to which this Attachment is added agrees to permit FTA to make available to the public, either FTA's license in the copyright to any subject data developed in the course of that contract, or a copy of the subject data first produced under the contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of the underlying contract, is not completed for any reason whatsoever, all data developed under that contract shall become subject data as defined in subsection (a) of this clause and shall be delivered as the Federal Government may direct. This subsection (c), however, does not apply to adaptations of automatic data processing equipment or programs for the Purchaser or Contractor's use whose costs are financed in whole or in part with Federal assistance provided by FTA for transportation capital projects.

- d. Unless prohibited by state law, upon request by the Federal Government, the Purchaser and the Contractor agree to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Purchaser or Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. Neither the Purchaser nor the Contractor shall be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.
 - e. Nothing contained in this clause on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.
 - f. Data developed by the Purchaser or Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying contract to which this Attachment has been added is exempt from the requirements of subsections (b), (c), and (d) of this clause, provided that the Purchaser or Contractor identifies that data in writing at the time of delivery of the contract work.
 - g. Unless FTA determines otherwise, the Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.
3. Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (*i.e.*, a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.), the Purchaser and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.

4. The Contractor also agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

Patent Rights

The following requirements apply to each contract involving experimental, developmental, or research work:

1. *General* - If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under the contract to which this Attachment has been added, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the Purchaser and Contractor agree to take actions necessary to provide immediate notice and a detailed report to the party at a higher tier until FTA is ultimately notified.
2. Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), the Purchaser and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.
3. The Contractor also agrees to include the requirements of this clause in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

Energy Conservation

The contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

ORDINANCE NO. 1447

AN ORDINANCE AMENDING CANBY MUNICIPAL CODE (CMC) CHAPTER 5.04.190 REGARDING BUSINESS LICENSE EXEMPTIONS IN THE CITY OF CANBY.

WHEREAS, the City of Canby currently requires businesses that operate within the City limits to obtain and maintain a Canby business license; and

WHEREAS, the City of Canby desires to clarify and update which businesses are exempt from obtaining or maintaining such a license; and

WHEREAS, the Canby Municipal Code needed to better address the need of businesses to follow all laws; now therefore

THE CITY OF CANBY, OREGON, ORDAINS AS FOLLOWS:

Section 1. The Canby Municipal Code (CMC) Chapter 5.04.190 is hereby amended to read as follows:

§ 5.04.190 Exemptions.

The provisions of this chapter shall not apply to:

- A. Garage sales, as described in this chapter.
- B. Participants of all official city-sponsored or sanctioned events **and the Canby Farmers Market.**
- C. ~~General Canby Day and Canby Saturday Market.~~
- D. Any person engaged as a landlord in leasing or renting property to others, unless the person leases at any 1 time more than 2 separate rental units, spaces or parcels, whether it be land, buildings or both, or residential, commercial or both.
- E. Municipal, state, or federal agencies.
- F. All non-profit **organizations** businesses are exempt **from** ~~for~~ the business license fee, but **are** still required to complete an application.
- G. **Businesses that are participating in an event sponsored by a non-profit organization.**
- H. Any person who carries on or engages in a business that is illegal under applicable city, state, or federal laws is prohibited from being issued a business license.
- I. Any business which is exempt from a license by virtue of state or federal law.
- J. **Any business who is in operation for three or fewer consecutive days at the same location and operates less than a total of 30 days per calendar year within C-1 Downtown Commercial Zone of Canby. This exemption does not apply to Contractors, Landscapers, or any business engaged in a contract with the City of Canby or Canby Urban Renewal Agency.**

(Ord. 1396, passed 3-5-2014)

2nd Reading

SUBMITTED to the Canby City Council and read the first time at a regular meeting therefore on Wednesday, August 3, 2016, 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 Wednesday, September 7, 2016, commencing at the hour of 7:30 p.m. at the Council Meeting Chambers located at 155 NW 2nd Avenue, Canby, Oregon.

