

AGENDA

CANBY CITY COUNCIL MEETING

August 2, 2006, 7:30 P.M.

Council Chambers

155 NW 2nd Avenue

Mayor Melody Thompson

Council President Teresa Blackwell

Councilor Randy Carson

Councilor Walt Daniels

Councilor Roger Harris

Councilor Tony Helbling

Councilor Wayne Oliver

CITY COUNCIL MEETING

1. CALL TO ORDER

- A. Pledge of Allegiance and Moment of Silence
- B. Presentation by Clackamas County Board of Commissioners
- C. Promotional Ceremony for Two Police Sergeants

2. COMMUNICATIONS

3. CITIZEN INPUT & COMMUNITY ANNOUNCEMENTS

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

4. MAYOR'S BUSINESS

5. COUNCILOR COMMENTS & LIAISON REPORTS

6. CONSENT AGENDA

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

- A. Approval of Accounts Payable \$ 212,955.98
- B. Approval of Minutes of the July 19, 2006 City Council Meeting and Executive Session

7. RESOLUTIONS & ORDINANCES

- A. Res. 928 Referring to the Electorate a Proposed Annexation of 73.35 Acres
(Weygandt) Pg. 1
- B. Res. 929 Referring to the Electorate a Proposed Annexation of 1.03 Acres
(STJ LLC) Pg. 6
- C. Res. 930 Referring to the Electorate a Proposed Annexation of 1.7 Acres
(Hellbusch) Pg. 11

- D. Res. 931, Establishing New Rules and Regulations for Zion Memorial Park Cemetery and Repealing Resolutions 71, 114, 146, 182, 218 and 251 Pg. 16
- E. Ord. 1217, Authorizing Contract with Blackline, Inc. for Seal Coating of Approximately 47,200 Square Yards of Street Asphalt (2nd Reading) Pg. 21
- F. Ord. 1218, Authorizing Contract with Scott Beck, Architect for Architectural Services for the Legacy Park and Maple Street Park Restroom Projects (2nd Reading) Pg. 23
- 8. NEW BUSINESS**
 - A. Local Agency Agreement with ODOT for High Priority Program Funds Pg. 25
- 9. CITY ADMINISTRATOR'S BUSINESS & STAFF REPORTS**
- 10. CITIZEN INPUT**
- 11. ACTION REVIEW**
- 12. EXECUTIVE SESSION: ORS 192.660(2)(h) Pending Litigation**
- 13. ADJOURN**

*The meeting location is accessible to persons with disabilities. A request for an interpreter for the hearing impaired or for other accommodations for persons with disabilities should be made at least 48 hours before the meeting to Kim Scheafer at 503.266.4021 ext. 233. A copy of this Agenda can be found on the City's web page at www.ci.canby.or.us. City Council and Planning Commission Meetings are broadcast live and can be viewed on OCTS Channel 5. For a schedule of the playback times, please call 503.263.6287.

July 24, 2006

Memo to: Mayor/City Council

From: John H. Kelley, City Attorney 

Re: Resolution No. 928 - Ballot measure/Summary for Voter's Pamphlet for
Annexation 06-01 – Weygandt Annexation

Attached is Resolution No. 928. It certifies to Clackamas County elections department for the November 7, 2006 election, Annexation 06-01, application from the Weygandt family to annex 73.35 acres of property to the City. Both the Planning Commission and City Council unanimously approved it, and in accordance with the City Charter requirement for voter-approved annexations, the application must be voted on at the next election.

Attached to the Resolution is a Notice of City Measure Election with the Caption, Question and Summary for the ballot and the Explanatory Statement for the Voter's Pamphlet. The City is required to submit these documents when it refers an issue to a vote of the electorate. The deadline for having the material to the County is September 7, 2006.

The guideline for drafting the Notice and Explanatory Statement is that, "the City Attorney, to the best of his ability, give a true and impartial statement of the purpose of the measure in such language that the ballot title not create any argument for, or create prejudice against the measure". I believe the Notice and Statement I have prepared meets this criteria. If you agree, a motion to approve Resolution No. 928 is appropriate. If you are not satisfied with the language, please feel free to contact me before the meeting or draft some alternative language to bring to the meeting so that it can be discussed.

RESOLUTION NO. 928

A RESOLUTION AUTHORIZING AND DIRECTING THE CITY RECORDER TO CERTIFY TO THE CLACKAMAS COUNTY CLERK A MEASURE REFERRING TO THE ELECTORATE A PROPOSED ANNEXATION OF 73.35 ACRES DESCRIBED AS TAX LOTS 100, 101, 102 & 103 OF TAX MAP 4-1E-03 LOCATED NORTH OF SW 13TH AVE, WEST OF MULINO ROAD AND SOUTH OF S TOWNSHIP ROAD; AUTHORIZING THE CITY RECORDER TO SEND AN EXPLANATORY STATEMENT FOR THE VOTER'S PAMPHLET; AND DOING ALL OTHER NECESSARY ACTS TO PLACE THE MATTER BEFORE THE VOTERS OF THE CITY OF CANBY FOR THE NOVEMBER 7, 2006 ELECTION.

WHEREAS, the Canby City Council has heretofore approved an application filed by the Weygandt family as the owners of tax lots 100, 101, 102 & 103 of Tax Map 4-1E-03, to annex 73.35 acres into the City of Canby; and

WHEREAS, pursuant to the provisions of the Canby City Charter, the approval of the proposed annexation must be referred to the electorate of the City of Canby for an election; and

WHEREAS, ORS 250.035 requires a Notice of Measure be prepared by the City and submitted to the Clackamas County Elections Department by September 7, 2006 in order to appear on the ballot for the November 7, 2006 election; and

WHEREAS, pursuant to the Canby Municipal Code, the Canby City Attorney has prepared a Notice of City Measure Election and Summary for Voter's Pamphlet to be submitted to the Elections Department;

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

1. The City Recorder of the City of Canby is hereby authorized and directed to certify to the Clackamas County Clerk for submission to the voters at the November 7, 2006 election, the Notice of City Measure. Such Notice of City Measure Election is attached to this Resolution in proper form and adopted by the City.
2. The City Recorder of the City of Canby is further authorized and directed to submit a Summary of the Measure to be placed in the voter's pamphlet explaining in clear and concise language the affect of such ballot measure. Such summary is attached to this Resolution in proper form and adopted by the City.

3. The City Recorder, the City Administrator and the City Attorney are hereby authorized to do all other necessary and proper acts to place the ballot measure before the voters at the November 7, 2006 election.

This Resolution shall take effect on August 2, 2006.

ADOPTED this 2nd day of August, 2006, by the Canby City Council.

Melody Thompson - Mayor

ATTEST:

Kimberly Scheafer
City Recorder, Pro-Tem

**CITY OF CANBY
NOTICE OF CITY MEASURE ELECTION
FOR THE NOVEMBER 7, 2006 ELECTION**

NOTICE IS HEREBY GIVEN that on Tuesday, November 7, 2006, an election will be held in the City of Canby, Clackamas County, Oregon. The following shall be the ballot title for the measure submitted to the City's voters on this date:

CAPTION: MEASURE APPROVING ANNEXATION OF 73.35 ACRES INTO CITY OF CANBY.

QUESTION: SHALL 73.35 ACRES LOCATED IN THE SE CORNER OF THE CANBY PIONEER INDUSTRIAL PARK BE ANNEXED INTO CANBY?

SUMMARY: Annexation is the legal process to bring property into the City limits. Weygandt, LLC, R.A. & Patsy Weygandt and Lisa M. Weygandt have filed an application asking the City to bring 73.35 acres of property into the City limits. The legal description of the property is Tax Lots 100, 101, 102 & 103 of Tax Map 4-1E-03. The parcels are located north of SW 13th Ave., west of Mulino Road and south of S Township Road. This application has previously been approved by the Canby Planning Commission and the City Council following a public hearing on July 5, 2006. The property contains one single-family residence and several outbuildings. It is currently zoned Exclusive Farm Use (EFU) by Clackamas County. The City's Zoning Map calls for Light Industrial (M-1) zoning designation for the property upon annexation. Any future development requires City review and must comply with land use laws.

The following authorized local government official hereby certifies that the above ballot title is true and complete, which includes completion of the ballot title challenge process.

