

Went

# AGENDA

## City of Brookings

### Common Council Meeting

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

Monday, July 28, 2008, 7:00 p.m.

**I. Call to Order**

**II. Pledge of Allegiance**

**III. Roll Call**

**IV. Ceremonies/Appointments/Announcements**

A. Appointment of Oregon Coastal Zone Management Association Representative. [pg. 5]

**V. Oral Requests and Communications from Audience**

A. Council Liaison Reports

B. Public Comments – limit to a maximum of **5 minutes per person**. A completed **public comment form** must be filled out and turned in **prior to the start of the meeting**. Forms are available in the City Manager's office and may be downloaded from the City's website at [www.brookings.or.us](http://www.brookings.or.us). Completed forms may be turned in to the City Manager's office during regular business hours. Comments **will be restricted** to the topics indicated on the form. All remarks and questions must be addressed to **the presiding officer, only**. Comments will be **respectful**. Harsh or abusive language will not be tolerated.

**VI. Ordinances**

A. Ordinance 08-O-610, adding Chapter 13.35, Storm Water, to Title 13, Public Services, of the Brookings Municipal Code. *Public Works Director [Advance Packet]*

B. Ordinance 08-O-619, adding Chapter 13.40, Storm Water Fees, to Title 13, Public Services, of the Brookings Municipal Code. *Public Works Director [Advance Packet]*

C. Ordinance 08-O-618, adding Chapter 12.40, Alcohol Prohibited on Public Premises, to Title 12, Streets, Sidewalks and Public Places, of the Brookings Municipal Code. *City Manager [Advance Packet]*

**Regular Agenda**

A. Approval to contract with Michael L. Piels for audit services. *Administrative Services Director [pg. 9]*

B. Approval of amendments to Salmon Run Golf Course Lease. *City Manager [pg. 21]*

C. Approval to instruct City Attorney to prepare ballot title and question for City Charter amendment regarding water service. *City Manager [pg. 73]*

**VII. Consent Calendar**

A. Approval of Council Meeting Minutes for July 14 & July 16, 2008. [pg. 77]

B. Vacation of City property at Parkview Estates. [pg. 87]

**VIII. Remarks from Mayor and Councilors**

A. Mayor

B. Councilors

**IX. Adjournment**

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.

July 2008

July 2008							August 2008						
S	M	T	W	T	F	S	S	M	T	W	T	F	S
6	7	8	9	10	11	12	3	4	5	6	7	8	9
13	14	15	16	17	18	19	10	11	12	13	14	15	16
20	21	22	23	24	25	26	17	18	19	20	21	22	23
27	28	29	30	31			24	25	26	27	28	29	30
							31						

Monday	Tuesday	Wednesday	Thursday	Friday	Sat/Sun
	July 1	2	3	4	5
	7:00pm CC - Planning Commission	10:00am CC- Site Plan Com Mtg 1:30pm CC - LDC Meeting 7:00pm FH-PoliceReserves	10:00am CC - KASPER 1:00pm CC - Court 3:00pm CC SafetyComMtg	July 4th - Closed (closest workday)	
					6
7	8	9	10	11	12
9:00am CC- VIPS/Volunteers in Police Service 4:00pm CC - Council Workshop 7:00pm FH-FireTng/ChShrp		9:30am CC - Traffic Safety Comm 10:00am CC- Site Plan Com Mtg 10:00am FH - Brookings Rural Fire Dept 12:00pm CC - Stout Park 1:30pm CC - LDC Meeting	9:00am CC-Crm Stoppers 3:00pm CC Urban Renewal Advisory Committee	10:00am Subdivision Committee Meeting	4:00pm 2nd Saturday Art Walk (Downtown Galleries)
					13
14	15	16	17	18	19
5:00pm CC - Council Workshop 7:00pm FH-FireTng/ChShrp 7:00pm CC-Council Mtg		10:00am CC- Site Plan Com Mtg 1:30pm CC - LDC Meeting 7:00pm CC - Special CC Meeting - Borax Appeal	10:00am CC - KASPER		
					20
21	22	23	24	25	26
9:00am CC-VIPS/Volunteers in Police Service 11:00am Garden Club - BW Bkgs Inn 7:00pm FH-FireTng/ChShrp		10:00am CC- Site Plan Com Mtg 11:00am Pre-app meeting-Planning	7:00pm CC-Parks & Rec Comm		
					27
28	29	30	31		
7:00pm FH-FireTng/ChShrp 7:00pm CC-Council Mtg		10:00am CC- Site Plan Com Mtg 1:30pm CC - LDC Meeting			

CC - Council Chambers  
 FH - Fire Hall  
 CM - City Manager's Office

Meeting dates and times are subject to change.

7/23/2008 3:52 PM

## August 2008

August 2008							September 2008						
S	M	T	W	T	F	S	S	M	T	W	T	F	S
3	4	5	6	7	8	9	7	8	9	10	11	12	13
10	11	12	13	14	15	16	14	15	16	17	18	19	20
17	18	19	20	21	22	23	21	22	23	24	25	26	27
24	25	26	27	28	29	30	28	29	30				
31													

Monday	Tuesday	Wednesday	Thursday	Friday	Sat/Sun
				August 1	2
					3
4	5	6	7	8	9
9:00am CC- VIPS/Volunteers in Police Service 4:00pm CC - Council Workshop 7:00pm FH-FireTng/ChShrp	7:00pm CC - Planning Commission	10:00am CC- Site Plan Com Mtg 1:30pm CC - LDC Meeting 5:00pm CC - Joint URAC/CC 7:00pm FH-PoliceReserves	3:00pm CC SafetyComMtg		4:00pm 2nd Saturday Art Walk (Downtown Galleries)
					10
11	12	13	14	15	16
(4) 7:00pm FH-FireTng/ChShrp 7:00pm CC-Council Mtg		10:00am CC- Site Plan Com Mtg 10:00am FH - Brookings Rural Fire Dept 12:00pm CC - Stout Park Subcommittee 1:30pm CC - LDC Meeting	9:00am CC-Crm Stoppers 1:00pm CC - Court 3:00pm CC Urban Renewal Advisory Committee		17
18	19	20	21	22	23
9:00am CC-VIPS/Volunteers in Police Service 11:00am Garden Club - BW Bkgs Inn 7:00pm FH-FireTng/ChShrp	7:00pm CC - Planning Comm (TENT)	10:00am CC- Site Plan Com Mtg 1:30pm CC - LDC Meeting			CC - Fire training 12:00pm City Volunteer & Employee Annual
					24
					CC - Fire training
25	26	27	28	29	30
7:00pm FH-FireTng/ChShrp 7:00pm CC-Council Mtg		10:00am CC- Site Plan Com Mtg 1:30pm CC - LDC Meeting	7:00pm CC-Parks & Rec Comm		
					31

CC - Council Chambers  
FH - Fire Hall  
CM - City Manager's Office

Meeting dates and times are subject to change.

7/23/2008 3:52 PM

**Designated Representative and Alternate  
to the  
Oregon Coastal Zone Management Association (OCZMA)  
FY 2008-2009**

Member Jurisdiction: \_\_\_\_\_

Designated Representative (must be an elected official): \_\_\_\_\_

Designated Alternate (can be an elected or non-elected official): \_\_\_\_\_

Address to which materials should be sent: \_\_\_\_\_

Approved or submitted by: \_\_\_\_\_

Date: \_\_\_\_\_

\*\*\*\*\*

**OCZMA BYLAWS  
(Article III, Membership)**

Section 1. Any county, city, port or SWCD within Oregon's Coastal Zone may become a Member of the Association by adopting a Resolution joining the Association. Each Member entity shall designate a representative and alternate to the Association. In the absence of the representative, the alternate shall have all of the representative's responsibilities and authority.

Section 2. Representatives to the Association must be an elected official of the jurisdiction. Alternates selected by the jurisdiction may be elected or non-elected representatives.

Section 3. At the beginning of the fiscal year, the Association will request from Member entities the names of the representatives and alternates to the Association who will represent the jurisdiction during the year. If any time during the year, a Member wishes to change its representation to the Association, it may do so by notifying the Chair of the newly designated representative and/or alternate.

Section 4. The Association may create associate and other non-voting memberships with privileges and assessments as deemed appropriate in support of the Association's purposes, activities and finances. No associate or other non-voting member shall be entitled to be appointed or elected to the Executive Board or otherwise vote on Association matters.



## Oregon Coastal Zone Management Association

P.O. Box 1033 • 313 S.W. 2nd • Suite C • Newport, Oregon 97365 • Tel: 541-265-8918 / 265-6651 • Fax: 541-265-5241 • [www.oczma.org](http://www.oczma.org)

July 1, 2008

City Council  
City of Brookings  
898 Elk Drive  
Brookings, Oregon 97415

RECEIVED

JUL 08 2008

RE: OCZMA DUES FOR FY 2008-2009

Dear Brookings City Council:

July 1, 2008 began the new fiscal year (FY 2008-09) for OCZMA, as well as local governments on the Oregon Coast and throughout Oregon. I'm pleased to have been reelected Chair of OCZMA for FY 2008-09.

For well over 20 years now, OCZMA has been engaged in a wide range of local, state, and federal issues that are uniquely coastal in nature—ports (dredging and harbor maintenance), fisheries (salmon recovery and salmon disaster assistance, groundfish/commercial fisheries, recreational fisheries/hatchery policy), coastal land use issues, coastal hazards (earthquakes, tsunamis, landslides, etc.), ocean planning (open ocean aquaculture, potential wind and wave energy-related resources, marine reserves/national marine sanctuary program, offshore oil and gas and mineral extraction), coastal tourism, coastal economic development activities, rural telecommunications, and coastal transportation. OCZMA will continue to be involved in these issues, and other new ones that may arise as they impact all the coastal communities on the Oregon Coast.

One new very exciting project that OCZMA began the summer of 2007 was the production of an Oregon fisheries film entitled *Oregon's Ocean Fisheries—A Conservation Success Story* (*working title*). We anticipate completion of that film by the fall of 2008. The recreational and commercial fishing industry is a major driver of the economy of the Oregon Coast. Moreover, it helps define who we are. Our fisheries have undergone a wrenching transition in the last decade after Congress re-wrote the Magnuson Stevens Act in 1996. Today, the needs of fishery resources take clear precedence over the economic needs of coastal communities. This sea change in public policy triggered a radical restructuring in Oregon's ocean fisheries. Unfortunately, we have not been able to persuade the media to report that Oregon's ocean fisheries have undergone an historic transition to sustainability. Instead, a handful of advocacy groups from outside our region dominate the public dialogue about Oregon's Ocean. By producing and widely distributing an objective 28-minute film (can be shown on television, at rotary clubs, and other service organizations), we can inform Oregonians and others about the positive changes in fisheries management that have already taken place. If Oregonians understand their ocean is healthy and thriving, and, that our ocean fisheries are now sustainable, we can improve the chances that we will continue to have ocean fisheries. These changes

City of Brookings • City of Cannon Beach • City of Coos Bay • City of Depoe Bay • City of Florence • City of Garibaldi • City of Lakeside • City of Lincoln City  
City of Manzanita • City of Nehalem • City of Newport • City of North Bend • City of Port Orford • City of Reedsport • City of Rockaway Beach • City of Tillamook  
City of Toledo • City of Yachats • Clatsop County • Clatsop Soil & Water Conservation District • Coos County • Coos Soil & Water Conservation District  
Coquille Indian Tribe • Curry County • Curry Soil & Water Conservation District • Douglas County • Lane County • Lincoln County  
Lincoln Soil & Water Conservation District • Port of Alsea • Port of Astoria • Port of Bandon • Port of Brookings Harbor • Oregon International Port of Coos Bay  
Port of Garibaldi • Port of Gold Beach • Port of Nehalem • Port of Newport • Port of Port Orford • Port of Siuslaw • Port of Tillamook Bay • Port of Toledo  
Port of Umpqua • Siuslaw Soil & Water Conservation District • Tillamook County • Tillamook Soil & Water Conservation District • Umpqua Soil & Water Conservation District

Brookings City Council  
Re: OCZMA Dues for FY 2008-09  
July 1, 2008—Page Two

include: fishing gear that is far more selective and environment-friendly, the existence of enormous areas closed to fishing like the Rockfish Conservation Area (RCA), and, upward trends in groundfish abundance.

The purpose of OCZMA is to keep Oregon coastal local governments actively engaged in regional coastal issues which have a profound impact on our quality of life. Being organized through OCZMA as a regional body representing the Oregon Coast definitely gives us greater clout at the state and federal level relating to these regional coastal issues. As local coastal units of government continue to experience declining revenues that would enable the hiring of needed personnel and resources to handle the ever complex, mind boggling, and frustrating coastal issues that are perpetual in nature, and new issues that constantly surface, OCZMA staff has the knowledge and technical expertise to work with and assist local coastal jurisdictions seek solutions to these regional coastal issues.

The financial and active support of member jurisdictions is extremely vital to continue OCZMA and its important work on behalf of Oregon's coastal jurisdictions. OCZMA is the only coast-wide organization representing local governments on the Oregon coast specifically on coastal issues and other activities which strive to promote economic development in rural Oregon coastal areas while still preserving its integrity and natural beauty.

Now, more than ever with all the issues challenging the Oregon Coast, and new ones that arise, I believe we need to work through and support the efforts of OCZMA on the Oregon Coast's behalf. The dues level for FY 2008-09 remain the same as for FY 2007-08. In fact, membership dues in OCZMA have remained the same since FY 1994-95. At that time, the small cities and ports membership dues were increased from \$300 to \$500 per year, and the membership dues for the three larger ports on the Oregon coast (ports of Astoria, Coos Bay, and Newport) were increased from \$700 to \$800. The county membership dues have remained the same since the early to mid 1980s. Prior to the early to mid 1980s, the dues were \$10,000 for coastal counties. OCZMA's dues structure continues to be among the lowest of membership dues.

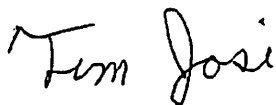
We would appreciate a remittance by the City of Brookings for FY 2008-09 Association dues in the amount of \$500.00. Enclosed is a statement for your files and use in remitting your dues payment for FY 2008-09.

For the new fiscal year, please appoint an OCZMA representative and alternate from the City of Brookings. A form is enclosed for your convenience. Please return the form upon completion. Thank You.

If you have any questions, please don't hesitate to contact me at the Tillamook County Courthouse in Tillamook at (503) 842-3403, or, contact OCZMA Director Onno Husing in Newport at (541) 265-8918 or (541) 265-6651.

Thanks in advance for your support of OCZMA.

Sincerely,



Tim Josi, Chair (Tillamook County Commissioner)  
OREGON COASTAL ZONE MANAGEMENT ASSOCIATION

TJ:OH/gy


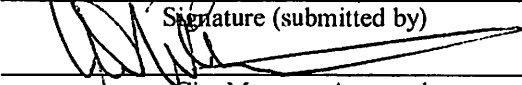
Enclosure

# CITY OF BROOKINGS

## COUNCIL AGENDA REPORT

Meeting Date: July 28, 2008

Originating Dept:  
Administrative Services

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

---

Subject: Approve audit services agreement.

Recommended Motion:

Move to accept proposal by Michael L. Piels Firm for City of Brookings' audit services for the fiscal year ending June 30, 2008, to include the consideration of extension for fiscal years ending June 30, 2009 and 2010.

Financial Impact:

Audit Services for the City of Brookings and URA \$38,150

Plus additional hourly fees to give oversight for drafting of the financial statements and note disclosures. Estimated hours of extra services can not be determined at this time, however, the hourly rate will usually be done by the "audit director" for \$155/hour.

Audit Service for single audit \$2,000. Single audits are a requirement when a capital project with funding by a State or Federal agency carries over for more than one fiscal period.

New auditing standards are affecting the City's audit fees. There are new Government Accounting Standard Board (GASB) pronouncements where the high fees include a built-in time to assist the City with these pronouncements and implementation of these new standards. The Secretary of State Audits Division continues to update minimum standards for the presentation of the report and the conduct of the audits, mostly caused by past fraud practices.

Background/Discussion:

The annual audit is more properly referred to as the Comprehensive Annual Financial Report(CAFR). However, the use of the word audit is more common and one that the Oregon Secretary of State uses. Annual audits are submitted to the Secretary of State each year. The Audits Division is the only independent auditing organization in the state with the authority to review programs of agencies in all three branches of state government and other organizations receiving state money. Authority for the responsibilities of the Audits Division is found in sections 297.010 through 297.990 of the *Oregon Revised Statutes*.

Sections 297.405 through 297.555 of the Oregon Revised Statutes cover municipal audit law. This program requires an annual financial statement audit of all municipal corporations. The Secretary of State Audits Division, in cooperation with the Board of Accountancy, and in consultation with the Oregon Society of CPAs, prescribes the minimum standards for the presentation of the report and the conduct of the audits.

In February, Wall & Wall gave notice they would not be fulfilling their three year contract. In May, the City requested for proposals (RFP) for audit services for the City of Brookings and URA. Three firms submitted a proposal for audit services by the June 19 deadline. The proposals were reviewed by Larry Anderson, Mayor, Gary Milliman, City Manager and Patti Dunn, Administrative Services Director.

Each proposal was reviewed for meeting the requirements of City's request. Each firm fulfilled the requirements except Grimstad & Associates who did not submit a sample CAFR since they have only done single audits and services for districts. Each proposal was rated for 1) Qualifications / Services Provided, 2) Understanding/Approach/Schedule, and 3) Cost.

Michael L. Piels firm ranked slightly above Rogers & Co. because of lower fees. The firm has extensive experience with municipalities to include City of Port Orford, along with the Brookings School District.

Michael L. Piels	\$38,100	Rank: 3	3	2	=8
Pauly, Rogers & Co	\$40,800	2	2	3	=7
Grimstad & Associates	\$18,000	1	1	3	=5

Attachment(s):

Michael L. Piels Firm Proposal and Scope of Work

Other proposals available from City Recorder

\*Pauly, Rogers & Co.,\* Grimstad & Associates.