Kimberly Scheafer, MMC
City Recorder

PASSED on the second and final reading by the Canby City Council at a regular meeting thereof on September 7, 2016 by the following vote:

YEAS_____ NAYS_____

Brian Hodson
Mayor

ATTEST:

Kimberly Scheafer, MMC
City Recorder

CURRAN-McLEOD, INC.
CONSULTING ENGINEERS

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

August 12, 2016

City of Canby
182 N Holly Street
Canby, OR 97013
Attn: Mr. Rick Robinson, City Administrator

RE: CITY OF CANBY
NW TERRITORIAL ROAD STREET AND SANITARY SEWER IMPROVEMENTS
BID TABULATION & RECOMMENDATION OF AWARD

Mr. Mayor & City Council Members:

On August 11th, 2016, the City of Canby solicited and received four (4) bids for the NW Territorial Road Street and Sanitary Sewer Improvements project. The summary of the pricing is shown on the attached tabulation, with the low bid received from Canby Excavating, Inc.

The summary of cost from each of the four (4) bidders is shown on the attached tabulation and listed below:

1	Canby Excavating, Inc.	\$482,400.00
2	MAG, LLC	\$560,659.40
3	Dirt & Aggregate Interchange	\$617,777.00
4	Kodiak Pacific Construction	\$671,671.00

BID REVIEW

Each bid was reviewed for compliance with the requirements listed in the contract documents. All bids were reviewed for mathematical entries, acknowledgement of addenda, bonding information, first tier disclosure information and execution of the bid.

In summary all of the bids were deemed responsive.

The low bidder, Canby Excavating, Inc. has a good record with the Construction Contractors Board and no record of concerns with the Oregon Department of Transportation for a wide variety of work classes. We have worked with Canby Excavating, Inc. on multiple projects of similar scope and their experience makes us confident they are more than capable to complete the work at hand.

City of Canby
August 12, 2016
Page 2

SUMMARY & RECOMMENDATION

After review of all bids, we recommend the City of Canby award the NW Territorial Road Street and Sanitary Sewer Improvements project to the low responsive bidder Canby Excavating, Inc. in the amount of Four Hundred Eighty Two Thousand, Four Hundred and 00/100 Dollars (\$482,400.00).

We have enclosed a staff report, an ordinance 1448, bid tabulation and a proposed contract for the City to proceed with award of the contract. In anticipation of award, we issued the Notice of Intent to Award to all bidders as of the date of this letter.

Very truly yours,

CURRAN-McLEOD, INC.




Curt McLeod, P.E.

Enclosures: Staff Report for Ordinance 1448
Ordinance No. 1448
Territorial Road Bid Tabulation
Contract for Construction

CURRAN-McLEOD, INC.
CONSULTING ENGINEERS

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

To: Honorable Mayor and City Council
CITY OF CANBY
ATTN: Mr. Rick Robinson, City Administrator

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

DATE: August 29, 2016

ISSUE: NW TERRITORIAL ROAD
STREET AND SANITARY SEWER IMPROVEMENTS
CONSTRUCTION CONTRACT ORDINANCE No. 1448

SYNOPSIS: On August 11, 2016, the City of Canby solicited and received four (4) bids for NW Territorial Road Street and Sanitary Sewer Improvements project. This staff report is to request Council approval for award of the contract to the low responsive bidder.

RECOMMENDATION:

That the Council approve Ordinance No. 1448 authorizing the Mayor and the City Administrator to execute a contract with Canby Excavating, Inc. in the amount of \$482,400.00 for the NW Territorial Road Street and Sanitary Sewer Improvements project; and declaring an emergency.

RATIONALE:

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

BACKGROUND:

NW Territorial Road Street and Sanitary Sewer Improvements Project was submitted and approved by ODOT (IGA #31291) to receive a grant in the amount of \$339,817.52 from the 2016 Fund Exchange Program. This fund will offset a large portion of the project expense.

Included in the construction contract are two work components outside of the Territorial Road improvements. Five (5) Speed Humps on N. Birch Street are included in the work scope and warranted to provide traffic calming in this area

prone to excessive speed.

The second work component is the installation of five new drywells located throughout the City to resolve historical drainage problems.

FISCAL IMPACT:

The low responsive bid is reasonable and all improvements have dedicated funding. The ODOT Fund Exchange Grant will cover all expenses of the roadway improvements including the speed humps, and a portion of the sanitary sewer installation on Territorial Road.

