

# City of Brookings

## MEETING AGENDA

### **CITY COUNCIL**

**Monday, March 26, 2012, 7:00pm**

City Hall Council Chambers, 898 Elk Drive, Brookings, OR 97415

The City Council will meet in Executive Session at 6:00pm, in the City Manager's Office, under the authority of ORS 192.660.2.d), to deliberate with the City Manager as the person designated by the City Council to carry on labor negotiations.

#### **A. Call to Order**

#### **B. Pledge of Allegiance**

#### **C. Roll Call**

#### **D. Public Hearings/Ordinances/Resolutions/Final Orders**

1. Resolution reducing fees for Subdivision Final Approval and Extensions of Time for Conditional Use Permit and Subdivisions. [Planning, pg. 5]
  - a. Resolution 12-R-978. [pg. 6]
2. Resolution authorizing Local Government Grant application to Parks and Recreation for the Brookings Coastal Improvement Project. [Public Works, pg. 8]
  - a. Resolution 12-R-976 [pg. 10]
  - b. Letter of Support – Parks and Recreation Commission [pg. 11]
  - c. Letter of Support – City of Brookings [pg. 12]
  - d. Letter of Support - Chamber of Commerce [pg. 13]
  - e. Letter of Support – Smith River Rancheria [pg. 14]
  - f. Mill Beach Plan Design [pg. 15]
  - g. Chetco Cove Overlook Plan Design [pg. 16]
3. Ordinance adding Section 12.25.017, Smoking Prohibited in Designated Park Areas, to Brookings Municipal Code Chapter 12.25, Public Parks and Recreational Areas. [Public Works, Advance Packet]
  - a. Ordinance 12-O-690
4. Ordinance amending Brookings Municipal Code Section 2.50.010, Creation of Parks and Recreation Commission. [City Manager, Advance Packet]
  - a. Ordinance 12-O-695

#### **E. Oral Requests and Communications from the audience**

1. Public Comments – 5 minute limit per person.\*

#### **F. Staff Reports**

1. Award contract for Pacific and Mendy Sewer Rehabilitation project to the John Rapraeger, Inc. in an amount not to exceed \$133,825 and authorize City Manager to execute all related documents. [Public Works, pg. 18]
  - a. Letter from City Engineer [pg. 20]
  - b. Summary of Bids [pg. 21]

2. Authorize the City Manager or designee to execute the Safe Routes to School Agreement and Intergovernmental Agreement for Right of Way Services with ODOT. [Public Works, pg. 22]
  - a. Vicinity map [pg. 23]
  - b. Plan view of proposed improvements [pg. 24]
  - c. Local Agency Agreement [pg. 25]
  - d. Intergovernmental Agreement for Right of Way Services. [pg. 45]
3. Authorize the City Manager to execute the Side Letter Agreement with Coos Curry Electric Cooperative regarding street lighting costs. [City Manager, pg. 58]
  - a. Side letter agreement [pg. 59]

#### **G. Consent Calendar**

1. Approve Council minutes for March 12, 2012. [pg. 62]
2. Approve rescheduling of City Council meeting from Monday, May 28<sup>th</sup> to Tuesday, May 29<sup>th</sup>, 2012, due to the Memorial Day holiday.
3. Receive monthly financial report for February, 2012. [pg. 64]

#### **H. Remarks from Mayor and Councilors**

#### **I. Adjournment**

\*Obtain Public Comment Forms and view the agenda and packet information on-line at [www.brookings.or.us](http://www.brookings.or.us), at City Hall and at the local library. Return completed Public Comment Forms to the City Recorder before the start of meeting or during regular business hours.

All public meetings are held in accessible locations. Auxiliary aids will be provided upon request with advance notification. Please contact 469-1102 if you have any questions regarding this notice.

# March 2012

March 2012						
Su	Mo	Tu	We	Th	Fr	Sa
				1	2	3
4	5	6	7	8	9	10
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18	19	20	21	22	23	24
25	26	27	28	29	30	31

April 2012						
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29	30					

	Monday		Tuesday		Wednesday		Thursday		Friday	
	Feb 27	28	29	30	Mar 1	2	3	4	5	6
Feb 27 - Mar 2							12:00pm 1:00pm CC - Public Art Comm 3:00pm 4:00pm CC - Staff			
Mar 5 - 9	5	6	7	8	9	10	11	12	13	14
	11:00am 12:00pm CC - VIPS 4:00pm 6:00pm CC - Council Wkshp 7:00pm 10:00pm FH-FireTrng	7:00pm 10:00pm CC-Planning Comm	10:00am 12:00pm CC- Site Plan 12:00pm 1:00pm CC - Stout Park 7:00pm 9:00pm FH-PoliceResrvs	9:00am 10:30am CC-Crm Stoppers 1:00pm 2:00pm CC - Court						
Mar 12 - 16	12	13	14	15	16	17	18	19	20	21
	7:00pm 10:30pm CC-Council 7:00pm 10:00pm FH-FireTrng		10:00am 11:00am FH-BRFD 10:00am 12:00pm CC- Site Plan 5:30pm 7:30pm CC - Victims Impact Panel	12:00pm 1:00pm CC - Public Art Comm 1:30pm 2:30pm CC-Staff						
Mar 19 - 23	19	20	21	22	23	24	25	26	27	28
	11:00am 12:00pm CC-VIPS 7:00pm 10:00pm FH-FireTrng		10:00am 12:00pm CC- Site Plan	7:00pm 9:00pm CC-Parks & Rec						
Mar 26 - 30	26	27	28	29	30	31				
	7:00pm 9:00pm CC-Council 7:00pm 10:00pm FH-FireTrng		10:00am 12:00pm CC- Site Plan 3:00pm 4:00pm CC - Staff							

# April 2012

April 2012						
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May 2012						
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20	21	22	23	24	25	26
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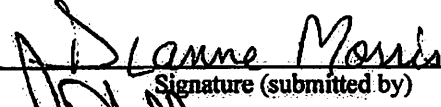

	Monday		Tuesday		Wednesday		Thursday		Friday	
	Apr 2		3		4		5		6	
Apr 2 - 6	11:00am 12:00pm CC - VIPS 1:00pm 3:00pm CC - Staff 4:00pm 6:00pm CC - Council Wkshp 7:00pm 10:00pm FH-FireTrng		5:30pm 7:00pm CC-Budget Comm (to 6:45) 7:00pm 10:00pm CC-Planning Comm		10:00am 12:00pm CC- Site Plan 12:00pm 1:00pm CC - Stout Park 2:00pm 3:00pm CC - Staff 7:00pm 9:00pm FH-PoliceResrvs		3:00pm 4:00pm CC - Staff			
	9		10		11		12		13	
Apr 9 - 13	7:00pm 10:00pm FH-FireTrng 7:00pm 9:30pm CC-Council				10:00am 11:00am FH-BRFD 10:00am 12:00pm CC- Site Plan		9:00am 10:30am CC-Crm Stoppers 12:00pm 1:00pm CC - Public Art 1:00pm 2:00pm CC - Court			
	16		17		18		19		20	
Apr 16 - 20	11:00am 12:00pm CC-VIPS 7:00pm 10:00pm FH-FireTrng				10:00am 12:00pm CC- Site Plan					
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Apr 23 - 27	7:00pm 9:00pm CC-Council 7:00pm 10:00pm FH-FireTrng				10:00am 12:00pm CC- Site Plan					
	30		May 1		2		3		4	
Apr 30 - May 4	7:00pm 10:00pm FH-FireTrng									

# CITY OF BROOKINGS

## COUNCIL AGENDA REPORT

Meeting Date: March 26, 2012

Originating Dept: Planning Dept.

  
Signature (submitted by)  
  
City Manager Approval

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**Subject:** Reduction in Planning fees for Subdivision Final Approval and Extensions of Time for Conditional Use Permits and Subdivisions.

**Recommended Motion:** Motion adopting Resolution 12-R-978 to reduce fees for Subdivision Final Approval and Extensions of Time for Conditional Use Permits and Subdivisions.

**Financial Impact:** This will result in a savings of staff time and fees charged to the applicant.

**Background/Discussion:** At the Council's February 27, 2012 meeting revisions were approved to the Code that provided for staff review of Subdivision Final Approvals and Extensions of Time for Conditional Use Permits and Subdivisions. Prior to this revision these matters were heard by the Planning Commission. Staff reports had to be prepared and distributed, and a meeting conducted to handle these. These revisions make for a significant reduction in staff time involved, thereby allowing for a reduction in fees paid by the applicant.

The current fee for processing a Subdivision Final Approval is \$515. Considering the time it will take, \$150. will cover the new process. The current fee for processing an Extension of Time is \$245. \$50. will cover the new process.

Attached is a Resolution with the reduced fees.

**Policy Considerations:** This in small part reduces hindrances to development.

**Attachment(s):** A. Resolution 12-R-978

**CITY OF BROOKINGS**

**RESOLUTION 12-R-978**

**A RESOLUTION REVISING THE PLANNING FEES WHICH WILL AMEND THE 2011 BROOKINGS MASTER FEE SCHEDULE, ADOPTED UNDER RESOLUTION 11-R-954.**

**WHEREAS**, the City of Brookings adopted revisions to the Brookings Municipal Code by Ordinance 12-O-692, 12-O-693, and 12-O-694 on February 27, 2012, which will take effect on March 28, 2012; and

**WHEREAS**, these revisions concerned the review process for Subdivision Final Approval and requests for Extensions of Time, resulting in a significant reduction in staff time required to handle these matters; and

**WHEREAS**, the savings of time allows for a reduction in the Planning fees currently charged;

**NOW, THEREFORE BE IT RESOLVED**, by the Mayor and City Council of the City of Brookings, Curry County, Oregon, that Resolution 12-R-978, as described in Exhibit A, is adopted and will take effect on March 28, 2012.

Adopted by City Council and made effective on the 28<sup>th</sup> of March, 2012

Attest:

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Mayor Larry Anderson

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City Recorder Joyce Heffington

**Exhibit A**

**2011 Brookings Master Fee Schedule  
Planning Fees**

<u>Planning Application</u>	<u>Current Fee</u>	<u>Revised Fee</u>
Time Extension CUP/ SUB	\$245.	\$50.
Subdivision Final Approval*	\$515.	\$150.


\*(formerly called Final Map Approval)

# CITY OF BROOKINGS

## COUNCIL AGENDA REPORT

Meeting Date: March 26, 2012

Originating Dept: Public Works

  
\_\_\_\_\_  
Signature (submitted by)  
\_\_\_\_\_  
City Manager Approval

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**Subject:** Letter of Support and Resolution for submissions of a Local Government Grant Application to the Oregon Parks and Recreation Department.

**Recommended Motion:** Adopt Resolution #12-R-976 authorizing submission of a Local Government Grant Program to the Oregon Parks and Recreation Department for Brookings Coastal Access Improvement Projects and authorize the mayor to sign a letter of support on behalf of the City Council.

**Financial Impact:** Total project costs for Mill Beach are approximately \$100,000 and \$25,000 for Chetco Cove Overlook. The grant is requesting 50% matching funds for Mill Beach since the total amount the grant will contribute is \$50,000 per project. This \$50,000 matching amount would be paid for by Parks System Development and Street System Development funds. The Chetco Cove Overlook project matching funds would be 40% or \$10,500 to be paid for from Parks System Development fees.

**Background/Discussion:**

These projects involve improving public access to the coast at two locations in Brookings.

**Mill Beach Access**

The City of Brookings recently acquired an access road to the area known as Mill Beach. The access consists of a 50-foot wide, 580-foot long roadway known as Macklyn Cove Drive which extends from Mill Beach Road to the beach, with a 4000 square foot parking area at the base of the road adjacent to Mill Beach.

While this has been a commonly used access to the beach used primarily by local residents for many decades, the City now proposes to improve the access to promote greater public use. Shortly after acquiring the property, the City improved the gravel surface of the roadway, which had previously only been used by four-wheel drive vehicles and adventurous hikers. These improvements consisted of grading the road to make it useable by a wider range of vehicles, and safer for pedestrians. The improvements also included removal of a block wall which had been extended into the roadway by an adjacent property owner some years ago. Since these improvements were made, there has been a dramatic increase in the number of people using this access to the beach. However, there are ongoing access impairments, including erosion of the gravel road surface and lack of handicapped accessibility. Also, as the beach becomes more popular as a visitor destination, people are staying for longer periods of time at the beach. This has resulted in degradation of sanitary conditions, as there are no nearby restrooms.



Proposed improvements would include paving the roadway to a width of 14 feet, paving the parking area with ADA accessibility, and installing a restroom and picnic tables for use by beach visitors. The restroom and picnic beaches would be ADA accessible; people with disabilities would be able to enjoy a day at the beach without actually going on to the beach. The paved surface of the road would also facilitate safer travel to the beach by pedestrians and bicyclists.

At low tide, visitors to Mill Beach can also walk to the beach and tide pools located at the base of Chetco Point. There is also a climbing trail from the beach at the west base of Chetco Point to Chetco Point Park, a nine-acre coastal bluff park owned and maintained by the City. Thus, this element of the project will result in connecting two public beach access points and improving access to some two miles of beach.

This beach access is located approximately .5 miles from U.S. Highway 101 and the Oregon Coast Bicycle Route. Once the project is completed, the City would seek appropriate signage on Highway 101 directing visitors to Mill Beach.

### **Chetco Cove Overlook**

The City of Brookings acquired the Chetco Cove Overlook property by dedication in 1987. The overlook consists of a walking trail from Tanbark Road to a bluff overlooking Chetco Cove. The walking trail and overlook have never been developed for public use.

This project involves paving the access trail to a width of five feet and constructing a 140 square foot concrete patio area with guard railing at the end of the trail overlooking Chetco Point. The project includes the installation of picnic and viewing benches at the overlook. This west-facing overlook will also provide views of spectacular coastal sunsets. The overlook will be handicapped accessible.

There is also a climbing trail adjacent to the proposed overlook which can be used for beach access. By accessing the beach at this location, visitors can walk along some two miles of beach and connect with a climbing trail at the east base of Chetco Point Park. The City currently owns and maintains Chetco Point as a nine-acre coastal bluff park. Thus, this element of the project will result in connecting two coastal access points.

Overall, this project involves connecting and improving public access to two miles of public beach. It enhances the visitor experience by providing safer, handicapped accessible access, facilitating longer stays at the beach, providing a mix of access opportunities and access to scenic vistas now reserved to private landowners.

- Attachment(s):
- a. Resolution
  - b. Letter of Support from Parks & Recreation Commission
  - c. Letter of Support from Mayor
  - d. Letter of Support from Brookings Chamber of Commerce
  - e. Letter of Support from Smith River Rancheria
  - f. Mill Beach Plan Design
  - g. Chetco Cove Overlook Plan Design

**CITY OF BROOKINGS**

**RESOLUTION 12-R-976**

**A RESOLUTION OF THE CITY OF BROOKINGS AUTHORIZING SUBMISSION OF A LOCAL GOVERNMENT GRANT APPLICATION TO THE OREGON PARKS AND RECREATION DEPARTMENT FOR THE BROOKINGS COASTAL ACCESS IMPROVEMENTS PROJECT.**

**WHEREAS**, the Oregon Parks and Recreation Department is accepting applications for the Local Government Grant Program; and

**WHEREAS**, the City of Brookings desires to participate in this grant program to the greatest extent possible as a means of providing needed park and recreation acquisitions, improvements and enhancements to public coastal access areas; and

**WHEREAS**, the City Council has identified improvements at the recently acquired Mill Beach Access and existing Chetco Cove Overlook as a high priority; and

**WHEREAS**, the City Council desires to make improvements at these two locations as a means of connecting and improving public access to two miles of public beach; and

**WHEREAS**, the Brookings Coastal Access Improvements Project will enhance the visitor's experience by providing opportunities to access and view scenic areas in a safe, handicap accessible environment, while promoting longer stays; and

**WHEREAS**, grant funding for the project at the Mill Beach Access location will be used to widen and pave the roadway, construct a paved parking area, and install a restroom, picnic tables, benches, and trash receptacles. At the Chetco Cove Overlook location, funding will be used to widen and enhance the access trail, pave a 140 foot patio area, and install guard railing and benches; and

**WHEREAS**, the applicant hereby certifies that the matching share for this application is readily available at this time; and

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of the City of Brookings, Oregon, does hereby authorize the submission of a Local Government Grant Program application to the Oregon Parks and Recreation Department for the Brookings Coastal Access Improvement Project, as described herein.

Passed by the City Council \_\_\_\_\_, 2012 and made effective the same date.

Attest:

\_\_\_\_\_  
Mayor Larry Anderson

\_\_\_\_\_  
City Recorder Joyce Heffington



# City of Brookings

898 Elk Drive, Brookings, OR 97415  
(541) 469-1103 Fax (541) 469-3650 TTY (800) 735-1232

March 19, 2012

To: Gary Milliman – City Manager

The City of Brookings Parks & Recreation Commission is pleased to support the Mill Beach and Chetco Cove (Tanbark Overlook) coastal access projects proposed by the City of Brookings staff.