Kimberly Scheafer
City Recorder Pro-Tem

Date

EXPLANATORY STATEMENT FOR VOTER'S PAMPHLET

**MEASURE APPROVING ANNEXATION OF 73.35 ACRES
INTO THE CITY OF CANBY**

Measure No. _____

Word Total 429 (500 max)

This measure would approve the annexation of 73.35 acres into the city limits of the City of Canby. The property which would be included within the City boundaries is known as Tax Lots 100, 101, 102 & 103 of Tax Map 4-1E-03 and is located generally in the southeast part of the City in the industrial park. Tax Lots 100, 101, 102 & 103 are currently zoned Exclusive Farm Use (EFU) under County zoning. If annexation into the City is approved by the voters, the parcels would be rezoned to M-1, Light Industrial, as required under the City's Comprehensive Land Use Plan (Comp Plan) and Zoning Map.

Tax Lots 100, 101, 102 & 103 are owned by Weygandt LLC., R.A. & Patsy Weygandt and Lisa M. Weygandt. They have filed the application for annexation into the City of Canby. The City, following its Charter, has put this matter before the voters for approval.

The address of the property is 2522 SE Township Road. The tax lots are north of SW 13th Ave., west of Mulino Road and south of S Township Road. The 73.35 acres is located entirely within the Canby Pioneer Industrial Park and is serviced by a railroad spur line. It contains one single family residence and several outbuildings. Adjacent properties on the east and south side are all outside the Canby Urban Growth Boundary (UGB). Property to the north is within the UGB, but outside the City at this time. It is zoned light industrial. One large piece of property to the west is within the City and is zoned light industrial while the rest of the property to the west is outside the City at this time. Under the M-1 zoning regulations, the applicant proposes to develop the property for light industrial use. However, annexation alone does not set the future uses to be built on the property. Any further development would have to comply with state and local land use laws and would be subject to public review.

The Canby Comp Plan also designates properties for annexation as Priority "A", "B" or "C". Priority "A" properties shall generally be annexed prior to those areas shown as Priority "B" which, in turn, shall generally be annexed prior to those areas shown as Priority "C". The subject property is priority "C", however there is no remaining priority "A" or "B" industrial property available for annexation. The Canby Planning Commission voted unanimously to approve the application and the Canby City Council voted unanimously to approve the application and refer it to a vote of the Canby electorate.

CITY OF CANBY

Kimberly Scheafer,
Canby City Recorder - Pro tem

Date

5

July 24, 2006

Memo to: Mayor/City Council

From: John H. Kelley, City Attorney 

Re: Resolution No. 929 - Ballot measure/Summary for Voter's Pamphlet for
Annexation 06-02 – STJ., LLC Annexation

Attached is Resolution No. 929. It certifies to Clackamas County elections department for the November 7, 2006 election, Annexation 06–02, application from the STJ., LLC (Tom Scott) to annex 1.7 acres of property to the City. Both the Planning Commission and City Council unanimously approved it, and in accordance with the City Charter requirement for voter-approved annexations, the application must be voted on at the next election.

Attached to the Resolution is a Notice of City Measure Election with the Caption, Question and Summary for the ballot and the Explanatory Statement for the Voter's Pamphlet. The City is required to submit these documents when it refers an issue to a vote of the electorate. The deadline for having the material to the County is September 7, 2006.

The guideline for drafting the Notice and Explanatory Statement is that, "the City Attorney, to the best of his ability, give a true and impartial statement of the purpose of the measure in such language that the ballot title not create any argument for, or create prejudice against the measure". I believe the Notice and Statement I have prepared meets this criteria. If you agree, a motion to approve Resolution No. 929 is appropriate. If you are not satisfied with the language, please feel free to contact me before the meeting or draft some alternative language to bring to the meeting so that it can be discussed.

RESOLUTION NO. 929

A RESOLUTION AUTHORIZING AND DIRECTING THE CITY RECORDER TO CERTIFY TO THE CLACKAMAS COUNTY CLERK A MEASURE REFERRING TO THE ELECTORATE A PROPOSED ANNEXATION OF 1.7 ACRES DESCRIBED AS TAX LOT 1300 OF TAX MAP 4-1E-27CB LOCATED AT 1203 NE TERRITORIAL ROAD; AUTHORIZING THE CITY RECORDER TO SEND AN EXPLANATORY STATEMENT FOR THE VOTER'S PAMPHLET; AND DOING ALL OTHER NECESSARY ACTS TO PLACE THE MATTER BEFORE THE VOTERS OF THE CITY OF CANBY FOR THE NOVEMBER 7, 2006 ELECTION.

WHEREAS, the Canby City Council has heretofore approved an application filed by the S.T.J., LLC as the owner of tax lot 1300 of Tax Map 4-1E-27CB, to annex 1.7 acres into the City of Canby; and

WHEREAS, pursuant to the provisions of the Canby City Charter, the approval of the proposed annexation must be referred to the electorate of the City of Canby for an election; and

WHEREAS, ORS 250.035 requires a Notice of Measure be prepared by the City and submitted to the Clackamas County Elections Department by September 7, 2006 in order to appear on the ballot for the November 7, 2006 election; and

WHEREAS, pursuant to the Canby Municipal Code, the Canby City Attorney has prepared a Notice of City Measure Election and Summary for Voter's Pamphlet to be submitted to the Elections Department;

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

1. The City Recorder of the City of Canby is hereby authorized and directed to certify to the Clackamas County Clerk for submission to the voters at the November 7, 2006 election, the Notice of City Measure. Such Notice of City Measure Election is attached to this Resolution in proper form and adopted by the City.
2. The City Recorder of the City of Canby is further authorized and directed to submit a Summary of the Measure to be placed in the voter's pamphlet explaining in clear and concise language the affect of such ballot measure. Such summary is attached to this Resolution in proper form and adopted by the City.
3. The City Recorder, the City Administrator and the City Attorney are hereby

authorized to do all other necessary and proper acts to place the ballot measure before the voters at the November 7, 2006 election.

This Resolution shall take effect on August 2, 2006.

ADOPTED this 2nd day of August, 2006, by the Canby City Council.

Melody Thompson - Mayor

ATTEST:

Kimberly Scheafer
City Recorder, Pro-Tem

**CITY OF CANBY
NOTICE OF CITY MEASURE ELECTION
FOR THE NOVEMBER 7, 2006 ELECTION**

NOTICE IS HEREBY GIVEN that on Tuesday, November 7, 2006, an election will be held in the City of Canby, Clackamas County, Oregon. The following shall be the ballot title for the measure submitted to the City's voters on this date:

CAPTION: MEASURE APPROVING ANNEXATION OF 1.7 ACRES INTO CITY OF CANBY.

QUESTION: SHALL 1.7 ACRES LOCATED AT 1203 NE TERRITORIAL ROAD, EAST OF N. PINE STREET, BE ANNEXED INTO CANBY?

SUMMARY: Annexation is the legal process to bring property into the City limits. S.T.J., LLC, has filed an application asking the City to bring 1.7 acres of property into the City limits. The legal description of the property is Tax Lot 1300 of Tax Map 3-1E-27CB. The parcel is located at 1203 NE Territorial Road, east of N. Pine Street and west of the Logging Road Trail. This application has previously been approved by the Canby Planning Commission and the City Council following a public hearing on July 5, 2006. The property contains one single-family residence. It is currently zoned Rural Residential Farm and Forest (RRFF 5) by Clackamas County. The City's Comprehensive Plan calls for High Density Residential (R-2) zoning designation for the property upon annexation. Any future development requires City review and must comply with land use laws.

The following authorized local government official hereby certifies that the above ballot title is true and complete, which includes completion of the ballot title challenge process.

Kimberly Scheafer
City Recorder Pro-Tem

Date

EXPLANATORY STATEMENT FOR VOTER'S PAMPHLET

**MEASURE APPROVING ANNEXATION OF 1.7 ACRES
INTO THE CITY OF CANBY**

Measure No. _____

Word Total 319 (500 max)

This measure would approve the annexation of 1.7 acres into the city limits of the City of Canby. The property which would be included within the City boundaries is known as Tax Lot 1300 of Tax Map 3-1E-27CB and is located generally in the northeast part of the City. Tax Lot 1300 is currently zoned Rural Residential Farm and Forest (RRFF-5) under County zoning. If annexation into the City is approved by the voters, the parcel would be rezoned to R-2, High Density Residential, as required under the City's Comprehensive Land Use Plan (Comp Plan).