The Combined Sewer Reserve is budgeted to cover all expenses of the off-site storm water drywells and any remaining costs of the sanitary sewer extension on Territorial Road that exceeds the available ODOT Fund Exchange resources, a total of approximately \$15,000.

ENCLOSURES:

- Ordinance No. 1448
- Canby Excavating, Inc Construction Contract
- Recommendation of Award
- Bid Tabulation

cc: Mr. Rick Robinson, City Administrator
Ms. Kim Scheafer, City Recorder

ORDINANCE NO. 1448

AN ORDINANCE AUTHORIZING THE MAYOR AND CITY ADMINISTRATOR TO EXECUTE A CONTRACT WITH CANBY EXCAVATING, INC. IN THE AMOUNT OF \$482,400.00 FOR NW TERRITORIAL ROAD STREET AND SANITARY SEWER IMPROVEMENTS; AND DECLARING AN EMERGENCY.

WHEREAS, the City of Canby has heretofore advertised and received four (4) bids for the NW Territorial Road Street and Sanitary Sewer Improvements project; and

WHEREAS, the notice of call for bids was duly and regularly published in the Oregon Daily Journal of Commerce on July 27, 2016; and

WHEREAS, bids were received and opened on August 11, 2016 at 2:00 pm in the City Hall Conference Room of the City of Canby and the bids were read aloud; and

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

1	Canby Excavating, Inc.	\$482,400.00
2	MAG, LLC	\$560,659.40
3	Dirt & Aggregate Interchange	\$617,777.00
4	Kodiak Pacific Construction	\$671,671.00

WHEREAS, the Canby City Council, acting as the City's Contract Review Board, met on Wednesday, September 7, 2016, and considered the bids and reports and recommendations of the City staff, including the staff recommendation that the low responsive bid be selected; and

WHEREAS, the Canby City Council determined that the low responsive bid was that of Canby Excavating, Inc.; now therefore

THE CITY OF CANBY ORDAINS AS FOLLOWS:

Section 1. The Mayor and/or City Administrator are hereby authorized and directed to make, execute, and declare in the name of the City of Canby and on its behalf, an appropriate contract with Canby Excavating, Inc. for NW Territorial Road Street and Sanitary Sewer Improvements, in the amount of \$482,400.00. A copy of the Contract for Construction with Canby Excavating, Inc. is attached hereto and by this reference incorporated herein.

Section 2. Inasmuch as it is in the best interest of the citizens of Canby, Oregon, to complete this project as soon as possible, an emergency is hereby declared to exist and this ordinance shall therefore take effect immediately upon its enactment after final reading.

SUBMITTED to the Canby City Council and read the first time at a regular meeting therefore on Wednesday, September 7, 2016; ordered posted as required by the Canby City Charter and scheduled for second reading on Wednesday, September 21, 2016, after the hour of 7:30 p.m. at the Council Meeting Chambers located at 155 NW 2nd Avenue, Canby, Oregon.

Kimberly Scheafer, MMC
City Recorder

PASSED on second and final reading by the Canby City Council at a regular meeting thereof on the 21st day of September, 2016, by the following vote:

YEAS_____

NAYS_____

Brian Hodson, Mayor

ATTEST:

Kimberly Scheafer, MMC
City Recorder

CONTRACT FOR CONSTRUCTION

THIS AGREEMENT is dated as of the ____ day of _____ in the year 2016 by and between

CITY OF CANBY

(hereinafter called OWNER) and

CANBY EXCAVATING, INC.

(hereinafter called CONTRACTOR)

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

ARTICLE 1 - WORK

CONTRACTOR shall complete all Work as specified or indicated in the Contract Documents:

**City of Canby
NW Territorial Road
Street & Sanitary Sewer Improvements**

The scope of work consists of approximately 650 lineal foot, 20-foot width half street improvements to include curbs, 6-foot wide sidewalks, street lights, excavation, paving, storm drain and sanitary sewer.

ARTICLE 2 - ENGINEER

The Project has been designed by CURRAN-McLEOD, INC., Consulting Engineers, who is hereinafter called ENGINEER and who will assume all duties and responsibilities and will have the rights and authority assigned to ENGINEER in the Contract Documents in connection with completion of the Work in accordance with the Contract Documents.

