

**RESOLUTION NO. 1322**

**A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A PROPERTY EXCHANGE AGREEMENT BETWEEN THE CITY OF CANBY AND CANBY UTILITY FOR THE EXCHANGE OF CANBY UTILITY'S 54.3% OWNERSHIP IN THE PUBLIC WORKS "SHOPS PROPERTY" FOR UNDEVELOPED PROPERTY ADJACENT TO THE "SHOPS PROPERTY", TO BE USED AS A FUTURE CANBY UTILITY WATER TREATMENT FACILITY, AND AUTHORIZING THE CITY ADMINISTRATOR TO SIGN ALL DOCUMENTS NECESSARY TO COMPLETE THE PROPERTY TRANSACTION**

**WHEREAS**, pursuant to a 1986 intergovernmental agreement, Canby Utility and the City of Canby jointly own property known as the "Shops Property", with an address of 1470 NE Territorial Road, Canby, OR; and

**WHEREAS**, Canby Utility currently has a 54.3% ownership interest in the "Shops Property" and the City of Canby has a 46.7% interest; and

**WHEREAS**, Canby Utility will be relocating their operations currently housed at the "Shops Property" to property adjacent to their new Administrative Offices; and

**WHEREAS**, Canby Utility has a need to acquire property for the future expansion of their water treatment facility; and

**WHEREAS**, The City is desirous of acquiring the 54.3% ownership interest in the "Shops Property" currently held by Canby Utility; and

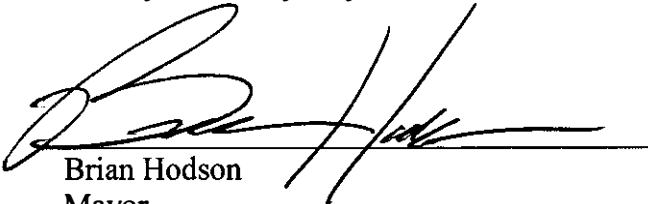
**WHEREAS**, The City is the sole owner of certain property located immediately south of and adjacent to the "Shops Property"; and

**WHEREAS**, the exchange of Canby Utility's interest in the "Shops Property" for approximately 5 acres of property currently owned by the City of Canby is in the public interest as it will benefit the residents of Canby, Canby Utility, and the City of Canby.

**NOW THEREFORE, IT IS HEREBY RESOLVED** by the City of Canby Council that the Mayor shall execute the attached Property Exchange Agreement.


This Resolution shall take effect on the date executed by all parties.

ADOPTED this 2<sup>nd</sup> day of October, 2019, by the Canby City Council.



Brian Hodson  
Mayor

ATTEST:



Rick Robinson  
City Recorder Pro-Tem

## PROPERTY EXCHANGE AGREEMENT

THIS PROPERTY EXCHANGE AGREEMENT (the “Agreement”) is made as of the last date of signature indicated below (“Effective Date”), by and between the Canby Utility Board (“CU”) and the City of Canby (“City”), each a “Party” and collectively the “Parties.”

### RECITALS

- A. Pursuant to a 1986 intergovernmental agreement, CU and City jointly own property known as the “Shops Property” with address of 1470 NE Territorial Road, Canby, Oregon. CU owns 54.3 percent and City owns 45.7 percent. CU’s field personnel and City’s public works personnel operate out of the Shops Property. The Parties also store equipment and materials on the Shops Property. The Shops Property is described in Exhibit A to this Agreement.
- B. City owns approximately 30 acres of undeveloped property that abuts the Shops Property to the south (“Abutting Property”). The Abutting Property is described in Exhibit B to this Agreement.
- C. CU intends to relocate its field personnel and its equipment, materials and other personal property from the Shops Property to its service center at 3<sup>rd</sup> Avenue and Pine St. The relocation will occur only after CU has completed additional improvements to the property at 3<sup>rd</sup> Ave. and Pine St. CU anticipates those improvements will be complete on or before January 1, 2021.
- D. City wants to use and occupy all of the space in and on the Shops Property to meet its future needs. According to CU’s water master plan, CU will need to acquire property and construct a new water treatment plant in the next ten to twenty years in order to meet future customer demands for water.
- E. Therefore, each Party has identified a need for additional property to meet the future needs of their shared constituency.
- F. In order to meet these needs, instead of CU selling City its 54.3 percent interest in the Shops Property to City, CU will grant City its interest in the Shops Property in exchange for City granting CU approximately five acres of land from the Abutting Property after that acreage is partitioned.

