



CITY COUNCIL Agenda

222 NE 2nd Avenue, Canby, OR, 97013 | Ph: (503) 266-4021 | www.canbyoregon.gov

JANUARY 3, 2024

This City Council meeting may be attended in person in the Council Chambers at
222 NE 2nd Avenue, Canby, OR 97013

The public can register to attend the meeting virtually at:

https://us06web.zoom.us/webinar/register/WN_PHnWaFmJSy-s-XAtBDPbmQ.

The meetings can be viewed on YouTube at: <https://www.youtube.com/channel/UCn8dRr3QzZYXoPUEF4OTP-A>

For questions regarding programming, please contact: Willamette Falls Studio (503) 650-0275;
media@wfmstudios.org

REGULAR MEETING – 7:00 PM

1. CALL TO ORDER

- a. Invocation
- b. Pledge of Allegiance

2. STAFF INTRODUCTIONS

- a. Scott Schlag, Finance Director

- 3. CITIZEN INPUT & COMMUNITY ANNOUNCEMENTS:** This is an opportunity for audience members to address the City Council on items not on the agenda. If you are attending in person, please complete a testimony/comment card prior to speaking and hand it to the City Recorder. If you would like to speak virtually, please email or call the Deputy City Recorder by 4:30 pm on January 3, 2024 with your name, the topic you'd like to speak on and contact information: lasonc@canbyoregon.gov or call 503-266-0637.

4. CONSENT AGENDA

- a. Appointment of Scott Sasse to the Transit Advisory Committee with a term ending March 31, 2025. Pg 1
- b. Appointment of Tiffany Mach to the Library Advisory Board with a term ending June 30, 2027. Pg 3
- c. Appointment of Adrienne Carlson to the Heritage and Landmark Commission with a term ending June 30, 2026. Pg 6
- d. Appointment of Aimee Noss to the Clackamas County Library District Advisory Committee effective January 3, 2024. Pg 10
- e. Approval of November 15, 2023 Work Session and City Council Regular Meeting Minutes. Pg 24
- f. Approval of December 6, 2023 Work Session and City Council Regular Meeting Minutes. Pg 30

5. ORDINANCES & RESOLUTIONS

a. Consider **Ordinance No. 1615**: AN ORDINANCE AUTHORIZING THE CITY ADMINISTRATOR TO MAKE, EXECUTE, AND DECLARE IN THE NAME OF THE CITY OF CANBY AND ON ITS BEHALF, AN APPROPRIATE LEASE AGREEMENT WITH ZIMMER VENTURES LLC, OF CANBY, OR TO PROVIDE LEASED OFFICE SPACE FOR CANBY AREA TRANSIT LOCATED AT 195 S. HAZEL DELL WAY THROUGH DECEMBER 2025. *(First Reading)*

6. OLD BUSINESS

a. City Attorney Recruitment

7. MAYOR'S BUSINESS

8. COUNCILOR COMMENTS & LIAISON REPORTS

9. CITY ADMINISTRATOR'S BUSINESS & STAFF REPORTS

10. CITIZEN INPUT

11. ACTION REVIEW

12. 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 Christopher Lason at 503-266-0637. A copy of this Agenda can be found on the City's web page at www.canbyoregon.gov.



City Council Staff Report

Meeting Date: 1/3/2024

To: The Honorable Mayor Hodson & City Council
Thru: Eileen Stein, City Administrator
From: Maya Benham, Administrative Director/ City Recorder
Agenda Item: Transit Advisory Committee Appointment

Summary

Member Randy Tessman resigned from the Transit Advisory Committee on May 23, 2023. This created a vacancy on the Transit Advisory Committee and was advertised on the City's website. Mr. Tessman's term was set to expire March 31, 2025.

Vice Chair Carlson interviewed Mr. Scott Sasse on December 12, 2023. After conducting an interview, it was unanimously recommended that Mr. Scott Sasse be appointed to the Transit Advisory Committee with the term ending March 31, 2025.

Background

The Transit Advisory Committee was established through Resolution No. 790 in 2002. It assesses transportation needs, acts in an advisory capacity to the Transit Director, promotes and educates the public regarding the acceptance and usage of the transit system and special problems associated with the use of the system by youth, elderly and disabled citizens. The Committee is made up of seven members who serve three year terms.

Attachments

Scott Sasse's Application

Fiscal Impact

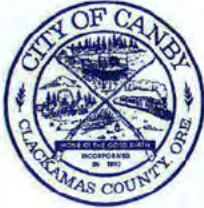
None

Options

1. Appoint Scott Sasse to the Transit Advisory Committee.
2. Take no action.

Proposed Motion

"I move to approve the appointment of Scott Sasse to the Transit Advisory Committee for a term ending March 31, 2025."



**CITY OF CANBY
COMMITTEE, BOARD, &
COUNCIL APPOINTMENT APPLICATION**

Date: 10/3/23 Position Applying For: Transit Board
Name: SCOTT E. SASSE Occupation: LANDSCAPER
Home Address: [REDACTED]
Employer: SELF Position: OWNER
Daytime Phone: [REDACTED] Evening Phone: SAME
E-Mail Address: [REDACTED]
What are your community interests (committees, organizations, special activities)? _____

What are your major interests or concerns in the City's programs? _____

Reason for your interest in this position: Help fill out a short board

Experience and educational background: _____

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

Parks & Rec

Budget Committee

Referred by (if applicable): Jerry Nelzen

Please return to:

City of Canby - Attn: City Recorder
PO Box 930, 222 NE 2nd Avenue, Canby, OR 97013
Phone: 503.266.0720 Fax: 503.266.7961 Email: benhamm@canbyoregon.gov

Note: Information on this form may be available to anyone upon a Public Records Request and may be viewable on the City's web page. 12/2021

Date Received: 10/3/2023 Date Appointed: _____ Term Expires: _____
Date Resigned: _____ Destruction Date: _____



City Council Staff Report

Meeting Date: 1/3/2024

To: The Honorable Mayor Hodson & City Council
Thru: Eileen Stein, City Administrator
From: Maya Benham, Administrative Director/ City Recorder
Agenda Item: Library Advisory Board Appointment

Summary

Member Jessica Hines resigned from the Library Advisory Board on February 9, 2023. This created a vacancy on the Library Advisory Board and was advertised on the City's website. Ms. Hines's term was originally set to expire June 30, 2023. The expiration date passed without being filled, so the position on the Library Advisory Board was set for a new term end date of June 30, 2027.

Chair Lois Brooks interviewed Ms. Tiffany Mach on December 16, 2023. After conducting an interview, it was unanimously recommended that Ms. Tiffany Mach be appointed to the Library Advisory Board with the term ending June 30, 2027.

Background

The Canby Public Library is established for the purpose of maintaining a free public library in accordance with O.R.S. 357.400-621. The Library Advisory Board was established through the City Code, section 2.20. The Library Board shall consist of 8 voting members appointed by the City Council upon recommendation of the Board Chairperson and the City Council liaison to the Library Board. The Mayor may vote only to break a tie, if necessary. A voting member shall be a high school student, residing within the Canby School District boundary. In accordance with the IGA, the city shall provide fair representation of unincorporated residents equal to the share of unincorporated patrons served by the Canby Public Library. Therefore, 2 of the 8 voting members must reside outside the Canby city limits. The other 6 members shall be residents of the city. Appointees shall hold office for 4-year terms from July 1 in the year of their appointment.

Attachments

Tiffany Mach's Application

Fiscal Impact

None

Options

1. Appoint Tiffany Mach to the Library Advisory Board.
2. Take no action.

Proposed Motion

"I move to approve the appointment of Tiffany Mach to the Library Advisory Board for a term ending June 30, 2027."



Insight

Search



Maya Benham

My HR Jobs ▼ Applicants ▼ Tests ▼

Lists ▼ Reports ▼

Career pages Library + ⌚

Application Detail

[View Exam Plan](#)
[View All Applicants](#)
[View Applicants By Step](#)
[Education Scoring](#)
[Work Experience Rating](#)
[Special Credit Rating](#)
[Add Skills](#)

[View Master Profile](#)

[Show Candidate Disposition](#)

Application 1 of 1

[Print View](#)

2023- LB - Library Advisory Board Member

Contact Information -- Person ID: 56061617

Name: Tiffany Mach Address: [REDACTED] Canby, Oregon 97013 US
 Home Phone: [REDACTED] Alternate Phone:
 Text Messaging Mobile No: Email: [REDACTED]
 Notification Preference: Email Former Last Name: [REDACTED]

Education

City of Canby has chosen not to collect this information for this job posting.

Work History

City of Canby has chosen not to collect this information for this job posting.

Certificates and Licenses

City of Canby has chosen not to collect this information for this job posting.

Skills

City of Canby has chosen not to collect this information for this job posting.

Additional Information

City of Canby has chosen not to collect this information for this job posting.

References

City of Canby has chosen not to collect this information for this job posting.

Resume

Text Resume

Attachments

City of Canby has chosen not to collect this information for this job posting.

Supplemental Questions

1. Q: What are your community interests (committees, organizations, special activities)?

A: The Library and furthering its growth, development, and community involvement.

2. Q: What are your major interests or concerns in the City's programs?

A: To keep the library as current, relevant and useful as it can be for our residents.

3. Q: Why are you interested in this volunteer position?

A: I have loved my time volunteering at the Friends of the Library Book Garden and would like to increase my involvement in other library related opportunities.

4. Q: Please share your experience and educational background.

A: I've been volunteering at FOL since Fall 2022. I have a bachelors in Medical Laboratory Science and serve as the Treasurer for ASCLS Oregon. Currently, I work full time as the Laboratory Manager at Women's Healthcare Associates in Portland, OR.

5. Q: Please list any other City or County positions on which you serve or have served.

A: None.

6. Q: If you were referred by someone, please list.

A: FOL Book Garden



City Council Staff Report

Meeting Date: 1/3/2024

To: The Honorable Mayor Hodson & City Council
Thru: Eileen Stein, City Administrator
From: Maya Benham, Administrative Director/ City Recorder
Agenda Item: Heritage and Landmark Commission Appointment

Summary

Member Rhonda Schectman resigned from the Heritage and Landmark Commission on February 2, 2022. This created a vacancy on the Heritage and Landmark Commission and was advertised on the City's website. Ms. Schectman's term was originally set to expire June 30, 2023. The expiration date passed without being filled, so the position on the Heritage and Landmark Commission was set for a new term end date of June 30, 2026.

Mayor Hodson, and members Doug Birkeland and Ron Burn interviewed Ms. Adrienne Carlson on December 20, 2023. After conducting an interview, it was unanimously recommended that Ms. Carlson be appointed to the Heritage and Landmark Commission with the term ending June 30, 2026.

Background

The Heritage and Landmark Commission was founded through Ordinance 1429, and was created to maintain and update an inventory of historic resources within the city, and provided under section 16.110.035 of the City code. There are 7 members on the Commission and they are appointed by the City Council. Members serve three year terms and may be appointed or reappointed at the discretion of the City Council.

Attachments

Adrienne Carlson's Application

Fiscal Impact

None

Options

1. Appoint Adrienne Carlson to the Heritage and Landmark Commission.
2. Take no action.

Proposed Motion

"I move to approve the appointment of Adrienne Carlson to the Heritage and Landmark Commission for a term ending June 30, 2026."

EMPLOYMENT APPLICATION		
	City of Canby 222 NE 2nd Ave Canby, Oregon - 97013 http://www.canbyoregon.gov (http://www.canbyoregon.gov) Carlson, AdriAnne Heritage & Landmark Commissioner	Received: 11/14/23, 5:17 PM For Official Use Only: QUAL: _____ DNQ: _____ <input type="checkbox"/> Experience <input type="checkbox"/> Training <input type="checkbox"/> Other: _____

PERSONAL INFORMATION	
POSITION TITLE: Heritage & Landmark Commissioner	Job Number: 2022-HLC
NAME: (Last, First, Middle) Carlson, AdriAnne	PERSON ID: [REDACTED]
ADDRESS: (Street, City, State, Zip Code) [REDACTED] Oregon City, OR 97045	
HOME PHONE: [REDACTED]	
EMAIL ADDRESS: [REDACTED]	NOTIFICATION PREFERENCE: Email

Agency - Wide Questions

Nothing Entered For This Section

Job Specific Supplemental Questions

- What are your community interests (committees, organizations, special activities)?**
Currently on the Canby school district budget board, and the CAT board
- What are your major interests or concerns in the City's programs?**
As far as heritage, I have grown up in Canby and find its history fascinating.
- Why are you interested in this volunteer position?**
I heard a seat needed to be filled and I care about the history of Canby and it's landmarks
- Please share your experience and educational background.**
Currently completing a bachelors degree. No current experience in heritage commissions
- Please list any other City or County positions on which you serve or have served.**
School budget board and Canby transit
- If you were referred by someone, please list.**
I heard about the position from Tyler Nizer.

By clicking the Accept & Submit button, I hereby certify that every statement I have made in this application is true and complete to the best of my knowledge.

Additional Information for Employment Applications:

I understand this application does not represent a contract for employment. I understand that an acceptance of an offer for employment does not create a contractual obligation upon the City of Canby to continue to employ me for any period of time in the future. I understand that no representative from the City has any authority to enter into any special agreement with me to promise and/or guarantee my employment for any specific time period or to promise me a promotion or transfer, etc. either prior to commencement of employment or

after I have become employed, or to assure me of any benefits or terms and conditions of employment, or to make any agreement contrary to the aforementioned.

I hereby represent that each answer to questions incorporated into this application and all other information otherwise furnished by me shall be true, complete, and correct. I understand that incorrect, incomplete, false or misleading statement/answer/information furnished by me either verbally, or in writing will subject my application to disqualification from further consideration and/or if already employed by the City, when the aforementioned is detected, I will be subject to discipline up to and including discharge, for falsifying a City record/document, regardless of how much time has elapsed since the date I was employed. In the event that I am employed by the City, I agree to comply with all its orders, rules, regulations, safety policies, and performance standards. Upon hire, I will provide proof as required on the US Government, I-9 form that I am legally eligible for employment in the United States. If I cannot provide such proof in accordance with Federal Law, I understand that my employment will be terminated.

I have read and understand all of the provisions of this acknowledgement. By signing this application, I hold the City of Canby harmless for any result of the City questioning the references provided in this application. If I am selected for further consideration, I hereby authorize and release from liability all former employers, landlords, educational institutions, law enforcement agencies, and/or other government agencies to provide/release information regarding my employment, education, criminal conviction record, credit history, driver's license violations and motor vehicle records, which may be in their possession to the City of Canby and/or its agents. I understand that I will not receive and am not entitled to know the contents of confidential reports received, and I further understand that these reports may be privileged. An offer of employment is conditional upon a background investigation, and if relevant, a pre-employment medical exam and drug screen test (safety sensitive positions).

EQUAL EMPLOYMENT OPPORTUNITY: We are an Equal Opportunity/Affirmative Action Employer. We are dedicated to a policy of nondiscrimination in employment on the basis of race, color, religion, sex, gender identity, sexual orientation, pregnancy, status as a parent, national origin, age, or mental and/or physical disability.

BACKGROUND: Finalists for City jobs must successfully pass a background investigation and may be required to pass a pre-employment medical exam as a final condition of the job offer. Finalists for safety sensitive positions must also successfully pass a pre-employment drug-screening test.

