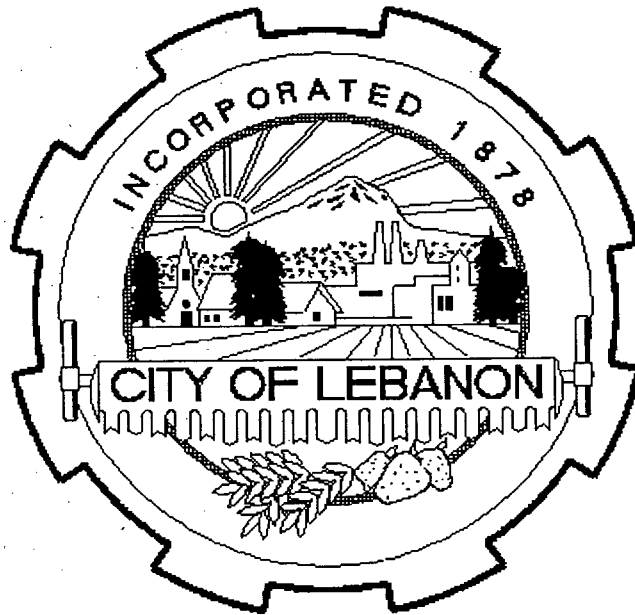
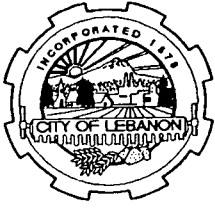


Council Agenda



November 14, 2001
7:30 p.m.



CITY COUNCIL MEETING
November 14, 2001
7:30 p.m.

School District Board Room
485 S. 5th Street

AGENDA

CALL TO ORDER/FLAG SALUTE

ROLL CALL

CITIZEN COMMENTS - *Those citizens with comments on items **not** on the agenda may have a maximum of 3 minutes to do so at this time. Those needing more than 3 minutes should wait until the end of the meeting to comment.*

*Those citizens with comments about items **on** this agenda should, at this time, indicate which agenda item(s) they would like to address. The Mayor will then invite you to the podium at the appropriate time.*

PRESENTATION

- 1) BOYS & GIRLS' CLUB PRESENTATION - Proposed Use of City Property

PUBLIC HEARING

- 2) RIGHT-OF-WAY VACATION FOR DAVID STREET

Presented by: Mr. Jim Clark, City Engineer

Approval/Denial by ORDINANCE

- 3) DRAINAGE EASEMENT VACATION FOR LINN-BENTON COMMUNITY COLLEGE

Presented by: Mr. Jim Clark, City Engineer

Approval/Denial by ORDINANCE

APPROVAL OF MINUTES

- 4) MINUTES OF THE OCTOBER 10, 2001 CITY COUNCIL MEETING
- 5) MINUTES OF THE OCTOBER 17, 2001 CITY COUNCIL WORKSHOP
- 6) MINUTES OF THE OCTOBER 17, 2001 CITY COUNCIL MEETING

LEGISLATIVE SESSION

7) APPROVAL OF BENCORP 401a AND VALEC 457 PLANS

Presented by: Mr. Cliff King of American General Financial Advisors
Mr. John Hitt, City Administrator

Approval/Denial by MOTION

8) USE OF TRANSIENT OCCUPANCY TAX REVENUES - Follow Up Proposal

Presented by: Mr. John Hitt, City Administrator
Mel Harrington, City Councilor

Approval/Denial by MOTION

9) Approval/Denial by MOTION LEBANON CHAMBER OF COMMERCE AGREEMENT

Presented by: Mr. John Hitt, City Administrator

Approval/Denial by MOTION

10) AFSCME CONTRACT APPROVAL

Presented by: Mr. John Hitt, City Administrator

Approval/Denial by MOTION

11) TRUCK ENFORCEMENT

Presented by: Mr. Mike Healy, Police Chief

Discussion Only

12) PARKING LOT ENFORCEMENT - Lebanon High School

Presented by: Mr. Tom McHill, City Attorney
Mr. Mike Healy, Police Chief

Approval/Denial by RESOLUTION

13) PROJECT "WALDEN" UPDATE

Presented by: Mr. Jim Clark, City Engineer

Discussion Only

14) ENGINEERING MANAGEMENT REVIEW AGREEMENT

Presented by: Mr. John Hitt, City Administrator

Approval/Denial by MOTION

EXECUTIVE SESSION - *Executive Sessions are closed to the public due to the highly confidential nature of the subject. Regular Legislative Session to follow will be open to the public.*

15) Per 192.660(1)(e) To conduct deliberations with persons designated by the Council to negotiate real property transactions.

Mayor Simpson reconvenes to Legislative Session and the regular order of business of the Lebanon City Council.

LEGISLATIVE SESSION

16) MORSE BROTHERS' PROPERTY - Real Property Negotiation

Presented by: Mr. Jim Ruef, Public Works Director

Approval/Denial by MOTION

17) CITY ADMINISTRATOR'S REPORT

Presented by: Mr. John Hitt, City Administrator

Discussion Only

CITIZEN COMMENTS - *Those citizens with comments concerning public matters may do so at this time.*

ITEMS FROM COUNCIL MEMBERS

ADJOURNMENT

AGENDA ITEM 1

Boys & Girls' Club Presentation

AGENDA ITEM 2



CITY OF LEBANON
MEMORANDUM

TO: Jim Ruef, Director of Public Works

DATE: November 5, 2001

FROM: Jim Clark, City Engineer *Jim Clark*

SUBJECT: Vacation of Public Right-of-Way: David Street

This memo provides Council an ordinance vacating David Street.

Background

We received a petition to vacate David Street, a public street in Royer Addition, a subdivision that was platted, but never constructed. Attached is a map indicating the right-of-way proposed for vacation. This vacation was initiated by Sunwest Management, which has planning approval for a Senior Housing facility, Century Fields. Vacation of David Street and consolidation of lots into one parcel is required to develop the site.

On September 26, 2001 City Council approved proceeding with the vacation and subsequently set a public hearing date for November 14, 2001. Staff has advertised and provided public hearing notice according to the requirements of ORS 271.

Action Requested

Staff recommends that Council hold the public hearing as advertised and then consider the attached ordinance vacating David Street.

C: Jim Ruef, Director of Public Works
Doug Parker, Community Development Manager
Jeff Kent, Engineering Technician

Section 2. A certified copy of this Ordinance vacating the above-described right-of-way on any map in regard thereto shall be filed for record with the County Clerk for Linn County.

Section 3. A certified copy of this Ordinance shall be also filed with the County Assessor and the County Surveyor for the County of Linn.

Section 4. This Ordinance shall be in full force and effect thirty (30) days after the date this ordinance is signed and approved by the City Council and the Mayor.

Passed by the Council by a vote of __ for and __ against and approved by the Mayor this 14th day of November, 2001.

J. Scott Simpson, Mayor []
Ken Toombs, Council President []

ATTEST:

John E. Hitt, City Recorder

AGENDA ITEM 3



CITY OF LEBANON
MEMORANDUM

TO: Jim Ruef, Director of Public Works **DATE:** November 5, 2001
FROM: Jim Clark, City Engineer *Jim Clark*
SUBJECT: Vacation of Public Easement - LBCC
Storm Drainage Easement

This memo provides Council an ordinance vacating a public storm drainage easement.

Background

We received a petition to vacate a portion of a storm drainage easement on the new Linn Benton Community College (LBCC) site. Attached is a map indicating the portion of storm drainage easement proposed for vacation.

LBCC initiated this request due to a conflict between the new building and the existing 12 foot wide storm drainage easement. The storm drainage pipe has been relocated around the building in a new public easement and the conflicting pipe has been removed with the foundation construction. However, building codes do not allow for building construction over existing easements, so the easement must be removed through the vacation process.

At the September 26, 2001 Council meeting, City Council initiated the vacation and subsequently scheduled a public hearing for the November 14th Council meeting. Staff has advertised and provided public hearing notice according to the requirements of ORS 271.

Action Requested

Staff recommends that Council hold the public hearing as advertised and then consider the attached ordinance vacating this easement.

C: Jim Ruef, Director of Public Works
Doug Parker, Community Development Manager
Jeff Kent, Engineering Technician

**MINUTES
LEBANON CITY COUNCIL
NOON MEETING
OCTOBER 10, 2001**

MEMBERS PRESENT Mayor Scott Simpson; Councilors Mel Harrington, Roger Munk, Dan Thackaberry, Ken Toombs, Stan Usinger

STAFF PRESENT John Hitt, City Administrator; Tom McHill, City Attorney; Casey Cole, Finance Director; Jim Ruef, Director of Public Works; Marsha Fugate, Director of Human Resources

CALL TO ORDER / ROLL CALL

The regular meeting of the Lebanon City Council was called to order by Mayor Simpson, October 10, 2001 at 12:07 P.M. in the CDC Conference Room, 853 Main Street. There were five members present. Councilor Ron Miller was absent.

CITIZEN COMMENTS

There were none.

LEGISLATIVE SESSION

**1. SET PUBLIC HEARING DATES FOR RIGHT-OF-WAY EASEMENTS/
VACATIONS**

Director of Public Works Ruef stated he would like the Councilors to approve the resetting of date for the public hearing for the right-of-way easements / vacations to the November 14, 2001 meeting of the City Council.

A motion was made by Councilor Toombs, seconded by Councilor Thackaberry and passed unanimously that:

The Public Hearing dates for the right-of-way easements/vacations be set for November 14, 2001 meeting of the Lebanon City Council.

2. CITY ADMINISTRATOR'S REPORT

Needs and Issues Inventory

City Administrator Hitt stated he started with the list that was approved by the Councilors last year. On this list he has drawn a line through the projects that have been completed previously, or are no longer being pursued. New items added to this list, based on the Goal Setting Session of September 12, 2001, are: Expansion and improvements to River Park, Recreation areas at Walden Pond, Industrial sites 2 and 4, where there is opportunity for economic development, approximate costs, etc. Mr. Hitt asked Councilors to come to October 17th meeting with any additions that may be added or to change the priorities as listed.

AGENDA ITEM 5

**MINUTES
LEBANON CITY COUNCIL
WORKSHOP
OCTOBER 17, 2001**

MEMBERS PRESENT Mayor Scott Simpson; Councilor Mel Harrington, Ron Miller, Roger Munk, Dan Thackaberry, Stan Usinger

STAFF PRESENT City Administrator John Hitt; City Attorney Tom McHill; Director of Public Works, Jim Ruef; City Engineer, Jim Clark

Mayor Simpson opened the Lebanon City Council Workshop at 5:40 P.M., October 17, 2001 in the Lebanon School District Board Room, 485 S. Fifth Street. All Councilors were present except Councilor Ken Toombs.

Director of Public Works Ruef reported on money Staff is trying to obtain for street improvements. There are three projects included in this plan. (1) Cheadle Lake frontage road, starting at Safeway to Dewey Street. It runs behind Les Schwab. (2) Highway 20 project along the frontage of the Lebanon Hospital would be the second in priority. (3) Highway 20 through Lebanon's downtown. The plan is for a one-way grid including lighting and signaling. This has been listed as third in priority by Linn County. The change in this plan for downtown will provide an increase of 53 parking spaces.

Mayor Simpson asked what has happened to timber dollars. Mr. Ruef stated the only program he is aware of using timber dollars at this time, is concerning environmental issues.

It was the consensus of the Council to move forward by approving the 10% match or \$13,000.

City Administrator Hitt stated that at the Council's Goal Setting Session, the Councilors asked for an update on what CIP projects are upcoming and the plans of the Facility Planning Committee.

City Engineer Clark reviewed the packet titled, *ENGINEERING DIVISION ORGANIZATION REVIEW*. (See attachment "A").

Councilor Miller stated that he would like a list from Staff telling what are the things not being looked at as closely as they should be. Mayor Simpson stated that an alternative would be to look at increasing SDC's every other year rather than occasionally. City Administrator stated this could not be done. Director of Public Works Ruef stated that SDC's are based on the need and current states of the infrastructure of each community, every community has different needs.

Director of Public Works Ruef stated that Staff's proposal is to have seven people do Facility Planning. Mr. Ruef stated he is proposing to create a new position for four years, an Assistant Director Public Works. He stated they cannot do the work required with only five people. This Assistant will spend most of his time on the Walden Pond project. Mr. Ruef stated the problem in finding consultants is that so much of Lebanon's needs, i.e., wetlands, have not been experienced by other areas, therefore, the consultants do not have this experience.

Councilor Harrington stated he has a problem with the process of bringing an additional person on Staff. He stated that he understands the need of the Assistant Director of Public Works but feels some of the other Engineers may not be needed.

City Administrator Hitt stated that the City would not be hiring anyone new, but would be dedicating one of the existing staff, who then would have their main focus on Walden Pond. The person to replace that person would probably be someone in-house also.

Councilor Munk asked why one of the present engineers cannot be given the Walden Pond project but not be promoted to Asst. Director of Public Works. Mr. Ruef responded that if the promotion was not made, that person would not have the authority to direct others.

City Administrator Hitt stated that all details on this request have not been worked out. Before these decisions are finalized, the City's engineering audit will review all of these plans, not only on a cost basis, but also on an organizational basis.

The feelings expressed by the Councilors was that City Administrator Hitt should proceed with the plans.

Mr. Hitt stated if the Councilors have any concerns or questions, to contact him at any time.

Mayor Simpson closed the Workshop at 7:35 P.M.

J. Scott Simpson, Mayor	<input type="checkbox"/>
Ken Toombs, President	<input type="checkbox"/>

ATTEST:

John E. Hitt, City Recorder

AGENDA ITEM 6

**MINUTES
LEBANON CITY COUNCIL
OCTOBER 17, 2001**

MEMBERS PRESENT Mayor Scott Simpson; Councilors Mel Harrington, Ron Miller, Roger Munk, Dan Thackaberry, Stan Usinger

STAFF PRESENT John Hitt, City Administrator; Tom McHill, City Attorney; Casey Cole, Finance Director; Jim Ruef, Director of Public works; Jim Clark, City Engineer

CALL TO ORDER / FLAG SALUTE / ROLL CALL

The regular meeting of the Lebanon City Council was called to order October 17, 2001 at 7:45 P.M. in the School District Board Room, 485 S. 5th Street. There were five members present. Councilor Toombs was absent.

APPOINTMENT

1. SENIOR CENTER ADVISORY BOARD APPOINTMENT - Mrs. Bonnie Prince

Mayor Simpson stated the Senior Center Advisory Board has one vacant position to fill and Mrs. Bonnie Prince has applied for the position. The Board is recommending this appointment. Mayor Simpson asked for approval of this request.

A motion was made by Councilor Thackaberry, seconded by Councilor Usinger and passed unanimously that:

The Council approved the appointment by Mayor Simpson of Mrs. Bonnie Prince to the Senior Center Advisory Board.

CITIZEN COMMENTS

There were none.

APPROVAL OF MINUTES

2. MINUTES OF THE SEPTEMBER 26, 2001 COUNCIL MEETING

Correction: Page 4, 6. MINUTES OF SEPTEMBER 12, 2001 CITY COUNCIL MEETING - Correction should state: "a moment of silence."

A motion was made by Councilor Munk, seconded by Councilor Harrington and passed unanimously that:

The Minutes of the September 26, 2001 Council Meeting be approved as corrected.

PUBLIC HEARING

3. **NEW LIQUOR LICENSE - Bi-Mart, Incorporated**

City Administrator Hitt stated that Bi-Mart, Inc. (Store #665) 2680 S. Santiam Hwy. are applying for and OLCC liquor license - Classification - Off Premises Sales. The Police Department does not pass any documented evidence to support the denial of this request.

Mayor Simpson opened the Public Hearing at 7:53 P.M.

There being no testimony on this request, Mayor Simpson closed the Public Hearing at 7:53 P.M.

A motion was made by Councilor Munk, seconded by Councilor Thackaberry and passed with four yeas and one nay by Councilor Miller that:

A Classification - Off Premises Sales OLCC liquor license be approved for Bi-Mart, Inc., Store #665 - 2680 S. Santiam Hwy.

LEGISLATIVE SESSION

4. **AFSCME LOCAL 2043 CONTRACT AGREEMENT**

City Administrator Hitt referred to the copies received by the Councilors of the first draft of the Labor Contract for AFSCME Local 2043. Mr. Hitt stated that the main provisions of the contract are the four-year agreement between the City and Local 2043. Financial terms are 2% raise increase of the base salary, effective July 1, 2001, Year '02 would be a raise on base salary of 2% - 4% depending on CPI but no less than 2% or more than 4%. Year '03 & '04 would have the same conditions. In the year 2004 there would be a co-pay of Health Insurance premiums which could reduce the CPI increase by a maximum of one-half percent. For the first time, the City has the option of seeking volunteers who could work a non-traditional schedule. Mr. Hitt reviewed the section 6.2 (pg 19) - Management Rights.

Because the Councilors did not receive the copy of this agreement until this evening, the following motion was made by Councilor Munk, seconded by Councilor Harrington and passed with four yeas and one nay by Councilor Thackaberry that:

A decision on the approval of the AFSCME Local 2043 Contract Agreement be tabled until the meeting of the City Council on November 14, 2001.

5. **CITY OF LEBANON - NEEDS & ISSUES INVENTORY**

City Administrator Hitt reviewed a report given to the Councilors at tonight's meeting titled: *2001 Needs and Issues Inventory Local Priority List*. Mr. Hitt stated that Notification Numbers 2625, 2626, 2627, 2628, 2629 are of first priority. Lebanon Municipal Court Remodeled, #2623 should be removed from the list, along with #2624, Berlin Rd., Equestrian Center. Number 2608, Lebanon Downtown Association, #2610, The Brock House, and #2614, Second Street Bridge should also be removed.

A motion was made by Councilor Miller, seconded by Councilor Thackaberry and passed unanimously that:

The 2001 Needs and Issues Inventory Local Priority List, be approved with corrections as listed above.

CITY ADMINISTRATOR'S REPORT

"Challenge of Change" Economic Development Conference

Mr. Hitt stated he attended the meeting of the "Challenge of Change" Economic Development Conference sponsored by the State of Oregon Economic and Community Development Dept. He stated the most beneficial thing is the detail in the State's Marketing Plan. The State is starting a nationwide marketing plan. Mr. Hitt stated that several thousand leads will be generated out of this plan. In exchange for buying into their marketing plan, \$1,000, they will pass on a high number of those leads to the cities. He feels that paying the \$1,000 might be money well spent. A decision on this should be made in the next couple of weeks.

Meetings & Events Schedule

League of Oregon Cities Annual Conference to be held November 9, 10, 11. At this point just Councilor Toombs and Mr. Hitt will attend.