Therefore, for good and valuable consideration, the receipt and sufficiency of which the Parties acknowledge, the Parties agree as follows:

### AGREEMENT

- 1. Transfer of Shops Property to City.** CU will transfer to City its interest in the Shops Property subject to the terms and conditions set forth below in this Agreement.
- 2. Transfer of Partitioned Property to CU.** City will transfer to CU an approximate five acre parcel from the Abutting Property subject to the terms and conditions set forth below in this Agreement. This Agreement refers to this approximate five acre parcel as the “Partitioned Property.” The Partitioned Property will be the approximate size, shape and in the approximate location depicted on Exhibit C.

**3. Closing Date.** If all conditions precedent described in this Agreement have been satisfied, the exchange will close no later than 30 days after the conditions described in Section 6.4 regarding the partition are satisfied (“Closing Date”). Otherwise, the Closing Date may be extended as provided herein or as the Parties may otherwise agree in writing. Closing will occur at Title Company.

#### **4. Title Review.**

**4.1. Title Report; Unacceptable Exceptions.** Within 15 days of the Effective Date, City will order a preliminary title report for the Abutting Property, along with legible copies of all plats and exceptions documents referenced in such report (“Title Report”) and deliver it to CU. CU will have 45 days following the Effective Date to review the Title Report and give City written notice of the exceptions listed in the Title Report that are unacceptable to CU (“Unacceptable Exceptions”). Mortgages, delinquent taxes, or other financial obligations secured by the Abutting Property are automatically deemed Unacceptable Exceptions. If CU notifies City of its objection to any Unacceptable Exceptions, City will have 15 days to provide CU written notice stating whether City will (at City’s sole cost and expense) remove such exceptions from the Title Policy issued to CU at closing. If City refuses to remove any of the Unacceptable Exceptions and CU is not then satisfied with the condition of title, CU may elect to terminate this Agreement, in which case neither Party shall have any further obligations to the other, except those that survive the termination of this Agreement.

**4.2. Failure to Deliver Clean Title at Closing.** If City fails to remove any Unacceptable Exception by the Closing Date, then CU may: (a) accept title to the Partitioned Property subject to such exceptions; (b) refuse to accept the Partitioned Property and terminate this Agreement, in which case neither Party shall have any further obligations to the other, except those that survive the termination of this Agreement; or (c) extend the Closing Date for 45 days to provide City with additional time to remove such exceptions. If CU elects option (c) and at the end of the 45-day period, City has not removed all Unacceptable Exceptions, CU may then proceed with either option (a) or (b).

**4.3. Permitted Exceptions.** All exceptions other than the Unacceptable Exceptions objected to by CU shall be deemed acceptable to CU (“Permitted Exceptions”) except that no mortgages, delinquent taxes, liens or other financial obligations secured by the Abutting Property or the Partitioned Property will be deemed Permitted Exceptions. Any new title exceptions not appearing in the initial Title Report will be deemed Unacceptable Exceptions, unless CU expressly accepts them in writing.

#### **5. City’s Due Diligence and Inspections.**

**5.1. City’s Delivery of Documents.** Within 15 days of the Effective Date, City will deliver to CU any and all material information and documentation in City’s possession or control pertaining to the Abutting Property (“Due Diligence Documents”). If City is aware of the existence of any material information or documentation pertaining to the Abutting Property that is not in City’s possession or control, City shall notify CU of the existence of such information within 15 days after the Effective Date or 2 business days after learning of such information. Should City fail to timely provide CU with the Due Diligence Documents, CU may, at CU’s sole discretion, extend the Closing Date for a period not to exceed 30 days, so that CU may have adequate time to review such additional documentation.

5.2. Property and Environmental Inspections. CU and its agents, including but not limited to consultants, surveyors, engineers, home inspectors, appraisers, and other professionals hired by CU, shall have the right to access the Abutting Property to conduct environmental studies (including but not limited to Phase I or any additional Environmental Site Assessments), structural inspections, sewer and septic system sampling, asbestos and lead testing, and any other due diligence CU deems necessary. City shall cooperate with CU in making such inspections. CU and its agents will have the right to enter the Abutting Property at reasonable times before closing to perform such surveys, analyses, studies, appraisals, and other due diligence that CU deems necessary; provided, however, that CU shall give City 24 hours written notice prior to entering any structures located on the Abutting Property. Any area disturbed by CU's inspections shall be restored by CU at its sole cost and expense to its pre-inspection condition.