**MICHAEL L. PIELS** CERTIFIED PUBLIC ACCOUNTANTS, LLP

940 Town Centre Drive, Medford, Oregon 97504-6100  
(541) 779-8261 FAX (541) 779-4245 [www.mlpcpa.com](http://www.mlpcpa.com)

June 5, 2008

Patti JG Dunn, Administrative Services Director  
City of Brookings  
898 Elk Drive  
Brookings

**RE: Proposal for Auditing Services**

We are pleased to have the opportunity to submit a proposal to provide audit services to the City of Brookings. If accepted, we will provide audit services to the City of Brookings for the fiscal year ending June 30, 2008, in accordance with the time specified in the City's request for proposal. These audit services will be performed in accordance with generally accepted auditing standards adopted by the American Institute of Certified Public Accountants; standards set forth for financial audits in the Government Accounting Office's Government Audit Standards 2007; Oregon Minimum Standards for Audits of Oregon Municipal Corporations, and the Single Audit Act & OMB Circular A-133 if applicable.

The staff at Michael L. Piels CPAs, LLP are excited at the prospect of establishing a relationship with the City of Brookings. We want to be the accounting and auditing firm the City of Brookings and its staff turn to for answers to their questions. Our staff is available year round to answer questions from office staff or the City's Councilors on topics such as accounting, budgeting and payroll, generally at no additional cost to the City. We truly believe we can offer the City of Brookings the best value for its dollar.

**Background**

Michael L. Piels CPAs, LLP, has grown from a modest one-person office to one that now employs 15 professionals, including six CPAs. The practice has eight experienced audit staff members, three of whom are licensed municipal auditors with the State of Oregon. The Firm is currently engaged in simple to complex income tax preparation and planning, representation of taxpayers before taxing authorities, audits of state and local governmental agencies, not-for-profit organizations and commercial business entities, as well as a full range of traditional accounting services.

## **Service Team**

Individuals selected to oversee the City of Brookings engagement are seasoned, industry professionals with past experience working for and serving similar organizations.

**Michael L. Piels, CPA**, managing partner, is a member of the American Institute of Certified Public Accountants, the Oregon Society of Certified Public Accountants, and is certified as a municipal auditor in Oregon (license #3755 and #0929). He is also a licensed CPA in the state of California.

Michael, a longtime Rogue Valley resident, grew up attending Medford's public schools. He graduated from Southern Oregon University (formerly Southern Oregon State College) in 1978 and passed the Uniform Certified Public Accountant exam the same year. Upon graduation, Michael worked for two of the larger regional CPA firms in Oregon – Yergen & Meyer and Isler & Co. – prior to establishing his own Firm in 1984.

**Stewart C. Parmele, CPA**, audit partner, is a member of the American Institute of Certified Public Accountants, the Oregon Society of Certified Public Accountants, and is certified as a municipal auditor in Oregon (license #7373 and #1137) and as a CPA in California. He has been associated with the Firm for the past seventeen years and has extensive experience in auditing Oregon municipal corporations as well as not for profit entities. Mr. Parmele will personally supervise the audit of City of Brookings.

Stewart has lived in the Rogue Valley for the past 18 years. He graduated from Southern Oregon University (formerly Southern Oregon State College) in 1990 and was certified by the Oregon State Board of Accountancy in 1993. Stewart began working for Michael L. Piels CPAs, LLP, in 1990. In 1997, Stewart became a partner in the Firm with a focus in audit, accounting and tax services for state and local governmental agencies, not-for-profit organizations, and commercial business entities.

**Jessie Bridgham, CPA**, audit director, is a member of the American Institute of Certified Public Accountants, the Oregon Society of Certified Public Accountants, and is certified as a municipal auditor in Oregon (license #7649 and #1151). She joined Michael L. Piels CPAs, LLP, in 2007.

Jessie graduated from Southern Oregon University (formerly Southern Oregon State College) in 1982. Before beginning her career as a public accountant, Jessie worked for a local school district as the assistant business manager for eight years. Her duties included budget preparation in compliance with Local Budget Law, insurance and employee benefit analysis, all aspects of payroll and administration, and preparing and reconciling all accounts for the audit process. Knowing the auditor's and the auditee's points of view, as well as the challenges, has given Jessie a unique perspective in relation to municipal auditing.

Jessie started her public accounting career as a staff accountant with Yergen and Meyer, a regional firm in 1990, which later merged with Moss Adams, and in 1996, Jessie became the Audit Partner for the Coos Bay office, retiring in 2004. Jessie joined Michael L. Piels CPAs, LLP in July of 2007 as Audit Director for the Firm. Over the years, Jessie has served a wide

range of municipal clients, including cities, school districts, community colleges, ports, counties and special districts. She has taught several classes on municipal budget law and financial statements, both locally and statewide. Jessie is the recipient of the Certificate of Educational Achievement in Government Accounting and Auditing issued by the AICPA.

**Carolyn Murray, CPA**, Senior Accountant, is a member of the American Institute of Certified Public Accountants and the Oregon Society of Public Accounts. She joined Michael L. Piels CPAs, LLP in May of 2008.

Prior to joining our Firm, Carolyn was the Finance Director for the City of Bandon. Carolyn was responsible for all finance and budget operations for the City and the Urban Renewal Agency. She has hands-on experience with budgeting, payroll, utility billing and collections through Caselle Accounting software.

Carolyn brings a vast array of experience to the Firm. From Finance Director to Auditor to Consultant, Carolyn's resume' previews her depth of knowledge and experience.

For individual resumes of our additional audit team personnel, please see **Exhibit I**.

### **Meeting Your Needs**

We provide a complete range of accounting and auditing services and have extensive experience in municipal auditing. Our objective is to make financial reporting understandable and informative. We supplement our report on financial statements with a management letter offering recommendations for a more efficient operation, stronger financial structure, and improved accounting and administrative controls. We assure you we have the staff and the expertise to perform these services in a creative, constructive, economical, and timely manner. We endeavor to build a warm relationship that continues throughout the year, rather than an association limited to year-end contact.

We crafted the attached proposal in reply to the various items we understand are important to the City. Our proposal describes a number of benefits the City receives when being served by our office. They add significant tangible value without increased cost, and differentiate us from other accounting firms.

Demonstrated benefits of retaining us include:

1. Licensed municipal auditors with extensive experience auditing governmental entities.
2. Auditors with "real world" experience, including water utility experience.
3. Related professional services, such as consultation on payroll issues, accounting, and upcoming regulation changes.
4. A high degree of senior staff involvement, giving you the benefit of our most experienced staff.
5. Competitive audit fees and consulting service rates.
6. Workshops on changes in accounting standards.
7. We will meet the City's audit time schedule causing less disruption to your staff.
8. Our audit team leaders are not highly involved with income tax preparation, making them available year round, instead of just at audit time.

It is clear that you are interested in more than just the deliverables listed above. You desire a strong working relationship with knowledgeable industry professionals; a fair return for the investment you make; plus the advantages and benefits provided to the City from value-added services. Our objective is to make financial reporting understandable and informative.

You will find these qualities at Michael L. Piels CPAs, LLP along with a strong presence and culture that values solid client relationships. We place a high importance in training our people to be specialized industry advisors and advocates for our clients and offer a depth of value-added services designed to meet our clients' growing needs.

The City of Brookings would be an important client to Michael L. Piels CPAs, LLP. We trust this proposal expresses our enthusiasm and desire to perform the services you need. We welcome any questions you may have about this proposal and thank you again for your consideration of Michael L. Piels CPAs, LLP.

As the managing partner of Michael L. Piels CPAs, LLP, I am authorized to bind the Firm to this proposal.

Very truly yours,

A handwritten signature in black ink, appearing to read "Michael L. Piels CPA". The signature is fluid and cursive, with the letters "CPA" written in a slightly larger, more distinct font at the end.

Michael L. Piels, CPA  
Managing Partner  
Michael L. Piels CPAs, LLP

City of Brookings  
Proposal Requirements

**Peer Review**

Our Firm is devoted to quality, and we have taken extra steps to assure that we meet the highest professional standards in performing quality governmental audits.

Our Firm is a voluntary member of the American Institute of Certified Public Accountants Government Audit Quality Center (GAQC). The GAQC was developed to provide support and community for member firms that are committed to best practices and quality governmental audits. These governmental audits include a wide variety of audit or attestation engagements, including financial statement audits performed under *Government Auditing Standards*, single audits, program-specific audits and other compliance audits. The GAQC's focus is to promote the highest quality governmental audits. Membership in the GAQC provides access to best practices and tools focused around quality governmental audits and makes a powerful statement about our Firm's commitment to ensuring the integrity of governmental audits.

Additionally, every three years, our quality controls are examined by specially trained CPAs from other firms. Results of these reviews, called peer reviews, are available to the public, and a copy of our most recent peer review report is included as an addendum to this proposal.

We are pleased that we received an unqualified report on our review, meaning that our Firm adheres to the most rigorous criteria of our profession for CPA firms.

**Board of Accountancy**

The Firm has never had a complaint filed with the State Board of Accountancy since its inception in 1984.

**Staffing**

Please see our letter of transmittal and the attached Firm Biographies as listed in Exhibit I for specifics on individual staff members and licensing.

For this audit, we would expect to have three individuals on site for the fieldwork portion, which would include the Audit Director Jessie Bridgham, in-Charge Senior Auditor, Carolyn Murray and one staff-level accountant. Audit Partner Stewart Parmele would be available for any significant issues or concerns and the audit presentation.

<u>Program Area</u>	<u>Hours</u>
Cash and investments	12
Revenue and receivables	16
Expenditures and accounts payable	12
Payroll and related liabilities	16
Property, equipment and capital expenditures	16
Debt and debt service expenditures	12
Prepaid expenses and deferred revenue	12
Grants and similar programs	16
Oregon Minimum Standards	8
Review minutes and ordinances	10
Functional testing	40
Engagement supervision and review	20
General procedures	40
Planning and risk assessment	40
Review of financial statements	35
Total hours	305

The above is an estimate of the time needed to complete the audit process for the City of Brookings.

#### **Other Local Governments Served by Michael L. Piels CPA s, LLP**

The following are current and former local government clients that are required to be audited in accordance with Government Auditing Standards, Oregon Minimum Standards, the Single Audit Act of 1984 as amended in 1996, and OMB Circular A-133, "Audits of States, Local Governments and Non-Profits", as applicable:

Local Government	Contact Person	Title	Phone Number
Ashland School District **	Pam Lucas	Business Manager	541-482-2811
Brookings School District**	Val Shapton	Business Manager	541-469-7443
Butte Falls School District	Mary Graham	Business Manager	541-865-3563
City of Shady Cove	Gretchen Meloth	Accountant	541-878-8206
City of Phoenix	Jane Turner	Interim City Manager	541-535-1955
City of Rogue River	Mark Reagles	City Manager	541-582-4401
City of Port Orford	David Johnson	Accountant	541-332-7121
Eagle Point School District**	Jodi Vihvainen	Accountant	541-830-6560
Grants Pass School District**	Sheri Ely	Business Manager	541-474-5703
Klamath County School District **	Leah Bickett	Accountant	541-883-5000
Phoenix-Talent School District**	Doug Spani	Business Manager	541-535-1517
Roseburg School District**	C. Lance Colley	Dir. of Business Operations	541-440-4027
South Umpqua School District**	Chris Davidson	Business Manager	541-863-5211
Rogue River School District**	Nena Woodhead	Business Manager	541-582-3235

\* Denotes CAFR

\*\* Denotes Single Audit Requirement

All of the local governments listed above are following the reporting model required under "Governmental Accounting Standards Board Statement No. 34, Basic Financial Statements – and Management's Discussion and Analysis – for State and Local Governments."

### **Comprehensive Annual Financial Report**

Enclosed is a copy of the Roseburg School District's CFAR that was submitted to GFOA for the fiscal year ended June 30, 2007. Per our discussions with the Director of Operations, the report was awarded the GFOA Certificate of Achievement for Excellence on Financial Reporting.

### **Management Letter**

Enclosed is a copy of one of our management letters to a local government. Because of the nature of the items, the entity dates, and other identifying information has been blocked.

### **Use of City Personnel**

We usually limit the use of City personnel except for responses to inquiries, providing copies of existing documents and records, etc. This is assuming the City's records have been properly closed and all major accounts have been reconciled, i.e., bank accounts, accounts receivable, accounts payable, fixed assets, interfund transfers, etc, supporting documentation exists. We anticipate the total number of hours required of City personnel to be approximately two hours for each day that we are on site.

We supplement the audit report with a management letter if there is a need to improve the City's internal accounting controls and/or administrative procedures. If items prove to be insignificant, we will review them with the Finance Director and/or City Manager. We also provide a summary of any audit adjusting entries and a final Trial Balance.

### **Fee for Audit Services**

Our audit will be conducted in accordance with U.S. generally accepted auditing standards, the Minimum Standards for Audits of Oregon Municipal Corporations; and the standards for financial audits contained in Government Auditing Standards, issued by the Comptroller General of the United States; and accordingly, will include such tests of the accounting records and such other auditing procedures as we consider necessary in the circumstances. All services performed shall be rendered by us or under our personal supervision and will be faithfully performed with care and diligence.

We will rely to a great extent on collaboration with you in order to plan, time and complete the audit within the fee estimate summarized below. Our fee proposal for an audit of the financial statements for the City of Brookings for the year ending June 30, 2008 is as follows:

	<u>2008</u>	<u>2009</u>	<u>2010</u>
City of Brookings audit services	\$38,150	\$40,000	\$42,000
Single audit, if required	\$2000 per major program	Same as 2008	Same as 2008

Our fee estimate is inclusive of all costs for travel, postage, telephone, etc. Our fee estimate does not include drafting of the financial statements and note disclosures. Our fee does include audit services, review of your CAFR, presentation to the City Council, and answering any questions that may arise. In addition, our staff is available year-round to provide timely, professional advice to the City's management on matters relating to budgeting, accounting, payroll and internal controls.

The fee estimate will be subject to adjustments and does not include any accounting assistance required to help the City in properly preparing the trial balance for audit and does not include any additional time required to correct or reconcile the general ledger accounts to the detailed subsidiary ledgers. The fee quote and this agreement further anticipate the following:

1. All requested schedules are completely and accurately prepared by the City of Brookings personnel prior to the start of fieldwork.
2. All the books and records are ready for audit with a reasonable number of year-end adjusting and/or passed audit adjustments after the financial statements have been presented for audit.
3. The City will provide our office with a draft trial balance in electronic form, one week prior to the commencement of fieldwork.

The starting date of the audit fieldwork will be at a mutually agreed upon time and we expect to deliver the report no later than November 30 for this first year. Because of the lateness of the Request for Proposal, our audit schedule has been set for this year. We request the penalty fee be waived for this current year only. If selected as your audit of record for the years beyond this current year, we can arrange the schedule to comply with your current request.

## Consulting Services

Our audit team is available year-round. We would make ourselves available to help meet your needs at a mutually agreeable time. Our fees for consulting services are dependent on the level of service needed by the City. Our fees for additional services beyond the scope of the audit process are as follows:

	<u>Hourly Charge</u>
Managing Partner	\$ 200
Audit Partner	175
Audit Director	155
Manager	120
Senior Staff	115
Staff	85

If selected as your audit of record for a three year period, these fees will not change. We do not charge for every question, phone call, etc. We want to hear from you, we want to be involved with the activities of the City. However, if the City needs research done that is outside the scope of the audit, these fees will be assessed. A quick phone call, resulting in less than one hour/month will not be billed.

## Insurance

Please see the enclosed certificates for our Worker's Compensation insurance and liability insurance coverage.

## Certification Statement

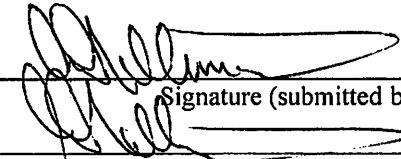
The signed certification statement is enclosed.

# CITY OF BROOKINGS

## COUNCIL AGENDA REPORT

Meeting Date: July 28, 2008

Originating Dept: City Manager

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

---

Subject: Salmon Run Golf Course Lease Amendment

Recommended Motion: Motion to approve amendments to the Lease Agreement dated February 17, 1998, between the City of Brookings and Felix Claveran with respect to the Salmon Run Golf Course.

Financial Impact: None

Background/Discussion:

The City of Brookings owns approximately 182 acres of land located four miles east of Brookings in the Jack Creek Valley. The City entered into a Lease Agreement effective February 17, 1998, with Felix Claveran for the development and operation of a golf course on that property. The golf course is now known as Salmon Run.

In early 2007, the lessee met with Interim City Manager Ken Hobson to discuss amendments to the lease. While a tentative agreement on changes in the agreement was reached between City management and Claveran at that time, the amendments were never approved by the City Council. Management has met recently with the golf course management to review the proposed lease amendments and recommends as follows (**changes are in bold**):

1. Amend Article 6, Section 3.06 to read:

“Driving range with a **minimum of 10 stations** with grass and artificial turf mats to accommodate practice during most weather conditions. The driving range will also include putting, pitching and chipping facilities and practice areas.”

The golf course has been fully developed and the leasor reports that they cannot install the “25 to 30” tees as required in the current agreement due to site restrictions.

2. Amend Article 7, Section 1.04 to read:

“Rental equipment including **clubs and carts**.

This would eliminate language requiring that the lessee make non-motorized “pull carts” available for rent. They do not currently offer manual pull carts and, given the terrain of the golf course, have never had a demand for pull carts.

3. Amend Article 9, Section 1.03 to read:

**“Senior citizen program for discounted green fees.”**

The golf course does not have a senior discount card program as was contemplated at the time the agreement was written. The senior discount program provides that persons age 55 and older can play for a \$30.00 fee, including cart, on Tuesdays and Thursdays after 1:00 p.m. The regular green fee is \$64.00 and the “resident” green fee is \$39.00. Given the large senior population locally, an “every day” senior discount is not economically feasible.

4. Delete Article 9, Section 1.05.

This provision requires the lessee to provide storage for individually-owned golf carts. The golf course does not allow the use of individually owned and maintained golf carts for liability reasons.

5. Delete Article 9, Section 1.11.

The “Players West” organization referenced here no longer exists.

6. Delete Article 9, Section 1.14.

The PGA “clubs for kids” program referenced here no longer exists.

7. Delete Article 9, Section 1.15.

The golf course no longer allows the use of private motorized golf carts for liability reasons.