ARTICLE 3 - CONTRACT TIME

- 3.1 The Work will be substantially completed within **90** calendar days after the date when the Contract Time commences to run as provided in paragraph 2.03 of the General Conditions, and completed and ready for final payment in accordance with Paragraph 14.07 of the General Conditions within **30** days after the date when the issuance of the Certificate of Substantial Completion including punch list items.

- 3.2 Liquidated Damages: OWNER and CONTRACTOR recognize that time is of the essence of this Agreement and that OWNER will suffer financial loss if the Work is not substantially complete within the time specified in paragraph 3.1 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. They also recognize the delays, expense and difficulties involved in proving in a legal proceeding the actual loss suffered by OWNER if the Work is not substantially complete on time.

Accordingly, instead of requiring any such proof, OWNER and CONTRACTOR agree that as liquidated damages for delay (but not as a penalty) CONTRACTOR shall pay OWNER or the OWNER may withhold from amounts due the CONTRACTOR Four Hundred Dollars (\$400.00) for each day that expires after the time specified in paragraph 3.1. for Substantial Completion until the Work is substantially complete AND/OR for each day of delay beyond the deadline for Final Completion.

ARTICLE 4 - CONTRACT PRICE

- 4.1 OWNER shall pay CONTRACTOR for performance of the Work in accordance with the Contract Documents in current funds by check, an amount totaling

Four Hundred Eighty-Two Thousand Four Hundred and 00/100----- Dollars

(\$482,400.00) as shown on the bid proposal.

ARTICLE 5 - PAYMENT PROCEDURES

CONTRACTOR shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Applications for Payment will be processed by ENGINEER as provided in the General Conditions.

- 5.1 Progress Payments: OWNER shall make progress payments on account of the Contract Price on the basis of CONTRACTOR'S Applications for Payment as recommended by ENGINEER, on or about the 25th day of each month during construction as provided below. All progress payments will be on the basis of the progress of the Work measured by the schedule of values provided for in paragraph 2.03 of the General Conditions.

- 5.1.1 Prior to Substantial Completion progress payments will be in an amount equal to:

- (a) 95 % of the Work completed; and
- (b) 95 % of materials and equipment not incorporated in the Work but delivered and suitably stored, less in each case the aggregate of payments previously made.

- 5.1.2 Upon Substantial Completion, OWNER shall pay an amount sufficient to increase total payments to CONTRACTOR to 95% of the value of the Contract Work completed, less such amounts as ENGINEER shall determine in accordance with paragraph 15.01 of the General Conditions.
- 5.2 Final Payment: Upon final completion and acceptance of the Work in accordance with paragraph 15.06 of the General Conditions, OWNER shall pay the remainder of the value of the Contract Work completed, as recommended by ENGINEER as provided in said paragraph 15.06.

ARTICLE 6 - INTEREST

All monies not paid when due hereunder shall bear interest at the maximum rate allowed by law at the place of the Project, when requested in accordance with ORS 279C.570

ARTICLE 7 - CONTRACTOR'S REPRESENTATIONS

In order to induce OWNER to enter into this Agreement CONTRACTOR makes the following representations:

- 7.1 CONTRACTOR has familiarized himself with the nature and extent of the Contract Documents, Work, locality, and with all local conditions and federal, state and local laws, ordinances, rules and regulations that in any manner may affect cost, progress or performance of the Work.
- 7.2 CONTRACTOR has visited and explored the site soil conditions or if attached studied carefully all reports of investigations and tests of subsurface and latent physical conditions at the site or otherwise affecting cost, progress or performance of the Work which were relied upon by ENGINEER in the preparation of the Drawings and Specifications and which have been identified in the Supplementary Conditions.
- 7.3 CONTRACTOR has visited and explored the site soil conditions, made or caused to be made if attached examinations, investigations and tests and studies of such reports and related data in addition to those referred to in paragraph 7.2 as he deems necessary for the performance of the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents; and no additional examinations, investigations, tests, reports or similar data are or will be required by CONTRACTOR for such purposes.
- 7.4 CONTRACTOR has conversed with the ENGINEER regarding the site soil conditions or correlated if attached the results of all such observations, examinations, investigations, tests, reports and data with the terms and conditions of the Contract Documents.