## 6. **Partition and Easement.**

6.1. Partition Application. The City may not lawfully convey the Petitioned Property to CU as of the Effective Date, but must first partition the Abutting Property in accordance with City's regulations and other relevant law. Within 90 days of the effective date of this Agreement, City will apply for a partition and pursue approval so that the Partitioned Property may be legally conveyed to CU on the Closing Date separately from the remainder of the Abutting Property. The remainder of the Abutting Property is the "Retained Property" for the purposes of this Agreement.

6.2. Survey. City shall obtain a survey of the Abutting Property from a registered land surveyor in order to: (a) create a legal description of the Partitioned Property as agreed to by the Parties in accordance with this Section 6.2; and (b) provide the survey information required to apply for and obtain approval of the partition. The surveyor shall physically demarcate the proposed boundary separating the Partitioned Property from the Retained Property with stakes, so that CU may inspect and approve the proposed boundary of the Partitioned Property. The Parties shall use good faith efforts to ensure that the Partitioned Property and the Retained Property are generally configured as shown on Exhibit C, subject to the Parties' acknowledgement that the size and location of the Partitioned Property and the Retained Property may need to be adjusted in order to comply with relevant law. Material adjustments shall require the written approval of each Party.

6.3. Easement. During the partition process, City in consultation with CU will identify an area of property from the Partitioned Property over and through the Shops Property and other City-owned property or City right-of-way to the Willamette River, sufficient to permit the eventual construction of a raw water line to deliver water from the Willamette River to the future water treatment plant on the Partitioned Property (the "Water Line Easement"). City shall have the Water Line Easement surveyed and will convey the Water Line Easement to CU at closing in a form substantially similar to Exhibit D.

6.4. Completion of the Partition. The partition is complete when: (a) the partition approval is final, binding and not subject to further appeal; and (b) a final plat for the Partitioned Property is recorded with Clackamas County.

6.5. Fees and Costs. All costs associated with the partition application, including the cost of any survey and any filing, application, or other administrative fees required by City's ordinances or resolutions or otherwise required by law shall be City's responsibility. City shall be solely

responsible for the payment of any real estate taxes required to be paid to complete the partition.

## **7. Conditions Precedent to Closing.**

7.1. Conditions Precedent to CU's Obligations. In addition to any other conditions contained in this Agreement, the conditions set forth in this Section 7.1 must be satisfied prior to closing. These conditions are intended solely for CU and CU has the sole right and discretion to waive, by written notice to the City, any of the conditions. On or before closing, if City has not satisfied any condition, or if CU has not waived the condition, CU has the right to terminate this Agreement, in which case neither Party shall have any further obligations to the other, except those that survive the termination of this Agreement.

7.1.1. Council Approval. Prior to closing, the Canby City Council must adopt a resolution approving this Agreement and the exchange of properties it describes.

7.1.2. Partition. Prior to closing, City shall have complied with Section 6 of this Agreement.

7.1.3. Due Diligence and Inspection Results. CU must be satisfied, in its sole and absolute discretion, with its review of the Due Diligence Documents and the results of CU's inspections of the Abutting Property conducted under Section 5.2 above. If CU notifies City prior to the Closing Date that CU is not satisfied with the results of its due diligence and inspections under Section 5, the Closing Date will be automatically extended for a period of 45 days, so that the Parties may address such results. If at the end of the 45-day period the Parties have not reached an agreement regarding the issues disclosed as a result of such due diligence and inspections: (a) CU may, within 10 days, obtain written consent from the City to extend the Closing Date for an additional length of time to be determined by the Parties at the time of the extension; or (b) this Agreement will automatically terminate in which case neither Party shall have any further obligations to the other, except those that survive the termination of this Agreement.

7.1.4. Title. At closing: (a) City shall convey fee simple title to the Partitioned Property to CU in accordance with Section 8.1.1; and (b) the Title Company must issue to CU the Title Policy described below in Section 10.