PROBATIONARY PERIOD: New employees or employees changing job positions will be considered Trial service employees for at least six (6) months before attaining regular status.

IMMIGRATION LAW: In accordance with the Immigration Reform and Control Act of 1986 (IRCA), all newly hired employees will be required to complete and sign an Employment Eligibility Verification Form and present documentation verifying identity and employment eligibility.

This application was submitted by Carlson, AdriAnne

Signature _____

Date _____



CITY COUNCIL STAFF REPORT

Meeting Date: 1/3/2024

To: The Honorable Mayor Hodson & City Council
Thru: Eileen Stein, City Administrator
From: Marisa Ely, Interim Library Director
Agenda Item: Clackamas County Library District Advisory Committee (LDAC) Appointment

Summary

Member Denise Fonseca resigned on June 26, 2023 as Canby's LDAC representative. This created a vacancy on the Clackamas County Library District Advisory Committee (LDAC). Section 1.2 of the IGA specifies that the Library District Board "shall appoint the individual nominated by the Library City governing body to fill the service area's representative seat." At the June 26, 2023 meeting, the LDAC nominated Aimee Noss to replace Denise Fonseca as Canby's LDAC representative. But the appointment by the City of Canby has not been formalized.

Background

The District was formed with the purpose of acting as a fiscal agent in order to distribute property tax revenues raised by the District permanent rate to participating local governments who operate public libraries within Clackamas County. The permanent rate approved by voters in November 2008 is \$ 0.3974 per thousand of assessed value. 100% of all funds collected are distributed to public libraries within Clackamas County for library operations. The voting membership of LDAC consists of one representative or alternate nominated by the Library Service Provider (the City of Canby) and appointed by the District Board. The term of office is determined by the Provider.

Attachments

LDAC Intergovernmental Agreement

Fiscal Impact

None

Options

1. Appoint Aimee Noss to the Clackamas County LDAC.
2. Take no action.

Proposed Motion

"I move to approve the appointment of Aimee Noss to the Clackamas County Library District Advisory Committee effective January 3, 2024."

COOPERATIVE INTERGOVERNMENTAL AGREEMENT
BETWEEN
THE LIBRARY DISTRICT OF CLACKAMAS COUNTY
AND
MEMBER CITIES

THIS COOPERATIVE INTERGOVERNMENTAL AGREEMENT (this “Agreement”), is entered into this ____ day of _____, 2009, by and between the Library District of Clackamas County (the “District”) a county service district formed under ORS Chapter 451, and each of the Cities of Barlow, Canby, Estacada, Gladstone, Happy Valley, Lake Oswego, Milwaukie, Molalla, Oregon City, Rivergrove, Sandy, West Linn, and Wilsonville (each, a “City” and collectively, the “Cities”).

WHEREAS, voters approved formation of the District to provide financial support to the library service providers of Clackamas County (the “Library Cities”); and

WHEREAS, the Parties desire to work in a cooperative manner to support and provide library services to their residents; and

WHEREAS, many of the Cities participate in the Clackamas County-supported Library Network of Clackamas County, which is discussed in an intergovernmental agreement by and between the participating Cities and Clackamas County; and

WHEREAS, the Cities desire funding by the District and to provide the levels of service described herein;

NOW, THEREFORE, the District and Cities each covenant and agree to the following:

Section 1 Obligations of the District

- 1.1 District Board. The Board of County Commissioners acting under the provisions of ORS 451 is the governing body of the District and shall be known as the District Board.
- 1.2 District Advisory Committee. The District Board shall organize and appoint a District Advisory Committee consisting of one nominee from each Library City consistent with the policies and procedures of Clackamas County and/or the District for advisory committees. The District Board shall appoint the individual nominated by the Library City governing body to fill the service area’s representative seat. The District Advisory Committee shall be responsible for meeting at least annually to consider: (i) the evaluation reports of participating libraries as submitted pursuant to Section 2.3, (ii) any proposed changes to this Agreement pursuant to the amendment process described in Section 3.3, and (iii) any impact of the annexation or withdrawal of territory from the District pursuant to Sections 3.4 and 3.5 hereof.

- 1.3 District Budget Committee. State law also requires that the District constitute a Budget Committee consisting of the members of the District Board and an equal number of citizens, who may be nominated pursuant to existing County budget committee procedures. The role and responsibilities of the Budget Committee shall be as set forth in the applicable statutes.
- 1.4 District Revenue. The District has a permanent tax rate of \$0.3974 per \$1,000 of assessed value, collected from all parcels of real property in the District.
- 1.5 Distribution of Revenue. Revenues generated by the District permanent rate, including delinquent taxes, are allocated, appropriated and expended pursuant to the budget adopted by the District Board. The District Board agrees to allocate, appropriate, and distribute the funds of the District pursuant to the formula as defined on Attachment A (the "Formula") for the service areas as shown on the maps included as Attachment B ("Service Area Maps"). The Formula may be reevaluated as necessary by the Parties to this Agreement. Any change to the Formula shall occur as an amendment to this Agreement.
- 1.6 Transition Payments. The parties hereto acknowledge and agree that the District shall distribute funds to Clackamas County for the operation of the Clackamas Corner and Oak Lodge Libraries pursuant to the alternative Service Area Maps described on Attachment B until such time as the City of Happy Valley and the City of Gladstone construct facilities sufficient to serve such area. During the term of such distributions, the Parties anticipate that the County libraries will be operated in a manner consistent with the Service Standards. Upon completion of such facilities, distributions shall be made based on the indicated Service Area Maps. To the extent the annual distribution of funds to Clackamas County is greater than the annual need to operate such libraries, the District shall retain such funds in trust for the Cities of Gladstone and/or Happy Valley, respectively, for distribution at such time as such City is constructing new library facilities.
- 1.7 Library Authority. Clackamas County operates public libraries pursuant to a board order creating public libraries for all Clackamas County residents dated July 9, 1938, as amended and updated pursuant to Board Order 85-1221 dated October 31, 1985. The District has received a delegation of such authority from Clackamas County to operate as a public library for the benefit of incorporated and unincorporated residents of Clackamas County pursuant to an Intergovernmental Agreement. To the extent necessary to insure the legal and effective functioning of the public libraries of Clackamas County but in no way intended to limit or otherwise restrict the powers or abilities of the City service providers to operate public libraries, the District hereby delegates such authority to operate public libraries for the benefit of incorporated and unincorporated residents of Clackamas County to each City service provider a party hereto or as may join this Agreement from time to time.

Section 2 Obligations of the Cities

- 2.1 Use of Funds. The Library Cities will use District revenue to provide public library service, and shall expend the entire library revenue paid under this Agreement in accordance with the purpose for which it was provided by implementing a plan to achieve the Service Standards. For the purposes of this Agreement, “Service Standards” shall mean (i) the standards described on Attachment C, (ii) the provision of services to all District residents on the same terms, and (iii) the proper expenditure of funds as described in this Section 2.1. District funds may not be used to support general overhead or administrative costs of Cities except to the extent such overhead or administrative costs are directly related to the provision of library services and/or the operation of a public library. It is the intention of the parties to work cooperatively in helping each city make progress in meeting the Service Standards.
- 2.2 Library Management. Library Cities retain administrative control over the library and library services in its service population. Each such City is responsible for developing library services based on the needs of its service population and the available revenue. The Library Cities will cooperate with the District Advisory Committee to assist in the review of library services to District residents.
- 2.3 Cooperation and Reporting. Each Library City will cooperate to the maximum extent practicable with other participating Cities to form standardized rules, procedures, and programs that affect the District and the provision of library services in Clackamas County as a whole. Each Library City will provide the District with (i) copies of its annual report to the State of Oregon regarding the provision of library services, (ii) a report on its efforts to meet OLA Threshold Standards as defined on Attachment C, and (iii) any supplemental reports that the District through both the District Advisory Committee and the District Board may require.

Section 3 Term and Amendment

- 3.1 Term. This Agreement shall commence on July 1, 2009 and continue until terminated as set forth herein.
- 3.2 Termination. This Agreement shall terminate upon the dissolution of the District.
- 3.3 Amendment. Except as specifically provided in Section 4.14, this Agreement may be amended at any time upon the agreement of the District and two-thirds of the Library Cities; *provided, however*, that any amendment that would amend that portion of the Formula providing for the return of one hundred percent (100%) of revenue collected within a City service provider’s boundaries to such City service provider shall require the unanimous consent of all Cities serving on the District Advisory Committee.

- 3.4 Changes in District Territory. The parties hereto recognize that during the term of this Agreement changes in the District territory may occur, such as (i) territory outside the District may annex into the District, (ii) territory currently in the District may withdraw by annexation into a non-participating City, or (iii) unincorporated territory currently in the District may annex into a participating City. The District shall inform the District Advisory Committee of any such changes, and the District Advisory Committee shall review the Service Area Maps and the Formula and recommend any amendments to this Agreement necessary to adjust for such changes.
- 3.5 Incorporation of a City within District Boundaries. Should an unincorporated area within the District choose to incorporate during the life of the District, the District Advisory Committee shall make a recommendation to the District Board of whether the newly-incorporated city qualifies as a service provider as such term is generally used in this Agreement, and if so to what extent the Formula should be adjusted to allow for a distribution to such new service provider. If the newly-incorporated city does not qualify as a service provider, the District Advisory Committee shall make a recommendation to the District Board regarding the impact, if any, of the new city on the provision of library services. Any proposed changes shall be addressed as an amendment to this Agreement.

Section 4 General Provisions

- 4.1 Indemnification. Each party shall release, defend, indemnify and/or hold harmless the other, its officers, commissioners, councilors, elected officials, employees, and agents, from and against all damages, claims, injuries, costs, or judgments that may in any manner arise as a result of the party's performance under this contract, subject to Oregon Tort claims limitations.
- 4.2 Governing Law. This Agreement shall be construed and governed in all respects in accordance with laws of the State of Oregon, without giving effect to the conflict of law provisions thereof.
- 4.3 Savings. Should any portion of this Agreement or amendment there to be adjudged by a Court of appropriate final jurisdiction to be in violation of any local, state or federal law, then such portion or portions shall become null and void, and the balance of the Agreement shall remain in effect. All Parties shall immediately renegotiate any part of this Agreement found to be in such violation by the Court and to bring it into compliance with said laws.
- 4.4 Reasonable Attorney's Fees. In the event any action is brought to enforce, modify or interpret the provisions of this Agreement, the prevailing party shall be entitled to reasonable attorneys fees and costs incurred in connection with such action or on appeal or review; said amount to be set by the court before which the matter is heard.

- 4.5 Notices. Formal notices, demands and communications between the Parties shall be deemed given three (3) business days after being sent by registered or certified mail, postage prepaid, return receipt requested to the principal offices of the party hereto, or upon confirmation of receipt via facsimile, electronic transmission, or hand delivery. Such written notices, demands and communication may be sent in the same manner to such other addresses and to such other persons and entities as either party may from time to time designate by mail as provided in this section.
- 4.6 No Personal Liability. No member, official, agent, or employee of the County, the District, or any City shall be personally liable to the other or any successor-in-interest thereto in the event of any default or breach by such entity.
- 4.7 No Agency. Neither anything in this Agreement nor any acts of the parties hereto shall be deemed or construed by the parties hereto, or any of them, or by any third person, to create the relationship of principal and agent, or of partnership, or of joint venture, or of any association between any of the parties to this Agreement. No party or its employees is entitled to participate in a pension plan, insurance, bonus, or similar benefits provided by any other party.
- 4.8 Entire Agreement. This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto and supersedes all negotiations or previous agreements between the parties or the predecessors in interest with respect to all or any part of the subject matter hereof. All waivers of the provisions of this Agreement must be in writing by the appropriate authorities of the party granting such waiver.
- 4.9 Further Action. The parties hereto shall, without additional consideration, acknowledge, execute, and deliver from time to time such further instruments as a requesting party may reasonably require to accomplish the purposes of this Agreement.
- 4.10 Non-Waiver of Rights. The failure of a party to insist on the strict performance of any provision of this Agreement or to exercise any right, power or remedy upon a breach of any provision of this Agreement shall not constitute a waiver of any provision of this Agreement or limit the party's right thereafter to enforce any provision or exercise any right.
- 4.11 Time is of the Essence. A material consideration of the parties entering into this Agreement is that the parties will perform all obligations under this Agreement in a timely manner. Time is of the essence as to each and every provision of this Agreement.
- 4.12 Restricted Assignment. No party hereto may assign its rights, responsibilities or obligations hereunder to another party, by operation of law or otherwise, without (i) seeking and receiving an amendment of this Agreement, (ii) having said party join this Agreement on the terms, conditions and covenants herewith, and (iii) with a demonstration that such new party has the capability and

durability to meet or exceed the levels of library service currently being provided by the party seeking to assign. The District Advisory Committee shall evaluate any request for assignment and make a recommendation to the District Board regarding the granting or denial of the same based on the above criteria, including the District Advisory Committee's determination of criteria (iii) above.

4.13 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and such counterparts shall constitute one and the same instrument.

4.14 Enforcement of Terms. The Parties hereto recognize that the District is relying on the good faith and commitments of the Library Cities to utilize the funding provided by the District in the promised manner. The Parties expect that to the extent there is any noncompliance or breach of this Agreement, the Parties will discuss such noncompliance or breach in the District Advisory Committee and encourage an effort towards compliance. If discussions and encouragement do not remedy the continued failure of a party to meet the Service Standards or other term of this Agreement, then the District Advisory Committee shall meet to consider an amendment to this Agreement to create incentives for compliance, including but not limited to withholding of District funds, reallocation of unincorporated residents to neighboring service areas, or other such actions as may be deemed appropriate. The Parties hereto agree that in an event of a material breach of this Agreement by one of the Parties, an amendment proposed to specifically address such breach shall require a two-thirds vote of the Library Cities, including but not limited to any amendment which would reduce the breaching City's 100% return on assessments within such City's boundaries, either via a Formula amendment or otherwise.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers or representatives as of the day and year first above written.

CLACKAMAS COUNTY BOARD OF COMMISSIONERS, AS THE GOVERNING BODY OF THE
LIBRARY DISTRICT OF CLACKAMAS COUNTY
By: _____
Title: <u>Chair</u>
ATTEST: _____

THE CITY OF BARLOW	THE CITY OF CANBY
By: _____ Title: _____	By: _____ Title: _____
ATTEST: _____	ATTEST: _____

THE CITY OF ESTACADA	THE CITY OF GLADSTONE
By: _____ Title: _____	By: _____ Title: _____
ATTEST: _____	ATTEST: _____

THE CITY OF HAPPY VALLEY	THE CITY OF LAKE OSWEGO
By: _____ Title: _____	By: _____ Title: _____
ATTEST: _____	ATTEST: _____

THE CITY OF MILWAUKIE	THE CITY OF MOLALLA
By: _____ Title: _____	By: _____ Title: _____
ATTEST: _____	ATTEST: _____

THE CITY OF OREGON CITY	THE CITY OF RIVERGROVE
By: _____ Title: _____	By: _____ Title: _____
ATTEST: _____	ATTEST: _____

THE CITY OF SANDY	THE CITY OF WEST LINN
By: _____ Title: _____	By: _____ Title: _____
ATTEST: _____	ATTEST: _____

THE CITY OF WILSONVILLE	
By: _____ Title: _____	
ATTEST: _____	

Attachment A

1. For the purposes of this Agreement, the “Formula” shall be calculated consistent with the following concepts:

a. The District rate is \$0.3974 per \$1000 of assessed value.

b. Each year the District will receive the amount collected for the year plus delinquent taxes recovered from the previous year. The District will distribute funds when received using the formula described below and shown in the example.