Tax Lot 1300 is owned by S.T.J., LLC. S.T.J., LLC has filed the application for annexation into the City of Canby. The City, following its Charter, has put this matter before the voters for approval.

The address of the property is 1203 NE Territorial Road. The parcel is located on the south side of NE Territorial Road, east of N. Pine Street and west of the Logging Road Trail. The 1.7 acres contains one single family residence. Adjacent properties on all sides are within city limits and zoned for High Density Residential. Under the R-2 zoning regulations, the applicant proposes to develop a 23-unit townhouse development. However, annexation alone does not set the future uses to be built on the property. Any further development would have to comply with state and local land use laws and would be subject to public review.

The Canby Comp Plan also designates properties for annexation as Priority "A", "B" or "C". Priority "A" properties shall generally be annexed prior to those areas shown as Priority "B" which, in turn, shall generally be annexed prior to those areas shown as Priority "C". The property is priority "A". The Canby Planning Commission unanimously voted to approve the application and the Canby City Council unanimously voted to approve the application and refer it to a vote of the Canby electorate.

CITY OF CANBY

Kimberly Scheafer,
Canby City Recorder - Pro tem

Date

July 24, 2006

Memo to: Mayor/City Council

From: John H. Kelley, City Attorney 

Re: Resolution No. 930 - Ballot measure/Summary for Voter's Pamphlet for
Annexation 06-03 – Hellbusch Annexation

Attached is Resolution No. 930. It certifies to Clackamas County elections department for the November 7, 2006 election, Annexation 06–03 application from the Reid Hellbusch to annex 1.03 acres of property to the City. Both the Planning Commission and City Council unanimously approved it, and in accordance with the City Charter requirement for voter-approved annexations, the application must be voted on at the next election.

Attached to the Resolution is a Notice of City Measure Election with the Caption, Question and Summary for the ballot and the Explanatory Statement for the Voter's Pamphlet. The City is required to submit these documents when it refers an issue to a vote of the electorate. The deadline for having the material to the County is September 7, 2006.

The guideline for drafting the Notice and Explanatory Statement is that, "the City Attorney, to the best of his ability, give a true and impartial statement of the purpose of the measure in such language that the ballot title not create any argument for, or create prejudice against the measure". I believe the Notice and Statement I have prepared meets this criteria. If you agree, a motion to approve Resolution No. 930 is appropriate. If you are not satisfied with the language, please feel free to contact me before the meeting or draft some alternative language to bring to the meeting so that it can be discussed.

RESOLUTION NO. 930

A RESOLUTION AUTHORIZING AND DIRECTING THE CITY RECORDER TO CERTIFY TO THE CLACKAMAS COUNTY CLERK A MEASURE REFERRING TO THE ELECTORATE A PROPOSED ANNEXATION OF 1.03 ACRES DESCRIBED AS TAX LOT 1800 OF TAX MAP 3-1E-28CD LOCATED AT 1480 N HOLLY STREET; AUTHORIZING THE CITY RECORDER TO SEND AN EXPLANATORY STATEMENT FOR THE VOTER'S PAMPHLET; AND DOING ALL OTHER NECESSARY ACTS TO PLACE THE MATTER BEFORE THE VOTERS OF THE CITY OF CANBY FOR THE NOVEMBER 7, 2006 ELECTION.

WHEREAS, the Canby City Council has heretofore approved an application filed by the Reid Hellbusch as the owner of tax lot 1800 of Tax Map 3-1E-28CD, to annex 1.03 acres into the City of Canby; and

WHEREAS, pursuant to the provisions of the Canby City Charter, the approval of the proposed annexation must be referred to the electorate of the City of Canby for an election; and

WHEREAS, ORS 250.035 requires a Notice of Measure be prepared by the City and submitted to the Clackamas County Elections Department by September 7, 2006 in order to appear on the ballot for the November 7, 2006 election; and

WHEREAS, pursuant to the Canby Municipal Code, the Canby City Attorney has prepared a Notice of City Measure Election and Summary for Voter's Pamphlet to be submitted to the Elections Department;

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

1. The City Recorder of the City of Canby is hereby authorized and directed to certify to the Clackamas County Clerk for submission to the voters at the November 7, 2006 election, the Notice of City Measure. Such Notice of City Measure Election is attached to this Resolution in proper form and adopted by the City.
2. The City Recorder of the City of Canby is further authorized and directed to submit a Summary of the Measure to be placed in the voter's pamphlet explaining in clear and concise language the affect of such ballot measure. Such summary is attached to this Resolution in proper form and adopted by the City.
3. The City Recorder, the City Administrator and the City Attorney are hereby

authorized to do all other necessary and proper acts to place the ballot measure before the voters at the November 7, 2006 election.

This Resolution shall take effect on August 2, 2006.

ADOPTED this 2nd day of August, 2006, by the Canby City Council.

Melody Thompson - Mayor

ATTEST:

Kimberly Scheafer
City Recorder, Pro-Tem

**CITY OF CANBY
NOTICE OF CITY MEASURE ELECTION
FOR THE NOVEMBER 7, 2006 ELECTION**

NOTICE IS HEREBY GIVEN that on Tuesday, November 7, 2006, an election will be held in the City of Canby, Clackamas County, Oregon. The following shall be the ballot title for the measure submitted to the City's voters on this date:

CAPTION: MEASURE APPROVING ANNEXATION OF 1.03 ACRES INTO CITY OF CANBY.

QUESTION: SHALL 1.03 ACRES LOCATED AT 1480 N HOLLY STREET, SOUTH OF TERRITORIAL ROAD, BE ANNEXED INTO CANBY?

SUMMARY: Annexation is the legal process to bring property into the City limits. Reid Hellbusch has filed an application asking the City to bring 1.03 acres of property into the City limits. The legal description of the property is Tax Lot 1800 of Tax Map 3-1E-28CD. The parcel is located at 1480 N. Holly Street, south of Territorial Road. This application has previously been approved by the Canby Planning Commission and the City Council following a public hearing on July 5, 2006. The property contains one single-family residence and several outbuildings. It is currently zoned Rural Residential Farm and Forest (RRFF - 5) by Clackamas County. The City's Zoning Map calls for Low Density Residential (R-1) zoning designation for the property upon annexation. Any future development requires City review and must comply with land use laws.

The following authorized local government official hereby certifies that the above ballot title is true and complete, which includes completion of the ballot title challenge process.

Kimberly Scheafer
City Recorder Pro-Tem

Date

EXPLANATORY STATEMENT FOR VOTER'S PAMPHLET

MEASURE APPROVING ANNEXATION OF 1.03 ACRES INTO THE CITY OF CANBY

Measure No. _____

Word Total 338 (500 max)

This measure would approve the annexation of 1.03 acres into the city limits of the City of Canby. The property which would be included within the City boundaries is known as Tax Lot 1800 of Tax Map 3-1E-28CD and is located generally in the north part of the City. Tax Lot 1800 is currently zoned Rural Residential Farm and Forest (RRFF - 5) under County zoning. If annexation into the City is approved by the voters, the parcel would be rezoned to R-1, Low Density Residential, as required under the City's Comprehensive Land Use Plan (Comp Plan) and Zoning Map.

Tax Lot 1800 is owned by Reid Hellbusch. He has filed the application for annexation into the City of Canby. The City, following its Charter, has put this matter before the voters for approval.

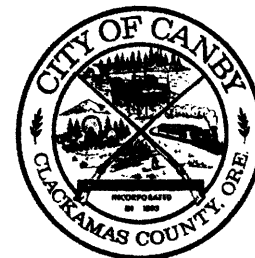
The address of the property is 1480 N Holly Street. It is on the east side of N Holly Street, south of Territorial Road. The property contains one single family residence and several outbuildings. The parcel is entirely surrounded by property within the City. All adjacent properties are also zoned Low Density Residential (R-1). Under the R-1 zoning regulations, the applicant could develop up to five (5) building lots for residential use, but indicates he has no plans to develop the property at the current time. However, annexation alone does not set the future uses to be built on the property. Any further development would have to comply with state and local land use laws and would be subject to public review.