7.1.5. Representations, Warranties, and Covenants of City. City shall have performed all of its obligations pursuant to this Agreement and City's representations, warranties, and covenants set forth in this Agreement shall be true and correct as of the Effective Date and the Closing Date.

7.1.6. No Material Changes. At closing, there must have been no material adverse changes related to or connected with the Partitioned Property.

7.1.7. City's Deliveries. City must have timely delivered each item to be delivered by CU pursuant to this Agreement, including the documents and materials described in Section 8.1.

7.2. Conditions Precedent to City's Obligations. In addition to any other conditions contained in this Agreement, the conditions set forth in this Section 7.1 must be satisfied prior to closing. These conditions are intended solely for City and City has the sole right and discretion to waive, by written notice to CU, any of the conditions. On or before closing, if CU has not satisfied any

condition, or if City has not waived the condition, City has the right to terminate this Agreement, in which case neither Party shall have any further obligations to the other, except those that survive the termination of this Agreement.

7.2.1. Board Approval. Prior to closing, the Canby Utility Board of Directors must adopt a resolution approving this Agreement and the exchange of properties it describes.

7.2.2. Title. At closing CU shall convey its legal interest in and to the Shops Property to City in accordance with Section 8.1.1.

7.2.3. Representations, Warranties, and Covenants of CU. CU shall have performed all of its obligations pursuant to this Agreement and CU's representations, warranties, and covenants set forth in this Agreement shall be true and correct as of the Effective Date and the Closing Date.

7.2.4. No Material Changes. At closing, there must have been no material adverse changes related to or connected with the Shops Property that arise out of or are related to acts or omissions of CU. Wear and tear that is reasonable for the types of uses the Parties make of the Shops Property will not be considered a material adverse change.

7.2.5. CU's Deliveries. CU must have timely delivered each item to be delivered by City pursuant to this Agreement, including the documents and materials described in Section 8.1.

7.3. Failure of Conditions. If any of the conditions in Sections 7.1 or 7.2 are not timely satisfied or waived, then this Agreement, escrow, and the rights and obligations of City and CU will terminate, except those that survive termination of this Agreement.

7.4. Cancellation Fees and Expenses. If the escrow terminates because of the nonsatisfaction of any condition by City, for a reason other than the default of CU under this Agreement, City will pay the cancellation charges required by the Title Company. If the escrow terminates because of the nonsatisfaction of any condition by the CU, for a reason other than the default of City under this Agreement, CU will pay the cancellation charges required by the Title Company.

## **8. Deliveries to the Title Company.**

8.1. By City. On or before the Closing Date, City shall deliver the following into escrow with the Title Company:

8.1.1. Deed. A statutory warranty deed executed and acknowledged in recordable form by City, conveying the Partitioned Property to CU free and clear of all liens and encumbrances except the Permitted Exceptions accepted by CU under Section 4 above. The Title Company's usual, preprinted general exceptions listed on the Title Report will not be listed as exceptions on the Deed.

8.1.2. Easement. The Water Line Easement in a form substantially similar to Exhibit D.

8.1.3. Lien Affidavits. Any lien affidavits or mechanic's lien indemnifications as may be reasonably requested by the Title Company to issue the Title Policy.

8.1.4. Other Documents. Other executed documents and funds required of City to close the

sale in accordance with this Agreement, including escrow instructions.

8.2. By CU. On or before the Closing Date, CU will deliver the following into escrow with the Title Company:

8.2.1. Deed. A statutory quit claim deed executed and acknowledged in recordable form by CU, conveying all of CU's interest in the Shops Property to City.

8.2.2. Other Documents. Other executed documents and funds as are required of CU to close the sale in accordance with this Agreement, including escrow instructions.

9. **Deliveries at Closing**. At closing:

9.1. City will deliver to CU exclusive possession of the Partitioned Property.

9.2. CU will deliver to City exclusive possession of the Shops Property, subject to Section 20 below.

10. **Title Insurance**. At closing, City will cause the Title Company to issue to CU a standard ALTA owner's title insurance policy ("Title Policy") in the amount of One Million Dollars (\$1,000,000), insuring fee simple title in the Partitioned Property is vested in CU or its designee, subject only to the Permitted Exceptions as established under Section 4.