- 7.5 CONTRACTOR has given ENGINEER written notice of all conflicts, errors or discrepancies that he has discovered in the Contract Documents and the written resolution thereof by ENGINEER is acceptable to CONTRACTOR.

ARTICLE 8 - CONTRACT DOCUMENTS

- 8.1 This Agreement
- 8.2 Exhibits to this Agreement.
- 8.3 Performance and other Bonds
- 8.4 Notice of Award.
- 8.5 General Conditions of the Construction Contract
- 8.6 Supplementary Conditions
- 8.7 Technical Specifications as listed in the Table of Contents.
- 8.8 Drawings bearing the following general title:

**City of Canby
NW Territorial Road
Street & Sanitary Sewer Improvements**

- 8.9 Addenda numbers 1 & 2.
- 8.10 CONTRACTOR'S Bid
- 8.11 Any Modification, including Change Orders, duly delivered after execution of Agreement.

There are no Contract Documents other than those listed above in this ARTICLE 8. The Contract Documents may only be altered, amended or repealed by a Modification (as defined in Article 1 of the General Conditions).

ARTICLE 9 - MISCELLANEOUS

- 9.1 Terms used in this Agreement which are defined in Article 1 of the General Conditions shall have the meanings indicated in the General Conditions.

- 9.2 No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and specifically by without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.
- 9.3 OWNER and CONTRACTOR each binds himself, his partners, successors, assigns and legal representatives to the other party hereto, his partners, successors, assigns and legal representatives in respect to all covenants, agreements and obligations contained in the Contract Documents.
- 9.4 In the event a suit, arbitration or other legal action is required by either the OWNER or the CONTRACTOR to enforce any provisions of this Agreement, the prevailing parties shall be entitled to all reasonable costs and reasonable attorney's fees upon trial or subsequent appeal.

IN WITNESS WHEREOF, the parties hereto have signed three counterparts of this Agreement.

This Agreement will be effective on _____, 2016.

OWNER:

CITY OF CANBY
182 N Holly Street
P.O. Box 930
Canby, OR 97013

CONTRACTOR:

CANBY EXCAVATING, INC.
P.O. Box 848
Canby, OR 97013

By:_____

By:_____

Name/Title:_____

Name/Title:_____

Attest:_____

Address for giving notices:

City of Canby
NW Territorial Road Street and Sanitary Sewer Improvements
Bid Date: Thursday, August 11, 2016, @ 2 PM