8. Add Article 13, Section 3.0 to read:

“Removal and proper disposal of shrubs, vegetation and trees up to 12 inches in diameter (measured at the ground) is allowed at lessee’s discretion. Removal of trees in excess of 12 inches in diameter must be approved by lessor in writing in advance of removal.”

There is no current language dealing with the removal of vegetation. In the past, the golf course management has consulted with the City staff concerning vegetation removal, and the City staff has visited the site to view trees proposed for removal.

Attachment(s): Golf course lease agreement

LEASE AGREEMENT

*PC - fine Dept  
Contract*  
**COPY**

ARTICLE 1

IDENTIFICATION OF PARTIES/ENTITIES AND  
DESCRIPTION OF LEASED PREMISES

Section 1.00 - Identification of Parties:

Lessor: CITY OF BROOKINGS, OREGON, a municipal corporation; 898 Elk Drive, Brookings Oregon 97415

Lessee: Felix Claveran, 3239 Danville Blvd., Suite E, Alamo CA 94507, and the parties and entities who or which are or will be obligors or guarantors of any construction debt described in this lease agreement. All obligors or guarantors of the construction debt described in this lease agreement shall execute an addendum to this lease agreement adding themselves as a Lessee.

Section 2.00 - Oregon Agent For Notice and Service of Process on Lessee: The Claveran Group, C/O 4004 SW Burber Blvd., Portland OR 97201.

Section 3.00 - Description of Leased Premises:

The real property described on attached Exhibit "A", incorporated herein by this reference.

ARTICLE 2

RECITALS

THIS LEASE AGREEMENT made and entered into effective the 17th day of February, 1998, by and between Lessor and Lessee identified above;

WHEREAS, Lessor is the owner of approximately 182 acres of land located four miles east of Brookings in Jack Creek Valley, a tributary of the Chetco River, all property being described more particularly in Article 1, Section 3.00 above, and desires to lease the entire 182 acres to Lessee for the purpose of constructing, developing and operating a public golf course and related structures (as specified herein or later approved in writing by Lessor), including RV pad sites, at Jack Creek. The construction, buildings and related improvements are referred to herein as the "Golf Course" or the "Project".

WHEREAS, Lessee wishes to lease the 182 acres of land for the purpose of constructing, developing and operating the Golf Course from Lessor according to certain specified terms and conditions;

NOW, THEREFORE, it is agreed between the parties as follows:

### ARTICLE 3

#### TERM

The term of this lease shall commence on February 17, 1998, and continue for a period of sixty (60) years, unless sooner terminated as hereinafter specified. Lessee's rights to occupancy and possession of the leased premises are subject to the requirements of Article 30 of this lease agreement. If this lease agreement is not then in default, Lessee shall have the option to renew the lease as set forth in Article 28.

### ARTICLE 4

#### PAYMENTS TO LESSOR

##### Section 1.00 - Rent:

Base rent shall commence to be paid by Lessee to Lessor four (4) years after the initial construction debt incurred by Lessee has been paid, but not later than twelve (12) years from the date of execution of this lease agreement. Prior to any construction or development activity on the leased premises, Lessee shall furnish written proof to Lessor of the total amount of the construction debt, including written loan approvals and related disbursement authorizations, from each of Lessee's lenders. Lessee shall not increase the amount of the construction debt, or extend the terms for repayment of the debt without Lessor's prior written consent. Upon complete repayment of the initial construction debt, the following rent payment schedule shall become effective and rent shall be paid by Lessee to Lessor at 898 Elk Drive, Brookings, Oregon, or such other address as may hereafter be designated by Lessor:

##### Annual Rent Payment Schedule

Year 1:	\$20,000
Year 2:	\$25,000
Year 3:	\$30,000
Year 4:	\$35,000
Year 5:	\$40,000
Year 6:	\$45,000
Year 7:	\$50,000

Commencing in Year 8, and in each year thereafter during the original term of this lease, Lessor shall increase and adjust the rent in the same percentage as the increase, if any, in the Consumer Price Index ("Index") published by the U.S. Bureau of Labor Statistics (US City Average [CPI-U] Schedule) and Lessee shall pay the adjusted rent to Lessor. The increase shall be computed by comparing the Index figure for the same month in the preceding year with the Index figure for the month in the year for which the adjustment is computed. For example, if the Index for March of the preceding year was 151.4 and if the Index for the following year is 155.7, the increase would be 2.8% and rent would be increased from \$50,000 to \$51,400. In no event will the adjustment from one year to the next year exceed 5%, and in no event will the Index be used to decrease rent payable by Lessee to Lessor. If the Index cited above is revised or discontinued during the term of this lease, then the Index that is designated to replace it by the U.S. Bureau of Labor Statistics shall be used.

Annual rent payments shall be payable in advance and shall begin on the first day of the first month four (4) years after Lessee has repaid the initial construction debt, but not later than twelve (12) years from the month of execution of this lease agreement, whichever occurs first. Rent shall be paid in lawful money of the United States of America.

#### Section 2.00 - Late Payment of Rent:

If Lessee fails to pay any rent when due and payable, such unpaid amounts shall bear interest from the due date thereof to the date of payment at the rate of seven and one-half percent (7.5%) per annum.

#### ARTICLE 5

[ARTICLE INTENTIONALLY LEFT BLANK]

#### ARTICLE 6

#### CONSTRUCTION AND ALTERATIONS

##### Section 1.00 - Lessee's Obligation:

Lessee shall, at no cost to Lessor, be responsible for making all reasonable Golf Course site improvements, and designing, developing and constructing all reasonably appropriate structures that are necessary to create a successful Golf Course operation in conformance with this lease agreement. Lessee will extend its best efforts to utilize, as available and appropriate, businesses within the Brookings area provided such items are cost competitive with other bids. All constructions, installations,

improvements, additions, alterations and decorations made by Lessee to and upon the leased premises shall become the sole property of Lessor upon termination of this lease.

Section 2.00 - Right to Review Construction/Alterations and Improvements:

All Lessee's designs, improvements and construction plans allowed by this lease agreement as well as any new proposals, alterations, or improvements that may occur in the future shall be reviewed with Lessor before Lessee commences the project, and are subject to Lessor's prior written consent. Lessee shall strictly comply with all plans and specifications approved by Lessor. Lessee may, at any time and at its sole expense, install and place business fixtures and equipment within any building constructed by Lessee. Lessor shall not unreasonably withhold consent as to construction proposals, alterations or improvements.

Section 3.00 - Construction Requirements:

Improvements and construction shall consist of at least, but not be limited to, the following:

3.01 18-hole regulation-length golf course of approximately 6,500 yards in length, with par of 70 to 72, having ample space for multiple tees stations to fit players of various skill levels and providing variation in the playing distances of the Golf Course;

3.02 Permanent automatic irrigation system for all fairways, tees, greens, and quick coupler irrigation system for all fairways and other landscaped areas;

3.03 Maintenance building of permanent construction with sufficient space for office and work area for the Golf Course superintendent and crew and sufficient storage space for seed, fertilizers, chemicals, golf course maintenance equipment and any other item(s) needed or required for Golf Course operation;

3.04 Putting greens of 6,000 to 6,500 square feet developed according to United States Golf Association (USGA) specification and seeded with the specie of bent grass suited to the area;

3.05 Tees and fairways seeded with a mixture of moderate weather grasses best suited to the area;

3.06 Driving range with 25 to 30 tees with grass and artificial turf mats to accommodate practice during most weather

conditions. The driving range will also include putting, pitching and chipping facilities and practice areas;

3.07 Full-service clubhouse including at a minimum 4,000 square feet, providing at a minimum a pro shop, a dining area and kitchen, display areas, men's and women's handicap accessible restrooms and management offices;

3.08 All construction work shall be performed in accordance with legal requirements and in a good and reasonable manner. The term "legal requirements" includes all present and future laws, ordinance, orders, rules, regulations and requirements of all federal, state and municipal entities, departments and agencies. Lessor, and Lessor's agents, shall have the right to inspect the work at reasonable times and in a manner that minimizes any interference with work. Lessee shall not suffer or permit any liens to attach to the leased premises by reasons of any work, labor, services or materials done for or supplied to the premises during the term of this lease agreement.

#### Section 4.00 - Construction Schedule:

Subject to Section 6.00, construction shall proceed according to the schedule set forth in Exhibit "B" which is attached hereto and incorporated herein by this reference.

#### Section 5.00 - Performance Bond:

Lessee shall provide a performance bond to Lessor, in a form and by a U.S. Treasury listed surety company satisfactory to Lessor, in the amount of the cost of the Golf Course grading (which includes heavy earth moving, clearing and grubbing, brush removal, rough and fine earth sculpting, shaping, rock removal, raking, planting, and lakes, ponds, rough and sand trap construction) and irrigation system installation (together which are estimated by Lessee to be approximately 80% of the total cost of the Golf Course Project), to assure completion of this construction phase of the Project. The bond shall be issued by a surety company authorized to issue such bonds in the State of Oregon. The bond shall bind the principal and surety to the true and faithful performance of the obligation to complete the design, construction, installation and operation of the grading and irrigation system, to satisfy all claims and demands incurred under this obligation, to indemnify, defend and hold Lessor harmless from all costs, damages and fees it may incur by reason of the failure to do so and to reimburse Lessor for all outlay, cost, expenses and fees which Lessor may incur in making good any default.

The bond shall be delivered by Lessee to Lessor at least ten days before Lessee occupies the leased premises for the

purpose of the commencement of construction. Construction may not begin until Lessor has reviewed and approved the performance bond.

Lessor shall release the bond and surety upon satisfactory proof by Lessee that the obligations set forth in this section have been satisfied. Such proof shall include a written certification from the project engineer that the grading and irrigation system have been completely installed and are fully operational for the purposes and requirements of the golf course described in the lease agreement, and will remain operational for the reasonably anticipated life of the system, and that all construction bills have been paid and satisfied.

Section 6.00 - Occupancy and Use of the Property by Lessee:

Lessee shall strictly adhere to the requirements of Article 30 of this lease agreement relating to occupancy and use of the leased premises.

Section 7.00 - Modifications to Schedule:

Lessee shall complete construction of the Golf Course Project by August 1, 1999. No modifications of this completion date will be allowed without the prior written consent of Lessor. Lessee shall notify Lessor in writing at least thirty (30) days prior to modifying any other part of the construction schedule set forth in Section 4.00 of this Article. Time is of the essence and, at all times, Lessee shall proceed with due diligence in adhering to the construction schedule.

Section 8.00 - RV Park and Residential Housing:

Subject to Lessee obtaining approval from governmental authorities at Lessee's sole expense, Lessee may develop, in connection with the Golf Course Project, up to four (4) residential buildings and a Recreational Vehicle (RV) Park with 16 full hook-up spaces. Lessee may, at its option, add up to an additional 32 RV spaces as necessary to accommodate patrons who use the Golf Course, but subject to Lessee obtaining approval from Curry County and other governmental authorities at Lessee's sole expense. Lessee must receive Lessor's written design and architectural approval in accordance with Article 6, Section 2.00 prior to construction of the RV park and/or the residential housing units. The following restrictions shall be enforced by Lessee in the management and operation of the RV park:

8.01 The facility shall be designated for short-term use with a maximum rental use time limit of ten (10) consecutive days in any one space; and

8.02 Priority in rental use shall be given to persons who intend to make use of the Golf Course facility.

## ARTICLE 7

### EQUIPMENT

#### Section 1.00 - Minimum Equipment to be Provided:

Lessee shall provide and maintain in good working order all personal property that is necessary to successfully operate the Golf Course. Lessee shall provide at a minimum, the following:

1.01 Golf Course maintenance equipment.

1.02 Pro shop and clubhouse furnishings, fixtures and equipment.

1.03 Driving range tees and mats for alternate use during bad weather, enhanced by good quality balls.

1.04 Rental equipment including used clubs for beginners, pull carts, rental sets and power golf carts.

*? kids ?*

#### Section 2.00 - Replacement of Defective or Worn Equipment:

Lessee shall at all times maintain the equipment described in Section 1.00 above in good condition and repair and shall replace all defective or worn out equipment.

## ARTICLE 8

### OPERATIONS AND SERVICES

#### Section 1.00 - Lessee's Scope of Management:

Lessee shall, under the terms and conditions of this lease agreement, be responsible for all Golf Course and other operations occurring on the leased premises, including, but not limited to, control and regulation of play, clubhouse services, food and beverage services. Lessee shall continuously operate all of the leased premises during the entire lease term with the ultimate purpose of providing the public with complete and continuous access to the leased premises and with sound business practice, due diligence and efficiency so as to produce the maximum gross receipts which may be produced by such manner of operation. Lessee shall provide a level of operation and service

equal to standards set by other championship quality Oregon public golf courses.

Section 2.00 - Business Hours/ Staff:

Lessee shall operate and keep the Golf Course facilities open to the public during such days and hours as are prudent and compatible for championship quality public golf courses in Oregon. The dining facilities and/or a snack bar will be open for lunch seven days a week and dining facilities for dinner will be available as demand permits. For the entire term of this lease agreement, a professional manager, or competent representative acting for and on Lessee's behalf, shall be present and on duty at said Golf Course each and every day that the Golf Course is open.

Section 3.00 - Safety:

Lessee shall at all times during the term of this lease agreement provide adequate security and safety measures necessary to protect the property and any persons, including Lessee's employees, invitees, agents, and members of the general public, from risk of harm arising from Lessee's use of the leased premises.

Section 4.00 - Non-Discrimination:

Lessee, or any agent or person claiming under or through Lessee, shall not discriminate against any person or group of persons based on race, color, sex, creed, marital status, national origin, ancestry, religion, political belief or physical handicap in employment practices, contracting and subcontracting practices or in making the leasehold facilities and services available to any person or group of persons.

Section 5.00 - Limitations on Operation of Business:

Lessee's operation of the Golf Course is limited solely to the terms and conditions of this lease agreement. No modifications of the terms and conditions of this lease agreement are permitted without the express written consent of Lessor.

Section 6.00 - Minimum Services Requirements:

Lessee shall provide the following minimum services to the public:

6.01 Instructional programs by qualified professional staff trained by course professional/manager;

6.02 Rules and instructional clinics;

6.03 Support staff, recruited and trained from the local area by course professional/manager;

6.04 Attractively priced high quality food and service to accommodate customer demand; and

6.05 Club fitting and repair.

## ARTICLE 9

### PROGRAMS

#### Section 1.00 - Minimum Program Requirements:

Lessee shall actively sponsor and maintain the following programs during its operation of the leased premises:

1.01 Brookings citizen discount golf fees; *yes*

1.02 Lifetime golf green fee and other privileges program for certain "Charter Members", as to be later determined by Lessee; *yes*

1.03 Senior citizen annual and monthly passes; *No*

1.04 Use of course for practice and matches for schools;

1.05 Use of and private storage of individually owned golf carts on premises at Lessee's standard charges; *No not allowed*

1.06 Organized men's, women's and couples events;

1.07 Mens and women's club for events and handicapping;

1.08 Junior golf instruction and competition;

1.09 Interclub activities/promotions;

1.10 At least one annual Pro-Am tournament; *yes*

1.11 Invitation to women professionals from Players West; *No*

1.12 One invitational per year for the benefit of local citizenry, plus monthly events; *yes*

?

1.13 Fund raising events for schools, service clubs and local needs available on request;

1.14 A free "clubs<sup>?</sup> for kids" program provided through the Professional Golf Association (PGA); and *Check with PGA*

1.15 Special consideration to private owners of golf carts for the duration of the golf cart's life. Owners must register their carts soon after the Golf Course opens and they will be charged an annual fee or a per round trail fee established by Lessee. Lessee shall have sole discretion to refuse access to the golf course by any older or unsightly golf cart. *NO*

## ARTICLE 10

### FINANCING

Lessee shall invest sufficient funds so as to develop a Golf Course/facility as may be approved pursuant to Article 6, Section 2.0 of this lease agreement. Lessee shall finance the Golf Course project, at no cost to Lessor. In no event shall such financing impair the property ownership interest of Lessor in the leased premises, or result in a lien on the leased premises.

## ARTICLE 11

### RECORDS AND EXAMINATIONS

Upon written request from Lessor, Lessee shall promptly furnish to Lessor (a) copies of any loan approval documentation, (b) an affirmative statement from each lender that no property of Lessor is collateral or security for any loan, (c) an affirmative statement from each lender that this lease is or is not collateral or security for any loan, (d) any loan amount, and (e) any loan balance. Lessee shall direct each of its lenders to provide to Lessor copies of any default notices sent to Lessee concerning failures under the terms of the construction financing loan documents. At such time as the construction debt has been satisfied in full by Lessee, Lessee shall furnish written proof to Lessor that all sums owed to the lenders relating to the construction debt have been paid.

## ARTICLE 12

### MAINTENANCE AND REPAIR

#### Section 1.00 - Lessee's Obligation:

Lessee shall keep all Golf Course and leasehold grounds and facilities in a clean, safe, sanitary condition and reasonably free from rubbish at all times, and in connection therewith shall assume complete responsibility for such janitorial service as may be necessary. Lessee shall be responsible for any and all repairs, maintenance and upkeep of the leased premises and shall not let the condition of the leased premises and/or its facilities deteriorate or fall into disrepair.

Lessee shall specifically be responsible for maintenance and repair of the following:

- 1.01 All Golf Course grounds;
- 1.02 All Golf Course maintenance equipment;
- 1.03 All buildings, structures and improvements; and
- 1.04 All rental and other equipment.

#### Section 2.00 - Lessor's Right to Repair:

In the event Lessee fails or neglects to maintain and repair the Golf Course grounds as confirmed by a USGA Turf Official selected by Lessor and Lessee, or fails to maintain and repair the buildings, fixtures and equipment, Lessor may, at its option, elect to make the repairs at the sole cost and expense of Lessee and Lessee shall reimburse Lessor for any such expenditures on demand, with interest at the statutory rate then provided by Oregon law from the date of expenditure until repaid. The exercise of Lessor's right to repair as provided in this section shall be without waiver of Lessor's other rights in the event of Lessee's default as provided in this lease agreement. If Lessor and Lessee are unable to agree upon the name of a USGA Turf Official, then selection of a USGA Turf Official shall be made pursuant to Article 26 of this Lease Agreement.