11. **Closing Costs**. City shall pay for the Title Policy, one-half of all escrow fees, any real property transfer or excise taxes, all recording charges other than those allocated to CU below, the cost of recording the deed for the Shops Property, and City's share of prorations pursuant to Section 12 below. CU shall pay the cost of recording the deed to the Partitioned Property, one-half of all escrow fees, and CU's share of prorations pursuant to Section 12 below. City and CU each shall pay for its own legal and professional fees incurred. All other costs and expenses are to be allocated between City and CU in accordance with the customary practice in Clackamas County.

12. **Prorations and Taxes**.

12.1. Prorations. Any and all state, county, and city taxes for the current year, rents, or other income or operating expenses pertaining to the Partitioned Property or the Shops Property will be prorated between CU and City as of the Closing Date.

12.2. Taxes and Assessments. All taxes, assessments, and encumbrances that will be a lien against the Partitioned Property at closing, whether or not those charges would constitute a lien against the Partitioned Property at settlement, must be satisfied by City at closing.

13. **City's Representations and Warranties**. In addition to any other express representations or warranties in this Agreement, City represents and warrants to CU the following matters, and acknowledges that they are material inducements to CU to enter into this Agreement. Subject to the limits of the Oregon Constitution and the Oregon Tort Claims Act, City agrees to indemnify, defend, and hold CU harmless from all expense, loss, liability, damages and claims, including attorney's fees, arising out of the breach or falsity of any of City's representations, warranties, and covenants. These representations and warranties survive closing. City represents and warrants to CU that the



following matters are true and correct, and will remain true and correct through closing:

13.1. Authority. City has full power and authority to enter into this Agreement and to transfer and convey all right, title, and interest in and to the Partitioned Property in accordance with this Agreement. No further consent of any partner, shareholder, creditor, investor, judicial or administrative body, governmental authority, or other party is required.

13.2. Hazardous Substances. For purposes of this Agreement, the term “Hazardous Substances” has the meaning defined in and includes those substances set forth in ORS 465.200. City warrants and represents as follows:

13.2.1. To City’s knowledge, there are no Hazardous Substances in, upon, or buried on or beneath the Abutting Property or the Partitioned Property and no Hazardous Substances have been emitted or released from the Abutting Property or the Partitioned Property in violation of any laws of the federal or state government;

13.2.2. City has not brought onto, stored on, buried, used on, emitted or released from, or allowed to be brought onto, stored on, buried, used on, emitted, released from, or produced or disposed of, from, or on the Abutting Property or the Partitioned Property, any Hazardous Substances in violation of any laws of the federal or state government;

13.2.3. To City’s knowledge, no underground storage tanks are located on the Abutting Property or the Partitioned Property, including any storage tanks that may have at one time contained any Hazardous Substances;

13.2.4. To City’s knowledge, the Abutting Property and the Partitioned Property is materially in compliance with applicable state and federal environmental standards and requirements affecting it;

13.2.5. City has not received any notices of violation or advisory action by regulatory agencies regarding environmental control matters or permit compliance with respect to the Abutting Property or the Partitioned Property;

13.2.6. City has not transferred, and to City’s knowledge no other person has transferred, Hazardous Substances from the Abutting Property or the Partitioned Property to another location that is not in compliance with applicable environmental laws, regulations, or permit requirements; and

13.2.7. There are no proceedings, administrative actions, or judicial proceedings pending or, to City’s knowledge, contemplated under any federal, state, or local laws regulating the discharge of hazardous or toxic materials or substances into the environment.

13.3. Encroachments. To City’s knowledge: (a) no existing building, structure, or improvement of any kind encroaches upon the Partitioned Property from any adjacent property; and (b) there are no present or past discrepancies or disputes regarding the boundaries of the Abutting Property.

13.4. Rights and Contracts Affecting Property. Except for this Agreement, City has not

entered into any other contracts for the sale of the Abutting Property or the Partitioned Property, nor are there any existing rights of first refusal or options to purchase the Abutting Property or the Partitioned Property. Except for those exceptions of record listed on the Title Report, City owns the Abutting Property and the Partitioned Property in fee, free and clear of all liens, conditions, reservations, mortgages, leases, licenses, easements, prescriptive rights, permits, or other similar encumbrances. City has not sold, transferred, conveyed, or entered into any agreement regarding timber rights, mineral rights, water rights, "air rights," or any other development or other rights or restrictions relating to the Abutting Property or the Partitioned Property, and to City's knowledge no such rights encumber the Abutting Property or the Partitioned Property. There are no service contracts or other agreements pertaining to the Abutting Property or the Partitioned Property that CU will be required to assume at Closing.