The two projects will enhance the public use of two existing coastal access points by improving accessibility and visibility. The project will provide new opportunities for visual and active access to the Oregon coast by people of all physical abilities, and will facilitate longer duration visits to the beach areas.

The proposed projects are consistent with the Chamber of Commerce goals of attracting visitors to the coast and enhancing their stay. The projects help “fill the gap” to coastal access along the City’s frontage to the ocean between Harris Beach and the Chetco River.

Please consider this letter as an endorsement of support from the Parks & Recreation Commission for the Chetco Cove (Tanbark Overlook) & Mill Beach Access Improvement projects.

Sincerely,

Anthony Baron  
Parks & Recreation Commissioner



# City of Brookings

898 Elk Drive, Brookings, OR 97415  
(541) 469-1104 Fax (541) 469-3650 TTY (800) 735-1232  
[landerson@brookings.or.us](mailto:landerson@brookings.or.us)

**Mayor Larry Anderson**

March 19, 2012

Re: City of Brookings Local Government Grant Application to the Oregon Parks and Recreation Department

To Whom It May Concern:

The Brookings Park and Recreation Commission is in support of efforts to improve access to our local public coastal areas.

We appreciate efforts made by the Oregon Parks and Recreation Department to help create and improve local coastal access through grant opportunities. Improving these areas will serve local citizens and enhance visitors experience by providing opportunities to view scenic areas in a safe, handicap accessible environment while promoting longer stays in our area.

Thank you for the opportunity to express our support for this valuable project.

Sincerely,

Larry Anderson  
Mayor



the PULSE of  
**America's**  
**Wild Rivers**  
Coast  
101 MILES OF NATURE'S BEST

March 21, 2012

Gary Milliman, City Manager  
City of Brookings  
898 Elk Drive  
Brookings, OR 97415

Dear Gary:

The Brookings-Harbor Chamber of Commerce enthusiastically supports the Mill Beach and Chetco Cove (Tanbark Lane) coastal access projects proposed by the City of Brookings. These projects will significantly improve access to our community's beautiful beaches and coves, for both residents and visitors, enhancing our livability and attractiveness to guests.

We believe that the new opportunities for visual and active access to Oregon's coast by people of all ages and physical abilities, will result in added incentives for longer duration visits to our area, and therefore in longer stays and additional room stays by our visitors.

As the Destination Marketing Organization (DMO) for the Brookings-Harbor community the Chamber of Commerce works to attract visitors to our section of the Oregon Coast and educate them to our many attractions. These projects increase coastal access along the City's frontage to the ocean that will result in a wide spread appeal.

We strongly encourage the approval of the grants necessary to make these projects a reality.

Sincerely,

Les Cohen, IOM  
President & CEO



# Smith River Rancheria

140 Rowdy Creek Rd, Smith River, CA 95567-9525

Ph: (707) 487-9255

Fax: (707) 487-0930

March 20, 2012

Kara Brundin Miller

Chairperson

Mr. Gary Milliman, City Manager

City of Brookings

898 Elk Drive

Brookings, OR 97415

Denise Padgett

Vice Chairperson

**Re: Mill Beach and Chetco Cove Project**

Loren Bommelyn

Council Secretary

Dear Mr. Milliman:

Joel Bravo

Treasurer

The Smith River Rancheria is a federally recognized Indian tribe of Tolowa Dee-ni' (people) that is located three miles south of the Oregon-California border in northwest California. The federally recognized jurisdiction and service area (near or on reservation status) includes Humboldt and Del Norte Counties in California and Coos, Curry and Josephine Counties in Oregon. Most of the tribal population is concentrated in a corridor stretching from Crescent City, California, to Brookings, Oregon. Del Norte County is the northernmost county on the California coast and Curry County is the southernmost county on the Oregon coast all within the ceded boundaries of the Smith River Rancheria.

Marian Lopez

Council Member

This project is within the ancestral lands of the Tolowa Dee-ni' and for this reason and many others, the Smith River Rancheria appreciates the opportunity to provide our strong support for the Mill Beach and Chetco Cove (Tanbark Lane) coastal access project as proposed by the City of Brookings.

Dr. Joseph  
Giovannetti

Council Member

This project will enhance the public use of two existing coastal access points by improving accessibility and visibility. The project will provide new opportunities for visual and active access to the Oregon coast by people of all physical abilities, and will facilitate longer duration visits to the beach areas. Needless to state, this project helps "fill the gap" to coastal access along the City's frontage to the ocean between Harris Beach and the Chetco River.

Lenora Hall

Council Member

Russ Crabtree

Tribal  
Administrator

*Waa-saa-ghitlh-'a~ Wee-ni Naa-ch'aa-ghitlh-ni*

*Our Heritage Is Why We Are Strong*

The Smith River Rancheria compliments the City of Brookings for taking on this community improvement project and is willing to assist wherever possible.

Russ Crabtree

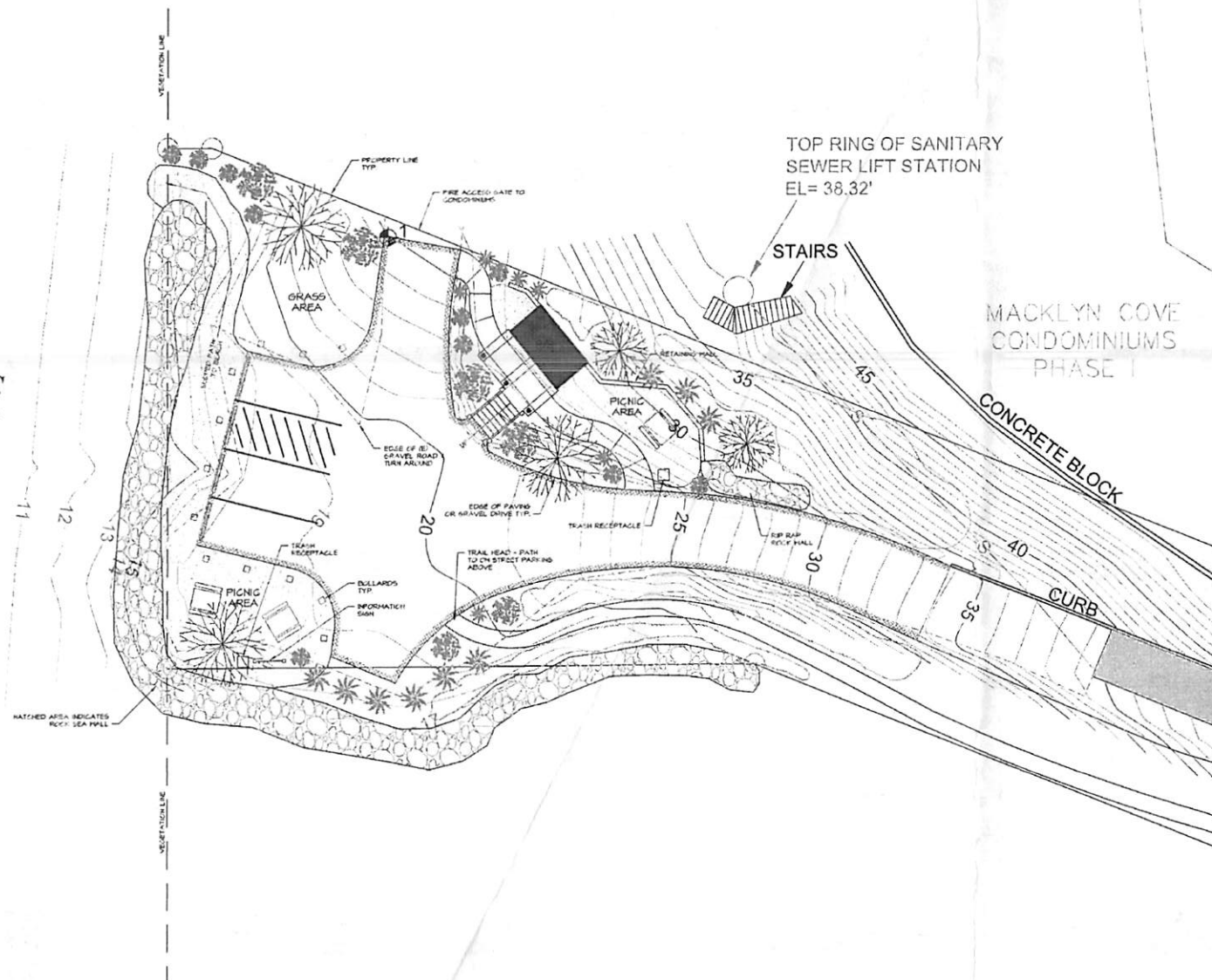


Tribal Administrator

***Waa-saa-ghitlh-'a~ Wee-ni Naa-ch'aa-ghitlh-ni***

***Our Heritage Is Why We Are Strong***

PACIFIC  
OCEAN



GENERAL NOTES

**BARON  
DESIGNS**  
ANTHONY BARON  
11249 S. PASSELEY RD  
BROOKINGS OREGON  
97415  
PH: (541)-461-2106

**Mill Beach**  
Access Improvements  
CITY OF BROOKINGS  
888 ELK DRIVE  
BROOKINGS, OREGON 97415

**ENLARGED  
SITE PLAN**

DRAWN BY: A38  
DATE: 11/20/11

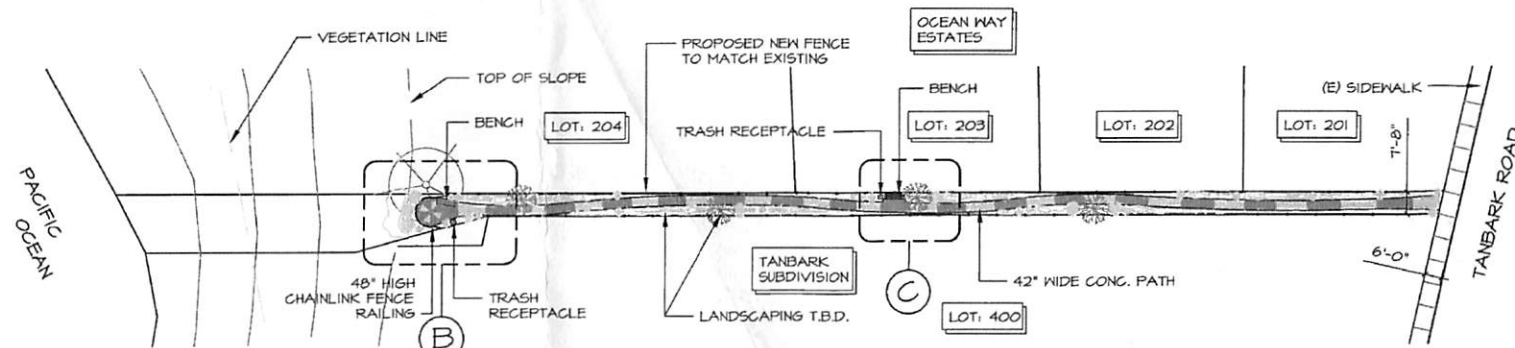
**A002**

**SITE PLAN**

SCALE: 1" = 10'-0"

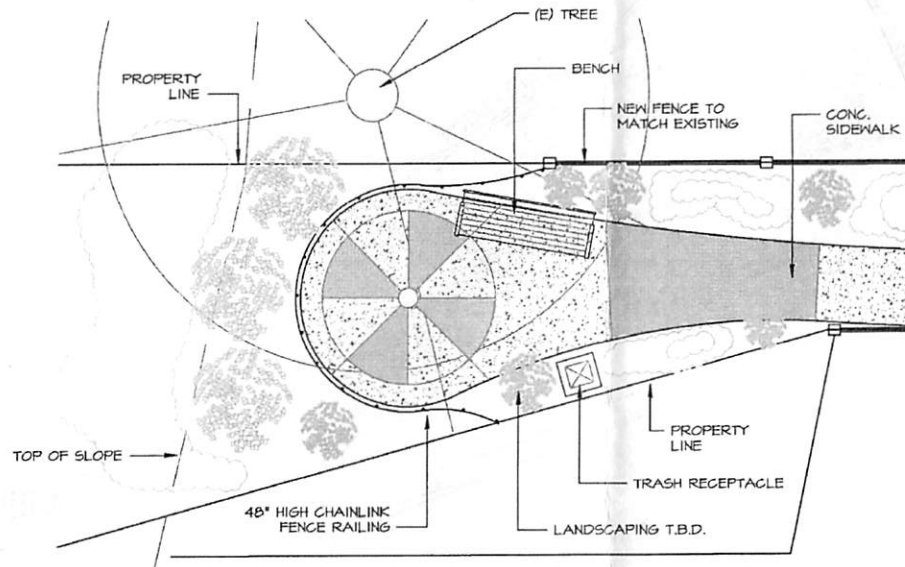
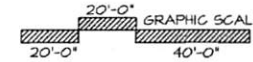
**A002**





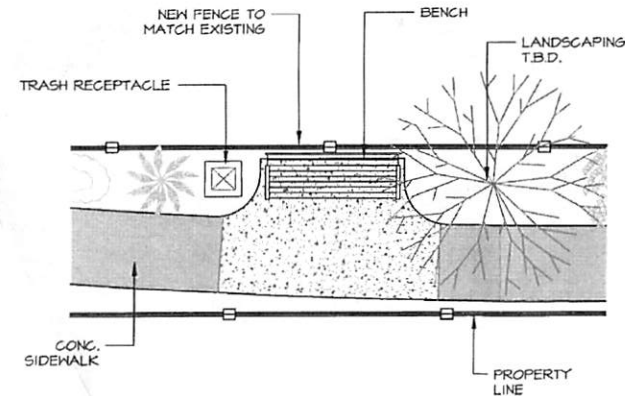
**A. OVERALL SITE PLAN**  
TANBARK OVERLOOK

SCALE: 1" = 40'-0"



**B. ENLARGED PLAN**  
TANBARK OVERLOOK

SCALE: 1/4" = 1'-0"



**C. ENLARGED PLAN**  
TANBARK OVERLOOK

SCALE: 1/4" = 1'-0"

**SITE**  
**A001**

DATE: 11/6/2011  
DRAWN BY: ASB

**CITY OF BROOKINGS**  
**PROPOSED**  
**TANBARK OVERLOOK**  
**BROOKINGS, OREGON 97415**

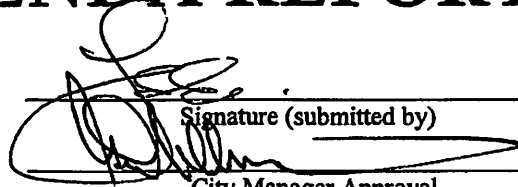
**BARON**  
**DESIGNS**  
ANTHONY BARON  
11241 S. PASSLEY RD.  
BROOKINGS, OREGON  
97415  
PH: 503-461-1000  
MOB: 503-461-1000

# CITY OF BROOKINGS

## COUNCIL AGENDA REPORT

Meeting Date: March 26, 2012

Originating Dept: Public Works

  
Signature (submitted by)  
City Manager Approval

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**Subject:** Pacific and Mendy Street Sewer Rehabilitation

**Recommended Motion:** Motion to award the contract for construction of the Pacific and Mendy Street Sewer Rehabilitation project to John Rapraeger, Inc., the lowest responsible bidder, in an amount not to exceed \$133,825, and authorize the City Manager to execute all related documents.

**Financial Impact:** The costs of this project are paid through appropriated wastewater capital improvement system replacement funds which was assigned \$200,000.

**Background/Discussion:** Staff and the City Engineer conducted TV inspection and smoke testing of numerous sewer mains in this easterly region of the City upstream of the Oak Street interceptor. The goal was to reduce storm water inflow and infiltration (I/I), and in doing such, increasing downstream sewer main capacity. In addition, the TV results were used to evaluate the condition of the existing sewer infrastructure. TV inspection results demonstrated that sewer mains such as Pacific Street and Mendy Street are of an age and concrete piping material that are suffering from corrosion. Corrosion weakens the pipe and promotes tree root intrusion and cracking which lessens the life of the sewer main and allows for water intrusion in rain events. Staff also conducted a smoke test of this area to identify laterals and properties which were permitting direct storm water inflow. The results of the smoke test identified several property owners that had open clean outs, deteriorated laterals and direct storm water connections. These property owners were required to remedy the inflow conditions.

The City Engineer recommended an alternative to conventional sewer replacement termed "sewer rehabilitation." This is the first time the City of Brookings has implemented a sewer rehabilitation project. Sewer rehabilitation consists of application of a cured in place plastic resin (CIPP) that adheres to the interior of the sewer main. Sewer rehabilitation has been known to cost a fraction of the cost of conventional sewer replacement and extend the life of a sewer main over 50 years. This project also includes sewer lateral replacement from the main to the property line of all effected properties. The subcontractor for the sewer rehabilitation portion of work is Columbia Piping from Pasco, Oregon.