## ARTICLE 13

### WASTE AND NUISANCE/TIMBER REMOVAL

#### Section 1.00 - Waste and Nuisance Not Permitted:

Lessee shall not commit or suffer to be committed any waste upon the Golf Course or any nuisance, unreasonable noise, odor, or other act or thing which may disturb the quiet enjoyment of any other person(s) or entities located on or near the Golf Course. Lessee shall not at any time, without prior written consent of Lessor, cut down any healthy trees on the leased premises and/or sell or remove from the leased premises any sand, gravel, soil, or minerals of any kind.

*Can we strike for  
change to define size*

#### Section 2.00 - Tree Removal and Log Disposal:

During the process of development and construction of the Golf Course and any other development approved under Article 6, Section 2.00, any trees removed from the leased premises will be utilized by or incorporated into the development or maintenance of the facility.

## ARTICLE 14

### GOVERNMENTAL REGULATIONS

#### Section 1.00 - Licenses and Permits:

On the date of execution of this lease agreement, Lessor shall provide Lessee, at no cost to Lessee, the permits and governmental approvals identified on attached Exhibit "C" incorporated herein by this reference. Lessee has reviewed and fully understands the requirements of such permits and approvals. Lessee shall continue all such permits in full force and effect during the entire term of this lease, including renewal periods, and comply with all terms, requirements and conditions thereof. Lessor will assist Lessee in the acquisition of any additional permits, or governmental approvals as may be needed to construct the golf course facility and related structures. Lessor will assist Lessee in determining whether wetlands mitigation will be required for the anticipated Golf Course development. Lessee shall bear the expense of continuation of existing permits and approvals, acquisition of additional permits or approvals and any required mitigation determination and implementation.

#### Section 2.00 - Signs:

Lessee shall acquire all required signs pertaining to the operation of Lessee's business and at all times be in

compliance with ordinances or regulations then currently in effect governing the posting or placement of a sign. Subject to the requirements of municipal ordinances, Lessee may place directional signs to the golf course property within City limits. Furthermore, subject to city, county and state regulations, Lessee may place, at Lessee's expense, two (2) city-approved signs (one at each end of the main highway city limits).

#### Section 3.00 - Governmental Regulations:

Lessee shall, at no cost to Lessor, comply with and faithfully observe all requirements of all county, municipal, state, federal and other applicable governmental authorities, now in force, or which may hereafter be in force, that pertain to the Golf Course premises and the activities of Lessee on those premises. Lessee shall meet or exceed the standards of the U.S. Army Corps of Engineers for wetlands protection and the standards of the Oregon Department of Fish and Wildlife (ODFW) for the protection of salmonid spawning and rearing habitat on the Golf Course site. Lessee shall cooperate with ODFW on the siting and construction of fish enhancement and demonstration projects on the Golf Course site. Lessee shall maintain all water rights and sources for irrigation of the Golf Course in accordance with county, state and federal requirements. Lessee shall indemnify, defend and hold Lessor harmless from any suits, actions, legal or administrative proceedings, demands, claims, penalties, fines, losses, damages, expenses, costs, assessment(s), fees or charges of any kind in the event of violation of any county, municipal, state, federal or other applicable governmental entity's standards, regulations, statutes or any other enforceable rule or law.

#### Section 4.00 - Environmental Concerns:

4.01 Lessee shall endeavor to retain the natural golf features and aesthetic beauty of Jack Creek Valley. Lessee shall work closely with various government agencies including, but not limited to, the Department of Fish & Wildlife, Water Resources, Environmental Quality, Salmon/Trout Enhancement Program (STEP) and the Army Corps of Engineers. Lessee shall not use any pesticides or fertilizers which require a permit, or allow any pesticides or fertilizers to run into Jack Creek.

4.02 Lessee shall at all time act in accordance with all environmental laws, including, but not limited to the Resource Conservation and Recovery Act, the Toxic Substances Control Act, the Comprehensive Environmental Response, Compensation and Liability Act, the Solid Waste Disposal Act or any comparable state or federal statute or regulation promulgated under any state or federal law relating to protection of human health or protection for the environment.

4.03 Lessee shall indemnify, defend and save harmless Lessor from and against any suits, actions, legal or administrative proceedings, demands, or against all suits, actions, legal or administrative proceedings, demands, claims, liabilities, fines, penalties, losses, injuries, damages, expenses or costs, including interest and attorney fees, in any way connected with any injury to any person or damage to any property (including costs of studies, surveys, clean-up and any other environmental claim expense) or any loss to Lessor occasioned in any way by Lessee on the leased premises relating to hazardous substances on the leased premises, or by the negligent or intentional activities of Lessee during or after its occupation of the leased premises.

4.04 The indemnity provision specified in Section 4.03 above, as well as the indemnity provisions in all other sections of this lease agreement, include the obligation of Lessee to perform any remedial work, activity or other obligation required, ordered or requested by any agency, governmental authority or third person, or otherwise necessary to avoid injury or liability to any person or property, or to prevent the spread of pollution on or from the leased premises. This indemnity shall only apply to contamination caused by Lessee or Lessee's sub-tenants.

4.05 In the event Lessor incurs costs as described by Section 4.03 above or under any other indemnity provision of this lease agreement, Lessee shall, within thirty (30) days of the receipt of notice thereof, reimburse Lessor for all such expenses together with interest from the date of the expenditure at the rate of seven and one-half percent (7.5%) per annum.

Section 5.00 - Compliance with Americans with Disabilities Act:

5.01 Lessee, in addition to compliance with all other laws, rules and regulations, shall comply with the provisions of Americans with Disabilities Act, 42 USC §12101 et seq and 42 USC 12111 et seq.

ARTICLE 15

TAXES, ASSESSMENTS AND FEES

Upon completion of the Golf Course construction, Lessee shall pay when due and before delinquency and the assessment of penalties or the accrual of interest, all taxes, fees, assessments, license fees, and other charges, hereinafter referred to as "taxes," that are levied and assessed against the leased real property and that are levied and assessed against personal property installed or located in or on the leased

premises. Lessor shall pay real property taxes and assessments to the date of Project completion.

Lessor covenants not to assess special fees or taxes on Lessee or Lessee's activities on the leased premises other than those which may be already provided for in Lessor's current assessments and taxes.

Lessee shall pay any applicable general business license taxes that may be required by a governmental unit.

Upon Lessor's written request, Lessee shall furnish Lessor with proof of payment of taxes.

## ARTICLE 16

### UTILITIES AND SERVICES

Lessee shall be solely responsible for and promptly pay all charges for heat, water, gas, electricity or any other utility used or consumed in or on the leased premises. In no event shall Lessor be liable for an interruption or failure in the supply of any such utilities to the leased premises, except for Lessor's negligent conduct.

## ARTICLE 17

### INSURANCE AND INDEMNIFICATION

#### Section 1.00 - Liability Insurance:

Lessee shall, during the lease term, keep in full force and effect policies of commercial general liability and real and personal property damage insurance with respect to the leased premises and the business conducted by Lessee and any subtenants of Lessee on the leased premises, including, but not limited to, Lessee's improvements, equipment and/or alterations. The commercial general liability limits of insurance shall not be less than 1 million dollars per person and 3 million dollars per occurrence. The property damage coverage providing standard fire and extended coverage insurance shall have limits of not less than 100% of the property's actual cash value. Additionally, based on assurances provided by Lessor in Article 31, section (d) pertaining to the status of hazardous materials as well as the findings of a Phase I Environmental Report obtained by Lessor and provided to Lessee, Lessee agrees to obtain a separate insurance policy for environmental pollution liability. Policy liability

limits for such coverage shall not be less than \$1 million dollars per occurrence. The policy shall include covenants for environmental/pollution liability to the full extent of the limits of liability. The policy shall name Lessee as the named insured, and Lessor or any person(s) or entity designated by Lessor as additional insured, and shall contain a clause that the insurer shall not cancel or change the scope, amount or coverage of the policy without first giving Lessor thirty (30) days prior written notice. The insurance shall be with an insurance company authorized to do business in the State of Oregon, with a financial rating of at least a contingent "A" status as rated in the most recent edition of Best's Insurance Reports. A certificate of insurance shall be delivered to Lessor at the commencement of the lease term. Renewals of the policy shall be delivered to Lessor not less than 15 days before expiration of the current policy then in effect. If Lessee refuses or neglects to secure and maintain insurance policies complying with the provisions of this Section, Lessor may, but shall not be required to do so, secure and maintain such insurance policies and Lessee shall pay the cost thereof to Lessor, together with interest at the statutory rate then provided by Oregon law, as additional rent, upon demand, which action by Lessor shall be made without waiver of Lessor's other rights in the event of Lessee's default as provided in this agreement.

If the Phase I Environmental Report described in this section identifies adverse environmental conditions, either party may terminate this lease agreement prior to commencement of construction.

#### Section 2.00 - Review and Increase in Liability

##### Coverage:

Lessee shall review and update the levels of the commercial general liability and property damage insurance on an annual basis and shall increase the coverage as necessary to reflect adequate and sufficient coverage for businesses similar to Lessee's location operation.

#### Section 3.00 - Workers' Compensation:

Lessee shall maintain at all times workers' compensation insurance for all Lessee's employees and shall comply with all workers' compensation rules, regulations, statutes and any other applicable laws.

Section 4.00 - Indemnification of Lessor:

Lessee shall indemnify Lessor and save Lessor harmless from and against any and all claims, actions, damages, liability and expense, including attorney fees, in connection with loss of life, personal injury and/or damage to property arising from or out of any occurrence in, upon or at the leased premises, or the occupancy or use by Lessee of the leased premises and common areas or any part thereof, or occasioned wholly or in part by any act or omission of Lessee, its agents, contractors, employees, servants, lessees or concessionaires, invitees and guests. In case Lessor shall be made a party to any litigation commenced by or against Lessee, then Lessee shall protect and hold Lessor harmless and shall pay all costs, expenses and reasonable attorney's fees incurred or paid by Lessor in connection with such litigation but not to the extent that such injury is due to Lessor's negligence or gross misconduct.

ARTICLE 18

ASSIGNMENTS AND SUBLETS

Section 1.00 - Consent Required:

Lessee shall not voluntarily or involuntarily assign, mortgage, pledge, hypothecate or sublet this lease in whole or in part, nor license, franchise or sublet all or any part of the leased premises, without the prior written consent of Lessor in each instance. Lessor shall not unreasonably withhold such consent. Lessor's consent to any assignment or subletting shall not constitute a waiver of the necessity for such consent for any subsequent assignment or subletting. This prohibition against assigning, mortgaging, pledging, hypothecating, licensing, franchising or subletting shall be construed to include a prohibition against any such act by operation of law, legal process, receivership, bankruptcy or otherwise. Lessee shall pay all costs, expenses and reasonable attorney's fees that may be incurred or paid by Lessor in processing, reviewing, documenting or administering any request of Lessee for Lessor's consent required pursuant to this section. Lessor's consent to any subletting or assignment as contemplated herein does not in any way release Lessee from the payment requirements of Article 4. Notwithstanding any assignment or sublease, Lessee shall remain fully liable on this lease and shall not be released from performing any of the terms, covenants and conditions of this

lease. Lessee shall have the right to pledge its interest in this lease agreement to a project lender, with the prior written consent of Lessor, for the sole purpose of security for financing the construction of the project contemplated by the lease, provided however that no pledge or assignment for construction financing shall create any rights, liens or interests in the leased premises superior to the interests of Lessor.

#### Section 2.00 - Ownership:

If at any time during the lease term any part or all of the ownership interest of Lessee shall be transferred by sale, assignment, bequest, inheritance, operation of law or other disposition so as to result in a change in the present effective control of Lessee, Lessee shall promptly notify Lessor in writing of such change, and Lessor's consent to such change shall be required as provided in Section 1.00 above.

### ARTICLE 19

#### SUCCESSORS

This lease agreement shall be binding on Lessor and Lessee and their heirs, executors, administrators, successors and to the extent assignable, Lessee's assigns. If there shall be more than one, all shall be bound jointly and severally by the terms, covenants and agreements herein. No rights, however, shall inure to the benefit of any assignee of Lessee unless the assignment to such assignee has been approved by Lessor in writing as provided in Article 18, Section 1.00 hereof. Nevertheless, Lessor may, at any time and with prior written notice to Lessee, make an assignment of its interest in this lease and, in the event of such assignment and the assumption by the assignee of the covenants and agreements to be performed by the Lessor herein, Lessor and its successors and assigns (other than the assignee of this lease) shall be released from any and all liability hereunder.

### ARTICLE 20

#### LIENS, CLAIMS AND ENCUMBRANCES

Lessee shall not create or permit to be created or to remain any lien, claim, encumbrance, tax or assessment against or upon the leased premises, improvements and fixtures, and will discharge immediately any such lien, claim, encumbrance, tax or

assessment, including, but not limited to, liens of mechanics, laborers or materialmen for work or materials alleged to be done or furnished in connection with the design, construction, development, improvement, alteration and/or operation of the leased premises.

Lessee shall have the right to pledge its leasehold interest in this lease agreement for construction financing, subject to the requirements of Article 18.

Lessee shall have the right to contest, in good faith and by appropriate legal proceedings, the validity or amount of any mechanics', laborers' or materialmen's lien or claimed lien. In the event of such contest, Lessee shall give to Lessor reasonable security as may be demanded by Lessor to insure payment thereof and to prevent any sale, foreclosure or forfeiture of the leased premises or any part thereof by reason of such nonpayment. On final determination of such lien or such claim for lien, Lessee shall immediately pay any judgment rendered, with all proper costs and charges, and shall have such lien released or judgment satisfied at Lessee's expense, and upon such payment and release or satisfaction, Lessor will promptly return to Lessee such security as Lessor shall have received in connection with such contest. If Lessee fails to resolve and satisfy the lien or claimed lien in a commercially reasonable and timely manner, Lessor may, following written notice to Lessee, use the security posted by Lessee to satisfy the lien or claimed lien. Lessor reserves the right to enter the leased premises to post and keep posted notices of non-responsibility for any such lien. Lessee shall pay, protect, defend and indemnify Lessor within ten (10) days after demand therefor, from and against all liabilities, losses, claims, damages, costs and expenses, including reasonable attorney's fees, incurred by Lessor by reason of the filing of any lien and/or the removal of the same.

## ARTICLE 21

### DEFAULT OF LESSEE

#### Section 1.00 - Right to Re-enter:

In the event of the occurrence of any of the events listed below, Lessor, in addition to other rights or remedies it may have under Oregon law, including the right to declare a default, shall have the immediate right to re-entry and may remove all persons and property from the leased premises and such property may be removed and stored in a public warehouse or elsewhere at the cost of, and for the account of Lessee, all without service of notice, and Lessor may resort to legal process

and without being deemed guilty of trespass, or becoming liable for any loss or damage which may occur thereby:

1.01 Failure to pay rental payments within sixty (60) days of the date due, failure to pay insurance premiums within sixty (60) days of the date due, or failure to continuously maintain all required insurance.

1.02 Failure to perform any other term(s), condition(s) or covenant(s) under this lease for more than sixty (60) days after Lessee receives written notice of such default; provided however no notice of default and opportunity to cure shall be required if during any twelve (12) consecutive month period, Lessor has already sent notice to Lessee concerning failure to perform the same covenant.

1.03 Lessee or Lessee's agent's falsification of any report or statement required to be furnished to Lessor pursuant to the terms of this lease agreement.

1.04 If Lessee becomes bankrupt or insolvent, or files for reorganization or for the appointment of a receiver or trustee of all or a portion of Lessee's property, or if Lessee is insolvent and makes an assignment for the benefit of creditors.

1.05 Lessee's abandonment of the leased premises or failure to operate the leased premises for a period of thirty (30) continuous days following completion of construction.

1.06 If Lessee suffers this lease or the leased premises to be taken under any writ of execution.

1.07 If Lessee fails to commence construction of the Project by July 1, 1998, or fails to complete construction by August 1, 1999.

1.08 Failure of Lessee to maintain authority and lawful business status in the State of Oregon. Lessee shall furnish to Lessor, from time to time on request of Lessor, evidence of continued authority and business status.

1.09 Failure of Lessee to obtain prior written consent from Lessor as to any requirement of this lease agreement when such consent is required before Lessee undertakes action, subject to the notice requirements of Section 1.02.

Each of the events set forth in this section shall be considered an event of default and may result in exercise of remedies by Lessor.

## Section 2.00 - Right to Re-let:

Should Lessor elect to re-enter as herein provided, or should Lessor take possession pursuant to legal proceedings or pursuant to any notice provided for by law, Lessor may either terminate this lease or relet the leased premises or any part thereof for such term or terms (which may be for a term extending beyond the lease term) and at such rental or rentals and upon such other terms and conditions as Lessor in its sole discretion may deem advisable. Upon each such reletting all rentals received by Lessor from such reletting shall be applied as follows:

2.01 To the payment of any indebtedness other than rent due hereunder from Lessee to Lessor;

2.02 To the payment of any costs and expenses of such reletting, including brokerage fees and attorneys' fees, and of costs of any alterations and repairs;

2.03 To the payment of rent due and unpaid hereunder;

2.04 Any residue shall be held by Lessor and applied in payment of future rent as the same may become due and payable hereunder.

## Section 3.00 - Deficiency:

If any such rentals received from such reletting during any period are less than that to be paid during that period by Lessee hereunder, Lessee shall pay any such deficiency to Lessor.

## Section 4.00 - Termination/Remedies:

No such re-entry or taking possession of the leased premises by Lessor shall be construed as an election on its part to terminate this lease unless a written notice of such intention is given to Lessee or unless the termination thereof be decreed by a court of competent jurisdiction. Notwithstanding any such reletting without termination, Lessor may at any time thereafter elect to terminate this lease for such previous breach. Should Lessor at any time terminate this lease for any breach, in addition to any other remedies it may have, Lessor may recover from Lessee all damages it may incur by reason of such breach, including the cost of recovering the leased premises, reasonable attorneys' fees, and including the worth at the time of such termination of the excess, if any, of the amount of rent and charges equivalent to rent reserved in this lease for the

remainder of the lease term over the then reasonable rental value of the leased premises for the remainder of the lease term. All of such amounts shall be immediately due and payable from Lessee to Lessor. Lessor's remedies are cumulative, not exclusive; the election of one remedy does not constitute a waiver of any other remedies available to Lessor at law or equity.