The Canby Comp Plan also designates properties for annexation as Priority "A", "B" or "C". Priority "A" properties shall generally be annexed prior to those areas shown as Priority "B" which, in turn, shall generally be annexed prior to those areas shown as Priority "C". The subject property is priority "A". The Canby Planning Commission voted unanimously to approve the application and the Canby City Council voted unanimously to approve the application and refer it to a vote of the Canby electorate.

CITY OF CANBY

Kimberly Scheafer,
Canby City Recorder - Pro tem

Date



MEMORANDUM

TO: *Honorable Mayor Thompson and City Council*
FROM: *John R. Williams, Community Development & Planning Director*
THROUGH: *Mark C. Adcock, City Administrator*
DATE: *July 21, 2006*

Issue: Resolution 931, establishing new rules and regulations for the Zion Memorial Park cemetery.

Synopsis: Cemetery rules were last changed in 1978 and some of the current rules date back to 1938 (before the City began using resolutions...). The cemetery sexton drafted the enclosed rules to update the language and reflect standard current practice. Staff has reviewed the proposed rules and believe them to be a fair combination of deference to family wishes and effective maintenance of the facility.

Recommendation: Staff recommends the Council **approve Resolution 931, a resolution establishing new rules and regulations for the Zion Memorial Park cemetery and repealing resolutions 71, 114, 146, 182, 218, and 251.**

Rationale: Resolution 931 will standardize and update language and address current operating and maintenance needs. Most of the new rules put into writing what has been current practice regarding, for example, the size and placement of headstones, and the notice requirements and overtime rules relating to funerals.

Perhaps the only rule change the public may notice is #3 under "Floral and Grounds," which prohibits the placement of breakable objects such as pottery and glass and allows the Sexton to remove items he feels represent a hazard or a maintenance problem. Apparently there have been a few cases in which items have broken and presented a safety problem to the public and staff. The Sexton would like authority to remove items if needed to prevent such problems. As you know, customer service is a priority at the cemetery and the Sexton plans to work closely with families on any problems that may arise.

Attached: 1. Resolution 931 + Exhibit

RESOLUTION NO. 931

A RESOLUTION ESTABLISHING NEW RULES AND REGULATIONS FOR THE ZION MEMORIAL PARK CEMETERY AND REPEALING RESOLUTIONS 71, 114, 146, 182, 218, AND 251.

WHEREAS, the City Council of the City of Canby has determined that the rules and regulations for the Zion Memorial Park cemetery should be changed to meet current needs and requirements; and

WHEREAS, the Council has previously established rules and regulations for Zion Memorial Park through resolutions 71, 114, 146, 182, 218, and 251;

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

- (1) The rules and regulations listed in Exhibit "A" shall henceforth be the City's rules and regulations for the Zion Memorial Park cemetery.
- (2) Resolutions 71, 114, 146, 182, 218, and 251 are hereby repealed.

The effective date of this resolution is August 2, 2006.

ADOPTED this 2nd day of August, 2006 by the Canby City Council.

Melody Thompson
Mayor

ATTEST:

Kimberly Scheafer
City Recorder, Pro-Tem

***EXHIBIT "A" TO
RESOLUTION 931***

CITY OF CANBY

ZION MEMORIAL PARK CEMETERY RULES & REGULATIONS

All rules and laws of the State of Oregon and the Canby Municipal Code apply to Zion Memorial Park Cemetery. In addition, the following specific rules and regulations are applied under the authority of City Council Resolution 931, to be enforced by City management and the Cemetery Sexton, acting as their representative.

HOURS OF OPERATION

1. Visitors are welcome from 8:00 a.m. to dusk every day.
2. Burials may be held Monday through Saturday, excepting listed holidays. The Sexton must be given notice a minimum of 24 hours in advance. There is an additional fee for burials on Saturday and on other legal holidays not listed. In some situations at the Sexton's discretion, burials may be performed on Sundays and the additional fee will apply. All funerals will be concluded and exited from the Cemetery by 4:30 p.m. or an overtime charge will apply.
3. Observed holidays are: New Year's Day, Memorial Day, July 4th, Labor Day, Thanksgiving Day, and Christmas Day.

FLORAL AND GROUNDS REGULATIONS

1. Floral arrangements accompanying the casket or urn at time of burial will be placed on the completed grave. Natural cut or artificial flowers may be placed in built-in vases or in plastic cone type vases on graves at any time of the year. They will be removed when they become unsightly or when it becomes necessary to facilitate Cemetery operations such as mowing or trimming.
2. Other permitted items are allowed for a period extending seven days before and seven days after the following holidays and observances: Easter Sunday, Mother's Day, Memorial Day, Father's Day, Christmas, and the birthday or anniversary of death of the person buried. Items must not extend beyond the perimeter of the headstone.
3. Permanent plantings (flowers, bulbs, shrubs, etc.), vigil lights, and breakable objects (including glass or pottery vases) are prohibited. Adornments considered offensive or otherwise inconsistent with the dignity of the Cemetery are prohibited. Items that pose a hazard or interfere with Cemetery maintenance are prohibited. The Sexton has the discretion to remove and discard prohibited items at any time.
4. The pounding in or insertion of any type of stake or metal rod into the ground anywhere in the Cemetery is prohibited.
5. The Cemetery is not responsible for the theft or damage of any items left on gravesites or at the mausoleum.

6. Permanent plantings may be allowed in the Memorial Garden area with prior permission and supervision of the Sexton.

BURIAL REGULATIONS

1. The Sexton must be notified 24 hours before any interment or entombment.
2. All burials require a vault or concrete liner.
3. No cremains may be scattered on top of burial sites.
4. All cremains to be buried must be in a non-decomposing container; otherwise, a cremains liner is required.
5. All opening and closing of any nature will be done by the Cemetery Sexton only.
6. Each full size gravesite may be used for one full burial and one cremation, or two cremations. Two full burials are not allowed.
7. In the event that the titled owner of a pre-owned space is different from the person to be buried, the person making arrangements must establish the right to burial to the satisfaction of the Sexton.
8. Fees for services and liners must be paid after scheduling but before the burial or entombment.
9. The Cemetery reserves the right to refuse full burials in the Old Section due to ground stability and other issues. Cremains burials are recommended in this section.

PROPERTY PURCHASES AND TRANSFER

1. Gravesites and mausoleum spaces may be purchased at any time in advance of need. Purchases are generally made at the Cemetery. A Certificate of Title will be issued by mail upon completion of recording at the City of Canby. Time payments are not allowed.
2. Reselling of property, except back to the City, is prohibited. Should the owner wish to rescind ownership, the City will buy back the property at the original selling price. A signed written request along with the Certificate of Title is required.
3. Title may be transferred to relatives or heirs by submitting a written request along with the original Certificate of Title and a \$75 recording fee. In the event the original title is no longer available, other documentation and/or signed affidavits may be accepted, at the discretion of the City Recorder. If the person requesting the transfer is not the original owner, they must prove their right to make the transfer.

MEMORIAL MARKERS (HEADSTONES)

1. The Sexton must be notified 24 hours before any memorial marker can be set in Cemetery.
2. All memorial markers must have a concrete border with the total width not exceeding 2 feet. For example:
 - On a 24" x 12" stone the pour will be 36" long x 24" wide
 - On a 36" x 12" stone the pour will be 48" long x 24" wide
 - On a 48" x 12" stone the pour will be 60" long x 24" wide

This results in a 6" border of concrete unless a vase is added to the top of stone, in which case the borders would be 8" on top and 4" on the bottom. Additional vases can be added only to the east side of stone in a 9" square concrete pour.

3. All memorial markers must be placed on the gravesite so it will be read facing east.
4. Either flat or upright markers are allowed in the Old Section as well as in the following blocks of the New Section: H, K, N, O, P, S, T, and U. New Section F West is reserved for upright markers only. All other blocks in the New Section, as well as all child, baby and cremains plots are limited to flat memorial markers only.
5. No rock or rock products will be allowed as a border around memorial markers.
6. Only one memorial marker is allowed per gravesite.
7. No foot markers are allowed.
8. Temporary markers will be removed after six months.
9. Memorial markers that have been removed due to disinterment/relocation or marker exchange will be destroyed and disposed of after three months if not claimed and removed by the owner(s).
10. The Cemetery assumes no obligation to repair, or pay for repair of memorial markers that are caused by vandalism or age decay. The Cemetery will work with owners to arrange necessary repairs to concrete border settings that were installed by the Cemetery. Resetting fees may apply unless evidence that perpetual care fees were paid is provided. Fees may also apply if requested repairs are cosmetic only.