City Council Meeting is scheduled for November 14th and will start at 5:30 for a review of goals update workshop. The next meeting will be scheduled, if necessary, on November 28. Mr. Hitt stated it may not be necessary to have a meeting at that time.

Goals Update

For the November 14, workshop, Staff has been asked by Mr. Hitt to take all of their goals that relate to their division or department and place them on worksheets. Completion dates of the goals as well as their priority will be determined by Councilors on November 14th.

Draft Letter of Agreement for the Master Plan of the Lebanon Middle School

The letter is from Mark Seder of Seder Architects presenting an analysis of the needs for all Lebanon City facilities except public works maintenance. It is presented in two phases. The City will be able to quit at the completion of Phase I, if desired. The fee for Phase I, including direct reimbursable expenses is \$7,600.00. Phase II, if the Council wishes to continue, will be the Site Development Plan and will cost \$12,200. It was the Council's consensus to allow the City Administrator to proceed with the agreement.

Intergovernmental Agreement

Mr. Hitt suggested some amendments to the agreement: page 1 - WHEREAS, for purposes of this agreement, "city prisoner" means any prisoner who is brought to the jail as a result of being charged with or convicted of, an offense against the City's Municipal Ordinance. All other prisoners are State prisoners, not subject to this agreement. page 2 - b. This payment provision shall not be in effect during the term of this agreement. It is understood that it is the intent of the parties that the City shall consider making payments in any future agreements.

School District

The School District is holding a special meeting Monday, October 29, at 6:30 P.M. to present an update on all of their projects.

Economic Development

Councilor Munk recommended that the suggestion made by City Administrator Hitt regarding the \$1000. being spent to take part in the State's new "marketing plan" be approved. It was the consensus of the Councilors to approve this recommendation.

CITIZENS COMMENTS

There were none.

ITEMS FROM COUNCIL MEMBERS

Mayor Simpson stated that City Administrator Hitt has suggested that as many of the Councilors who can, should attend the Saturday, November 10th, meeting of the League of Oregon Cities Annual Conference. Those who stated they will attend are City Administrator Hitt, Mayor Simpson, Councilors Toombs and Harrington. Mayor Simpson asked that anyone else who can attend, contact Linda Kaser or Mr. Hitt.

Councilor Harrington stated that because the Santiam Travel Station is on the National Historic Registry, any changes made to the interior should go to the Historic Resources Commission for review. City Administrator Hitt stated he has reviewed the original grant and stated that it does not make any reference to the interior walls as far as maintaining them. It does say the interior would be finished in order to make it suitable for meeting rooms.

EXECUTIVE SESSION

7. At 8:40 P.M., Mayor Simpson announced that the Lebanon City Council would move into Executive Sess as authorized under ORD 192.660(1)(e) *To conduct deliberations with persons designated by the Council to negotiate real property transactions.*

Mayor Simpson announced that Council expects to take official action following the Executive Session so the meeting will resume following the Executive Session.

LEGISLATIVE SESSION

8. **RIGHT-OF-WAY ACCEPTANCE FOR 5TH STREET - Real Property Negotiation**

A motion was made by Councilor Munk, seconded by Councilor Thackaberry and passed unanimously that:

The Council accept the right-of-way, adjacent to Pioneer School, conditional upon the offer of \$15,000 per acre and authorize the Mayor and City Recorder to sign this agreement.

ADJOURNMENT

There being no further business or discussion, Mayor Simpson closed the meeting of the Lebanon City Council at 8:53 P.M.

Recorded and transcribed by Dorothy Nicholson

J. Scott Simpson, Mayor
Ken Toombs, President

ATTEST:

John E. Hitt, City Recorder

AGENDA ITEM 7



CITY OF LEBANON

MEMORANDUM

TO: Mayor Simpson & City Council

DATE: November 9, 2001

FROM: John Hitt, City Administrator

SUBJECT: Approval of Bencorp 401a Plan and American General VALIC 457 Plan.

- 1) The Bencorp 401a Plan is for the purpose of cashing in or "banking" accumulated sick leave and vacation pay that would otherwise be paid in cash, upon the termination of employment by a non-union employee.

This plan offers the following benefits:

- ▶ Neither the City nor the employee pays social security taxes.
- ▶ The City pays no PERS.
- ▶ Provides for the payment of accumulated sick and vacation pay over a six (6) year period, rather than all at once upon termination, reducing and ultimately ending this unfunded and unbudgeted liability. This plan incurs no costs to the City.

- 2) The VALIC 457 Plan simply offers another deferred compensation alternative to all employees. It is purely voluntary and entails no cost to the City.

Either plan may be terminated at any time by the City.

Approval/Denial of the following motion:

"Approve the American General - Bencorp 401a Plan for accumulated sick and vacation leave for *non-union* employees, and the American General/VALIC 457 Plan for *all* city employees."

JEH/lgk

ADMINISTRATIVE SERVICES AGREEMENT

This Agreement is made and entered into by and between _____
(the "Employer") and The Variable Annuity Life Insurance Company (" VALIC"), a Texas corporation,
on this _____ day of _____, 20 ____.

ARTICLE I - PURPOSE

The Employer maintains a deferred compensation plan (the " Plan"). In the interest of economy and efficiency, the Employer deems it desirable to contract for administrative services pertaining to accounting for deferrals, disbursements of funds, proper reporting to participants and the Internal Revenue Service, and withholding of taxes, if applicable. Therefore, the Employer designates VALIC its agent to perform the services outlined in this Agreement and deposit income tax amounts as required by law. VALIC's undertaking to provide administrative services hereunder is limited to those amounts of deferred compensation under the Plan that the Employer has invested in annuity contracts issued by VALIC.

ARTICLE II - DEFINITIONS

As used in this Agreement, the following definitions shall apply unless the context indicates otherwise:

2.1 Agent - The Variable Annuity Life Insurance Company (" VALIC").

2.2 Annuity Contract - The group or individual annuity contract(s) between the Employer or Plan Participants and VALIC.

2.3 Employer _____
Employer Name

Employer Address

2.4 Participant – An employee or independent contractor of the Employer electing to participate in the Plan.

2.5 Plan – The _____ Deferred Compensation Plan.
Name of Plan

(check one below):

- a. _____ a 457(b) or " eligible" deferred compensation plan described under section 457 of the Internal Revenue Code of 1986, as amended.
- b. _____ a 457(f) or " ineligible" deferred compensation plan sponsored by a tax-exempt or governmental organization.
- c. _____ a non-qualified (top hat) deferred compensation plan sponsored by a for-profit organization.

ARTICLE III - RESPONSIBILITIES OF EMPLOYER

3.1 The Employer shall complete and sign all forms necessary for VALIC's appointment as its agent with the Internal Revenue Service, or where applicable, those forms that release VALIC of said appointment.

3.2 The Employer shall notify VALIC in writing of all Participant information requested by VALIC, including, but not limited to, age, Social Security number and beneficiary information.

3.3 The Employer shall direct VALIC to make benefit payments under the Plan in accordance with the annuity option specified by the Employer and shall supply VALIC with the amount of the account to be distributed.

3.4 The Employer shall be responsible for approval of all requests for unforeseeable emergency withdrawals under the Plan and direct VALIC to make approved disbursements in amounts specified by the Employer. Unforeseeable Emergency Withdrawal requests shall be processed as follows (check one below):

- a. Employer has reviewed VALIC'S Unforeseeable Emergency Withdrawal procedures and, having determined such procedures to be consistent with the terms of the Plan, hereby adopts such procedures and delegates the determination function to VALIC. By signature on this Agreement, Employer approves all unforeseeable emergency withdrawal requests made and processed in accordance with VALIC'S procedures adopted by Employer for the Plan.
- b. Employer will review all requests for and make all determinations regarding unforeseeable emergency withdrawals and will indicate distribution approval by signature on all Unforeseeable Emergency Withdrawal request forms.

PB/NPR/PR 1/04
VA-7 13 VER 12/00

ARTICLE IV - VALIC RESPONSIBILITIES

4.1 VALIC shall furnish a Notice of Receipt of Premium to Employer within 7 days of receiving funds.

4.2 VALIC shall furnish quarterly confirmation statements of accounts showing activity for the period and the total value of each Participant's account(s) to (check one below):

- a. _____ Participants; or
- b. _____ the Employer.

4.3 VALIC shall compute and deduct income taxes required by law to be withheld for all distributions (check one below).

- a. _____ Yes. *This option is only available if you checked 2.5(a). (Proceed to 4.4.)*
- b. _____ No. *(Proceed to Article VI)*

4.4 VALIC shall issue the disbursements in accordance with the provisions of the Annuity Contract and the Plan at the direction of and in amounts specified by the Employer. Such disbursements shall be made payable and mailed to participants *This does not apply if 4.3(b) was checked.*

4.5 Disbursements shall be made from the account maintained by VALIC on behalf of the Employer in accordance with the terms of the Annuity Contract and the Plan; provided, however, that if the Employer terminates the Annuity Contract, VALIC shall be obligated to make disbursements only to the extent that funds are still available in the account of the Employer.

4.6 VALIC shall compute and deduct income taxes required by law to be withheld from distributions from the Plan under the wage bracket method for all distributions for Federal income tax purposes and as may be specified below for State income tax purposes. A report of such withheld taxes will be forwarded by VALIC to the Internal Revenue Service within the time prescribed by law *This only applies if you checked 2.5(a).*

State income tax withholding (Specify one only):

- _____ wage bracket method for all distributions.
- _____ current percentage rate specified by state law for all distributions.

Employer agrees to furnish VALIC a properly completed Withholding Allowance Certificate (Form W-4) for each Participant receiving a disbursement. VALIC will not withhold Federal income tax for any employee who claims an exemption from withholding on Form W-4 by indicating no tax liability for the preceding year and none expected for the current year.

4.7 VALIC shall furnish to each Participant tax reporting form(s) required by the applicable taxing authority, including a statement of gross amounts paid to the Participant and the amount of Federal, state and local income tax withheld by VALIC, if any.

4.8 VALIC shall furnish to the Employer, if applicable, annual and semi-annual reports for The Variable Annuity Life Insurance Company Separate Account(s) for distribution to Participants.

4.9 VALIC shall establish and maintain records of notifications from Employer concerning Participants who are to receive disbursements, gross payments under the Agreement, amounts of Federal, state and local income withheld by VALIC on behalf of the Employer and reports of such income and deposits filed with the appropriate governmental agencies by VALIC on behalf of the Employer.

ARTICLE V - MISCELLANEOUS

5.1 Term. This Agreement shall become effective immediately upon execution and shall remain in force until terminated by either party as provided below.

5.2 Termination. This Agreement may be terminated by either party upon sixty (60) days' written notice to the other party of the intent to terminate. Upon any such termination, Agent shall deliver to the Employer all records and reports required by this Agreement.

5.3 Information. VALIC relies on the information provided to it by the Employer and Plan Participants and beneficiaries, and VALIC will not be responsible for claims resulting from the use by VALIC of any incorrect or misleading information provided to it by the Employer or Plan Participant or beneficiary.

5.4 Assignment. This Agreement may not be assigned without the written consent of the other party.

5.5 Amendment. The parties may amend this Agreement only in writing. Any such amendment must be approved by the President or a Vice President of Agent and a person authorized to act on behalf of Employer.

5.6 Notice. Any notice provided for herein shall be in writing and shall be deemed to have been given when received by personal delivery or United States mail addressed to the Employer at the address given in section 2.3 or to VALIC at the address below:

Customer Service
The Variable Annuity Life Insurance Company
2929 Allen Parkway
Houston, TX 77019

5.7 Governing Law. The laws of the state /commonwealth of _____ shall govern the rights and obligations of the parties under this Agreement.

5.8 Entire Agreement. This Agreement and any written amendments hereto constitute the entire agreement of the parties. This Agreement shall supersede all previous communications, representations or agreements, either oral or written, between the parties.

5.9 No Cost to Employer. The services rendered by VALIC pursuant to this Agreement shall be performed without additional cost to the Employer other than administrative and sales charges provided for in the Annuity Contract.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed to be effective as of the date herein above.

EMPLOYER:

Name
BY: _____
Signature

Name and Title

HOME OFFICE:
THE VARIABLE ANNUITY LIFE
INSURANCE COMPANY

BY: _____

ARTICLE VI - EMPLOYER NOTICE OF WITHHOLDING
(Signature required if item 4.3b was selected)

Notice is hereby given by the Employer that all disbursements under the above-referenced Plan shall be made by VALIC to Employer in accordance with the Annuity Contract(s) entered into between VALIC and the Employer under the Plan in such amounts and at such times as Employer specifies in writing to VALIC. VALIC is hereby released from the responsibility, if any, of withholding Federal and state income taxes from all disbursements made to Employer under the above-referenced Plan.

EMPLOYER:

Name
BY: _____
Signature

AGENDA ITEM 8



CITY OF LEBANON

MEMORANDUM

TO: Mayor Simpson & City Council

DATE: November 9, 2001

FROM: John Hitt, City Administrator

SUBJECT: Use of Transient Occupancy Tax Revenues - Alternative Proposal

Councilor Mel Harrington, per our July 25 meeting, wanted to propose an alternative to a Chamber of Commerce contract for the use of transient occupancy tax revenues.

As of this date, Councilor Harrington has not provided a written proposal.

I have found only one Oregon City that does not contract with a nonprofit organization for tourism promotion (other than some very small cities that have minimal tax revenues). That city is Grants Pass. They employ one full-time staff person who works with a city appointed Tourism Commission. They develop materials, sponsor events, and help fund certain tourism related development (kiosks, etc.).

JEH/lgk

AGENDA ITEM 9



CITY OF LEBANON

MEMORANDUM

TO: Mayor Simpson & City Council

DATE: November 9, 2001

FROM: John Hitt, City Administrator

SUBJECT: Lebanon Chamber of Commerce/City of Lebanon Agreement -
"Uses of Transient Occupancy Taxes"

Attached is a sample agreement, drafted by City Attorney Tom McHill, formalizing the proposal made by the Lebanon Chamber of Commerce in August of this year.

The agreement is for your review and possible action taken at the November 14 City Council Meeting.

JEH/lgk

MORLEY, THOMAS, McHILL & PHILLIPS, LLC
Attorneys at Law

William R. Thomas
Thomas A. McHill
Joseph K. Phillips

80 E. Maple St.
Lebanon, OR 97355-3218
Phone: (541) 258-3194
Fax: (541) 258-7575

Natasha A. Zimmerman
Laurence Morley (1915-1999)

October 31, 2001

Barbara Allen
Lebanon Area Chamber of Commerce
1040 Park Street
Lebanon, OR 97355

Dear Ms. Allen:

Enclosed please find a draft Agreement, the form of which I would be willing to recommend approval to the Lebanon City Council should the Council decide to enter into such an agreement with the Chamber. It is my understanding that this matter may be placed upon the Council fairly soon, so I wanted you to have a copy of an Agreement that I would approve with enough time so that you can take a look at the contents of the Agreement as well.

By presenting this Agreement, please understand that I am in no way indicating that the Council may or may not approve entering into such an Agreement with the Lebanon Area Chamber of Commerce. My purpose in preparing this draft Agreement is to simply come up with something that, I think, represents the major elements of the Agreement that the Chamber had proposed, along with some changes that I felt were important from the City's standpoint. Please also understand that the City Council has not reviewed the contents of this Agreement either, and there may be additional provisions that they would like to see in an Agreement should they decide to proceed.

Very truly yours,

MORLEY, THOMAS, McHILL & PHILLIPS, LLC

Thomas A. McHill

TAM:th
Enclosures

cc: Mayor and Council/Read File

AGREEMENT

This Agreement is entered into this ____ day of _____, 2001, by and between the City of Lebanon, a municipal corporation and political subdivision of the State of Oregon, with the principle office at 925 Main Street, Lebanon, Linn County, Oregon, hereinafter referred to as "City" and the Lebanon Area Chamber of Commerce, a non-profit corporation organized under the laws of the State of Oregon, having its principle place of business located at 1040 Park Street, Lebanon, Linn County, Oregon, hereinafter referred to as "Chamber".

WITNESSETH

WHEREAS, the Lebanon Municipal Code, Chapter 3.12, provides for the imposition of a transit room tax on hotel, motel, recreation parks and other persons who do business within the City of Lebanon; and

WHEREAS, Section 3.12.220 of the Lebanon Municipal Code provides that all revenues derived from the transient room tax shall be spent for the promotion, acquisition, construction, operation and maintenance of recreational, cultural and tourist-related services, and that it is the intent that revenue from the transient room tax shall be used to promote Lebanon, Oregon; and

WHEREAS, the Chamber staffs and operates a committee which focuses its attention on tourism, known as the Chamber's Tourism and Economic Development Committee (TED) that focuses on tourism and providing and coordinating Lebanon information services, known as the Chamber's Tourism and Economic Development Committee. Such committee consists of representatives of members of the Chamber of Commerce, the general community, with strong emphasis on the motel/hotel sector, and is organized as a committee of the Chamber of Commerce; and

WHEREAS, the Chamber desires to undertake and has the ability to support and promote tourism for the City of Lebanon; and

WHEREAS, the City desires to use the services of the Chamber pursuant to the requirements, limitations and direction of LMC Chapter 3.12;

NOW, THEREFORE, IN CONSIDERATION of the mutual promises and covenants contained herein, the parties agree as follows:

1. The Chamber agrees to staff and operate a committee of the Chamber, known as the Chamber's Tourism and Economic Development Committee (T.E.D.), which will foster and provide support for tourism in the City of Lebanon, as defined and required under Lebanon Municipal Code Section 3.12.220. Services provided will include, but not be limited to, providing local citizens and visitors with information about Lebanon area visitor facilities, recreational opportunities, city services and provide a clearinghouse for the dissemination of other requested information about the Lebanon area. In addition, the Chamber shall provide coordination for the dissemination of information which is

generated by written requests for information.