Section 5.00 - Legal Expenses:

In the event of suit, action or proceeding to collect any sums due hereunder or to enforce any of the provisions of this lease, the prevailing party shall be entitled to collect from the losing party all expenses therefor, including reasonable attorney fees.

Section 6.00 - Mitigation of Damages and Right to Cure Defaults:

Lessor shall have no duty to mitigate damages arising in any way out of Lessee's failure to comply with any term, condition, covenant or agreement of this lease. At Lessor's election, Lessor may cure, at any time, with thirty (30) days written notice, any default by Lessee under this lease. If Lessor so elects, all costs and expenses incurred by Lessor, including reasonable attorney's fees, together with interest thereon at the statutory rate then provided by Oregon law, shall be paid by Lessee to Lessor on demand.

Section 7.00 - Miscellaneous Provisions Relating to Default of Lessee:

Section 7.01 - Ownership of Real Property Improvements:

In the event of default by Lessee and the re-entry of Lessor to the leased premises as provided in this Article, all of Lessee's right, title and interest in and to the improvements and fixtures constructed on the real property shall cease and those improvements and fixtures shall thereupon become the property of Lessor. Lessee shall have no further right to occupy or possess those improvements or fixtures on the real property in the event of such default.

Section 7.02 - Right to Sue More Than Once:

Lessor may sue Lessee to recover damages periodically during the remainder of the term of the lease in the event of default and no action for damages shall bar a later action for damages subsequently accruing.

Section 7.03 - Remedies Not Exclusive:

The remedies for default provided in this Article shall be in addition to and shall not exclude any other remedy available to Lessor under Oregon law. Upon termination of the lease, Lessee shall join with Lessor in the execution of any instruments necessary to remove Lessee's interest in the lease and property from the record title, as well as the interest of any construction lender in the lease as allowed hereunder, and Lessee shall bear the cost of preparation of all such documents and recording.

ARTICLE 22

SURRENDER OF LEASED PREMISES

Section 1.00 - Removal of Personal Property:

At the termination of this lease, or any renewal term thereof, Lessee shall remove all personal property, goods and effects from the leased premises which are not the property of Lessor, and shall surrender the leased premises, fixtures connected therewith, and all alterations, additions or improvements to or upon the leased premises, in good repair, order and condition, reasonable wear and tear excepted, and shall surrender all keys for the leased premises to Lessor at the place then fixed for the payment of rent and shall inform Lessor of all combinations on locks, safes, and vaults, if any, in the leased premises. Lessee authorizes Lessor to store in any public warehouse or elsewhere and in the name and at the risk and expense of the Lessee any of Lessee's personal property not so removed, or to sell at public or private sale, without notice, any or all of said property not so removed and to apply the net proceeds of such sale to the payment of any sum due hereunder, or to destroy such property in the event Lessee has failed to retrieve the same following thirty (30) days written notice by Lessor requiring removal by Lessee. Lessor, by written notice, may elect to require Lessee, at its sole cost and expense, to perform the removal of such of Lessee's personal property.

ARTICLE 23

LESSEE HOLDING OVER

If Lessee remains in possession of the leased premises after the expiration of the lease term, or any renewal or extension thereof, and without the execution of a new lease, Lessee, at the option of Lessor, shall be deemed to be occupying

the leased premises as a tenant from month to month at a rental amount to be determined at the time of the holdover. Lessee shall remain subject to all conditions, provisions and obligations set forth in this lease agreement in so far as the same are applicable to a month-to-month tenancy.

## ARTICLE 24

### DESTRUCTION OF LEASED PREMISES

#### Section 1.00- Total Destruction:

In the event that the leased premises and buildings shall be totally destroyed by fire, flood or other casualty to the extent that the damage cannot be materially restored with due diligence within twelve (12) months from the date of destruction, Lessee may terminate this lease agreement by giving written notice to Lessor within thirty (30) days following such damage or destruction. If Lessee elects to terminate, this lease agreement shall cease and come to an end as of the date of such damage or destruction as though such date were the date originally fixed for the expiration of the term of this agreement. In the event of the termination of the lease agreement under this section, the proceeds of insurance received for damage or loss to the structures and improvements on the real property, if any, shall be paid to the parties in accordance with the following formula: Lessee's interest in the proceeds of insurance for damage or loss to structures or improvements shall be calculated by multiplying the amount of the insurance proceeds by a fraction, the denominator of which is 60 and the numerator of which is the number of years and parts of years remaining on Lessee's interest in the lease under the terms of this agreement (the maximum value of the numerator being 60). Lessor's interest in such insurance proceeds is the remainder of the insurance proceeds after application of the formula set out herein.

Section 2.00 - Partial Destruction: In the event the leased premises and/or buildings are damaged by fire, flood or other casualty and such damage can be materially restored with due diligence in twelve (12) months following the date of destruction, Lessee shall have the obligation to repair the building or premises, as the case may be, as nearly as practicable to the same condition prior to such damage. The Lessee shall cause such repair to be commenced with all reasonable speed so as to complete the same at the earliest possible date. The Lessee agrees that any insurance proceeds received in connection with the damage shall be used for

repairing and rebuilding the leased premises and buildings and structures.

## ARTICLE 25

### EMINENT DOMAIN

#### Section 1.00 - Total Taking:

If the leased premises is taken by power of eminent domain by any public or quasi-public authority, this lease shall terminate as of the date of possession of such condemning authority. Lessee shall pay rent up to that date and Lessee shall be entitled to a refund of advanced payment of rent as of that date. Lessor covenants not to participate in favor of any condemnation of the property.

#### Section 2.00 - Partial Taking:

If less than all of the leased premises are taken by power of eminent domain, this lease shall terminate only as to the parts so taken as of the date of possession by the public authority. Rent for the leased premises shall be equitably adjusted, where applicable, to the extent that the taking by eminent domain has reduced the useable area required for Lessee's activities on the leased premises.

#### Section 3.00 - Eminent Domain Proceeds Division:

The proceeds received from the condemning public authority as compensation for the value of the property taken under power of eminent domain shall be distributed between Lessor and Lessee as follows: Any portion of a damage award made for land and/or improvements to the leased premises shall be distributed between Lessee and Lessor in accordance with the same formula specified for distribution of insurance proceeds set out in Article 24, Section 1.00.

## ARTICLE 26

### DISPUTE RESOLUTION

Lessor and Lessee agree that any disputes arising as a result of the terms and provisions of this lease agreement, or for enforcement thereof, shall be resolved by arbitration. The parties shall attempt in good faith to agree upon a single arbitrator to resolve the dispute, but if the parties are unable to agree promptly as to the name of one arbitrator, then each party shall designate the name of an arbitrator and the two

arbitrators shall select a third arbitrator and the arbitration shall proceed to be heard by the panel of three arbitrators. The arbitration shall proceed in accordance with the Oregon statutes governing arbitration (Oregon Revised Statutes Chapter 36). The arbitration proceeding shall be conducted in Brookings, Curry County, Oregon. The arbitrators' decision shall be final and binding and judgment may be entered thereon. If the parties agree as to use of one arbitrator, the parties shall share the fees and expenses of the arbitrator. If a three person arbitration panel is utilized, each party shall pay the fees and expenses of the arbitrator selected by that party and one-half of the fee of the third arbitrator.

#### ARTICLE 27

##### QUIET ENJOYMENT

Upon Lessee's payment of the rents herein provided and upon Lessee's observance and performance of all the covenants, terms and conditions, Lessee shall peaceably and quietly hold and enjoy the leased premises for the lease term without hindrance or interruption by Lessor or any other person(s) lawfully or equitably claiming by, through or under Lessor, subject, nevertheless, to the terms and conditions of this lease agreement.

#### ARTICLE 28

##### OPTION TO RENEW

At the conclusion of the original lease term of sixty (60) years, and provided that the Lessee is not in default under the terms of this lease agreement, Lessee shall have the option of renewing this lease for an additional fifteen (15) year period, provided that Lessee gives written notice to Lessor of its intent to renew at least six (6) months prior to expiration of the original term. The option shall be for all of the leased premises. If Lessee exercises this option to renew, all terms of the lease for the ensuing term shall be the same as the preceding term except for rent which shall be set either by agreement of the parties or by dispute resolution pursuant to Article 26. In no event shall rent be less than the rent specified in the last year of the original lease term. In selection of an arbitrator or panel of arbitrators to fix the amount of rent for the ensuing term, the parties shall designate qualified, independent real property appraiser(s) familiar with rental values for golf course operations in Oregon, California and Washington. The arbitrator may set rent for the ensuing term on a year to year escalation

formula, or any other basis that the arbitrator determines to be fair and reasonable under the circumstances then existing.

## ARTICLE 29

### MISCELLANEOUS

#### Section 1.00 - Time Is Of The Essence:

Time is of the essence of each and every provision and obligation of this lease agreement.

#### Section 2.00 - Entire Agreement:

This lease agreement and the exhibits attached hereto and forming a part hereof set forth all the covenants, promises, agreements, conditions and understandings between Lessor and Lessee concerning the leased premises and there are no covenants, promises, agreements, conditions or understandings, either oral or written, between them other than as are herein set forth. Except as provided herein, no subsequent alteration, amendment, change or addition to this lease shall be binding upon Lessor or Lessee unless reduced to writing and signed by the parties.

#### Section 3.00 - Applicable Law:

The laws of the State of Oregon shall govern the validity, construction, interpretation, performance and enforcement of this lease agreement.

#### Section 4.00 - Waiver:

The waiver by Lessor of any breach of any term, covenant or condition herein shall not be deemed a waiver of such term, covenant or condition or any subsequent breach of such term or any other term, covenant or condition herein. The subsequent acceptance of rent hereunder by Lessor shall not be deemed a waiver of any preceding breach by Lessee of any term, covenant or condition of this lease agreement, other than the failure of Lessee to pay the particular rental so accepted, regardless of the Lessor's knowledge of such preceding breach at the time of acceptance of such rent. No covenant, term or conditions of this lease agreement shall be deemed waived by Lessor, unless such waiver is in writing and signed by Lessor.

#### Section 5.00 - Accord and Satisfaction:

No payment by Lessee or receipt by Lessor of a lesser amount than the rent herein stipulated shall be deemed to be

other than on account of the earliest stipulated rent, nor shall any endorsement or statement or any check or any letter accompanying any check or payment as rent be deemed an accord and satisfaction, and Lessor may accept such check or payment without prejudice to Lessor's right to recover the balance of such rent or pursue any other remedy provided for in this lease agreement.

Section 6.00 - No Partnership:

Lessor does not, in any way or for any purpose, become a partner of Lessee in the conduct of its business, or otherwise, or joint venturer or a member of a joint enterprise with Lessee. Provisions of this lease pertaining to rent payable hereunder are included solely for the purpose of providing a method whereby the rent is to be measured and ascertained.

Section 7.00 - Notices:

7.01 At all times when this lease agreement is in force, Lessee shall maintain and designate in writing to Lessor an agent for receipt of notices and service of process which agent shall be located within the state of Oregon.

7.02 Any notice, demand, request or other instrument which may be or are required to be given under this lease agreement shall be delivered personally or sent by United States certified mail postage prepaid and shall be addressed (a) if to Lessor at 898 Elk Drive, Brookings, Oregon 97415, or such other address as Lessor may designate, and (b) if to Lessee at such address as Lessee has designated as their agent within Oregon for receipt of notice and service of process.

Section 8.00 - Partial Invalidity:

If any term, covenant or condition of this lease or the application thereof to any person(s) or circumstance(s) shall, to any extent, be invalid or unenforceable, the remainder of this lease, or the application of such term, covenant or condition to person(s) or circumstance(s) other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term, covenant or condition of this lease shall be valid and enforceable to the fullest extent permitted by law.

Section 9.00 - Execution Of Lease:

The submission of this lease for examination does not constitute a reservation of or option for the leased premises and this lease becomes effective as a lease only upon execution and delivery thereof by Lessor and Lessee. If Lessee is a

corporation, limited liability company or partnership, this lease becomes effective only upon delivery to Lessor of certified resolutions of Lessee's directors or members authorizing the execution and delivery of this lease.

Section 10.00 - Certificate of Good Standing:

Each party hereto certifies that it is lawfully created and existing and authorized to enter into this lease agreement.

Section 11.00 - Recording:

If requested by Lessor, the parties shall execute a memorandum of this lease agreement in recordable form for the purpose of recordation, at Lessor's expense. Said memorandum or short form of this lease agreement shall describe the parties, the leased premises and the lease term and shall incorporate this lease by reference.

Section 12.00 - Limitation on Use:

The leased premises shall be used by Lessee for the purposes of construction and operation of a championship quality public Golf Course and Golf Course related commercial activities. Subject to prior approval of governmental authorities, including Curry County, the leased premises may also be used to site and construct a RV park and up to four (4) residential buildings as described in Article 6, Section 8.00 of this lease agreement. Lessee may explore the option of adding motel or condominium facilities in the future based on providing to Lessor adequate justification for building such facilities for the benefit of increasing business opportunity to the golf facility, provided any such proposal shall be subject to prior approval by Lessor as set forth in Article 6.

Section 13.00 - Acceptance of Property "As Is":

Lessee hereby acknowledges that it accepts the leased premises in its present condition "as is" and based upon Lessee's own determination of the suitability of the leased premises for Lessee's intended purposes.

ARTICLE 30

TERMINATION OF LEASE AGREEMENT

In the event Lessee is unable (1) to obtain suitable financing for the proper construction of the Golf Course

development, (2) to deliver to City a satisfactory performance bond according to the requirements of this lease agreement, or (3) to commence construction according to the time frame set forth in Article 21, Section 1.07, this lease shall terminate and be of no further force and effect.

Until such time as the conditions stated in this Article are fully satisfied, Lessee's activity on and occupancy of the leased premises shall be limited to site evaluation, testing and such other related activities as may be necessary to secure the approvals of governmental agencies which may be required to issue additional permits and approvals for use of the leased premises as a Golf Course. Upon Lessee's receipt and confirmation of suitable financing, delivery of a performance bond satisfactory to Lessor and delivery of proof of insurance to Lessor, Lessee shall then be entitled to use, occupy and develop the leased premises as contemplated by this lease agreement.

#### ARTICLE 31

##### LESSOR WARRANTY

Lessor represents, warrants and covenants to Lessee that:

(a) Lessor has the right, power, legal capacity and authority to execute, deliver and perform this lease agreement and any consent required as a condition to Lessor's authority to execute, deliver and perform this lease agreement has been obtained;

(b) No violation of any applicable statute, ordinance, regulation, order, or law exists with respect to the leased premises;

(c) There are no existing actions, claims, suits or proceedings pending or, to Lessor's current and actual knowledge, threatened against the leased premises (including without limitation any condemnation, eminent domain, or similar proceeding);

(d) Hazardous Materials/Condition Precedent

For purposes of this section, hazardous material shall include, but not be limited to, the substances defined as "hazardous substances" "hazardous material" or "toxic substances" in the comprehensive environmental response, Compensation Liability Act of 1980, as amended, 42 U.S.C. Sections 9601 et

seq.; the Hazardous Material Transportation Act, 40 U.S.C. Sections 1801 et seq.; the Resource Conservation Recovery Act, 42 U.S.C. Section 6901 et seq.

(i) To Lessor's knowledge after due inquiry, no asbestos containing materials were installed or exposed in the leased premises through demolition, renovation or otherwise, at any time during or prior to Lessor's ownership thereof;

(ii) To Lessor's knowledge after due inquiry, no electrical transformers, flourescent light fixtures with ballasts or other equipment containing PCB's are or were located on the leased premises during or prior to Lessor's ownership thereof;

(iii) To Lessor's knowledge after due inquiry, no storage tanks for gasoline or any other hazardous substance are or were located on the leased premises at any time during or prior to Lessor's ownership thereof;

(iv) The leased premises and Lessor's operations concerning the leased premises are not in violation of any applicable federal, state or local statute, law or regulation, and no notice from any government body has been served upon Lessor claiming any violation of any law, ordinance, code or regulation, or requiring or calling attention to the need for, any work, repairs, construction, alterations or installation or in connection with the property in order to comply with any laws, ordinances, codes or regulations, with which Lessor has not complied. If there are any such notices with which Lessor has complied, Lessor shall provide Purchaser with copies thereof;

(e) Possession shall be delivered to Lessee free of any leases, tenancies or other third-party possessory interests except easements of record.

(f) To Lessor's knowledge, there are no applicable building or zoning laws which prevent Lessee's construction on the leased premises of buildings and improvements in accordance with Lessee's intended land use (i.e., zoning) designations except that Lessee obtain approval through the applicable conditional use permit process.

(g) All permits identified on Exhibit "C" will still be in full force and effect until at least July 8, 1998.

IN WITNESS WHEREOF, Lessor and Lessee have signed this lease effective the day and year first above written.

LESSOR

CITY OF BROOKINGS, OREGON

BY: Nancy Brendlinger  
Nancy Brendlinger  
Mayor

ATTEST:

Beverly S. Adams  
Beverly S. Adams  
Finance Director/Recorder

LESSEE

Felix Claveran

STATE OF OREGON     )  
                              ) ss.  
County of Curry     )

Personally appeared Nancy Brendlinger and ~~Beverly S. Adams~~, who being sworn, stated that they are the Mayor and Finance Director/Recorder respectively of the City of Brookings, a Municipal Corporation of the State of Oregon; and that this Lease Agreement was voluntarily signed on behalf of said municipal corporation by authority of the Common Council. BEFORE ME:



STATE OF OREGON     )  
                              ) ss.  
County of Curry     )

Nancy L. Phillips  
Notary Public for Oregon  
My Commission Expires: 3-27-98

Personally appeared Felix Claveran, who being sworn, stated that he voluntarily signed this Lease Agreement. BEFORE ME:

Notary Public for Oregon  
My Commission Expires: \_\_\_\_\_

IN WITNESS WHEREOF, Lessor and Lessee have signed this lease effective the day and year first above written.