ORDINANCE NO. 1217

AN ORDINANCE AUTHORIZING THE MAYOR AND CITY ADMINISTRATOR TO EXECUTE A CONTRACT WITH BLACKLINE, INC., OF VANCOUVER, WASHINGTON FOR SEAL COATING OF APPROXIMATELY 47,200 SQUARE YARDS OF STREET ASPHALT WITHIN THE CITY OF CANBY; AND DECLARING AN EMERGENCY.

WHEREAS, the City of Canby wishes to seal coat approximately 47,200 square yards of asphalt covered streets within the City of Canby; and

WHEREAS, the contract will be made in compliance with ORS 279.015 (1)(g) utilizing an existing solicitation and award for the City of Gladstone, Oregon; and

WHEREAS, in accordance with ORS 279.015 (1)(g), the City of Canby finds that the original contract met the requirements of ORS chapter 279, the contract allows other public agencies to use the solicitation, and the City of Gladstone concurs with the use of the solicitation; and

WHEREAS, Blackline, Inc., of Vancouver, Washington wishes to provide the seal coating service for the City of Canby utilizing the same solicitation and unit pricing as offered to the City of Gladstone, which is \$1.07 per square yard of street surface; now therefore

THE CITY OF CANBY ORDAINS AS FOLLOWS:

Section 1. The Mayor and City Administrator are hereby authorized and directed to make, execute and declare in the name of the City of Canby and on its behalf, an appropriate contract with Blackline, Inc., of Vancouver, Washington to provide approximately 47,200 square yards of seal coating of asphalt streets within the City of Canby at the unit price of \$1.07 per square yard of street surface for a total of \$50,504.00.

Section 2. Emergency Declared.

It being necessary for the health, safety and general welfare of the citizens of Canby, that this project be completed as soon as possible, an emergency is hereby declared to exist and this ordinance shall take effect immediately upon its enactment after final reading.

2nd Reading 21

SUBMITTED to the Canby City Council and read the first time at a regular meeting thereof on Wednesday, July 19, 2006 and ordered posted in three (3) public and conspicuous places in the City of Canby as specified in the Canby City Charter and to come before the City Council for final reading and action at a regular meeting thereof on Wednesday, August 2, 2006, commencing at the hour of 7:30 P.M. in the Council Meeting Chambers at Canby City hall in Canby, Oregon.

Kimberly Scheafer
City Recorder - Pro Tem

PASSED on second and final reading by the Canby City Council at a regular meeting thereof on the 2nd day of August, 2006, by the following vote:

YEAS _____

NAYS _____

Melody Thompson, Mayor

ATTEST:

Kimberly Scheafer, City Recorder - Pro Tem

ORDINANCE 1218

AN ORDINANCE AUTHORIZING THE MAYOR AND CITY ADMINISTRATOR TO EXECUTE A CONTRACT WITH SCOTT BECK, ARCHITECT FOR ARCHITECTURAL SERVICES FOR THE LEGACY PARK AND MAPLE STREET PARK RESTROOM PROJECTS; AND DECLARING AN EMERGENCY

WHEREAS, the City of Canby wishes to construct new restroom facilities for Legacy Park and Maple Street Park; and

WHEREAS, the City wishes to employ Scott Beck, Architect, as an independent contractor under a personal services contract for the purpose of producing the necessary construction drawings and bid documents, as well as to provide assistance with the bidding and construction processes as needed; and

WHEREAS, Scott Beck, Architect has proposed a personal services contract for these services which is acceptable to the City; now therefore

THE CITY OF CANBY ORDAINS AS FOLLOWS:

Section 1. The Mayor and City Administrator are hereby authorized and directed to make, execute, and declare in the name of the City of Canby and on its behalf, an appropriate contract with Scott Beck, Architect for preparation of construction drawings and bid documents and additional assistance as needed. The copy of said contract is attached hereto and marked as Exhibit "A" and by this reference fully incorporated herein.

Section 2. Emergency Declared.

It being necessary for the health, safety and general welfare of the citizens of Canby that these services be completed as soon as possible, an emergency is hereby declared to exist and this ordinance shall take effect immediately upon its enactment after final reading.

SUBMITTED to the Canby City Council and read the first time at a regular meeting thereof on Wednesday, July 19, 2006 and ordered posted in three (3) public and conspicuous places in the City of Canby as specified in the Canby City Charter and to come before the City Council for final reading and action at a regular meeting thereof on

Wednesday, August 2, 2006, commencing at the hour of 7:30 P.M. in the Council Meeting Chambers at Canby City Hall in Canby, Oregon.

Kimberly Scheafer
City Recorder Pro-Tem

PASSED on the second and final reading by the Canby City Council at a regular meeting thereof on August 2, 2006 by the following vote:

YEAS _____ NAYS _____

Melody Thompson, Mayor

ATTEST:

Kimberly Scheafer
City Recorder Pro Tem

DATE: July 19, 2006

MEMO TO: Honorable Mayor Thompson and City Councilors

FROM: Beth Saul, Library and Parks Director

Through: Mark Adcock, City Administrator

RE: High Priority Program Funds for Logging Rd. Trail Over OR 99E Bridge Painting project

Issue:

Thanks to the efforts of Representative Darlene Hooley, Canby is eligible to receive a share of SAFETEA-LU High Priority Funds for the painting of the Logging Road Trail Bridge over OR 99E. In order to go forward with the project and receive the funds, the City Council needs to authorize the Mayor to sign the Local Agency Agreement (attached).

Background:

The painting of the Logging Road Trail Bridge over OR 99E has been a priority for the City and its partners at the Chamber of Commerce and Canby Business Development for several years. Two years ago staff applied to ODOT for FHWA Transportation Enhancement grant money to paint and refurbish the bridge but were unsuccessful. However, we met lots of nice folks at ODOT who are now helping us to negotiate our way through the many regulations attached to receiving the special High Priority Project earmark allocation that Congresswoman Hooley has now made possible.

The Parks Development Fund has long held onto a matching amount of \$50,000 to go towards this project. Most of the project will be handled by the City Engineer and staff, with assistance from ODOT as needed. The City Council needs to authorize the Mayor to sign the intergovernmental agreement with ODOT in order to proceed any further.

Recommendation:

Staff recommends that the Council authorize the Mayor to sign an intergovernmental agreement with ODOT to execute the Logging Trail Road: OR 99E Bridge (Canby) painting project.

Fiscal Impact:

Funds are budgeted in the Parks Development Fund for this project.

**LOCAL AGENCY AGREEMENT
HIGH PRIORITY PROJECT**
Logging Trail Rd.: OR 99E Bridge (Canby)

THIS AGREEMENT is made and entered into by and between THE STATE OF OREGON, acting by and through its Department of Transportation, hereinafter referred to as "State"; and the CITY OF CANBY, acting by and through its elected officials, hereinafter referred to as "Agency", collectively referred to as the "Parties".

RECITALS

1. By the authority granted in ORS 190.110, 366.572, and 366.576, State may enter into cooperative agreements with the counties, cities and units of local governments for the performance of work on certain types of improvement projects with the allocation of costs on terms and conditions mutually agreeable to the contracting parties.
2. Under provisions of the Safe, Accountable, Flexible, Efficient, Transportation Equity Act: A Legacy for Users (SAFETEA-LU), which provides authorization for Federal-aid highways, highway safety programs, and transit programs, and for other purposes; State is required to set aside federal funds over the five (5) years of SAFETEA-LU for projects to address High Priority project activities.