2. The Chamber agrees to ensure that the "Visitor Information Center" signs which are on roads and highways in the general vicinity of the City will provide directions as to where persons may obtain further information about the Lebanon area.
3. The Chamber agrees to maintain office and telephone service which shall be open and available to the public from each Monday through Friday, except for holidays or such other times as which may be determined reasonably necessary by the Chamber for prudent business reasons or safety issues.
4. The Chamber agrees to be responsible for marketing and the promotion of meetings and special events, and the distribution of public information necessary to support such activity, including but not limited to the following kinds of activities:
 - a. Attract meetings and special events to Lebanon.
 - b. Assist meetings and special events, which locate in Lebanon.
 - c. Encourage groups, which have the potential for holding meetings special events in Lebanon.
 - d. Assist in publishing and distributing brochures and other marketing tools to encourage others to consider Lebanon as a site for their functions.
5. The Chamber agrees to be responsible for marketing and promotion of tourism activity and the distribution of information necessary to support such activities, including but not limited to the following kinds of activities:
 - a. To emphasize improvement of the occupancy rate of local motel/hotel facilities through the assistance of the motel/hotel owners.
 - b. Listen to and work with the thoughts and ideas of the motel/hotel owners to entice greater overnight visitors to our community.
 - c. Operate as Lebanon's Visitor Information Resource Center.
6. The Chamber agrees to maintain books, records, documents and other evidence of accounting procedures. Those records shall be subject to the inspection, review or audit by the City at all reasonable times. In addition, Chamber shall provide an annual accounting to the City, in writing, and provided to the city administrator on or before December 31, 2001 of each year. The annual report shall provide, but is not limited to, outlining all actions taken during the year, the accomplishments, current projects, future goals and budget details, which shall include all expenses made attributable to the funds provided by the City in this agreement.
7. Chamber agrees to indemnify, defend and hold harmless the City, its agents, officers and employees, from and against any and all liability, claims, suits, loss, damages, costs and

expenses arising out of or resulting from the negligent or intentional acts, errors or omissions of the Chamber, its officers, employees or agents. The Chamber shall procure and maintain liability insurance naming the City as an additional insured, in an amount specified in the Oregon Tort Claims Act, to protect the City against any claim for damage to property or person as determined by the City. The Chamber's insurance carrier shall provide the City with proof of insurance coverage upon request each year.

8. Chamber agrees to comply with the provisions of all Federal, State and local laws and ordinances that are applicable to the performance under this contract. The Chamber, its employees, volunteers and agents working under this agreement are subject employees under the Oregon Worker's Compensation Law and shall comply with ORS 656.017, which requires the Chamber to provide Worker's Compensation coverage for all of their subject workers.
9. The City agrees to pay to the Chamber, as consideration for services described herein, on at least a quarterly basis, all transient room taxes actually received by the City, pursuant to Lebanon Municipal Code Title 3.12, less any administrative costs or other costs, which are allowed by the ordinance.

It is mutually agreed by the parties:

- a. All funds paid to the Chamber pursuant to this agreement shall be used only as may be provided in this agreement, or according to law.
- b. The parties agree that at all times herein, the Chamber shall be deemed as an "independent contractor" and not an agent of the City. Accordingly, the Chamber, while providing the labor or services required herein, is free from the direction and control over the means and manner of providing the labor or services, subject only to the right of the City to specify the desired results. The Chamber shall be responsible for obtaining and providing any and all tools or equipment necessary for the performance of the provisions of this agreement, and retains the authority to hire and fire employees to perform the labor or services required herein. The Chamber assumes and continues to have any and all responsibility for paying its employees, withholding federal and state mandated income taxes, and making all necessary reports of the same to the government entities as required by law.
- c. The Chamber agrees not to discriminate on the basis of race, religion, sex, color, mental or physical handicap or national origin in the enforcement and execution of this agreement.
- d. This agreement is not subject to transfer by merger, consolidation, sale, assignment or otherwise without prior, express written consent of the City of Lebanon.

- e. A waiver of any breach of any provision of this agreement by either party shall not operate as a waiver of any subsequent breach of the same or any other provision of this agreement
- f. Either party, upon written notice and without cause, may terminate this agreement by giving such written notice to the other party no less than 90 days prior to the effective date of the termination. Upon the termination of this agreement, any funds shall be immediately paid over to the City. Upon termination, the Chamber shall also provide to the City, within thirty days, a current accounting of any and all funds expended pursuant to the agreement up until the time of termination.

IN WITNESS WHEREOF, the parties have executed this Agreement at Linn County, Oregon, the day and year first above written.

City of Lebanon

Lebanon Area Chamber of Commerce

City Administrator

By Executive Director

Approved as to form:

Thomas A. McHill
Lebanon City Attorney

AGENDA ITEM 10



CITY OF LEBANON

MEMORANDUM

TO: Mayor Simpson & City Council

DATE: November 9, 2001

FROM: John Hitt, City Administrator

SUBJECT: Approval/Denial of AFSCME Local 2043 Contract

The AFSCME Contract was distributed at the last City Council meeting with the major provisions to the contract outlined. It has been since approved by the AFSCME leadership.

Any questions or concerns about the contract should be articulated at the November 14 City Council Meeting. If significant amendments to the proposed agreement are desired by the City Council, it will probably necessitate the reopening of collective bargaining negotiations.

Staff recommends approval of the agreement.

JEH/Igk

AGENDA ITEM 11



LEBANON POLICE DEPARTMENT MEMORANDUM

TO: Mr. John Hitt, City Administrator

FROM: Michael D. Healy, Chief of Police 

DATE: November 9, 2001

RE: Truck Enforcement

CC: Tom McHill, City Attorney
Greg Burroughs, Patrol Sergeant

At the November 14th Council meeting, the police department had planned on making a presentation to the Council regarding truck enforcement within the City. We had also planned on making recommendations for changes in our current ordinance.

As you are aware, a recent court decision has significantly impacted any city's ability to regulate truck traffic. So instead of discussing our current ordinance and any recommended changes, Mr. McHill and I will be prepared to discuss the impact of this court case on the City of Lebanon.

AGENDA ITEM 12

OFFICE OF THE CITY ATTORNEY
CITY OF LEBANON
80 E. Maple St.
Lebanon, OR 97355
Telephone: (541) 451-7419
email: tmchill@centurytel.net

To: **John Hitt**
City Administrator

November 2, 2001

From: **Thomas McHill**
City Attorney 

RE: **Parking lot enforcement at Lebanon High School**

As you know, this school year has seen increased enforcement of parking regulations at the parking lots at Lebanon High School. New parking signs have been installed and the School Resource Officer, Mike Fiala, has been aggressive in writing tickets for students, faculty and members of the general public who park in the wrong places or don't have the proper permits.

Lebanon Municipal Code, Chapter 10.28, provides for the enforcement of parking regulations in certain private parking lots by the Lebanon Police Department, with enforcement carried out in the Lebanon Municipal Court.

Recently, Mike has discovered an anomaly in the ordinance concerning enforcement of the parking regulations in the student parking lot located on the east side of Fifth Street, across from the high school. The ordinance, LMC 10.28.030, allows the Council to, by resolution, extend the provisions of the enforcement of the parking lot regulations to lots not mentioned in the Code. Therefore, in order to clear up any confusion about the ability to enforce regulations on the lot, I have drafted such a resolution.

I have talked with Mr. Ken Woody, the high school principal, who supports the extension of these regulations.

I recommend and request that the Council consider and approve the proposed resolution at its meeting of November 14, 2001.

Cc: Mike Fiala, LPD

A RESOLUTION EXTENDING PRIVATE) Resolution Number _____
PARKING LOT ENFORCEMENT AT) for 2001
LEBANON HIGH SCHOOL)

WHEREAS, the provisions of Lebanon Municipal Code, 10.28.030, provide that the Lebanon City Council may, by resolution, provide for the extension of the provisions of said chapter to include other private parking lots than those specifically mentioned in said code by resolution; and

WHEREAS, the Lebanon City Council hereby finds that it is necessary and in the best interests of the public that said provisions extend to the enforcement of parking lot regulations for cars parked on the private parking lot located on the east side of Fifth Street, directly across said street from Lebanon High School, said lot designated by the High School as the Student Parking Lot, or as otherwise designated in the future; and

WHEREAS, the Lebanon High School Administration joins in the request to extend the provisions of LMC chapter 10.28 to include the enforcement of parking at said parking lot;

NOW, THEREFORE, IT IS HEREBY RESOLVED:

Section 1. The provisions of Chapter 10.38 concerning Private Parking Lot Regulations are hereby extended to include the enforcement of said parking regulations to that parking lot which is located on the east side of Fifth Street, directly across the street from the Lebanon High School, 1700 S. Fifth St., Lebanon, Linn County, Oregon. At the time of the passage of this resolution, said parking lot was designated as the "Student Parking Lot." It is intended by the Lebanon City Council that this extension of parking lot regulations shall survive any change in the designation of the parking lot at said location.

Section 2. This resolution shall take effect immediately upon its passage and shall remain in effect until further resolution of the Lebanon City Council.

Passed by the vote of _____ for and _____ against by the Lebanon City Council at its meeting on the 14th day of November, 2001.

Mayor

ATTEST:

City Recorder

AGENDA ITEM 13

*Project "Walden"
Update*

AGENDA ITEM 14



CITY OF LEBANON

MEMORANDUM

TO: Mayor Simpson & City Council

DATE: November 9, 2001

FROM: John Hitt, City Administrator

SUBJECT: Contract for Professional Services with Greg Wilder

Please find attached a proposed agreement with Wilder and Associates. This agreement is for the purpose of fulfilling the City Council's goal of reviewing the City's engineering services for the purpose of measuring its effectiveness and cost efficiency.

The agreement is a standard format, approved by our City Attorney.

Specifically, the scope of work (Exhibit "B") will provide the following by March 1, 2002:

- A review of current staff funding
- Reviewing and comparing staff funding costs with comparable Oregon jurisdictions and to private consultant service providers.
- Review current organization structure and staffing to make recommendations that will enhance performance and/or reduce costs.

Mr. Wilder comes highly recommended by another area City Manager that has previously worked with him. Mr. Wilder has served as a City Engineer, City Manager and Engineering Consultant.

The total fee and charges will not exceed \$9,500. The City also has the right to terminate the agreement at any time after giving ten (10) days notice.

I recommend your approval of this professional services agreement.

JEH/lgk

SERVICE PROVIDER / PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT, is made and entered into in duplicate this _____ day of *November, 2001*, by and between the *City of Lebanon*, a Oregon municipal corporation, hereinafter referred to as the "CITY" and *Wilder & Associates*, hereinafter referred to as the "SERVICE PROVIDER".

WITNESSETH:

WHEREAS, the CITY desires to have certain services and/or tasks performed as set forth below requiring specialized skills and other supportive capabilities; and

WHEREAS, the SERVICE PROVIDER represents that the SERVICE PROVIDER is qualified and possesses sufficient skills and the necessary capabilities, including technical and professional expertise, where required, to perform the services and/or tasks et forth in this Agreement.

NOW, THEREFORE, in consideration of the terms, conditions, covenants, and performance contained herein, the parties hereto agree as follows:

1. SCOPE OF SERVICES

The SERVICE PROVIDER shall perform such services and accomplish such tasks, including the furnishing of all materials and equipment necessary for full performance thereof, as are identified and designated as SERVICE PROVIDER responsibilities throughout this Agreement and as detailed in Exhibit "B" attached hereto and incorporated herein (the "Project").

2. TERM

The Project shall begin no earlier than *November 19, 2001*, and shall be completed no later than *March 1st, 2002* unless sooner terminated according to the provisions herein or extended as may be mutually agreed.

3. COMPENSATION AND METHOD OF PAYMENT

A. Payments for services provided hereunder shall be made following the performance of such services, unless otherwise permitted by law and approved in writing by the CITY. The type of payment shall be cash for hourly services at rates set forth in exhibit "A" plus all other applicable charges, services, and expenses identified in exhibit "A" and applicable to the work scope identified herein as exhibit "B."

B. No payment shall be made for any service rendered by the SERVICE PROVIDER except for services identified and set forth in this Agreement.

C. The SERVICE PROVIDER shall submit to the City's Administrator in a manner and method approved by the Finance Director, a voucher or invoice for services rendered during prosecution and progress of the

work identified within exhibit "B." The CITY shall initiate authorization for payment after receipt of said approved voucher or invoice and shall make payment to the SERVICE PROVIDER within its next payment cycle, but in no case later than thirty (30) days thereafter.

D. The SERVICE PROVIDER shall not exceed \$9,500 in total fees and charges without the written consent of the CITY. This not-to-exceed (NTE) amount is limited to the work effort identified as a "basic" activity within the work scope identified in exhibit "B." The CITY may contract for the additional services that may be necessary for the full implementation of applicable recommendations. These additional items are identified in exhibit "B" as Item 4 (Implementation Instruments a, b, and c).

4. REPORTS AND INSPECTIONS

A. The SERVICE PROVIDER at such times and in such forms as the CITY may require, shall furnish to the CITY such statements, records, reports, data, and information as the CITY may request pertaining to matters covered by this Agreement. All of the reports, information, data, and other related materials, prepared or assembled by the SERVICE PROVIDER under this Agreement and any information relating to personal, medical and financial data will be treated as confidential only as permitted by Oregon Public Records Laws.

B. The SERVICE PROVIDER shall at any time during normal business hours and as often as the CITY or its auditor may deem necessary, make available for examination all of its records and data with respect to all matters covered, directly or indirectly, by this Agreement and shall permit the CITY or its designated authorized representative to audit and inspect other data relating to all matters covered by this Agreement. The CITY shall receive a copy of all audit reports made by the agency or firm as to the SERVICE PROVIDER'S activities. The CITY may, at its discretion, conduct an audit, at its expense, using its own or outside auditors, of the SERVICE PROVIDER'S activities that relate, directly or indirectly, to the Agreement.

5. INDEPENDENT CONTRACTOR RELATIONSHIP

A. The parties intend that an independent contractor relationship will be created by this Agreement. The CITY is interested primarily in the results to be achieved; subject to paragraphs herein, the implementation of services will lie solely with the discretion of the SERVICE PROVIDER. No agent, employee, servant or representative of the SERVICE PROVIDER shall be deemed to be an employee, servant or representative of the CITY for any purpose, and the employees of the SERVICE PROVIDER are not entitled to any of the benefits the CITY provides for its employees except as otherwise expressly provided herein. SERVICE PROVIDER will not be eligible for any Federal Social Security, State Workman's Compensation, unemployment insurance or Public Employees Retirement System benefits from payments made as a part of this contract. The SERVICE PROVIDER will be solely and entirely responsible for its act and for the acts of its agents, employees, servants, subcontractors or representatives during the performance of this Agreement.

B. In the performance of the services herein contemplated the SERVICE PROVIDER is an independent contractor with the authority to control and direct the performance of the details of the work, however, the result of the work contemplated herein must meet the approval of the CITY and shall be subject to the CITY's general rights of inspection and review to secure the satisfactory completion thereof.

C. As an independent contractor, SERVICE PROVIDER shall be responsible for any federal or state taxes applicable to payments received pursuant to this Agreement.

D. The CITY shall report the total amount of all payments to SERVICE PROVIDER, including any expenses, in accordance with federal Internal Revenue Service and to the applicable departments of the State of

Oregon.

E. The City will insure access to, and make all provision for SERVICE PROVIDER to enter upon public and private property as may be necessary for the SERVICE PROVIDER to carry out the agreed upon work.

6. SERVICE PROVIDER EMPLOYEES/AGENTS

The CITY may at its sole discretion require the SERVICE PROVIDER to remove an employee(s), agent(s) or servant(s) from employment on this Project. The SERVICE PROVIDER may however employ that (those) individuals on other non-city related projects.

7. HOLD HARMLESS AND INDEMNIFICATION

A. The SERVICE PROVIDER shall indemnify and hold the CITY and its agents, employees, and/or officers, harmless from and shall process and defend at its own expense any and all claims, demands, suits, at law or equity, actions, penalties, loss, damages, or costs, of whatsoever kind or nature, brought against the CITY arising out of, or in connection with, or incident to, the execution of this Agreement and/or the SERVICE PROVIDER'S performance or failure to perform any aspect of this Agreement; provided, however, that if such claims are caused by or result from the concurrent negligence of the CITY, its agents, employees, and/or officers, this indemnity provisions shall be valid and enforceable only to the extent of the negligence of the SERVICE PROVIDER; and provided further, that nothing herein shall require the SERVICE PROVIDER to hold harmless or defend the CITY, its agents, employees, and/or officers for damages or loss caused by the City's sole negligence. The SERVICE PROVIDER expressly agrees that the indemnification provided herein constitutes the contractor's waiver of immunity for the purposes of this Agreement. The parties have mutually negotiated this waiver. The provisions of this section shall survive the expiration or termination of this Agreement. This limitation of liability of the City is subject to the limitations and conditions of Oregon Tort statutes and rules.

B. No liability shall attach to the CITY by reason of entering into this Agreement except as expressly provided herein and the CITY shall pay for all required bonds which shall remain in full force during the duration of this agreement.

8. INSURANCE

The SERVICE PROVIDER shall procure and maintain for the duration of the Agreement, statutory workers' compensation and employer's liability insurance for the State of Oregon and insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the SERVICE PROVIDER, their agents, representative, employees or subcontractors.

The SERVICE PROVIDER shall provide a Certificate of Insurance evidencing:

A. Automobile Liability insurance with limits no less than \$300,000 combined single limit per accident for bodily injury and property damage.

B. Commercial General Liability insurance written on an occurrence basis with limits no less than \$200,000 combined single limit per occurrence and \$300,000 aggregate for personal injury, bodily injuring and property damage. Coverage shall include but not be limited to: blanket contractual; products/completed operations; broad form property damage; explosion, collapse and underground excavation if applicable; and employer's liability.

Any payment of deductible or self-insured retention shall be the sole responsibility of the SERVICE PROVIDER.

9. TREATMENT OF ASSETS

Title to all property furnished by the CITY shall remain in the name of the CITY and the CITY shall be the owner of the work product and other documents, if any, prepared by the SERVICE PROVIDER pursuant to this Agreement including but not limited to:

- a. The work product(s) described in exhibit "B".
- b. All digital files including spreadsheets, word-processed documents, graphics, etc.
- c. All map and drawing files, etc. including their digital form.

10. PRODUCT STANDARDS

The CITY shall have the right to require delivery of services and products in a format compatible with CITY standards. Such standards may include but are not limited to:

- a. Map and drawing digital files.
- b. Word processing text and documents.
- c. Graphics files.
- d. Other hard copy and digital files including spreadsheets, statistical data, etc.
- e. Document size and shape.

11. COMPLIANCE WITH LAWS

A. The SERVICE PROVIDER, in the performance of this Agreement, shall comply with all applicable federal, state or local laws and ordinances, including all applicable Oregon Public Contracting Laws. SERVICE PROVIDER shall also comply with all regulations for licensing, certification and operation of facilities, programs and accreditation, licensing of individuals, and any other standards or criteria as described in this Agreement to insure quality of services.

B. The SERVICE PROVIDER shall obtain all licenses and permits necessary to perform the services under this contract, including a City of Lebanon business license, prior to beginning work under this contract.