LESSOR

CITY OF BROOKINGS, OREGON

BY: Nancy Brandlinger  
Nancy Brandlinger  
Mayor

ATTEST:

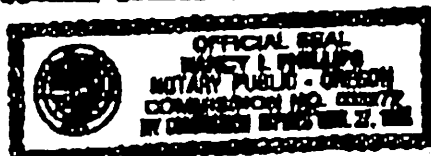
Beverly S. Adams  
Beverly S. Adams  
Finance Director/Recorder

LESSEE

Felix Claveran  
Felix Claveran

STATE OF OREGON     )  
                              ) ss.  
County of Curry     )

Personally appeared Nancy Brandlinger and Beverly S. Adams, who being sworn, stated that they are the Mayor and Finance Director/Recorder respectively of the City of Brookings, a Municipal Corporation of the State of Oregon; and that this Lease Agreement was voluntarily signed on behalf of said municipal corporation by authority of the Common Council. BEFORE ME:



Nancy I. Phillips  
Notary Public for Oregon  
My Commission Expires: 3-2-98

STATE OF OREGON     )  
                              ) ss.  
County of Curry     )

Personally appeared Felix Claveran, who being sworn, stated that he voluntarily signed this Lease Agreement. BEFORE ME:

Notary Public for Oregon  
My Commission Expires: \_\_\_\_\_

LEASE AGREEMENT - 32

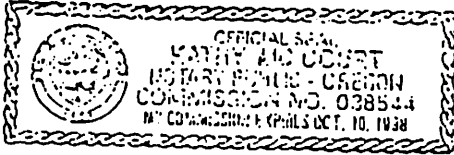
County of Curry

} ss.

BE IT REMEMBERED, That on this 17 day of FEBRUARY, 19 98,  
before me, the undersigned, a Notary Public in and for the State of Oregon, personally appeared the within  
named Beverly S Adams

known to me to be the identical individual..... described in and who executed the within instrument and  
acknowledged to me that She.....executed the same freely and voluntarily.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed  
my official seal the day and year last above written.



Kathy McCurt  
Notary Public for Oregon  
My commission expires 10-10-98

# CALIFORNIA



## ALL-PURPOSE



### ACKNOWLEDGEMENT

STATE OF CALIFORNIA )

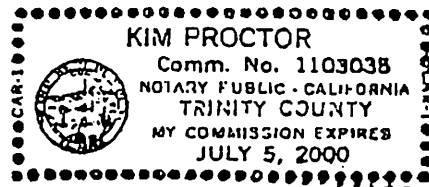
COUNTY OF Trinity )

On 2/18/98 before me, Kim Proctor  
DATE NAME, TITLE OF OFFICER - E.G., "JANE DOE, NOTARY PUBLIC"

personally appeared, Felix Claveran  
personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s)  
whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/  
they executed the same in his/her/their authorized capacity(ies), and that by his/her/their  
signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted,  
executed the instrument.

WITNESS my hand and official seal.

Kim Proctor (SEAL)  
NOTARY PUBLIC SIGNATURE



### OPTIONAL INFORMATION



TITLE OR TYPE OF DOCUMENT \_\_\_\_\_

DATE OF DOCUMENT \_\_\_\_\_ NUMBER OF PAGES \_\_\_\_\_

SIGNER(S) OTHER THAN NAMED ABOVE \_\_\_\_\_

EXHIBIT A

LEGAL DESCRIPTION

A parcel of land lying within the southwest Quarter (SW 1/4) of Section 35, Township 40 South, Range 13 West, Willamette Meridian, Section 2 and the Northeast Quarter (NE 1/4 of Section 11, Township 41 South, Range 13 West Willamette Meridian, Curry County, Oregon, being more particularly described as follows: Beginning at a point described as being South 69.06 feet and East 446.92 feet from the northwest corner of said Section 2;

thence South 81°23'40" East 532.76 feet;  
thence North 43°01'27" East 159.17 feet;  
thence North 49°57'28" East 292.07 feet;  
thence North 77°19'41" East 373.18 feet;  
thence South 88°42'58" East 131.41 feet;  
thence South 36°11'57" East 98.18 feet;  
thence South 05°04'26" East 149.57 feet;  
thence South 13°47'19" East 190.63 feet;  
thence South 25°43'47" West 454.58 feet;  
thence South 14°31'34" East 93.71 feet;  
thence South 58°15'59" East 263.48 feet;  
thence South 88°12'41" East 304.99 feet;  
thence South 71°51'10" East 344.73 feet;  
thence South 23°58'03" East 482.40 feet;  
thence South 35°21'37" East 126.51 feet;  
thence North 65°29'12" East 90.15 feet;  
thence South 06°41'08" East 473.33 feet;  
thence South 40°38'16" East 208.48 feet;  
thence South 29°50'48" East 114.34 feet;  
thence South 01°54'27" East 183.18 feet;  
thence South 52°33'47" East 106.16 feet;  
thence South 65°59'56" East 106.36 feet;  
thence South 36°16'54" East 90.63 feet;  
thence South 88°47'57" East 109.96 feet;  
thence South 85°52'57" East 110.09 feet;  
thence North 71°47'24" East 399.03 feet;  
thence South 23°48'24" East 242.67 feet;  
thence South 85°30'22" West 249.02 feet;  
thence South 65°46'10" West 143.47 feet;  
thence North 80°36'30" West 90.98 feet;  
thence South 05°19'33" West 288.10 feet;  
thence South 03°37'17" West 981.41 feet;  
thence South 38°36'29" East 393.55 feet;  
thence South 29°57'47" East 292.91 feet;  
thence South 33°34'12" East 249.01 feet;  
thence South 48°32'52" East 461.52 feet;  
thence South 24°35'08" East 138.52 feet;

thence South 30°53'25" East 388.72 feet;  
 thence South 34°32'00" East 181.81 feet;  
 thence South 02°04'40" East 234.26 feet;  
 thence South 17°25'16" East 241.17 feet;  
 thence South 00°09'59" West 82.94 feet;  
 thence South 30°47'32" West 196.47 feet;  
 thence South 77°36'23" West 72.03 feet;  
 thence North 66°51'26" West 206.57 feet;  
 thence North 82°30'08" West 239.76 feet;  
 thence North 29°00'56" West 125.11 feet;  
 thence North 12°23'39" West 237.97 feet;  
 thence North 28°46'53" West 407.03 feet;  
 thence North 50°32'55" West 245.18 feet;  
 thence North 30°54'34" West 783.81 feet;  
 thence North 26°48'11" West 211.27 feet;  
 thence North 65°08'02" West 397.18 feet;  
 thence North 85°44'07" West 245.88 feet;  
 thence North 07°33'46" East 202.18 feet;  
 thence North 23°02'55" East 501.32 feet;  
 thence North 01°01'40" East 273.70 feet;  
 thence North 05°13'49" West 185.89 feet;  
 thence North 06°12'57" West 393.39 feet;  
 thence North 16°50'33" West 692.41 feet;  
 thence North 28°11'14" West 398.94 feet;  
 thence North 24°59'15" West 411.45 feet;  
 thence North 71°39'36" West 434.91 feet;  
 thence North 63°55'36" West 572.67 feet;  
 thence North 05°50'56" East 447.16 feet;  
 thence North 02°29'51" East 175.06 feet;  
 thence North 52°18'40" West 85.50 feet;  
 thence North 72°58'12" West 61.44 feet;  
 thence South 59°14'38" West 100.67 feet;  
 thence South 77°18'49" West 117.98 feet;  
 thence North 83°02'14" West 406.98 feet;  
 thence North 37°14'23" West 300.00 feet;  
 thence North 30°41'39" West 133.25 feet to the Point of  
 Beginning.

RESERVING THEREFROM a 15.00 foot wide utility easement lying  
 Southerly and Westerly, parallel with, and adjacent to the  
 following described line:

Beginning at the point of beginning of the above described  
 parcel;

thence South 81°23'40" East 532.76 feet;  
 thence North 43°01'27" East 159.17 feet;  
 thence North 49°57'28" East 292.07 feet;  
 thence North 77°19'41" East 373.18 feet;  
 thence South 88°42'58" East 131.41 feet;  
 thence South 36°11'57" East 98.18 feet;

thence South 05°04'26" East 149.57 feet;  
thence South 13°47'19" East 190.63 feet;  
thence South 25°43'47" West 454.58 feet;  
thence South 14°31'34" East 93.71 feet;  
thence South 58°15'59" East 263.48 feet;  
thence South 88°12'41" East 304.99 feet;  
thence South 71°51'10" East 344.73 feet;  
thence South 23°58'03" East 482.40 feet;  
thence South 35°21'37" East 126.51 feet;  
thence North 65°29'12" East 90.15 feet;  
thence South 06°41'08" East 473.33 feet;  
thence South 40°38'16" East 208.48 feet;  
thence South 29°50'48" East 114.34 feet;  
thence South 01°54'27" East 183.18 feet;  
thence South 52°33'47" East 106.16 feet;  
thence South 65°59'56" East 106.36 feet;  
thence South 36°16'54" East 90.63 feet.

RESERVING THEREFROM a 50 foot wide roadway and utility easement, being 25.00 feet each side of the following described centerline: Beginning at a point described as being South 2533.14 feet and East 3465.82 feet from the northwest corner of said Section 2; thence South 20°45'07" East 129.01 feet to Point "A"; thence South 31°35'59" East 23.54 feet; thence South 55°47'54" East 28.34 feet; thence South 74°31'55" East 24.72 feet; thence South 71°18'26" East 100.58 feet to a point lying on the easterly boundary of the above described parcel.

Also, RESERVING THEREFROM a 50 foot wide roadway and utility easement being 25 feet each side of the following described centerline: Beginning at Point "A" described above; thence South 05°07'02" West 27.44 feet; thence South 33°02'41" West 35.94 feet; thence South 42°29'01" West 46.66 feet; thence South 29°58'08" West 18.73 feet; thence South 13°10'08" West 30.52 feet; thence South 05°52'32" East 28.70 feet; thence South 17°20'21" East 197.34 feet; thence South 15°50'15" East 137.13 feet; thence South 24°01'33" East 64.33 feet; thence South 16°36'11" East 178.27 feet to a point lying on the easterly boundary of the above described parcel.

THESE VARIOUS EASEMENTS DESCRIBED ABOVE RESERVED BY SOUTH COAST LUMBER COMPANY ARE FOR THE BENEFIT OF ADJACENT LANDS OWNED BY SOUTH COAST LUMBER COMPANY AND FOR ANY FUTURE LANDS ACQUIRED BY

SOUTH COAST LUMBER COMPANY THAT CAN UTILIZE THESE EASEMENTS. AND FOR ANY PARTITION OR DIVISION OF ADJACENT LANDS AND FOR THE BENEFIT OF SOUTH COAST LUMBER COMPANY'S SUCCESSORS AND ASSIGNS.

AND IN ADDITION THE FOLLOWING PARCELS:

Parcel I:

A parcel of land lying within Section 2, Township 41 South, Range 13 West, Willamette Meridian, Curry County, Oregon, being more particularly described as follows:  
Beginning at a point South 422.48 feet and East 696.49 feet from the northwest corner of said Section 2;  
thence along the westerly boundary of that property described in Book of Records 139, page 1025, Official Records of Curry County, the following courses: South 83°02'14" East 406.98 feet; North 77°18'49" East 117.98 feet; North 59°14'38" East 100.67 feet; South 72°58'12" East 61.44 feet; South 52°18'40" East 85.50 feet; South 02°29'51" West 175.06 feet; South 05°50'56" West 447.18 feet; South 60°41'03" East 189.87 feet; South 65°31'57" East 383.26 feet; South 71°39'36" East 434.91 feet; South 24°59'15" East 411.45 feet; South 28°11'14" East 398.94 feet; South 16°50'33" East 692.41 feet; South 06°12'57" East 393.39 feet; South 05°13'49" East 185.89 feet; South 01°01'40 West 273.70 feet; South 23°02'55" West 501.32 feet; South 07°33'46" West 202.18 feet; South 85°44'07" East 245.88 feet; South 65°08'02" East 397.18 feet; South 26°48'11" East 211.27 feet;  
Thence North 64°06'41" West, leaving said westerly boundary, 856.27 feet to a point lying on the north-south centerline of said Section 2; thence North 00°37'03" East, along said centerline, 1724.91 feet to the center one-quarter corner of said Section 2;  
thence North 00°23'15" East, along said centerline, 374.32 feet;  
thence North 42°40'54" West 1249.82 feet;  
thence North 63°58'37" West 557.46 feet;  
thence North 05°47'35" West 369.21 feet;  
thence North 45°11'05" West 265.32 feet;  
thence North 83°05'02" West 308.24 feet;  
thence North 37°14'23" West 119.84 feet to the Point of Beginning.

PARCEL II:

A parcel of land lying within Section 2, Township 41 South, Range 13 West Willamette Meridian, Curry County, Oregon, being more particularly described as follows:

Beginning at a point South 83.25 feet and East 540.67 feet from the northwest corner of said Section 2;

thence South 82°33'30" East, along the southerly right of way line of the South Bank Chetco River County Road, 229.33 feet to the beginning of a 300.00 foot radius curve to the left, having a central angle of 71°00'00";

thence along said curve the arc length of 371.76 feet, the long chord of which bears North 61°56'30" East 348.42 feet, to the beginning of a 425.00 foot radius reverse curve to the right, having a central angle of 52°20'00";

thence along said curve the arc length of 388.19 feet, the long chord of which bears North 52°36'30" East 374.84 feet, to the beginning of a 725.00 foot radius reverse curve to the left having a central angle of 49°00'00";

thence along said curve the arc length of 620.03 feet, the long chord of which bears North 54°16'30" East 601.31 feet, to the beginning of a 250.00 foot radius reverse curve to the right, having a central angle of 12°56'19";

thence along said curve the arc length of 56.46 feet, the long chord of which bears North 36°14'40" East 56.34 feet; thence South 08°50'34" East, leaving said right of way, 1362.38 feet;

thence North 81°09'26" East 788.13 feet;

thence South 18°35'37" East 2094.30 feet to a point lying on the easterly boundary of that property described in Book of Records 139, page 1025, Official Records of Curry County;

thence along said boundary the following courses: North 88°47'57" West 109.96 feet; North 36°16'54" West 90.63 feet; North 65°59'56" West 106.36 feet; North 52°33'47" West 106.16 feet; North 01°54'27" West 183.18 feet; North 29°50'48" West 114.34 feet; North 40°38'16" West 208.48 feet; North 06°41'08" West 473.33 feet; South 65°29'12" West 90.15 feet; North 35°21'37" West 126.51 feet; North 23°58'03" West 482.40 feet; North 71°51'10" West 244.73 feet; North 88°12'41" West 304.99 feet; North 58°15'59" West 263.48 feet; North 14°31'34" West 93.71 feet; North 25°43'47" East 454.58 feet; North 13°47'19" West 190.63 feet; North 05°04'26" West 149.57 feet; North 36°11'57" West 98.18 feet; North 88°42'58" West 131.41 feet; South 77°19'41" West 373.18 feet; South 49°57'28" West 292.07 feet; South 43°01'27" West 159.17 feet; and North 81°23'40" West 437.95 feet to the Point of Beginning.

PARCEL III:

A parcel of land lying within Section 2, Township 41 South, Range 13 West, Willamette Meridian, Curry County, Oregon, being more particularly described as follows:  
Beginning at a point South 2703.69 feet and East 3668.73 feet from the northwest corner of said Section 2;  
thence South 11°59'58" East 1473.07 feet;  
thence South 46°46'09" East 584.95 feet;  
thence South 41°54'12" East 644.12 feet;  
thence South 16°07'53" East 536.74 feet;  
thence South 09°18'13" West 348.44 feet;  
thence South 06°45'57" West 235.37 feet to a 5/8" iron rod capped PLS 1868 lying on the easterly boundary of that property described in Book of Records 139, page 1025, Official Records of Curry County;  
thence along said boundary the following courses: North 17°25'16" West 241.17 feet; North 02°04'40" West 234.26 feet; North 34°32'01" West 181.82 feet; North 30°53'25" West 388.72 feet; North 24°35'08" West 138.52 feet; North 48°32'52" West 461.52 feet; North 33°34'12" West 249.01 feet; North 29°57'47" West 292.91 feet; North 41°39'48" West 323.52 feet; North 01°43'29" East 1045.77 feet; and North 05°19'33" East 288.10 feet to the Point of Beginning.

EXHIBIT B  
CONSTRUCTION SCHEDULE

<u>EVENT</u>	<u>DATE</u>
Commence Construction	July 1, 1998
Complete Construction	August 1, 1999

The remaining particulars of the construction schedule shall be furnished by Lessee to Lessor prior to commencement of construction.

EXHIBIT C

EXISTING GOVERNMENTAL PERMITS  
(February 10, 1998)

<u>DESCRIPTION OF PERMIT</u>	<u>EXPIRATION DATE</u>
Curry County Conditional Use Permit	July 8, 1998
Oregon Water Resources Department Permit #51383	October 1, 1998
Oregon Water Resources Department Permit #51595	October 1, 1998
Oregon Water Resources Department Permit #R-11535	October 1, 1998
Oregon Department of Fish and Wildlife	No expiration date

I, Felix Claveran, acknowledge that the signature on the attached copy of the signature page of that certain Lease between me and the City of Brookings concerning the development of a golf course (as described and defined in such Lease), which copy is incorporated herein by this reference, is my signature and that I signed it on the date indicated on the copy and that it was properly notarized on the date indicated by the person stated therein.

*Felix Claveran*  
Felix Claveran

State of Oregon       )  
                              )     S.S.  
County of Curry     )

Subscribed and sworn to (or affirmed) before me this 16<sup>th</sup> day of July, 1998, by  
Felix Claveran



*Linda Barker*  
Notary Public, State of Oregon  
My Commission expires 4-27-2000

# CALIFORNIA



## ALL-PURPOSE



### ACKNOWLEDGEMENT

STATE OF CALIFORNIA )

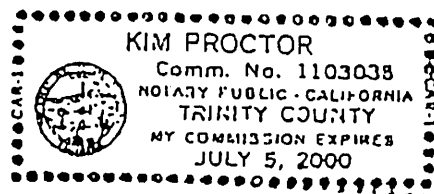
COUNTY OF Trinity )

On 2/18/98 before me, Kim Proctor  
DATE NAME, TITLE OF OFFICER - E.G., "JANE DOE, NOTARY PUBLIC"

personally appeared, Felix Claveran  
personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s)  
whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/  
they executed the same in his/her/their authorized capacity(ies), and that by his/her/their  
signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted,  
executed the instrument.