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

TERMS OF AGREEMENT

1. Under said provisions, Agency agrees to repair and recoat logging bridge over Highway 99E, Canby, i.e., repair and paint the existing pedestrian bridge (former logging road bridge) that crosses OR 99E in Canby, hereinafter referred to as "Project". The location of the Project is approximately as shown on the sketch map attached hereto, marked Exhibit A, and by this reference made a part hereof.
2. The Project shall be conducted as a part of the High Priority Program under Title 23, United States Code, which incorporated SAFETEA-LU. The total Project cost is estimated at \$164,574, which is subject to change. The High Priority Program Funds available for the Project are estimated at \$120,000 with Agency providing the match for the federal funds and any non-participating costs, including all costs in excess of the available federal funds. The federal pro-rata funding for the project is 89.73 percent and provided federal funds will be subject to annual obligation limitations and possible rescissions. The funds shall be used for all phases of the Project.

M C & A No. 23,219
CITY OF CANBY

3. The Federal Bill Number and Project Description are as shown in the table below:

Federal Bill Number	Project Description
2810	Repair and recoat logging bridge over Highway 99 E, Canby.

4. The federal funding for this Project is contingent upon approval by the FHWA. Any work performed prior to acceptance by FHWA will be considered nonparticipating and paid for at Agency expense.
5. The term of this Agreement shall begin on the date all required signatures are obtained and shall terminate on completion of the Project and final payment or ten (10) calendar years following the date all required signatures are obtained, whichever is sooner. The attached Special Provisions may contain additional termination conditions.
6. This Agreement may be terminated by mutual written consent of both Parties.
7. State may terminate this Agreement effective upon delivery of written notice to Agency, or at such later date as may be established by State, under any of the following conditions:
- If Agency fails to provide services called for by this Agreement within the time specified herein or any extension thereof.
 - If Agency fails to perform any of the other provisions of this Agreement, or so fails to pursue the work as to endanger performance of this Agreement in accordance with its terms, and after receipt of written notice from State fails to correct such failures within ten (10) days or such longer period as State may authorize.
 - If Agency fails to provide payment of its share of the cost of the Project.
 - If State fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow State, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement.
 - If federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the work under this Agreement is prohibited or State is prohibited from paying for such work from the planned funding source.

M C & A No. 23,219
CITY OF CANBY

8. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
9. The Special and Standard Provisions attached hereto, marked Attachments 1 and 2, respectively, are by this reference made a part hereof. The Standard Provisions apply to all federal-aid projects and may be modified only by the Special Provisions. The Parties hereto mutually agree to the terms and conditions set forth in Attachments 1 and 2. In the event of a conflict, this Agreement shall control over the attachments, and Attachment 1 shall control over Attachment 2.
10. Agency, as a recipient of federal funds, pursuant to this Agreement with the State, shall assume sole liability for Agency's breach of any federal statutes, rules, program requirements and grant provisions applicable to the federal funds, and shall, upon Agency's breach of any such conditions that requires the State to return funds to the Federal Highway Administration, hold harmless and indemnify the State for an amount equal to the funds received under this Agreement; or if legal limitations apply to the indemnification ability of Agency, the indemnification amount shall be the maximum amount of funds available for expenditure, including any available contingency funds or other available non-appropriated funds, up to the amount received under this Agreement.
11. Agency shall enter into and execute this Agreement during a duly authorized session of its City Council.
12. This Agreement may be executed in several counterparts [facsimile or otherwise] all of which when taken together shall constitute one agreement binding on all parties, notwithstanding that all parties are not signatories to the same counterpart. Each copy of this Agreement so executed shall constitute an original.
13. This Agreement and attached exhibits constitute the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of State to enforce any provision of this Agreement shall not constitute a waiver by State of that or any other provision.

IN WITNESS WHEREOF, the Parties hereto have set their hands as of the day and year hereinafter written.

M C & A No. 23,219
CITY OF CANBY

This Project, (Key 14067) was approved into the 2006-2009 Statewide Transportation Improvement Program by STIP Amendment No. 06-09-28A on May 17, 2006. The 2006 – 2009 STIP was approved by the Oregon Transportation Commission on August 17, 2005.

The Oregon Transportation Commission on June 18, 2003, approved Delegation Order No. 2, which authorizes the Director to approve and execute agreements for day-to-day operations when the work is related to a project included in the Statewide Transportation Improvement Program or a line item in the biennial budget approved by the Commission.

In November 10, 2004, the Director of the Oregon Department of Transportation approved Subdelegation Order No. 2, in which the Director delegates to the Deputy Director, Highways the authority to approve and sign agreements over \$75,000 when the work is related to a project included in the Statewide Transportation Improvement Program or in other system plans approved by the Oregon Transportation Commission or in a line item in the biennial budget approved by the Director.

CITY IF CANBY, by and through its elected officials

By _____
Mayor

Date _____

By _____
Recorder

Date _____

**APPROVED AS TO LEGAL
SUFFICIENCY**

By _____
Agency Counsel

Date _____

By _____
Assistant Attorney General

Date _____

STATE OF OREGON, by and through its Department of Transportation

By _____
Deputy Director, Highways

Date _____

APPROVAL RECOMMENDED

By _____
Technical Services Manager/Chief Engineer

Date _____

By _____
Region 1 Manager

Date _____

Agency Billing Address:

Beth Saul, Library & Parks Director
182 N Holly Street
Canby, OR 97013

**ATTACHMENT NO. 1 TO AGREEMENT # 23,219
SPECIAL PROVISIONS**

1. Agency, or its consultant, shall conduct the necessary preliminary engineering and design work required to produce final plans, specifications and cost estimates (PS&E); purchase all necessary right of way; obtain all required permits; arrange for all utility relocations or reconstruction; perform all construction engineering, including all required materials testing and quality documentation; and prepare necessary documentation to allow State to make all contractor payments. Agency shall submit to State an approved engineering quality control plan for PS&E review. Said document shall be on file with State's Local Agency Program Liaison prior to the obligation of federal PE funding.
2. In the event that Agency elects to engage the services of a personal services consultant to perform any work covered under this Agreement, Agency and Consultant shall enter into a Personal Services Contract approved by State's Office of Procurement Manager or designee (Salem). Said contract must be reviewed and approved by the Office of Procurement Manager or designee prior to beginning any work. This review includes, but is not limited to the Request for Proposal, Statement of Work, advertisement and all contract documents. This review and approval is required to ensure federal reimbursement.
3. State may make available Region 1's On-Call PE, Design and Construction Engineering Services consultant for Local Agency Projects upon written request. If Agency chooses to use said services, they agree to manage the work done by the consultant and make funds available to the State for payment of those services. All eligible work shall be a federally participating cost and included as part of the total cost of the Project.
4. Agency guarantees the availability of Agency funding in an amount required to fully fund Agency's share of the Project. Prior to award of the contract, the Project cost is defined as the engineer's estimate plus 10 percent.
5. Agency shall, at its own expense, maintain and operate the Project upon completion at a minimum level that is consistent with normal depreciation and/or service demand.
6. If Agency fails to meet the requirements of this Agreement or the underlying federal regulations, State may withhold the Agency's proportional share of Highway Fund distribution necessary to reimburse State for costs incurred by such Agency breach.
7. Agency understands that the federal funding is allocated over a Five-year period. If Agency wishes to construct the Project prior to the fifth year, which is Federal Fiscal Year 2009, Agency shall deposit sufficient funds to State to cover all Project costs in excess of currently available federal funds. As federal funds become available, Agency will be reimbursed that portion of the advance deposit. These funds must be deposited per Paragraph 24 of the Standard Provisions.

ATTACHMENT NO. 2

STANDARD PROVISIONS

JOINT OBLIGATIONS

PROJECT ADMINISTRATION

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

PRELIMINARY & CONSTRUCTION ENGINEERING

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

contract claims, or any other lawsuit arising out of the contractor's work or Agency's supervision of the project.