This project was bid with an alternative for additional rehabilitation on Mendy Street in case the base bid was within budget. On March 14, 2012 the City received 3 bids on this project. The following summaries include the base bid and alternative bid. Staff recommends award of both the base bid and alternative bid as identified as follows;

John D. Rapraeger, Inc,

\$133,825

Tidewater Contractors, Inc. \$158,820  
Hangar Construction Unlimited, Inc. \$180,148

The engineer's estimate is \$185,940.

Attachment(s):

- a. Letter from City Engineer
- b. Summary of Bids



THE DYER PARTNERSHIP  
ENGINEERS & PLANNERS, INC.

March 15, 2012

Gary Milliman, City Manager  
City of Brookings  
898 Elk Drive  
Brookings, OR 97415

RE: Pacific Avenue & Mendy Street Sewerline Rehabilitation  
City of Brookings  
Project No. 145.31

Dear Gary:

This letter is to recommend action by the City in response to bids received on March 14, 2012 for the above referenced project. We received three bids of \$133,825, \$158,820 and \$180,148. The Engineer's Estimate was \$185,940. Please see attached summary of bids.

We recommend that the City take the following action:

1. Accept all bids.
2. Award a contract to John D. Rapraeger, Inc., the lowest responsive bidder in the amount of \$133,825.00 for the Basic Bid and Additive Alternate No. 1, contingent upon no protest being received during the Notice of Intent to Award Protest Period.


It is our opinion that John D. Rapraeger, Inc. has sufficient experience and qualifications to satisfactorily construct the project.

Assuming the Council concurs with our recommendation, we have enclosed three copies of the Notice of Award. A representative for the City needs to sign all three copies after which they should be returned to our office. (*Please do not date the Notice of Award.*) We will date the Award following the Protest Period. Contracts and Performance Bonds will then be forwarded to John D. Rapraeger, Inc. for their signature.

Pursuant to ORS 279C.835, the Oregon Bureau of Labor and Industries requires that Form WH-81 be filled out by the contracting agency and sent to them with a copy of the first-tier subcontractor form, if applicable (ORS 279C.370), within 30 days of issuing the Notice of Award. The form is available at <http://egov.oregon.gov/BOLI/WHID/PWR/jan08/WH-81.doc>. The Owner is also responsible for payment of a Public Works Fee to the Bureau of Labor & Industries. This payment is accompanied by Form WH-39 which is available at <http://egov.oregon.gov/BOLI/WHID/PWR/docs/wh-39.doc>.

Sincerely,

The Dyer Partnership  
Engineers & Planners, Inc.

  
Barbara Negherbon, P.E.  
Project Engineer

## TABULATION OF BIDS

Pacific Avenue and Mendy Street Sewerline Rehabilitation  
 City of Brookings  
 Project No. 145.31

Date: March 14, 2012.  
 Bids Received: 2 p.m.

Name of Bidder                      Basic Bid                      Alternate 1                      TOTAL                      Comments

John D. Rapraeger	\$103,090.00	\$30,735.00	\$133,825.00	
Tidewater Contractors, Inc.	\$119,470.00	\$39,350.00	\$158,820.00	
Hangar Construction Unlimited, Inc	\$140,798.00	\$39,350.00	\$180,148.00	
ENGINEER'S ESTIMATE	\$142,700.00	\$43,240.00	\$185,940.00	

The Dyer Partnership Engineers & Planners, Inc.

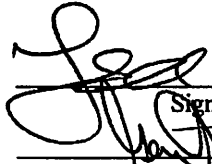
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# CITY OF BROOKINGS

## COUNCIL AGENDA REPORT

Meeting Date: March 26, 2012

Originating Dept: Public Works

  
\_\_\_\_\_  
Signature (submitted by)  
\_\_\_\_\_  
City Manager Approval

---

**Subject:** Local Agency Agreement Safe Routes to School Program Infrastructure Project at Brookings Kalmiopsis Elementary School

**Recommended Motion:** Motion to authorize the City Manager or designee to execute the Safe Routes to School (SRT) Agreement and Intergovernmental Agreement for Right of Way Services with Oregon Department of Transportation (ODOT).

**Financial Impact:** These agreements allow for the execution of the design and construction of a SRT grant from ODOT for sidewalk installation at the Kalmiopsis Elementary School. The overall construction costs are estimated at \$543,000. The City's matching fund contribution is \$33,000 for paving and subgrade work, \$20,000 for water main replacement and ODOT is contributing \$490,000. There are adequate funds in both the street replacement and water replacement funds to appropriate to this matching grant contribution.

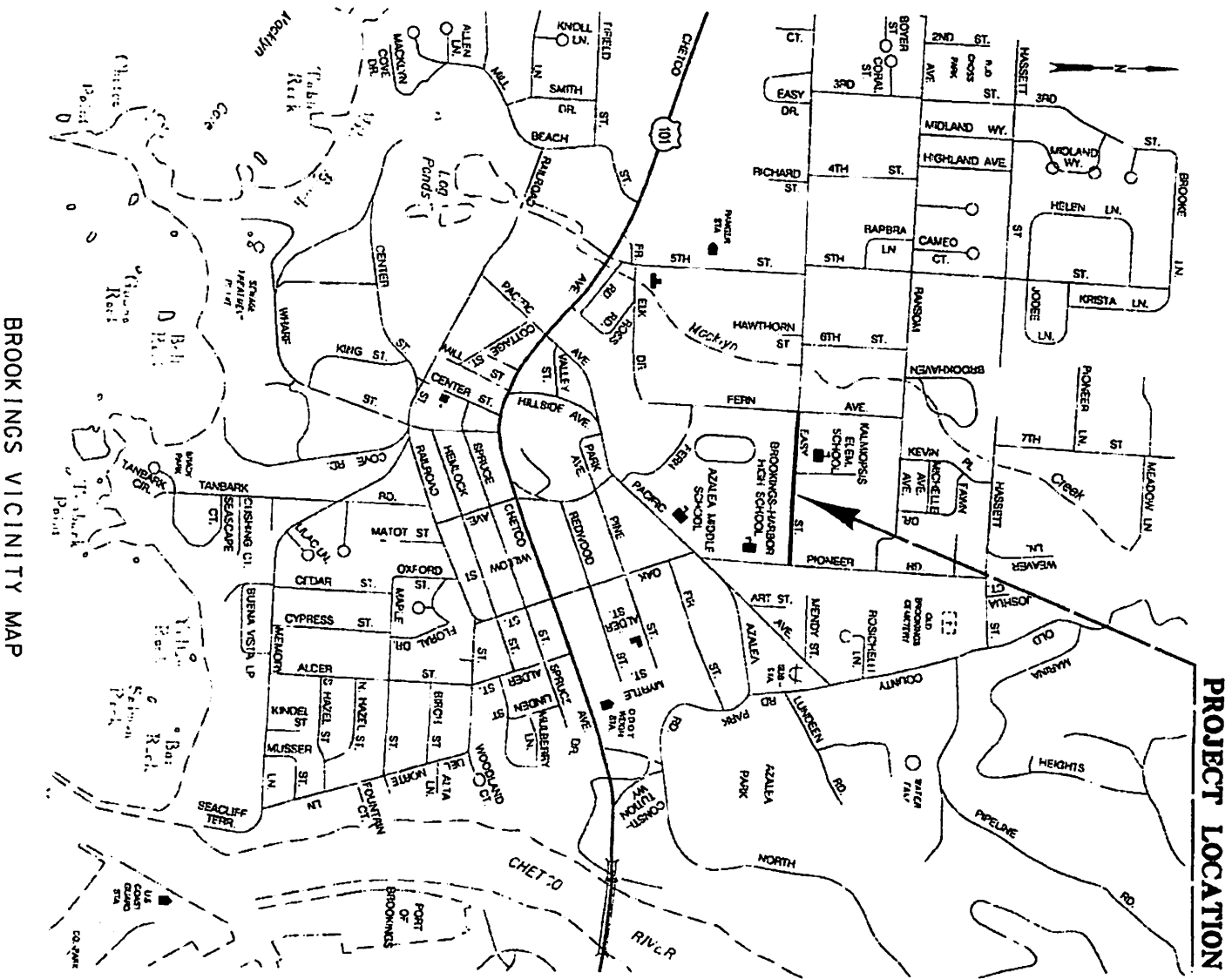
**Background/Discussion:** The City applied for the SRT grant in January 2011 and was successfully selected as the recipient. The proposed project includes building 6-foot wide sidewalks, 6-foot wide bike lanes, and installing new signage and pavement markings on the northerly portion of Easy Street from Fern Ave to Pioneer Rd. The primary benefit of this project will be the increased safety to our school children that walk and bike to and from school along Easy Street. ODOT will be hiring the engineering design firm and coordinating the construction activities. Construction is scheduled for the summer of 2013 so that it won't impact mobility during the school year.

The Public Works Supervisor, Richard Christensen and support staff Lauri Zierner, were responsible for submittal of this grant application and should be acknowledged for their commitment and hard work to obtain a much needed improvement for the safety of our children in this community.

**Attachment(s):**

- a. Vicinity map
- b. Plan view of proposed improvements
- c. Local Agency Agreement
- d. Intergovernmental Agreement for Right of Way Services

# EASY STREET PED. IMPROVEMENTS FERN AVE. TO PIONEER RD., UNIT 1



BROOKINGS VICINITY MAP

FIGURE 1

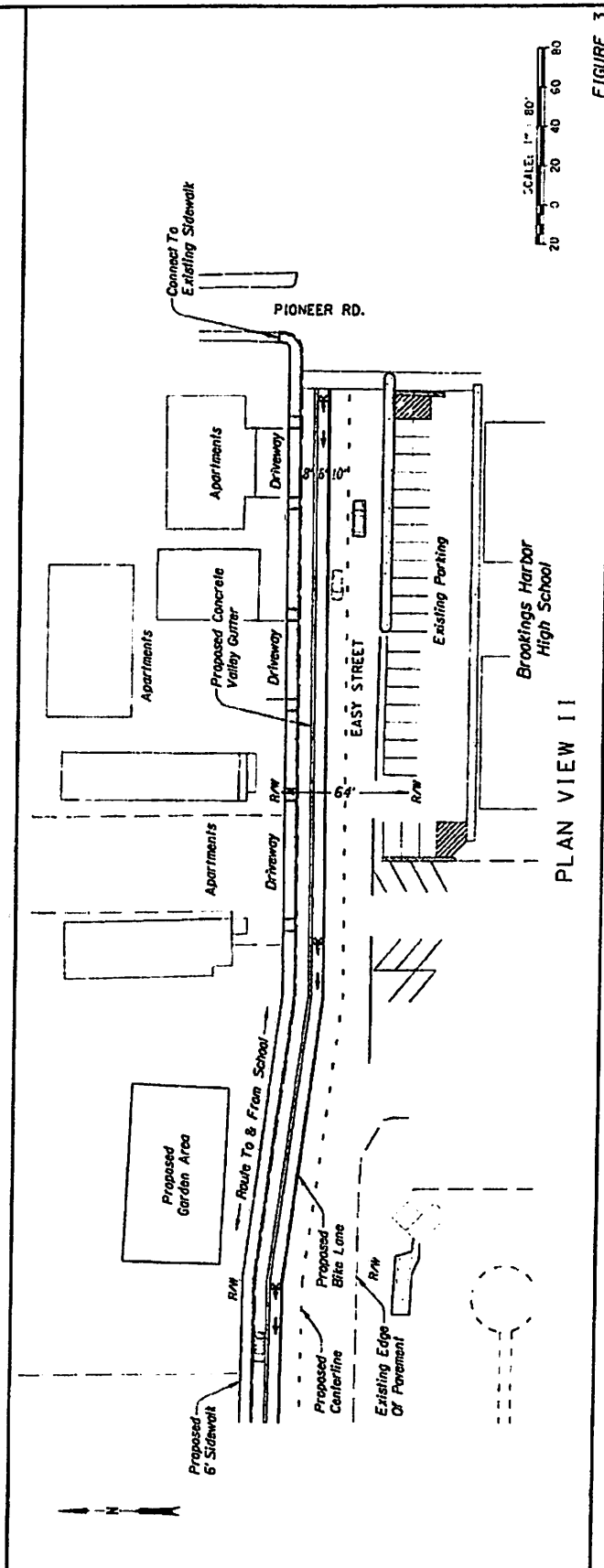
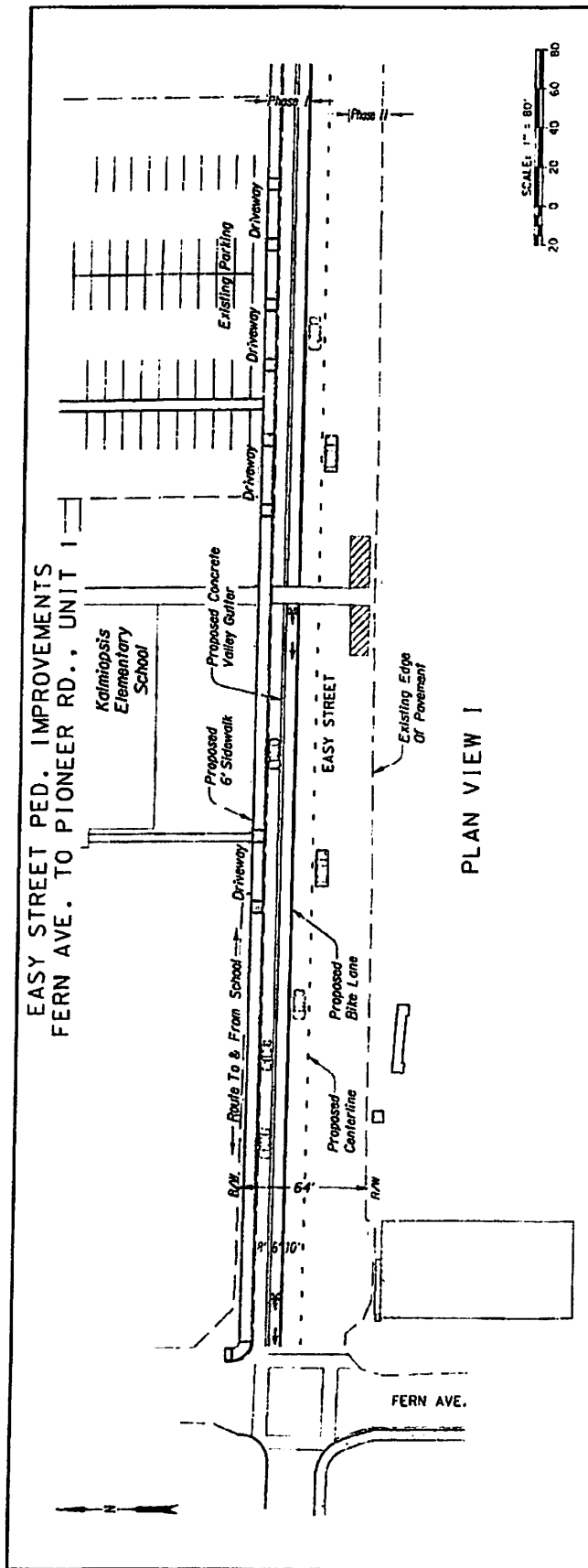


FIGURE 3



**LOCAL AGENCY AGREEMENT  
SAFE ROUTES TO SCHOOL PROGRAM  
INFRASTRUCTURE PROJECT  
Brookings (Kalmiopsis Elementary School): Safety Improvements  
City of Brookings**

**THIS AGREEMENT** is made and entered into by and between the **STATE OF OREGON**, acting by and through its Department of Transportation, hereinafter referred to as "State;" and the **City of Brookings**, acting by and through its elected officials, hereinafter referred to as "Agency," both herein referred to individually or collectively as "Party" or "Parties."

**RECITALS**

1. By the authority granted in Oregon Revised Statutes (ORS) 190.110, 366.572 and 366.576, State may enter into cooperative agreements with counties, cities and units of local governments for the performance of work on certain types of improvement projects with the allocation of costs on terms and conditions mutually agreeable to the contracting parties.
2. The Safe Routes to Schools (SRTS) Program is a federal-aid program of the Federal Highway Administration (FHWA) through funding from the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users Act (SAFETEA-LU). State's SRTS program is administered by State's Transportation Safety Division. The "Infrastructure" portion of the program is managed by the Highway Division, Local Government Section.
3. Under ORS 184.740 and 184.741, Oregon Administrative Rules (OAR) 737-025-0030 and 737-025-0040, State may award SRTS funds to school districts, qualifying schools, units of state and local government, or private, non-profit organizations in partnership with any of the above to perform education, engineering or enforcement projects or activities that directly benefit a qualifying school.
4. In accordance with ORS 811.106, a flashing light used as a traffic control device to indicate that children may be within a school zone may be operated only at times when children are scheduled to arrive at or leave the school.
5. Easy Street is a part of the city street system under the jurisdiction and control of Agency.