13.5. Possession. Except as specifically set forth in this Agreement, there are no leases, licenses, or other agreements permitting, nor has City entered into any course of conduct that would permit, any person or entity to occupy or use any portion of the Partitioned Property. City shall deliver immediate and exclusive possession of the entire Partitioned Property to CU at closing.

13.6. Recitals. The statements and information set forth in the Recitals paragraph are true and correct.

13.7. No Legal Proceedings. There is no suit, action, arbitration, judgment, legal, administrative, or other proceeding, claim, lien, or inquiry pending or threatened against the Abutting Property or the Partitioned Property or against City that could: (a) affect City's right or title to the Abutting Property or the Partitioned Property; (b) affect the value of the Abutting Property or the Partitioned Property; or (c) subject an owner of the Partitioned Property to liability.

13.8. Mechanic's and Other Liens. No work on the Abutting Property or the Partitioned Property has been done or materials provided that would give rise to actual or impending mechanic's liens, private liens, or any other liens, against the Abutting Property or the Partitioned Property.

13.9. Public Improvements or Governmental Notices. To City's knowledge, there are no intended public improvements which will result in the creation of any liens upon the Property, nor have any notices or other information been served upon City from any governmental agency notifying City of any violations of law, ordinance, rule or regulation which would affect the Property.

13.10. Breach of Agreements. The execution of this Agreement will not constitute a breach or default under any agreement to which City is bound or to which the Abutting Property or the Partitioned Property is subject.

13.11. Bankruptcy Proceedings. No attachments, execution proceedings, assignments for the benefit of creditors, insolvency, bankruptcy, reorganization, or other proceedings are pending or, to City's knowledge, threatened against City, nor are any such proceedings contemplated by City.

13.12. Changed Conditions. If City discovers any information or facts that would materially change the foregoing warranties and representations, City must immediately give notice to CU of those facts and information. If any of the foregoing warranties and representations ceases to be true before closing, City must use its best efforts to remedy the problem, at its sole expense, before

closing. If the problem is not remedied before closing, CU may elect to either: (a) terminate this Agreement and have no obligation to close the property exchange contemplated in this Agreement; or (b) extend the Closing Date until such problem has been remedied or for up to 45 days, whichever occurs first. If CU extends the Closing Date and the problem is not remedied within the up to 45-day extension period, CU may terminate this Agreement. Such election will not constitute a waiver of CU's rights with regard to any loss or liability suffered because of a representation or warranty not being true, nor will it waive any other remedies under this Agreement or by law.

**14. Condition of the Property Through Closing.** City further represents, warrants, and covenants that until this transaction is closed or escrow is terminated, it will: (a) maintain the Abutting Property and the Partitioned Property in substantially the same condition as it was on the Effective Date, with no alteration of the Abutting Property that would affect the Partitioned Property in any way; (b) keep all existing insurance policies affecting the Abutting Property and the Partitioned Property in full force and effect; (c) make all regular payments of interest and principal on any existing financing; (d) comply with all government regulations; and (e) keep CU timely advised of any repair or improvement required to keep the Abutting Property and the Partitioned Property in substantially the same condition as it was on the Effective Date.

**15. CU's Representations and Warranties.** In addition to any other express representations or warranties in this Agreement, CU represents and warrants to City the following matters, and acknowledges that they are material inducements to City to enter into this Agreement. Subject to the limits of the Oregon Constitution and the Oregon Tort Claims Act, CU agrees to indemnify, defend, and hold City harmless from all expense, loss, liability, damages and claims, including attorney's fees, arising out of the breach or falsity of any of CU's representations, warranties, and covenants. These representations and warranties survive closing. CU represents and warrants to City that the following matters are true and correct, and will remain true and correct through closing:

15.1. Authority. CU has full power and authority to enter into this Agreement and to transfer and convey all rights and interest it has in and to the Shops Property in accordance with this Agreement. No further consent of any partner, shareholder, creditor, investor, judicial or administrative body, governmental authority, or other party is required.