1 2 3 4

BID TABULATION		Canby Excavating		MAG, LLC		Dirt & Aggregate Interchange		Kodiak Pacific Construction	
Basic Bid Items:		Unit / Total		Unit / Total		Unit / Total		Unit / Total	
A. Site Preparation & Restoration		Units		Unit / Total		Unit / Total		Unit / Total	
A.1	Mobilization	1	LS	\$ 38,403.00	\$ 39,000.00	\$ 64,370.00	\$ 81,841.00	\$ 81,841.00	
A.2	Temporary Protection & Direction of Traffic, Temporary Signing	1	LS	\$ 6,000.00	\$ 7,600.00	\$ 10,000.00	\$ 21,558.00	\$ 21,558.00	
A.3	Erosion & Sediment Control	1	LS	\$ 1,600.00	\$ 1,800.00	\$ 4,500.00	\$ 4,223.00	\$ 4,223.00	
A.4	Clearing & Grubbing, Tree Removal, Landscape Removal and Replacement, and Site Restoration (Excluding Tax Lot 817)	1	LS	\$ 12,000.00	\$ 6,800.00	\$ 7,000.00	\$ 4,141.00	\$ 4,141.00	
A.5	Tax Lot 817 Clearing, Grubbing, Tree Removal, Retaining Wall Relocation, Irrigation Replacement, New Fence, Gate (Installation Only), and landscaping, including \$400 allowance	1	LS	\$ 18,000.00	\$ 8,300.00	\$ 16,800.00	\$ 33,711.00	\$ 33,711.00	
A.6	Common Excavation	400	CY	\$ 24.00	\$ 44.10	\$ 40.00	\$ 65.08	\$ 65.08	
A.7	Subgrade/ Trench Stabilization	25	CY	\$ 45.00	\$ 88.00	\$ 100.00	\$ 277.00	\$ 277.00	
A.8	Sawcut Asphalt/ Concrete Pavement (up to 6" Depth)	2000	LF	\$ 1.00	\$ 2.40	\$ 3.50	\$ 1.07	\$ 1.07	
Subtotal Site Preparation & Restoration				\$ 88,728.00	\$ 88,140.00	\$ 128,170.00	\$ 180,571.00	\$ 180,571.00	
Basic Bid Items:		Unit / Total		Unit / Total		Unit / Total		Unit / Total	
B. Paving & Surfacing		Units		Unit / Total		Unit / Total		Unit / Total	
B.1	1"-0" Crushed Rock Base (12" deep)	1482	SY	\$ 17.00	\$ 18.95	\$ 15.50	\$ 28.50	\$ 28.50	
B.2	Standard Concrete Type 'C' Curb including Excavation and 6" Leveling Rock	743	LF	\$ 25,194.00	\$ 28,083.90	\$ 22,971.00	\$ 42,237.00	\$ 42,237.00	
B.3	6" Concrete Driveway including Excavation and 4" Leveling Rock	90	SY	\$ 19,318.00	\$ 21,547.00	\$ 20,061.00	\$ 20,432.50	\$ 20,432.50	
B.4	4" Concrete Sidewalk or Driveway including Excavation and 2" Leveling Rock	398	SY	\$ 9,000.00	\$ 12,982.50	\$ 8,010.00	\$ 8,653.50	\$ 8,653.50	
B.5	Detectable Warning Tile (ADA Ramp 2'x4')	2	Ea.	\$ 27,860.00	\$ 32,039.00	\$ 23,681.00	\$ 27,064.00	\$ 27,064.00	
B.6	Asphalt Driveway Restoration including Excavation, 2" of HMAC and 6" Base Rock	40	SY	\$ 250.00	\$ 317.00	\$ 295.00	\$ 254.50	\$ 254.50	
B.7	1/2" Dense Mix AC Pavement, Level III	450	Tons	\$ 55.00	\$ 22.25	\$ 112.50	\$ 80.55	\$ 80.55	
B.8	2'x9' Thermoplastic Continental Cross Bars or 12" wide Stop Bars	100	SF	\$ 2,200.00	\$ 890.00	\$ 4,500.00	\$ 3,222.00	\$ 3,222.00	
B.9	Pavement Grinding at new AC connection to the existing, three locations	1	LS	\$ 33,750.00	\$ 50,850.00	\$ 48,645.00	\$ 34,425.00	\$ 34,425.00	
B.10	Speed Humps on North Birch Street	5	Ea.	\$ 4,000.00	\$ 8,625.00	\$ 5,310.00	\$ 4,772.00	\$ 4,772.00	
Subtotal Paving & Surfacing				\$ 152,622.00	\$ 178,951.40	\$ 163,883.00	\$ 184,041.00	\$ 184,041.00	

