

Archives

# Lebanon City Council Agenda



November 10, 2004  
Santiam Travel Station  
7:00 p.m.

**LEBANON CITY COUNCIL MEETING**  
**Wednesday, November 10, 2004**  
**7:00 p.m.**

Santiam Travel Station  
750 3rd Street

**AGENDA**

**CALL TO ORDER/FLAG SALUTE**

**ROLL CALL**

**CONSENT CALENDAR**

CITY COUNCIL AGENDA: November 10, 2004

AGREEMENTS: 2004 ODOT Fund Exchange Agreement – Overlay Projects

MINUTES: Lebanon Public Library Advisory Board Meeting Minutes  
– September 8, 2004 & October 13, 2004

**PRESENTATIONS:**

**1) Lebanon/Albany Cooperative Adult Sports Program**

Presented by: Rick Barnett, City of Albany

DISCUSSION

**2) Star Spangled Celebration – Grant Request**

Presented by: Warren Beeson

Approval/Denial by MOTION

**PUBLIC HEARING:**

**3) Code Enforcement Ordinance**

Presented by: Mike Healy, Police Chief

Approval/Denial by Ordinance

**LEGISLATIVE:**

**4) ODOT Cooperative Improvement Agreement and Letter of Agreement for US Hwy 20:  
Wheeler Street to Market Street**

Presented by: Malcolm Bowie, City Engineer

Approval/Denial by MOTION

**5) ODOT Railroad Agreement – Hansard Crossing**

Presented by: Malcolm Bowie, City Engineer

Approval/Denial by MOTION

**6) City Administrator's Report**

Presented by: John Hitt, City Administrator

DISCUSSION

**CITIZEN COMMENTS** - *Those citizens with comments concerning public matters may do so at this time. Please identify yourself before speaking and enter your name and address on the sign-up sheet.*

**EXECUTIVE SESSION**

- Pursuant to ORS 192.660(1)(h) to consult with counsel concerning legal rights and duties of the Council regarding current litigation or litigation likely to be filed.

**ADJOURNMENT**

# *Consent Calendar*

CITY COUNCIL AGENDA: November 10, 2004

AGREEMENTS: 2004 ODOT Fund Exchange Agreement  
– Overlay Projects

MINUTES: Lebanon Public Library Advisory Board Meeting Minutes  
– September 8, 2004 & October 13, 2004



# CITY OF LEBANON

## PUBLIC WORKS DEPARTMENT - CAPITAL IMPROVEMENTS MEMORANDUM

**TO:** Malcolm Bowie, City Engineer  
**FROM:** Ron Whitlatch, Senior Engineer *RW*  
**SUBJECT:** 2004 STP Fund Exchange  
Approval of the 2004 Fund Exchange

**DATE:** November 1, 2004

Each year the City of Lebanon receives Federal Transportation dollars to use towards local transportation projects. There are two ways in which the City can actually obtain the funds. We can deal directly with the federal agency administering the funds (rather lengthy process involving quite a bit of paperwork) or request that ODOT do this and exchange the funds at a rate of \$94 State dollars to \$100 Federal dollars.

This year, our STP dollars were allocated to be used for the 2004 overlay program. The amount and use of the funds was approved by the budget committee in June 2004. The actual streets in which the money will be used for overlays has not been determined yet.

The agreements must be signed by the Mayor and City Administrator, and then sent back to ODOT for signature. Once the agreement has been executed, the City of Lebanon will receive a check for the approved amount. If you have any questions, please let me know.



# Oregon

Theodore R. Kulongoski, Governor

## Department of Transportation

Region 2 Headquarters

455 Airport Road SE, Bldg. B

Salem, OR 97301-5395

Telephone (503) 986-2600

FAX (503) 986-2840

Visit our website at [www.oregon.gov/ODOT/](http://www.oregon.gov/ODOT/)

October 19, 2004

File Code: AGR 4-1

City of Lebanon  
Attn: Ron Whitlatch  
925 Main Street  
Lebanon, OR 97355-3200

Subject: 2004 Fund Exchange Agreement  
City of Lebanon Various Street Overlay Project

Dear Mr. Whitlatch:

Enclosed are three copies of the above referenced Agreement.

Please have appropriate staff sign all copies and return the signed documents to me at 455 Airport Road SE, Building B, Salem, OR 97301-5395. A fully executed copy will be returned to you once all signatures have been obtained.

If you have any questions, you may contact me at 503.986.3152.

Sincerely,

Marta Eriksen  
Region 2 Agreement Coordinator

Enclosure (3)

**2004 FUND EXCHANGE AGREEMENT  
CITY OF LEBANON VARIOUS STREET OVERLAY PROJECT**

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

**RECITALS**

1. By the authority granted in ORS 190.110, 366.572 and 366.576, State may enter into cooperative agreements with counties, cities and units of local governments for the performance of work on certain types of improvement projects with the allocation of costs on terms and conditions mutually agreeable to the contracting parties.

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

**TERMS OF AGREEMENT**

1. Agency has submitted a completed and signed Part 1 of the Project Prospectus, or a similar document agreed to by State, outlining the schedule and costs associated with all phases of the City of Lebanon Various Street Overlays, hereinafter referred to as "Project".
2. To assist in funding the Project, Agency has requested State to exchange 2004 Federal funds, which have been allocated to Agency, for State funds based on the following ratio:

\$94 State for \$100 Federal

Based on this ratio, Agency wishes to trade \$114,706 Federal Funds for \$107,824 State funds.

3. State has reviewed Agency's prospectus, considered Agency's request for the fund exchange, and has determined that Agency's Project is eligible for the exchange funds.
4. This Agreement shall be for two years beginning on the date all required signatures are obtained and shall terminate two calendar years later on the same month and day, unless otherwise extended or renewed by formal agreement of the parties.

5. The parties agree that the exchange is subject to the following conditions:
- A. The Federal Funds transferred to State may be used by State at its discretion.
  - B. State dollars transferred to Agency must be used for the **City of Lebanon Various Street Overlay Project**. This fund exchange is to provide funding for specific roadway projects and is not intended for maintenance.
  - C. State funds may be used for all phases of the Project, including preliminary engineering, right of way, utility relocations and construction. Said use shall be consistent with the Oregon Constitution and statutes (Section 3a of Article IX Oregon Constitution). Agency shall be responsible to account for expenditure of State funds.
  - D. This Fund Exchange shall be on a reimbursement basis, with State funds limited to a maximum amount of \$107,824. All costs incurred in excess of the fund exchange amount will be the sole responsibility of Agency.
  - E. State certifies at the time this Agreement is written that sufficient funds are available and authorized for expenditure to finance costs of this Agreement within State's current appropriation or limitation.
  - F. Agency shall be responsible for all costs and expenses related to its employment of individuals to perform the work under this Agreement, including but not limited to retirement contributions, workers' compensation, unemployment taxes, and State and Federal income tax withholding.
  - G. Agency shall comply with all federal, state, and local laws, regulations, executive orders and ordinances applicable to the work under this Agreement, including, without limitation, the provisions of ORS 279.312, 279.314, 279.316, 279.320 and 279.555, which hereby are incorporated by reference. Without limiting the generality of the foregoing, Agency expressly agrees to comply with (i) Title VI of Civil Rights Act of 1964; (ii) Title V and Section 504 of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659A.142; (iv) all regulations and administrative rules established pursuant to the foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.
  - H. Agency, or its consultant, shall conduct the necessary preliminary engineering and design work required to produce final plans, specifications and cost estimates; purchase all necessary right of way in



City of Lebanon/ODOT  
Agreement No. 22,133

accordance with current State and Federal laws and regulations; obtain all required permits; be responsible for all utility relocations; advertise for bid proposals; award all contracts; perform all construction engineering; and make all contractor payments required to complete the Project.

- I. Agency shall compile accurate cost accounting records. Agency shall bill State in a form acceptable to State no more than once a month for costs incurred on the Project. State will reimburse Agency at 100 percent of the billing amount not to exceed \$107,824. The cost records and accounts pertaining to the work covered by this Agreement shall be retained for inspection by representatives of State for a period of three years following final payment. Copies shall be made available upon request.
- J. Agency shall upon completion of Project maintain and operate the Project at its own cost and expense.
- K. All employers, including Agency, that employ subject workers who work under this Agreement in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage unless such employers are exempt under ORS 656.126. Agency shall ensure that each of its subcontractors complies with these requirements.
- L. This Agreement may be terminated by mutual written consent of both parties.
  1. State may terminate this Agreement effective upon delivery of written notice to Agency, or at such later date as may be established by State, under any of the following conditions:
    - a. If Agency fails to provide services called for by this Agreement within the time specified herein or any extension thereof.
    - b. If Agency fails to perform any of the other provisions of this Agreement, or so fails to pursue the work as to endanger performance of this Agreement in accordance with its terms, and after receipt of written notice from State fails to correct such failures within 10 days or such longer period as State may authorize.
  2. Either party may terminate this Agreement effective upon delivery of written notice to the other party, or at such later date as may be established by the terminating party, under any of the following conditions:

City of Lebanon/ODOT  
Agreement No. 22,133

- a. If either party fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow either party, in the exercise of their reasonable administrative discretion, to continue to make payments for performance of this Agreement.
  - b. If Federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the work under this Agreement is prohibited or either party is prohibited from paying for such work from the planned funding source.
3. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the parties prior to termination.
- M. State and Agency hereto agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be invalid, unenforceable, illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.
6. Agency shall enter into and execute this Agreement during a duly authorized session of its City Council.
7. This Agreement and attached exhibits constitute the entire agreement between the parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either party unless in writing and signed by both parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of State to enforce any provision of this Agreement shall not constitute a waiver by State of that or any other provision.

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

The funding for this fund exchange program was approved by the Oregon Transportation Commission on November 17, 2003, as a part of the 2004-2007 Statewide Transportation Improvement Program.

The Program and Funding Services Manager approved the fund exchange on October 4, 2004.

City of Lebanon/ODOT  
Agreement No. 22,133

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

On September 16, 2002, the Director of the Oregon Department of Transportation approved Subdelegation Order No. 2, in which the Director delegates authority to the Deputy Director, Highway Division, to approve and execute agreements over \$75,000 when the work is related to a project included in the Statewide Transportation Improvement Program or in a line item in the approved biennial budget.