**NOW THEREFORE**, the premises being in general as stated in the foregoing Recitals, it is agreed by and between the Parties hereto as follows:

**TERMS OF AGREEMENT**

1. Under such authority, Agency and State agree to fund, design and construct bicycle and pedestrian improvements in the vicinity of Kalmiopsis Elementary School

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hereinafter referred to as "Project." Agency applied for this Project in January 2011 and was approved funds from the Safe Routes to School program in August 2011. The application for the Project is incorporated by reference. The location of the Project is approximately as shown on the sketch map attached hereto, marked "Exhibit A," and by this reference made a part hereof.

2. The Project shall be conducted as a part of the SRTS Program under Title 23, United States Code. The total Project cost is estimated at \$543,000, which is subject to change. The SRTS Funds are estimated at \$490,000 with Agency providing any funds in excess of the available SRTS funds and any non-participating costs. The scope, schedule, progress report requirements, and Project Change Request process are described in Exhibit B, attached hereto and by this reference made a part hereof. Agency agrees to the conditions set forth in Exhibit B.
3. Agency must obtain approval from State's SRTS Program Manager for any additional SRTS funds beyond the amount in Paragraph No. 2 above. State's SRTS Program Manager may, depending upon funding availability and other considerations, approve additional funds up to a maximum of ten (10) percent over the awarded SRTS funding, with total funding capped at \$500,000. For additional funding above the 10% increase, State's SRTS Program Manager must consult with State's Safe Routes Advisory Committee and an amendment to this Agreement must be executed reflecting any approved increase in funds. In no case may total program funding exceed \$500,000 for any project.
4. The SRTS funding for the Project is contingent upon approval by the Federal Highway Administration (FHWA). Any work performed prior to acceptance by FHWA will be considered nonparticipating and paid for at Agency expense.
5. State considers Agency a subrecipient of the federal funds it receives as reimbursement under this Agreement. The Catalog of Federal Domestic Assistance (CFDA) number and title for this Project is 20.205, Highway Planning and Construction.
6. The term of this Agreement shall begin on the date all required signatures are obtained and shall terminate upon completion of the Project and final payment or ten (10) calendar years following the date all required signatures are obtained, whichever is sooner.
7. This Agreement may be terminated by mutual written consent of both Parties.
8. State may terminate this Agreement effective upon delivery of written notice to Agency, or at such later date as may be established by State, under any of the following conditions:
  - a. If Agency fails to provide services called for by this Agreement within the time specified herein or any extension thereof.

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- b. If Agency fails to perform any of the other provisions of this Agreement, or so fails to pursue the work as to endanger performance of this Agreement in accordance with its terms, and after receipt of written notice from State fails to correct such failures within ten (10) days or such longer period as State may authorize.
  - c. If Agency fails to provide payment of its share of the cost of the Project.
  - d. If State fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow State, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement.
  - e. If federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the work under this Agreement is prohibited or if State is prohibited from paying for such work from the planned funding source.
9. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
10. The Special and Standard Provisions attached hereto, marked Attachments 1 and 2, respectively, are by this reference made a part hereof. The Standard Provisions apply to all federal-aid projects and may be modified only by the Special Provisions. The Parties hereto mutually agree to the terms and conditions set forth in Attachments 1 and 2. In the event of a conflict, this Agreement shall control over the attachments, and Attachment 1 shall control over Attachment 2.
11. Agency, as a recipient of federal funds, pursuant to this Agreement with the State, shall assume sole liability for Agency's breach of any federal statutes, rules, program requirements and grant provisions applicable to the federal funds, and shall, upon Agency's breach of any such conditions that requires the State to return funds to the Federal Highway Administration, hold harmless and indemnify the State for an amount equal to the funds received under this Agreement; or if legal limitations apply to the indemnification ability of Agency, the indemnification amount shall be the maximum amount of funds available for expenditure, including any available contingency funds or other available non-appropriated funds, up to the amount received under this Agreement.
12. Agency agrees to comply with the conditions imposed by ORS 184.740 and 184.741, and administrative rules under OAR Chapter 737, Division 25.
13. State and Agency hereto agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be invalid, unenforceable, illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.

14. Agency certifies and represents that the individual(s) signing this Agreement has been authorized to enter into and execute this Agreement on behalf of Agency, under the direction or approval of its governing body, commission, board, officers, members or representatives, and to legally bind Agency.
15. State's Safe Routes to School Program Manager is David Galati, Active Transportation Section, 555 13<sup>th</sup> Street NE, Suite 2, Salem, OR 97301, (503) 986-3441, david.a.galati@odot.state.or.us, *or assigned designee upon individual's absence*. State shall notify the other Party in writing of any contact information changes during the term of this Agreement.
16. Agency's Project Liaison for this Agreement is Loree Pryce, Public Works Director, 898 Elk Drive, Brookings OR 97415, (541) 469-1151, lpryce@brookings.or.us, *or assigned designee upon individual's absence*. Agency shall notify the other Party in writing of any contact information changes during the term of this Agreement.
17. This Agreement may be executed in several counterparts (facsimile or otherwise) all of which when taken together shall constitute one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of this Agreement so executed shall constitute an original.
18. This Agreement, Project application and documents provided by Agency to State prior to the execution of the Agreement, and attached exhibits constitute the entire agreement between the Parties on the subject matter hereof. In the event of conflict, the body of this Agreement and the attached Exhibits will control over Project application and documents provided by Agency to State. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of State to enforce any provision of this Agreement shall not constitute a waiver by State of that or any other provision.

**THE PARTIES**, by execution of this Agreement, hereby acknowledge that their signing representatives have read this Agreement, understand it, and agree to be bound by its terms and conditions.

This Project is in the 2010-2013 Statewide Transportation Improvement Program, (Key #16067) that was approved by the Oregon Transportation Commission on December 16, 2010 (or subsequently approved by amendment to the STIP).

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**City of Brookings**, by and through its  
elected officials

By \_\_\_\_\_

Date \_\_\_\_\_

By \_\_\_\_\_

Date \_\_\_\_\_

**APPROVED AS TO LEGAL  
SUFFICIENCY**

By \_\_\_\_\_  
City Attorney

Date \_\_\_\_\_

**Agency Contact:**

Loree Pryce  
Public Works Director  
898 Elk Drive  
Brookings, OR 97415  
(541) 469-1151  
lpryce@brookings.or.us

**State Contact:**

Scott Adams  
ODOT Local Agency Liaison  
3500 NW Stewart Parkway  
Roseburg, OR 97470  
(541) 957-3636  
scott.adams@odot.state.or.us

**STATE OF OREGON**, by and through  
its Department of Transportation

By \_\_\_\_\_  
Highway Division Administrator

Date \_\_\_\_\_

**APPROVAL RECOMMENDED**

By \_\_\_\_\_  
Safe Routes to School Program Manager,  
Active Transportation Section

Date \_\_\_\_\_

By \_\_\_\_\_  
Region Manager

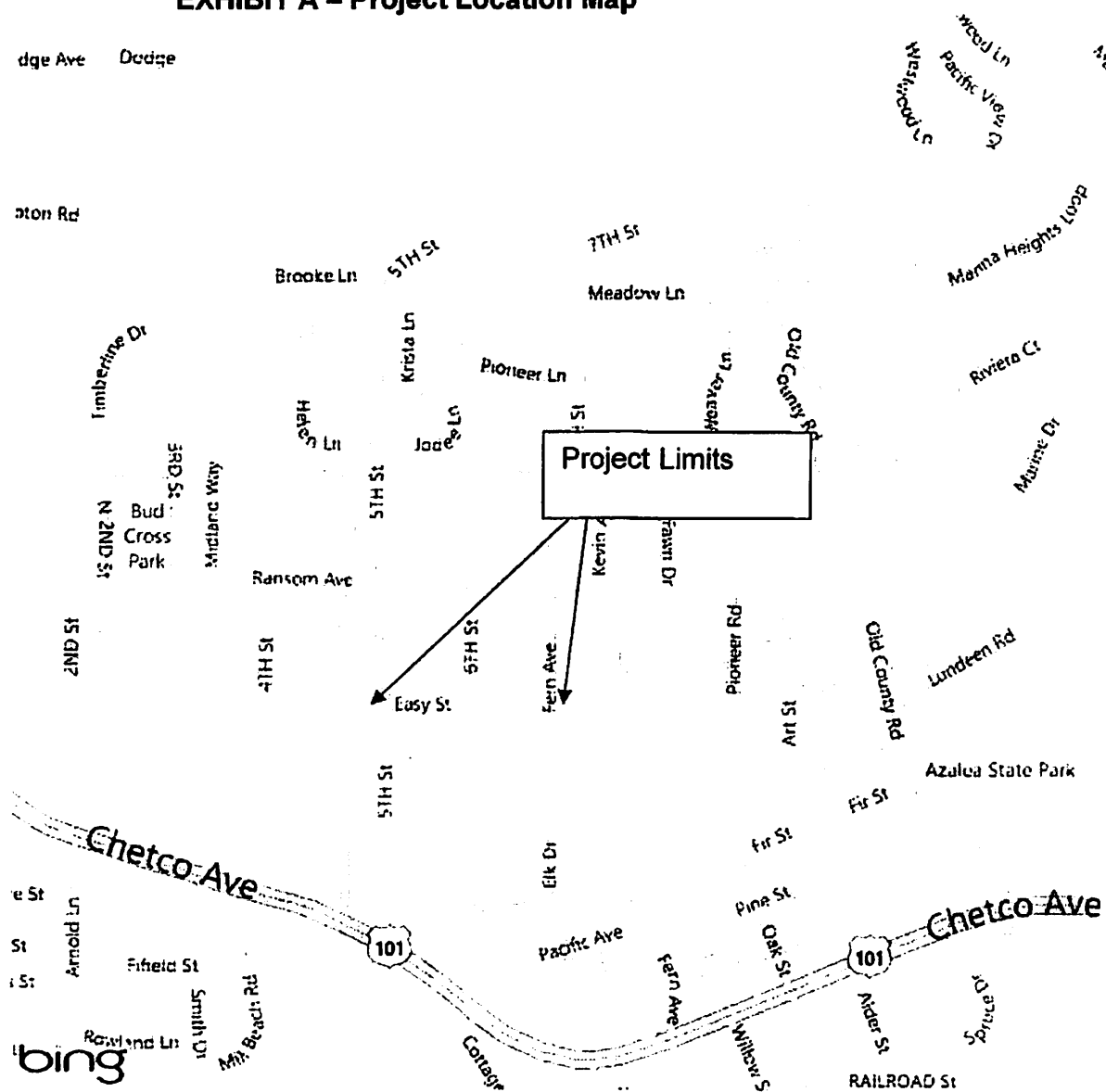
Date \_\_\_\_\_

**APPROVED AS TO LEGAL  
SUFFICIENCY**

By \_\_\_\_\_  
Assistant Attorney General

Date \_\_\_\_\_

## EXHIBIT A – Project Location Map



**EXHIBIT B**

**Project Cost Estimate, Progress Reports and Project Change Request Process**

**Agreement No. 28171**

**Key Number: 16067**

**Project Name:** Brookings (Kalmiopsis Elementary School): Safety Improvements

**1. Project Description**

Construct approximately 1,200 LF of sidewalks and bike lanes along Easy Street between Fern Avenue and Pioneer Road, including draining, utilities reconfiguration, and re-striping travel and parking lanes as required.

2. This Project is subject to progress reporting and project change process as stated in paragraphs No. 3 through No. 6 below.

3. **Monthly Progress Reports (MPR)** - Agency shall submit monthly progress reports using MPR Form 734-2862, attached by reference and made a part of this Agreement. The Monthly Progress Report is due by the 5<sup>th</sup> day of each month, starting the first month after execution of this Agreement, and continuing through the first month after State issues Project Acceptance (Second Note) for the Project's construction contract.

The fillable MPR form and instructions are available at the following address:

**<http://www.oregon.gov/ODOT/HWY/LGS/online.shtml>**

4. **Project Milestones** – The Parties agree that the dates shown in Table 1 constitute the intended schedule for advancing and completing the Project. Project Milestones may only be changed through amendment of this Agreement, after obtaining an approved Project Change Request.

**Table 1: Project Milestones**

	<b>Milestone Description</b>	<b>Completion Date</b>
<b>1</b>	Obligation (Federal Authorization) of Safe Routes to School funds for the Preliminary Engineering phase of Project	4/1/2012 5
<b>2</b>	Obligation (Federal Authorization) of Safe Routes to School funds for the Construction phase of Project	12/15/2012
<b>3</b>	Project Completion based on State issuing Project Acceptance or "Second Note"	10/1/2013

**EXHIBIT B**

**5. Project Change Request (PCR) Process** - Agency must obtain approval from State's Contact and State's Safe Routes to School Program Manager for changes to the Project's scope, schedule, or budget as specified in paragraphs 5a and 5b, below. Agency shall be fully responsible for all costs that occur outside the established Project scope, schedule or budget and prior to an approved PCR.

**a. Scope** - A PCR is required for any significant change or reduction in the scope of work described in the Project Description (Paragraph 1 of this Exhibit).

**b. Schedule**— A PCR is required if Agency or State's Contact anticipate that any Project Milestone will be delayed by more than ninety (90) days, and also for any change in schedule that will require amendment of the Statewide Transportation Improvement Program (STIP).

**6. PCR Form** - Agency must submit all change requests using PCR Form 734-2863, attached by reference and made a part of this Agreement. The PCR Form is due no later than thirty (30) days after the need for change becomes known to Agency. The PCR shall explain what change is being requested, the reasons for the change, and any efforts to mitigate the change. A Project Change Request may be rejected at the discretion of State's Safe Routes to School Program Manager.

The fillable PCR form and its instructions are available at the following web site:  
<http://www.oregon.gov/ODOT/HWY/LGS/online.shtml>

**7. Consequence for Non-Performance** - If Agency fails to fulfill its obligations in paragraphs No. 3 through No. 6 above, or does not advance the Project according to the Project Milestones, State's course of action through the duration of Agency's default shall be (1) restricting Agency consideration for future funds awarded through State's Active Transportation Section, then (2) withdrawing unused Project funds, and then (3) terminating this Agreement as stated in paragraphs #8a and 8b of this Agreement.



After recording, return to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**ATTACHMENT NO. 1 to Agreement No. 28171  
SPECIAL PROVISIONS**

1. Agency (if qualified through State's "Local Agency Certification" program), or its consultant, shall conduct the necessary preliminary engineering and design work required to produce final plans, specifications and cost estimates; purchase all necessary right of way; obtain all required permits; arrange for all utility relocations or reconstruction; perform all construction engineering, including all required materials testing and quality documentation; and prepare necessary documentation to allow State to make all contractor payments.
2. Agency guarantees the availability of Agency funding in an amount required to fully fund Agency's share of the Project. Prior to award of the contract, Agency shall provide State its share of the Project cost upon receipt of request from State. The Project cost is defined as the Engineer's estimate plus 10 percent.
3. State may make available Region 3's On-Call Preliminary Engineering (PE), Design and Construction Engineering Services consultant for Local Agency Projects upon written request. If Agency chooses to use said services, Agency agrees to manage the work done by the Consultant and reimburse State for payment of any Consultant costs that are not eligible as federal participating costs or that are not included as part of the total cost of the Project.
4. Indemnification language in the Standards Provisions, Paragraphs 46 and 47; and Paragraph 4 in regards to tort claims, shall be replaced with the following language:
  - a. If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third Party Claim") against State or Agency with respect to which the other Party may have liability, the notified Party must promptly notify the other Party in writing of the Third Party Claim and deliver to the other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Each Party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by a Party of the notice and copies required in this paragraph and meaningful opportunity for the Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to that Party's liability with respect to the Third Party Claim.
  - b. With respect to a Third Party Claim for which State is jointly liable with Agency (or would be if joined in the Third Party Claim), State shall contribute to the

amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by Agency in such proportion as is appropriate to reflect the relative fault of State on the one hand and of Agency on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of State on the one hand and of Agency on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. State's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if State had sole liability in the proceeding.

- c. With respect to a Third Party Claim for which Agency is jointly liable with State (or would be if joined in the Third Party Claim), Agency shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by State in such proportion as is appropriate to reflect the relative fault of Agency on the one hand and of State on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of Agency on the one hand and of State on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. Agency's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if it had sole liability in the proceeding.
  - d. The Parties shall attempt in good faith to resolve any dispute arising out of this Agreement. In addition, the Parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation.
5. Agency shall, at its own expense, maintain and operate the Project upon completion and throughout the useful life of the Project at a minimum level that is consistent with normal depreciation and/or service demand. State and Agency agree that the useful life of this Project is defined as (20 years). State may conduct periodic inspections during the life of the Project to verify that Project is properly maintained and continues to serve the purpose for which federal funds were provided. Maintenance and power responsibilities shall survive any termination of this Agreement.
6. Agency grants State the right to enter onto Agency right of way for the performance of duties as set forth in this Agreement.