WITNESS my hand and official seal.

Kim Proctor (SEAL)  
NOTARY PUBLIC SIGNATURE



### OPTIONAL INFORMATION



TITLE OR TYPE OF DOCUMENT \_\_\_\_\_

DATE OF DOCUMENT \_\_\_\_\_ NUMBER OF PAGES \_\_\_\_\_

SIGNER(S) OTHER THAN NAMED ABOVE \_\_\_\_\_

## LEASE AMENDMENT

THIS LEASE AMENDMENT is made and entered into as of the \_\_\_\_\_ day of December, 2004, by and between The Claveran Group, LLC, an Oregon Limited Liability Company ("Lessee") and The City of Brookings, an Oregon municipal corporation, ("Lessor"), regarding that certain Lease Agreement between the parties dated February 17, 1998 and as amended prior to the date hereof (the "Lease").

1. Amendment. The parties agree to the following amendments to the Lease:

1.1 In the first sentence and the last paragraph of Section 1.00 of Article 4, the reference to twelve (12) years shall be deleted and "fourteen (14) years" inserted in its place.

1.2 The Annual rent Payment Schedule in Section 1.00 of Article 4 shall be deleted and the following inserted in its place:

Year 1:	\$30,000
Year 2:	\$35,000
Year 3:	\$40,000
Year 4:	\$45,000
Year 5:	\$50,000
Year 6:	\$52,500
Year 7:	\$55,125

2. Release. In consideration for the promises contained herein, Lessee and all of its predecessors, and successors in interest do hereby release, waive and forever discharge Lessor and all of its, predecessors, and successors in interest or assigns, from any and all claims, demands, liabilities, causes of action, costs, and expenses of any kind or nature, known or unknown, liquidated or unliquidated, which Lessee may have now or in the future against Lessor, directly related to the land slide from property owned by South Coast Lumber Company onto the area leased by Lessee from Lessor. Lessee further agrees to release, waive and forever discharge South Coast Lumber Company, from all claims, demands, liabilities, causes of action, costs, and expenses of any kind or nature, which Lessee may have now against Lessor, directly related to known damage caused by said land slide. Each party agrees that this is a compromise of claims, if any, and that no party is admitting to any fault. This shall not be construed to be, and is not, an admission of liability or fault by any party. Each party represents to the other parties that they will not file any complaint or charge or lawsuit against the other party contrary to this Section 2 of this Amendment at any time hereafter; provided, however, this shall not limit any party from filing a lawsuit for the sole purpose of enforcing their rights under this Amendment.

3. Binding Effect. This Amendment shall be binding upon the successors and assigns of the parties. The parties shall execute and deliver such further and

( 70 )

My commission expires \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of December, 2004, before me, the undersigned, a Notary Public in and for the State of \_\_\_\_\_, duly commissioned and sworn, personally appeared \_\_\_\_\_, to me known to be the individual described in and who executed the within and foregoing instrument, and acknowledged to me that he signed and sealed the said instrument as his free and voluntary act and deed for the uses and purposes therein mentioned.

WITNESS my hand and official seal hereto affixed the day and year in this certificate above written.

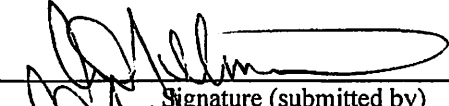

\_\_\_\_\_  
NOTARY PUBLIC in and for the State of \_\_\_\_\_,  
residing at \_\_\_\_\_  
My commission expires \_\_\_\_\_

# CITY OF BROOKINGS

## COUNCIL AGENDA REPORT

Meeting Date: July 28, 2008

Originating Dept: City Manager

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

---

Subject: Water Service Charter Amendment

Recommended Motion: Instruct City Attorney to review and prepare ballot title and question for Charter amendment regarding water service for November 2008 ballot.

Financial Impact: Administrative costs associated with preparing a ballot measure.

Background/Discussion:

The City is currently working with Curry County and various special districts located within the City of Brookings Urban Growth Boundary (UGB) to develop Urban Services Agreements. The goal of this effort is to develop a transition plan for providing urban services in the event the City boundaries are extended to incorporate properties within the UGB.

There are several existing entities that already provide "urban services" to properties within the UGB, including fire districts, the Harbor Sanitary District, and the Harbor Water District. City and County management staff have been discussing how these agencies and the services they provide might be affected by an annexation of a portion of the territory served by them into the City Limits.

Specifically with regard to the water and sewer utility providers, it is important to note that they operate physical facilities located within streets and right-of-ways. While the Harbor Sanitary District delivers sewage to the City for treatment, thus providing an interconnect between the two systems, the Harbor Water District operates an entirely independent system. Management staff does not see the need for the City to assume the operation of these two utility systems if areas they currently serve are annexed.

Indeed, by allowing the Harbor Water District to continue as the water service provider in newly annexed areas, the City would avoid the cost of developing new water sources of supply and maintenance of the distribution system south of the Chetco River.

The City Charter currently provides in Chapter XI, Section 42:

*"The right to furnish the inhabitants of said City with water shall be forever vested in the City of Brookings, and no franchise, right or privilege shall hereafter be granted to or contract made with any person or corporation by said City to furnish or supply said City or its inhabitants with water, without*

*the authorization of the legal voters of said City."*

This section was enacted as a part of a Charter section authorizing the City to sell \$1.3 million in bonds to pay for water system improvements in 1989. Management believes that the purpose of this section was to prohibit the City from selling or contracting the operation of the water system after the bonds were sold as a part of the security for the bond holders; the City would retain authority to set rates as needed to pay the debt service, and the facilities constructed with the proceeds of the bonds would remain the property of the City and an asset supporting the bonds.

There is no similar provision with respect to wastewater (sewer) service.

Management has prepared a draft Measure for the November, 2008, ballot which would provide that the City remains as the sole provider of water service for areas within the City Limits now, but that other public water purveyors would be authorized to provide water service to newly annexed areas. This would provide the same level of security to bond holders as the current Charter language, and would enable the City to annex additional lands that would be served by other public water purveyors.

City Attorney John Trew suggested retaining bond counsel to review the matter with respect to the City's water bonds. The Administrative Services Director confirms that the bonds were paid off in 2005. If annexations occur in the future where an agency other than the City provides water service within the City Limits, this matter would be disclosed in any future water bond offerings.

Policy Considerations:

It is not unusual for a public agency or private company to provide utility services within a City. The City has participated in the establishment of an Urban Growth Boundary, and it is good public policy to develop a transition plan for properties within the UGB that may become a part of the City. The current City Charter presents an impediment to such a transition when the properties involved are served by the Harbor Water District. The water service restriction provision was, apparently, made a part of the Charter not for the purpose of restricting growth, but to protect bond holders. The Charter can be amended to lift, in part, the water service restriction while protecting bond holders.

Attachment(s): Draft ballot language

## CAPTION

Amend the City Charter regarding provision of water service.

## QUESTION

Shall Section 42 of City Charter providing that only the City may provide water service to its inhabitants be amended?

## SUMMARY

Section 42 of the City Charter provides, in part:

“The right to furnish the inhabitants of said City with water shall be forever vested in the City of Brookings, and no franchise, right or privilege shall hereafter be granted to or contract made with any person or corporation by said City to furnish or supply the said City or its inhabitants with water, without the authorization of the legal voters of said City.”

This Measure would substitute the following language:

“The right to furnish potable water within the City Limits as existing November 4, 2008, shall be vested in the City of Brookings. Public water purveyors licensed by the State of Oregon may provide potable water service to lands annexed after said date.”

The City Charter precludes the City from annexing property already served by a public water system, such as the Harbor Water District. The change would enable the City to annex areas receiving water service from other public agencies without the expense of expanding the City water system or obtaining additional water rights.

**MINUTES**  
**City of Brookings**  
**Common Council Meeting**  
Brookings City Hall Council Chambers  
898 Elk Drive, Brookings, Oregon 97415  
**Monday, July 14, 2008**

Council met for a workshop at 6:00pm to discuss downtown street projects.

**Call to Order**

Mayor Anderson called the meeting to order at 7:00pm.

**Roll Call**

Council Present: Mayor Larry Anderson, Councilors Hedenskog, Gordon, Kitchen and Pieper; a quorum present.

Staff Present: City Manager Gary Milliman, Planning Director Dianne Morris, Building Official LauraLee Gray, Public Works Director John Cowan, Treatment Plants Chief Operator Ray Page, Public Works Utility Worker Sam Prudden, Public Works Equipment Operator/Utility Worker Clay Nading, Administrative Services Director Patti Dunn, Administrative Services Assistant Vicki Merrill, Accounts Receivable Clerk Robin Clyde, Accounts Payable Clerk Rhonda Gardiner, City Attorney John Trew and City Recorder Joyce Heffington.

Other: Curry Coastal Pilot Reporter Kurt Madar and approximately 11 public.

**Councilor Hedenskog moved, a second followed and Council voted unanimously to remove Item VII-H, Charter Amendment, from the agenda.**

**Ceremonies/Appointments/Announcements**

Public Works Director Cowan introduced new employees, Sam Prudden, Public Works Utility Worker; Clay Nading, Public Works Equipment Operator/Utility Worker and Ray Page, Treatment Plants Chief Operator.

Administrative Services Director Dunn and Administrative Services Assistant Vicki Merrill, introduced new employees, Rhonda Gardiner, Accounts Payable Clerk and Robin Clyde, Accounts Receivable Clerk

**Councilor Gordon moved, a second followed and Council voted unanimously to approve City Manager Milliman as Board alternate to the Border Coast Airport Authority.**

Mayor Anderson announced July "Yard of the Month" Award winners:

1. Yard of the Month: 636 Hawthorne, Delma Olsen, owner.
2. Most Improved Property: 317 Spruce Drive, Jana Ritz and Linda Thomas, owners.
3. Commercial Property: 549 Chetco Avenue, Mark Gleason, owner.

**Council Liaison Reports**

Councilor Gordon attended a Border Coast Airport Authority meeting.

Councilor Hedenskog attended one City meeting.

Council Kitchen attended four Coos Curry Electric Cooperative meetings and one City meeting.

Councilor Pieper attended five City meetings.

Mayor Anderson attended one school and ten City affiliated meetings.

### **Ordinances**

**Councilor Hedenskog moved, a second followed and Council voted unanimously to do a first reading of Ordinance 08-O-617 by title only.**

Mayor Anderson read the title.

**Councilor Hedenskog moved, a second followed and Council voted unanimously to do a second reading of Ordinance 08-O-617 by title only.**

Mayor Anderson read the title.

**Councilor Hedenskog moved, a second followed and Council voted unanimously to adopt Ordinance 08-O-617, amending Chapter 17.128, Interpretations and Exceptions, of the Brookings Municipal Code.**

### **Resolution**

City Manager Milliman reviewed the staff report regarding the ballot title for the proposed police tax levy.

Mayor Anderson generally stated that the measure was being submitted not to force a decision upon Brookings' residents, but rather to allow the City's citizens to decide what level of police service they wanted.

**Councilor Hedenskog moved, a second followed and Council voted unanimously to adopt Resolution 08-R-898, a resolution submitting a ballot measure for a five-year police tax levy to the Curry County Elections Department for inclusion in the November, 2008 ballot.**

### **Regular Agenda**

Building Official Gray reviewed staff's recommendation to uphold the decision of the Systems Development Review Board to charge a \$12,392.60 Systems Development Charge for the requested expansion of the business located at 604 Railroad Street.

Mayor Anderson generally stated that he felt a workshop was needed to discuss the process being used to determine business use and type as it relates to the application of System Development Charges and asked the applicant if they would like to wait for a decision until after the workshop was conducted.

Noah Bruce, PO Box 61, and Cindy Thomas, PO Box 4331, the applicant and owner of the Health Food Shop, requested the opportunity to speak briefly to the issue, and generally stated that they felt that the proposed changes were minor and did not justify the application of additional charges.

After some discussion, Council and the applicant mutually agreed that a decision on this issue would be postponed until after the workshop.

City Manager Milliman reviewed the request by local growers to hold a Wednesday, Farmer's Market on City property.

Joyce Tromblee, 825 Midland, discussed the proposal and addressed Council's concerns, a particular concern of which was the apparent lack of agreement by Dr. Rush and a few of the other business owners who might be impacted by the market. Tromblee generally stated that her statement of support for the market had been distributed to all businesses in the immediate area but not all businesses had signed or returned it.

Tim Patterson, 621 Chetco, said that he was in favor of the market, but expressed concern that the agreement with Dr. Rush for the public's use of his parking area could be placed in jeopardy if Dr. Rush did not sign off in support of the market.

Peter Mitchell, PO Box 1666, generally stated that the market would be similar to that held at Caldwell Bank, and was especially important to local growers, who need a local venue to sell their produce, as well as the elderly, many of whom have limited means of travel and are the market's primary buyers. Mitchell also stated that time was of the essence in determining the market's local, as the season was well underway.

After some discussion, Council generally agreed that a more comprehensive buy-in from surrounding businesses was needed, and in particular, written support of the proposed market from Dr. Rush and Dr. Walker.

**Councilor Hedenskog moved, a second followed and Council voted unanimously to authorize the City Manager to execute an operating agreement contingent upon written consent from the other merchants, and specifically the eye center, and that staff review the parking agreement with the eye center to determine if there was a conflict.**

Public Works Director Cowan reviewed the staff report regarding the Seacrest Reservoir project change order.

**Councilor Gordon moved, a second followed and Council voted unanimously to approve the Contract Change Order No. 1, for Alternative 2A-1.6 Million Gallon Reservoir.**

City Manager Milliman reviewed the staff report regarding the construction and financing of a communications tower.

**Councilor Kitchen moved, a second followed and Council voted unanimously to authorize the City Manager to enter into agreement with Motorola and Dooling Lease Management Corporation for furnishing, constructing and financing a communications tower at the civic center under the financing plan proposed by the City Manager.**

City Manager Milliman reviewed the staff report regarding the collective bargaining agreement for police employees.

**Councilor Gordon moved, a second followed and Council voted unanimously to ratify the Collective Bargaining Agreement between the City of Brookings and Teamsters Local 223 for police employees for the period of July 1, 2008 to June 30, 2010.**

City Manager Milliman reviewed the staff report regarding the cost sharing agreement with the Oregon Department of Transportation for the appeal of the County's weigh station decision.

**Councilor Hedenskog moved, a second followed and Council voted unanimously to authorize the Mayor to sign the Intergovernmental Agreement with the Oregon Department of Transportation regarding cost sharing for the appeal of the Curry County Planning Commission decision on the conditional use permit application for the weigh station on Highway 101 near McVay Lane.**

City Manager Milliman reviewed the staff report regarding the construction of the U.S. 101 and Constitution Way agreement.

**Councilor Kitchen moved, a second followed and Council voted unanimously to authorize the Mayor to execute the Cooperative Improvement Agreement with the Oregon Department of Transportation for construction of the U.S. 101 and Constitution Way intersection.**

Mayor Anderson reviewed the results of City Manager Milliman's annual evaluation.

**Councilor Gordon moved, a second followed, and Council voted unanimously that the City Council finds that the performance of the City Manager has met or exceeded expectations during his first 12 months of employment, fulfilling the criteria for a salary increase of**

**\$5,000 annually, effective with his first anniversary date. Further, the Council moves to extend a cost of living salary increase of 4.0 percent to the City Manager and agrees to pay the medical premium cost for the participation of the City Manager and his spouse in the California Public Employees Retirement System medical insurance program in an amount not to exceed the same premium amount paid by the City for other City employees and spouses.**

**Consent Calendar**

- A. Approval of Council Minutes for June 23 and July 7, 2008.**
- B. Acceptance of Planning Commission Minutes for June 3 and June 17, 2008.**
- C. Acceptance of Parks and Recreation Minutes for May 22, 2008.**
- D. Approval of vouchers for June, 2008 in the amount of \$130,555.09.**

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

**Remarks from Mayor and Councilors**

Mayor Anderson thanked the Pilot for the article on the KASPER program and stated that more than 80 children were reported to be participating in the program.

**Adjournment**

**Councilor Kitchen moved, a second followed and Council voted unanimously to adjourn by voice vote at 8:35pm.**

Respectfully submitted:

ATTESTED:

this \_\_\_\_\_ day of \_\_\_\_\_ 2008:

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

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

**MINUTES**  
City of Brookings  
***SPECIAL COUNCIL MEETING***  
Brookings City Hall Council Chambers  
898 Elk Drive, Brookings Oregon  
**Wednesday July 16, 2008 7:00pm**

**Call to Order**

Mayor Anderson called the meeting to order at 7:03pm.

**Roll Call**

Council Present: Mayor Larry Anderson, Councilors Hedenskog, Gordon, Kitchen and Pieper; a quorum present.

Staff Present: City Manager Gary Milliman, Planning Director Dianne Morris, Senior Planner Donna Colby-Hanks and City Recorder Joyce Heffington.

Other: Curry Coastal Pilot Reporter Kurt Madar and approximately 32 public

**Resolution**

City Manager Milliman reviewed the staff report regarding the City's application for Oregon Department of Transportation funding for its Downtown Brookings Sidewalk and Infill Project.

**Councilor Hedenskog moved, a second followed and Council voted unanimously to adopt Resolution 08-R-903, a resolution designating the City Manager as the authorized representative for the City of Brookings in its application to the Oregon Department of Transportation Bicycle and Pedestrian Program for funding of the Downtown Brookings Sidewalk and Infill Project.**

**Public Hearing**

The public hearing was opened at 7:08pm in the of File No. APP-1-08, an appeal of the Planning Commission's denial for the request of an extension of time for 2 years for an approved Master Plan of Development, known as Lone Ranch Master Plan, a 553 acre parcel located on the easterly side of Highway 101 and north of Carpenterville Road; Assessor's Map 40-14 & Index; Tax lots 2400, 2401, and a portion of 2402; U.S. Borax, Applicant and Appellant; Burton Weast, Representative; File MPD-1-04 Extension. The criteria to decide this matter is found in Chapter 17.70.120, Effective Period of Master Plan of Development (MPoD) Approval, and Chapter 17.152, Appeal to the City Council, of the Brookings Municipal Code.