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

By \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

By \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

By \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

**APPROVED AS TO LEGAL  
SUFFICIENCY**

By \_\_\_\_\_  
Agency Counsel

Date \_\_\_\_\_

**Agency Billing Address:**  
City of Lebanon  
Ron Whitlatch  
925 Main Street  
Lebanon, OR 97355-3200

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

By \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

**APPROVAL RECOMMENDED**

By \_\_\_\_\_  
Technical Services Manager/  
Chief Engineer

Date \_\_\_\_\_

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

Date \_\_\_\_\_

**APPROVED AS TO LEGAL  
SUFFICIENCY**

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

Date \_\_\_\_\_



## Lebanon Public Library

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### LEBANON PUBLIC LIBRARY

Advisory Board Meeting Minutes

September 8, 2004

The Library Advisory Board meeting was called to order at 5:36 p.m. by Chairperson Carol Heibert. Attending were Glenda Claborn, Sharon Follingstad, Carol Heibert, Sue Spiker, Tom Stewart and Library Director Denice Lee.

The minutes of the August 11<sup>th</sup> meeting were approved.

#### **Director's Report:**

##### **Circulation:**

August 2004= 8050	YTD 2004= 16,352
August 2003= 7768	YTD 2003= 17,010

##### **Board Term:**

The Library Advisory Board welcomed Sharon Zwierzyna Follingstad to the Board. The board secretary wrote a letter of recommendation to the mayor for him to make the appointment. We are still waiting to hear of the appointment of Sharon and Carolyn Misa.

##### **Mah Donation:**

The library received a second \$5,000 donation from Kwong and Betty Mah in memory of Bing Mah. The board discussed whether the money should be spent for books since the library's book budget took such a huge hit during the budget process, or to go the Library-Senior Center Trust as a donation from the community to show support in grant applications being prepared for the architectural phase of the new library project. It was decided to wait awhile before doing anything, but it was unanimous that if we had an opportunity to buy more books, that's what we should do.

##### **Academy Square Recommendation:**

On August 11<sup>th</sup> the City Council approved the revision of the Academy Square Master Plan to create a 16,000+ square foot library with an attached community meeting room (approx. 4,000 square feet) as the anchor building at the front of the property. This plan leaves the large span of green space across the front of the property and provides a new library for the community as well as much needed meeting space for library programming, weddings, reunions, meetings and conferences. The goal is to develop the site as a community use campus with library services, senior services and community meeting opportunities. The existing gyms could be restored, replaced with new gyms, or replaced with other city facilities in the future.

**Steady Readers:**

The library director showed the board a new product purchased by the library with Ready to Read Grant money. The product is called a Steady Reader Read Along Pack. It is a sturdy container with an unabridged book on tape and a paperback book which patrons can use to listen to the tape and follow along in the book. This will be a piece of the library's efforts to develop a collection to help with literacy skills. The staff selected classic junior literature to help students with school reading assignments.

**Technical Training:**

The library director went to three days of technical training in Eugene, August 23-25. Part of the training involved Internet policies and procedures. After attending the session, the director was more convinced than ever that our procedure for signing patrons up for the Internet at the library needs to change. With board approval, the director will be exploring options for freeing the staff for more valuable uses of their time than scheduling and juggling Internet appointments.

**Fall Art Display:**

The October the library will host a Fall Art Display. We'll be advertising through the schools and through the newspapers and library so that patrons can bring art projects to the library for display. The library will not be providing pumpkins, as they have in the past, but patrons can bring in decorated pumpkins if they choose to.

**Ideas for Current Library Building:**

As part of the project to provide our community with a new library facility, the board was encouraged by the library director to be open to suggestions for possible uses of the existing library building.

**Hermiston:**

On a recent trip to Hermiston, the library director saw a former Lebanon resident now living there. The former patron related how much they miss the Lebanon Public Library because the staff was always so pleasant and helpful, and the selections for purchase were much better than at the Hermiston library. In fact, their staff and book selection was so poor that the patron opted to get a card in Richland, 35 miles away. It was a pat on the back for the Lebanon Public Library, but also a caution about what patrons really value in library services.

**FRIEND'S REPORT:**

There was no Friends report.

**ADJOURNMENT:**

The meeting was adjourned at 6:45 p.m.

**Next meeting October 13, 2004  
5:30 p.m.  
750 3<sup>rd</sup> Street  
Santiam Travel Station  
North End of Building where we used to meet**



# Lebanon Public Library

## LEBANON PUBLIC LIBRARY

Advisory Board Meeting Minutes

October 13, 2004

The Library Advisory Board meeting was called to order at 5:32 p.m. by Chairperson Carol Heibert. Attending were Sharon Follingstad, Carol Heibert, Harlan Mastenbrook, Carolyn Misa, Sue Spiker, Tom Stewart and Library Director Denice Lee.

The minutes of the September meeting were approved.

### **Director's Report:**

#### **Circulation:**

September 2004= 8171

YTD 2004= 24,523

September 2003= 8084

YTD 2003= 25,094

#### **Academy Square:**

On December 2 there will be a Sneak Preview hosted by the Lebanon Public Library-Senior Center Trust. It will be an invitation only event for community leaders and business people. The Trust board will give tours of the new Senior Center even though it won't be completed. The donor wall will also be unveiled. We will serve a beverage and finger foods. Denice asked the Library Advisory Board to help with set-up, serving and clean up. Sue Spiker will be available for clean up, Carol Heibert will set-up and serve, the Mastenbrooks will help wherever they can, and Sharon Follingstad can serve from 4:30 p.m. – 6:30 p.m.

#### **CybraryNSolution:**

Because of our association with the Albany Public Library, we have been able to purchase the Internet timing and reservation software CybraryN for \$324 instead of the \$1,500 quote the Director received last week.

#### **Cataloging Software:**

The library currently uses ITSMARC for its cataloging software. There is an annual fee of \$1,500 for this, which doesn't include access to audiovisual materials. Since the library is getting more and more audiovisual material added to the collection, the lack of this software creates a huge time issue for cataloging those materials. To add the audiovisual piece to our subscription would cost another \$800 annually. This is prohibitive. As a result of this situation, the director has been looking at trying cataloging software from OCLC which has recently been made available to smaller libraries. The annual fee for the OCLC software is \$900 and includes everything.

#### **Fall Art Display:**

The Fall Art Display has started at the library and will continue through November 15. We have already received several art pieces and a set of leaf drawings from a local grade school class. We'll be advertising through the schools and through the newspapers and library so that patrons can bring art projects to the library for display. The library will not be providing pumpkins, as they have in the past, but patrons can bring in decorated pumpkins if they choose to.

**EBSCOhost training:**

The Oregon State Library is making training available to all public libraries for EBSCOhost. This is the extremely large periodicals and newspaper database available to patrons remotely through the public libraries. Denice is trying to send as many of the library's staff as possible when the training is scheduled.

**L-net:**

Another program newly launched from the Oregon State Library for library staff and patrons is the online reference service L-net. Through this program library staff and patrons can either email reference questions to reference librarians at participating libraries, or they can actually chat with a reference librarian in regards to a reference questions. This can be done through the public library's Internet access or remotely from home with the user name and password available at the library.

**Linn Library League:**

The Linn Library League is making another \$350 available to the Lebanon Public Library for programming to promote the League's project to form a library district in Linn County. The library staff discussed possibilities at the October staff meeting, and will pursue the project at the next staff meeting.

**Christmas Party:**

The annual library Christmas Party will be held December 10<sup>th</sup> at the Mennonite Church at 11:30 a.m. The director encouraged board members to mark their calendars.

**Grants:**

The Lebanon Public Library-Senior Center Trust has been actively pursuing grant applications to fund the architectural phase of the library building project. Grants have been submitted to PacifiCorp, The Ford Family Foundation, Paul G. Allen Family Foundation and the Wheeler Foundation. The Ford Family indicated an interest in helping when more funding has been secured, and the Wheeler Foundation is unable to help at this time. In another development relating to grants, the City Administrator gave the library director a new set of Community Development Block Grant guidelines just released from the State of Oregon. The CDBG funding is now available to libraries for technical assistance. This would be a possibility for the \$300,000 needed to fund bid-ready architectural plans if the low-moderate income level in Lebanon meets the State's requirements.

**Friends Move:**

The Friends of the Library are making plans to move their books and book sale into the former library area at the new Senior Center. This will take place when the remodel project is complete. Jim Ruef has offered the Friends a city maintenance employee and a truck to assist with the move.

**Kits:**

The theme kits created with Ready to Read Grant money for daycare and preschool providers have been used less frequently by those patrons in recent months. In order to make these items available to the public, the director requested a change in the policy manual from a 2-week check out period to a 3-week check out period, and a change to remove the restriction that the kits be available to daycare and preschool providers only. The board approved these changes.

**FRIEND'S REPORT:**

The Friends reported a sales total of \$213.

**ADJOURNMENT:**

The meeting was adjourned at 6:17 p.m.

**Next meeting November 9, 2004**

**5:30 p.m.**

**750 3<sup>rd</sup> Street**

**Santiam Travel Station**

**North End of Building where we used to meet**

# Agenda Item 1

**PRESENTATION:**

**Lebanon/Albany Cooperative Adult Sports Program**

Presented by: Rick Barnett, City of Albany





# City of Lebanon

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## Administration

### MEMORANDUM

To: Mayor and City Council

DATE: November 5, 2004

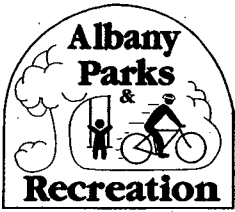
From: City Administrator

RE: Proposal for Lebanon/Albany Cooperative Adult Sports Program

Mr. Rick Barnett, from the City of Albany Parks and Recreation Department, will present the attached proposal to the City Council.

The program will be self-funded through user fees and, hence, has no budget impact other than some minimal staff time.

It would be a pilot program for this winter and spring. Mr. Barnett indicates that if the program merits expansion, and the City supports it, that more gym space and time are readily available from the Lebanon Community Schools.