BID TABULATION		Canby Excavating	MAG, LLC	Dirt & Aggregate Interchange	Kodiak Pacific Construction
Basic Bid Items:		Unit / Total	Unit / Total	Unit / Total	Unit / Total
C. Storm Drain Improvements		Units	Unit / Total	Unit / Total	Unit / Total
C.1	10" HDPE Pipe Including Excavation, Crushed Rock Pipe Zone and Native Backfill	100 LF	\$ 87.00 \$ 48.55	\$ 68.00	\$ 294.81
			\$ 8,700.00 \$ 4,855.00	\$ 6,800.00	\$ 29,481.00
C.2	Type G-2 Catch Basin	3 Ea.	\$ 2,700.00 \$ 2,152.00	\$ 1,300.00	\$ 2,844.00
			\$ 8,100.00 \$ 6,456.00	\$ 3,900.00	\$ 8,532.00
C.3	48" Diameter Sedimentation Manhole	3 Ea.	\$ 6,100.00 \$ 4,143.00	\$ 4,600.00	\$ 8,196.00
			\$ 18,300.00 \$ 12,429.00	\$ 13,800.00	\$ 24,588.00
C.4	48" Diameter Drywell (26' deep)	7 Ea.	\$ 11,000.00 \$ 18,500.00	\$ 24,500.00	\$ 13,289.00
			\$ 77,000.00 \$ 129,500.00	\$ 171,500.00	\$ 93,023.00
C.5	Connect to Exist. Drywell	5 Ea.	\$ 2,300.00 \$ 1,000.00	\$ 1,500.00	\$ 1,478.00
			\$ 11,500.00 \$ 5,000.00	\$ 7,500.00	\$ 7,390.00
C.6	10" HDPE	500 LF	\$ 100.00 \$ 105.00	\$ 118.00	\$ 61.90
			\$ 50,000.00 \$ 52,500.00	\$ 59,000.00	\$ 30,950.00
Subtotal Storm Drain Improvements			\$ 173,600.00 \$ 210,740.00	\$ 262,500.00	\$ 193,964.00
Basic Bid Items		Unit / Total	Unit / Total	Unit / Total	Unit / Total
D. Sanitary Sewer		Units	Unit / Total	Unit / Total	Unit / Total
D.1	10" PVC Pipe Including Trench Excavation, Crushed Rock Pipe Zone and Native Backfill	430 LF	\$ 65.00 \$ 62.10	\$ 64.00	\$ 69.00
			\$ 27,950.00 \$ 26,703.00	\$ 27,520.00	\$ 29,670.00
D.2	8" PVC Pipe Including Trench Excavation, Crushed Rock Pipe Zone and Native Backfill	40 LF	\$ 105.00 \$ 60.00	\$ 55.00	\$ 128.00
			\$ 4,200.00 \$ 2,400.00	\$ 2,200.00	\$ 5,120.00
D.3	6" PVC Pipe Including Trench Excavation, Crushed Rock Pipe Zone and Native Backfill, & 6" Cleanout	2 Ea.	\$ 4,000.00 \$ 2,600.00	\$ 3,752.00	\$ 4,208.00
			\$ 8,000.00 \$ 5,200.00	\$ 7,504.00	\$ 8,416.00
D.4	Remove Existing Cleanout & Connect	1 Ea.	\$ 1,100.00 \$ 300.00	\$ 500.00	\$ 1,311.00
			\$ 1,100.00 \$ 300.00	\$ 500.00	\$ 1,311.00
D.5	Remove Existing Manhole & Dispose	1 Ea.	\$ 1,200.00 \$ 1,200.00	\$ 1,000.00	\$ 1,846.00
			\$ 1,200.00 \$ 1,200.00	\$ 1,000.00	\$ 1,846.00
D.6	48" Diameter Standard Manhole, Sta 7+03	1 Ea.	\$ 4,200.00 \$ 4,900.00	\$ 3,000.00	\$ 10,414.00
			\$ 4,200.00 \$ 4,900.00	\$ 3,000.00	\$ 10,414.00
D.7	48" Diameter Inside Drop MH, Sta 2+05	1 Ea.	\$ 5,500.00 \$ 6,350.00	\$ 3,800.00	\$ 10,631.00
			\$ 5,500.00 \$ 6,350.00	\$ 3,800.00	\$ 10,631.00
Subtotal Sanitary Sewer			\$ 52,150.00 \$ 47,053.00	\$ 45,524.00	\$ 67,408.00
Basic Bid Items		Unit / Total	Unit / Total	Unit / Total	Unit / Total
E. Utility Construction		Units	Unit / Total	Unit / Total	Unit / Total
E.1	Trench Excavation Including Material Disposal and Crushed Rock Backfill	550 LF	\$ 22.00 \$ 62.50	\$ 30.00	\$ 46.50
			\$ 12,100.00 \$ 34,375.00	\$ 16,500.00	\$ 25,575.00
E.2	Excavate, Material Disposal and Rock Backfill For Street Light Poles Including Setting Junction Boxes (#1324) to Grade	4 Ea.	\$ 800.00 \$ 350.00	\$ 300.00	\$ 5,028.00
			\$ 3,200.00 \$ 1,400.00	\$ 1,200.00	\$ 20,112.00
Subtotal Utility Construction			\$ 15,300.00 \$ 35,775.00	\$ 17,700.00	\$ 45,687.00
TOTAL BASIC BID			\$ 482,400.00 \$ 560,659.40	\$ 617,777.00	\$ 671,671.00