2. The Formula has two components:

a. City Assessed Value Component: The annual distribution to a Library City for properties within its boundaries shall equal the assessed value of such Library City’s properties, as established annually by the Clackamas County Assessor, divided by the total assessed value of all properties in the District. This determines the Assessed Value Percentage Rate for each Library City. Each Library City will receive funds equal to the Assessed Value fund amount multiplied by its individual Assessed Value Percentage Rate.

b. Unincorporated Population Served Component: After calculation of each Library City’s Assessed Value fund amount, the District shall calculate the remaining funds to be distributed (the “Remainder Amount”) and distribute those funds based on the Unincorporated Population Served Percentage Rate based on the Service Area Maps attached to this Agreement as Attachment B. The term “Unincorporated Population” will also include residents of those cities that do not provide library services.

The Unincorporated Population Served Percentage Rate is determined by the number of unincorporated residents served by each City as allocated on the Service Area Maps divided by the total number of unincorporated residents within the District. Each Library City will receive funds equal to the Remainder Amount multiplied by its individual Unincorporated Service Area Percentage Rate.

3. Prior year recovered delinquencies and interest earned: Recovered delinquent taxes combined with any interest earned will be distributed to Library Cities based on the distribution percentage allocations calculated in the previous tax year.

Below are examples of the distribution of funds based on 2008 assessed values and population figures. The spreadsheet assumes the new Gladstone/Oak Lodge and Happy Valley libraries have not yet been constructed.

Library District Distribution Formula

<i>Assessed Value 2008</i>		
Total County Assessed Value (AV)	\$32,936,836,893	100%
Less: Non-Participating City AV	\$(1,239,770,249)	-4%
Equals: Total Library District AV	<u>\$31,697,066,644</u>	<u>96%</u>

Participating Cities:	Assessed Value	
Canby	\$999,941,295	6%
Estacada	\$179,662,976	1%
Gladstone	\$635,886,719	4%
Happy Valley	\$1,508,430,197	9%
Lake Oswego	\$4,756,391,295	28%
Milwaukie	\$1,467,817,328	9%
Molalla	\$409,821,923	2%
Oregon City	\$2,002,572,357	12%
Sandy	\$551,473,814	3%
West Linn	\$2,655,549,376	16%
Wilsonville	\$1,652,437,025	10%
Total Participating Cities AV	<u>\$16,819,984,305</u>	<u>100%</u>

Total Library District AV	\$31,697,066,644	100%
Less: Participating Cities AV	\$(16,819,984,305)	-53%
Equals: Unincorporated AV in District	<u>\$14,877,082,339</u>	<u>47%</u>

<i>Unincorporated Population Served 2008</i>		
Canby	10,221	6%
Estacada	16,802	9%
Gladstone	8,506	5%
Happy Valley (Town Center)	32,373	18%
Lake Oswego	3,305	2%
Milwaukie	10,756	6%
Molalla	15,001	8%
Oregon City	28,015	15%
Sandy	22,236	12%
West Linn	5,691	3%
Wilsonville	3,421	2%
Oak Lodge	28,036	15%
	<u>184,363</u>	<u>100%</u>

<i>Example Distribution Calculation</i> <i>Assuming \$12 million in tax receipts</i>		
Total District Tax Receipts		
Total Tax Collected	\$12,000,000	100%
City Assessed Value	\$6,367,776	53%
Unincorporated Population Served	\$5,632,224	47%

City Distribution of Receipts				
	<i>Assessed Value</i>	<i>Pop Served</i>	<i>Total</i>	
			\$	%
Canby	\$378,562	\$312,248	\$690,810	6%
Estacada	\$68,018	\$513,295	\$581,313	5%
Gladstone	\$240,736	\$259,855	\$500,592	4%
Happy Valley (Town Center)	\$571,067	\$988,984	\$1,560,051	13%
Lake Oswego	\$1,800,693	\$100,967	\$1,901,660	16%
Milwaukie	\$555,692	\$328,592	\$884,284	7%
Molalla	\$155,152	\$458,275	\$613,427	5%
Oregon City	\$758,142	\$855,848	\$1,613,990	13%
Sandy	\$208,779	\$679,302	\$888,081	7%
West Linn	\$1,005,348	\$173,858	\$1,179,206	10%
Wilsonville	\$625,586	\$104,510	\$730,096	6%
Oak Lodge	\$-	\$856,490	\$856,490	7%
	\$6,367,776	\$5,632,224	\$12,000,000	100%

Attachment B

Service population maps are included as Attachment B.

1. The maps divide Clackamas County into library service areas. These areas are based on distance, roads, rivers, travel patterns, etc. and are intended to define where people are most likely to receive library service, and to give a Library City the ability to meet the library threshold standards in Attachment C. Each Library City's service area has been constructed by assigning Census tracts into library service areas. Based on census data compiled every 10 years, the population in each census tract will be verified and then the total unincorporated population within each service area will be used to calculate the Formula.
2. For the continuation of library service to the citizens in the Oak Lodge and Clackamas Corner areas, the service area boundaries and population served totals will not change until the new Happy Valley Library is open and the new Gladstone/Oak Lodge Library is open. As each new facility is opened to the public, the service population will be adjusted to the new agreed-upon boundaries found in this Attachment. The population service area changes and resulting increase in payments for unincorporated population served will take place in the fiscal year following the library opening.

[See attached maps]

Attachment C
Service Standards

The Parties agree that all library service providers shall strive to meet OLA Threshold Standards, with a particular emphasis on:

STAFFING: Provide qualified staff employed by the library as outlined in the table below:

Population Served	Threshold Staffing Level
0 - 2,499	0.5 FTE, with high school diploma
2,500 - 4,999	0.35 FTE/1,000 served. Director has B.A.
5,000 - 9,999	0.35 FTE/1,000 served. Director has B.A.
10,000 - 24,999	0.35 FTE/1,000 served. Director has MLS.
25,000 - 49,999	0.35 FTE/1,000 served. Director has MLS. 1/5 of staff has MLS.
50,000 - 499,999	0.33 FTE/1,000 served. Director has MLS. 1/5 of staff has MLS.

MATERIALS: Provide the number of volumes in the library's total collection as spelled out in the table below:

Population served	Threshold Materials
0 - 49,999	Material collection of 5,000 items or two items per capita, whichever is greater.
50,000+	Material collection of two items per capita.

ACCESS: Provide and post open hours which fit the community's need, including evening and weekend hours, and provide the minimum standards listed in the table below:

Population served	Threshold
0 - 4,999	20 hours
5,000 - 9,999	30 hours
10,000 - 24,999	40 hours
25,000 +	50 hours

NOTE: Total staffing levels and material volumes may be constrained by current facility size limitations. The Parties understand and agree that a strategic plan that recognizes such size limitations and adjusts staff and material goals accordingly is an acceptable implementation of this standard.

**CANBY CITY COUNCIL
WORK SESSION MINUTES
November 15, 2023**

PRESIDING: Brian Hodson

COUNCIL PRESENT: Jason Padden, Traci Hensley, and Daniel Stearns.

COUNCIL ABSENT: James Davis and Herman Maldonado.

STAFF PRESENT: Eileen Stein, Interim City Administrator; CJ Lason, Deputy City Recorder; Maya Benham, Administrative Director/ City Recorder; Rodney Grafe, Municipal Judge; Jorge Tro, Police Chief; Lucy Heil, City Prosecutor; and Jessica Roberts, Municipal Court Supervisor.

OTHERS PRESENT: John Wentworth, Clackamas County District Attorney (attended virtually).

CALL TO ORDER: Mayor Hodson called the Work Session to order at 6:07 p.m.

MUNICIPAL COURT OPERATIONS DISCUSSION: Judge Grafe gave a presentation describing the decision by the former City Attorney to move misdemeanor cases to be prosecuted by the County instead of locally back in July of 2022. At that time, he had written letters of concern to the Council about reducing court services. Certain cases that would normally be prosecuted if they were kept in-house were not when they were transferred to County jurisdiction. He was particularly concerned about theft and trespass cases and suggested that Canby pull those cases back and prosecute them locally. They had open probation files and outstanding warrants which still needed prosecuting. He also recommended having separate duties for a City Attorney and prosecution duties. He discussed lower revenues and how the Court could support taking back the criminal cases.

There was discussion regarding staffing, what other cities did, options, and time to adjudicate cases.

John Wentworth, District Attorney with Clackamas County, stated the County did prosecute these cases, and Canby was not losing services by outsourcing the cases to the County. If the reason was revenue-driven then it might make sense to move the cases back to the city, but he wanted to dispel any perceived lack of service from the County as erroneous. The only other benefit was cases might be prosecuted faster with the city.

Police Chief Tro stated that the police had seen an increase in the decline-to-prosecute rate once the cases moved to the County. He thought local control, as well as parking and other amenities, were reasons to move the case load back to the City of Canby. There were more resources available, and Measure 110 might be better handled at circuit court. He explained what cases would go to the District Attorney regardless.

Lucy Heil, City Prosecutor, said building relationships was important, and by moving the cases back to local control, the city could make a better impact on people's lives. She felt confident she

could prosecute the misdemeanor cases if they were brought back. Accountability was important as a deterrent to more crimes.

ADJOURN: Mayor Hodson adjourned the Work Session at 6:58 p.m.

**CANBY CITY COUNCIL
REGULAR MEETING MINUTES
November 15, 2023**

PRESIDING: Brian Hodson

COUNCIL PRESENT: James Davis, Jason Padden, Traci Hensley, Herman Maldonado, and Daniel Stearns.

COUNCIL ABSENT: None.

STAFF PRESENT: Eileen Stein, Interim City Administrator; David Doughman, City Attorney; CJ Lason, Deputy City Recorder; Maya Benham, Administrative Director/ City Recorder; Jerry Nelzen, Public Works Director; and Jamie Stickel, Economic Development Director.

CALL TO ORDER: Council President Hensley called the Council Meeting to order at 7:08 p.m.

VETERAN’S DAY ACTIVITIES UPDATE: Ken Buckles, Canby resident, spoke about the recent Albany Veteran’s Day parade, and how a video of his Hummer riding in the parade went viral on Tik Tok. He and the president of the Canby Rodeo, Clayton Rhodes, presented awards to veterans from World War II, the Korean War, the Vietnam War, the Iraq War, and Afghanistan in recognition of their service.

APPOINTMENT OF CITY ADMINISTRATOR: Mayor Hodson gave an update on the appointment of the new City Administrator and recent interviews. The Council came to a consensus and sent contracts to a candidate for approval.

****Council President Hensley moved to enable Mayor Hodson to continue negotiations with Eileen Stein to be the next City Administrator. Motion was seconded by Councilor Davis and passed 5-0.**

CITIZEN INPUT & COMMUNITY ANNOUNCEMENTS: Greg Perez, Canby resident, was happy that things were moving forward better than they had in the past. As they started a new calendar year, he wanted to see City Hall utilized to its capacity and City employees working posted hours in the office.

Eric Pfeiffer-Robinson, Canby resident, was seeking assurances about taking a stand against intolerance, bigotry, hatred, and white supremacy, which the Council gave. He thought the

Council had the opportunity to be great leaders, and he spoke about having to destroy multiple swastikas over the past six years.

Daniel Godfrey, Canby resident, spoke about the downtown alleys and the state of disrepair that was a blight and caused safety hazards. Money needed to be set aside in the budget for maintenance and repair of the alleyways.

CONSENT AGENDA: **Council President Hensley moved to approve the consent agenda that included the appointment of Greg Perez to the Transit Advisory Committee for a term ending March 31, 2024; approval of the September 20, 2023, Regular City Council meeting minutes; and the October 4, 2023, Work Session and Regular City Council meeting minutes. Motion was seconded by Councilor Maldonado and passed 5-0.

RESOLUTIONS:

Resolution 1398 – Jerry Nelzen, Public Works Director, gave some background and a presentation on the ongoing South Ivy St. sidewalk and paving improvements. He stated although the project was approved previously, the project had grown, and costs had increased. He was asking for commitment to pay for the project. The project would go out to bid in January and construction would start in March/April. He showed a visual simulation of future Ivy Street between 99E and Lee Elementary School.

There was discussion regarding flashing lights at sidewalks, the city getting jurisdiction of Ivy St., delays and increased costs, and the light on 13th and Ivy.

****Councilor Padden moved to adopt Resolution 1398, A RESOLUTION APPROVING THE INTERGOVERNMENTAL AGREEMENT BETWEEN CLACKAMAS COUNTY AND THE CITY OF CANBY RELATED TO THE SOUTH IVY STREET SIDEWALK IMPROVEMENT PROJECT, REPEALING RESOLUTION NO. 1308. Motion was seconded by Councilor Stearns and passed 5-0.**

OLD BUSINESS: Discussion on ARPA Funding – Eileen Stein, Interim City Administrator, gave a presentation on the ARPA allocations. The City received \$3,982,964.76 in ARPA funds and spent \$342,861.96 so far. They had promised/allocated \$338,370.70 in the 2024 budget and approved a further \$960,000 through ordinance adoptions on September 20, 2023. This equaled \$1,298,370.70 currently budgeted but unspent from the ARPA funds, with a remaining amount of \$2,341,732.10 still unallocated. The consequence of spending these ARPA funds was that the General Fund's "Reserved for Future Expenditures-Unrestricted" fund balance would decrease by \$1,298,370.70. She reviewed the choices for the available \$2,341,732.10. They could reappropriate all of the remaining funds towards already spent projects if the Council wanted. It would keep the money in the General Fund, which allowed the City to extend out the reserve, but it would mean abandoning the Logging Bridge project.

Mayor Hodson asked Chief Tro to give information about the projects listed, and Chief Tro affirmed that they had already been paid for.

Councilor Davis said he wanted to be presented with the requirements of usage and reporting of ARPA funds. He also wanted to make sure the City was going to fulfill its obligations to its partners, and asked for an update on the Logging Bridge project.

Mr. Nelzen stated there were a couple of different levels of improvement when it came to the Logging Bridge project. The basic painting of the bridge would be a minimum of \$1.1 million, and additional beautification would be more expensive.

Ms. Stein did not have a strong recommendation on how to allocate funds other than making sure the City was taking care of its prior commitments to the community agencies.

Councilor Padden thought they should honor their prior commitments, and the rest of the money should go into improvements in the community now rather than be sitting in the reserve. Costs would be higher in the future. He wanted to see what the City's reserve requirements were.

Council President Hensley agreed that the City should honor its prior commitments, but that it would be irresponsible to spend all of the reserve.

Staff would bring back the information requested for further discussion.

City Attorney Recruitment – Ms. Stein agreed with the Judge's suggestion to have the City Attorney duties and prosecution duties separated. She recommended that the City extend its contract with Beery, Elsner & Hammond, LLC to provide interim attorney services while the recruitment search continued to give them enough time to complete the recruitment process with no loss of service.

David Doughman, City Attorney, agreed that was consistent with previous discussions. He gave background on the City Prosecutor process and also recommended splitting the municipal law and criminal law aspects of the position.

Councilor Stearns left the meeting at 8:18 p.m.