12. NONDISCRIMINATION

A. Nondiscrimination in Employment. In the performance of this Agreement, the SERVICE PROVIDER will not discriminate against any employee or applicant for employment on the grounds of race, creed, color, national origin, sex, marital status, age, sexual orientation, religion, veteran's status, or the presence of any sensory, mental or physical handicap or any other bases prohibited by applicable Federal, State, or local law; provided that the prohibition against discrimination in employment is because of the particular work involved. The SERVICE PROVIDER shall ensure that applicants are employed, and that employees are treated during employment without discrimination because of their race, creed, color, national origin, sex, marital status, age or the presence of any sensory, mental or physical handicap. Such action shall include, but not be limited to: employment, upgrading, demotion or transfers, recruitment or recruitment advertising, layoff or termination, rates of pay or

other forms of compensation, and such action with respect to this Agreement as may be required to ensure full compliance with local, state and federal laws prohibiting discrimination in employment.

B. Nondiscrimination in Services. The SERVICE PROVIDER will not discriminate against any recipient of any services, or benefits provided for in this Agreement on the grounds of race, creed, color, national origin, sex, marital status, age or the presence of any sensory, mental or physical handicap.

C. If any assignment and/or subcontracting has been authorized by CITY, said assignment or subcontract shall include appropriate safeguards against discrimination. The SERVICE PROVIDER shall take such action as may be required to ensure full compliance with the provisions in the immediately preceding paragraphs herein.

13. ASSIGNMENT/SUBCONTRACTING

A. The SERVICE PROVIDER shall not assign its performance under this Agreement or any portion of this Agreement without the written consent of the CITY, and its further agreed that said consent must be sought in writing by the SERVICE PROVIDER not less than thirty(30) days prior to the date of any proposed assignment. The CITY reserves the right to reject without cause any such assignment.

B. Any work or services assigned hereunder shall be subject to each provision of this Agreement and proper bidding procedures where applicable as set forth in local, State and/or Federal statutes, ordinances and guidelines.

C. Any technical/professional service subcontract not listed in this Agreement, must have express advance approval by the CITY.

14. CHANGES

Either party may request changes to the scope of services and performance to be provided hereunder, however, no change or addition to this Agreement shall be valid or binding upon either party unless such change or addition be in writing and signed by both parties. Such amendments shall be attached to and made a part of this Agreement.

15. MAINTENANCE AND INSPECTION OF RECORDS

A. The SERVICE PROVIDER shall maintain books, records and documents, which sufficiently and properly reflect all direct and indirect costs related to the performance of this Agreement and shall maintain such accounting procedures and practices as may be necessary to assure proper accounting of all funds paid pursuant to this Agreement. These records shall be subject at all reasonable times to inspection, review, or audit, by the CITY, its authorized representative, the City's Auditor, or other governmental officials authorized by law to monitor this Agreement.

B. The SERVICE PROVIDER shall retain all books, records, documents and other material relevant to this Agreement, for six (6) years after its expiration. The SERVICE PROVIDER agrees that the CITY or its designee shall have full access and right to examine any of said materials at all reasonable times during said period.

16. POLITICAL ACTIVITY PROHIBITED

None of the funds, materials, property or services provided directly or indirectly under the Agreement shall be used for any partisan political activity, or to further the election or defeat of any candidate for public office.

17. PROHIBITED INTEREST

No member, officer, or employee of the CITY shall have any interest, direct or indirect, in this Agreement or the proceeds thereof.

18. TERMINATION

A. Termination for Convenience. Either party may terminate this Agreement, in whole or in part, at any time, by at least ten (10) days written notice to the other party.

The SERVICE PROVIDER shall promptly submit a termination claim to the CITY. The SERVICE PROVIDER shall promptly submit a claim for all expenses and hours worked, to the CITY. If the SERVICE PROVIDER has any property in its possession belonging to the CITY, the SERVICE PROVIDER will account for the same, and dispose of it in the manner directed by the CITY.

B. Termination for Cause. If the SERVICE PROVIDER fails to perform in the manner called for in this Agreement, or if the SERVICE PROVIDER fails to comply with any other provisions of the Agreement and fails to correct such noncompliance within five (5) days written notice thereof, the CITY may terminate this Agreement for cause. Termination shall be effected by serving a notice of termination on the SERVICE PROVIDER setting forth the manner in which the SERVICE PROVIDER is in default. The SERVICE PROVIDER will only be paid for services performed in accordance with the manner of performance set forth in this Agreement.

19. NOTICE

Notice provided for in this Agreement shall be sent by certified mail to the addresses designated for the parties on the last page of this Agreement.

20. ATTORNEY'S FEES AND COSTS

If any legal proceeding is brought for the enforcement of this Agreement, or because of a dispute, breach, default, or misrepresentation in connection with any of the provisions of this Agreement, the prevailing party shall be entitled to recover from the other party, in addition to any other relief to which such party may be entitled, reasonable attorney's fees and other costs incurred in that action or proceeding.

21. JURISDICTION AND VENUE

A. This Agreement has been and shall be construed as having been made and delivered within the State of Oregon, and it is agreed by each party hereto that this Agreement shall be governed by laws of the State of Oregon, both as to interpretation and performance.

B. Any action of law, suit in equity, or judicial proceeding for the enforcement of this Agreement or any provisions thereof, shall be instituted and maintained only in any of the courts of competent jurisdiction in Linn County, Oregon.

22. SEVERABILITY

A. If, for any reason, any part, term or provision of this Agreement is held by a court of the United States to be illegal, void or unenforceable, the validity of the remaining provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular provision held to be invalid.

B. If it should appear that any provision hereof is in conflict with any statutory provision of the State of Oregon, said provision which may conflict therewith shall be deemed inoperative and null and void insofar as it may be in conflict therewith, and shall be deemed modified to conform to such statutory provisions.

23. ENTIRE AGREEMENT

The parties agree that this Agreement is the complete expression of the terms hereto and any oral representations or understandings not incorporated herein are excluded. Further, any modifications of this Agreement shall be in writing and signed by both parties. Failure to comply with any of the provisions stated herein shall constitute material breach of contract and cause for termination. Both parties recognize time is of the essence in the performance of the provisions of this Agreement. It is also agreed by the parties that the forgiveness of the non-performance of any provision of this Agreement does not constitute a waiver of any other of the provisions of this Agreement.

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be executed the day and year first hereinabove written.

CITY: City of Lebanon
Lebanon, Oregon

Mayor: _____ Date: _____

SERVICE PROVIDER: Wilder & Associates (F. Gregory Wilder)
16300 47th Place South
Tukwila, WA 98188

Signature: _____ Date: _____

Printed Name: _____

Title: _____

Exhibit "A"

2001 Rate Schedule

PERSONNEL CHARGES

Professional

Senior Manager	\$85 - \$95 per hour
Creative Director	\$75 - \$85 per hour
Senior Technical Staff	\$75 - \$85 per hour
Project Managers	\$65 - \$80 per hour
Technical Staff (Engineers, Planners, Economists, HR)	\$55 - \$75 per hour

Technical / Creative

Technical Writers / Editors	\$50 - \$60 per hour
Information Systems Specialists	\$45 - \$75 per hour
Human Resources Specialists (Includes background checks)	\$45 - \$65 per hour
Recruiters	\$45 - \$65 per hour
Drafter / CADD Operator	\$45 - \$55 per hour
Accounting Specialists	\$35 - \$55 per hour
Photographers / Videographers / Illustrators	\$35 - \$45 per hour
Graphics Specialists	\$25 - \$45 per hour
Project Assistants	\$35 - \$50 per hour

Non-Technical

Office support services	\$35 - \$55 per hour
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Testimony, depositions, and presentations will be charged at 150% of the above rates.

Travel time will be charged in accordance with the above rates up to a maximum combined total of eight hours per day unless agreed to elsewhere in the project Scope.

OUTSIDE SERVICES

Charges for special services, equipment, and facilities not furnished by Wilder & Associates, will be billed at cost plus 15%. Such charges may include, but are not limited to, the following:

Printing, Photograph Processing, Reproduction	Independent Project Audits / Review
Video Production / Post Production	Shipping charges
Rented Vehicles	Meals & Lodging
Transportation on Public Carriers	Rented Specialty and/or Field Equipment
Special Fees, Permits, Insurance, etc.	DVD / CD-ROM Production

COMMUNICATIONS / OFFICE

The cost of communications and office expenses including telephone, internet/email, facsimile, cell, express mail, postage, routine copying costs, and standard office computers & supplies will be charged at a flat rate of 3.5% of

the total gross labor charges.

DIRECT CHARGES

Reproduction (letter/legal) – black & white (non-routine), per sheet	\$.010	
Reproduction (letter/legal) – colour, per sheet		\$1.35
Reproduction (11" x 17") – black & white (non-routine), per sheet	\$.025	
Reproduction (11" x 17") – colour, per sheet		\$2.75
Overhead transparencies & frame, per each		\$3.50
Printing (8.5" x 11") – Photographic quality, coated paper / 4 colour, per sheet		\$2.25
Printing (11" x 17") – Photographic quality, coated paper / 4 colour, per sheet		\$4.75
Photographic Prints, per size, specification, quantity, and quality		varies
Automobile, per mile		\$0.44
Volume printing, per specification and quantity		varies

SUPPLEMENTAL SCHEDULES OF CHARGES (Schedules available upon request)

Specialized Computers & Software	Video Production / Post Production
Photography (Studio & Field)	Engineering / Environmental / Scientific

RATE CHANGES

Items listed within the 2001 Rate Schedule and Supplemental Schedules of Charges are subject to change. However, changes will not be made to any applicable schedule or schedule item during the duration of any applicable contract/agreement without the review and concurrence by all affected parties.

PAYMENT

Monthly Invoices are to be paid within 30 days from the date of the invoice. Interest on late payments will be charged at a rate of 18% per annum.

Exhibit "B"

Scope of Work

1. **Organizational Assessment**
 - a. Review current organizational structure
 - b. Review current budget year workload
 - c. Review capital project management system / program
 - d. Review and compare staffing levels and function class to other comparable Oregon cities
 - e. Review and compare staff to consultant ratios with other comparable Oregon cities
 - f. Review current consultant selection process and policies

2. **Financial Assessment and Review (budget and selected project)**
 - a. Review current staff funding (including salary, benefits, training, overhead, and other project billable costs linked to staff)
 - b. Review both capitalized and non capitalized equipment costs and charges recorded as project costs/expenses
 - c. Review and compare current staffing costs/services to other Oregon comparable jurisdictions and to consultant service providers
 - d. Review in-house Engineering and Administration rates and compare them to consultant service providers and other applicable jurisdictions

3. **Recommendations**
 - a. Make recommendations, if applicable, for organizational changes to enhance performance, delivery, credibility, and accountability
 - b. Make recommendations for fiscal systems and processes to encourage and define "total" capital project costs by considering current cost/expense and project life-cycle costs.

4. **Implementation Instruments**
 - a. Establish and provide a Project Management checklist and prospectus standard... (NTE \$2,250)
 - b. Prepare, working with staff, a project management system/manual to insure consistent methods, systems, and accountability standards... (\$1,500 - \$10,000)
 - c. Provide staff assessment, performance review standards, and teambuilding methodology... (NTE \$2,750)

Work scope items 1 (Organizational Assessment), 2 (Financial Assessment and Review), and 3 (Recommendations) are considered "basic" to this agreement and the SERVICE PROVIDER shall not exceed \$9,500 for their completion without the written agreement of the CITY. Item 4 is an "optional" work task and is subject to the findings and recommendations established by the basic work program. Any work agreed to between the CITY and SERVICE PROVIDER for the preparation of "Implementation Instruments" (Item 4) will be at the same hourly rates set forth in exhibit "A" and are not restricted to the not-

to-exceed provision set forth in section 3.D of this Agreement.

Executive Session (15)

Per 192.660(1)(e) To conduct deliberations with persons designated by Council to negotiate real property transactions.

Executive Sessions are closed to the public due to the highly confidential nature of the subject. Therefore, it is unlawful to discuss anything outside of the Executive Session.

AGENDA ITEM 16



CITY OF LEBANON
MEMORANDUM

TO: Jim Ruef, Director of Public Works

DATE: November 7, 2001

FROM: Jim Clark, City Engineer *JM. Clark*

SUBJECT: Purchase of Morse Brothers Properties

At the November 14th meeting, staff will be presenting this property purchase to Council for their consideration. The purchase involves a total of approximately 195 acres on both sides of the Santiam River east of our wastewater treatment plant.

While specifics of this purchase will be discussed in an executive session, this memo provides a summary explanation of the reasons and timing for the proposed purchase.

Purchase of the Morse Brothers properties is consistent with several Council goals, objectives and direction:

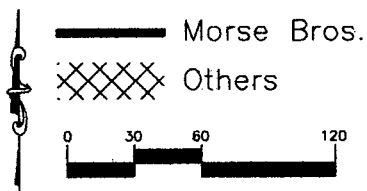
- Our Parks Master Plan
- Land buffer for our Wastewater Treatment Plant
- Land buffer for our landfill
- Project "Walden" - specifically for recreation, reclamation and education
- Project "Walden" - potential for alternative wastewater disposal

In order to efficiently meet the above Council goals, objectives, and direction staff is recommending purchase of these properties now because:

- Opportunities are available that may be lost
- The sale price and agreement are reasonable
- The overall risk is low compared to the potential benefits received



City of Lebanon
**Walden Pond
 Property**





CITY OF LEBANON
PUBLIC WORKS DEPARTMENT
MEMORANDUM

TO: Jim Ruef - Director of Public Works

DATE: November 8th, 2001

FROM: Nitin Joshi - Environmental Operations Manager *Nitin J.*

SUBJECT: Professional Opinion on Environmental Site Assessment Reports on the Morse Brothers Inc. Property.

Two Phase I Environmental Site Assessments (ESA) were conducted to cover the Morse Brothers Property on the East and West side of the South Santiam River to identify any obvious concerns from the environmental perspective before the City plans to acquire the property. This memo addresses any concerns or lack thereof as researched in the Phase I ESA documents. The ESA reports included a site inspection, a review of historical data, interviews with persons knowledgeable about the property, a review of local, state and federal agency records, discussions with agency representatives, and review of published environmental resource information.

The first ESA covered all but one tax lots owned by Morse Brothers Inc. on the East side of the river (Tax Lots 700, 1000, 1100, 1200, 1300 in T12S R2W Section 1, Tax Lots 100, 200 in T12 SR2W Section 11 and Tax Lots 1200, 1300 in T12 S R2W Section 12). A Tax Lot map for the same is included along with this memo. This ESA was conducted by Environmental Science Associates of Eugene, on behalf of Morse Brothers Inc. The report indicates that the site was used for sand and gravel mining operations approximately from the 1975 until late 1980's. The site was undeveloped prior to 1975 except for a small farm and orchard located on the northeast corner of the property. Adjacent property use was residential, agriculture and light commercial. There are no buildings on the site and some concrete footings exist on the upper terrace where the former buildings and plant equipment was in operations in the past. A detailed review of all the governmental agency reports did not find any leaking underground tank sites or any hazardous waste issues.

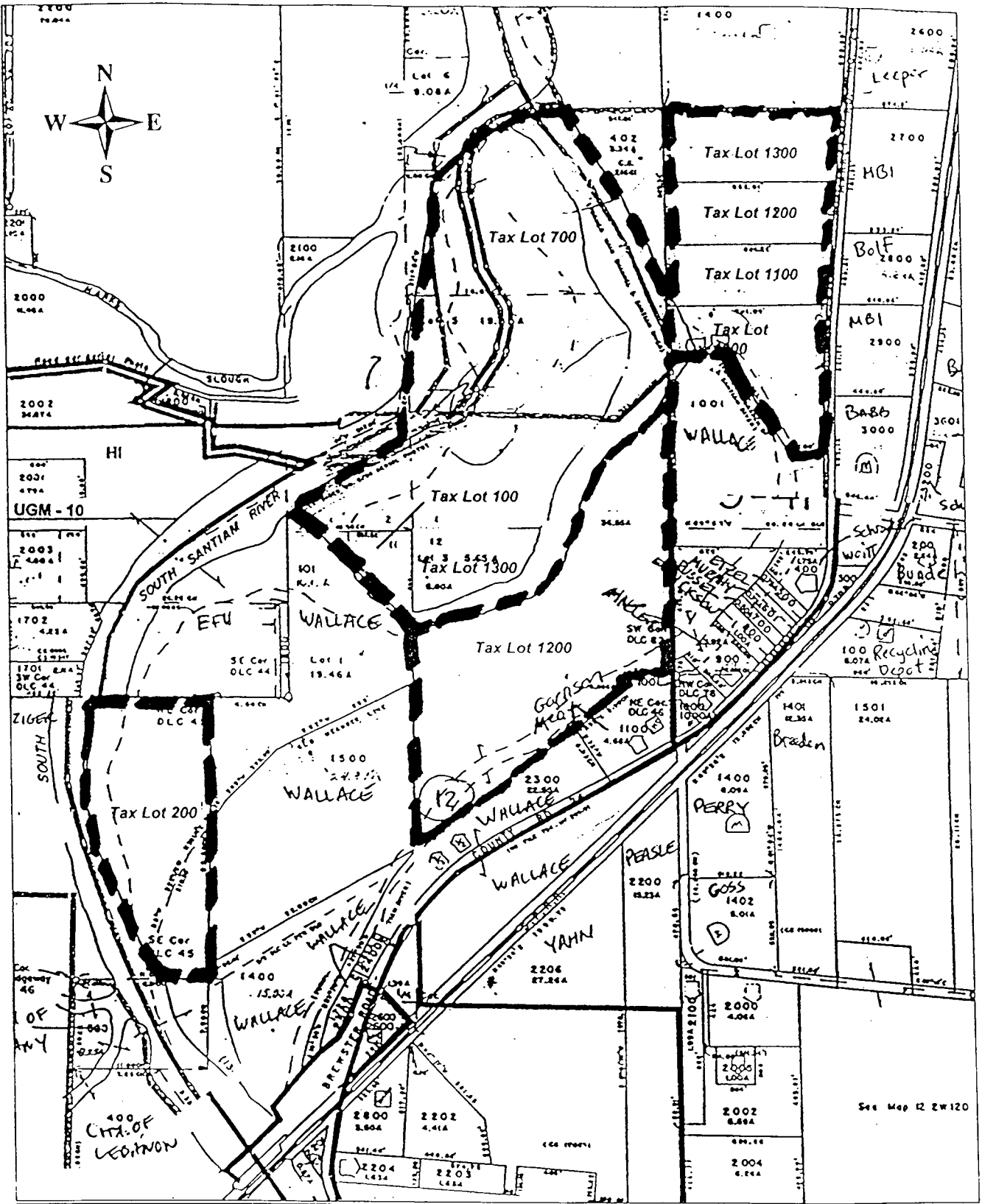
There are however some asphalt waste debris piles and old 55 gallon drums which might have to be removed with a back hoe and disposed off. There was no other environmental concern that was found in the Phase I assessment. Based on information from Phase I assessment a phase II assessment is not warranted at this time.