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

5. If as a condition of assistance, Agency has submitted and the United States Department of Transportation (USDOT) has approved a Disadvantaged Business Enterprise Affirmative Action Program which Agency agrees to carry out, this affirmative action program is incorporated into the financial assistance agreement by reference. That program shall be treated as a legal obligation and failure to carry out its terms shall be treated as a violation of the financial assistance agreement. Upon notification from USDOT to Agency of its failure to carry out the approved program, USDOT shall impose such sanctions as noted in Title 49, CFR, Part 26, which sanctions may include termination of the agreement or other measures that may affect the ability of Agency to obtain future USDOT financial assistance.
6. **Disadvantaged Business Enterprises (DBE) Obligations.** State and its contractor agree to ensure that DBE as defined in Title 49, CFR, Part 26, have the opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with federal funds. In this regard, Agency shall take all necessary and reasonable steps in accordance with Title 49, CFR, Part 26, to ensure that DBE have the opportunity to compete for and perform contracts. Neither State nor Agency and its contractors shall discriminate on the basis of race, color, national origin or sex in the award and performance of federally-assisted contracts. Agency shall carry out applicable requirements of Title 49, CFR, Part 26, in the award and administration of such contracts. Failure by Agency to carry out these requirements is a material breach of this Agreement, which may result in the termination of this contract or such other remedy as State deems appropriate.
7. The DBE Policy Statement and Obligations shall be included in all subcontracts entered into under this Agreement.
8. Agency agrees to comply with all applicable civil rights laws, rules and regulations, including Title V and Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990 (ADA), and Titles VI and VII of the Civil Rights Act of 1964.
9. The parties hereto agree and understand that they will comply with all applicable federal, state, and local laws, regulations, executive orders and ordinances applicable to the work including, but not limited to, the provisions of ORS 279C.505, 279C.515, 279C.520, 279C.530 and 279B.270, incorporated herein by reference and made a part hereof; Title 23 CFR Parts 1.11, 140, 710, and 771; Title 49 CFR Parts 18, 24 and 26; OMB CIRCULAR NO. A-87 and NO. A-133 Title 23, USC, Federal-Aid Highway Act; Title 41, Chapter 1, USC 51-58, Anti-Kickback Act; Title 42 USC; Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970, as amended and provisions of Federal-Aid Policy Guide (FAPG).

STATE OBLIGATIONS

PROJECT FUNDING REQUEST

10. State shall submit a Project funding request to FHWA with a request for approval of federal-aid participation in all engineering, right-of-way acquisition, eligible utility relocations and/or construction work for the Project. **No work shall proceed on any activity in which federal-aid participation is desired until such approval has been obtained.** The program shall include services to be provided by State, Agency, or others. State shall notify Agency in writing when authorization to proceed has been received from FHWA. Major responsibility for the various phases of the Project will be as outlined in the Special Provisions. All work and records of such work shall be in conformance with FHWA rules and regulations.

FINANCE

11. State shall, in the first instance, pay all reimbursable costs of the Project, submit all claims for federal-aid participation to FHWA in the normal manner and compile accurate cost accounting records. Agency may request a statement of costs to date at any time by submitting a written request. When the actual total cost of the Project has been computed, State shall furnish Agency with an itemized statement of final costs. Agency shall pay an amount which, when added to said advance deposit and federal reimbursement payment, will equal 100 percent of the final total actual cost. Any portion of deposits made in excess of the final total costs of Project, minus federal reimbursement, shall be released to Agency. The actual cost of services provided by State will be charged to the Project expenditure account(s) and will be included in the total cost of the Project.

PROJECT ACTIVITIES

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

16. State shall, as a Project expense, assign a liaison person to provide Project monitoring as needed throughout all phases of Project activities (preliminary engineering, right-of-way acquisition, and construction). The liaison shall process reimbursement for federal participation costs.

RIGHT OF WAY

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

AGENCY OBLIGATIONS

FINANCE

23. Federal funds shall be applied toward Project costs at the current federal-aid matching ratio, unless otherwise agreed and allowable by law. Agency shall be responsible for the entire match amount, unless otherwise agreed to and specified in the intergovernmental agreement. If federal funds are used, Agency will specify the Catalog of Federal Domestic

Assistance (CFDA) number in the Agreement. Agency will also determine and clearly state in the Agreement if recipient is a subrecipient or vendor, using criteria in Circular A-133.

24. Agency's estimated share and advance deposit.

- A. Agency shall, prior to commencement of the preliminary engineering and/or right-of-way acquisition phases, deposit with State its estimated share of each phase. Exception may be made in the case of projects where Agency has written approval from State to use in-kind contributions rather than cash to satisfy all or part of the matching funds requirement.
 - B. Agency's construction phase deposit shall be 110 percent of Agency's share of the engineer's estimate and shall be received prior to award of the construction contract. Any additional balance of the deposit, based on the actual bid must be received within 45 days of receipt of written notification by State of the final amount due, unless the contract is canceled. Any unnecessary balance of a cash deposit, based on the actual bid, will be refunded within 45 days of receipt by State of the Project sponsor's written request.
 - C. Pursuant to ORS 366.425, the advance deposit may be in the form of 1) money deposited in the State Treasury (an option where a deposit is made in the Local Government Investment Pool, and an Irrevocable Limited Power of Attorney is sent to the Highway Finance Office), or 2) an Irrevocable Letter of Credit issued by a local bank in the name of State, or 3) cash.
 - D. Agency may satisfy all or part of any matching funds requirements by use of in-kind contributions rather than cash when prior written approval has been given by State.
25. If the estimated cost exceeds the total matched federal funds available, Agency shall deposit its share of the required matching funds, plus 100 percent of all costs in excess of the total matched federal funds. Agency shall also pay 100 percent of the cost of any item in which FHWA will not participate. If Agency has not repaid any non-participating cost, future allocations of federal funds, or allocations of State Highway Trust Funds, to that Agency may be withheld to pay the non-participating costs. If State approves processes, procedures, or contract administration outside the Local Agency Guidelines that result in items being declared non-participating, those items will not result in the withholding of Agency's future allocations of federal funds or the future allocations of State Highway Trust Funds.
26. Costs incurred by State and Agency for services performed in connection with any phase of the Project shall be charged to the Project, unless otherwise mutually agreed upon.
27. If Agency makes a written request for the cancellation of a federal-aid project; Agency shall bear 100 percent of all costs as of the date of cancellation. If State was the sole cause of the cancellation, State shall bear 100 percent of all costs incurred. If it is determined that the cancellation was caused by third parties or circumstances beyond the control of State or Agency, Agency shall bear all development costs, whether incurred by State or Agency, either directly or through contract services, and State shall bear any State administrative costs incurred. After settlement of payments, State shall deliver surveys, maps, field notes, and all other data to Agency.

28. Agency shall follow requirements of the Single Audit Act. The requirements stated in the Single Audit Act must be followed by those local governments and non-profit organizations receiving \$500,000 or more in federal funds. The Single Audit Act of 1984, PL 98-502 as amended by PL 104-156, described in "OMB CIRCULAR NO. A-133", requires local governments and non-profit organizations to obtain an audit that includes internal controls and compliance with federal laws and regulations of all federally-funded programs in which the local agency participates. The cost of this audit can be partially prorated to the federal program.
29. Agency shall make additional deposits, as needed, upon request from State. Requests for additional deposits shall be accompanied by an itemized statement of expenditures and an estimated cost to complete the Project.
30. Agency shall present invoices for 100 percent of actual costs incurred by Agency on behalf of the Project directly to State's Liaison Person for review and approval. Such invoices shall identify the Project and Agreement number, and shall itemize and explain all expenses for which reimbursement is claimed. Billings shall be presented for periods of not less than one-month duration, based on actual expenses to date. All billings received from Agency must be approved by State's Liaison Person prior to payment. Agency's actual costs eligible for federal-aid or State participation shall be those allowable under the provisions of Title 23 CFR Parts 1.11, 140 and 710. Final billings shall be submitted to State for processing within three months from the end of each funding phase as follows: 1) award date of a construction contract for preliminary engineering 2) last payment for right-of-way acquisition and 3) third notification for construction. Partial billing (progress payment) shall be submitted to State within three months from date that costs are incurred. Final billings submitted after the three months shall not be eligible for reimbursement.
31. The cost records and accounts pertaining to work covered by this Agreement are to be kept available for inspection by representatives of State and FHWA for a period of three (3) years following the date of final voucher to FHWA. Copies of such records and accounts shall be made available upon request. For real property and equipment, the retention period starts from the date of disposition (Title 49 CFR 18.42).
32. State shall request reimbursement, and Agency agrees to reimburse State, for federal-aid funds distributed to Agency if any of the following events occur:
- a) Right-of-way acquisition or actual construction of the facility for which preliminary engineering is undertaken is not started by the close of the tenth fiscal year following the fiscal year in which the federal-aid funds were authorized;
 - b) Right-of-way acquisition is undertaken utilizing federal-aid funds and actual construction is not started by the close of the twentieth fiscal year following the fiscal year in which the federal-aid funds were authorized for right-of-way acquisition.
 - c) Construction proceeds after the Project is determined to be ineligible for federal-aid funding (e.g., no environmental approval, lacking permits, or other reasons).