Councilor Padden wanted to see the costs associated with having an in-house attorney vs. contracting with an outside provider. He expressed concerns that the City would not have enough hands-on availability if they contracted out with a third-party service provider.

Council President Hensley wanted to know if the city was contractually obligated to use the same firm that the city used for the City Administrator search for the City Attorney recruitment. She was not pleased with the process and wanted the flexibility of using a different firm.

There was consensus to extend the contract and staff would bring back the numbers as requested.

NEW BUSINESS: City Councilor Vacancy – After discussion, the following timeline was agreed upon:

1. City Councilor vacancy position would be posted on the website on November 16, 2023.
2. Job posting closed December 29, 2023.
3. Interviews conducted January 10, 2024.

MAYOR'S BUSINESS: The Mayor reported on the C4 meeting where the STIP list, the upcoming legislative session, and the recent housing numbers were discussed. He also attended the recent Comprehensive Plan meeting, which had a great turnout. He stressed the importance of participating in the process. He reminded everyone that Light the Night at Wait Park was on December 1.

COUNCILOR COMMENTS & LIAISON REPORTS:

Councilor Davis attended the UGB meeting. The attendance was so impressive that they were going to have another one. It was a very positive experience. He reported on the Dodds Farm Park public meeting, which was also a very positive meeting. He attended the Adult Center meeting, and they were moving forward with their remodeling plans and raising more funding.

Council President Hensley attended the Traffic Safety Commission meeting where they heard different public comments and concerns about areas around town. She reminded the public that if there were traffic concerns, they could email the chair or attend a meeting.

Councilor Padden attended the Comprehensive Plan Summit. It was clear that the public was paying attention to what was going on. He looked forward to additional meetings where citizens would have a chance to have their questions answered and concerns addressed. He also attended the landowner meeting. He asked what consequences the city would face if it chose not to go through with an Urban Growth Boundary expansion.

He had heard a lot about the City's hybrid work situation and that citizens said they were not able to get a hold of someone at the city. He would like to know how many City employees were on a hybrid work schedule, how many days those employees were allowed to work out of the office, how many utilized all those days to work from home, and how many of those employees were in a direct customer contact role.

Mayor Hodson asked for clarification as to why this information was needed.

Councilor Padden said there was a perception that there was no one available at City Hall to answer questions because they were allowed to work from home. He wanted to have the data to present to citizens when they had concerns.

The Mayor did not think it was an appropriate use of time for staff to compile this data when they had many other commitments to provide information to the Council about other issues.

Councilor Davis asked if it was a requirement that at least two Council members had to agree to ask staff to provide data or information on issues. He thought that this issue was more the City Administrator's purview than a Council issue.

Councilor Padden said the only way to put this issue to rest definitively was to have the data to prove or disprove the talking points.

Council President Hensley also said that it would be an important piece to look at staff morale as well in terms of colleagues missing from the office.

Councilor Maldonado suggested that the Council push it out as it was not as time pressing as other issues.

Ms. Stein agreed it was good to have the information, and the overall concern was customer service. There was consensus for staff to provide the information in January.

CITY ADMINISTRATOR'S BUSINESS & BI-MONTHLY STAFF REPORTS: None

CITIZEN INPUT: None.

ACTION REVIEW:

1. Approved the Consent Agenda.
2. Adopted Resolution 1398.
3. Posted City Councilor vacancy on November 17, 2023, closing the posting on December 29, 2023, and holding interviews on January 10, 2024.

****Council President Hensley moved to adjourn the regular meeting. Motion was seconded by Councilor Davis and passed 4-0.**

The meeting was adjourned at 9:01pm.

Maya Benham
City Recorder

Brian Hodson
Mayor

Assisted with Preparation of Minutes - Susan Wood

**CANBY CITY COUNCIL
WORK SESSION MINUTES
December 6, 2023**

PRESIDING: Brian Hodson

COUNCIL PRESENT: Jason Padden, Traci Hensley, James Davis, and Daniel Stearns.

COUNCIL ABSENT: Herman Maldonado.

STAFF PRESENT: Eileen Stein, Interim City Administrator; CJ Lason, Deputy City Recorder; Maya Benham, Administrative Director/ City Recorder; Eric Laitinen, Swim Director; and Jerry Nelzen, Public Works Director.

CALL TO ORDER: Mayor Hodson called the Work Session to order at 6:45 p.m.

SWIM CENTER REMODEL DISCUSSION: Eric Laitinen, Swim Director, gave a presentation describing the need to remodel the current swim center. It was over 50 years old and there were many issues requiring attention, especially plumbing and electric wiring. The original plan was to replace the piping underneath the pool, remodel the locker rooms and front lobby area, and add an extra room for classes, events, and parties. Due to rising costs, Mr. Laitinen estimated that although they had \$1.5 million saved for these projects, they would most likely be unable to complete all of them. In terms of prioritization the plumbing took precedence, followed by the locker room areas, front lobby, and lastly the extra room. They needed to go back to the engineers to get an updated cost estimate of the work.

Councilor Padden thought there should be cost estimates for the different options and how the work could be done in phases.

Jerry Nelzen, Public Works Director, said the pipes had reached the end of their usable life and that most, if not all, would need to be completely replaced.

Eileen Stein, Interim City Administrator, said the City would get accurate estimates for replacing the plumbing as a first priority, the front office and locker room replacements as a second, and the party room as a third.

The Council would be provided with updated costs and budgeting for this project within the next 3-4 months.

ADJOURN: Mayor Hodson adjourned the Work Session at 7:09 p.m.

**CANBY CITY COUNCIL
REGULAR MEETING MINUTES
December 6, 2023**

PRESIDING: Brian Hodson

COUNCIL PRESENT: James Davis, Jason Padden, Traci Hensley, and Daniel Stearns.

COUNCIL ABSENT: Herman Maldonado.

STAFF PRESENT: Eileen Stein, Interim City Administrator; David Doughman, City Attorney (attended virtually); CJ Lason, Deputy City Recorder; Maya Benham, Administrative Director/ City Recorder; Jerry Nelzen, Public Works Director; Kevin Aguilar, Human Resources Director; Natalya Erofeeff, Office Specialist; and Don Hardy, Planning Director.

CALL TO ORDER: Mayor Hodson called the Council Meeting to order at 7:14 p.m.

FINALIZING NEW CITY ADMINISTRATOR HIRING AND CONTRACT:

The Council discussed finalizing the City Administrator contract. There was discussion about Section 10c, which covered the possibility of working from home.

Council President Hensley wanted to amend the contract to remove that language. She thought the City Administrator should be 100% in the office and that expectations could not be set for staff to be in the office if their manager was not also in the office. Including this language in a contract could set a precedent for others to demand it as well.

Councilor Davis agreed and said that work from home was available during the pandemic, but the emergency had passed and businesses were getting people back to the office. Because this was a public position, working for the public, one needed to be available to the public by being in the office full-time. As a manager the City Administrator needed to be available.

Both Councilors wanted this section struck from the contract.

Mayor Hodson stated that he himself occasionally worked from home, and asked Human Resources Director Kevin Aguilar if the language included in the contract was common. Mr. Aguilar responded it was not very common because work from home was not really an option prior to 2020.

Councilor Padden said that work from home availability was here to stay, and the City Administrator had never given the Council reason to suspect she might abuse this option and had almost never used it in the past during the interim phase. It was fine to leave the contract as it was.

Councilor Stearns interpreted the language to mean that the City Administrator was always on the clock and could work from the office or at home as needed.

Councilor Padden wanted to move forward with the contract as it was and stressed the fact that the contract could be revisited and adjusted as needed by the Council in the future if problems did arise from the working from home.

Mayor Hodson stated that if they struck the language from the contract, the contract would have to be re-written, and it would then be re-opened for negotiation again and approved at a future meeting.

Ms. Stein explained she preferred to be in the office five days a week. She had only worked from home on occasion because she lived in Salem and had obligations in Eugene. It did not make sense to drive north to Canby to work in the office, only to turn around and drive twice as far south to Eugene. It saved her time and money to work from home on occasion.

Mayor Hodson said if the City Administrator was working from home too much in the future they could treat it as a performance issue and address it at that time. They could revisit the contract at any time and make changes to it as they saw fit.

Council President Hensley stated that she was a hard no on the contract as it was currently written. She wanted to strike Section 10c completely from the contract.

Councilor Padden said there were already contracts with other employees in the City that had this language. The language was becoming standard because younger people were looking for work from home options in their job searches. Some jobs naturally led to a work from home option, and others did not. He was fine with the contract remaining as it was.

Councilor Stearns said that based on the way the contract was written, a default in it would be hard to recognize and enforce. It was fine to keep it as it was and if they felt the work from home option was being abused they could revisit it in the future. He wanted to proceed based on trust, not the clause in the contract.

****Councilor Padden moved to approve the contract as written and move forward with Eileen Stein as City Administrator. Motion was seconded by Councilor Stearns and passed 3-2 Councilors Hensley and Davis opposed and Mayor Hodson breaking the tie.**

Councilor Davis said that in the future he would like the Mayor to keep the Council updated with negotiations on contracts.

KIWANIS CANBY COMMUNITY FOOD AND TOY DRIVE PROCLAMATION:

Mayor Hodson read the proclamation declaring December 10-16, 2023, as Kiwanis Canby Community Food and Toy Drive Week.

Sharon Schneider and a group from the Kiwanis accepted the proclamation. They were taking cash donations to purchase Cutsforth gift cards for needy families as well as new unwrapped

toys. They had over 50 barrels distributed around town to accept toys. They encouraged the community to continue to donate to make this a great event.

STAFF INTRODUCTIONS:

Ms. Stein introduced new Office Specialist Natalya Eroffeeff, who started with the City on November 6. She also congratulated Administrative Director/ City Recorder Maya Benham on achieving her Certified Municipal Clerk certification.

CITIZEN INPUT & COMMUNITY ANNOUNCEMENTS: None

PUBLIC HEARINGS: Noise Variance Request from the Oregon Department of Transportation (ODOT) for night construction work along 99E between Berg Pkwy and Pine St between December 2023 and November 2024 –

Mayor Hodson opened the public hearing and read the hearing statement.

Paul Scarlett, ODOT, gave a presentation on the OR 99E paving and improvement project. ODOT would repave and reconstruct sections of 99E between the railroad crossings and SW Berg Parkway as well as add safety improvements. Additional improvements included traffic signals with new detectors, reconstruction of several short sections of sidewalk, updated striping, new bicycle lanes, sidewalk curb ramps, removal of unused railroad tracks and realigning the tracks still in use, adding bus shelters, and replacing cracked underground stormwater pipe. He explained the community involvement, schedule, and construction impacts.

Robert Schiavone, ODOT, explained they were requesting up to 24 weeks of night work throughout the project area. He discussed the equipment that would be used, decibel levels, and distance from residents. He also stressed that the noise would move, so it would not be constant near any one place.

Councilor Davis asked about the impacts to the firetruck routes and response times during the one-lane construction. He also asked that they not block businesses, such as Walgreens.

Councilor Stearns asked if there had been any complaints made about the noise so far. Mr. Schiavone said there had been no complaints made to ODOT. Ms. Stein said the City had not received any complaints either.

Councilor Padden stressed not delaying the project, but getting it done by the end of next year.

There was no public testimony.

Mayor Hodson closed the public hearing.

****Councilor Padden moved to approve the noise variance request for ODOT for night work along 99E between Berg Pkwy and Pine St. from December 2023 through November 2024. Motion seconded by Councilor Davis and passed 4-0.**

Noise Variance Request from Canby Pioneer Chapel of the Performing Arts to play amplified music at a New Year's Eve event, from 8:30 pm on Sunday, December 31, 2023, through 12:30 am on Monday, January 1, 2024 –

Mayor Hodson opened the public hearing and read the hearing statement.

Trent Beaver, local musician, spoke about his plan to have a New Year's Eve party to celebrate his band's success this year and give back to the community. There would be performances inside the facility, and music played outside in the tented area.

Councilor Stearns expressed concern about residents hearing the music while still inside with the doors closed. Mr. Beaver stated that the main concert would be inside with the doors closed, and that they were not planning on playing it too loudly.

Councilor Stearns suggested sending someone out a block or two to test the sound levels prior to the concert. Mr. Beaver agreed.

Council President Hensley asked staff if there were any responses to the mailing that went out with any concerns or complaints. Staff replied that no complaints or questions had been received in response to the mailing.

There was no public testimony.

Mayor Hodson closed the public hearing.

****Council President Hensley moved to approve the noise variance request for Canby Pioneer Chapel of the Performing Arts to play amplified music at a New Year's Eve event, from 8:30 pm on Sunday, December 31, 2023, through 12:30 am on Monday, January 1, 2024. Motion seconded by Councilor Padden and passed 4-0.**

CONSENT AGENDA: **Council President Hensley moved to approve the Consent Agenda that included the reappointment of Jennifer Driskill to the Planning Commission with a term ending December 30, 2026; the reappointment of Matt Ellison to the Planning Commission with a term ending December 30, 2026; the minutes of the October 18, 2023 Joint Work Session and Regular City Council Meeting; and the minutes of the November 1, 2023 Work Session and Regular City Council Meeting. Motion seconded by Councilor Padden and passed 4-0.

RESOLUTIONS:

Resolution 1399 – Don Hardy, Planning Director, explained the resolution would enable the City to continue to charge System Development Charges (SDCs) when a commercial building was converted to residential housing.

Councilor Stearns asked for clarification. Mr. Hardy explained the purpose of SDCs and the formula for charging the SDCs for conversions. If cities did not adopt a resolution by the end of 2023, they would no longer be able to charge fees when a commercial property was converted to

a residential property. Because the SDCs were a primary source of revenue generation for the City, it would be in the City's best interests to adopt this resolution to continue charging when these conversions took place.

****Councilor Padden moved to adopt Resolution 1399, A RESOLUTION ADOPTING A SPECIFIC POLICY FOR SYSTEM DEVELOPMENT CHARGE CALCULATIONS IN CONNECTION WITH COMMERCIAL TO RESIDENTIAL CONVERSIONS, AS REQUIRED BY HOUSE BILL 2984. Motion was seconded by Councilor Davis and passed 4-0.**

OLD BUSINESS: City Attorney Recruitment – Ms. Stein presented information on the costs associated with recruiting a new in-house City Attorney versus continuing to contract attorney services through Beery, Elsner and Hammond. A comparison of salary and benefits vs. hourly rate was made among several cities that had their own attorney or who contracted services. She thought it would be more cost effective in terms of an hourly rate to recruit and hire an in-house attorney. She suggested continuing with the current contract until an in-house attorney was hired.

Councilor Davis asked for clarification on the health costs included for an in-house attorney and how their hours would be broken out among the different departments. He also would like to go through the budget process before they decided which direction to go in case there was a deficit.

Kevin Aguilar, Human Resources Director, explained the health costs, which were included in the benefits number.

Mayor Hodson wanted staff to investigate the cities that did use contracted services and get a breakdown of the labor hours and how they used their services.

David Doughman, contracted City Attorney, said Gladstone regularly made the labor breakdown of their attorney services a part of the Consent Agenda to be approved at each Council meeting.

Council President Hensley also wanted to know the breakdown by department. She expressed concern that the numbers presented were based on 40 hours a week when the previous City Attorney served in an expanded capacity and did not spend 40 hours a week on City Attorney duties. She also wanted to wait until the current budget cycle was completed to revisit this topic in case positions needed to be eliminated.