City of Albany  
**PARKS AND  
RECREATION**

ADMINISTRATION  
333 Broadalbin SW  
P.O. Box 490  
Albany, OR 97321-0144  
(541) 917-7777  
FAX (541) 917-7776  
www.ci.albany.or.us

PARK MAINTENANCE  
2312 Willamette NE  
P.O. Box 490  
Albany, OR 97321-0144  
(541) 917-7759  
FAX (541) 917-7757

MAPLE LAWN PRESCHOOL  
1950 Salem Avenue SE  
P.O. Box 490  
Albany, OR 97321-0144  
(541) 917-7753

SENIOR CENTER  
489 Water Avenue NW  
Albany, OR 97321-2255  
(541) 917-7760  
FAX (541) 917-7761

October 5, 2004

Lebanon City Council  
c/o John Hitt  
925 Main Street  
Lebanon OR 97355

Dear Council Members:

I am scheduled to be at your November 10<sup>th</sup> meeting to speak with you briefly about the attached "Proposal for Lebanon/Albany Cooperative Adult Sports Program".

In effect we already serve the Lebanon community (approximately 20% of our participants come from the Lebanon area). We are asking for your approval to test and see if there is interest in more formally expanding our programs into Lebanon's service area. There are several advantages to this approach.

1. It gives Albany sports participants opportunity to compete with new or different teams.
2. It allows you to provide some level of adult sports programming with negligible city cost.
3. It allows us to get bigger which is necessary to meet our financial self support goals.
4. It starts as a pilot project that we can evaluate and move slowly forward.

At your council meeting I will be asking you for two things.

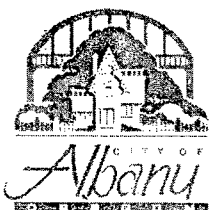
- Your support of this concept. (a go for it)
- A City of Lebanon contact that I can go to with questions, status reports and further discussion. (a go to)

Sincerely,

Rick Barnett  
Recreation Coordinator  
917-7773 or rick.barnett@cityofalbany.net

RJB

Enclosure: Proposal for Lebanon/Albany Cooperative Adult Sports Program



## Proposal for Lebanon/Albany Cooperative Adult Sports Program

### **Goal:**

Use the cooperative resources of the two cities to...

- Provide active recreational opportunities for the citizens of Lebanon.
- Increase the number of participants and interest level for Albany players.
- Provide programs with a neutral or positive financial impact on both partnering organizations.

### **Methodology**

- Begin small as a 6 month pilot project of basketball and volleyball open gyms. This allows us to assess interest and keeps the scope small enough that the open gyms could become self sustainable if necessary.
- Assess the interest of Lebanon area teams in a combined Albany/Lebanon league. If the interest level is good, include Lebanon teams in spring or fall 2005 volleyball and basketball leagues.
- We begin with one evening a week for each sport. The ideal start date would be Just after the first of January 2005

### **Partner's Responsibilities**

Albany – Develop programming. Provide supervisor. Provide first aid and emergency supplies. Make arrangements for gymnasiums. Evaluate and keep Lebanon's representative informed.

Lebanon – Communicate and promote the open gyms and partnership through the local newspaper and other sources. If program grows to more than drop in open gyms, the city will provide a registration site and office personnel to process registrations.

Both Partner's – This is all new ground so we will need to keep in communication and cooperatively solve challenges as they arise.

### **Financials**

Our cost for Lebanon school district gyms is \$5 per hour

Our cost for a gym supervisor (through Selectemp) is slightly less than \$10 per hour.

If we charge \$5 per participant for a two hour open gym (same as Albany) we should cover our costs.

The ideal situation would be Seven Oak middle school gyms where we can combine the programs and still get by with one gym supervisor.

For the pilot period (6 months) any net revenue will be put back into the program for necessary equipment. Once we recognize the level of success, the two partners will discuss level of service related needs, partner responsibilities and longer term financial arrangements.

# Agenda Item 2

**PRESENTATION:**

**Star Spangled Celebration – Grant Request**

Presented by: Warren Beeson



# City of Lebanon

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## Administration

### MEMORANDUM

To: Mayor and City Council

DATE: November 5, 2004

From: City Administrator

RE: Request for Tourism Funding

Warren Beeson, representing the Star Spangled Celebration Committee, is coming to request funding for the 4<sup>th</sup> of July Celebration for 2005.

As you may recall, in January 2004, the City Council approved \$6,750 for this event. This year, the request is for \$6,610, to be spent as outlined in Mr. Beeson's October 8, 2004 letter, included in this packet.

The Motel Tax fund has a current balance of \$20,557. Per City/Chamber of Commerce agreement, \$6,000 will be spent from this fund, leaving a net of approximately \$14,000 for other tourism activities.



813 Main St.  
Lebanon, OR 97355

Ph. (541) 451-1039  
Fax (541) 258-6951

E-mail – [july4th@gravagraphics.com](mailto:july4th@gravagraphics.com)

October 8, 2004

To: John Hitt, Administrator  
City of Lebanon

From: Warren Beeson, Executive Director  
Lebanon Community Foundation

Re: Grant request

First, I want to express, on behalf of the Foundation, our appreciation for the support of the City of Lebanon for our efforts on the inaugural Star-Spangled Celebration. The City's grant was instrumental in attaining the high level of success we were able to achieve. We believe we exceeded our goals in virtually every area; community participation, attendance, sponsorships, and programming. We were very pleased with the event, but now fear we have created a monster! We have to do even better in 2005. And we've already begun our efforts to do so. Once again, we are requesting financial support from the City in order to help achieve our goals.

We find that while the 2004 event was successful, the challenges are formidable for next year. We obtained many items such as street banners and signage, which will be re-used year after year. But because the facility is still undeveloped and amenities few, we found it necessary to rent many items required to conduct the event. These included: canopies, sound systems, heavy-duty electrical cable system, porta-potties, and lighting. The need for these remains, and in fact will be greater with the expected increase in attendance in 2005. We are requesting a financial grant from the City of Lebanon in the amount of \$6,610 to help defray these expenses for the event in 2005. A breakdown of budgeted expenses to be covered is:

Portable toilets & washers	\$ 600
Traffic and Parking Control	1,000
Canopy Rentals/ Purchase	1,830
Sound System Contracted Services	1,500
Electrical & Lighting Rentals	1,100
Signage (visitor directions)	220
	<hr/>
Total	\$6,610

I believe we made a great start on a marvelous new event for Lebanon and our region. Our Foundation remains committed to the success of the Celebration and we look forward to working together with the City to build the event and our community. Thank you for your consideration.

**BUDGET 2005**  
***Star-Spangled Celebration II***

<b><u>INCOME</u></b>	<b><u>2005</u></b>	<b><u>2004</u></b>
<b>Beginning Cash</b>	750	0
<b>Sponsors</b>	23,000	15,750
<b>Vendors / Games</b>	3,000	2,464
<b>Sales</b>	1,000	740
<b>City of Lebanon Grant</b>	6,610	6,750
<b>Donations</b>	1,000	2,870
	<hr/> 35,360	<hr/> 28,574
<b><u>EXPENSES</u></b>		
<b>Fireworks Display</b>	7,500	6,000
<b>Advertising / Promotion</b>	6,000	7,659
<b>Facilities / Grounds Prep.</b> <b>(Porta-Potties, Canopies, Supplies)</b>	4,000	3,093
<b>Sound / Lights / Stage</b>	2,000	1,220
<b>Printing / Signs</b>	750	1,663
<b>Traffic Control / Parking</b>	1,000	420
<b>Management / Operations</b>	1,000	675
<b>Entertainment</b>	2,500	3,424
<b>Insurance</b>	1,750	1,586
<b>Sales Inventory</b>	750	1,217
<b>Contingency</b>	1,000	46
	<hr/> 28,250	<hr/> 27,003
<b>Net Proceeds</b>	7,110	1,571

# Agenda Item 3





## LEBANON POLICE DEPARTMENT MEMORANDUM

TO: John Hitt, City Administrator

FROM: Michael D. Healy, Chief of Police

DATE: October 7, 2004

RE: Enforcement Code

CC:

---

The attached document contains an explanation memo authored by City Attorney McHill along with a draft ordinance addressing code enforcement. I have read and am in agreement with the contents of the ordinance and request that it be forwarded to Council for consideration.

## LEBANON CITY ATTORNEY

80 East Maple Street ▪ Lebanon, Oregon 97355 ▪ Phone: (541) 258-3194 ▪ Fax: (541) 258-7575

### MEMORANDUM

**DATE:** August 11, 2004

**TO:** John Hitt, City Administrator  
Michael Healy, Chief of Police

**FROM:** Thomas McHill, Lebanon City Attorney

**RE:** Enforcement Code

Chief Healy and I have been discussing the possibility of empowering non-sworn personnel to become involved in the enforcement of some Municipal Code provisions, such as the nuisance provisions. It would appear to make better use of the City's finances in enforcing some of these code provisions as the enforcement should not require the use of trained officers. Their time and expertise are probably better employed in doing other police work.

In addition, our current code provisions appear to limit the ability of enforcement to a quasi-civil process with the use of notice and possible hearing before the City Council, with abatement of nuisances, for instance, undertaken by the City with the hope that the costs might be recouped at some later time. It seems to me that a better enforcement tool would be to cite offenders into the Municipal Court where the Judge is more experienced in hearing cases involving the alleged violation of our code.

Therefore, I have drafted an "Enforcement Code" for consideration by the Council. This draft, modeled on the Linn County Code, empowers an enforcement officer, the building official, and other City officials to investigate and cite offenders into the Municipal Court. Violations prosecuted in such manner could carry a maximum fine of \$600. Every day of an offense is a separate offense. Failure to pay the fine could result in contempt of court, which, under Oregon law, can result in a jail sentence of up to six months. However, prosecution under the Enforcement Code would not result in the City being required to provide court appointed attorneys as violations would not result in the possibility of jail terms.

Enacting this code would not limit the City, in appropriate cases, to enforcement by notice, abatement and potential hearing before the City Council. This code will only give the City more discretion and flexibility in enforcing code provisions.

I would hope that the City Council would look upon this ordinance favorably. Please also note that the ordinance carries with it an emergency provision, making the ordinance effective immediately upon passage.

Exhibit "A"

**8.02.010 Title**

This Chapter, LMC 8.02.010 to 8.02.300, shall be known and may be cited as the "Lebanon Enforcement Code" or simply as the "Enforcement Code."

**8.02.020 Definitions**

For purposes of this Chapter, and in addition to the meaning given in ORS Chapter 153, the following definitions apply:

- (A) **"Enforcement Officer"** means an individual described in LMC 8.02.050.
- (B) **"Offense"** means "violation" as defined in subsection (D) of this section.
- (C) **"Peace Officer"** means a sheriff, constable, marshal, municipal police officer, or member of the Oregon State Police.
- (D) **"Violation"** means conduct prohibited by a City ordinance or the Lebanon Municipal Code (LMC), or by an Oregon administrative rule cited in this Code, and for which a fine is provided by such ordinance, Code, or rule, and which is not a crime. The term includes offenses described elsewhere as infractions, and for purposes of the Lebanon Municipal Code conduct described as an infraction shall be regarded as a violation.