The second ESA covered one tax lot partially on the West side of the river and partially on the East side of the river (Tax Lot 2002 in T12S R2W Section 2D). A Tax Lot map for the same is included along with this memo. This ESA was conducted by Environmental Operations Section of City of Lebanon Public Works Department.

The tax lot portion on the East side has a natural setting with flood channels and has not been disturbed. The East side however had light industrial use in the past which consisted of a rock crushing operations and redimix production. There are mounds of construction debris and some 55 gallon drums on site. The construction debris is from street repair projects from the past. Neighboring property uses are agriculture and light industrial. There are areas with dense invasive brush on site on the West side. Wetland Inventory maps indicated existence of wetlands on the East side along the north bank of the property. Care would have to be taken about proper delineation and protection/mitigation of the wetlands on this portion of the property. Based on the information available there is no need to conduct a phase II assessment on this tax lot at this time.

In conclusion, I would have no hesitation in recommending that we continue to acquire the property based on the Environmental Assessment information available at this time.

Enclosures:



Phase I ESA
 Morse Brothers
 Brewster Road Property
 Lebanon, Oregon 97355

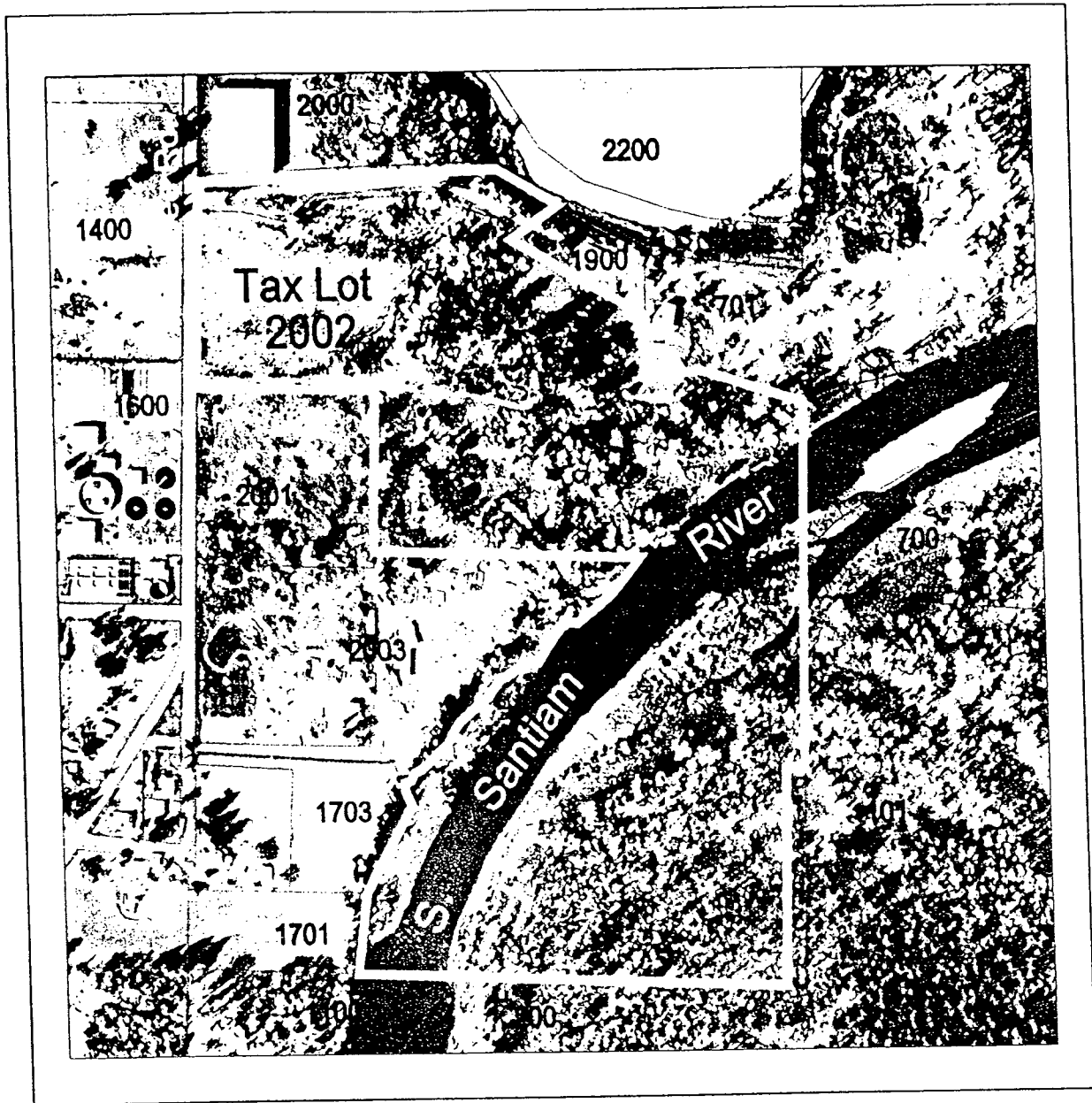
TAX LOT MAP

FIGURE 3

Source: Morse Brothers File

Environmental Science Associates, Inc.

07/03/01



Phase 1 ESA
City of Lebanon
Tennessee Road Property
Lebanon, OR 97355

TAX LOT MAP

Figure 3

AGENCY ACKNOWLEDGMENT

Seller and Buyer hereby acknowledge and consent to the following agency relationship in this transaction:

(1) Tom Owen (selling licensee) of Coldwell Banker Valley Bikes (selling firm) is the agent of (check one):
[] the Buyer exclusively ("buyer agency"). [] the Seller exclusively ("subagency"). [X] both the Seller and the Buyer ("in-company transaction").
(2) Tom Owen (listing licensee) of Coldwell Banker Valley Bikes (listing firm) is the agent of (check one): [] the Seller exclusively. [X] both the Seller and the Buyer ("in-company transaction").

Buyer shall sign this acknowledgment at the time of signing this Agreement before submission to Seller. Seller shall sign this acknowledgment at the time this Agreement is first submitted to Seller, even if this Agreement will be rejected or a counter offer will be made. Seller's signature to this Final Agency Acknowledgment shall not constitute acceptance of the Agreement or any terms therein.

Buyer Signature: John E. Hill, City of Lebanon, OR Print: John E. Hill Date: 04/27/01
Buyer Signature: Print: Date:
Seller Signature: Stephen Frey for Morse Bros. Inc. Print: Stephen Frey Morse Bros, Inc. Date: 05/2/01
Seller Signature: Print: Date:

REAL ESTATE SALE AGREEMENT

Upon signature by Seller and Buyer, this Agreement is a legal and binding contract. If not understood, seek competent legal advice before signing.

DEFINITIONS: All references in this Agreement to "licensee" or "firm" shall refer to real estate agents and their brokerages, respectively, licensed in the State of Oregon pursuant to ORS Chapter 696.

Buyer (print name) City of Lebanon (City of Lebanon) offers to purchase from Seller (print name) Morse Bros. the following described real property (hereinafter "the Property") situated in the County of State of Oregon (legal description):

and commonly known as (street address): Brewster Properties
for the purchase price (in U.S. currency) of \$ 170,000
on the following terms: Earnest money herein received for B \$ 5,000
on as additional earnest money, the sum of C \$
at or before closing, the balance of down payment. D \$
at closing and upon delivery of [X] DEED [] CONTRACT the sum of (Lines B, C, D and E must equal Line A) E \$ 165,000
Payable as follows: All cash to seller at closing.

For additional details, see Addendum

BUYER REPRESENTS THAT: Buyer has sufficient funds available to close this sale in accordance with this Agreement and is not relying on any contingent source of funds unless otherwise disclosed in writing herein.

IF A NEW LOAN IS REQUIRED, THIS TRANSACTION IS SUBJECT TO BUYER AND PROPERTY QUALIFYING FOR THE LOAN. Buyer agrees to make written loan application not later than 14 business days from date this Agreement is signed by all parties, complete necessary papers, and exert best efforts, including payment of all application, appraisal and processing fees, in order to procure the loan.

REQUIRED REPAIRS: Seller agrees to pay a total of not more than \$ 0 for repairs identified in any inspections requested herein by Buyer and/or for any repairs identified by lender as a condition to granting Buyer's loan.

TITLE INSURANCE: Unless otherwise provided herein, this transaction is subject to Buyer's review and approval of a preliminary title report and the recorded covenants, conditions and restrictions ("the report and CC&Rs") showing the condition of title to the Property. Upon execution of this Agreement by all parties, Seller will, at Seller's sole expense, promptly order the report and CC&Rs from an Oregon title insurance company and furnish them to Buyer. Upon receipt of the report and CC&Rs, Buyer shall have 15 business days (five if not filled in) within which to notify Seller, in writing, of any matters disclosed in the report and CC&Rs which is/are unacceptable to Buyer ("the objections"). Buyer's failure to timely object, in writing, to any matters disclosed in the report and/or CC&Rs shall constitute acceptance of the report and/or CC&Rs. If, within 14 business days (five if not filled in) following receipt of the objections, Seller fails to remove or correct the matters identified in the objections, or does not give written assurances reasonably satisfactory to Buyer that they will be removed prior to the closing date, all earnest money shall be promptly refunded to Buyer and this transaction shall be of no further binding effect between Seller and Buyer. Within thirty (30) days after closing, Seller shall furnish to Buyer an owner's standard form policy of title insurance insuring marketable title in the Property to Buyer in the amount of the purchase price, free and clear of the objections and all other title exceptions agreed to be removed as part of this transaction.

ADDITIONAL PROVISIONS: See addendum A

For additional provisions, see Addendum

Sale Agreement # 627928
Buyer Initials JEH Date 04/27/01
Seller Initials SF Date 5/2/01

Unless otherwise herein provided, marketable title to the Property is to be conveyed by statutory warranty deed (or good and sufficient personal representative or a trustee's deed, where applicable) free and clear of all liens and encumbrances of record except property taxes which are a lien but not yet payable, zoning ordinances, building and use restrictions, reservations in Federal patents, easements of record which affect the Property or area in which the Property is located, private covenants, conditions and restrictions of record for the development of which the Property is a part, and no other

FIXTURES: All fixtures are to be left upon the Property. Fixtures shall include but not be limited to: Built-in appliances; attached floor coverings; drapery rods and curtain rods; window and door screens; storm doors and windows; irrigation, plumbing, ventilating, cooling and heating fixtures; water heaters; attached electric light and bathroom fixtures; light bulbs, fluorescent lamps; installed garage door opener(s) with remote control(s); window blinds; awnings; fences; all planted shrubs, plants and trees; EXCEPT: not exceptions

PERSONAL PROPERTY: The following personal property, in "AS-IS" condition and at no stated value is included: none

ALARM SYSTEM: NONE OWNED LEASED. If leased, Buyer will will not assume the lease at closing. Approximate monthly lease payment is \$ _____.

BUYER UNDERSTANDS THAT SELLER MAKES THE FOLLOWING REPRESENTATIONS:

(1) The above dwelling is connected to a public sewer system; an on-site sewage system; a public water system; a private well; (2) at the earlier of possession or closing date, the dwelling will have an operating smoke detector as required by law; (3) Seller has no knowledge of any hazardous substances on the Property other than substances (if any) contained in appliances and equipment; (4) Seller knows of no material structural defects; (5) all electrical wiring, heating, cooling, plumbing and irrigation equipment and systems and the balance of the Property, including the yard, will be in substantially its present condition at the time Buyer is entitled to possession; (6) Seller has no notice of any liens to be assessed against the Property; and (7) Seller has no notice from any governmental agency of any violation of law relating to the Property, and (8) Seller agrees to promptly notify Buyer if, prior to closing, Seller receives actual notice of any event or condition which could result in making any previously disclosed material information relating to the Property substantially misleading or incorrect. These representations are based upon Seller's actual knowledge. Seller has made no investigation. Exceptions to items (1) through (8) are: _____

Buyer recognizes that asbestos commonly exists in insulation, ceilings, floor coverings and other areas in residential properties. Seller makes no representations regarding the presence or condition of asbestos.

"AS-IS": Except for Seller's express written agreements and written representations contained herein, and Seller's Property Disclosure, if any, Buyer is purchasing the Property "AS-IS," in its present condition and with all defects apparent or not apparent.

PRIVATE WELL: Seller represents that the private water well located on or serving the Property has provided an adequate supply of water throughout the year for household use and, to the best of Seller's knowledge, the water is fit for human consumption and the continued use of the well and water is authorized by and complies with the laws of the State of Oregon and appropriate governmental agencies. No other representation is made concerning the water supply and well except as expressly stated in this Agreement. If the well provides water for domestic purposes, upon Seller's acceptance of Buyer's offer, Seller, at Seller's expense, will have the well tested for nitrates and total coliform bacteria and for such other matters as are required by the Oregon Health Division. Upon receipt, Seller shall promptly submit the test results to the Oregon Health Division and Buyer. Buyer, at Buyer's expense, may have the well water tested for quantity or quality by a qualified tester, and obtain a written report of such test or tests, showing the deficiencies (if any) in the well and the standards required to correct the deficiencies, all within 30 business days (seven if not filled in) after the date all parties have signed this Agreement. If the written report of any test made by Seller or Buyer shows a substantial deficiency in quantity or quality of the water, then Buyer may terminate this transaction by delivering written notice of termination, together with a copy of the test report, to Seller or the listing licensee within 24 hours after the receipt by Buyer of the written test report unless, within 24 hours after delivery of notice of termination, Seller agrees in writing to correct the deficiencies shown on the report. Any report obtained by Buyer will show what deficiencies, if any, are substantial.

INSPECTIONS: Buyer understands that a complete professional inspection of the Property is advisable. (check one)

PROFESSIONAL INSPECTIONS: At Buyer's expense Buyer may have the Property and all elements and systems thereof inspected by one or more professionals of Buyer's choice. Provided, however, Buyer must specifically identify in this Agreement any desired inspections which may include testing or removal of any portion of the Property due to the possible presence of any environmentally hazardous substance or condition. Buyer shall have 450 business days (seven if not filled in), after the date Seller and Buyer have signed this Agreement, (hereinafter "the Inspection Period") in which to negotiate with Seller regarding any matters disclosed in any inspection report. However, during the Inspection Period, Seller shall not be required to modify any terms of this Agreement already reached with Buyer. Unless a written and signed modification is reached, at any time during the Inspection Period, Buyer may notify Seller or listing licensee, in writing, of Buyer's unconditional disapproval of any inspection report, in which case, all earnest money deposits shall be promptly refunded and this Agreement shall be of no further binding effect. If Buyer fails to provide Seller or listing licensee with written unconditional disapproval of any inspection report(s) by Midnight of the final day of the Inspection Period, Buyer shall be deemed to have accepted the condition of the Property.

SEE ATTACHED ADDENDUM REGARDING PROFESSIONAL INSPECTIONS.

NOTE: Fill in preprinted number from Page 1

Sale Agreement # 627928
Seller Initials JSF Date 5/2/01

Buyer Inspection
Lead-Based Paint Inspection
Escrow
Closing
Possession
Utilities
Escrow Deposit
Earnest Money Payment/Refund
Binding Effect/Consent
FIRPTA

BUYER'S INSPECTION: Buyer has personally inspected the Property and all elements and systems thereof. Buyer is fully satisfied and has elected NOT to have any professional inspections performed.

LEAD-BASED PAINT INSPECTION: Buyer should check the box below only if Seller's Property was constructed before 1978 and Buyer desires to conduct a risk assessment or inspection. *NA*

Buyer represents that Buyer intends to conduct a risk assessment or inspection to determine the presence of lead-based paint or lead-based paint hazards on the Property. Buyer may terminate this transaction by delivery to Seller or listing licensee written notice of Buyer's disapproval of the risk assessment or inspection within _____ calendar days (TEN if not filled in) after the date this Agreement is signed by all parties, in which case this transaction shall be null and void. Buyer understands that the failure to give written notice of disapproval within said period shall constitute acceptance of the condition of the Property solely as it relates to lead-based paint or lead-based paint hazards.

THIS SALE WILL BE CLOSED IN ESCROW: This transaction shall be closed at Oregon Title ("Escrow"), a neutral escrow depository located in the State of Oregon. Costs of escrow shall be shared equally between Seller and Buyer, unless Buyer is financing through Federal VA, in which case Seller shall pay escrow costs.

CLOSING: TIME IS OF THE ESSENCE. Closing shall occur on or before May 23/2003, or as soon thereafter as financing documents can be prepared and marketable title delivered, but not to exceed 14 business days (ZERO if not filled in). This extension is not available if financing documents are prepared and marketable title can be delivered on or before the specified closing date. The terms "closed" or "closing date" shall mean when the deed or contract is recorded and funds are available to Seller. Seller and Buyer acknowledge that, for closing to occur by the date specified, it may be necessary to execute documents and deposit funds in escrow prior to that date.

POSSESSION: Seller shall remove all personal property not sold to Buyer and deliver possession of the Property to Buyer (check one): (1) by 5:00 o'clock p.m. on the closing date; (2) by _____ a.m./p.m. _____ days after the closing date; (3) by _____ a.m./p.m. on the _____ day of _____. If a tenant is currently in possession of the Property: (check one): Buyer will accept tenant at the time of closing; Seller shall have full responsibility for removal of tenant prior to closing date.

PRORATIONS: Prorates for rents, current year's taxes, interest on new or assumed obligations, and other prepaid expenses attributable to the property shall be as of: (check one only) (1) the closing date; (2) date Buyer is entitled to possession; or (3) _____.

SELLER POSSESSION AFTER CLOSING: In the event that Seller and Buyer have agreed that Seller will deliver possession after the closing date, Seller shall pay as consideration \$ _____ per day for each day after closing that Seller remains in possession of the Property. Such payment shall be made by Seller through escrow at the time of closing and no landlord-tenant relationship shall be created thereby. See attached Addendum _____, if applicable.

UTILITIES: Seller shall pay all utility bills accrued to date Buyer is entitled to possession and Buyer shall pay Seller for heating fuel then on premises, at Seller's supplier's rate on the possession date. Payment shall be handled between Buyer and Seller outside of escrow.

INSURANCE: Seller shall keep the Property insured until closing.