Councilor Padden stated that he did not need more data to know that the City was not utilizing the attorney services to their fullest capacity, and that he knew there were legal questions that were not being answered. He was concerned about future lawsuits. The City historically had a dedicated City Attorney, and there was a decision several months ago to move forward with recruiting an in-house City Attorney. Money had been budgeted in the current budget to hire a City Attorney. He wanted to move forward with the recruitment while costs were lower.

Councilor Stearns asked Councilor Padden for any specific situations where legal counsel had been denied.

Councilor Padden said he would contact the former City Attorney on a semi-regular basis when he served on the Planning Commission to make sure he was operating within legal guidelines in that role. He had not contacted the current contracted legal counsel because he knew it was more expensive and wanted to save the City money. He was more comfortable going to an in-house City Attorney with whom he had developed a relationship, rather than trying to contact an outside provider.

Councilor Stearns said the rates being charged by outside legal services were within reason, and wanted to know if the expectations of the quality of service were being met. If the attorney was being utilized and communicating well, the cost was not as important.

Councilor Davis wanted to look at the billing from the previous City Attorney's tenure because there were instances where he had to reach out to outside counsel to answer questions that were not in his area of expertise.

Mayor Hodson asked Councilor Padden for specific instances where he did not have questions answered by staff or the current contractor.

Councilor Padden said it would have been useful to have an attorney present during the recent Executive Session for hiring a new City Administrator. In the past when he was on the Planning Commission, he would contact the City Attorney about various ideas and plans to make sure he was not putting the City in jeopardy.

Council President Hensley would have liked to have had an attorney present during the interviews as well, but pointed out they could have contacted the contract attorney to attend virtually if they really wanted someone present.

Mayor Hodson said the Council needed to decide if they should open recruitment for a new City Attorney, continue with the current contract, and ask staff for additional data regarding labor hours by department, how often other cities used their outside counsels, and how often the previous City Attorney had to reach out to outside counsel for questions.

Ms. Stein said that out of the \$149,000 budgeted in the contract with Berry Elsner, the City had only billed about \$27,000 of it. The City could continue with Berry Elsner under the current contract for quite a while.

Councilor Davis said he typically didn't contact the attorney, and instead preferred to contact the City Administrator with questions, and the City Administrator could reach out to the attorney if they did not know the answer. It would not change even if the attorney was an employee of the City Council.

Councilor Stearns said it was imperative that the Council realized the attorney reported to and was hired by the City Council, and that it was part of their duty to reach out to them on occasion even if it meant going over the City Administrator's head. A relationship needed to be established and it was important to have a clear attorney/client relationship.

Mr. Doughman said their client was the corporate entity of the City of Canby. It was analogous to an attorney that provided general counsel to a company.

Council President Hensley said the attorney represented the City's best interest, and not the Council individually. She had not utilized the attorney in the past because it was her own responsibility to police herself.

Mayor Hodson said there did not appear to be consensus to open the City Attorney position to recruitment at this time.

Ms. Stein said the convenience and relationship factor was something that needed to be considered in the future.

Councilor Padden wanted to find out how much time and money was spent by the City Attorney when they had to remove a former City Administrator back in 2010 to gain a better understanding of what the job might entail.

There was consensus to wait for additional data points before moving forward with opening recruitment for a new City Attorney.

****Councilor Padden moved to re-order the agenda and go to Citizen Input to accommodate a citizen who had missed the first opportunity and had been waiting patiently. Motion seconded by Council President Hensley and passed 4-0.**

CITIZEN INPUT:

Steve Trachsel, Canby resident, spoke about how the leaves were not being cleaned up properly. There were several landscape companies that blew the leaves in the street for the City to clean up. He suggested fining them and making it a point to address the issue.

NEW BUSINESS: Possible cancelation of December 20, 2023, Regular City Council Meeting –

Ms. Stein said there was nothing currently scheduled on the December 20 agenda.

Councilor Padden did not want to cancel the meeting. The Council should continue to do the work of the public and he suggested holding a Work Session in place of a regular meeting.

Councilor Davis was fine leaving it up to the Mayor and the City Administrator to decide whether or not to cancel the meeting. The Mayor said it was not his decision, it was the purview of the City Council.

****Council President Hensley moved to cancel the business meeting on December 20, 2023, and direct staff to discover whether or not there was enough to present as a Work Session instead. Motion seconded by Councilor Padden and passed 4-0.**

MAYOR'S BUSINESS: Mayor Hodson reported on the Region 1 Area Commission on Transportation meeting where the project on 217, the 99E project that should be done by the end of 2025, Boone's Bridge expansion open house, bike and pedestrian improvements around the bridge, toll implementation report, interstate bridge project between Washington and Oregon, and ODOT's revenue forecast were discussed. He attended the Light the Night event and thanked staff for their work. He discussed the Christmas in Canby event and snowman fundraiser.

COUNCILOR COMMENTS & LIAISON REPORTS:

Councilor Stearns attended the Bridging Cultures event. He asked for a follow up on idle properties usage. He suggested a "Citizens Academy" to build and foster relationships with City government and residents. He also suggested an online repair request system.

Councilor Davis reported on the Parks and Recreation Advisory Board meeting where they discussed the Locust street park graffiti which had been reduced due to cameras installed, Community Park which would be closed until December 27 to remodel the bathrooms, the scope of work on the exercise equipment at Legacy park which was waiting on bids, creating a memorial tree and bench program, the Auburn Farms park meeting which went well and had a lot of positive feedback from the community, and a meeting with Cogeo on December 7 to discuss the athletic fields. The Fire Department had a very active citizens emergency preparedness unit including amateur radio operators. The number of applicants for EMTs and Paramedics had grown, with 65 for EMT positions and 18 for Paramedics. He complimented City staff for the Light the Night event on December 1. He attended the pancake breakfast at the Fairgrounds and Journey to Bethlehem event at the Foursquare Church.

Council President Hensley attended the Light the Night event and thanked City staff. ODOT gave the City a grant for enforcement during construction, so everyone needed to be mindful of their speed and using phones in the zones. She met with Chief Tro when they received a donation from Citizens Bank for their "Shop with a Cop" event for needy families.

Councilor Padden promoted the Friends of the Library "Christmas Tour" fundraiser event and his house was on the tour. It was on December 16 and cost \$10. He requested staff get caught up on the Planning Commission's minutes. He gave an update on the ethics training required by the state. He also attended the Light the Night event and thanked City staff.

CITY ADMINISTRATOR'S BUSINESS: Ms. Stein said the new Finance Director would start on January 2.

Jerry Nelzen, Public Works Director, walked the Council through the map of the properties owned by the City explaining there were very few properties owned by the City that were not already in use or had future usage planned for them.

Councilor Stearns asked about the property at 4th Ave and Fir St. He thought something needed to be done with the old equipment still on the property. Mr. Nelzen said it was owned by Canby Utility, not the City.

Don Hardy, Planning Director, said Councilor Padden had asked at a previous meeting what the consequences would be if the City decided not to expand the UGB. He explained the City got a significant portion of funding from the state and if they chose not to expand under the terms of the UGB expansion plan, they could pull the funding. In addition, they would lose control over their own growth with property owners and the state taking it over. They had some flexibility regarding employment land, but the residential land aspect had to be complied with if they wanted to continue to accept state funds.

Councilor Padden thanked Mr. Hardy for this information and said knowing how much state funding they received would be useful in his conversations with citizens.

There was discussion regarding upcoming UGB expansion open houses.

Ms. Stein said Canby had been featured in the fourth quarter issue of LOC magazine for the old City Hall restoration.

ACTION REVIEW:

1. Approved the Consent Agenda.
2. Adopted Resolution 1399.
3. Approved a Noise Variance Request for ODOT.
4. Approved a Noise Variance Request for Canby Pioneer Chapel.
5. Changed the December 20, 2023, Regular City Council Meeting to a Work Session if an appropriate topic could be prepared.

The meeting was adjourned at 10:08 p.m.

Maya Benham
City Recorder

Brian Hodson
Mayor

Assisted with Preparation of Minutes - Susan Wood



CITY COUNCIL STAFF REPORT

Meeting Date: 1/3/2024

To: The Honorable Mayor Hodson & City Council
Thru: Eileen Stein, City Administrator
From: Todd Wood, Transit & Fleet Services Director
Agenda Item: Transit Lease Agreement

Summary

This Ordinance will fill in the lease gap from 2018 until today and will further extend the lease to 2026.

Discussion

Canby Area Transit (CAT) leases offices at 195 S Hazel Dell Way, Suite C from Zimmer Ventures LLC. The original lease officially expired in 2018 and CAT has been paying month-to-month ever since. CAT, as a department of the City, is exempt from property taxes; however, exemption requires an active lease. To maintain the appropriate tax-exempt status, the lease needs to be updated and extended.

Attachments

- Ordinance 1615
- Lease Agreement

Fiscal Impact

CAT currently pays the lease plus triple net (site operational expenses equal to 25% of the facility). This lease will not change CATS' current finances but will put the agreement into writing. Our current lease is \$3606 per month with a triple net of \$365.50 per month. The triple net is recalculated annually based on actual expenditures and lease will increase approximately 3% annually.

Options

1. Approve the Ordinance for a second reading.
2. Do not approve the Ordinance for a second reading and instruct staff accordingly.

Recommendation

Staff recommends that the City Administrator sign the lease agreement with Zimmer Ventures Inc. for leasing the property located at 195 S Hazel Dell Way.

Proposed Motion

"I move to approve **Ordinance No. 1615**: AN ORDINANCE AUTHORIZING THE CITY ADMINISTRATOR TO MAKE, EXECUTE, AND DECLARE IN THE NAME OF THE CITY OF CANBY AND ON ITS BEHALF, AN APPROPRIATE LEASE AGREEMENT WITH ZIMMER VENTURES LLC, OF CANBY, OR TO PROVIDE LEASED OFFICE SPACE FOR CANBY AREA TRANSIT LOCATED AT 195 S. HAZEL DELL WAY THROUGH DECEMBER 2025 to a second reading on January 17, 2024."

ORDINANCE NO. 1615

AN ORDINANCE AUTHORIZING THE CITY ADMINISTRATOR TO MAKE, EXECUTE, AND DECLARE IN THE NAME OF THE CITY OF CANBY AND ON ITS BEHALF, AN APPROPRIATE LEASE AGREEMENT WITH ZIMMER VENTURES LLC, OF CANBY, OR TO PROVIDE LEASED OFFICE SPACE FOR CANBY AREA TRANSIT LOCATED AT 195 S. HAZEL DELL WAY THROUGH DECEMBER 2025.

WHEREAS, the City of Canby on behalf of Canby Area Transit (CAT) has leased the property continuously since 2016 located at 195 S Hazel Dell Way Suite C, Canby, OR; and

WHEREAS, the original lease agreement expired in June 2018; and

WHEREAS, A new lease agreement is needed to cover the period from 2018 through 2026.

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

The City Administrator is hereby authorized and directed to make, execute, and declare in the name of the City of Canby and on its behalf, an appropriate lease agreement with ZIMMER VENTURES INC of Canby, Oregon to provide leased office space for Canby Area Transit through December 2025.

SUBMITTED to the Canby City Council and read for the first time at a regular meeting thereof on Wednesday, January 3, 2024, 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, January 17, 2024.

Maya Benham,
City Recorder

PASSED on second and final reading by the Canby City Council at a regular meeting thereof on the 17th of January 2024 by the following vote:

YEAS _____

NAYS _____

Brian Hodson
Mayor

ATTEST:

Maya Benham,
City Recorder

LEASE AGREEMENT

THIS LEASE is entered into this ____ day of _____, 2024, between ZIMMER VENTURES, LLC ("Landlord") and CITY OF CANBY, an Oregon municipal corporation, acting on behalf of CANBY AREA TRANSIT ("Tenant"). Landlord owns a building and other improvements on that certain property known as 195 S. Hazel Dell Way, Canby, Clackamas County, Oregon known as THE SEQUOIA COMMERCE CENTER (the "Property"). Landlord hereby leases to Tenant and Tenant hereby leases from Landlord certain space on the Property consisting of 1728 rentable square feet, as outlined on the attached Exhibit A (the "Premises") on the terms and conditions set forth in this Lease. The Property, as it may be expanded or otherwise reconfigured from time to time is sometimes referred to herein as "Suite C of Lot 1 of the Zimmer Commerce Center".

1. **TERM.** The term of this Lease (the "Term") is for a period of ninety-six (96) months. The Term commenced on January 1, 2018 and will expire at 12:00am PST on January 1, 2026, unless the Landlord or Tenant terminates the Lease at an earlier date in accordance with the Lease or as otherwise permitted by law.

2. **RENT.** The Landlord and Tenant represent and warrant that as of the date the parties enter into this Lease, Tenant has paid and Landlord has received all Rent (as that term is broadly defined in paragraph (2)(d), below) due and payable under the Lease. Beginning on July 1, 2023, which will be the first day of "month 1" for purposes of calculating Rent for the remainder of the Term, the Tenant shall pay to Landlord the "Base Rent" plus adjustments to Base Rent, as defined in this section. Based on the Term's expiration date of January 1, 2026, "Month 30" is the month of December, 2025.

(a) **Base Rent.** The monthly Base Rent shall be:

- (i) Months 1 through 12 \$3606 per month
- (ii) Months 13 through 24 \$3714 per month (previous 12 months base rent plus \$108)
- (iii) Months 25 through 30 \$3825 per month (previous 12 months base rent plus \$111)

(b) **Adjustments in Base Rent:** The Base Rent referenced in paragraph 2(a)(i) (Months 1 through 12) will be increased annually at the rate of three percent (3%) per annum. Thus, instead of \$3606 being the amount of Base Rent for months 13 through 24, the new Base Rent increase would be \$3714 with a similar percent increase in the following years.

(c) **No Partnership Created.** Landlord is not by virtue of this Section 2 a partner or joint venture with Tenant in connection with the activities carried on under this Lease, and shall have no obligation with respect to Tenant's debts or other liabilities.

(d) **Additional Rent.** All references to "Rent" or "Rental" in this Lease shall mean Base Rent, and all other payments required of Tenant under this Lease unless a narrower meaning is expressly specified. All payments of Rent shall be made to Landlord without offset, abatement, or deduction.

3. SECURITY DEPOSIT (FIRST AND LAST MONTH'S RENT). Tenant and Landlord represent and warrant that Tenant has paid and Landlord has received a sum of \$6121 as security for the full and faithful performance by Tenant of all of the covenants and terms of this Lease required to be performed by Tenant. Such security deposit shall be returned to Tenant after the expiration of this Lease, provided Tenant has fully and faithfully carried out all of Tenant's obligation hereunder, including the payment of all amounts due to Landlord hereunder and the surrender of the Premises to Landlord in the condition required in this Lease. However, Landlord, at its option, may apply such sum on account of the payment of the last month's Base Rent or other unpaid obligation of Tenant's. Such sum may be commingled with other funds of Landlord and shall not bear interest. In the event of a sale of the property on which the Premises are located, subject to this Lease, Landlord shall have the right to transfer the lease consideration to the purchaser to be held under the terms of this Lease, and Landlord shall thereupon be released from all liability for the return of the lease consideration. Tenant agrees to look solely to the new landlord for the return of the lease consideration.