**8.02.030 Purpose**

This Chapter is enacted pursuant to the authority granted to cities by Oregon Revised Statutes for the purpose of providing procedures to be used in enforcing the Lebanon Municipal Code.

**8.02.040 Application**

(A) Prosecution and enforcement of any violations of this Chapter of the Lebanon Municipal Code shall be conducted as violation proceedings under ORS Chapter 153 may, by order of the Chief of Police, be ("Violations and Traffic

Offenses") as supplemented by the provisions of this Chapter.

(B) In addition to violations of the Municipal Code, this Chapter applies to the prosecution of the conduct that is prohibited by the administrative rules described in this Code, for which City officials have enforcement authority.

(C) Whenever a provision of this Chapter refers to a Lebanon Municipal Code violation, such provision shall be interpreted to include violations of the administrative rules described in subsection (B) of this section.

(D) In all cases where the same violation is made punishable by different clauses or sections of any provision of this Code, or if the same violation is made punishable by more than one provision, the enforcement officer may elect under which to proceed. Not more than one recovery shall be had against the same person for the same violation, provided that the revocation of a license or permit shall not be considered a recovery or penalty so as to bar any other penalty being enforced, nor shall an order for abatement for nuisance, as provided by Chapter 8.08 of this Code, be considered a recovery or penalty.

**8.02.050 Enforcement officers**

(A) The Chief of Police may appoint, from time to time, one or more appropriate persons as enforcement officers for the purpose of implementing this Chapter.

(B) Enforcement officers serve at the pleasure of the Chief of Police.

(C) The authority of any enforcement officer may, by order of the Chief of Police, be limited to enforcement of specific violations or amended at any time.

(D) The following City officials are designated enforcement officers not requiring an order of appointment:

## Exhibit "A"

Planning Director, Building Official, Building Inspector, Public Works Director and Environmental Operations Manager. No order of appointment is required for the officials designated in this subsection.

(E) A person designated or appointed as an enforcement officer have all authority to carry out the purposes of this Chapter and the provisions of the Code under their authority.

(F) The City may establish a job position having as its principle function the enforcement of the Lebanon Municipal Code. Such enforcement officer shall have authority to enforce the Lebanon Municipal Code pursuant to this Chapter.

(G) Any person with lawful authority, other than by appointment or designation under this section, to enforce violations under this Chapter may enforce the Lebanon Municipal Code.

### **8.02.055 Other authority for enforcement of statutes and rules**

(A) A violation of a statute or administrative rule that is not adopted by this Code may be enforced in the manner provided in that statute or rule by a person having lawful authority to enforce such statute or rule.

(B) Notwithstanding any other provision in this Chapter, a violation of a statute or administrative rule that is defined by that statute or rule as a felony or misdemeanor may be enforced in the manner provided in that statute or rule by a person having lawful authority to enforce such statute or rule.

### **8.02.060 Nature of an enforcement prosecution under this Chapter**

(A) Prosecution and enforcement action of any violation of the Lebanon Municipal Code shall be brought as

violation proceedings under this Chapter.

(B) A violation of any provision in any chapter of the Lebanon Municipal Code that does not have an enforcement procedure in that chapter to dispose of that violation is subject to this Chapter.

(C) A judgment issued pursuant to this Chapter involves only a fine, and does not incur loss by forfeiture, suspension or revocation of any license or any other privilege or other civil penalty.

(D) A person against whom a judgment is issued pursuant to this Chapter does not suffer any disability or legal disadvantage, based upon said judgment, other than the enforcement of the judgment by the City of Lebanon.

(E) The parties in an enforcement action are the plaintiff, City of Lebanon, and the defendant, the person prosecuted.

### **8.02.080 Enforcement by City Attorney**

To the extent consistent with ORS 153.076, the City Attorney, upon information or complaint of any person having authority to enforce violations subject to this Chapter, may prosecute a case in which it appears there has been a violation of the Municipal Code.

### **8.02.090 Jurisdiction of courts**

The Municipal Court and the Linn County Circuit Court have concurrent jurisdiction of all violations under this Chapter.

### **8.02.100 Administrative search warrant**

#### **Procedures - Definitions**

As used in this chapter:

(A) "Place" means any building, premises, or other location subject to the Lebanon Municipal Code.

Exhibit "A"

(B) "**Judge**" means the Lebanon Municipal Judge, or any judge of the circuit court, or any justice of the peace.

**8.02.110 Enforcement authority**

(A) *Generally.* Any enforcement officer designated by this Chapter acting in the course of official duties is hereby authorized to make such inspections and take such actions as may be required to enforce this Code or other applicable statute or regulation applicable under this Chapter.

(B) *Inspections.* Whenever necessary to make an inspection to enforce any of the provisions of the Code or other applicable statute or regulation or whenever an enforcement officer has cause to believe that there exists in any place any condition or violation which makes such place a safety or health hazard or danger, the enforcement officer may enter a place at all reasonable times to inspect the same or to perform any duty imposed upon the enforcement officer by any State statute or regulation, or any City ordinance or Code or regulation, relating to safety or health. However, if such place is occupied, the enforcement officer shall first present proper credentials and request entry. If such entry is refused, the enforcement officer may apply for an inspection warrant under this Chapter to obtain entry.

**8.02.120 Issuance of inspection warrants for safety and health inspections**

Judges authorized to issue search warrants may, upon application of any enforcement officer in the course of official duties, issue an inspection warrant whenever an inspection or investigation of any place is required or authorized by any State statute or regulation, or any City ordinance or

Code or regulation, relating to safety or health, or as authorized in this Chapter. The inspection warrant is an order authorizing the safety or health inspection or investigation to be conducted at a designated place.

**8.02.130 Grounds for issuance of inspection warrants; requirements of affidavit**

(A) An inspection warrant shall be issued only upon cause. The inspection warrant shall be supported by affidavit. The affidavit shall particularly describe the following:

- (1) the applicant's status in applying for the warrant;
- (2) the statute or regulation, or the City ordinance or Code or regulation requiring or authorizing the inspection or investigation;
- (3) the place to be inspected or investigated;
- (4) the purpose for which the inspection or investigation is to be made;
- (5) the basis upon which cause exists to inspect; and
- (6) that entry has been sought but not granted, despite reasonable efforts to obtain entry for voluntary inspection.

This statement shall recite those efforts undertaken by the Code Enforcement Officer in seeking entry. For purposes of this subsection, reasonable efforts include but are not limited to, attempts to contact the owner or occupant of the place for which the warrant is sought to obtain entry either personally, by phone, or by letter sent certified mail return receipt requested which is returned or otherwise not accepted for delivery.

(B) Cause for an inspection warrant shall be deemed to exist:

- (1) if there is probable cause to believe that a condition of nonconformity which a safety or health statute or regulation, or City ordinance or Code or regulation

## Exhibit "A"

exists with respect to the particular place;

(2) an investigation is reasonably believed to be necessary in order to determine or verify whether there exists a condition of nonconformity with a safety or health statute or regulation, or City ordinance or Code or regulation with respect to the particular place, or

(3) for the purpose of carrying out a routine periodic inspection, if the place is other than a private residence.

(C) For the purpose of subsections (B) (1) and (B) (2) of this section, in determining whether an investigation is reasonably believed to be necessary an enforcement officer may look to the following factors:

- (1) the history of violations at the particular place if any;
- (2) the willingness to cure such violations if any;
- (3) whether or not a complaint regarding the particular place has been filed with the Code Enforcement Officer by a citizen; or
- (4) the willingness to accept voluntary inspections of the particular place.

The list of factors herein does not limit consideration of other factors by the enforcement officer, so long as the factors are of a type regularly relied upon by Code Enforcement Officers in determining whether an investigation is reasonably believed to be necessary, and so long as these factors are articulated in the affidavit required in subsection (A) of this section.

### **8.02.140 Procedure for issuance of inspection warrant by Judge.**

(A) Before issuing an inspection warrant, the judge may examine under oath the applicant and any other witness to be satisfied of the existence of grounds for granting such application.

(B) If the judge is satisfied that cause for the inspection or investigation exists and that the other requirements for granting the application are satisfied, the judge shall issue the warrant, particularly describing the name and title of the person or persons authorized to execute the warrant, the place to be entered and the purpose of the inspection or investigation. The warrant shall contain a direction that it be executed on any day of the week between the hours of 8:00 a.m. and 6:00 p.m., or where the judge has specially determined upon a showing that the inspection warrant cannot be effectively executed between those hours that it be executed at any additional or other time of the day or night.

### **8.02.150 Execution of inspection warrants**

(A) Except as provided in subsection (B) of this section, in executing an inspection warrant, the person authorized to execute the warrant shall, before entry, make a reasonable effort to present the person's credentials, authority and purpose to an occupant or person in possession of the place designated in the warrant and show the occupant or person in possession of the place the warrant or a copy thereof upon request.

(B) In executing an inspection warrant, the person authorized to execute the warrant need not inform anyone of the person's authority and purpose, as prescribed in subsection (A) of this section, but may promptly enter the designated place if it is at the time unoccupied or not in the possession of any person or at the time reasonably believed to be in such condition.

(C) A peace officer may be requested to assist in the execution of the inspection warrant.

Exhibit "A"

(D) An inspection warrant must be executed and returned to the judge by whom it was issued within 10 days from the date of issue, unless such judge before the expiration of such time, by endorsement thereon, extends the time for 5 days. After the expiration of the time prescribed by this subsection, the warrant is void unless executed.

**8.02.160 Refusal of entry when inspection warrant obtained**

(A) When an enforcement officer has obtained an inspection warrant to secure entry to a place, no owner or occupant or any other persons having charge, care or control of any place shall fail or neglect, after proper request is made as provided in this Chapter, to promptly permit entry therein by the enforcement officer for the purpose of the inspection or investigation.

(B) Any failure or neglect to promptly permit entry under this section shall be punishable under this Chapter.