33. Agency shall maintain all Project documentation in keeping with State and FHWA standards and specifications. This shall include, but is not limited to, daily work records, quantity documentation, material invoices and quality documentation, certificates of origin, process control records, test results, and inspection records to ensure that projects are completed in conformance with approved plans and specifications.

RAILROADS

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

UTILITIES

35. Agency shall cause to be relocated or reconstructed, all privately or publicly-owned utility conduits, lines, poles, mains, pipes, and all other such facilities of every kind and nature where such relocation or reconstruction is made necessary by the plans of the Project in order to conform the utilities and other facilities with the plans and the ultimate requirements of the Project. Only those utility relocations, which are eligible for federal-aid participation under, Title 23 CFR 645A, shall be included in the total Project costs; all other utility relocations shall be at the sole expense of Agency, or others. State will arrange for utility relocations/adjustments in areas lying within jurisdiction of State, if State is performing the preliminary engineering. Agency may request State in writing to arrange for utility relocations/adjustments lying within Agency jurisdiction, acting on behalf of Agency. This request must be submitted no later than 21 weeks prior to bid let date. However, State is under no obligation to agree to perform said duties.
36. Agency shall follow established State utility relocation policy and procedures. The policy and procedures are available through the appropriate State's Region Utility Specialist or State's Right of Way Section Railroad Liaison, and Utility Engineer.

STANDARDS

37. Agency agrees that design standards for all projects on the National Highway System (NHS) and the Oregon State Highway System shall be in compliance to standards specified in the current "State Highway Design Manual" and related references. Construction plans shall be in conformance with standard practices of State for plans prepared by its own staff. All specifications for the Project shall be in substantial compliance with the most current "Oregon Standard Specifications for Highway Construction".
38. Agency agrees that minimum design standards for non-NHS projects shall be recommended AASHTO Standards and in accordance with the current "Oregon Bicycle and Pedestrian Plan", unless otherwise requested by Agency and approved by State.

39. Agency agrees and will verify that the installation of traffic control devices shall meet the warrants prescribed in the "Manual on Uniform Traffic Control Devices and Oregon Supplements".
40. All plans and specifications shall be developed in general conformance with the current "Contract Plans Development Guide" and the current "Oregon Standard Specifications for Highway Construction" and/or guidelines provided.
41. The standard unit of measurement for all aspects of the Project may be either System International (SI) Units (metric), or English Units. However, all Project documents and products shall be in one or the other unit of measurement. This includes, but is not limited to, right-of-way, environmental documents, plans and specifications, and utilities. It should be recognized that the State is currently transitioning to English, and will be completely English by 2006.

GRADE CHANGE LIABILITY

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

CONTRACTOR CLAIMS

45. Agency shall, to the extent permitted by state law, indemnify, hold harmless and provide legal defense for State against all claims brought by the contractor, or others resulting from Agency's failure to comply with the terms of this Agreement.
46. Notwithstanding the foregoing defense obligations under paragraph 45, neither Agency nor any attorney engaged by Agency shall defend any claim in the name of the State of Oregon or any agency of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without the prior written consent of the Oregon Attorney General. The State of Oregon may, at anytime at its election assume its own defense and settlement in the event that it determines that Agency is prohibited from defending the State of Oregon, or that Agency is not adequately defending the State of Oregon's interests, or that an important governmental principle is at issue or that it is in the best interests of the State of Oregon to do so. The State of Oregon reserves all rights to pursue any claims it may have against Agency if the State of Oregon elects to assume its own defense.

MAINTENANCE RESPONSIBILITIES

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

WORKERS' COMPENSATION COVERAGE

48. All employers, including Agency that employ subject workers who work under this Agreement in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage unless such employers are exempt under ORS 656.126. Agency shall ensure that each of its contractors complies with these requirements.

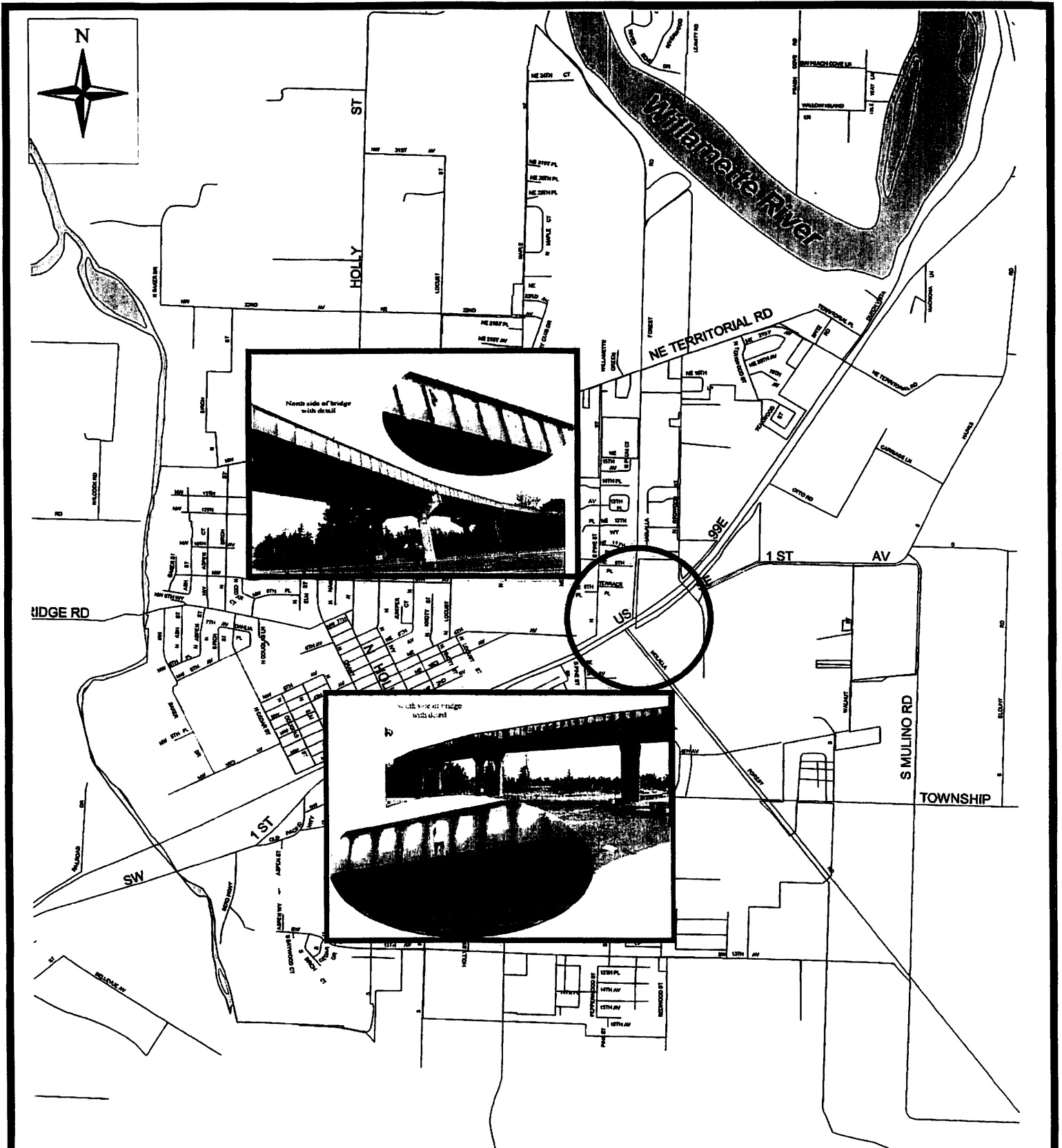
LOBBYING RESTRICTIONS

49. Agency certifies by signing the Agreement that:

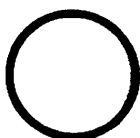
- A. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress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

Paragraphs 35, 36, and 47 are not applicable to any local agency on state highway projects.

EXHIBIT "A"



City of Canby Logging Road Trail Bridge



Site Location

2000 0 2000 4000 Feet

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