4. TAXES, INSURANCE, AND OPERATING EXPENSES.

(a) Tenant's Taxes. Tenant shall be responsible for and shall pay before delinquent all taxes assessed during the Term against any leasehold or personal property of any kind owned by or placed upon or about the Premises by Tenant.

(b) Tenant's Share of Property Taxes. In addition to Base Rent, Tenant shall pay during each calendar year or part thereof during the Term, Tenant's Proportionate Share (as provided in Section 4(h)) of the total real property taxes and assessments levied, assessed or imposed during the Term upon the Property or the use, occupancy or operations of the Property ("Taxes") for each such calendar year. PROVIDED HOWEVER, IN THE EVENT THE PROPERTY TAXES ARE REDUCED BECAUSE OF TENANT'S GOVERNMENTAL NOT-FOR-PROFIT STATUS, TENANT WILL BE ENTITLED TO ALL CREDITS APPLICABLE TO SUITE C OF LOT 1 OF THE ZIMMER COMMERCE CENTER. **It is assumption of both parties that Tenant will not have to pay these taxes.** Otherwise, in the interim commencing with the payment due July 1, 2023, Tenant shall pay to Landlord an amount each month, which is equal to one-twelfth of Landlord's reasonable estimate of Tenant's share of the Taxes. Landlord shall notify Tenant of the estimated monthly amount to be paid and of any changes in the estimated amount, and Tenant shall pay Landlord such estimated amount at the same time as and together with Tenant's Base Rent. When the actual Taxes are determined each year, Landlord shall furnish to tenant a statement showing in reasonable detail the computation of Tenant's share of the Taxes, and the charge or credit to Tenant for any difference between the actual amount and the estimated amounts previously paid by tenant. Any deficiency shall be reimbursed by Tenant within ten (10) days after Landlord gives Tenant notice thereof and any credit shall be applied to Tenant's next succeeding payment of Rent or other charges under the Lease. No interest or earnings shall be payable by Landlord to Tenant on any amount paid hereunder and Landlord may commingle such payment with other funds of Landlord. Should there be in effect during the Term any law, statute, or ordinance which levies, assesses or imposes any tax (other than federal or state income tax) upon rents, Tenant shall pay such taxes as may be attributable to the Rents under this Lease or shall reimburse Landlord for any such taxes paid by Landlord within ten (10) days after Landlord bills Tenant for same.

(c) Insurance. During the term, Landlord shall maintain in full force policy or policies of fire insurance with standard extended coverage endorsements covering the building or buildings and other improvements (exclusive of Tenant's trade fixtures, tenant improvements and other personal property) situated on the Property. During the Term, Landlord shall maintain in full force a comprehensive liability insurance policy insuring Landlord against liability for bodily injury and property damage occurring in, on or about the Property. Landlord shall use its reasonable efforts to secure said insurance at competitive rates. Tenant shall pay Tenant's Proportionate Share of such insurance pursuant to the terms of Section 4(h) of this Lease, as part of Operating Expenses.

(d) Increases in Premiums. This Lease is entered into on the basis that Tenant's occupancy will not affect the Property's classification for insurance rating purposes. If Tenant's initial intended use of the Premises results in higher insurance premiums for any buildings situated on the Property, Tenant shall pay for the increased costs of the premiums for insuring any such buildings against loss by fire with standard extended coverage endorsements during the Term. If the insurance premiums on any such buildings are increased during the Term as a result of the installation of equipment on the Premises by Tenant, by reason of Tenant maintaining certain goods or materials on the Premises or as a result of other use or occupancy of the Premises by Tenant, Tenant shall pay the additional cost of the insurance for any such buildings (whether or not Landlord has consented to the activity resulting in the increased insurance premiums). Tenant shall refrain from any activity in its use of the Premises which would make it impossible to insure the Premises or the buildings situated on the Property against casualty or which would increase the insurance rate of any such buildings or prevent Landlord from taking advantage of the ruling of the Insurance Rating Bureau of the state in which the Premises are or its successors allowing Landlord to obtain reduced premium rates for long term fire insurance policies, unless Tenant pays the additional cost of the insurance. All of Tenant's electrical equipment shall be U-L approved. If Tenant installs any electrical equipment that overloads the lines in the Premises or in any such buildings, Tenant shall at its own expense make whatever changes are necessary to comply with the requirements of the insurance underwriters and governmental authorities having jurisdiction. Any insurance premiums to be paid by Tenant by reason of its initial intended use of the Premises or any increase in fire insurance premiums attributable to Tenant's use or occupancy of the Premises during the Term shall be paid by Tenant to Landlord within thirty days after Landlord bills Tenant for the same.

(e) Indemnity; Tenant's Insurance. Tenant shall indemnify and save harmless Landlord from any and all liability, damage, expenses, attorney's fees, causes of actions, suits, claims or judgments, arising out of or connected with (i) the use, occupancy, management, or control of the Premises, (ii) any failure of Tenant to comply with the terms of this Lease, and (iii) the negligent acts or omissions of Tenant, its agents, officers, directors, employees, or invitees; provided, however, that Tenant shall not be liable for claims caused by the negligence of Landlord. Tenant shall, at its own cost and expense, defend any and all suits which may be brought against Landlord either alone or in conjunction with others upon any such above mentioned cause or claim, and shall satisfy, pay, and discharge any and all judgments that may be recovered against Landlord in any such action or actions in which Landlord may be a party defendant. Neither Landlord nor any partner, director, officer, agent, or employee of Landlord shall be liable to Tenant or any person claiming through Tenant for any loss,

injury, or damage whatsoever, including without limitation any loss, injury, or damage caused by other tenants or persons in or about the Property, except to the extent any such loss, injury, or damage is caused by or results from the negligent or willful act or omission of Landlord or its agents or employees. Except in cases of Landlord negligence, Landlord shall not be liable for consequential damages, including lost profits, of Tenant or any person claiming through Tenant, regardless of the cause of any loss, injury, or damage. Tenant shall at its own expense during the Term carry in full force and effect a comprehensive public liability insurance policy, with an insurance carrier satisfactory to Landlord, naming Landlord as an additional insured, with combined limits of not less than \$2,000,000 in bodily injury liability, and property damage liability, insuring against any and all liability of Tenant with respect to the Premises and under this Lease, or arising out of the maintenance, use or occupancy of the Premises. Such policy shall provide that the insurance shall not be cancelable or modified without at least ten (10) days' prior written notice to Landlord and shall be deemed primary and noncontributing with other insurance available to Landlord. Tenant shall maintain, at Tenant's expense, insurance covering Tenant's personal property, furnishings, fixtures, and equipment; Landlord is not responsible, therefore. On or before the Commencement Date, Tenant shall furnish Landlord with a certificate or other acceptable evidence that such insurance is in effect. Tenant shall also provide and maintain insurance to comply with Worker's Compensation and Employer's Liability Laws.

(f) Routine Operating Expenses. From and after the Commencement Date, Tenant shall pay to Landlord during each calendar year or part thereof during the Term, in addition to Base Rent and additional rent ("Additional Rent") Tenant's Proportionate Share of Routine Operating Expenses. Tenant shall pay to Landlord an amount each month which is equal to one-twelfth of Landlord's reasonable estimate of Tenant's share of the Routine Operating Expenses. Landlord shall notify Tenant of the estimated monthly amount to be paid, and of any changes in the estimated amount, and Tenant shall pay Landlord such estimated amount at the same time as and together with Tenant's Base Rent. When the actual Routine Operating Expenses are determined each year, Landlord shall furnish to Tenant a statement showing in reasonable detail the computation of Tenant's share of the Routine Operating Expenses, and the charge or credit to Tenant for any difference between the actual amount and the estimated amounts previously paid by Tenant. Any deficiency shall be reimbursed by Tenant within ten (10) days after Landlord gives Tenant notice thereof and any credit shall be applied to Tenant's next succeeding payment of Rent or other charges under the Lease. No interest or earnings shall be payable by Landlord to Tenant on any amount paid hereunder, and Landlord may commingle such payment with other funds of Landlord. The term "Routine Operating Expenses" means all reasonable and routine expenses paid or incurred by Landlord or on Landlord's behalf and determined by Landlord to be necessary or appropriate for the efficient operation, maintenance, and repair of the Property, for those areas of the Property not reserved for exclusive use by a specific tenant, such as the driveways, parking areas, landscape areas, curbs, sidewalks, plazas, and refuse collection areas. Routine Operating Expenses shall include, but not be limited to, the following (to the extent not chargeable to a specific tenant):

(i) Salaries, wages, and benefits (including without limitation medical and other insurance, pension payments, payroll taxes, and worker's compensation insurance) for employees of Landlord, if any, engaged in the on-site repair, operation, maintenance, management, engineering, or security of the Property;

(ii) All expenses incurred for gas, electricity, heat, heat, ventilation, air conditioning, water, and other services or utilities furnished to the Property, together with any taxes thereon;

(iii) All repair, replacement, service, and general maintenance costs relating to the Property, including without limitation heating, ventilating, and air conditioning systems, sidewalks, landscaping, surface parking, service areas, refuse collection areas, mechanical rooms, roofs, and building exteriors, whether the work in question is done by Landlord or its agents, or by an independent contractor;

(iv) The cost of all insurance charges, including without limitation casualty, comprehensive liability, fire with extended coverage endorsement, boiler and machinery, rent loss, earthquake, flood, and such other policies of insurance as Landlord deems reasonable to obtain with respect to the Property;

(v) The cost or rental of all supplies, including without limitation cleaning supplies, light bulbs, tubes and ballasts, materials, and equipment, and all taxes thereon;

(vii) The cost of reasonable alterations and improvements to ZIMMER COMMERCIAL CENTER as required by any governmental authority or insurance underwriter or similar board or body;

(viii) Actual management fees paid to a third party with respect to the Property or, if no managing agent is employed by Landlord, a management fee not in excess of the then-prevailing management fees charged for comparable properties in the Portland, Oregon metropolitan area;

(ix) Legal, accounting and other professional fees incurred in connection with general, routine operations, maintenance, and management of the Property as it applies to Routine Operating Expenses;

(x) Any parking charges, utilities surcharges, or other costs levied, assessed, or imposed by or at the direction of, or resulting from statutes or regulations, or interpretations thereof, promulgated by, any governmental authority in connection with the use or occupancy of the Property or the parking facilities serving the Property;

(xi) All other expenses properly allocable to the operation, repair, and maintenance of the Property in accordance with generally accepted accounting principles.

(g) Net Lease. This Lease shall be an absolutely net lease and Rent shall be paid to Landlord absolutely net of all costs and expenses. The provisions for payment of Tenant's Proportionate Share of Taxes and Operating Expenses are intended to pass on to Tenant and to reimburse Landlord for all costs and expenses of the nature described in this Lease.

(h) Tenant's Proportionate Share. As of the date of this Lease, Tenant's Proportionate Share of Taxes, insurance, and Operating Expenses is twenty-five per cent (25%). Tenant's Proportionate Share may be adjusted from time to time if the number of rentable square feet in the Property is remeasured or changes, so long as such adjustment is equitable.

5. PLACE OF PAYMENT. Tenant shall pay the Rent and other amounts required to be paid by Tenant hereunder to Landlord at the address for Landlord set forth on the last

page of this Lease, or at such other place as Landlord may from time to time designate in writing.

6. USE OF PREMISES. The Premises shall be used for retail office space to support CANBY AREA TRANSIT (CAT) and for no other purpose without Landlord's written consent, which consent shall not be unreasonably withheld. In connection with the use of Premises or as a tenant or owner of any other parcel in the ZIMMER COMMERCE CENTER, Tenant shall:

(a) Conform to and comply with all applicable laws and regulations of any public authority affecting the Premises, the condition of the Premises, and the use of the Premises and correct promptly, at Tenant's own expense, any failure of compliance.

(b) Refrain from any activity which would be reasonably offensive to Landlord, to other tenants in any buildings situated on the Property, or to owners or users of the adjoining premises, or which would tend to create a nuisance or damage the reputation of the Premises or of any such buildings. Without limiting the generality of the foregoing, Tenant shall not permit any objectionable noise or odor to escape or be emitted from the Premises nor permit the use of flashing (strobe) lights.

(c) Refrain from loading the floors beyond the point considered safe by a competent engineer or architect selected by Landlord and refrain from using water, sewer, and plumbing systems in any harmful way. Tenant shall use hair interceptors, grease traps or other drain protection devices as needed to avoid such harmful use.

(d) Tenant, at its sole cost and expense, may install a sign on the fascia of the building at a location and of a style which meets the approval of the landlord (consent shall not be unreasonably withheld) and is in accordance with all appropriate government regulations. Tenant may also have signage at the existing pylon reserved for ZIMMER COMMERCE CENTER tenants. Tenant shall have use of the top lens panel on each side of the pylon for its exclusive use. Notwithstanding Landlord's consent to any signs, Tenant shall remove all such signs upon expiration or termination of the Lease and repair any damage to the Premises caused thereby, at Tenant's own cost and expense.

(e) Comply with any reasonable rules respecting the use of the Premises promulgated by Landlord from time to time and communicated to Tenant in writing. Of the twenty-eight (28) parking spaces allocated for Lot 1 of ZIMMER COMMERCE CENTER, Tenants normal use shall not exceed seven (7) of these spaces. It is understood by the parties that until occupied by future tenants, the remaining additional 14 spaces, for a total of 21 spaces, will be available for use by Tenant.

(f) Not permit any cash, credit card, or coin-operated vending, novelty or gaming machines or equipment on the Premises without the prior written consent of Landlord; and not to permit the use of any part of the Premises for a second-hand store, nor for an auction, distress or fire sale, or bankruptcy or going-out-of-business sale or the like.

(g) Not commit or suffer any strip or waste of the Premises including without limitation the improvements thereon or any part thereof; and Tenant shall keep the Premises in a neat, clean, sanitary, and orderly condition.

(h) Not display or sell merchandise outside the exterior walls of the Premises;

and

(i) Shall not cause or permit any Hazardous Substance to be spilled, leaked, disposed of, or otherwise released on or under the Premises. Tenant may use or otherwise handle on the Premises only those Hazardous Substances typically used or sold in the prudent and safe operation of the uses specified in Section 6. Tenant may store such Hazardous Substances on the Premises only in quantities necessary to satisfy Tenant's reasonably anticipated needs. Tenant shall comply with all Environmental Laws and exercise the highest degree of care in the use, handling, and storage of Hazardous Substances and shall take all practicable measures to minimize the quantity and toxicity of Hazardous Substances used, handled, or stored on the Premises. Upon the expiration or termination of this Lease, Tenant shall remove all Hazardous Substances from the Premises. The term Environmental Law shall mean any federal, state, or local statute, regulation, or ordinance or any judicial or other governmental order pertaining to the protection of health, safety or the environment. The term Hazardous Substance shall mean any hazardous, toxic, infectious or radioactive substance, waste, and material as defined or listed by any Environmental Law and shall include, without limitation, petroleum oil and its fractions.

(j) Be subject to Declaration and Establishment of Protective Covenants, Conditions and Restrictions and Grant of Easements, Clackamas County Recorder's Fee No. 2007-081170, as amended in Clackamas County Recorder's Fee No. 2009-026540.

7. IMPROVEMENTS AND ALTERATIONS.

a. Landlord Improvements And Alterations.