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7. If Agency fails to meet the requirements of this Agreement or the underlying federal regulations, State may withhold the Agency's proportional share of Highway Fund distribution necessary to reimburse State for costs incurred by such Agency breach. Agency will be ineligible to receive or apply for any Title 23, United States Code funds until State receives full reimbursement of the costs incurred.
8. Maintenance responsibilities will survive any termination of this Agreement.

## **ATTACHMENT NO. 2**

### **FEDERAL STANDARD PROVISIONS**

#### **JOINT OBLIGATIONS PROJECT ADMINISTRATION**

1. State (ODOT) is acting to fulfill its responsibility to the Federal Highway Administration (FHWA) by the administration of this Project, and Agency (i.e. county, city, unit of local government, or other state agency) hereby agrees that State shall have full authority to carry out this administration. If requested by Agency or if deemed necessary by State in order to meet its obligations to FHWA, State will further act for Agency in other matters pertaining to the Project. Agency shall, if necessary, appoint and direct the activities of a Citizen's Advisory Committee and/or Technical Advisory Committee, conduct a hearing and recommend the preferred alternative. State and Agency shall each assign a liaison person to coordinate activities and assure that the interests of both parties are considered during all phases of the Project.
2. Any project that uses federal funds in project development is subject to plans, specifications and estimates (PS&E) review and approval by FHWA or State acting on behalf of FHWA prior to advertisement for bid proposals, regardless of the source of funding for construction.

#### **PRELIMINARY & CONSTRUCTION ENGINEERING**

3. State, Agency, or others may perform preliminary and construction engineering. If Agency or others perform the engineering, State will monitor the work for conformance with FHWA rules and regulations. In the event that Agency elects to engage the services of a personal services consultant to perform any work covered by this Agreement, Agency and Consultant shall enter into a State reviewed and approved personal services contract process and resulting contract document. State must concur in the contract prior to beginning any work. State's personal services contracting process and resulting contract document will follow Title 23 Code of Federal Regulations (CFR) 172, Title 49 CFR 18, ORS 279A.055, the current State Administrative Rules and State Personal Services Contracting Procedures as approved by the FHWA. Such personal services contract(s) shall contain a description of the work to be performed, a project schedule, and the method of payment. Subcontracts shall contain all required provisions of Agency as outlined in the Agreement. No reimbursement shall be made using federal-aid funds for any costs incurred by Agency or its consultant prior to receiving authorization from State to proceed. Any amendments to such contract(s) also require State's approval.
4. On all construction projects where State is the signatory party to the contract, and where Agency is doing the construction engineering and project management, Agency, subject to any limitations imposed by state law and the Oregon Constitution, agrees to accept all responsibility, defend lawsuits, indemnify and hold State harmless, for all tort claims, contract claims, or any other lawsuit arising out of the contractor's work or Agency's supervision of the project.

**REQUIRED STATEMENT FOR UNITED STATES DEPARTMENT OF  
TRANSPORTATION (USDOT) FINANCIAL ASSISTANCE AGREEMENT**

5. If as a condition of assistance, Agency has submitted and the United States Department of Transportation (USDOT) has approved a Disadvantaged Business Enterprise Affirmative Action Program which Agency agrees to carry out, this affirmative action program is incorporated into the financial assistance agreement by reference. That program shall be treated as a legal obligation and failure to carry out its terms shall be treated as a violation of the financial assistance agreement. Upon notification from USDOT to Agency of its failure to carry out the approved program, USDOT shall impose such sanctions as noted in Title 49, CFR, Part 26, which sanctions may include termination of the agreement or other measures that may affect the ability of Agency to obtain future USDOT financial assistance.
6. **Disadvantaged Business Enterprises (DBE) Obligations.** State and its contractor agree to ensure that DBE as defined in Title 49, CFR, Part 26, have the opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with federal funds. In this regard, Agency shall take all necessary and reasonable steps in accordance with Title 49, CFR, Part 26, to ensure that DBE have the opportunity to compete for and perform contracts. Neither State nor Agency and its contractors shall discriminate on the basis of race, color, national origin or sex in the award and performance of federally-assisted contracts. Agency shall carry out applicable requirements of Title 49, CFR, Part 26, in the award and administration of such contracts. Failure by Agency to carry out these requirements is a material breach of this Agreement, which may result in the termination of this contract or such other remedy as State deems appropriate.
7. The DBE Policy Statement and Obligations shall be included in all subcontracts entered into under this Agreement.
8. Agency agrees to comply with all applicable civil rights laws, rules and regulations, including Title V and Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990 (ADA), and Titles VI and VII of the Civil Rights Act of 1964.
9. The parties hereto agree and understand that they will comply with all applicable federal, state, and local laws, regulations, executive orders and ordinances applicable to the work including, but not limited to, the provisions of ORS 279C.505, 279C.515, 279C.520, 279C.530 and 279B.270, incorporated herein by reference and made a part hereof; Title 23 CFR Parts 1.11, 140, 710, and 771; Title 49 CFR Parts 18, 24 and 26; 2 CFR 225, and OMB CIRCULAR NO. A-133, Title 23, USC, Federal-Aid Highway Act; Title 41, Chapter 1, USC 51-58, Anti-Kickback Act; Title 42 USC; Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970, as amended and provisions of Federal-Aid Policy Guide (FAPG).

**STATE OBLIGATIONS**

**PROJECT FUNDING REQUEST**

10. State shall submit a Project funding request to FHWA with a request for approval of federal-aid participation in all engineering, right-of-way acquisition, eligible utility relocations and/or construction work for the Project. **No work shall proceed on any activity in which federal-aid participation is desired until such approval has been obtained.** The program

shall include services to be provided by State, Agency, or others. State shall notify Agency in writing when authorization to proceed has been received from FHWA. Major responsibility for the various phases of the Project will be as outlined in the Special Provisions. All work and records of such work shall be in conformance with FHWA rules and regulations.

## **FINANCE**

11. State shall, in the first instance, pay all reimbursable costs of the Project, submit all claims for federal-aid participation to FHWA in the normal manner and compile accurate cost accounting records. Agency may request a statement of costs to date at any time by submitting a written request. When the actual total cost of the Project has been computed, State shall furnish Agency with an itemized statement of final costs. Agency shall pay an amount which, when added to said advance deposit and federal reimbursement payment, will equal 100 percent of the final total actual cost. Any portion of deposits made in excess of the final total costs of Project, minus federal reimbursement, shall be released to Agency. The actual cost of services provided by State will be charged to the Project expenditure account(s) and will be included in the total cost of the Project.
12. If federal funds are used, State will specify the Catalog of Federal Domestic Assistance (CFDA) number in the Agreement. State will also determine and clearly state in the Agreement if recipient is a subrecipient or vendor, using criteria in Circular A-133.

## **PROJECT ACTIVITIES**

13. State shall, if the preliminary engineering work is performed by Agency or others, review and process or approve all environmental statements, preliminary and final plans, specifications and cost estimates. State shall, if they prepare these documents, offer Agency the opportunity to review and approve the documents prior to advertising for bids.
14. The party responsible for performing preliminary engineering for the Project shall, as part of its preliminary engineering costs, obtain all Project related permits necessary for the construction of said Project. Said permits shall include, but are not limited to, access, utility, environmental, construction, and approach permits. All pre-construction permits will be obtained prior to advertisement for construction.
15. State shall prepare contract and bidding documents, advertise for bid proposals, and award all contracts.
16. Upon State's award of a construction contract, State shall perform independent assurance testing in accordance with State and FHWA Standards, process and pay all contractor progress estimates, check final quantities and costs, and oversee and provide intermittent inspection services during the construction phase of the Project.
17. State shall, as a Project expense, assign a liaison person to provide Project monitoring as needed throughout all phases of Project activities (preliminary engineering, right-of-way acquisition, and construction). The liaison shall process reimbursement for federal participation costs.

## **RIGHT OF WAY**

18. State is responsible for proper acquisition of the necessary right of way and easements for construction and maintenance of the Project. Agency may perform acquisition of the necessary right of way and easements for construction and maintenance of the Project, provided Agency (or Agency's consultant) are qualified to do such work as required by the State's Right of Way Manual and have obtained prior approval from State's Region Right of Way office to do such work.
19. Regardless of who acquires or performs any of the right of way activities, a right of way services agreement shall be created by State's Region Right of Way office setting forth the responsibilities and activities to be accomplished by each party. State shall always be responsible for requesting project funding, coordinating certification of the right of way, and providing oversight and monitoring. Funding authorization requests for federal right of way funds must be sent through the State's Region Right of Way offices on all projects. All projects must have right of way certification coordinated through State's Region Right of Way offices (even for projects where no federal funds were used for right of way, but federal funds were used elsewhere on the Project). Agency should contact the State's Region Right of Way office for additional information or clarification.
20. State shall review all right of way activities engaged in by Agency to assure compliance with applicable laws and regulations. Agency agrees that right of way activities shall be in accord with the Uniform Relocation Assistance & Real Property Acquisition Policies Act of 1970, as amended, ORS Chapter 35, FHWA Federal-Aid Policy Guide, State's Right of Way Manual and the Code of Federal Regulations, Title 23, Part 710 and Title 49, Part 24.
21. If any real property purchased with federal-aid participation is no longer needed for the originally authorized purpose, the disposition of such property shall be subject to applicable rules and regulations, which are in effect at the time of disposition. Reimbursement to State and FHWA of the required proportionate shares of the fair market value may be required.
22. Agency insures that all Project right of way monumentation will be conducted in conformance with ORS 209.155.
23. State and Agency grants each other authority to enter onto the other's right of way for the performance of the Project.

## **AGENCY OBLIGATIONS**

### **FINANCE**

24. Federal funds shall be applied toward Project costs at the current federal-aid matching ratio, unless otherwise agreed and allowable by law. Agency shall be responsible for the entire match amount, unless otherwise agreed to and specified in the intergovernmental agreement.
25. Agency's estimated share and advance deposit.
  - a) Agency shall, prior to commencement of the preliminary engineering and/or right of way acquisition phases, deposit with State its estimated share of each phase. Exception may be made in the case of projects where Agency has

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written approval from State to use in-kind contributions rather than cash to satisfy all or part of the matching funds requirement.

- b) Agency's construction phase deposit shall be 110 percent of Agency's share of the engineer's estimate and shall be received prior to award of the construction contract. Any additional balance of the deposit, based on the actual bid must be received within forty-five (45) days of receipt of written notification by State of the final amount due, unless the contract is canceled. Any unnecessary balance of a cash deposit, based on the actual bid, will be refunded within forty-five (45) days of receipt by State of the Project sponsor's written request.
  - c) Pursuant to ORS 366.425, the advance deposit may be in the form of 1) money deposited in the State Treasury (an option where a deposit is made in the Local Government Investment Pool, and an Irrevocable Limited Power of Attorney is sent to the Highway Finance Office), or 2) an Irrevocable Letter of Credit issued by a local bank in the name of State, or 3) cash.
  - d) Agency may satisfy all or part of any matching funds requirements by use of in-kind contributions rather than cash when prior written approval has been given by State.
26. If the estimated cost exceeds the total matched federal funds available, Agency shall deposit its share of the required matching funds, plus 100 percent of all costs in excess of the total matched federal funds. Agency shall also pay 100 percent of the cost of any item in which FHWA will not participate. If Agency has not repaid any non-participating cost, future allocations of federal funds, or allocations of State Highway Trust Funds, to that Agency may be withheld to pay the non-participating costs. If State approves processes, procedures, or contract administration outside the Local Agency Guidelines that result in items being declared non-participating, those items will not result in the withholding of Agency's future allocations of federal funds or the future allocations of State Highway Trust Funds.
27. Costs incurred by State and Agency for services performed in connection with any phase of the Project shall be charged to the Project, unless otherwise mutually agreed upon.
28. If Agency makes a written request for the cancellation of a federal-aid project; Agency shall bear 100 percent of all costs as of the date of cancellation. If State was the sole cause of the cancellation, State shall bear 100 percent of all costs incurred. If it is determined that the cancellation was caused by third parties or circumstances beyond the control of State or Agency, Agency shall bear all development costs, whether incurred by State or Agency, either directly or through contract services, and State shall bear any State administrative costs incurred. After settlement of payments, State shall deliver surveys, maps, field notes, and all other data to Agency.
29. Agency shall follow requirements of the Single Audit Act. The requirements stated in the Single Audit Act must be followed by those local governments and non-profit organizations receiving \$500,000 or more in federal funds. The Single Audit Act of 1984, PL 98-502 as amended by PL 104-156, described in "OMB CIRCULAR NO. A-133", requires local governments and non-profit organizations to obtain an audit that includes internal controls and compliance with federal laws and regulations of all federally-funded programs in which



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the local agency participates. The cost of this audit can be partially prorated to the federal program.

30. Agency shall make additional deposits, as needed, upon request from State. Requests for additional deposits shall be accompanied by an itemized statement of expenditures and an estimated cost to complete the Project.
31. Agency shall present invoices for 100 percent of actual costs incurred by Agency on behalf of the Project directly to State's Liaison Person for review and approval. Such invoices shall identify the Project and Agreement number, and shall itemize and explain all expenses for which reimbursement is claimed. Billings shall be presented for periods of not less than one-month duration, based on actual expenses to date. All billings received from Agency must be approved by State's Liaison Person prior to payment. Agency's actual costs eligible for federal-aid or State participation shall be those allowable under the provisions of Title 23 CFR Parts 1.11, 140 and 710. Final billings shall be submitted to State for processing within three (3) months from the end of each funding phase as follows: 1) award date of a construction contract for preliminary engineering (PE) 2) last payment for right of way acquisition and 3) third notification for construction. Partial billing (progress payment) shall be submitted to State within three (3) months from date that costs are incurred. Final billings submitted after the three months shall not be eligible for reimbursement.
32. The cost records and accounts pertaining to work covered by this Agreement are to be kept available for inspection by representatives of State and FHWA for a period of six (6) years following the date of final voucher to FHWA. Copies of such records and accounts shall be made available upon request. For real property and equipment, the retention period starts from the date of disposition (Title 49 CFR 18.42).
33. State shall request reimbursement, and Agency agrees to reimburse State, for federal-aid funds distributed to Agency if any of the following events occur:
  - a) Right of way acquisition or actual construction of the facility for which preliminary engineering is undertaken is not started by the close of the tenth fiscal year following the fiscal year in which the federal-aid funds were authorized;
  - b) Right of way acquisition is undertaken utilizing federal-aid funds and actual construction is not started by the close of the twentieth fiscal year following the fiscal year in which the federal-aid funds were authorized for right of way acquisition.
  - c) Construction proceeds after the Project is determined to be ineligible for federal-aid funding (e.g., no environmental approval, lacking permits, or other reasons).
34. Agency shall maintain all Project documentation in keeping with State and FHWA standards and specifications. This shall include, but is not limited to, daily work records, quantity documentation, material invoices and quality documentation, certificates of origin, process control records, test results, and inspection records to ensure that projects are completed in conformance with approved plans and specifications.

## **RAILROADS**

35. Agency shall follow State established policy and procedures when impacts occur on railroad property. The policy and procedures are available through State's appropriate Region contact or State's Railroad Liaison. Only those costs allowable under Title 23 CFR Part 646, subpart B and Title 23 CFR Part 140, subpart I, shall be included in the total Project costs; all other costs associated with railroad work will be at the sole expense of Agency, or others. Agency may request State, in writing, to provide railroad coordination and negotiations. However, State is under no obligation to agree to perform said duties.

## **UTILITIES**

36. Agency shall follow State established Statutes, Policies and Procedures when impacts occur to privately or publicly-owned utilities. Only those utility relocations, which are eligible for federal-aid participation under, the FAPG, Title 23 CFR 645A, Subpart A and B, shall be included in the total Project costs; all other utility relocations shall be at the sole expense of Agency, or others. State will arrange for utility relocations/adjustments in areas lying within jurisdiction of State, if State is performing the preliminary engineering. Agency may request State in writing to arrange for utility relocations/adjustments lying within Agency jurisdiction, acting on behalf of Agency. This request must be submitted no later than twenty-one (21) weeks prior to bid let date. However, State is under no obligation to agree to perform said duties.
37. The State utility relocation policy, procedures and forms are available through the appropriate State's Region Utility Specialist or State Utility Liaison. Agency shall provide copies of all signed utility notifications, agreements and Utility Certification to the State Utility Liaison.