**8.02.170 Enforcement Procedures -- Commencement of enforcement or civil action**

The enforcement official may do one or both of the following:

- (1) issue a citation pursuant to this Chapter; or
- (2) request the City Attorney to commence civil proceedings such as, but not limited to, a complaint seeking injunction, mandamus, abatement, fine or other appropriate remedy filed in a court in Linn County having jurisdiction, to prevent, temporarily or permanently enjoin, abate or penalize the violation; or
- (3) take appropriate enforcement action as provided in LMC 8.02.330.

**8.02.180 Method of enforcement discretionary**

(A) The decision by the City to seek enforcement of a particular violation is discretionary.

(B) Nothing in the Lebanon Municipal Code shall be construed to create a duty, enforceable in mandamus or other similar proceeding, on the part of the City or any of its officers or agents to enforce any particular violation of the Code.

**8.02.190 Enforcement by complaint for injunction or other relief**

(A) If the City determines that enforcement by means of a complaint for injunction, mandamus, abatement, or fine, or other appropriate proceeding, would be the most effective manner to proceed, the Board shall direct the City Attorney, to institute civil action to require compliance with the Code or penalize the violator or both.

(B) The City Attorney may then prosecute such action to judgment and may seek to enforce that judgment by appropriate legal means.

**8.02.200 Enforcement by citation filed in Municipal or Circuit Court**

(A) If the enforcement officer determines that enforcement of a violation defined by the Code by means of a citation filed in Circuit or Municipal Court is warranted, the enforcement officer may issue a citation under this Chapter.

(B) Any peace officer or enforcement officer may issue and serve a citation for violation of the Lebanon Municipal Code.

(C) Pursuant to ORS 153.030(8), any peace officer may serve a person with a citation on which an enforcement officer made a certification pursuant to ORS 153.045.

(D) Pursuant to ORS 153.030(8), the person making the certification required

Exhibit "A"

by ORS 153.045 is not required to be the person who serves the citation on the person believed to be in violation of the Code.

(E) Pursuant to ORS 153.042 and 153.030(8), an enforcement officer or peace officer may issue a violation citation pursuant to this Chapter even if the conduct alleged to constitute a violation does not take place in the presence of the officer, if the officer has reasonable grounds to believe that the conduct alleged constitutes a violation.

(F) Violation proceedings for the purpose of enforcing the Lebanon Municipal Code and this Chapter may be commenced only by enforcement officers or peace officers. No private party may initiate a violation proceeding pursuant to ORS 153.058 or other law.

**8.02.210 Hearing discretionary with court; exception**

(A) For any Code violation for which a citation has been issued, the Court may direct a hearing be held or may enter the appropriate judgment, impose a fine, direct that a fine be paid out of the base fine deposit, and unless the court orders otherwise, remit the balance to the defendant or to any other person designated by the defendant.

(B) No fine may be imposed in excess of the amount of the base fine deposited unless a hearing is held.

**8.02.220 Hearing procedures**

(A) The trial of any violation complaint shall be in accordance with this Chapter. Prosecution and enforcement of any violations of the Lebanon Municipal Code under this Chapter shall be conducted as violation proceedings under ORS Chapter 153 ("Violations and Traffic Offenses") as supplemented by the provisions of this Chapter.

(B) Proof of negligence, malfeasance, misfeasance, nonfeasance, willful conduct, knowing conduct, intentional conduct, or any other culpable mental state is not an element of any violation.

**8.02.230 Role of enforcement officers**

Notwithstanding ORS 9.160 and 9.320, in any trial of a violation under this Chapter, in which the City Attorney or other attorney is barred by statute from appearing on behalf of the City, the enforcement officer who issued the citation for the violation may present evidence, examine and cross examine witnesses and make arguments relating to:

- (A) the application of statutes and rules to the facts in the case;
- (B) the literal meaning of the statutes or rules at issue in the case;
- (C) the admissibility of evidence; and
- (D) proper procedures to be used in the trial.

**8.02.240 Prosecution of subsequent violations**

- (A) The prosecution of one violation complaint shall not bar the subsequent prosecution of additional City Code violations occurring or committed at the same time or as part of the same act or transaction or as part of the same occurrence as other Code violations.
- (B) Evidence of prior Code violations shall be admissible, subject to ORS 40.170, in any subsequent prosecution of any Code violation.

**8.02.250 Court costs**

- (A) The court shall charge court costs to the violator, including but not limited to the unitary and county assessments established under ORS 137.290 and 137.309, where:
  - (1) The violator admits a violation of a provision of the Code;



Exhibit "A"

(2) The violator fails to appear for the hearing or, following a hearing, is found to have violated a provision of the Code. (B) Court costs shall be as described in the most recent court costs/fee schedule adopted by the court. If the violator fails to pay the costs, the costs shall be entered as a judgment against the violator in the same manner and with like effect as a judgment for a fine.

**8.02.260 Fines**

All fines paid to the City shall be credited to the general fund to be used for general City purposes.

**8.02.270 Costs and disbursements**

(A) The City shall be entitled to recover all costs and disbursements that are reasonable and necessary expenses incurred in the successful prosecution of a violation complaint, other than for legal services, but including the costs, expenses, salaries and overhead costs of officers, employees and witnesses, the necessary expenses of taking depositions, the expense of publication of summons or notices, postage, compensation of expert witnesses, and the expense of copying any public or private record, book or document used as evidence in the trial.

(B) The costs and disbursements shall be allowed to the City in the same manner as a judgment for fines. When the City is entitled to recover costs and disbursements, the City may within 30 calendar days of judgment file with the court a signed and detailed statement identifying the amount of the costs and disbursements and shall provide a copy of the statement to the offender. The court shall award the costs and disbursements unless the court finds the costs or disbursements unreasonable. If the court so finds, the court shall award an amount for the costs and

disbursements that the court deems reasonable. No findings of fact or conclusions of law shall be necessary.

**8.02.280 Enforcement; penalties**

(A) The penalty for a violation of this chapter is a fine not more than \$600.

(B) For purposes of this Chapter a failure to comply with any provision of the Lebanon Municipal Code from day to day shall be a separate offense for each such day.

(C) If there is a violation of any provision identical to a statute of the State of Oregon with a lesser penalty attaching, punishment shall be limited to the lesser penalty prescribed in Oregon State law.

**8.02.300 Judgment of Abatement**

In addition to, and not in lieu of, any remedy allowed by this Chapter, and pursuant to ORS 153.090 (1)(e), as part of a judgment entered under this Chapter a court may order a violator to abate any violation of which the violator is found guilty or enters a plea of guilty or no contest. Any failure to abate the violation as ordered by the court shall be contempt of court.

# Agenda Item 4



# Oregon

Theodore R. Kulongoski, Governor

Department of Transportation

Right of Way Section  
355 Capitol Street NE  
Salem, Oregon 97301-3871

October 13, 2004

Telephone (503) 986-3600  
FAX (503) 986-3625

City of Lebanon  
Attn: Mr. Malcolm Bowie, P.E.  
925 Main Street  
Lebanon, OR 97355

File Code:

Regarding: Letter Agreement  
Project Name: US 20: Wheeler St. to Market St. (Lebanon) Sec.  
Highway: Santiam Highway  
County: Linn County  
Key No: 11799

The purpose of this letter is to serve as a letter agreement between the City of Lebanon (City) and the Oregon Department of Transportation (ODOT). In general ODOT has agreed to include in its US 20: Wheeler St. - Market St. (Lebanon) "Project" certain utility work required of and by the City.

This letter discusses the scope of utility work added to the contract, the project status and the parties' financial responsibilities. At the end of the letter a space is provided for your signature to express acceptance of the letter's conditions.

### Cost Responsibilities for ODOT and City

Since the City facilities are located on City street and State highway routed over City street, your facility relocations caused by the project are reimbursable per ORS 373.020. However, the City has included betterments and additional water line work not attributable to the project. This work is not reimbursable and must be paid by the City. Based on the information supplied by the City, the estimated cost to the City for the non-reimbursable water line work is \$32,710.50. Additional costs to be paid by the City are construction engineering costs associated with the non-reimbursable work in the estimated amount of \$1,726. A spreadsheet outlining the cost items between ODOT and the City is attached as Exhibit "A", and made a part of this agreement.

With regard to payment of funds, the Oregon Constitution states that the use of revenue from taxes on motor vehicle use and fuel must be used exclusively for highway purposes. This means that highway trust funds cannot be utilized for non-highway purposes, i.e., non-reimbursable utility work. Therefore, the cost of non-highway construction must be deposited with the agency administering the highway construction contract **in advance** of actual construction.

ODOT will conduct a public solicitation for the Project including the City's required utility work and award the contract in accordance with State statutes and ODOT rules. ODOT will act as administrator of the contract. City's sole responsibility will be for payment of costs chargeable for the non-reimbursable utility work undertaken on City's behalf by ODOT.

Upon award of the contract for the subject project, the City of Lebanon will be advised of the unit bid price for the above utility work submitted by the accepted low bid contractor. As soon as possible thereafter City will be required to forward a deposit to ODOT to cover the bid price and construction engineering for the above utility work.

At this time, no payment of funds is due. Once the bid amounts are known, I will forward another letter to you advising of this amount and requesting the payment. Please note that the bid costs could substantially vary from the estimated costs. You should be advised that the execution of this agreement means that the non-reimbursable utility work cannot be removed from ODOT's construction contract, even if the cost of the bid items is more than anticipated. The City will be responsible for paying all of the charges for the water line work.

Upon final completion and acceptance of the Project, the City shall have permanent ownership and maintenance responsibilities for the water line improvements that are constructed

When construction is complete, verification will be made of the expenditures for the ODOT contract. The City will be billed for any costs of the improvements that exceed the bid amount, or a refund will be issued for any excess funds that were collected. In making the deposit, the City of Lebanon has several payment options, which are listed as follows.

## **ADVANCE DEPOSIT OPTIONS**

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### **OPTION 1 CASH**

The City will make its check in the prescribed amount payable to the Oregon Department of Transportation and send it to:

**Oregon Department of Transportation  
Financial Services  
355 Capitol Street NE, Room 434  
Salem, OR 97301-3872  
503.986.3956  
Attn: Cash Receipts**

### **OPTION 2 LETTER OF CREDIT**

The City will obtain an irrevocable letter of credit for the prescribed amount from a bank, savings bank, trust company or saving association, and send it to:

**Oregon Department of Transportation  
Financial Services  
355 Capitol Street NE, Room 434  
Salem, OR 97301-3872  
Attn: Dottie Larson**

**Note:** The City's share of the costs must at all times be covered by some form of advance deposit. If the letter of credit expires before completion of the agency's share of the contracted work, the Local Agency must extend a letter of credit upon its expiration or choose to replace the balance of an expired letter of credit with either cash or a deposit in the Local Government investment Pool.