ESCROW DEPOSIT: Escrow is hereby instructed by Seller, Buyer, Selling Firm and the Listing Firm (if any) as follows: (1) Upon your receipt of a copy of this Agreement marked "rejected" by Seller or of Selling Firm's written advice that the offer is "rejected" by Seller, you are to refund all earnest money to Buyer. (2) Upon your receipt of a copy of this Agreement signed by Seller, Buyer, Selling Firm and the Listing Firm (if any), set up an escrow account and proceed with closing in accordance with the terms of this Agreement. If you determine that the transaction cannot be closed for any reason (whether or not there is then a dispute between the parties), you are to hold all earnest money deposits until you receive written instructions from Seller, Buyer, Selling Firm and the Listing Firm (if any) as to disposition of such deposits.

EARNEST MONEY PAYMENT/REFUND: If (1) Seller does not approve this Agreement, or (2) Seller having approved this Agreement fails to furnish marketable title, or (3) Seller fails to complete this transaction in accordance with this Agreement, or perform any other act as herein provided, all earnest money shall be promptly refunded to Buyer. However, acceptance by Buyer of the refund shall not constitute a waiver of other legal remedies available to Buyer. If Seller approves this Agreement and title is marketable and: (1) Buyer has misrepresented Buyer's financial status; or (2) Buyer's bank does not pay, when presented, any check given as earnest money; or (3) Buyer fails to redeem, when due, any note given as earnest money; or (4) Buyer fails to complete this transaction in accordance with this Agreement, or perform any other act as herein provided, then all earnest money paid or agreed to be paid shall be paid to Seller either as liquidated damages or as otherwise allowed under Oregon law, and this Agreement shall be of no further binding effect. It is the intention of the parties that under no circumstances shall Buyer be liable to Seller under this Agreement beyond the amount of earnest money provided for herein.

BINDING EFFECT/CONSENT: This Agreement is binding upon the heirs, personal representatives, successors and assigns of Buyer and Seller. However, Buyer's rights under this Agreement or in the Property are not assignable without prior written consent of Seller.

FOREIGN INVESTMENT IN REAL PROPERTY TAX ACT: The Foreign Investment in Real Property Tax Act ("FIRPTA") requires every person who purchases real property located within the United States from a "foreign person" to deduct and withhold from the Seller's proceeds ten percent (10%) of the gross sales price, with certain exceptions, and to pay the amount withheld to the Internal Revenue Service. A "foreign person" includes a non-resident alien individual, foreign corporation, foreign partnership, foreign trust and foreign estate. Seller and Buyer agree to execute and deliver, as appropriate, any instrument, affidavit or statement, and to perform any acts reasonable or necessary to carry out the provisions of FIRPTA.

THE PROPERTY DESCRIBED IN THIS INSTRUMENT MAY NOT BE WITHIN A FIRE PROTECTION DISTRICT PROTECTING STRUCTURES. THE PROPERTY IS SUBJECT TO LAND USE LAWS AND REGULATIONS, WHICH, IN FARM OR FOREST ZONES, MAY NOT AUTHORIZE CONSTRUCTION

NOTE: Fill in preprinted number from Page 1

Sale Agreement # <u>627928</u>	
Buyer Initials <u>JUA</u>	Date <u>05/21/03</u>
Seller Initials <u>SF</u>	Date <u>5/21/03</u>

APPROVED USES: OR SITING OF A RESIDENCE AND WHICH LIMIT LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930 IN ALL ZONES. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES AND EXISTENCE OF FIRE PROTECTION FOR STRUCTURES. IF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IS SUBJECT TO SPECIAL ASSESSMENT UNDER ORS 358.505, ORS 358.515 REQUIRES NOTIFICATION TO THE STATE HISTORIC PRESERVATION OFFICER OF SALE OR TRANSFER OF THIS PROPERTY

LEVY OF ADDITIONAL PROPERTY TAXES: The Property: (check one) is is not specially assessed for property taxes (e.g. farm, forest or other) in a way which may result in levy of additional taxes in the future. If, as a result of Buyer's actions or the closing of this transaction, the Property either is disqualified from special use assessment or loses its deferred property tax status, unless otherwise specifically provided in this Agreement, Buyer shall be responsible for and shall pay when due, any deferred and/or additional taxes and interest which may be levied against the Property and shall hold Seller completely harmless therefrom. However, if as a result of the Seller's actions prior to closing, the Property either is disqualified from its entitlement to special use assessment or loses its deferred property tax status, Seller shall be responsible for and shall pay at or before closing all deferred and/or additional taxes and interest which may be levied against the Property and shall hold Buyer completely harmless therefrom.

ADDITIONAL LAND SALE CONTRACT/TRUST DEED/MORTGAGE PROVISIONS: If this transaction is to include a land sale contract, trust deed or mortgage to be carried back by Seller, Buyer and Seller shall agree upon the terms and conditions of such document not later than ___ business days (ten if not filled in) from the date this Agreement is signed by all parties. Upon failure to reach such agreement, this transaction shall be of no further binding effect, and all earnest money shall be promptly refunded to Buyer.

DISPUTE RESOLUTION: Seller and Buyer, including the licensees of each, if any, agree that all claims, controversies and disputes, including those for rescission (hereinafter collectively referred to as "Claims"), relating directly or indirectly to this transaction, shall be resolved in accordance with the procedures set forth herein which shall expressly survive closing. Provided, however, the following matters shall not constitute Claims: (a) any proceeding to collect, interpret or enforce any mortgage, trust deed, land sale contract or recorded construction lien; (b) a forcible entry and detainer action; (c) any dispute between REALTORS® which is subject to the Professional Standards Arbitration provisions of the National Association of REALTORS®. The filing of a notice of pending action ("lis pendens") or the application to any court for the issuance of any provisional process or similar remedy described in the Oregon or Federal Rules of Civil Procedure shall not constitute a waiver of the right or duty to utilize the procedures specified herein.

SMALL CLAIMS: Notwithstanding the following provisions, Seller, Buyer and the licensees, if any, mutually agree that all Claims within the jurisdiction of the Small Claims Court shall be brought and decided there, in lieu of mediation, arbitration or litigation in any other court of law.

MEDIATION: If Seller or Buyer were represented in this transaction by a licensee who was then a member of the National Association of REALTORS®, all Claims shall be submitted to mediation in accordance with the procedures of the Home Seller/Home Buyer Dispute Resolution System of the National Association of REALTORS® or other organization-adopted mediation program (collectively "the System"). Provided, however, if the System was not then available through the licensees' Association of REALTORS®, then the Seller, Buyer and/or licensees shall not be required to engage in mediation.

ARBITRATION: All claims that have not been resolved by mediation, or otherwise, shall be submitted to final and binding private arbitration in accordance with Oregon Laws. Filing for arbitration shall be treated the same as filing in court for purposes of meeting any applicable statutes of limitation or for purposes of filing a lis pendens. Seller, Buyer and/or their licensees may use any professional arbitration company which provides such service to the county where the Property is located, as selected by the party first filing for arbitration. Provided, however, if no arbitration company had available services when the claim arose, neither Seller, Buyer, nor their respective licensees, if any, shall be required to participate in arbitration.

ATTORNEY FEES: The prevailing party in any suit, action or arbitration (excluding those claims filed in Small Claims Court) shall be entitled to recovery of all reasonable attorney fees and costs (including all filing and mediator fees paid in mediation) pursuant to ORCP 68. Provided, however, if a mediation service was available to the parties when the claim arose, the prevailing party shall not be entitled to any award of attorney fees unless it is established to the satisfaction of the arbitrator(s) or judge that the prevailing party offered or agreed to participate in mediation prior to, or promptly upon, the filing in arbitration or court.

RECEIPT FOR EARNEST MONEY: The undersigned Selling Firm acknowledges receipt of earnest money (which Selling Firm agrees to handle as provided below) from Buyer in the sum of \$ 5,000⁰⁰ evidenced by CASH CHECK PROMISSORY NOTE payable on or before 4 DAYS OF CLOSING Other _____

EARNEST MONEY INSTRUCTIONS: Buyer instructs the undersigned Selling Firm to (check applicable box(es)): Deposit the earnest money in Selling Firm's client trust account, and thereafter/or Deposit with _____ as escrow. If earnest money funds are to be redeemed under a promissory note, said funds shall be deposited with _____
SELLING LICENSEE AND SELLING FIRM SHALL HAVE NO FURTHER LIABILITY WITH RESPECT TO EARNEST MONEY WHICH THE PARTIES HAVE AUTHORIZED TO BE TRANSFERRED TO A THIRD PARTY.

Selling Firm Coldwell Banker Valley Bikes Selling Licensee Signature Tom Owen
Main Office Address _____ Phone _____ FAX _____
Branch Office Address 285 MAIN ST. Lebanon Phone 451-4513 FAX 4514155

PROPERTY DISCLOSURE/DISCLAIMER LAW: Buyer acknowledges that unless otherwise exempted, Buyer has a right to revoke Buyer's offer within five (5) business days after delivery of Seller's property disclosure form, or within seven (7) business days after delivery of Seller's written disclaimer form, or at any time before closing, as defined in the Oregon Administrative Rules, if Buyer does not receive either a disclosure or disclaimer form from Seller. Buyer may waive the right of revocation if done so in writing. If this transaction is exempted from the property disclosure/disclaimer law, Seller and Buyer are encouraged to sign a written acknowledgment identifying the specific exemption.

NOTE: Fill in preprinted number from Page 1
Sales Agreement # 627928
Date 04/29/01
Seller Initials JSF

Seller authorizes the licensee listing firm to receive Buyer's notice of revocation, if any, on Seller's behalf.

213

This Agreement may be signed in multiple counterparts with the same effect as if all parties signed the same document. Delivery of a photocopy, teletax, carbon or carbonless copy of a signed original of this Agreement shall be treated the same as delivery of the original.

214

215

BUYER acknowledges receipt of a completely filled in copy of this Agreement which Buyer has fully read and understands. Buyer acknowledges that Buyer has not received or relied upon any oral or written statements, made by Seller or any real estate licensee, which are not expressly contained in this Agreement. Neither Seller nor any licensees warrant the square footage of any structure or the size of any land being purchased. If square footage or land size is a material consideration, all structures and land should be measured by Buyer prior to signing, or should be made an express contingency in this Agreement.

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Deed or contract to be prepared in the name of City of Lebanon

221

This offer shall automatically expire on Date 5/2/01 a.m. 5 p.m., if not accepted within that time. However, Buyer may withdraw this offer any time prior to Seller's written acceptance. This offer may only be accepted by Seller in writing.

222

223

Buyer Signature John S. Hitt, City Administrator Date 4/27/01 11:30 a.m. _____ p.m.

224

Buyer Signature _____ Date _____ a.m. _____ p.m.

225

Address _____ Zip _____

226

Phone Home _____ Work _____ Work _____ Fax _____

227

ANY MODIFICATION BY SELLER OR SELLER'S AGENT ABOVE BUYER'S SIGNATURE SHOULD BE ON A SEPARATE DOCUMENT

This offer was submitted to Seller for signature on the 28 day of April, 2001, at 7 a.m. 2:00 p.m.
By Tom Owen (Licensee Presenting Offer).

228

229

SELLER'S ACCEPTANCE: Seller accepts this offer. At the time of closing, Seller agrees to pay in U.S. dollars to the Selling Firm or, if this is a co-op transaction, the Listing Firm, the sum of \$ _____ for professional real estate services rendered in this transaction. Seller authorizes Listing Firm to order a preliminary title report and title insurance at Seller's expense and further authorizes escrow to pay out of the cash proceeds of sale the expenses of furnishing title insurance, Seller's recording fees, Seller's closing costs and any encumbrances on the Property payable by Seller on or before closing. Seller is a U.S. citizen unless otherwise stated herein. **Seller acknowledges receipt of a completely filled in copy of this Agreement, which Seller has fully read and understands.** Seller acknowledges that Seller has not received or relied upon any oral or written statements of Buyer or any real estate licensee(s) which are not expressly contained in this Agreement. In the event Buyer fails to complete this transaction as provided herein, all earnest money shall be distributed as follows after deduction of any title insurance and escrow cancellation charges: (check one) First to the Listing Firm to the extent of the agreed commission just as if the transaction had been closed, with residue to Seller, or _____

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Seller Print full name(s): _____

240

Seller Signature _____ Date _____ a.m. _____ p.m.

241

Seller Signature _____ Date _____ a.m. _____ p.m.

242

Address _____ Zip _____

243

Phone Home _____ Work _____ Work _____ Fax _____

244

BUYER'S ACKNOWLEDGMENT: Buyer acknowledges receipt of a copy of Seller's written response to this Agreement.

245

Buyer Signature _____ Date _____ a.m. _____ p.m.

246

Buyer Signature _____ Date _____ a.m. _____ p.m.

247

REJECTION/COUNTER OFFER:

248

SELECT ONE: Seller does not accept the above offer, but makes the attached counter offer; Seller rejects Buyer's offer without a counter offer.

249

SELLER Print full name(s): _____

250

Seller Signature John J. Moore Bros., Inc. Date 5/02/01 _____ a.m. X p.m.

251

Seller Signature _____ Date _____ a.m. _____ p.m.

252

Address _____ Zip _____

253

Phone Home _____ Work _____ Work _____ Fax _____

254

Selling Firm Caldwell Banker Valley Bkers Selling Licensee Tom Owen

255

Listing Firm Caldwell Banker Valley Bkers Listing Licensee Tom Owen

256

Selling Firm to receive: (select one) _____ % of purchase price or \$ _____

257

Listing Firm Main Office Address _____ Phone _____ Fax _____

258

Listing Firm Branch Office Address 385 Main St, Lebanon Phone 451-4513 Fax 451-4155

259

Listing Firm Broker Initials/Date _____ / _____ Selling Firm Broker Initials/Date _____ / _____

260

NOTE: Fill in preprinted number from Page 1

Sale Agreement # 627928
Buyer Initials JSH Date 4/27/01
Seller Initials _____ Date _____



ADDENDUM TO REAL ESTATE SALE AGREEMENT

The Oregon Real Estate Agency has reviewed this form for compliance with the applicable provisions in ORS.696 and finds that it complies with those provisions.

This is an Addendum to: Real Estate Sale Agreement Seller's Counter Offer Buyer's Counter Offer

Re: Real Estate Sale Agreement No. 627928 Dated 4/26/01 Addendum No. A

Buyer: City of Lebanon

Seller: Morse Bros.

The real property described as: 18.3 acres M/L. on Brewster Rd to include
Tax lot numbers 1300, 1200, 1100, 402, 700 plus Lots 1300, 1200 ac. 12 plus
lots in sec. 21, 22, total parcel noted in title report.

SELLER AND BUYER HEREBY AGREE THE FOLLOWING SHALL BE A PART OF THE REAL ESTATE SALE AGREEMENT REFERENCED ABOVE.

1. Full legal description to follow from Title company.
2. Sale is subject to the approval and permits from any and all govt. agencies to include but not limited to Corp of Engineers, ODFW, city council, Linn County, ^{state} Health Dept, DCCOMY, State Div of Lands, NMFs, Environmental Quality Commission, O.E.Q.
3. Buyer to approve a phase I environmental study provided by Seller.
4. Seller to provide a land survey to determine property lines and actual acreage. Price to be adjusted on a per acre basis if actual property size is determined to be less or greater than the size determined in the appraisal.
5. Buyer shall have full access to the property with the right to clear brush and to any and all tests the buyer deems necessary.

Buyer Signature John G. Idell Date 4/27/01, 11:30 A.M. P.M.

Buyer Signature _____ Date _____, _____ A.M. P.M.

Seller Signature Stephen Jay for Morse Bros., Inc Date 5/2/01, _____ A.M. X P.M.

Seller Signature _____ Date _____, _____ A.M. P.M.

Listing Licensee TOM Owen Selling Licensee TOM Owen
Listing Firm Broker Initials/Date _____ Selling Firm Broker Initials/Date _____

Seller authorizes the licensee listing firm to receive Buyer's notice of revocation, if any, on Seller's behalf.

213

This Agreement may be signed in multiple counterparts with the same effect as if all parties signed the same document. Delivery of a photocopy, teletax, carbon or carbonless copy of a signed original of this Agreement shall be treated the same as delivery of the original.

214

215

BUYER acknowledges receipt of a completely filled in copy of this Agreement which Buyer has fully read and understands. Buyer acknowledges that Buyer has not received or relied upon any oral or written statements, made by Seller or any real estate licensee, which are not expressly contained in this Agreement. Neither Seller nor any licensees warrant the square footage of any structure or the size of any land being purchased. If square footage or land size is a material consideration, all structures and land should be measured by Buyer prior to signing, or should be made an express contingency in this Agreement.

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Deed or contract to be prepared in the name of City of Lebanon
This offer shall automatically expire on Date 5/2/01 a.m. 5 p.m., if not accepted within that time. However, Buyer may withdraw this offer any time prior to Seller's written acceptance. This offer may only be accepted by Seller in writing.

221

222

223

Buyer Signature John E. Hitt, City Administrator Date 4/27/01 11:30 a.m. _____ p.m.

224

Buyer Signature _____ Date _____ a.m. _____ p.m.

225

Address _____ Zip _____

226

Phone Home _____ Work _____ Work _____ Fax _____

227

ANY MODIFICATION BY SELLER OR SELLER'S AGENT ABOVE BUYER'S SIGNATURE SHOULD BE ON A SEPARATE DOCUMENT

This offer was submitted to Seller for signature on the 28 day of April, 2001, at 7 a.m. 2:00 p.m.
By Tom Owen (Licensee Presenting Offer).

228

229

SELLER'S ACCEPTANCE: Seller accepts this offer. At the time of closing, Seller agrees to pay in U.S. dollars to the Selling Firm or, if this is a co-op transaction, the Listing Firm, the sum of \$ _____ for professional real estate services rendered in this transaction. Seller authorizes Listing Firm to order a preliminary title report and title insurance at Seller's expense and further authorizes escrow to pay out of the cash proceeds of sale the expenses of furnishing title insurance, Seller's recording fees, Seller's closing costs and any encumbrances on the Property payable by Seller on or before closing. Seller is a U.S. citizen unless otherwise stated herein. **Seller acknowledges receipt of a completely filled in copy of this Agreement, which Seller has fully read and understands.** Seller acknowledges that Seller has not received or relied upon any oral or written statements of Buyer or any real estate licensee(s) which are not expressly contained in this Agreement. In the event Buyer fails to complete this transaction as provided herein, all earnest money shall be distributed as follows after deduction of any title insurance and escrow cancellation charges: (check one) First to the Listing Firm to the extent of the agreed commission just as if the transaction had been closed, with residue to Seller, or _____

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Seller Print full name(s): _____

240

Seller Signature _____ Date _____ a.m. _____ p.m.

241

Seller Signature _____ Date _____ a.m. _____ p.m.