## **STANDARDS**

38. Agency agrees that design standards for all projects on the National Highway System (NHS) and the Oregon State Highway System shall be in compliance to standards specified in the current "State Highway Design Manual" and related references. Construction plans shall be in conformance with standard practices of State for plans prepared by its own staff. All specifications for the Project shall be in substantial compliance with the most current "Oregon Standard Specifications for Highway Construction".
39. Agency agrees that minimum design standards for non-NHS projects shall be recommended AASHTO Standards and in accordance with the current "Oregon Bicycle and Pedestrian Plan", unless otherwise requested by Agency and approved by State.
40. Agency agrees and will verify that the installation of traffic control devices shall meet the warrants prescribed in the "Manual on Uniform Traffic Control Devices and Oregon Supplements".
41. All plans and specifications shall be developed in general conformance with the current "Contract Plans Development Guide" and the current "Oregon Standard Specifications for Highway Construction" and/or guidelines provided.

42. The standard unit of measurement for all aspects of the Project shall be English Units. All Project documents and products shall be in English. This includes, but is not limited to, right of way, environmental documents, plans and specifications, and utilities.

### **GRADE CHANGE LIABILITY**

43. Agency, if a County, acknowledges the effect and scope of ORS 105.755 and agrees that all acts necessary to complete construction of the Project which may alter or change the grade of existing county roads are being accomplished at the direct request of the County.
44. Agency, if a City, hereby accepts responsibility for all claims for damages from grade changes. Approval of plans by State shall not subject State to liability under ORS 105.760 for change of grade.
45. Agency, if a City, by execution of Agreement, gives its consent as required by ORS 373.030(2) to any and all changes of grade within the City limits, and gives its consent as required by ORS 373.050(1) to any and all closure of streets intersecting the highway, if any there be in connection with or arising out of the project covered by the Agreement.

### **CONTRACTOR CLAIMS**

46. Agency shall, to the extent permitted by state law, indemnify, hold harmless and provide legal defense for State against all claims brought by the contractor, or others resulting from Agency's failure to comply with the terms of this Agreement.
47. Notwithstanding the foregoing defense obligations under Paragraph 46, neither Agency nor any attorney engaged by Agency shall defend any claim in the name of the State of Oregon or any agency of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without the prior written consent of the Oregon Attorney General. The State of Oregon may, at anytime at its election assume its own defense and settlement in the event that it determines that Agency is prohibited from defending the State of Oregon, or that Agency is not adequately defending the State of Oregon's interests, or that an important governmental principle is at issue or that it is in the best interests of the State of Oregon to do so. The State of Oregon reserves all rights to pursue any claims it may have against Agency if the State of Oregon elects to assume its own defense.

### **MAINTENANCE RESPONSIBILITIES**

48. Agency shall, upon completion of construction, thereafter maintain and operate the Project at its own cost and expense, and in a manner satisfactory to State and FHWA.

### **WORKERS' COMPENSATION COVERAGE**

49. All employers, including Agency, that employ subject workers who work under this Agreement in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage unless such employers are exempt under ORS 656.126. Employers Liability Insurance with coverage limits of not less than \$500,000 must be included. Agency shall ensure that each of its contractors complies with these requirements.

## **LOBBYING RESTRICTIONS**

50. Agency certifies by signing the Agreement that:

- a) No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- b) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, and contracts and subcontracts under grants, subgrants, loans, and cooperative agreements) which exceed \$100,000, and that all such subrecipients shall certify and disclose accordingly.
- d) This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Title 31, USC Section 1352.
- e) Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Paragraphs 36, 37, and 48 are not applicable to any local agency on state highway projects.

**INTERGOVERNMENTAL AGREEMENT  
FOR RIGHT OF WAY SERVICES**

Brookings (Kalmiopsis Elementary School): Safety Improvements

THIS AGREEMENT is made and entered into by and between the STATE OF OREGON, acting by and through its Department of Transportation, hereinafter referred to as "State"; and the City of Brookings, acting by and through its elected officials, hereinafter referred to as "Agency," both herein referred to individually or collectively as "Party" or "Parties."

**RECITALS**

1. By the authority granted in Oregon Revised Statute (ORS) 190.110, 283.110, 366.572 and 366.576, state agencies may enter into agreements with units of local government or other state agencies for the performance of any or all functions and activities that a Party to the agreement, its officers, or agents have the authority to perform.
2. By the authority granted in ORS 366.425, State may accept deposits of money or an irrevocable letter of credit from any county, city, road district, person, firm, or corporation for the performance of work on any public highway within the State. When said money or a letter of credit is deposited, State shall proceed with the Project. Money so deposited shall be disbursed for the purpose for which it was deposited.
3. That certain Easy Street is under the jurisdiction and control of Agency and Agency may enter into an agreement for the acquisition of real property.
4. N/A, is a part of the state highway system under the jurisdiction and control of the Oregon Transportation Commission (OTC).
5. This Agreement shall define roles and responsibilities of the Parties regarding the real property to be used as part of right of way for road, street or construction of public improvement. The scope and funding may be further described in LOCAL AGENCY Agreement number 28171. Hereinafter, all acts necessary to accomplish services in this Agreement shall be referred to as "Project."

**NOW THEREFORE**, the premises being in general as stated in the foregoing Recitals, it is agreed by and between the Parties hereto as follows:

**TERMS OF AGREEMENT**

1. Under such authority, State and Agency agree to perform certain right of way activities shown in Special Provisions - Exhibit A, attached hereto and by this reference made a part hereof. If the State performs right of way services on behalf of the Agency, under

no conditions shall Agency's obligations for said services exceed a maximum of \$5,000, including all expenses, unless agreed upon by both Parties.

2. The work shall begin on the date all required signatures are obtained and shall be completed no later than July 31, 2022, on which date this Agreement automatically terminates unless extended by a fully executed amendment.
3. The process to be followed by the Parties in carrying out this Agreement is set out in Exhibit A.
4. It is further agreed both Parties will strictly follow the rules, policies and procedures of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, ORS Chapter 35 and the "State Right of Way Manual".

#### **STATE OBLIGATIONS**

1. State shall perform the work described in Special Provisions - Exhibit A.
2. With the exception of work related to appraisals, State shall not enter into any subcontracts for any of the work scheduled under this Agreement without obtaining prior written approval from Agency.
3. If the State performs right of way services on behalf of the Agency, State shall perform the service under this Agreement as an independent contractor and shall be exclusively responsible for all costs and expenses related to its employment of individuals to perform the work under this Agreement including, but not limited to, retirement contributions, workers compensation, unemployment taxes, and state and federal income tax withholdings.
4. State's right of way contact person for this Project is Craig Pearsall, ODOT Sr. Right of Way Agent, 3500 NW Stewart Pkwy, Roseburg, OR 97470-1687, 541-957-3552, craig.a.pearsall@odot.state.or.us, or assigned designee upon individual's absence. State shall notify the other Party in writing of any contact changes during the term of this Agreement.

#### **AGENCY OBLIGATIONS**

1. Agency shall perform the work described in Special Provisions - Exhibit A.
2. Agency certifies, at the time this Agreement is executed, that sufficient funds are available and authorized for expenditure to finance costs of this Agreement within Agency's current appropriation or limitation of current budget. Agency is willing and able to finance all, or its pro-rata share of all, costs and expenses incurred in the Project up to its maximum.

3. Agency may utilize its own staff or subcontract any of the work scheduled under this Agreement provided Agency receives prior written approval of any staff, consultant or contractor by the State's Region Right of Way office.
4. Agency represents that this Agreement is signed by personnel authorized to do so on behalf of Agency.
5. Agency's right of way contact person for this Project is Loree Pryce, Public Works Director, 898 Elk Drive, Brookings OR 97415, (541) 469-1151, lpryce@brookings.or.us, or assigned designee upon individual's absence. Agency shall notify the other Party in writing of any contact information changes during the term of this Agreement.

#### **PAYMENT FOR SERVICES AND EXPENDITURES:**

1. In consideration for the services performed by State (as identified in the attached Exhibit A), Agency agrees to pay or reimburse State a maximum amount of \$5,000. Said maximum amount shall include reimbursement for all expenses, including travel expenses. Travel expenses shall be reimbursed to State in accordance with the current Oregon Department of Administrative Services' rates. Any expenditure beyond federal participation will be from, or reimbursed from, Agency funds. Payment in Agency and/or federal funds in any combination shall not exceed said maximum, unless agreed upon by both Parties.
2. Agency agrees to reimburse salaries and payroll reserves of State employees working on Project, direct costs, costs of rental equipment used, and per-diem expenditures.

#### **GENERAL PROVISIONS:**

1. This Agreement may be terminated by either Party upon thirty (30) days' notice, in writing and delivered by certified mail or in person, under any of the following conditions:
  - a. If either Party fails to provide services called for by this Agreement within the time specified herein or any extension thereof.
  - b. If either Party fails to perform any of the other provisions of this Agreement or so fails to pursue the work as to endanger performance of this Agreement in accordance with its terms, and after receipt of written notice fails to correct such failures within ten (10) days or such longer period as may be authorized.
  - c. If Agency fails to provide payment of its share of the cost of the Project.

- d. If State fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow State, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement.
  - e. If federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the work under this Agreement is prohibited or State is prohibited from paying for such work from the planned funding source.
2. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
  3. Agency acknowledges and agrees that State, the Oregon Secretary of State's Office, the federal government, and their duly authorized representatives shall have access to the books, documents, papers, and records of Agency which are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of six (6) years after final payment. Copies of applicable records shall be made available upon request. Payment for costs of copies is reimbursable by State.
  4. Agency shall comply with all federal, state, and local laws, regulations, executive orders and ordinances applicable to the work under this Agreement, including, without limitation, the provisions of ORS 279B.220, 279B.225, 279B.230, 279B.235 and 279B.270 incorporated herein by reference and made a part hereof. Without limiting the generality of the foregoing, Agency expressly agrees to comply with (i) Title VI of Civil Rights Act of 1964; (ii) Title V and Section 504 of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659A.142; (iv) all regulations and administrative rules established pursuant to the foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.
  5. All employers that employ subject workers who work under this Agreement in the State of Oregon shall comply with ORS 656.017 and provide the required workers' compensation coverage unless such employers are exempt under ORS 656.126. Employers Liability insurance with coverage limits of not less than \$500,000 must be included. Both Parties shall ensure that each of its subcontractors complies with these requirements.
  6. If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third Party Claim") against State or Agency with respect to which the other Party may have liability, the notified Party must promptly notify the other Party in writing of the Third Party Claim and deliver to the other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Each Party is entitled to participate in the defense of a Third Party Claim and to defend a Third Party Claim with counsel of its own choosing. Receipt by a Party of the notice and copies required in this paragraph and meaningful opportunity for the Party to participate in the investigation, defense and



settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to that Party's liability with respect to the Third Party Claim.

7. With respect to a Third Party Claim for which State is jointly liable with Agency (or would be if joined in the Third Party Claim), State shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by Agency in such proportion as is appropriate to reflect the relative fault of State on the one hand and of Agency on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of State on the one hand and of Agency on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. State's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if State had sole liability in the proceeding.
8. With respect to a Third Party Claim for which Agency is jointly liable with State (or would be if joined in the Third Party Claim), Agency shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by State in such proportion as is appropriate to reflect the relative fault of Agency on the one hand and of State on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of Agency on the one hand and of State on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. Agency's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if it had sole liability in the proceeding.
9. The Parties shall attempt in good faith to resolve any dispute arising out of this Agreement. In addition, the Parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation.
10. If federal funds are involved in this Agreement, Exhibits B and C are attached hereto and by this reference made a part of this Agreement, and are hereby certified to by Agency.
11. If federal funds are involved in this Agreement, Agency, as a recipient of federal funds, pursuant to this Agreement with the State, shall assume sole liability for Agency's breach of any federal statutes, rules, program requirements and grant provisions applicable to the federal funds, and shall, upon Agency's breach of any such conditions that requires the State to return funds to the Federal Highway Administration, hold harmless and indemnify the State for an amount equal to the

funds received under this Agreement; or if legal limitations apply to the indemnification ability of Agency, the indemnification amount shall be the maximum amount of funds available for expenditure, including any available contingency funds or other available non-appropriated funds, up to the amount received under this Agreement.

12. The Parties hereto agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be invalid, unenforceable, illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.
13. This Agreement may be executed in several counterparts (facsimile or otherwise) all of which when taken together shall constitute one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of this Agreement so executed shall constitute an original.
14. This Agreement and attached exhibits constitute the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either Party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of State to enforce any provision of this Agreement shall not constitute a waiver by State of that or any other provision.

**THE PARTIES**, by execution of this Agreement, hereby acknowledge that their signing representatives have read this Agreement, understand it, and agree to be bound by its terms and conditions.

**Signature Page to Follow**

**CITY OF BROOKINGS**, by and through  
its elected officials

By \_\_\_\_\_

Date \_\_\_\_\_

By \_\_\_\_\_

Date \_\_\_\_\_

**APPROVED AS TO LEGAL  
SUFFICIENCY**

By \_\_\_\_\_

Date \_\_\_\_\_

**Agency Contact:**

Loree Pryce  
Public Works Director  
898 Elk Drive  
Brookings, OR 97415  
(541) 469-1151  
lpryce@brookings.or.us

**State Contact:**

Craig Pearsall, Sr. Agent  
ODOT Region 3 Right of Way  
3500 NW Stewart Pkwy  
Roseburg, OR 97470-1687  
541-957-3552  
craig.a.pearsall@odot.state.or.us

**STATE OF OREGON**, by and through  
its Department of Transportation

By \_\_\_\_\_  
State Right of Way Manager

Date \_\_\_\_\_

**APPROVAL RECOMMENDED**

By \_\_\_\_\_  
Region 3 Right of Way Manager

Date \_\_\_\_\_

By \_\_\_\_\_

Date \_\_\_\_\_

**APPROVED AS TO LEGAL SUFFICIENCY**

By N/A  
Assistant Attorney General

Date \_\_\_\_\_

**APPROVED**

(If Litigation Work Related to Condemnation  
is to be done by State)

By N/A  
Chief Trial Counsel

Date \_\_\_\_\_

**SPECIAL PROVISIONS EXHIBIT A**  
**Right of Way Services**

**THINGS TO BE DONE BY STATE OR AGENCY**

1. Pursuant to this Agreement, the work performed on behalf of the Agency can be performed by the Agency, the Agency's consultant, or a State Flex Services consultant. The work may be performed by Agency staff or any of these representatives on behalf of Agency individually or collectively provided they are qualified to perform such functions and after receipt of approval from the State's Region 3 Right of Way Manager. Said approval must be obtained, in writing, prior to the performance of said activities.
2. With the exception of work related to appraisals, State shall not enter into any subcontracts for any of the work scheduled under this Agreement without obtaining prior written approval from Agency.
3. Both Parties will strictly follow the rules, policies and procedures of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, ORS Chapter 35 and the "State Right of Way Manual".

**Instructions:** Insert either: State, Agency, or N/A on each line.

**A. Preliminary Phase**

1. Agency shall provide preliminary cost estimates.
2. Agency shall make preliminary contacts with property owners.
3. Agency shall gather and provide data for environmental documents.
4. Agency shall develop access and approach road list.
5. Agency shall help provide field location and Project data.

**B. Acquisition Phase**

1. General:
  - a. When doing the Acquisition work, Agency shall provide State with a status report of the Project monthly.
  - b. Title to properties acquired shall be in the name of the Agency.
  - c. Prior to the initiation of acquisitions, if title to the properties is to be acquired in the name of the Agency, the Agency shall adopt a resolution of intention and determination of necessity in accord with ORS 35.235 and ORS 35.610, authorizing acquisition and condemnation. If the Oregon Department of Justice

is to handle condemnation work, prior approval evidenced by Chief Trial Counsel, Department of Justice, signature on this Agreement is required; and authorization for such representation shall be included in the resolution adopted by the Agency. Prior approval by Oregon Department of Justice is required.

**2. Legal Descriptions:**

- a. Agency shall provide sufficient horizontal control, recovery and retracement surveys, vesting deeds, maps and other data so that legal descriptions can be written.
- b. Agency shall provide construction plans and cross-section information for the Project.
- c. Agency shall write legal descriptions and prepare right of way maps. If the Agency acquires any right of way on a State highway, the property descriptions and right of way maps shall be based upon centerline stationing and shall be prepared in accordance with the current "State Right of Way & Rail/Utility Coordination Manual", "Contractor Services Guide" and the "Right of Way Engineering Manual". The preliminary and final versions of the property descriptions and right of way maps must be reviewed and approved by the State.
- d. Agency shall specify the degree of title to be acquired (e.g., fee, easement).

**3. Real Property and Title Insurance:**

- a. Agency shall provide preliminary title reports, if State determines they are needed, before negotiations for acquisition commence.
- b. Agency shall determine sufficiency of title (taking subject to). If the Agency acquires any right of way on a State highway, sufficiency of title (taking subject to) shall be determined in accordance with the current "State Right of Way Manual" and the "Contractor Services Guide". Agency shall clear any encumbrances necessary to conform to these requirements, obtain Title Insurance policies as required and provide the State copies of any title policies for the properties acquired.
- c. State shall conduct a Level 1 Hazardous Materials Study within project limits to detect presence of hazardous materials on any property purchase, excavation or disturbance of structures, as early in the project design as possible, but at a minimum prior to property acquisition or approved design.
- d. Agency shall conduct a Level 2 Site Investigation of sufficient scope to confirm the presence of contamination, determine impacts to properties and develop special provisions and cost estimates, if the Level 1 Corridor study

indicates the potential presence of contamination that could impact the properties.