(i) Landlord shall be responsible for making alterations requested by Tenant in conformance with the attached Exhibit B (ceiling plan and floor plan). Construction notes have been enlarged for the convenience of Landlord and Tenant. Except for the alterations requested by the Tenant in the attached Exhibit B, Landlord shall not be required to make any further improvements or alterations to the premises.

(ii) Provided, however, Tenant shall obtain and pay for all developmental, design and architectural permits, fees and costs.

b. Tenant Improvements And Alterations.

(i) When Tenant takes possession of the Premises, Tenant shall be deemed to have accepted the Premises and the Building in their current condition. Landlord makes no representations regarding the fitness of the Premises or the Building for any particular purpose.

(ii) Tenant shall make no improvements or alterations to the premises of any kind without the prior written consent of Landlord, which consent shall not be unreasonably withheld.

(iii) All work by Tenant shall be done in strict compliance with all applicable building, fire, sanitary and safety codes and other applicable laws, statutes, regulations and ordinances and Tenant shall secure all necessary permits for the same.

Tenant shall keep the premises free from all liens in connection with any such work. Landlord or

Landlord's agents shall have the right at all reasonable times to inspect the quality and progress of such work.

(iv) All improvements, alterations and other work performed on the Premises by the Tenant shall be the property of Landlord when installed, except for Tenant's trade fixtures, and items marked on the Exhibit C to be removed at the conclusion of the Lease. All such improvements, alterations or other work to be performed by Tenant shall be at the Tenant's sole cost and expense.

8. REPAIRS AND MAINTENANCE.

(a) Landlord's Responsibilities. The following shall be the responsibility of Landlord, and Landlord shall maintain all of the following in good condition and repair:

(i) Structural repairs and maintenance and repairs necessitated by structural disrepair or defects;

(ii) Repair and maintenance of the exterior walls, roof, gutters, downspouts and the foundation of the building in which the Premises are located. This shall not include maintenance of the operating condition of doors and windows or replacement of glass, nor maintenance of the store front; and

(iii) Repair of interior walls, ceilings, doors, windows, floors and floor coverings when such repairs are made necessary because of failure of Landlord to keep the structure in repair as above provided in this Section 8(a).

(b) Tenant's Responsibilities. The following shall be the responsibility of Tenant, and Tenant shall maintain all of the following in good condition and repair:

(i) The interior of the Premises including any interior decorating;

(ii) Any repairs necessitated by the negligence of Tenant, its agents, employees and invitees and their use of the Premises;

(iii) Maintenance and repair of the heating, ventilating, and air conditioning systems, plumbing system, electrical system, and sprinkler systems, if any. However, Landlord reserves the right to contract with a service company for the maintenance and repair of the foregoing systems, or any of them; and Tenant's share of such expenses shall be paid by Tenant to Landlord monthly;

(iv) Maintenance and repair of the interior walls and floor coverings (both hard surfaces and carpeting);

(v) Any repairs or alterations required under Tenant's obligation to comply with laws and regulations as set forth in this Lease; and

(vi) All other repairs or maintenance to the Premises which Landlord is not expressly required to make under Section 8(a) above, which includes, without limiting the generality of the foregoing, the replacement of all glass which may be broken or cracked during the Term with glass of as good or better quality than that in use at the commencement

of the Term, wiring, plumbing, drainpipes, sewers, and septic tanks including without limitation, repairs outside of the Premises if the need for the repair arises from Tenant's use of the Premises. All of Tenant's work shall be in full compliance with then-current building code and other governmental requirements.

(c) Inspections. Landlord shall have the right to inspect the Premises at any reasonable time or times to determine the necessity of repair. Whether or not such inspection is made, the duty of Landlord to make repairs as outlined above in any area in Tenant's possession and control shall not mature until a reasonable time after Landlord has received from Tenant written notice of the necessity of repairs, except in the event emergency repairs may be required and in such event Tenant shall attempt to give Landlord appropriate notice considering the circumstances.

(d) Landlord's Work. All repairs, replacements, alterations or other work performed on or around the Premises by Landlord shall be done in such a way as to interfere as little as reasonably possible with the use of the Premises by Tenant. Tenant shall have no right to an abatement of Rent nor any claim against Landlord for any inconvenience or disturbance resulting from Landlord's performance of repairs and maintenance pursuant to this Section 8.

9. LIENS. Tenant shall keep the Premises free from all liens, including mechanic's liens, arising from any act or omission of Tenant or those claiming under Tenant. Landlord shall have the right to post and maintain on the Premises or the building in which the Premises are situated such notices of non-responsibility as are provided for under the lien laws of the state in which the Premises are located.

10. UTILITIES. Tenant shall pay promptly for all water and sewer facilities, gas and electrical services, including heat and light, garbage collection, and all other facilities and utility services used by Tenant or provided to the Premises during the Term. If the heating and air-conditioning systems are not on separate meters, Tenant shall pay its proportionate share of such charges based upon the actual use of the heat and air conditioning by Tenant and by the other tenants of the building in which the Premises are situated within ten (10) days after billings therefore. Tenant shall arrange for regular and prompt pickup of trash and garbage and shall store such trash and garbage in only those areas designated by Landlord. However, if Landlord elects to arrange for garbage collection on a cooperative basis for Tenant and other tenants, Tenant shall pay its proportionate share of the garbage collection charges, within ten (10) days after billings therefore. Landlord shall not be liable for any interruption of utility services to the Premises.

11. ICE. SNOW. AND DEBRIS. Tenant shall keep the walks in front of the Premises free and clear of ice, snow, rubbish, debris, and obstructions. Tenant shall save and protect Landlord from any injury whether to Landlord or Landlord's property or to any other person or property caused by Tenant's failure to perform Tenant's obligations under this Section 11. Tenant's obligations under this Section 11 shall be performed at Tenant's cost and expense.

12. WAIVER OF SUBROGATION. Neither party shall be liable to the other for any loss or damage caused by fire or any of the risks enumerated in a standard fire insurance policy with an extended coverage endorsement, including sprinkler leakage insurance, if any. All claims or rights of recovery for any and all such loss or damage, however caused, are hereby waived.

Without limiting the generality of the foregoing, said absence of liability shall exist whether or not such loss or damage is caused by the negligence of either Landlord or Tenant or by any of their respective agents, servants or employees.

13. INJURY TO TENANT'S PROPERTY. Landlord shall not be liable for any injury to any property of Tenant or to any person in or upon the Premises resulting from fire or collapse of the building in which the Premises are located or any portion thereof or any other cause, including but not limited to damage by water, gas or steam, or by reason of any electrical apparatus in or about the Premises. Landlord shall not be responsible for securing the Premises or providing security to the Building.

14. DAMAGE OR DESTRUCTION.

(a) Partial Destruction. If the Premises shall be partially damaged by fire or other cause, and Section 14(b) below does not apply, the damages to the Premises shall be repaired by Landlord, and all Base Rent until such repair shall be made shall be apportioned according to the part of the Premises which is useable by Tenant, except when such damage occurs because of the fault of Tenant. The repairs shall be accomplished with all reasonable dispatch. Landlord shall bear the cost of such repairs unless the damage occurred from a risk which would not be covered by a standard fire insurance policy with an endorsement for extended coverage, including sprinkler leakage, and the damage was the result of the fault of Tenant, in which event Tenant shall bear the expense of the repairs. However, if the holder of any indebtedness secured by the Property requires that the insurance proceeds be applied to such indebtedness, then Landlord shall have the right to terminate this Lease.

(b) Substantial Damage. If the buildings situated on the Property or the building in which the Premises are located or the Premises, or any of them, are 50% or more destroyed during the Term by any cause, Landlord may elect to terminate the Lease as of the date of damage or destruction by notice given to Tenant in writing not more than 45 days following the date of damage. In such event all rights and obligations of the parties shall cease as of the date of termination. In the absence of an election to terminate, Landlord shall proceed to restore the Premises, if damaged, to substantially the same form as prior to the damage or destruction, so as to provide Tenant useable space equivalent in quantity and character to that before the damage or destruction. Work shall be commenced as soon as reasonably possible, and thereafter proceed without interruption, except for work stoppages on account of matters beyond the reasonable control of Landlord. From the date of damage until the Premises are restored or repaired, Base Rent shall be abated or apportioned according to the part of the Premises useable by Tenant, unless the damage occurred because of the fault of Tenant. Landlord shall bear the cost of such repairs unless the damage occurred from a risk which would not be covered by a standard fire insurance policy with an endorsement for extended coverage, including sprinkler leakage, and the damage was the result of the fault of Tenant, in which event Tenant shall bear the expense of the repairs.

(c) Restoration. If the Premises are to be restored by Landlord as above provided in this Section 14, Tenant, at its expense, shall be responsible for the repair and restoration of all items which were initially installed at the expense of Tenant (whether the work was done by Landlord or Tenant) or for which an allowance was given by Landlord to Tenant, together with Tenant's stock in trade, trade fixtures, furnishings, and equipment; and Tenant

shall commence the installation of the same promptly upon delivery to it of possession of the Premises and Tenant shall diligently prosecute such installation to completion.

15. EMINENT DOMAIN.

(a) Partial Taking. If a portion of the Premises is condemned and neither Section 15(b) nor Section 15(c) apply, the Lease shall continue in effect. Landlord shall be entitled to all the proceeds of condemnation, and Tenant shall have no claim against Landlord as a result of condemnation. Landlord shall proceed as soon as reasonably possible to make such repairs and alterations to the Premises as are necessary to restore the remaining Premises to the condition as comparative as reasonably practicable to that existing at the time of condemnation. Base Rent shall be abated to the extent that the Premises are untenable during the period of alteration and repair. After the date on which title vests in the condemning authority, Base Rent shall be reduced commensurately with the reduction in value of the Premises as an economic unit on account of the partial taking. However, if the holder of any indebtedness secured by the Property requires that the condemnation proceeds be applied to such indebtedness, then Landlord shall have the right to terminate this Lease.

(b) Substantial Taking of the Property. If a condemning authority takes any substantial part of the Property or any substantial part of the building in which the Premises are located, the Lease shall, at the option of Landlord, terminate as of the date title vests in the condemning authority. In such event all rights and obligations of the parties shall cease as of the date of termination. Landlord shall be entitled to all of the proceeds of condemnation, and Tenant shall have no claim against Landlord as a result of the condemnation.

(c) Substantial Taking of Premises. If a condemning authority takes all of the Premises or a portion sufficient to render the remaining Premises reasonably unsuitable for Tenant's use, the Lease shall terminate as of the date title vest in the condemning authority. In such event all rights and obligations of the parties shall cease as of the date of termination. Landlord shall be entitled to all of the proceeds of condemnation, and Tenant shall have no claim against Landlord as a result of the condemnation.

(d) Definition. Sale of all or any part of the Premises to a purchaser with the power of eminent domain in the face of a threat or probability of the exercise of the power shall be treated for the purpose of this Lease as a taking by condemnation.

16. BANKRUPTCY. Subject to Section 17, this Lease shall not be assigned or transferred voluntarily or involuntarily by operation of law. It may, at the option of Landlord, be terminated, if Tenant be adjudged bankrupt or insolvent, or makes an assignment for the benefit of creditors, or files or is a party to the filing of a petition in bankruptcy, or commits an act of bankruptcy, or in case a receiver or trustee is appointed to take charge of any of the assets of Tenant or sub lessees or assignees in or on the Premises, and such receiver or trustee is not removed within 30 days after the date of his appointment, or in the event of judicial sale of the personal property in or on the Premises upon judgment against Tenant or any sub lessees or assignee hereunder, unless such property or reasonable replacement therefore be installed on the Premises. To the extent permitted by law, this Lease or any sublease hereunder shall not be considered as an asset of a debtor-in-possession, or an asset in bankruptcy, insolvency, receivership, or other judicial proceedings.

17. DEFAULT. The following shall be events of default:

(a) Failure of Tenant to pay any Base Rent, or Additional Rent when due or failure of Tenant to pay any other charge required under this Lease when due.

(b) Failure of Tenant to execute the documents described in Section 21 or 22 within the time required under such Sections; failure of Tenant to provide or maintain the insurance required of Tenant pursuant to Section 4(e); or failure of Tenant to comply with any governmental law, order, rule, regulation, ordinance or directive applicable to the Premises within 24 hours within written demand by Landlord.

(c) Failure of Tenant to comply with any term or condition or fulfill any obligation of this Lease (other than the failures described in Sections 17(a) or 17(b)), within ten (10) days after written notice by Landlord specifying the nature of the default with reasonable particularity. If the default is of such nature that it cannot be completely remedied within the ten (10) day period, this provision shall be complied with if Tenant begins correction of the default within the ten (10) day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable. Landlord shall not be obligated to give written notice for the same type of default more than twice; at Landlord's option a failure to perform an obligation after the second notice shall be an automatic Event of Default, without notice or an opportunity to cure.

(d) The abandonment of the Premises by Tenant or the failure of Tenant for fifteen (15) days or more to operate the business activities described in Section 6 of this Lease in the Premises unless such failure is excused under other provisions of this Lease.

(e) The bankruptcy or the occurrence of other acts specified in Section 16 of this Lease which give Landlord the option to terminate.

18. REMEDIES ON DEFAULT. In the event of a default, Landlord may, at Landlord's option, exercise anyone or more of the rights and remedies available to a landlord in the state in which the Premises are located to redress such default, consecutively or concurrently, including the following:

(a) Landlord may elect to terminate Tenant's right to possession of the Premises or any portion thereof by written notice to Tenant. Following such notice, Landlord may re-enter, take possession of the Premises and remove any persons or property by legal action or by self-help with the use of reasonable force and without liability for damages. To the extent permitted by law, Landlord shall have the right to retain the personal property belonging to Tenant which is on the Premises at the time of re-entry, or the right to such other security interest therein as the law may permit, to secure all sums due or which become due to Landlord under this Lease. Perfection of such security interest shall occur by taking possession of such personal property or otherwise as provided by law.

(b) Following re-entry by Landlord, Landlord may relet the Premises for a term longer or shorter than the Term and upon any reasonable terms, including the granting of rent concessions to the new tenant. Landlord may alter, refurbish or otherwise change the character or use of the Premises in connection with such reletting. Landlord shall not be required to relet for any use or purpose which Landlord may reasonably consider injurious to its property or to any tenant which Landlord may reasonably consider objectionable. No such

reletting by Landlord following a default by Tenant shall be construed as an acceptance of the surrender of the Premises. If rent received upon such reletting exceeds the Rent received under this Lease, Tenant shall have no claim to the excess.

(c) Following re-entry Landlord shall have the right to recover from Tenant the following damages:

(i) All unpaid or other charges for the period prior to re-entry, plus interest at a rate equal to six percent (6%) per annum.

(ii) An amount equal to the Rent lost during any period during which the Premises are not relet, if Landlord uses reasonable efforts to relet the Premises. If Landlord lists the Premises with a real estate broker experienced in leasing commercial property in the metropolitan area in which the Premises are located, such listing shall constitute the taking of reasonable efforts to relet the Premises.

(iii) All costs incurred in reletting or attempting to relet the Premises, including but without limitation, the cost of cleanup and repair in preparation for a new tenant, the cost of correcting any defaults or restoring any unauthorized alterations and the amount of any real estate commissions or advertising expenses.

(iv) Reasonable attorney's fees incurred in connection with the default, whether or not any litigation is commenced.