242

Address _____ Zip _____

243

Phone Home _____ Work _____ Work _____ Fax _____

244

BUYER'S ACKNOWLEDGMENT: Buyer acknowledges receipt of a copy of Seller's written response to this Agreement.

245

Buyer Signature _____ Date _____ a.m. _____ p.m.

246

Buyer Signature _____ Date _____ a.m. _____ p.m.

247

REJECTION/COUNTER OFFER:

248

SELECT ONE: Seller does not accept the above offer, but makes the attached counter offer; Seller rejects Buyer's offer without a counter offer.

249

SELLER Print full name(s): _____

250

Seller Signature John J. Moore Bros., Inc. Date 5/02/01 _____ a.m. X p.m.

251

Seller Signature _____ Date _____ a.m. _____ p.m.

252

Address _____ Zip _____

253

Phone Home _____ Work _____ Work _____ Fax _____

254

Selling Firm Caldwell Banker Valley Bkrs. Selling Licensee Tom Owen

255

Listing Firm Caldwell Banker Valley Bkrs. Listing Licensee Tom Owen

256

Selling Firm to receive: (select one) _____ % of purchase price or \$ _____

257

Listing Firm Main Office Address _____ Phone _____ Fax _____

258

Listing Firm Branch Office Address 385 Main St. Lebanon Phone 451-4513 Fax 451-4155

259

Listing Firm Broker Initials/Date _____ / _____ Selling Firm Broker Initials/Date _____ / _____

260

NOTE: Fill in preprinted number from Page 1

Sale Agreement # 627928
Buyer's Initials JEB Date 4/27/01
Seller's Initials _____ Date _____



ADDENDUM TO REAL ESTATE SALE AGREEMENT

The Oregon Real Estate Agency has reviewed this form for compliance with the applicable provisions in ORS.696 and finds that it complies with those provisions.

This is an Addendum to: Real Estate Sale Agreement Seller's Counter Offer Buyer's Counter Offer

Re: Real Estate Sale Agreement No. 627928 Dated 4/26/01 Addendum No. A

Buyer: City of Lebanon

Seller: Morse Bros.

The real property described as: 17.3 acres M/L. on Brewster Rd to include Tax lot numbers 1300, 1200, 1100, 402, 700 and 1,300, 1200 ac. 17 plus
lots in sec. 11, 12, total noted in title report.

SELLER AND BUYER HEREBY AGREE THE FOLLOWING SHALL BE A PART OF THE REAL ESTATE SALE AGREEMENT REFERENCED ABOVE.

1. Full legal description to follow from title company.

2. Sale is subject to the approval and permits from any and all govt. agencies to include but not limited to Corp of Engineers, ODFW, city council, Linn County, ^{State} Health Dept, DCCOMY, State Div. of Lands, NMFS, Environmental Quality Commission, O.E.G.

3. Buyer to approve a phase I environmental study provided by Seller.

4. Seller to provide a land survey to determine property lines and actual acreage. Price to be adjusted on a per acre basis if actual property size is determined to be less or greater than the size determined in the appraisal.

5. Buyer shall have full access to the property with the right to clear brush and to any and all tests the buyer deems necessary.

Buyer Signature John G. Smith Date 4/27/01 11:30 A.M. P.M.

Buyer Signature _____ Date _____ A.M. P.M.

Seller Signature Stephen Jay for Morse Bros, Inc Date 5/2/01 A.M. X P.M.

Seller Signature _____ Date _____ A.M. P.M.

Listing Licensee TOM OWEN Selling Licensee TOM OWEN

Listing Firm Broker Initials/Date _____ Selling Firm Broker Initials/Date _____

SELLER'S COUNTER OFFER

The Oregon Real Estate Agency has reviewed this form for compliance with the applicable provisions in ORS.696 and finds that it complies with those provisions.

Re: Real Estate Sale Agreement No. 627928

Dated 4/27/01

Seller: MORSE BROS

Buyer: City of Lebanon

The real property described as: Brewster Rd. properties (Legal on file)

Seller agrees to sell the real and personal property specified in Buyer's offer on the terms and conditions in Buyer's offer, except as modified below:

1. Sale is subject to Buyer approval of any inspections ordered by Buyer. Sale is also subject to the approval of any and all govt. agencies deemed necessary by Buyer to include Lebanon City Council.

2. Closing date to be 11/21/01

3. Seller to provide a phase I environmental study for Buyer approval.

4. Buyer is buying property as is where is.

5. Price is only good if both parcels are present For additional provisions, see Addendum

AGREEMENT TO SELL:

All provisions of the Buyer's offer except those modified herein are approved and accepted by Seller. Time is of the essence of this counter offer. This counter offer shall automatically expire on Date 5/5 A.M. 5 P.M., if not accepted within that time. However, Seller may withdraw this counter offer any time prior to written acceptance.

If Buyer accepts Seller's counter offer, Seller agrees to pay to the Selling Firm, or if this is a co-op transaction, the Listing Firm, the sum of \$ 8,500 for professional real estate services rendered in this transaction. Seller authorizes Listing Firm to order a preliminary title report and title insurance at Seller's expense and further authorizes escrow to pay out of the cash proceeds of sale the expenses of furnishing title insurance, Seller's recording fees, Seller's closing costs and any encumbrance on the property payable by Seller on or before closing. Seller is a U.S. citizen unless otherwise stated herein (See FIRPTA clause in Real Estate Sale Agreement).

SELLER ACKNOWLEDGES RECEIPT OF A COMPLETELY FILLED IN COPY OF BUYER'S OFFER AND SELLER'S COUNTER OFFER, WHICH SELLER HAS FULLY READ AND UNDERSTANDS. Seller acknowledges that Seller has not received or relied on any statement made by any real estate licensee which is not herein expressed. In the event Buyer fails to complete the sale as herein provided, the earnest money shall be distributed as follows after deduction of any title insurance and escrow cancellation charges: (check one) First to the Listing Firm, to the extent of the agreed commission just as if the transaction had been consummated, with residue to Seller; or 50% later 50% to Seller.

Seller Signature Stephen Jung for Morse Bros., Inc Date 5/2/01 A.M. X P.M.

Seller Signature _____ Date _____ A.M. _____ P.M.

AGREEMENT TO PURCHASE:

Buyer accepts Seller's counter offer.

Buyer rejects Seller's counter offer: OR Buyer makes the attached counter offer.

Buyer Signature John E. Hunt Date 5/02/01 A.M. 2:30 P.M.

Buyer Signature _____ Date _____ A.M. _____ P.M.

SELLER'S ACKNOWLEDGMENT:

Seller acknowledges receipt of copies of Buyer's offer and of Seller's counter offer bearing Buyer's signature, which Seller has fully read and understands.

Seller Signature Stephen Jung for Morse Bros., Inc Date 5/7/01 A.M. X P.M.

Seller Signature _____ Date _____ A.M. _____ P.M.

RECEIPT OF EARNEST MONEY (Use only if earnest money provided in Buyer's offer is changed by Seller's counter offer).

Selling firm acknowledges receipt of earnest money from Buyer NOT previously received for in the sum of \$ _____ evidenced by cash, check, promissory note payable on or before _____, which selling firm agrees to handle as provided in the Agreement. Selling Licensee's signature _____

Listing Licensee Tom Owen Selling Licensee Tom Owen

Listing Firm Broker's Initials/Date _____ Selling Firm Broker's Initials/Date _____



AGENCY ACKNOWLEDGMENT

Seller and Buyer hereby acknowledge and consent to the following agency relationship in this transaction:

(1) Tom Owen (selling licensee) of Coldwell Banker Valley Blue (selling firm) is the agent of (check one):
[] the Buyer exclusively ("buyer agency"). [] the Seller exclusively ("subagency"). [X] both the Seller and the Buyer ("in-company transaction").
(2) Tom Owen (listing licensee) of Coldwell Banker Valley Blue (listing firm) is the agent of (check one): [] the Seller exclusively. [X] both the Seller and the Buyer ("in-company transaction").

Buyer shall sign this acknowledgment at the time of signing this Agreement before submission to Seller. Seller shall sign this acknowledgment at the time this Agreement is first submitted to Seller, even if this Agreement will be rejected or a counter offer will be made. Seller's signature to this Final Agency Acknowledgment shall not constitute acceptance of the Agreement or any terms therein.

Buyer Signature: John E. Hitt, City Administrator; John E. Hitt; Date: 04/27/01
Buyer Signature: _____; _____; Date: _____
Seller Signature: Stephen Frey for Morse Bros Inc; STEPHEN FREY; Date: 5/2/01
Seller Signature: _____; _____; Date: _____

REAL ESTATE SALE AGREEMENT

Upon signature by Seller and Buyer, this Agreement is a legal and binding contract. If not understood, seek competent legal advice before signing.

DEFINITIONS: All references in this Agreement to "licensee" or "firm" shall refer to real estate agents and their brokerages, respectively, licensed in the State of Oregon pursuant to ORS Chapter 696.

Buyer (print name) City of Lebanon, offers to purchase from Seller (print name) Morse Bros, the following described real property (hereinafter "the Property") situated in the County of Linn, State of Oregon (legal description): 26 Acres +/- on Tennessee Rd Tax Lot 2002 Sec. 2

and commonly known as (street address): _____
for the purchase price (in U.S. currency) of _____ A \$ 320,000.00
on the following terms: Earnest money herein received for _____ B \$ 5,000.00
on _____ as additional earnest money, the sum of _____ C \$ _____
at or before closing, the balance of down payment, _____ D \$ _____
at closing and upon delivery of [X] DEED [] CONTRACT the sum of (Lines B, C, D and E must equal Line A), _____ E \$ 315,000.00
Payable as follows: All cash to seller at closing

For additional details, see Addendum _____

BUYER REPRESENTS THAT: Buyer has sufficient funds available to close this sale in accordance with this Agreement and is not relying on any contingent source of funds unless otherwise disclosed in writing herein.

IF A NEW LOAN IS REQUIRED, THIS TRANSACTION IS SUBJECT TO BUYER AND PROPERTY QUALIFYING FOR THE LOAN. Buyer agrees to make written loan application not later than 15 business days from date this Agreement is signed by all parties, complete necessary papers, and exert best efforts, including payment of all application, appraisal and processing fees, in order to procure the loan.

REQUIRED REPAIRS: Seller agrees to pay a total of not more than \$ 0 for repairs identified in any inspections requested herein by Buyer and/or for any repairs identified by lender as a condition to granting Buyer's loan.

TITLE INSURANCE: Unless otherwise provided herein, this transaction is subject to Buyer's review and approval of a preliminary title report and the recorded covenants, conditions and restrictions ("the report and CC&Rs") showing the condition of title to the Property. Upon execution of this Agreement by all parties, Seller will, at Seller's sole expense, promptly order the report and CC&Rs from an Oregon title insurance company and furnish them to Buyer. Upon receipt of the report and CC&Rs, Buyer shall have 15 business days (five if not filled in) within which to notify Seller, in writing, of any matters disclosed in the report and CC&Rs which is/are unacceptable to Buyer ("the objections"). Buyer's failure to timely object, in writing, to any matters disclosed in the report and/or CC&Rs shall constitute acceptance of the report and/or CC&Rs. If, within _____ business days (five if not filled in) following receipt of the objections, Seller fails to remove or correct the matters identified in the objections, or does not give written assurances reasonably satisfactory to Buyer that they will be removed prior to the closing date, all earnest money shall be promptly refunded to Buyer and this transaction shall be of no further binding effect between Seller and Buyer. Within thirty (30) days after closing, Seller shall furnish to Buyer an owner's standard form policy of title insurance insuring marketable title in the Property to Buyer in the amount of the purchase price, free and clear of the objections and all other title exceptions agreed to be removed as part of this transaction.

ADDITIONAL PROVISIONS: Sale is subject to buyer approval of any inspections ordered by Buyer. Sale is also subject to the approval of any and all govt. agencies deemed necessary by Buyer to include Lebanon City Council.

For additional provisions, see Addendum _____

Sale Agreement # 627946
Buyer Initials JEH Date 04/27/01
Seller Initials SF Date 5/2/01

Unless otherwise herein provided, marketable title to the Property is to be conveyed by statutory warranty deed (or good and sufficient personal representative or a trustee's deed, where applicable) free and clear of all liens and encumbrances of record except property taxes which are a lien but not yet payable, zoning ordinances, building and use restrictions, reservations in Federal patents, easements of record which affect the Property or area in which the Property is located, private covenants, conditions and restrictions of record for the development of which the Property is a part, and no other.

FIXTURES: All fixtures are to be left upon the Property. Fixtures shall include but not be limited to: Built-in appliances; attached floor coverings; drapery rods and curtain rods; window and door screens; storm doors and windows; irrigation, plumbing, ventilating, cooling and heating fixtures; water heaters; attached electric light and bathroom fixtures; light bulbs, fluorescent lamps; installed garage door opener(s) with remote control(s); window blinds; awnings; fences; all planted shrubs, plants and trees; EXCEPT: no exceptions

PERSONAL PROPERTY: The following personal property, in "AS-IS" condition and at no stated value is included: None

ALARM SYSTEM: NONE OWNED LEASED. If leased, Buyer will will not assume the lease at closing. Approximate monthly lease payment is \$ _____.

BUYER UNDERSTANDS THAT SELLER MAKES THE FOLLOWING REPRESENTATIONS: Bare land
(1) The above dwelling is connected to a public sewer system; an on-site sewage system; a public water system; a private well;
(2) at the earlier of possession or closing date, the dwelling will have an operating smoke detector as required by law; (3) Seller has no knowledge of any hazardous substances on the Property other than substances (if any) contained in appliances and equipment; (4) Seller knows of no material structural defects; (5) all electrical wiring, heating, cooling, plumbing and irrigation equipment and systems and the balance of the Property, including the yard, will be in substantially its present condition at the time Buyer is entitled to possession; (6) Seller has no notice of any liens to be assessed against the Property; and (7) Seller has no notice from any governmental agency of any violation of law relating to the Property, and (8) Seller agrees to promptly notify Buyer if, prior to closing, Seller receives actual notice of any event or condition which could result in making any previously disclosed material information relating to the Property substantially misleading or incorrect. These representations are based upon Seller's actual knowledge. Seller has made no investigation. Exceptions to items (1) through (8) are: _____

Buyer recognizes that asbestos commonly exists in insulation, ceilings, floor coverings and other areas in residential properties. Seller makes no representations regarding the presence or condition of asbestos.

"As-Is" Clause
"AS-IS": Except for Seller's express written agreements and written representations contained herein, and Seller's Property Disclosure, if any, Buyer is purchasing the Property "AS-IS," in its present condition and with all defects apparent or not apparent.

PRIVATE WELL: Seller represents that the private water well located on or serving the Property has provided an adequate supply of water throughout the year for household use and, to the best of Seller's knowledge, the water is fit for human consumption and the continued use of the well and water is authorized by and complies with the laws of the State of Oregon and appropriate governmental agencies. No other representation is made concerning the water supply and well except as expressly stated in this Agreement. If the well provides water for domestic purposes, upon Seller's acceptance of Buyer's offer, Seller, at Seller's expense, will have the well tested for nitrates and total coliform bacteria and for such other matters as are required by the Oregon Health Division. Upon receipt, Seller shall promptly submit the test results to the Oregon Health Division and Buyer. Buyer, at Buyer's expense, may have the well water tested for quantity or quality by a qualified tester, and obtain a written report of such test or tests, showing the deficiencies (if any) in the well and the standards required to correct the deficiencies, all within _____ business days (seven if not filled in) after the date all parties have signed this Agreement. If the written report of any test made by Seller or Buyer shows a substantial deficiency in quantity or quality of the water, then Buyer may terminate this transaction by delivering written notice of termination, together with a copy of the test report, to Seller or the listing licensee within 24 hours after the receipt by Buyer of the written test report unless, within 24 hours after delivery of notice of termination, Seller agrees in writing to correct the deficiencies shown on the report. Any report obtained by Buyer will show what deficiencies, if any, are substantial.

INSPECTIONS: Buyer understands that a complete professional inspection of the Property is advisable. (check one)

PROFESSIONAL INSPECTIONS: At Buyer's expense Buyer may have the Property and all elements and systems thereof inspected by one or more professionals of Buyer's choice. Provided, however, Buyer must specifically identify in this Agreement any desired inspections which may include testing or removal of any portion of the Property due to the possible presence of any environmentally hazardous substance or condition. Buyer shall have 45 business days (seven if not filled in), after the date Seller and Buyer have signed this Agreement, (hereinafter "the Inspection Period") in which to negotiate with Seller regarding any matters disclosed in any inspection report. However, during the Inspection Period, Seller shall not be required to modify any terms of this Agreement already reached with Buyer. Unless a written and signed modification is reached, at any time during the Inspection Period, Buyer may notify Seller or listing licensee, in writing, of Buyer's unconditional disapproval of any inspection report, in which case, all earnest money deposits shall be promptly refunded and this Agreement shall be of no further binding effect. If Buyer fails to provide Seller or listing licensee with written unconditional disapproval of any inspection report(s) by **Midnight of the final day of the Inspection Period, Buyer shall be deemed to have accepted the condition of the Property.**

SEE ATTACHED ADDENDUM REGARDING PROFESSIONAL INSPECTIONS.

NOTE: Fill in preprinted number from Page 1
Sale Agreement # - 62-7946
Buyer Initials JWH Date 04/29/01
Seller Initials JSF Date 05/2/01

BUYER'S INSPECTION: Buyer has personally inspected the Property and all elements and systems thereof. Buyer is fully satisfied and has elected NOT to have any professional inspections performed.

LEAD-BASED PAINT INSPECTION: Buyer should check the box below only if Seller's Property was constructed before 1978 and Buyer desires to conduct a risk assessment or inspection. Bare land

Buyer represents that Buyer intends to conduct a risk assessment or inspection to determine the presence of lead-based paint or lead-based paint hazards on the Property. Buyer may terminate this transaction by delivery to Seller or listing licensee written notice of Buyer's disapproval of the risk assessment or inspection within _____ calendar days (TEN if not filled in) after the date this Agreement is signed by all parties, in which case this transaction shall be null and void. Buyer understands that the failure to give written notice of disapproval within said period shall constitute acceptance of the condition of the Property solely as it relates to lead-based paint or lead-based paint hazards.

THIS SALE WILL BE CLOSED IN ESCROW: This transaction shall be closed at On Title ("Escrow"), a neutral escrow depository located in the State of Oregon. Costs of escrow shall be shared equally between Seller and Buyer, unless Buyer is financing through Federal VA, in which case Seller shall pay escrow costs.