### **OPTION 3 LOCAL GOVERNMENT INVESTMENT POOL**

The City will wire transfer the prescribed amount from its bank to the State Treasurer's Office for deposit in the Local Government Investment Pool. The City will furnish the State Treasurer with an irrevocable limited power of attorney and a confirmation of deposit of funds to the Local Government Investment Pool and send a copy of both to:

**Oregon Department of Transportation  
Financial Services  
355 Capitol Street NE, Room 434  
Salem, OR 97301-3872  
Attn: Dottie Larson**

A sample Limited Power of Attorney form is attached.

The City will receive the interest, which is credited daily and posted monthly. A monthly statement showing transactions and accrued interest will be furnished by the State Treasurer for the account.

**Note:** If a blanket power of attorney has been previously submitted, the City will furnish to the Oregon Department of Transportation's Financial Services Section a copy of the confirmation of deposit of funds into the Local Government Investment Pool.

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For specific questions about the letter of credit or the Local Government Investment Pool, you can contact Dottie Larson at 503-986-3956.

If the terms set forth above are acceptable to City of Lebanon, please execute this letter agreement in the space provided below and return the original to this office. If you have any questions, please call me at 503-986-3658.

Cordially,



Matthew C. Caswell, PE, PLS  
Railroad & Utility Engineer  
355 Capitol St. NE  
Salem, OR 97301-3871  
(503) 986-3658

By signing this letter agreement, I agree to the conditions of the letter and acknowledge that the City of Lebanon is responsible for the cost of the non-reimbursable utility work. The City of Lebanon will compensate ODOT for that portion of non-reimbursable utility work added to ODOT's contract.

---

Sign and print the name and title of the City of Lebanon representatives.

**CITY OF LEBANON APPROVAL:**

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

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

**IRREVOCABLE  
LIMITED POWER OF ATTORNEY  
LOCAL GOVERNMENT INVESTMENT POOL**

The \_\_\_\_\_ hereby appoints the  
Local Government Unit

Investment Manager of the Oregon State excess Fund, as Attorney-in Fact for it and said officer shall have the Power of Attorney to negotiate fund transfers to the Oregon Department of Transportation, Financial Services Branch, and delivered to said officer by either Chief Financial Officer or Staff delegated the authority; for the State of Oregon, for the purpose of depositing the proceeds of such fund transfers to the account of the Oregon Department of Transportation, Financial Services branch with the State Treasurer.

The \_\_\_\_\_ has deposited with the State  
Local Government Unit

of Oregon Investment Pool the sum of \$ \_\_\_\_\_ in Account No. \_\_\_\_\_. The purpose of this deposit is to create a fund from which to pay its share of the cost of certain improvements to be made in connection with \_\_\_\_\_

Project Name

By this document it authorizes the Chief Financial Officer of the Oregon Department of Transportation to draw or delegate the authority to draw on the account to pay project costs. The signature of State upon a voucher in a form acceptable to the custodians of the State Investment Pool shall constitute proper authority for the withdrawal of money up to the total amount of the deposit identified above. Upon completion of the project, Local Government may request verification that all funds owed have been drawn so that excess funds may be released.

The authorized signatures shall be furnished by the Chief Financial Officer of the Oregon Department of Transportation to the State Treasury Department.

This Power of Attorney was authorized by \_\_\_\_\_  
Local Government Unit

this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by a vote of the majority of a quorum of its governing body.

Approved by:

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

**US 20: Wheeler St. - Market St. (Lebanon) Sec.**  
**City of Lebanon CE Responsibility Calculation**  
 October 14, 2004

**Exhibit "A"**

Total Waterline Estimate					
ITEM	CODE	UNIT	QUANTITY	UNIT COST	TOTAL
150 MM POTABLE WATER PIPE, FITTINGS AND COUPLINGS WITH RESTRAINED JOINTS AND CLASS A BACKFILL	1140.0148000F	M	4	\$233.00	\$932.00
200 MM POTABLE WATER PIPE, FITTINGS AND COUPLINGS WITH RESTRAINED JOINTS AND CLASS A BACKFILL	1140.0149000F	M	90	\$289.00	\$26,010.00
400 MM POTABLE WATER PIPE, FITTINGS AND COUPLINGS WITH RESTRAINED JOINTS AND CLASS A BACKFILL	1140.0153000F	M	50	\$583.00	\$29,150.00
200 MM GATE VALVE	1150.0104000E	EA	1	\$777.00	\$777.00
25 MM DOUBLE CHECK VALVE BACKFLOW PREVENTION ASSEMBLY	1150.0194000E	EA	1	\$1,665.00	\$1,665.00
200 MM TAPPING SLEEVE AND 150 MM VALVE ASSEMBLY	1150.0221000E	EA	1	\$1,776.00	\$1,776.00
200 MM TAPPING SLEEVE AND 200 MM VALVE ASSEMBLY	1150.0222000E	EA	1	\$1,998.00	\$1,998.00
MOVING EXISTING HYDRANTS	1160.0102000E	EA	1	\$3,996.00	\$3,996.00
25 MM WATER SERVICE CONNECTIONS	1170.0101000E	EA	6	\$1,665.00	\$9,990.00

Waterline Non-Reimbursable Calculations <sup>1</sup>					
ITEM	CODE	UNIT	Fully Non-Reimbursable Quantity <sup>2</sup>	UNIT COST	TOTAL
150 MM POTABLE WATER PIPE, FITTINGS AND COUPLINGS WITH RESTRAINED JOINTS AND CLASS A BACKFILL	1140.0148000F	M	0	\$233.00	\$0.00
200 MM POTABLE WATER PIPE, FITTINGS AND COUPLINGS WITH RESTRAINED JOINTS AND CLASS A BACKFILL	1140.0149000F	M	20	\$289.00	\$5,780.00
400 MM POTABLE WATER PIPE, FITTINGS AND COUPLINGS WITH RESTRAINED JOINTS AND CLASS A BACKFILL	1140.0153000F	M	21	\$583.00	\$12,243.00
200 MM GATE VALVE	1150.0104000E	EA	1	\$777.00	\$777.00
25 MM DOUBLE CHECK VALVE BACKFLOW PREVENTION ASSEMBLY	1150.0194000E	EA	0	\$1,665.00	\$0.00
200 MM TAPPING SLEEVE AND 150 MM VALVE ASSEMBLY	1150.0221000E	EA	0	\$1,776.00	\$0.00
200 MM TAPPING SLEEVE AND 200 MM VALVE ASSEMBLY	1150.0222000E	EA	0	\$1,998.00	\$0.00
MOVING EXISTING HYDRANTS	1160.0102000E	EA	0	\$3,996.00	\$0.00
25 MM WATER SERVICE CONNECTIONS	1170.0101000E	EA	2	\$1,665.00	\$3,330.00

**Total Fully Non-Reimbursable Amount<sup>1</sup> = \$22,130.00**

**Notes:**

- 1 This calculation used to determine City of Lebanon share of CE costs only; was not used to determine overall reimbursement amount (ODOT/City cost split).
- 2 "Fully Non-Reimbursable Quantity" equals the quantity of waterline work located outside of the "ODOT Project Limits". Betterments (e.g. increase in pipe size) are not included in this calculation.



**CITY OF LEBANON**

**Exhibit "A" - Preliminary Construction Cost Estimate**

Project Name: U.S. 20: Wheeler St. to Market St. (Lebanon) Sec.

Highway: Santiam Highway

Key No: 11799

Lower existing water main on Wheeler and Milton

September 2004

No.	ITEM DESCRIPTION	UNITS	QUANTITY	UNIT COST	TOTAL COST	OWNER/SPR	ADVANTAGE/WHITHIN THROUGH/THUMPS	EXISTING PIPE SIZE	PROPOSED PIPE SIZE	INCREASE (W/T)	COST SPLIT RESPONSIBILITY			
											ODOT	CITY OF LEBANON	ESTIMATED ODOT COST	ESTIMATED CITY COST
1	200mm Tapping Sleeve & 150mm Valve Assembly	EA	1	\$1,776.00	\$1,776.00	ODOT	1	NA	NA	NA	100.0%	0.0%	\$1,776.00	\$0.00
2	200mm Tapping Sleeve & 200mm Valve Assembly	EA	1	\$1,998.00	\$1,998.00	ODOT	1	NA	NA	NA	88.8%	11.1%	\$1,776.00	\$222.00
3	150mm Potable Water Pipe, Fittings and Couplings with Restrained Joints and Class 'B' Backfill	m	4	\$233.00	\$932.00	ODOT	4	150mm	150mm	\$0	100.0%	0.0%	\$932.00	\$0.00
4	200mm Potable Water Pipe, Fittings and Couplings with Restrained Joints and Class 'B' Backfill	m	7.5	\$289.00	\$2,167.50	ODOT	7.5	150mm	200mm	\$58.00	80.8%	19.4%	\$1,747.50	\$420.00
5	400mm Potable Water Pipe, Fittings and Couplings with Restrained Joints and Class 'B' Backfill	m	3	\$583.00	\$1,749.00	ODOT	3	250mm	400mm	\$219.00	62.4%	37.8%	\$1,092.00	\$657.00
6	Moving Existing Hydrants	EA	1	\$3,996.00	\$3,996.00	ODOT	1	NA	NA	NA	100.0%	0.0%	\$3,996.00	\$0.00
7	200mm Potable Water Pipe, Fittings and Couplings with Restrained Joints and Class 'B' Backfill**	m	82.5	\$289.00	\$23,842.50	City of Lebanon	59	150mm	200mm	\$58.00	57.7%	42.3%	\$13,747.00	\$10,095.50
8	200mm FLGxMJ Gate Valve	EA	1	\$777.00	\$777.00	City of Lebanon	0	150mm	200mm	NA	0.0%	100.0%	\$0.00	\$777.00
9	400mm Potable Water Pipe, Fittings and Couplings with Restrained Joints and Class 'B' Backfill**	m	47	\$583.00	\$27,401.00	City of Lebanon	28	250mm	400mm	\$219.00	37.2%	62.8%	\$10,192.00	\$17,209.00
10	25mm Water Service Connections	EA	6	\$1,665.00	\$9,990.00	City of Lebanon	4	25mm	25mm	NA	66.7%	33.3%	\$6,660.00	\$3,330.00
11	25mm Double Check Valve Backflow Assembly	EA	1	\$1,665.00	\$1,665.00	City of Lebanon	1	25mm	25mm	NA	100.0%	0.0%	\$1,665.00	\$0.00

TOTAL CONSTRUCTION COST: \$76,284.00

ESTIMATED ODOT RESPONSIBILITY: \$43,583.50

ESTIMATED CITY RESPONSIBILITY: \$32,710.50

\*Overall Project Split: ODOT 57.1% City of Lebanon 42.9%

\*Cost split % based on estimated financial responsibility versus total estimated project cost.