***Ex parte was declared as follows:***

Mayor Anderson:

- Made a site visit for the college's ground breaking ceremony.
- Attended a Council workshop on March 3<sup>rd</sup> to meet the new dean of the college, Jason Wood, and answer questions, primarily about sewage treatment.
- Attended a meeting initiated by Congressman Wayne Krieger at which the idea of locating a hospital on the site was introduced.
- Attended a meeting, at the City Manager's request, to review the status of projects and encourage coordination of infrastructure development.

Dave Gordon attended the meeting with Congressman Krieger.

Ron Hedenskog performed a survey of the property a few years ago.

Dave Kitchen made a number of site visits with the permission of Borax and the City, and attended the Krieger meeting, but left prior to the start of any discussion.

***Conflicts of interest were declared as follows:***

Dave Kitchen declared the following conflict of interest, as previously submitted by letter to Council:

"I am writing this letter to inform you of an actual Conflict of Interest I have with the upcoming City Council meeting on July 16, 2008. My company, DK Builders, has been retained by Curry General Hospital to consult and manage a new project at the Borax Lone Ranch project. Curry General Hospital has initiated a letter of intent to purchase approximately 12 acres from the Borax/Rio Tinto Company. I therefore will not be able to participate in any discussion or vote on any issues concerning the Lone Ranch Project."

***Council's jurisdiction:***

There were no objections to the Council's jurisdiction to hear the matter.

***Staff's testimony:***

Planning Director Morris listed the various exhibits, citing into the record Exhibit F (Advance Packet #1), Exhibit G (Advance Packet #2) and Exhibit H, a packet handed out to Council prior to the meeting and containing those documents received after the distribution of the last packet.

Morris then reviewed the staff report recommending that Council overturn the Planning Commission's decision to deny the request for an extension of time for the Lone Ranch Master Plan and grant the request for a two year extension. Morris outlined the criteria to be used when deciding to approve or deny the requested extension and presented staff's response to the various concerns raised in written testimony.

***Applicant's testimony:***

Burton Weast, representative for the applicant, 148B Avenue, Suite 100, Lake Oswego, provided a breakdown of the work that had been done on the project over the past three years and generally stated that: a great deal of money and time had been spent and work had been accomplished; turnover in the City's Mayor and City Manager positions delayed any real progress toward completing an off-site agreement until City Manager Milliman assumed his position; until the court decision, Borax and the college thought they had until August 2009 to complete the Detailed Development Plan; the master plan provision allowing a possible extension of time was there to "...deal with these unforeseen circumstances or delays."

Tim Ramis, 2 Centerpoint, #600, Lake Oswego, attorney for the applicant, generally stated that the Brookings Municipal Code provides the City Council the authority to grant an extension of 2 years in the case that the conditions have not changed and that, in his review of the testimony, there are three possible interpretations of the term "conditions," which he (generally) described as follows:

- 1) Conditions as they relate to changes in the physical property.
- 2) Conditions as they relate to the findings used to support the approved master plan.
- 3) Conditions as they relate to any conceivable change, regardless of whether or not that change related to the rationale used to approve the original master plan.

Ramis generally stated that: while either of the first two interpretations are reasonable, the third, offered by CRAG and Chasar, was not; he did not believe that the intent of the Brookings Municipal Code, when allowing for an extension, was to have the applicant completely re-do the master plan.

Ramis requested that Council grant the requested extension relying upon staff's recommendation so that the project, along with the college's application, can proceed.

***Speaking in support of reversing the Planning Commission's decision:***

Jason Wood, 815 Old County Road, invited the audience to visit current college facilities and generally stated that he was in support of the project on behalf of the college and offered to answer any questions from Council.

Cherie Mitchell, 423 Buena Vista Loop, complimented Borax on their plan and their donation of land to the college and community and generally stated that: the project was important to the college; she saw no change to the plans; putting in the infrastructure to support the development, the college; the hospital at the same time would be of great financial benefit to the community.

Don Mitchell, 423 Buena Vista Loop, generally stated that the project would have a beneficial financial impact on the City and delays would impact the community's financial viability.

Peggy Goergen, 1227 Hollis Lane, generally stated that the community college's current facilities were inadequate and expressed surprise at the Planning Commission's denial of the extension since what was discussed at the hearing had already approved.

Bill McMillan, 13410 Tanbark, Chief Executive Officer of Curry Health District, addressed the district's plans to expand its services into Brookings with the Borax property being a viable site. He generally stated that the existing site lacked the potential for the necessary expansion.

***Speaking in opposition of reversing the Planning Commission's decision:***

Pete Chasar, 935 Marina Heights Road, generally stated that: any reversal of the Planning Commission's decision should be remanded back to the Planning Commission, as the Brookings Municipal Code does not give the City Council authority to grant an extension; a change to the plan is not the issue, but rather changes in conditions since the plan was approved in 2004 and the Planning Commission's majority decision to deny based on a change in conditions; the donation of land to the college and the addition of the clinic were being used by Borax as a "red herring" to divert attention from financial issues; approval of the request would force local citizens to take on new debt based on future growth that may or may not occur.

Catherine Wiley, 96370 Duley Creek Road and Yvonne Maitland, 15676 Ocean View Drive, jointly read from a prepared statement. Specifically, Wiley requested that certain documents previously submitted as testimony be used as the basis to deny the applicants request under MPD1-04; Maitland stated that it was, "...clear, in both the testimony and evidence, that there are significant findings which document changes in conditions including, but not limited to, the City costs, contracts, and comprehensive plan as well as those of the general public." In general, Wiley and Maitland presented a list of "precedents," asserting that staff, in dealing with the application had, among other things: exceeded its authority; displayed bias in presentation of the evidence; allowed the applicant to conduct surveys that were the City's responsibility; and understated the financial impact of the project.

Maitland also submitted written testimony that Mayor Anderson accepted into the record as Exhibit I-1.

***Speaking as interested parties:***

Jim Stigamire, 1744 Highway 101, Apt D311, generally stated that his concern was the protection of the Rainbow Rock Condominium's water supply.

Tim Patterson, 621 Chetco, generally stated that a denial of the extension would have a negative financial impact on the City.

***Rebuttal Testimony:***

Burton Weast generally stated that: Borax had been contacted by former City Manager Tom Weldon regarding the possibly donation of property to the college and that the hospital district sought out Borax; Borax had entered into negotiations with the Coos Curry Electric Cooperative; the master plan contained specific language to protect Rainbow Rock's water supply and Borax would stand by that language and continue to actively work to protect the property as well as the water supply.

Tim Ramis submitted for the record several documents, accepted by Mayor Anderson as Exhibits I-2 – 6, and generally stated that: Council, under Brookings Municipal Code Section 17.152.030, has the authority to modify or reverse any decision of the Planning Commission; much of the opposition's argument was either irrelevant, because it didn't relate to the criteria, or was factually incorrect.

Staff generally stated that: the approval of the extension does not have a financial impact because the conditions have not changed; it is staff's responsibility to make recommendations to Council based upon the criteria.

***Conclusion of proceedings:***

Mayor Anderson announced that the record would remain open to allow the submission of additional testimony at the request of the Oregon Shores Conservation and Catherine Wiley.

Mayor Anderson closed the public comment portion of the public hearing at 8:37pm and presented the following timeline and process to be used for submitting testimony to City Hall regarding this matter:

1. From Thursday, July 17<sup>th</sup>, 2008, to no later than 4:30 p.m., Wednesday, July 23<sup>rd</sup>, 2008, anyone who has participated in this hearing proceeding is allowed to submit additional written testimony and/or evidence. No additional testimony will be accepted after this time.
2. From Thursday, July 24<sup>th</sup>, 2008, to no later than 4:30 p.m., Wednesday, July 30<sup>th</sup>, 2008 anyone who has participated in this hearing may provide written rebuttal only to testimony and/or evidence submitted during the prior seven days. No new evidence will be accepted after this time.
3. From Thursday, July 31<sup>st</sup>, 2008, to no later than 4:30 p.m., Wednesday, August 6<sup>th</sup>, 2008, the applicant will be allowed to submit written argument to the testimony and/or evidence submitted during the first two seven day periods. No new evidence may be submitted during this period.

The public hearing was continued to August 21, 2008 at 7pm.

**Adjournment**

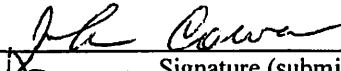
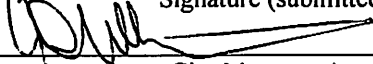
**Councilor Gordon moved, a second followed and Council voted unanimously by voice vote to adjourn at 8:42pm.**

# CITY OF BROOKINGS

## COUNCIL AGENDA REPORT

Meeting Date: July 28, 2008

Originating Dept: Public Works

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

---

Subject: Vacation of 86.10' strip of property behind sidewalk on Parkview Estates (7008 West Park Court, Lot #8).

Recommended Motion: Motion to approve vacation of 86.10' strip of property behind sidewalk on Parkview Estates (7008 West Park Court, Lot #8).

Financial Impact: None

Background/Discussion: Staff was contacted by a local contractor who was representing a homeowner on West Park Court. The contractor asked why there was a 10'+ right of way behind the sidewalk at Lot 8. At issue was the setback requirement for a proposed garage. After researching the issue staff found that the cul-de-sac is the approved diameter to the back of the sidewalk at the time of the subdivision was approved. The engineer had allowed extra ground behind the sidewalk in his design as a contingency to allow for compliance if pending new cul-de-sac dimensions were implemented. Staff recommends vacating the 86.10' strip of property behind the sidewalk to allow property owner to finish installation of their garage to allow for two car design as was originally proposed.

Policy Considerations: This vacation request is in accordance with previous vacation practices.

Attachment(s): Exhibit "A" Roberts & Associates Plat Map showing vacated street portion and new configuration of lot lines.

LOCATED IN  
T40S, R13W, WILLAMETTE MERIDIAN,  
CITY OF BROOKINGS, CURRY COUNTY, OREGON

# MAP OF SURVEY

## PROPERTY LINE ADJUSTMENT

FOR  
DORA I. ESPRITU

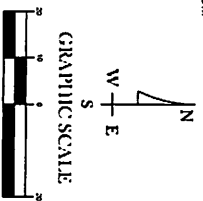
### LEGEND

- SET 5/8" X 30" IRON REBAR WITH YELLOW PLASTIC CAP STAMPED "ROBERTS PLS 2730"
- FOUND 5/8" REBAR W/PLASTIC CAP MKD. "STUNTNER ENG. PER PLAT 2004-04, RECORD POSITION"
- RECORD PER PLAT# 2004-04
- PUBLIC UTILITY EASEMENT TO BE RETAINED OVER VACATED PORTION
- P.U.E. PUBLIC UTILITY EASEMENT

AREA TABULATION	
AMN. 40-13-31CB	
TAX LOT 811	
BEFORE	AFTER
9.632 sq. ft. - 0.22 acres	9.640 sq. ft. - 0.22 acres
TRANSFER PARCEL	208 sq. ft.

### NARRATIVE

THE CURB AND SIDEWALK IMPROVEMENTS IN THE CUL-DE-SAC PORTION OF WEST PARK COURT WERE CONSTRUCTED BY THE SUBDIVISION DEVELOPER AS A 36 CURB FACE RADIUS THAT WAS SUBSEQUENTLY ADJUSTED TO THE RIGHT OF WAY. THE PURPOSE OF THIS SURVEY WAS TO ADJUST THAT PORTION OF WEST PARK COURT RIGHT OF WAY AND ADJUST LOT 8 THAT LIES PARTIALY WITHIN THE 20 FEET FROM THE BACK OF THE SIDEWALK. HOWEVER, THE VACATED PORTION WILL BE RETAINED AS A PUBLIC UTILITY EASEMENT. BEARINGS WERE BASED ON TWO FOUND MONUMENTS ALONG THE EASTERLY RIGHT OF WAY OF WEST PARK COURT. TAKEN TO BE N 0° 21' 42" W PER SAID SUBDIVISION PLAT. CORNER "A" WAS REESTABLISHED BY PROJECTING A LINE THRU THE MONUMENTS USED FOR THE BASIS OF BEARINGS AND HOLDING THE RECORD DIMENSION OF 4.79 FEET (PER PLAT NO. 2004-04) FROM THE MONUMENT FOUND AT THE SOUTHWEST CORNER OF LOT 8. CORNER "B" WAS REESTABLISHED BY HOLDING THE RECORD BEARING AND DISTANCE FROM THE MONUMENT RECOVERED AT THE NORTHWEST CORNER OF LOT 8.



LOT 11  
PARKVIEW ESTATES  
40-13-31CB  
TL 800



**Roberts & Associates**  
LAND SURVEYING INC.

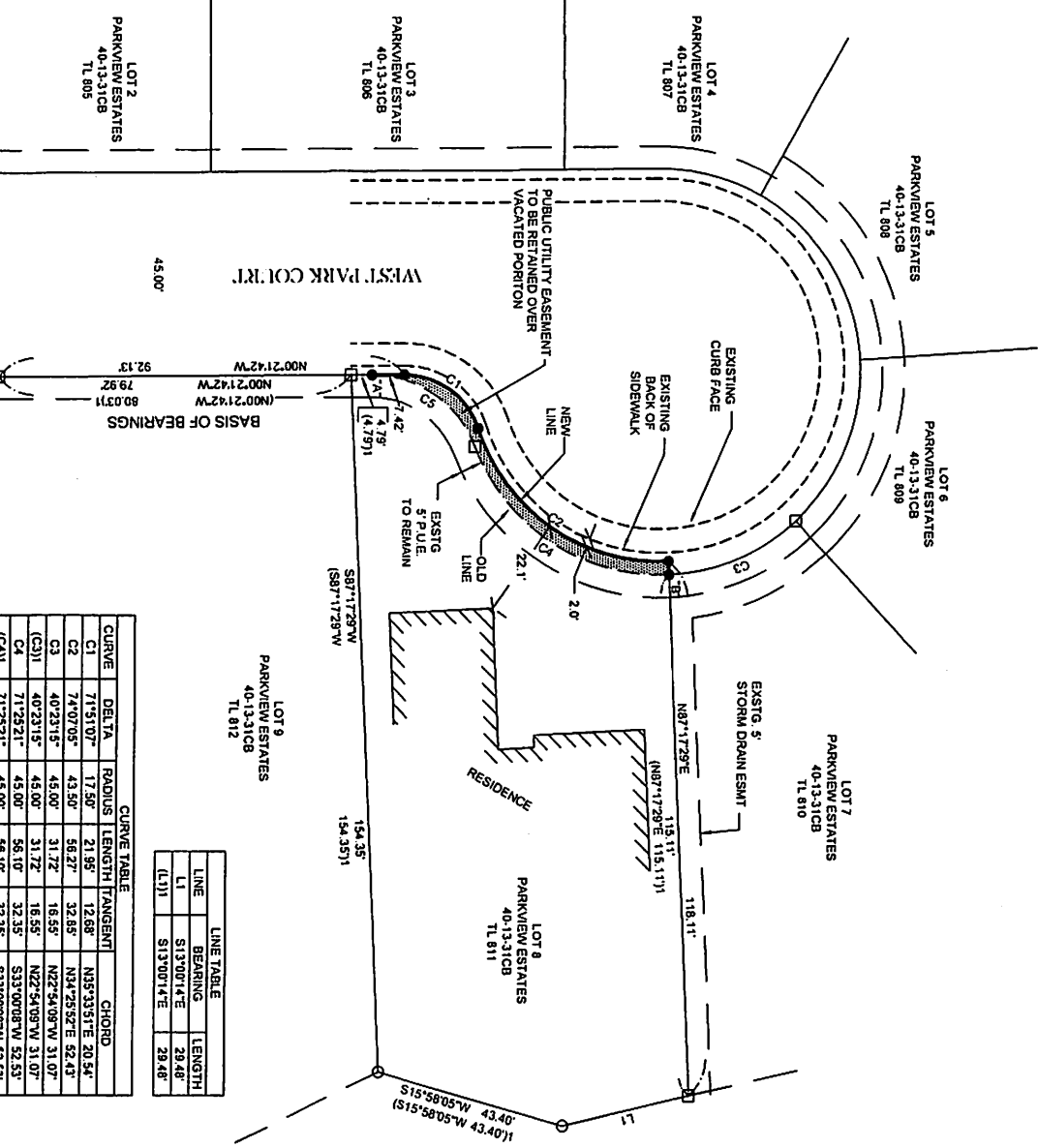
611 SPRUCE STREET  
P.O. Box 199  
Brookings, OR 97415  
Ph: 541-469-0102  
Fax: 541-469-5466

Drawn By:	CFE	Date:	7/14/08
Checked By:	RFR	Job No:	08-070
Drawing Name:	MOS	Sheet:	1 of 1
Project Name:	08-070		

CURVE TABLE			
CURVE	DELTA	RADIUS	LENGTH
C1	71°51'07"	17.50'	21.95'
C2	74°07'05"	43.50'	56.27'
C3	40°23'15"	45.00'	31.72'
C4	40°23'15"	45.00'	31.72'
C5	69°04'31"	25.00'	30.14'

CHORD			
C1	N53°33'51"E	20.54'	
C2	N24°25'27"E	62.43'	
C3	N22°54'09"W	31.07'	
C4	N22°54'09"W	31.07'	
C5	S33°00'08"W	52.53'	
C6	S33°00'08"W	52.53'	
C7	S34°10'33"W	28.35'	
C8	S34°10'33"W	28.35'	

LINE TABLE			
LINE	BEARING	LENGTH	
L1	S13°00'14"E	28.48'	
(L1)	S13°00'14"E	28.48'	



ROBERTS & ASSOCIATES HAS NOT MADE AN INDEPENDENT SEARCH FOR NOR DOES THIS MAP NECESSARILY INDICATE ALL EASEMENTS OF RECORD, ENCUMBRANCES, RESTRICTIVE COVENANTS, OWNERSHIP TITLE EVIDENCE, WATER RIGHTS, OR ANY OTHER FACT THAT AN ACCURATE AND CURRENT TITLE SEARCH AND SURFACE IMPROVEMENTS ON OR ADJACENT TO THE SITE WERE LOCATED. ENVIRONMENTAL CONDITIONS WERE NOT EXAMINED OR CONSIDERED AS A PART OF THIS SURVEY.