- If contamination is found, a recommendation for remediation will be presented to Agency.

e. Agency shall be responsible for arrangement of any necessary remediation.

f. Agency shall conduct asbestos, lead paint and other hazardous materials surveys for all structures that will be demolished, renovated or otherwise disturbed. Asbestos surveys must be conducted by an AHERA (asbestos hazard emergency response act) certified inspector.

4. Appraisal:

a. Agency shall conduct the valuation process of properties to be acquired.

b. Agency shall perform the Appraisal Reviews.

c. Agency shall recommend Just Compensation, based upon a review of the valuation by qualified personnel.

5. Negotiations:

a. Agency shall tender all monetary offers to land-owners in writing at the compensation shown in the appraisal review. Conveyances taken for more or less than the approved Just Compensation will require a statement justifying the settlement. Said statement will include the consideration of any property trades, construction obligations and zoning or permit concessions. If State performs this function, it will provide the Agency with all pertinent letters, negotiation records and obligations incurred during the acquisition process.

b. State and Agency shall determine a date for certification of right of way and agree to cosign the State's Right of Way Certification form. State and Agency agree possession of all right of way shall occur prior to advertising of any construction contract, unless appropriate exceptions have been agreed to by Agency and State.

c. Agency agrees to file all Recommendations for Condemnation at least seventy (70) days prior to the right of way certification date if negotiations have not been successful on those properties.

6. Relocation:

a. Agency shall perform any relocation assistance, make replacement housing computations, and do all things necessary to relocate any displaced parties on the Project.

- b. Agency shall make all relocation and moving payments for the Project.
- c. Agency shall perform the relocation appeal process.

#### **C. Closing Phase**

- 1. Agency shall close all transactions. This includes drawing of deeds, releases and satisfactions necessary to clear title, obtaining signatures on release documents, and making all payments. If Agency is handling the closing, State shall submit all signed Final Report packets, information required by the Uniform Act, and agreements to the Agency.
- 2. Agency shall record conveyance documents, only upon acceptance by appropriate agency.

#### **D. Property Management**

- 1. Agency shall take possession of all the acquired properties. There shall be no encroachments of buildings or other private improvements allowed upon the State highway right of way.
- 2. Agency shall dispose of all improvements and excess land.

#### **E. Condemnation**

- 1. Agency may offer mediation if the parties have reached an impasse.
- 2. Agency shall perform all administrative functions in preparation of the condemnation process, such as preparing final offer and complaint letters.
- 3. Agency shall perform all legal and litigation work related to the condemnation process. (If State agrees to handle legal and litigation work, prior approval evidenced by Chief Trial Counsel, Department of Justice, signature on this Agreement is required. Where it is contemplated that property will be obtained for Agency for the Project, such approval will be conditioned on passage of a resolution by Agency substantially in the form attached hereto as Exhibit D, and by this reference made a part hereof, specifically identifying the property being acquired.)
- 4. Where State shall perform legal or litigation work related to the condemnation process, Agency acknowledges, agrees and undertakes to assure that no member of Agency's board or council, nor Agency's mayor, when such member or mayor is a practicing attorney, nor Agency's attorney nor any member of the law firm of Agency's attorney, board or council member, or mayor, will represent any party, except Agency, against the State of Oregon, its employees or contractors, in any matter arising from or related to the Project which is the subject of this Agreement.

#### **F. Transfer of Right of Way to State**

If applicable, Agency agrees to transfer to the State all right of way acquired on the State highway which was acquired in the Agency's name. The specific method of conveyance will be determined by the Agency and the State at the time of transfer and shall be coordinated by the State's Region Right of Way Manager. Agency agrees to provide the State all information and file documentation the State deems necessary to integrate the right of way into the State's highway system. At a minimum, this includes: copies of all recorded conveyance documents used to vest title in the name of the Agency during the right of way acquisition process, and the Agency's Final Report or Summary Report for each acquisition file that reflects the terms of the acquisition and all agreements with the property owner(s).

#### **G. Transfer of Right of Way to Agency**

If applicable, State agrees to transfer and Agency agrees to accept all right of way acquired on the Agency's facility which was acquired in the State's name. The specific method of conveyance will be determined by the State and the Agency at the time of transfer and shall be coordinated by the State's Region Right of Way Manager. If requested, State agrees to provide Agency information and file documentation associated with the transfer.



**RESOLUTION EXERCISING THE POWER OF EMINENT DOMAIN EXHIBIT D**  
**Right of Way Services**

WHEREAS the City of Brookings may exercise the power of eminent domain pursuant to its charter and the Law of the State of Oregon generally, when the exercise of such power is deemed necessary by the City's governing body to accomplish public purposes for which the City has responsibility;

WHEREAS the City has the responsibility of providing safe transportation routes for commerce, convenience and to adequately serve the traveling public;

WHEREAS the project or projects known as Kalmiopsis Elementary School have been planned in accordance with appropriate engineering standards for the construction, maintenance or improvement of said transportation infrastructure such that property damage is minimized, transportation promoted, travel safeguarded; and

WHEREAS to accomplish the project or projects set forth above it is necessary to acquire the interests in the property described in "Exhibit A," attached to this resolution and, by this reference incorporated herein; now, therefore

BE IT HEREBY RESOLVED by Council:

1. The foregoing statements of authority and need are, in fact, the case. The project or projects for which the property is required and is being acquired are necessary in the public interest, and the same have been planned, designed, located, and will be constructed in a manner which will be most compatible with the greatest public good and the least private injury;
2. The power of eminent domain is hereby exercised with respect to each of the interests in property described in Exhibit A. Each is acquired subject to payment of just compensation and subject to procedural requirements of Oregon law;
3. City's staff and Counsel are authorized and requested to attempt to agree with the owner and other persons in interest as to the compensation to be paid for each acquisition, and, in the event that no satisfactory agreement can be reached, to commence and prosecute such condemnation proceedings as may be necessary to finally determine just compensation or any other issue appropriate to be determined by a court in connection with the acquisition. This authorization is not intended to expand the jurisdiction of any court to decide matters determined above or determinable by the Commission.
4. City expressly reserves its jurisdiction to determine the necessity or propriety of any acquisition, its quantity, quality, or locality, and to change or abandon any acquisition.

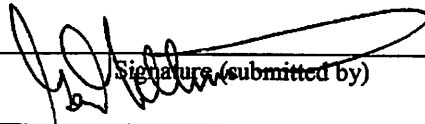
DATED this \_\_\_\_ day of \_\_\_\_\_, 20\_\_

# CITY OF BROOKINGS

## COUNCIL AGENDA REPORT

Meeting Date: March 26, 2012

Originating Dept: City Manager

  
\_\_\_\_\_  
Signature (submitted by)  
\_\_\_\_\_  
City Manager Approval

---

**Subject:** Street Light Agreement with Coos Curry Electric Cooperative

**Recommended Motion:**

Motion to authorize the City Manager to execute the Side Letter Agreement with Coos Curry Electric Cooperative regarding street lighting costs.

**Financial Impact:**

A reduction of approximately \$7,800 annually in street lighting energy costs.

**Background/Discussion:**

As a part of the franchise fee discussion, Coos Curry Electric Cooperative (CCEC) recently conducted an audit to identify all street lights in the City that are covered under the franchise fee in lieu agreement. CCEC is currently providing 289 street lights to the City under the franchise agreement. This includes the lights on the Chetco River Bridge. According to the franchise agreement, CCEC is to provide 279 lights as of the date of the agreement plus one additional light for each additional 21 residents. Based upon the current population estimate from Portland State University CCEC should be providing 307 lights. CCEC agrees with this number. According to CCEC management, their files had indicated they were providing 302 street lights; however, the recent field audit confirmed that they are providing 289; this includes two new lights on Lone Ranch Parkway adjacent to the College and a new street light at Bi Mart.

The City pays separately for electricity and maintenance of the new downtown street lights, which the City owns. Staff believes that the difference between the 302 and 289 above is: When the new downtown lights were installed, existing street lights located on CCEC poles were removed, decreasing the overall number of "franchise lights." The City is currently paying about \$7,800 annually in electric costs for the newer downtown street lights; the City pays CCEC separately for maintenance of these street lights.

CCEC management suggested that CCEC assume the electric cost for these downtown lights to bridge the gap between the 289 street lights they are now providing and the 307 street lights they should be providing under the terms of the franchise agreement. The CCEC Board has approved a side letter agreement to that effect.

**Attachment(s):**

- a. Side Letter Agreement to Coos-Curry Electric Cooperative Franchise Agreement

**SIDE LETTER AGREEMENT TO  
COOS-CURRY ELECTRIC COOPERATIVE FRANCHISE AGREEMENT**

This Side Letter Agreement ("Agreement") to the Coos-Curry Electric Cooperative Franchise Agreement (Ord. No. 02-O-555, as amended in Ord. No. 04-O-555.A) is hereby entered into, by and between, the **City of Brookings**, an Oregon municipal Corporation ("City") and **Coos-Curry Electric Cooperative, Inc.**, an Oregon non-profit corporation ("CCEC"). The City and CCEC are referred to jointly in this Agreement as "Parties" and individually as a "Party."

WHEREAS, on November 25, 2002, the Parties entered into have a 20-year franchise agreement for the provision of providing electric utility services within the City of Brookings for 20 years beginning December 25, 2002; and

WHEREAS, for July 2011 the current population estimate for Brookings is 6,360 residents, with this increase in population CCEC now should be providing 307 lights; and

WHEREAS, CCEC is currently providing 289 lights, including 9 lights on the Dot Martin Bridge; and

WHEREAS, this Agreement provides for consideration from CCEC to the City as a way to fulfill CCEC's obligations under the terms of the current franchise agreement.

NOW, THEREFORE, the Parties, for valuable consideration, the receipt and adequacy of which are hereby acknowledged, covenant and agree as follows:

**1.0 "IN LIEU OF" SERVICES.** The franchise agreement provides that CCEC will provide certain services in lieu of a franchise tax, license fee or similar charge. The following "in lieu of" services are considered by the City to constitute full consideration under the franchise agreement based upon a City population of 6,360.

**1.1 Maintenance and Electricity of 289 Current Street Lights.** CCEC shall maintain and provide electricity, at no charge to the City, for the 289 street lights that currently receive such service. The 9 lights on Dot Martin Bridge are maintained by the State of Oregon.

**1.2 Electricity to City-Owned and Maintained Street Lights.** CCEC shall provide electricity, at no-charge to the City, for the 64 City-owned and maintained street lights in the downtown area. Maintenance and bulb replacement will remain the responsibility of the City. No modifications that would increase the electrical load will be allowed to the circuits that serve these 64 lights. The lights are shown on the map which is included as Attachment A.

## **2.0 POPULATION AUDIT.**

**2.1 Every Year.** Every year, on January 2, CCEC shall conduct a population audit by comparing the Portland State University's annual certified population estimate for the City of Brookings to the "in lieu of" services being provided.

**2.2 Additional Lights.** Based upon the population audit, every January CCEC shall add or subtract lights as necessary under the current Franchise Agreement; that is, for every 21 persons over 6,360 residing within Brookings, CCEC shall provide the City with one additional street light with wattage not to exceed 200 watts, including installation, maintenance, replacement of bulbs, and electricity for operation of the same.

## **3.0 GENERAL PROVISIONS**

**3.1 Third Parties.** The provisions of this Agreement are for the benefit of the Parties only and are not for the benefit of any other persons as third-party beneficiaries, or otherwise, and this Agreement does not confer any rights, express or implied, upon any person not a Party to this Agreement.

**3.2 Original Franchise Agreement Remains in Effect.** Except as explicitly provided in this Amendment, all provisions of the Franchise Agreement, Ordinance No. 04-0-555.A shall remain in full force and effect.

**3.3 Interpretation.** If any provision of this Agreement conflicts with any provision of the Franchise Agreement, this Agreement will control.

**3.4 Severability.** If any clause, sentence or any other provision of the terms and conditions of this Agreement becomes illegal, null or void for any reason, the remaining provisions will remain in full force and effect to the fullest extent permitted by law.

**3.5 Waivers.** Except as otherwise expressly provided in this Agreement, no waiver made by either Party with respect to the performance, or manner or time thereof, of any obligation of the other Party or any condition inuring to its benefit under this Agreement will be considered a waiver of any other rights of the Party making the waiver. No waiver by either Party of any provision of this Agreement or any breach thereof may be of any force or effect unless in writing; and no such waiver may be construed to be a continuing waiver.

**3.6 Governing Law; Venue.** This Agreement is governed by the laws of the State of Oregon. Any action or suit to enforce or construe any provision of this Agreement by any Party must be brought in the Circuit Court of the State of Oregon for Curry County, or the United States District Court for the District of Oregon in Medford, Oregon.

**3.7 Modifications.** Any modifications to this Amendment and the Franchise Agreement must be made in writing and signed by all Parties. The Parties recognize that circumstances may change and that it may be in the best interest of all Parties that Agreement be amended from time to time. It is incumbent upon the party seeking an amendment to the Franchise Agreement to demonstrate the need for the change and how the proposed change is in

the best interest of each party. For this reason, the Parties will consider changes that may be proposed by the other during the term of the Franchise Agreement and will negotiate in good faith in an attempt to reach agreement.

**3.8 Successors and Assigns.** The benefits conferred by this Agreement, and the obligations assumed thereunder, will inure to the benefit of and bind the successors and assigns of the Parties.

**3.9 No Partnership.** Nothing contained in this Agreement or any acts of the Parties hereby may be deemed or construed by the Parties, or by any third person, to create the relationship of principal and agent, or of partnership, or of joint venture, or any association between any of the Parties.

IN WITNESS WHEREOF, the Parties have executed this Agreement by affixing the signatures of their authorized representatives below.

*Executed on this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, at Brookings, Oregon.*

**CITY OF BROOKINGS**

ATTEST:

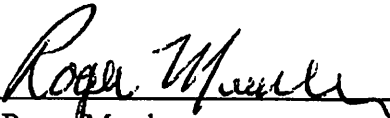
By: \_\_\_\_\_  
Gary Milliman, City Manager

\_\_\_\_\_  
Joyce Heffington, City Recorder

APPROVED AS TO FORM:

\_\_\_\_\_  
Martha D. Rice, City Attorney

**COOS-CURRY ELECTRIC COOPERATIVE, INC.**

By:   
Name: Roger Meader  
Title: General Manager/CEO

# **City of Brookings**

## **CITY COUNCIL MEETING MINUTES**

**Monday, March 12, 2012**

City Hall Council Chambers, 898 Elk Drive, Brookings, OR 97415

The City Council met in Executive Session at 6:00pm, in the City Manager's office under authority of ORS 192.660.2 (e), "to conduct deliberations with persons designated by the governing body to negotiate real property transactions," and ORS 192.660.2 (d) "to deliberate with the City Manager as the person designated by the City Council to carry on labor negotiations."

### **Call to Order**

Council President Ron Hedenskog called the meeting to order at 7:00pm.

### **Roll Call**

Council Present: Council President Ron Hedenskog and Councilors Dave Gordon, Jake Pieper, and Brent Hodges; a quorum present. Mayor Anderson was absent.

Staff Present: City Manager Gary Milliman, Planning Director Dianne Morris, Public Works Director Loree Pryce, City Attorney Martha Rice and City Recorder Joyce Heffington.

Others Present: Curry Coastal Pilot Editor Scott Graves and approximately one member of the public.

### **Ceremonies/Appointments/Announcements**

**Councilor Pieper moved, a second followed and Council voted unanimously to reappoint Cheryl McMahon to Planning Commission Position #2.**

**Councilor Gordon moved, a second followed and Council voted unanimously to appoint Pat Brown to Parks and Recreation Position #4.**

### **Public Comment**

Carolyn Milliman, Brookings, wished everyone a happy St. Patrick 's Day and reminded them to wear green for good luck.

### **Staff Reports**

Authorize the Public Art Committee to create an inventory and recommendations for City-owned art.

Director Morris gave the staff report.

Councilor Pieper asked what was to be accomplished and Morris said an inventory with recommendations as to, for example, artwork that may need repair.

**Councilor Hodges moved, a second followed and Council voted unanimously to authorize the Public Art Committee to create an inventory and recommendations for City-owned art.**

Letter of support for Federal Tiger IV Grant application.

Director Morris presented the staff report.

**Councilor Pieper moved, a second followed and Council voted unanimously to approve a letter of support for Federal Tiger IV Grant application.**

Authorize the City Engineer to finalize design plans and specifications and include Cove Road Water Main Replacement in the scope of the Cove Road project area.