15.2. Possession. Except as specifically set forth in this Agreement, there are no leases, licenses, or other agreements permitting, nor has CU entered into any course of conduct that would permit, any person or entity to occupy or use its portion of the Shops Property. CU shall deliver immediate and exclusive possession of the entire Shops Property to City at closing, subject to Section 20 below.

15.3. Recitals. The statements and information set forth in the Recitals paragraph are true and correct.

15.4. Breach of Agreements. The execution of this Agreement will not constitute a breach or default under any agreement to which CU is bound or to which CU's interest in the Shops Property is subject.

15.5. Bankruptcy Proceedings. No attachments, execution proceedings, assignments for the benefit of creditors, insolvency, bankruptcy, reorganization, or other proceedings are pending or, to CU's knowledge, threatened against CU, nor are any such proceedings contemplated by CU.

15.6. **Changed Conditions.** If CU discovers any information or facts that would materially change the foregoing warranties and representations, CU must immediately give notice to City of those facts and information. If any of the foregoing warranties and representations ceases to be true before closing, CU must use its best efforts to remedy the problem, at its sole expense, before closing. If the problem is not remedied before closing, City may elect to either: (a) terminate this Agreement and have no obligation to close the property exchange contemplated in this Agreement; or (b) extend the Closing Date until such problem has been remedied or for up to 45 days, whichever occurs first. If City extends the Closing Date and the problem is not remedied within the up to 45-day extension period, City may terminate this Agreement. Such election will not constitute a waiver of City's rights with regard to any loss or liability suffered because of a representation or warranty not being true, nor will it waive any other remedies under this Agreement or by law.

## 16. Enforcement of Agreement.

16.1. **Default by City.** If closing and consummation of this transaction do not occur because of any default by City, CU may pursue any available legal remedy including the specific performance of this Agreement.

16.2. **Default by CU.** If closing and consummation of this transaction do not occur because of any default by CU, City may pursue any available legal remedy including the specific performance of this Agreement.

17. **Risk of Loss, Condemnation.** City bears the risk of all loss or damage to the Abutting Property or the Partitioned Property from all causes, through the Closing Date. If, before the Closing Date, all or any part of the Abutting Property or the Partitioned Property is damaged, destroyed, condemned, or threatened with condemnation, City must promptly give CU written notice of such event. CU may terminate this Agreement by giving written notice to City within 15 days after CU receives written notice from City of such casualty or condemnation.

18. **Notices.** All notices under this Agreement must be in writing to the address set forth below and will be deemed given upon (a) personal service or (b) deposit in the United States Mail, postage prepaid. All such notices shall be deemed received upon personal service, three days after deposit in the United States Mail, postage prepaid, or one day after deposit with a nationally recognized overnight courier service.

To CU:           Canby Utility Board  
                    Dan Murphy  
                    General Manager  
                    P.O. Box 1070  
                    Canby, OR 97013

To Canby:       City of Canby  
                    Scott McClure  
                    City Administrator  
                    P.O. Box 930  
                    Canby, OR 97013

The foregoing addresses may be changed by written notice, given in the same manner. Notice given in any manner other than that set forth above will be effective when received by the party for whom it is intended. Telephone, email, and fax numbers are for information only.

**19. Further Actions.** City and CU agree to execute all such instruments and documents and to take all actions pursuant to this Agreement to consummate the purchase and sale contemplated and both parties will use their best efforts to accomplish closing in accordance with these provisions.

**20. CU's Continued Use of Shops Property After Closing.** City recognizes that CU will likely not be able to vacate the Shops Property before the Parties anticipate closing to occur. Therefore, notwithstanding any language to the contrary in this Agreement, City will permit CU to continue to occupy and use the Shops Property consistent with CU's historical occupation and use of the Shops Property, subject to the following terms.

20.1. Duration. CU may continue to occupy and use the Shops Property for 48 months from the Closing Date, or until CU relocates its field personnel and its equipment, materials and other personal property from the Shops Property to its service center at 3<sup>rd</sup> Avenue and Pine St, whichever occurs first.

20.2. Operational Costs. Until it relocates to the service center at 3<sup>rd</sup> Avenue and Pine St., CU will continue to be responsible for its 54.3 percent share of the costs to operate the Shops Property.

20.3. Capital Costs. The Parties intend that CU will no longer be responsible for costs that will extend the useful life of the Shops Property or increase its value. Therefore, on and after the Closing Date, City will be solely responsible for maintaining and repairing the Shops Property and its improvements, including building components, utility systems, HVAC equipment, security equipment and other similar capital improvements.