\*\*Cost increase based on difference between existing pipe size unit cost and proposed pipe size unit cost.

Estimated ODOT Financial Responsibility, Subtotal: \$43,583.50

October 7, 2004

Misc. Contracts & Agreements  
No. 21,463

**COOPERATIVE IMPROVEMENT AGREEMENT**  
US 20; Wheeler Street – Market Street  
City of Lebanon

THIS AGREEMENT is made and entered into by and between THE STATE OF OREGON, acting by and through its Department of Transportation, hereinafter referred to as "ODOT"; and THE CITY OF LEBANON, acting by and through its designated officials, hereinafter referred to as "City".

**RECITALS**

1. US 20, also known as North Santiam Highway, is a part of the state highway system under the jurisdiction and control of the Oregon Transportation Commission. Market Street and Wheeler Street are a part of the city street system under the jurisdiction and control of City.
2. By the authority granted in ORS 190.110, 366.572 and 366.576, ODOT may enter into cooperative agreements with the counties, cities, and units of local governments for the performance of work on certain types of improvement projects with the allocation of costs on terms and conditions mutually agreeable to the contracting parties.
3. By the authority granted in ORS 810.210, ODOT is authorized to determine the character or type of traffic control devices to be used, and to place or erect them upon state highways at places where ODOT deems necessary for the safe and expeditious control of traffic. No traffic control devices shall be erected, maintained, or operated upon any state highway by any authority other than ODOT, except with its written approval. Traffic signal work on this Project will conform to the current ODOT standards and specifications.

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

**TERMS OF AGREEMENT:**

1. For the purpose of providing acceptable traffic patterns on public highways, ODOT and City agree to interconnect 13 signals throughout the City in order to improve safety, provide smooth flow of traffic, increase the radii at four quadrants of two intersections (Milton and US 20; Wheeler Street and Morton Street and US 20) replace the traffic signals and luminaires at these intersections and perform minor modifications to the storm system hereinafter referred to as "Project". The location of the Project is approximately as shown on the sketch map attached hereto, marked Exhibit A, and by this reference made a part hereof.
2. The estimated cost of Project is \$1,118,000. The funds for this Project will be Federal and State funds available to ODOT, with ODOT providing the required federal match.

3. The maintenance and power responsibilities identified in Agreement number 17931, entered into on June 4, 2003 shall remain in effect. In the event of a conflict between Agreement number 17931 and this Agreement, Number 21,463, Agreement numbered 17931 shall control.
4. This Agreement shall become effective on the date all required signatures are obtained and shall remain in effect for the purpose of ongoing maintenance and power responsibilities for the useful life of the facilities constructed as part of the Project. The Project shall be completed within two calendar years following the date of final execution of this Agreement by both parties.

#### **CITY OBLIGATIONS**

1. City shall, at its own expense, be responsible for and provide power to the luminaries installed as a part of this Project.
2. City hereby grants ODOT the right to enter onto and occupy City right-of-way as necessary for the performance of construction of the Project and for necessary maintenance of the traffic signal equipment.
3. City shall, at its own expense, be responsible for and maintain all features outside the back of the curb, with the exception of signs, for the useful life of the facilities constructed as part of the Project. This includes maintenance, repairs, and any future costs associated with sidewalks and landscaping created as part of the Project.
4. City hereby delegates its authority to ODOT to act as City's agent in initiating and resolving any utility relocations and/or adjustments. Said utility relocations shall be accomplished according to the terms and conditions as described in Paragraph 3 of ODOT Obligations.
5. City, by execution of this Agreement, gives its consent as required by ORS 373.030(2) and ORS 105.760 to any and all changes of grade within the City limits, and gives its consent as required by ORS 373.050(1) to any and all closure of streets intersecting the highway, if any there be in connection with or arising out of the Project covered by the Agreement.
6. All employers, including City, that employ subject workers who work under this Agreement in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage unless such employers are exempt under ORS 656.126. City shall ensure that each of its subcontractors complies with these requirements.
7. City acknowledges and agrees that ODOT, the Secretary of State's Office of the State of Oregon, the federal government, and their duly authorized representatives shall have access to the books, documents, papers, and records of City which are directly pertinent to the specific agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of three years after completion of Project. Copies of applicable records shall be made available upon request. Payment for costs of copies is reimbursable by ODOT.
8. City shall comply with all federal, state, and local laws, regulations, executive orders and ordinances applicable to the work under this Agreement, including, without limitation, the provisions of ORS 279.312, 279.314, 279.316, 279.320 and 279.555, which hereby are

incorporated by reference. Without limiting the generality of the foregoing, City expressly agrees to comply with (i) Title VI of Civil Rights Act of 1964; (ii) Title V and Section 504 of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659A.142; (iv) all regulations and administrative rules established pursuant to the foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.

## **ODOT OBLIGATIONS**

1. ODOT, or its consultant, shall conduct the necessary preliminary engineering and design work required to produce final plans, specifications, and cost estimates for the Project; obtain any required right-of-way; obtain all required permits; perform all construction engineering and inspection, including all required traffic studies, materials testing and quality documentation; prepare all bid documents; advertise and award all contracts; pay all contractor costs; provide project management services and other necessary functions for sole administration of the construction contract entered into for this Project.
2. ODOT shall, at its own expense, be responsible for construction installation and maintenance of the signs and the improvements of the roadway from curb to curb constructed as part of the Project, with the exception of features described in Paragraph 3 of City Obligations.
3. ODOT shall resolve any utility issues by initiating utility relocations and/or adjustments, pursuant to Title 23, CFR (Code of Federal Regulations) Part 645; State law; and ODOT policies.
4. ODOT shall be responsible for the installation and replacement of the traffic signals, as well as inspection, signal timing and turn on.
5. ODOT shall be responsible for all construction costs associated with this Project. City shall be responsible for power costs.
6. ODOT's Consultant Project Manager (CPM) for this Project is the Mid-Willamette Valley Area 3 CPM, 455 Airport Rd. Building A, Salem, Oregon 97301-5397. Telephone No. 503-986-2900.

## **GENERAL PROVISIONS**

1. ODOT and City agree that a mutual review of the construction plans will be conducted prior to advertisement for construction bid proposals.
2. This Agreement may be terminated by mutual written consent of both parties. ODOT may terminate this Agreement effective upon delivery of written notice to City, or at such later date as may be established by ODOT, under any of the following conditions:
  - a. If City fails to provide services called for by this Agreement within the time specified herein or any extension thereof.
  - b. If City fails to perform any of the other provisions of this Agreement, or so fails to pursue the work as to endanger performance of this Agreement in

accordance with its terms, and after receipt of written notice from ODOT fails to correct such failures within 10 days or such longer period as ODOT may authorize.

- c. If ODOT fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow ODOT, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement.
- d. If federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the work under this Agreement is prohibited or if ODOT is prohibited from paying for such work from the planned funding source.

Any termination of this Agreement shall not prejudice any rights or obligations accrued to the parties prior to termination.

- 3. If City fails to maintain facilities in accordance with the terms of this Agreement, ODOT, at its option, may maintain the facility and bill City, seek an injunction to enforce the duties and obligations of this Agreement or take any other action allowed by law.
- 4. This Agreement and attached exhibits constitute the entire agreement between the parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either party unless in writing and signed by both parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of ODOT to enforce any provision of this Agreement shall not constitute a waiver by ODOT of that or any other provision.

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

This Project was approved by the Oregon Transportation Commission on November 17, 2003 as a part of the 2004-2007 Statewide Transportation Improvement Program, Key number 11799.

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

*Signature Page to Follow*

On September 6, 2002, the Director of the Oregon Department of Transportation approved Subdelegation Order No. 2, in which the Director delegates authority to the Deputy Director, Highway Division to approve and execute agreements over \$75,000 when the work is related to a project included in the Statewide Transportation Improvement Program.

CITY OF LEBANON, by and through its  
designated officials

By \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

By \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

**APPROVED AS TO LEGAL SUFFICIENCY**

By \_\_\_\_\_

City Legal Counsel

Date \_\_\_\_\_

**APPROVED AS TO LEGAL SUFFICIENCY**

By \_\_\_\_\_

Assistant Attorney General

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

**Agency Contact:**

James Ruef, Public Works Director  
City of Lebanon  
925 Main Street  
Lebanon OR 97355-3200