CLOSING: TIME IS OF THE ESSENCE. Closing shall occur on or before 11/21/01, or as soon thereafter as financing documents can be prepared and marketable title delivered, but not to exceed 14 business days (ZERO if not filled in). This extension is not available if financing documents are prepared and marketable title can be delivered on or before the specified closing date. The terms "closed" or "closing date" shall mean when the deed or contract is recorded and funds are available to Seller. Seller and Buyer acknowledge that, for closing to occur by the date specified, it may be necessary to execute documents and deposit funds in escrow prior to that date.

POSSESSION: Seller shall remove all personal property not sold to Buyer and deliver possession of the Property to Buyer (check one): (1) by 5:00 o'clock p.m. on the closing date; (2) by _____ a.m./p.m. _____ days after the closing date; (3) by _____ a.m./p.m. on the _____ day of _____. If a tenant is currently in possession of the Property: (check one): Buyer will accept tenant at the time of closing; Seller shall have full responsibility for removal of tenant prior to closing date.

PRORATIONS: Prorates for rents, current year's taxes, interest on new or assumed obligations, and other prepaid expenses attributable to the property shall be as of: (check one only) (1) the closing date; (2) date Buyer is entitled to possession; or (3) _____

SELLER POSSESSION AFTER CLOSING: In the event that Seller and Buyer have agreed that Seller will deliver possession after the closing date, Seller shall pay as consideration \$ 5 per day for each day after closing that Seller remains in possession of the Property. Such payment shall be made by Seller through escrow at the time of closing and no landlord-tenant relationship shall be created thereby. See attached Addendum _____, if applicable.

UTILITIES: Seller shall pay all utility bills accrued to date Buyer is entitled to possession and Buyer shall pay Seller for heating fuel then on premises at Seller's supplier's rate on the possession date. Payment shall be handled between Buyer and Seller outside of escrow.

INSURANCE: Seller shall keep the Property insured until closing.

ESCROW DEPOSIT: Escrow is hereby instructed by Seller, Buyer, Selling Firm and the Listing Firm (if any) as follows: (1) Upon your receipt of a copy of this Agreement marked "rejected" by Seller or of Selling Firm's written advice that the offer is "rejected" by Seller, you are to refund all earnest money to Buyer. (2) Upon your receipt of a copy of this Agreement signed by Seller, Buyer, Selling Firm and the Listing Firm (if any), set up an escrow account and proceed with closing in accordance with the terms of this Agreement. If you determine that the transaction cannot be closed for any reason (whether or not there is then a dispute between the parties), you are to hold all earnest money deposits until you receive written instructions from Seller, Buyer, Selling Firm and the Listing Firm (if any) as to disposition of such deposits.

EARNEST MONEY PAYMENT/REFUND: If (1) Seller does not approve this Agreement, or (2) Seller having approved this Agreement fails to furnish marketable title, or (3) Seller fails to complete this transaction in accordance with this Agreement, or perform any other act as herein provided, all earnest money shall be promptly refunded to Buyer. However, acceptance by Buyer of the refund shall not constitute a waiver of other legal remedies available to Buyer. If Seller approves this Agreement and title is marketable and: (1) Buyer has misrepresented Buyer's financial status; or (2) Buyer's bank does not pay, when presented, any check given as earnest money; or (3) Buyer fails to redeem, when due, any note given as earnest money; or (4) Buyer fails to complete this transaction in accordance with this Agreement, or perform any other act as herein provided, then all earnest money paid or agreed to be paid shall be paid to Seller either as liquidated damages or as otherwise allowed under Oregon law, and this Agreement shall be of no further binding effect. It is the intention of the parties that under no circumstances shall Buyer be liable to Seller under this Agreement beyond the amount of earnest money provided for herein.

BINDING EFFECT/CONSENT: This Agreement is binding upon the heirs, personal representatives, successors and assigns of Buyer and Seller. However, Buyer's rights under this Agreement or in the Property are not assignable without prior written consent of Seller.

FOREIGN INVESTMENT IN REAL PROPERTY TAX ACT: The Foreign Investment in Real Property Tax Act ("FIRPTA") requires every person who purchases real property located within the United States from a "foreign person" to deduct and withhold from the Seller's proceeds ten percent (10%) of the gross sales price, with certain exceptions, and to pay the amount withheld to the Internal Revenue Service. A "foreign person" includes a non-resident alien individual, foreign corporation, foreign partnership, foreign trust and foreign estate. Seller and Buyer agree to execute and deliver, as appropriate, any instrument, affidavit or statement, and to perform any acts reasonable or necessary to carry out the provisions of FIRPTA.

THE PROPERTY DESCRIBED IN THIS INSTRUMENT MAY NOT BE WITHIN A FIRE PROTECTION DISTRICT PROTECTING STRUCTURES. THE PROPERTY IS SUBJECT TO LAND USE LAWS AND REGULATIONS, WHICH, IN FARM OR FOREST ZONES, MAY NOT AUTHORIZE CONSTRUCTION

NOTE: Fill in preprinted number from Page 1
Sale Agreement # 62794625
Buyer Initials [Signature] Date 11/21/01
Seller Initials [Signature] Date 11/21/01

OR SITING OF A RESIDENCE AND WHICH LIMIT LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930 IN ALL ZONES. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES AND EXISTENCE OF FIRE PROTECTION FOR STRUCTURES. IF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IS SUBJECT TO SPECIAL ASSESSMENT UNDER ORS 358.505, ORS 358.515 REQUIRES NOTIFICATION TO THE STATE HISTORIC PRESERVATION OFFICER OF SALE OR TRANSFER OF THIS PROPERTY

LEVY OF ADDITIONAL PROPERTY TAXES: The Property: (check one) is is not specially assessed for property taxes (e.g. farm, forest or other) in a way which may result in levy of additional taxes in the future. If, as a result of Buyer's actions or the closing of this transaction, the Property either is disqualified from special use assessment or loses its deferred property tax status, unless otherwise specifically provided in this Agreement, Buyer shall be responsible for and shall pay when due, any deferred and/or additional taxes and interest which may be levied against the Property and shall hold Seller completely harmless therefrom. However, if as a result of the Seller's actions prior to closing, the Property either is disqualified from its entitlement to special use assessment or loses its deferred property tax status, Seller shall be responsible for and shall pay at or before closing all deferred and/or additional taxes and interest which may be levied against the Property and shall hold Buyer completely harmless therefrom.

ADDITIONAL LAND SALE CONTRACT/TRUST DEED/MORTGAGE PROVISIONS: If this transaction is to include a land sale contract, trust deed or mortgage to be carried back by Seller, Buyer and Seller shall agree upon the terms and conditions of such document not later than business days (ten if not filled in) from the date this Agreement is signed by all parties. Upon failure to reach such agreement, this transaction shall be of no further binding effect, and all earnest money shall be promptly refunded to Buyer.

DISPUTE RESOLUTION: Seller and Buyer, including the licensees of each, if any, agree that all claims, controversies and disputes, including those for rescission (hereinafter collectively referred to as "Claims"), relating directly or indirectly to this transaction, shall be resolved in accordance with the procedures set forth herein which shall expressly survive closing. Provided, however, the following matters shall not constitute Claims: (a) any proceeding to collect, interpret or enforce any mortgage, trust deed, land sale contract or recorded construction lien; (b) a forcible entry and detainer action; (c) any dispute between REALTORS® which is subject to the Professional Standards Arbitration provisions of the National Association of REALTORS®. The filing of a notice of pending action ("lis pendens") or the application to any court for the issuance of any provisional process or similar remedy described in the Oregon or Federal Rules of Civil Procedure shall not constitute a waiver of the right or duty to utilize the procedures specified herein.

SMALL CLAIMS: Notwithstanding the following provisions, Seller, Buyer and the licensees, if any, mutually agree that all Claims within the jurisdiction of the Small Claims Court shall be brought and decided there, in lieu of mediation, arbitration or litigation in any other court of law.

MEDIATION: If Seller or Buyer were represented in this transaction by a licensee who was then a member of the National Association of REALTORS®, all Claims shall be submitted to mediation in accordance with the procedures of the Home Seller/Home Buyer Dispute Resolution System of the National Association of REALTORS® or other organization-adopted mediation program (collectively "the System"). Provided, however, if the System was not then available through the licensees' Association of REALTORS®, then the Seller, Buyer and/or licensees shall not be required to engage in mediation.

ARBITRATION: All claims that have not been resolved by mediation, or otherwise, shall be submitted to final and binding private arbitration in accordance with Oregon Laws. Filing for arbitration shall be treated the same as filing in court for purposes of meeting any applicable statutes of limitation or for purposes of filing a lis pendens. Seller, Buyer and/or their licensees may use any professional arbitration company which provides such service to the county where the Property is located, as selected by the party first filing for arbitration. Provided, however, if no arbitration company had available services when the claim arose, neither Seller, Buyer, nor their respective licensees, if any, shall be required to participate in arbitration.

ATTORNEY FEES: The prevailing party in any suit, action or arbitration (excluding those claims filed in Small Claims Court) shall be entitled to recovery of all reasonable attorney fees and costs (including all filing and mediator fees paid in mediation) pursuant to ORCP 68. Provided, however, if a mediation service was available to the parties when the claim arose, the prevailing party shall not be entitled to any award of attorney fees unless it is established to the satisfaction of the arbitrator(s) or judge that the prevailing party offered or agreed to participate in mediation prior to, or promptly upon, the filing in arbitration or court.

RECEIPT FOR EARNEST MONEY: The undersigned Selling Firm acknowledges receipt of earnest money (which Selling Firm agrees to handle as provided below) from Buyer in the sum of \$ 5000 - evidenced by CASH CHECK PROMISSORY NOTE payable on or before 4 DAYS OF ACCOMP Other

EARNEST MONEY INSTRUCTIONS: Buyer instructs the undersigned Selling Firm to (check applicable box(es)): Deposit the earnest money in Selling Firm's client trust account, and thereafter/or Deposit with as escrow. If earnest money funds are to be redeemed under a promissory note, said funds shall be deposited with

SELLING LICENSEE AND SELLING FIRM SHALL HAVE NO FURTHER LIABILITY WITH RESPECT TO EARNEST MONEY WHICH THE PARTIES HAVE AUTHORIZED TO BE TRANSFERRED TO A THIRD PARTY.

Selling Firm COUGAR BROKER US Selling Licensee Signature Tom Owen
Main Office Address Phone FAX
Branch Office Address 285 MAIN ST. Phone 541-451-4513 FAX 541-457-4655

PROPERTY DISCLOSURE/DISCLAIMER LAW: Buyer acknowledges that unless otherwise exempted, Buyer has a right to revoke Buyer's offer within five (5) business days after delivery of Seller's property disclosure form, or within seven (7) business days after delivery of Seller's written disclaimer form, or at any time before closing, as defined in the Oregon Administrative Rules, if Buyer does not receive either a disclosure or disclaimer form from Seller. Buyer may waive the right of revocation if done so in writing. If this transaction is exempted from the property disclosure/disclaimer law, Seller and Buyer are encouraged to sign a written acknowledgment identifying the specific exemption.

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Sale Agreement # 2022797657
Buyer Initials JK Date 4/23/11
Seller Initials JSF Date 5/2/11

Seller authorizes the licensee listing firm to receive Buyer's notice of revocation, if any, on Seller's behalf.

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This Agreement may be signed in multiple counterparts with the same effect as if all parties signed the same document. Delivery of a photocopy, telefax, carbon or carbonless copy of a signed original of this Agreement shall be treated the same as delivery of the original.

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BUYER acknowledges receipt of a completely filled in copy of this Agreement which Buyer has fully read and understands. Buyer acknowledges that Buyer has not received or relied upon any oral or written statements, made by Seller or any real estate licensee, which are not expressly contained in this Agreement. Neither Seller nor any licensees warrant the square footage of any structure or the size of any land being purchased. If square footage or land size is a material consideration, all structures and land should be measured by Buyer prior to signing, or should be made an express contingency in this Agreement.

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Deed or contract to be prepared in the name of City of Lebanon
This offer shall automatically expire on Date 5/2/01 a.m. _____ p.m., if not accepted within that time. However, Buyer may withdraw this offer any time prior to Seller's written acceptance. This offer may only be accepted by Seller in writing.
Buyer Signature John E. Heth, City Administrator Date Apr 12 2001 11:30 a.m. _____ p.m.
Buyer Signature _____ Date _____ a.m. _____ p.m.
Address _____ Zip _____
Phone Home _____ Work _____ Work _____ Fax _____

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ANY MODIFICATION BY SELLER OR SELLER'S AGENT ABOVE BUYER'S SIGNATURE SHOULD BE ON A SEPARATE DOCUMENT

This offer was submitted to Seller for signature on the _____ day of _____, at _____ a.m. _____ p.m.
By _____ (Licensee Presenting Offer).

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SELLER'S ACCEPTANCE: Seller accepts this offer. At the time of closing, Seller agrees to pay in U.S. dollars to the Selling Firm or, if this is a co-op transaction, the Listing Firm, the sum of \$16,000⁰⁰ for professional real estate services rendered in this transaction. Seller authorizes Listing Firm to order a preliminary title report and title insurance at Seller's expense and further authorizes escrow to pay out of the cash proceeds of sale the expenses of furnishing title insurance, Seller's recording fees, Seller's closing costs and any encumbrances on the Property payable by Seller on or before closing. Seller is a U.S. citizen unless otherwise stated herein. Seller acknowledges receipt of a completely filled in copy of this Agreement, which Seller has fully read and understands. Seller acknowledges that Seller has not received or relied upon any oral or written statements of Buyer or any real estate licensee(s) which are not expressly contained in this Agreement. In the event Buyer fails to complete this transaction as provided herein, all earnest money shall be distributed as follows after deduction of any title insurance and escrow cancellation charges: (check one) First to the Listing Firm to the extent of the agreed commission just as if the transaction had been closed, with residue to Seller. or _____

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Seller Print full name(s): MORSE BROS, INC.
Seller Signature Stephen [unclear] for Morse Bros, Inc Date 5/2/01 a.m. X p.m.
Seller Signature _____ Date _____ a.m. _____ p.m.
Address _____ Zip _____
Phone Home _____ Work _____ Work _____ Fax _____

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BUYER'S ACKNOWLEDGMENT: Buyer acknowledges receipt of a copy of Seller's written response to this Agreement.
Buyer Signature John E. Heth Date 5/2/01 a.m. 2:30 p.m.
Buyer Signature _____ Date _____ a.m. _____ p.m.

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REJECTION/COUNTER OFFER:
SELECT ONE: Seller does not accept the above offer, but makes the attached counter offer; Seller rejects Buyer's offer without a counter offer.

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SELLER Print full name(s): _____
Seller Signature _____ Date _____ a.m. _____ p.m.
Seller Signature _____ Date _____ a.m. _____ p.m.
Address _____ Zip _____
Phone Home _____ Work _____ Work _____ Fax _____

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Selling Firm _____ Selling Licensee _____
Listing Firm _____ Listing Licensee _____
Selling Firm to receive: (select one) _____ % of purchase price or \$ _____
Listing Firm Main Office Address _____ Phone _____ Fax _____
Listing Firm Branch Office Address _____ Phone _____ Fax _____
Listing Firm Broker Initials/Date _____ / _____ Selling Firm Broker Initials/Date _____ / _____

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Seller Initials SB Date 5/2/01



ADDENDUM TO REAL ESTATE SALE AGREEMENT

The Oregon Real Estate Agency has reviewed this form for compliance with the applicable provisions in ORS.696 and finds that it complies with those provisions.

This is an Addendum to: Real Estate Sale Agreement Seller's Counter Offer Buyer's Counter Offer

Re: Real Estate Sale Agreement No. 627946, Dated _____ Addendum No. A

Buyer: City of Lebanon

Seller: Morse Bros.

The real property described as: 25 acres M/L on Tennessee Rd.

SELLER AND BUYER HEREBY AGREE THE FOLLOWING SHALL BE A PART OF THE REAL ESTATE SALE AGREEMENT REFERENCED ABOVE.

1. Price to remain at \$320,000⁰⁰ only if both parcels are purchased. Second parcel includes approx 170 acres on Brewster Rd.

Buyer Signature John E. Hall Date 5/2/01 A.M. 2:30 P.M.

Buyer Signature _____ Date _____ A.M. _____ P.M.

Seller Signature Stephen Jay for MORSE BROS., Inc Date 5/2/01 A.M. X P.M.

Seller Signature _____ Date _____ A.M. _____ P.M.

Listing Licensee TOM Owen Selling Licensee TOM Owen

Listing Firm Broker Initials/Date / Selling Firm Broker Initials/Date /



VALLEY BROKERS

2600 S. SANTIAM HWY, SUITE B
LEBANON, OR 97355
BUS. (541) 451-4513
FAX (541) 451-4155

Return or Redemption of Promissory Note

The undersigned do hereby acknowledge the (circle one) return of voided note or redemption of their promissory note dated _____ by check # _____ in the amount of _____ payable to _____.

Buyer signature _____ Date _____
_____ Date _____

Received by _____

TAX _____ Property Address _____

Seller _____ Buyer _____

Listing agent _____ Selling agent _____

\$5,000⁰⁰ _____ Lebanon _____, 4/29 _____, 2001
 WITHIN 4 DAYS OF ACCEPTANCE _____ after date, I (or if more than one maker) we jointly and
 severally promise to pay to the order of _____
 Coldwell Banker Valley Brokers CTA _____ at 2600 S Santiam Hwy, Lebanon Oregon _____
five thousand & 00/100 _____ DOLLARS.
 with interest thereon at the rate of _____ % per annum from _____ until paid; interest to be paid
 and if not so paid, all principal and interest, at the option of the holder of this note, to become immen-
 dately due and collectible. Any part hereof may be paid at any time. If this note is placed in the hands of an attorney for collection, I/we
 promise and agree to pay holder's reasonable attorney's fees and collection costs, even though no suit or action is filed hereon; if a suit or
 an action is filed, the amount of such reasonable attorney's fees shall be fixed by the court or courts in which the suit or action, including any
 appeal therein, is tried, heard or decided.
 NOTE: Interest will be waived if paid on time.
 EARNEST MONEY FOR: _____

FOR OVER 90 YEARS. ♦ MAKING REAL ESTATE REAL EASY.™

Each Office Is Independently Owned And Operated.

AGENDA ITEM 17



CITY OF LEBANON

MEMORANDUM

TO: Mayor Simpson & City Council

DATE: November 9, 2001

FROM: John Hitt, City Administrator

SUBJECT: City Administrator Report

I will bring you an oral update on the following matters:

- ✓ Lebanon Middle School Master Plan
- ✓ Status of Economic Development Opportunities
- ✓ Status of New "Management and Administrative Employees Manual."
- ✓ Miscellaneous Items

JEH/lgk