Director Pryce provided the staff report.

Councilor Pieper asked if there was a breakdown of the System Development/System Replacement Funds for the project and Pryce said that this had yet to be determined but she expected something close to a fifty-fifty split.

**Councilor Hodges moved, a second followed and Council voted unanimously to authorize the City Engineer to finalize design plans and specifications and include the Cove Road Water Main Replacement in the construction scope for the Cove Road improvement project area.**

Authorize the City Manager and City Attorney to develop a draft agreement with the North Bank Land Owners Group concerning sewer service extension to North Bank Chetco River Road.

City Manager Milliman gave the staff report.

Council President Hedenskog asked about Urban Renewal funds for the project and Milliman said \$200,000 would help bridge the gap between the existing sewer line and the first property to be served by the new line; this portion of the project would be eligible for Urban Renewal funds.

**Councilor Pieper moved, a second followed and Council voted unanimously to authorize the City Manager and City Attorney to develop a draft agreement with the North Bank Land Owners Group concerning sewer service extension to North Bank Chetco River Road.**

**Consent Calendar**

1. Approve Council minutes for February 27, 2012.
2. Approve Liquor License Application for Bi-Mart Corporation.
3. Accept February, 2012, Vouchers in the amount of \$301,621.63.

**Councilor Pieper moved, a second followed and Council voted unanimously to approve the Consent Calendar as written.**

**Adjournment**

Councilor Gordon moved, a second followed and Council voted unanimously to adjourn by voice vote at 7:15pm.

Respectfully submitted:

ATTESTED:  
this \_\_\_\_\_ day of \_\_\_\_\_ 2012:

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Larry Anderson, Mayor

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Joyce Heffington, City Recorder

**CITY OF BROOKINGS  
FUND SUMMARY  
FOR THE 8 MONTHS ENDING FEBRUARY 29, 2012**

**GENERAL FUND**

	<u>BUDGET</u>	<u>PERIOD ACTUAL</u>	<u>YTD ACTUAL</u>	<u>REMAINING BUDGET</u>	<u>PCNT</u>
<b>REVENUE</b>					
TAXES	2,473,998.00	20,286.40	173,897.74	2,298,998.28	7.0
LICENSES AND PERMITS	94,500.00	4,286.51	64,850.79	29,649.21	68.6
INTERGOVERNMENTAL	569,000.00	16,870.51	88,903.68	480,096.34	15.6
CHARGES FOR SERVICES	142,500.00	35,486.98	120,038.58	22,461.42	84.2
OTHER REVENUE	94,500.00	1,705.39	54,606.50	39,893.50	57.8
TRANSFERS IN	530,591.00	.00	.00	530,591.00	.0
	<u>3,805,087.00</u>	<u>78,625.79</u>	<u>502,397.27</u>	<u>3,402,689.73</u>	<u>12.9</u>
<b>EXPENDITURES</b>					
<b>JUDICIAL:</b>					
PERSONAL SERVICES	13,539.00	.00	.00	13,539.00	.0
MATERIAL AND SERVICES	7,300.00	300.00	2,580.00	4,710.00	35.5
CAPITAL OUTLAY	12,500.00	.00	.00	12,500.00	.0
	<u>33,339.00</u>	<u>300.00</u>	<u>2,580.00</u>	<u>30,749.00</u>	<u>7.8</u>
<b>LEGISLATIVE/ADMINISTRATION:</b>					
PERSONAL SERVICES	228,852.00	18,761.85	160,252.24	68,399.76	70.7
MATERIAL AND SERVICES	85,700.00	4,630.70	82,455.73	3,244.27	96.2
CAPITAL OUTLAY	.00	.00	.00	.00	.0
	<u>312,352.00</u>	<u>23,392.55</u>	<u>242,707.97</u>	<u>69,644.03</u>	<u>77.7</u>
<b>POLICE:</b>					
PERSONAL SERVICES	1,775,929.00	128,937.47	1,201,128.98	574,800.02	67.6
MATERIAL AND SERVICES	155,740.00	16,848.83	89,405.71	66,334.29	57.4
CAPITAL OUTLAY	401,100.00	4,998.00	65,788.65	335,311.35	16.4
TRANSFERS OUT	15,000.00	.00	.00	15,000.00	.0
	<u>2,347,769.00</u>	<u>150,782.30</u>	<u>1,356,323.34</u>	<u>991,445.66</u>	<u>57.8</u>
<b>FIRE:</b>					
PERSONAL SERVICES	194,065.00	15,521.20	133,387.62	60,677.38	68.7
MATERIAL AND SERVICES	124,240.00	10,372.72	63,717.58	60,522.44	51.3
CAPITAL OUTLAY	38,600.00	.00	36,885.01	1,914.99	95.0
TRANSFERS OUT	.00	.00	.00	.00	.0
	<u>356,905.00</u>	<u>25,893.92</u>	<u>233,790.19</u>	<u>123,114.81</u>	<u>65.5</u>
<b>PLANNING AND BUILDING:</b>					
PERSONAL SERVICES	266,554.00	24,508.71	209,909.89	56,644.31	78.8
MATERIAL AND SERVICES	68,540.00	295.53	16,269.98	50,270.02	24.5
CAPITAL OUTLAY	.00	.00	.00	.00	.0
TRANSFERS OUT	.00	.00	.00	.00	.0
	<u>333,094.00</u>	<u>24,802.24</u>	<u>226,179.67</u>	<u>106,914.33</u>	<u>67.9</u>



CITY OF BROOKINGS  
FUND SUMMARY  
FOR THE 8 MONTHS ENDING FEBRUARY 29, 2012

GENERAL FUND

	BUDGET	PERIOD ACTUAL	YTD ACTUAL	REMAINING BUDGET	PCNT
<b>PARKS &amp; RECREATION:</b>					
PERSONAL SERVICES	102,320.00	20,714.70	73,673.93	28,646.07	72.0
MATERIAL AND SERVICES	64,650.00	2,158.73	30,747.23	33,902.77	47.6
CAPITAL OUTLAY	60,800.00	980.00	60,697.38	102.62	99.8
TRANSFERS OUT	.00	.00	.00	.00	.0
	<u>227,770.00</u>	<u>23,883.43</u>	<u>165,118.54</u>	<u>62,651.48</u>	<u>72.5</u>
<b>ADMINISTRATIVE SERVICES:</b>					
PERSONAL SERVICES	272,597.00	15,273.28	174,689.60	97,907.40	64.1
MATERIAL AND SERVICES	32,640.00	3,644.68	21,464.50	11,175.50	65.8
CAPITAL OUTLAY	.00	.00	.00	.00	.0
	<u>305,237.00</u>	<u>18,917.94</u>	<u>196,154.10</u>	<u>109,082.90</u>	<u>64.3</u>
<b>SWIMMING POOL:</b>					
PERSONAL SERVICES	54,635.00	481.67	38,022.03	18,612.97	65.9
MATERIAL AND SERVICES	33,680.00	.00	19,344.54	14,335.46	57.4
CAPITAL OUTLAY	20,000.00	.00	11,973.00	8,027.00	59.9
	<u>108,315.00</u>	<u>481.67</u>	<u>67,339.57</u>	<u>40,975.43</u>	<u>62.2</u>
<b>NON-DEPARTMENTAL:</b>					
MATERIAL AND SERVICES	177,940.00	( 115,886.31)	( 45,732.46)	223,672.46	( 25.7)
CAPITAL OUTLAY	2,000.00	.00	.00	2,000.00	.0
TRANSFERS OUT	67,000.00	.00	.00	67,000.00	.0
CONTINGENCIES AND RESERVES	663,366.00	.00	.00	663,366.00	.0
	<u>910,306.00</u>	<u>( 115,886.31)</u>	<u>( 45,732.46)</u>	<u>956,038.46</u>	<u>( 5.0)</u>
	<u>4,935,087.00</u>	<u>152,527.74</u>	<u>2,444,470.92</u>	<u>2,490,616.08</u>	<u>49.5</u>
	<u>( 1,030,000.00)</u>	<u>( 73,901.95)</u>	<u>( 1,942,073.65)</u>	<u>912,073.65</u>	<u>(188.6)</u>

CITY OF BROOKINGS  
FUND SUMMARY  
FOR THE 8 MONTHS ENDING FEBRUARY 29, 2012

STREET FUND

	BUDGET	PERIOD ACTUAL	YTD ACTUAL	REMAINING BUDGET	PCNT
<u>REVENUE</u>					
INTERGOVERNMENTAL	421,000.00	33,398.98	217,181.89	203,838.31	51.6
OTHER REVENUE	300.00	.00	5,343.27	( 5,043.27)	1781.1
TRANSFER IN	.00	.00	.00	.00	.0
	<u>421,300.00</u>	<u>33,398.98</u>	<u>222,504.96</u>	<u>198,795.04</u>	<u>52.8</u>
<u>EXPENDITURES</u>					
EXPENDITURES:					
PERSONAL SERVICES	61,198.00	4,397.72	38,008.16	23,187.84	62.1
MATERIAL AND SERVICES	193,240.00	18,176.30	150,504.71	42,735.29	77.9
CAPITAL OUTLAY	134,900.00	2,807.14	39,925.87	94,974.33	29.6
TRANSFERS OUT	94,604.00	.00	.00	94,604.00	.0
CONTINGENCIES AND RESERVES	62,460.00	.00	.00	62,460.00	.0
	<u>546,300.00</u>	<u>25,381.16</u>	<u>228,438.54</u>	<u>317,861.46</u>	<u>41.8</u>
	<u>546,300.00</u>	<u>25,381.16</u>	<u>228,438.54</u>	<u>317,861.46</u>	<u>41.8</u>
	<u>( 125,000.00)</u>	<u>8,017.82</u>	<u>( 5,933.58)</u>	<u>( 119,086.42)</u>	<u>( 4.8)</u>

**CITY OF BROOKINGS  
FUND SUMMARY  
FOR THE 8 MONTHS ENDING FEBRUARY 28, 2012**

**WATER FUND**

	<u>BUDGET</u>	<u>PERIOD ACTUAL</u>	<u>YTD ACTUAL</u>	<u>REMAINING BUDGET</u>	<u>PCNT</u>
<b>REVENUE</b>					
SOURCE 03	.00	.00	.00	.00	.0
CHARGES FOR SERVICES	1,275,500.00	85,779.60	863,359.87	412,140.13	67.7
OTHER INCOME	4,000.00	2,160.00	25,462.64	( 21,462.64)	636.6
TRANSFERS IN	.00	.00	.00	.00	.0
	<u>1,279,500.00</u>	<u>87,939.60</u>	<u>888,822.71</u>	<u>390,677.29</u>	<u>69.5</u>
<b>EXPENDITURES</b>					
<b>WATER DISTRIBUTION:</b>					
PERSONAL SERVICES	421,876.00	32,604.19	285,914.72	135,961.28	67.8
MATERIAL AND SERVICES	372,130.00	5,410.32	192,570.55	179,559.45	51.8
CAPITAL OUTLAY	80,800.00	5,614.29	21,832.65	58,967.35	27.0
	<u>874,806.00</u>	<u>43,628.80</u>	<u>500,317.92</u>	<u>374,488.08</u>	<u>57.2</u>
<b>WATER TREATMENT:</b>					
PERSONAL SERVICES	.00	.00	.00	.00	.0
MATERIAL AND SERVICES	.00	.00	.00	.00	.0
CAPITAL OUTLAY	.00	.00	.00	.00	.0
TRANSFERS OUT	443,149.00	.00	.00	443,149.00	.0
CONTINGENCIES AND RESERVES	151,545.00	.00	.00	151,545.00	.0
	<u>594,694.00</u>	<u>.00</u>	<u>.00</u>	<u>594,694.00</u>	<u>.0</u>
<b>DEPARTMENT 24:</b>					
CAPITAL OUTLAY	.00	.00	.00	.00	.0
	<u>.00</u>	<u>.00</u>	<u>.00</u>	<u>.00</u>	<u>.0</u>
	<u>1,469,500.00</u>	<u>43,828.80</u>	<u>500,317.92</u>	<u>989,182.08</u>	<u>34.1</u>
	<u>( 190,000.00)</u>	<u>44,310.80</u>	<u>388,504.79</u>	<u>( 578,504.79)</u>	<u>204.5</u>

CITY OF BROOKINGS  
FUND SUMMARY  
FOR THE 8 MONTHS ENDING FEBRUARY 29, 2012

WASTEWATER FUND

	BUDGET	PERIOD ACTUAL	YTD ACTUAL	REMAINING BUDGET	PCNT
<b>REVENUE</b>					
CHARGES FOR SERVICES	2,437,900.00	216,993.46	1,663,470.82	774,429.18	68.2
OTHER REVENUE	553,000.00	.00	914.05	552,085.95	.2
TRANSFER IN	.00	.00	.00	.00	.0
	<u>2,990,900.00</u>	<u>216,993.46</u>	<u>1,664,384.87</u>	<u>1,326,515.13</u>	<u>55.7</u>
<b>EXPENDITURES</b>					
<b>WASTEWATER COLLECTION:</b>					
PERSONAL SERVICES	317,604.00	29,934.47	251,608.21	65,995.79	79.2
MATERIAL AND SERVICES	226,740.00	5,044.38	71,831.73	155,108.27	31.6
CAPITAL OUTLAY	24,900.00	101,981.77	120,541.11	( 95,641.11)	484.1
	<u>569,244.00</u>	<u>136,960.62</u>	<u>443,781.05</u>	<u>125,462.95</u>	<u>78.0</u>
<b>WASTEWATER TREATMENT:</b>					
PERSONAL SERVICES	371,227.00	29,350.33	252,183.31	119,043.69	67.9
MATERIAL AND SERVICES	579,290.00	55,410.05	524,930.64	54,359.36	90.6
CAPITAL OUTLAY	2,287,400.00	6,187.40	1,057,065.80	1,230,334.20	46.2
TRANSFERS OUT	1,123,824.00	.00	.00	1,123,824.00	.0
CONTINGENCIES AND RESERVES	259,915.00	.00	.00	259,915.00	.0
	<u>4,621,856.00</u>	<u>90,927.78</u>	<u>1,834,179.75</u>	<u>2,787,476.25</u>	<u>39.7</u>
	<u>5,180,900.00</u>	<u>227,888.40</u>	<u>2,277,960.80</u>	<u>2,912,939.20</u>	<u>43.9</u>
	<u>( 2,200,000.00)</u>	<u>( 10,894.94)</u>	<u>( 613,575.93)</u>	<u>( 1,588,424.07)</u>	<u>( 27.9)</u>

CITY OF BROOKINGS  
FUND SUMMARY  
FOR THE 8 MONTHS ENDING FEBRUARY 29, 2012

URBAN RENEWAL AGENCY FUND

	BUDGET	PERIOD ACTUAL	YTD ACTUAL	REMAINING BUDGET	PCNT
<u>REVENUE</u>					
TAXES	481,345.00	.00	7,328.31	474,018.69	1.5
INTERGOVERNMENTAL	.00	.00	.00	.00	.0
OTHER REVENUE	2,000.00	.00	449.12	1,550.88	22.5
	<u>483,345.00</u>	<u>.00</u>	<u>7,775.43</u>	<u>475,569.57</u>	<u>1.6</u>
<u>EXPENDITURES</u>					
GENERAL:					
PERSONAL SERVICES	.00	.00	.00	.00	.0
MATERIAL AND SERVICES	70,000.00	652.00	7,788.19	62,213.81	11.1
CAPITAL OUTLAY	587,215.00	.00	2,686.07	584,528.93	.5
DEBT SERVICE	.00	.00	.00	.00	.0
TRANSFERS OUT	306,130.00	.00	.00	306,130.00	.0
CONTINGENCIES AND RESERVES	.00	.00	.00	.00	.0
	<u>983,345.00</u>	<u>652.00</u>	<u>10,472.26</u>	<u>952,872.74</u>	<u>1.1</u>
DEPARTMENT 20:					
CAPITAL OUTLAY	.00	.00	.00	.00	.0
	<u>.00</u>	<u>.00</u>	<u>.00</u>	<u>.00</u>	<u>.0</u>
DEPARTMENT 22:					
MATERIAL AND SERVICES	.00	.00	.00	.00	.0
DEBT SERVICE	.00	.00	.00	.00	.0
	<u>.00</u>	<u>.00</u>	<u>.00</u>	<u>.00</u>	<u>.0</u>
DEPARTMENT 24:					
CONTINGENCIES AND RESERVES	.00	.00	.00	.00	.0
	<u>.00</u>	<u>.00</u>	<u>.00</u>	<u>.00</u>	<u>.0</u>
	<u>983,345.00</u>	<u>652.00</u>	<u>10,472.26</u>	<u>952,872.74</u>	<u>1.1</u>
	<u>( 480,000.00)</u>	<u>( 652.00)</u>	<u>( 2,686.83)</u>	<u>( 477,303.17)</u>	<u>( .6)</u>