(d) Landlord may sue periodically to recover damages as they accrue throughout the Term and no action for accrued damages shall be a bar to a later action for damages subsequently accruing. To avoid a multiplicity of actions, Landlord may obtain a decree of specific performance requiring Tenant to pay the damages stated in Section 18(c) above as they accrue. Alternatively, Landlord may elect in any one action to recover accrued damages plus damages attributable to the remaining Term equal to the difference between the Rent under this Lease and the reasonable rental value of the Premises for the remainder of the Term, discounted to the time of the judgment at the rate of six percent (6%) per annum.

(e) In the event that Tenant remains in possession following default and Landlord does not elect to re-enter, Landlord may recover all back Rent and other charges, and shall have the right to cure any nonmonetary default and recover the cost of such cure from Tenant, plus interest from the date of expenditure at the Interest Rate. In addition, Landlord shall be entitled to recover attorney's fees reasonably incurred in connection with the default, whether or not litigation is commenced. Landlord may sue to recover such amounts as they accrue, and no one action for accrued damages shall bar a later action for damages subsequently accruing.

(f) The foregoing remedies shall not be exclusive but shall be in addition to all other remedies and rights provided under applicable law, and no election to pursue one remedy shall preclude resort to another remedy.

19. SURRENDER AT EXPIRATION

(a) Condition of Premises. Upon expiration of the Term or earlier termination Tenant shall deliver all keys to Landlord and surrender the Premises in first-class

condition and broom clean. Except as provided in section 7 (see Exhibit C), improvements and alterations constructed by Tenant shall not be removed or restored to the original condition unless the terms of Landlord's consent provides otherwise or unless Landlord requests Tenant to remove such improvements or alterations, in which event Tenant shall remove the same and restore the Premises. Depreciation and wear from ordinary use for the purpose for which the Premises were let need not be restored, but all repair for which Tenant is responsible shall be completed to the latest practical date prior to such surrender. Tenant's obligations under this Section 19 shall be subject to the provisions of Section 14 relating to damages or destruction.

(b) Fixtures.

(i) Except as set forth in Exhibit C, all fixtures placed upon the Premises during the Term, other than Tenant's trade fixtures, shall, at Landlord option, become the property of Landlord. Movable furniture, decorations, floor covering other than hard surface bonded or adhesively fixed flooring, curtains, drapes, blinds, furnishing and trade fixtures shall remain the property of Tenant if placed on the Premises by Tenant; provided, however, if Landlord granted Tenant an allowance for improvements, installation, floor coverings, curtains, drapes, blinds or other items, such items shall at Landlord's option become the property of Landlord notwithstanding the installation thereof by Tenant.

(ii) If Landlord so elects, Tenant shall remove any or all fixtures which would otherwise remain the property of Landlord, and shall repair any physical damage resulting from the removal. If Tenant fails to remove such fixtures, Landlord may do so and charge the cost to Tenant with interest at the Interest Rate. Tenant shall remove all furnishings, furniture and trade fixtures which remain the property of Tenant. If Tenant fails to do so, this shall be an abandonment of the property, and Landlord may retain the property and all rights of Tenant with respect to it shall cease. Landlord may effect a removal and place the property in public or private storage for Tenant's account. Tenant shall be liable to Landlord for the cost of removal, transportation to storage, with interest on all such expenses from the date of expenditure at the Interest Rate.

(iii) The time for removal of any property or fixtures which Tenant is required to remove from the Premises upon termination shall be as follows:

(1) On or before the date the Lease terminates because of expiration of the Term or because of a default under Section 17.

(2) Within 30 days after notice from Landlord requiring such removal where the property to be removed is a fixture which Tenant is not required to remove except after such notice by Landlord, and such date would fall after the date on which Tenant would be required to remove other property.

(c) Holdover.

(i) If Tenant does not vacate the Premises at the time required, Landlord shall have the option to treat Tenant as a tenant from month-to-month, subject to all of the provisions of this Lease except the provision for the Term, and except the Base Rent provided herein shall double during the period of the month-to-month tenancy. Failure of Tenant to remove fixtures, furniture, furnishings or trade fixtures which Tenant is required to remove under this

Lease shall constitute a failure to vacate to which this Section 19(c) shall apply if the property not removed will substantially interfere with occupancy of the Premises by another tenant or with occupancy by Landlord for any purpose including preparation for a new tenant.

(ii) If a month-to-month tenancy results from a holdover by Tenant under this Section 19(c), the tenancy shall be terminable at the end of any monthly rental period on written notice from Landlord given not less than ten (10) days prior to the termination date which shall be specified in the notice. Tenant waives any notice which would otherwise be provided by law with respect to a month-to-month tenancy.

20. ASSIGNMENT AND SUBLETTING. Tenant shall not assign this Lease or sublet all or any part of the Premises without the written consent of Landlord, which consent will not be unreasonably withheld. Without limiting the generality of the foregoing, it shall not be unreasonable for Landlord to withhold its consent if the proposed assignee or sublessee does not have the net worth of Tenant and/or does not have an established record of high-quality operations. Tenant shall remain primarily liable, after any assignment or sublease, for the payment of all Rent and other charges under this Lease and for the performance of all of Tenant's obligations under this Lease, notwithstanding such assignment or subletting by Tenant.

21. SUBORDINATION. Tenant's interest hereunder shall be subject and subordinate to all mortgages, trust deeds, and other financing and security instruments placed on the Premises by Landlord from time to time ("Mortgages") except that no assignment or transfer of Landlord's rights hereunder to a lending institution as collateral security in connection with a Mortgage shall affect Tenant's right to possession, use and occupancy of the Premises so long as Tenant shall not be in default under any of the terms and conditions of this Lease. The provisions of this Section 21 shall be self-operating. Nevertheless, Tenant agrees to execute and acknowledge an instrument in recordable form which expressly subordinates Tenant's interest hereunder to the interests of the holder of any Mortgage within ten (10) days after request by Landlord. As an accommodation to Landlord and at its request, Tenant shall furnish Landlord current and past balance sheets and operating statements certified as accurate and up to date by Tenant and in the form requested by the holder of any Mortgage to which Landlord applies for financing concerning the Property or any prospective purchaser of the Property.

22. ESTOPPEL CERTIFICATE. Tenant shall from time to time, upon not less than ten (10) days prior notice, submit to Landlord, or to any person designated by Landlord, a statement in writing, in the form submitted to Tenant by Landlord, certifying that this Lease is unmodified and in full force and effect (or if there have been modifications, identifying the same by the date thereof and specifying the nature thereof), that to the knowledge of Tenant no uncured default exists hereunder (or if such uncured default does exist, specifying the same), the dates to which the Rent and other sums and charges payable hereunder have been paid, that Tenant has no claims against Landlord and no defenses or offsets to rental except for the continuing obligations under this Lease (or if Tenant has any such claims, defenses or offsets, specifying the same), and any other information concerning this Lease as Landlord reasonably requests.

23. PERFORMANCE BY LANDLORD. Landlord shall not be deemed in default for the nonperformance or for any interruption or delay in performance of any of the terms,

covenants and conditions of this Lease if the same shall be due to any labor dispute, strike, lockout, civil commotion or like operation, invasion, rebellion, hostilities, military or usurped power, sabotage, governmental regulations or controls, inability to obtain labor, services or materials, through acts of God, or other cause beyond the reasonable control of Landlord, providing such cause is not due to the willful act or neglect of Landlord. Tenant shall look only to Landlord's estate and property in the Property (or the proceeds thereof) for the satisfaction of any judgment against Landlord resulting from a default by Landlord hereunder, and no other property or assets of Landlord or its partners or principals, disclosed or undisclosed, shall be subject to levy, execution, or other enforcement procedure for the satisfaction of any such judgment.

24. LANDLORD'S RIGHT TO CURE DEFAULT. If Tenant shall fail to perform any of the covenants or obligations to be performed by Tenant, Landlord, in addition to all other remedies provided herein, shall have the option (but not the obligation) to cure such default after thirty days' written notice to Tenant. All of Landlord's expenditures incurred to correct the default shall be reimbursed by Tenant upon demand with interest from the date of expenditure at the Interest Rate. Landlord's right to cure defaults is for the sole protection of Landlord and the existence of this right shall not release Tenant from the obligation to perform all of the covenants herein provided to be performed by Tenant or deprive Landlord of any other right which Landlord may have by reason of such default by Tenant.

25. INSPECTION; CHANGES. Landlord, Landlord's agents and representatives, shall have the right to enter upon the Premises at reasonable times for the purpose of inspecting the same, for the purpose of making repairs or improvements to the Premises or the building in which the Premises are located, for showing the Premises during the final ninety days of the Term, or for any other lawful purpose.

26. FOR SALE AND FOR RENT SIGNS. During the period of ninety days prior to the date for the termination of this Lease, Landlord may post on the Premises or in the windows thereof signs of moderate size notifying the public that the Premises are "for sale" or "for rent" or "for lease".

27. ATTORNEY'S FEES. In the event a suit, action, arbitration, or other proceeding of any nature whatsoever, including without limitation any proceeding under the U.S. Bankruptcy Code, is instituted, or the services of an attorney are retained, to interpret or enforce any provision of this Lease or with respect to any dispute relating to this Lease, the prevailing or non-defaulting party shall be entitled to recover from the losing or defaulting party its attorneys', paralegals', accountants', and other experts' fees and all other fees, costs, and expenses actually incurred and reasonably necessary in connection therewith. In the event of suit, action, arbitration, or other proceeding, the amount thereof shall be determined by the judge or arbitrator, shall include fees and expenses incurred on any appeal or review, and shall be in addition to all other amounts provided by law.

28. NOTICES. Any notice required or permitted under this Lease shall be in writing and shall be deemed given when actually delivered or when deposited in the United States mail as certified or registered mail, addressed to the addresses set forth on the last page of this Lease or to such other addresses as may be specified from time to time by either of the parties in the manner above provided for the giving of notice.

29. BROKERS. [INTENTIONALLY OMITTED]

30. LATE CHARGES. Tenant acknowledges that late payment by Tenant to Landlord of any Base Rent due hereunder will cause Landlord to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs may include, without limitation, processing and accounting charges and late charges which may be imposed on Landlord under the terms of any Mortgage. Accordingly, if any Rent is not received by Landlord within ten (10) days after it is due, Tenant shall pay to Landlord a late charge equal to five percent (5%) of the overdue amount. The parties hereby agree that such late charge represents a fair and reasonable estimate of the costs incurred by Landlord by reason of the late payment by Tenant. Acceptance of any late charge by Landlord shall in no event constitute a waiver of Tenant's default with respect to the overdue amount in question, nor prevent Landlord from exercising any of the other rights and remedies granted hereunder.

31. RULES AND REGULATIONS. Tenant and its employees and agents shall faithfully observe and comply with the rules and regulations for the Property attached as Exhibit D and such changes to such rules and regulations as Landlord may from time to time promulgate (the "Rules and Regulations"). Landlord shall not be liable to Tenant for any violation of the rules and Regulations by any other person, including any other tenant.

32. MISCELLANEOUS PROVISIONS.

(a) This Lease does not grant any rights of access to light or air over any part of the Property.

(b) Time is of the essence of this Lease.

(c) The acceptance by Landlord of any Rent or other benefits under this Lease shall not constitute a waiver of any default. Any waiver by Landlord of the strict performance of any of the provisions of this Lease shall not be deemed to be a waiver of subsequent breaches of the same character or of a different character, occurring either before or subsequent to such waiver, and shall not prejudice Landlord's right to require strict performance of the same provision in the future or of any other provision of this Lease. .

(d) This Lease contains the entire agreement of the parties. This Lease shall not be amended or modified except by agreement in writing, signed by the parties hereto.

(e) Subject to the limitations on the assignment or transfer of Tenant's interest in this Lease, this Lease shall be binding upon and inure to the benefit of the parties, their respective heirs, personal representatives, successors, and assigns.

(f) No remedy herein conferred upon or reserved to Landlord or Tenant shall be exclusive of any other remedy herein provided or provided by law, but each remedy shall be cumulative.

(g) In interpreting or construing this Lease, it is understood that Tenant may be more than one person, that if the context so requires, the singular pronoun shall be taken to mean and include the plural, and that generally all grammatical changes shall be made, assumed, and implied to make the provisions hereof apply equally to corporations,

partnerships, and individuals.

(h) Section headings are for convenience and shall not affect any of the provisions of this Lease.

(i) If any provision of this Lease or the application thereof to any person or circumstance is, at any time or to any extent, held to be invalid or unenforceable, the remainder of this Lease, or the application of such provision to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby, and each provision of this Lease shall be valid and enforceable to the fullest extent permitted by law.

(j) All agreements (including, but not limited to, indemnification agreements) set forth in this Lease, the full performance of which are not required prior to the expiration or earlier termination of this Lease, shall survive the expiration or earlier termination of this Lease and be fully enforceable thereafter.

(k) Each person executing this Lease on behalf of Tenant hereby covenants and warrants that Tenant is duly incorporated and validly existing under the laws of its state of incorporation; Tenant has full corporate right and authority to enter into this Lease and to perform all of the Tenant's obligations under this Lease; and each person signing this Lease on behalf of the corporation is duly and validly authorized to do so.

(l) Notwithstanding any language to the contrary in this Lease, Tenant in its sole discretion may terminate this Lease at any time for its convenience by providing no less than ninety (90) days prior written notice to Landlord. If Tenant terminates the Lease for its convenience, Tenant is only obligated to pay Landlord the Rent that will have accrued through the month that the termination is effective. Landlord is not entitled to Rent that Tenant would have paid through the remainder of the Term, lost profits or any other consequential damages that may result from Tenant terminating the Lease for its convenience.

33. ARBITRATION

a. Disputes to Be Arbitrated. If any dispute arises between the parties [as to a matter which this lease says should be arbitrated, or as to any other question involving apportionment or valuation], either party may request arbitration and appoint as an arbitrator an independent real estate appraiser having knowledge of valuation of rental properties comparable to the premises. The other party shall also choose an arbitrator with such qualifications, and the two arbitrators shall choose a third. If the choice of the second or third arbitrator is not made within 10 days of the choosing of the prior arbitrator, then either party may apply to the presiding judge of the judicial district where the premises are located to appoint the required arbitrator.

b. Procedure for Arbitration. The arbitrator shall proceed according to the Oregon statutes governing arbitration, and the award of the arbitrators shall have the effect therein provided. The arbitration shall take place in the county where the leased premises are located. Costs of the arbitration shall be shared equally by the parties, but each party shall pay its own attorney fees incurred in connection with the arbitration.

34. EXHIBITS AND ADDITIONAL PROVISIONS. The following exhibits are attached to this Lease and are incorporated as if they are fully set out within this instrument.

- Exhibit A (Premises Outline);
- Exhibit B (Transit Office Ceiling and Floor Plan);
- Exhibit C (Improvements to Be Removed Upon Lease Termination);
- Exhibit D (Rules and Regulations);
- Exhibit E (Renewal Options); and
- Exhibit F (Covenants, Conditions and Restrictions).

IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease as of the date first set forth above.

Landlord:

ZIMMER VENTURES, LLC

By: Robert Zimmer
Title: Owner/Manager

Tenant:

CITY OF CANBY, an Oregon Municipal Corporation, acting on behalf of CANBY AREA TRANSIT (CAT)

By: Eileen Stein
Title: City Administrator
Address: PO Box 930 / 222 NE 2nd Avenue
Canby, OR 97013