## **21. Miscellaneous.**

21.1. Partial Invalidity. If any term or provision of this Agreement is, to any extent, found invalid or unenforceable, the remainder of this Agreement will not be affected, and each remaining term and provision of this Agreement is valid and enforceable fully permitted by law.

21.2. Waivers. No waiver of any breach of any covenant or provision will be deemed a waiver of any preceding or succeeding breach or of any other covenant or provision. No extension of time for performance of any obligation or act will extend the performance of any other obligation or act.

21.3. Survival of Representations. The covenants, agreements, representations, and warranties survive closing and will not merge into either deed upon recordation.

21.4. Successors and Assigns. This Agreement is binding on and inures to the benefit of the successors and assigns of the parties.

21.5. Representation. The Parties each had an opportunity to consult with their own legal counsel prior to executing this Agreement. The Parties waive any claim that any term or condition will be construed against the drafter of the Agreement. This Agreement will be construed as if it had

been prepared by both Parties.

21.6. Entire Agreement. This Agreement (including any exhibits) is the final expression of, and contains the entire agreement between, the Parties with respect to the subject matter of the Agreement and supersedes all prior understandings. This Agreement may not be modified or terminated, nor may any obligations under it be waived, except by written instrument signed by the party to be charged.

21.7. Time of Essence. The Parties acknowledge that time is strictly of the essence with respect to every term, condition, obligation, and provision contained in this Agreement. Unless otherwise specified, in computing any period of time described in this Agreement, whenever a date for an action required to be performed falls on a Saturday, Sunday, or a state or federal holiday, then such date shall be extended to the following business day. All references to a “day” or “days” in this Agreement mean calendar days, unless expressly stated otherwise.

21.8. Recitals and Attachments. The statements and information set forth in the Recitals paragraph and any attachments or exhibits to this Agreement are incorporated as if fully set forth herein and shall be used for the purposes of interpreting this Agreement.

21.9. Third Party Beneficiaries. The City and CU are the only parties to this Agreement and there are no other parties, intended or implied, who benefit from the Agreement.

21.10. Governing Law. Oregon law governs this Agreement without regard to conflict of laws principles.

THE PROPERTY DESCRIBED IN THIS INSTRUMENT MAY NOT BE WITHIN A FIRE PROTECTION DISTRICT PROTECTING STRUCTURES. THE PROPERTY IS SUBJECT TO LAND USE LAWS AND REGULATIONS THAT, IN FARM OR FOREST ZONES, MAY NOT AUTHORIZE CONSTRUCTION OR SITING OF A RESIDENCE AND THAT LIMIT LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930 IN ALL ZONES. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON’S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301, AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, AND SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO VERIFY THE EXISTENCE OF FIRE PROTECTION FOR STRUCTURES AND THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, AND SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.

***[SIGNATURES ON FOLLOWING PAGE]***

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the last date of signature specified below.

CITY OF CANBY

CANBY UTILITY BOARD

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
<Title>

\_\_\_\_\_  
Board Chair

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date





**Objectid:** 135982  
**Primary Address:** 1440 N Ivy St, Canby, 97013  
**Jurisdiction:** Canby (<http://www.ci.canby.or.us/>)  
**Map Number:** 31E33BA  
**Taxlot Number:** 31E33BA00113  
**Parcel Number:** 00786894  
**Document Number:** 2003-129627  
**Census Tract:** 022905

### Assessment

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**Estimated Acres:** 0.18  
**Current Year Assessed Value:** \$198,252.00  
**Market Building Value:** \$178,600.00  
**Market Land Value:** \$142,444.00  
**Market Total Value:** \$321,044.00  
**Sq Ft:** 1704





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**Exhibit A**  
**Property Legal Description**

**Exhibit B**  
**Abutting Property Legal Description**

## Exhibit C Partitioned Property General Description



**Exhibit D**  
**Form of Water Line Easement**



SCALE 1"=800'

POINT OF DIVERSION IS TO BE  
600' NORTH AND 800 FEET EAST  
OF THE SOUTH CORNER OF  
SECTION 22 T.35. R.1E., W.M.

FUTURE  
PLANT  
SITE

Water Line  
Easement