STATE OF OREGON, by and through  
its Department of Transportation

By \_\_\_\_\_

Deputy Director, Highway Division

Date \_\_\_\_\_

**APPROVAL RECOMMENDED**

By \_\_\_\_\_

Technical Services Manager/Chief Engineer

Date \_\_\_\_\_

By \_\_\_\_\_

Region 2 Manager

Date \_\_\_\_\_

By \_\_\_\_\_

Area 3 Manager

Date \_\_\_\_\_

By \_\_\_\_\_

District 4 Manager

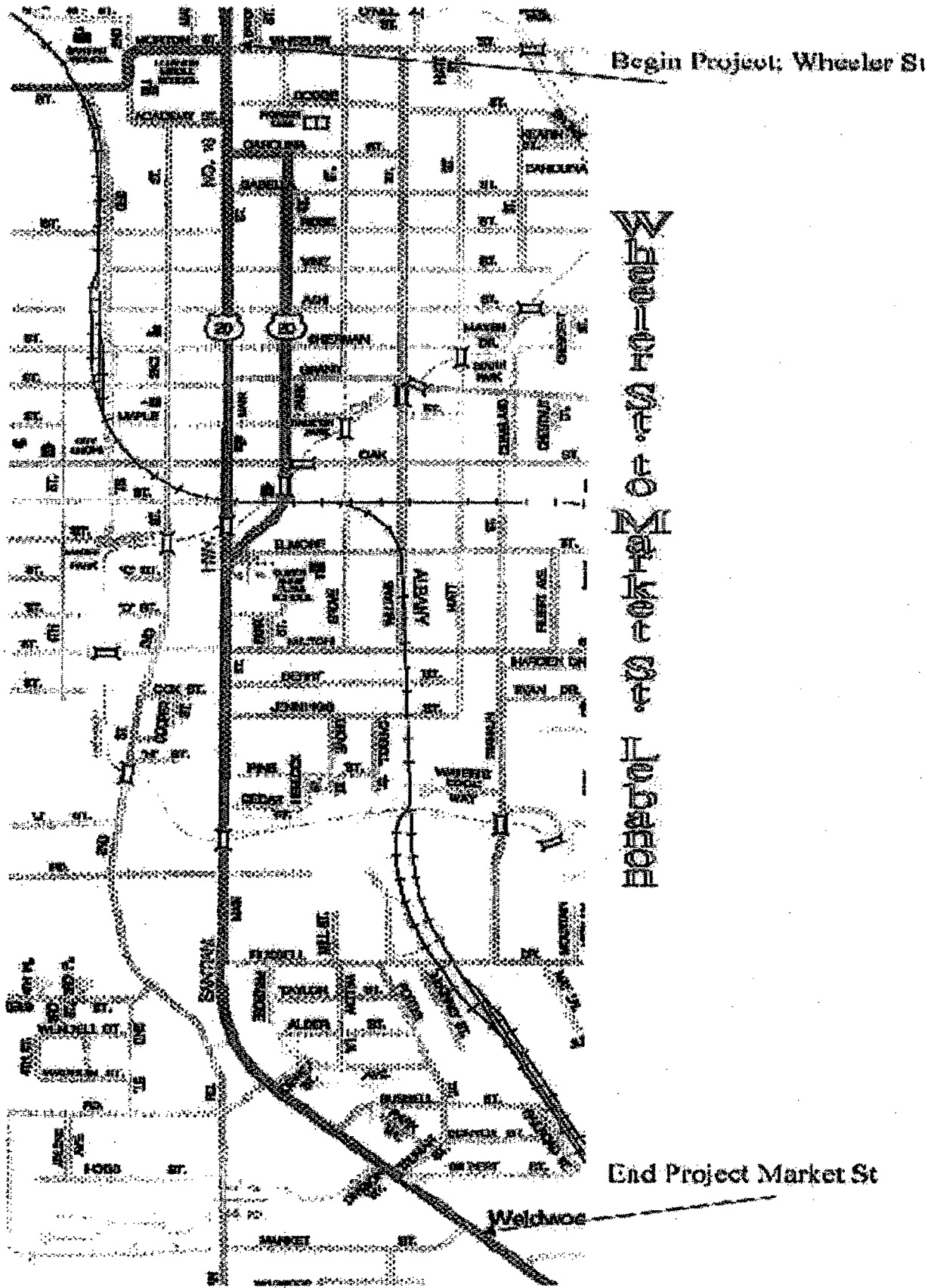
Date \_\_\_\_\_

By \_\_\_\_\_

Region 2 Electrical Manager

Date \_\_\_\_\_

EXHIBIT A



# Agenda Item 5





# CITY OF LEBANON

## PUBLIC WORKS DEPARTMENT - CAPITAL IMPROVEMENTS MEMORANDUM

**TO:** John Hitt, City Administrator  
**FROM:** Malcolm Bowie City Engineer *MJB*  
**SUBJECT:** Local Agency agreement 22111 between City of Lebanon and ODOT  
Railroad for safety improvements at the Hansard railroad crossing.

**DATE:** November 5, 2004

This memo requests City Council approval of the City to enter into agreement with the State rail Division to design and construct proposed safety improvements to the Railroad-Highway Crossing at Hansard Avenue. The documents are included for review.

### BACKGROUND

ODOT Rail Division has instigated this safety improvement. The crossing as it now exists consists of a two track crossing with passive warning devices including crossbucks, advance warning signs, advance warning pavement markings and stop signs. On May 15 2004 a diagnostic team including the city met on site and recommended crossing alterations for public safety, convenience and welfare. The proposed improvement will now include a flashing light and automatic gate signals at the crossing. The roadway as shown on the submitted plan is to be widened to 3 lanes and sidewalks to accommodate future street improvements.

Project funding is 100% through Oregon Department of Transportation Federal Section 130 funds.

City Staff will perform the design and construction management of the street improvement items.

It is anticipated construction will be in the summer of 2005.

### RECOMMENDATION

I recommend that City Council pass a motion approving the city to sign Agreement No. 22111 between the City of Lebanon and State of Oregon for the Hansard Avenue Rail Crossing Safety Project.



# Oregon

Theodore R. Kulongoski, Governor

## Department of Transportation

Rail Division

555 13th Street NE, Suite 3

Salem, OR 97301-417

Telephone (503) 986-43

FAX (503) 986-3183

TTY (503) 986-3416

October 1, 2004

File Code:

MALCOM BOWIE, CITY ENGR  
CITY OF LEBANON  
853 MAIN ST  
LEBANON OR 97355

**RX 1181: In the Matter of the Investigation on the Department's Own Motion into the Need for Safety Improvements at the Railroad-Highway Grade Crossing at Hansard Avenue 706 and ALBANY & EASTERN RAILROAD COMPANY (AERC), Mill City Branch (West End), in Lebanon, Linn County, Oregon.**

Please find attached four original draft copies of Agreement No. 22111 for the proposed roadwork on the Hansard Avenue Rail Crossing Safety Project (RX 1181) with three attachments. Please review these, and if everything is acceptable, have the appropriate City official please sign all four copies and return three copies to me for further processing. I will then obtain the required ODOT signatures and return a fully executed original copy to you.

Note that no work is to proceed on the project until written authorization is given from this office, if federal reimbursement is desired. This notice to proceed will be given after the Intergovernmental Agreement is in place, the Prospectus Parts 1, 2, and 3 completed, and programming of funds received.

I look forward to working with you and City of Lebanon on this project. I think we are off to a great start on the project, and I really appreciate the City's teamwork and efforts to date.

Please call me if you have any questions.

Glen Kirkpatrick  
Senior Rail Crossing Safety Specialist  
(503) 986-4097 (voice), (503) 986-3183 (FAX)

Enclosures

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**LOCAL AGENCY AGREEMENT  
RAIL-HIGHWAY CROSSINGS PROGRAM PROJECT**

THIS AGREEMENT is made and entered into by and between THE STATE OF OREGON, acting by and through its Department of Transportation, hereinafter referred to as "State", and the City of Lebanon, a municipal corporation of the State of Oregon, acting by and through City Officials, hereinafter referred to as "Agency".

**RECITALS**

1. By the authority granted in ORS 366.770 and 366.775, State may enter into cooperative agreements with counties and cities for the performance of work on certain types of improvement projects with the allocation of costs on terms and conditions mutually agreeable to the contracting parties.

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

1. Under such authority, State and Agency plan and propose to alter the existing railroad-highway crossing at Hansard Avenue, Crossing No. CLB687.6, hereinafter referred to as "project". The project description and scope of work are described in Department Order No. 50254, marked Exhibit A, and by this reference made a part hereof.
2. The project shall be conducted as a part of the Rail-Highway Crossings Program under Title 23, United States Code. The State shall be responsible for the match for federal funds. Engineering, right of way, and construction costs for the project as depicted by Exhibit A are reimbursable under this program. Agency shall be responsible for all costs of any additional highway work it chooses to add to the project which is not depicted by Exhibit A.
3. The term of this agreement shall begin upon execution of the agreement by all parties and shall terminate on upon completion of project and final payment.
4. The Special and Standard Provisions attached hereto, marked Attachments 1 and 2, respectively, are by reference made a part hereof. The Standard Provisions apply to all federal aid projects and can be modified only by the Special Provisions. The parties hereto mutually agree to the terms and conditions set forth in Attachments 1 and 2. In the event of a conflict, this agreement shall control over the attachments, and Attachment 1 shall control over Attachment 2.
5. Agency shall adopt an ordinance or resolution authorizing its City officials to enter into and execute this agreement.

6. Agency, as a recipient of grant funds, pursuant to this agreement with the State, shall assume sole liability for Agency's breach of the conditions of the grant, and shall, upon Agency's breach of grant conditions that requires the State to return funds to FHWA, the grantor, hold harmless and indemnify the State for an amount equal to the funds received under this agreement; or if legal limitations apply to the indemnification ability of Agency, the indemnification amount shall be the maximum amount of funds available for expenditure, including any available contingency funds or other available non-appropriated funds, up to the amount received under this agreement.
7. This agreement may be terminated by mutual written consent of both parties. State may terminate this agreement effective upon delivery of written notice to City, or at such later date as may be established by State, under any of the following conditions:
  - a. If City fails to provide services called for by this agreement within the time specified herein or any extension thereof.
  - b. If City fails to perform any of the other provisions of this agreement, or so fails to pursue the work as to endanger performance of this agreement in accordance with its terms, and after receipt of written notice from State fails to correct such failures within 10 days or such longer period as State may authorize.
  - c. If State fails to provide payment of its share of the cost of the project.
  - d. If State fails to receive funding, appropriations, limitations or other expenditure authority at levels sufficient to pay for the work provided in the agreement.
  - e. If Federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the work under this agreement is prohibited or State is prohibited from paying for such work from the planned funding source.
8. Any termination of this agreement shall not prejudice any rights or obligations accrued to the parties prior to termination.
9. Agency shall enter into and execute this agreement during a duly authorized session of its City Council.
10. This agreement and attached exhibits constitute the entire agreement between parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this agreement. No waiver, consent, modification or change of terms of this agreement shall bind either party unless in writing and signed by both parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure

Docket No.  
Misc. Contracts & Agreements No.

of State to enforce any provision of this agreement shall not constitute a waiver by State of that or any other provision.

This project was approved by the Oregon Transportation Commission as part of the Statewide Transportation Improvement Program, Highway/Rail Crossing Program.

(Choose the appropriate Approval Paragraph)

On October 24, 2002, the Director of the Oregon Department of Transportation approved Subdelegation Order No. 15, in which the Director grants authority to the Deputy Directors, Division Managers, Chief of Staff, Technical Services Manager/Chief Engineer, Branch and Region Managers for their respective Branch or Region, to approve and execute agreements up to and over \$75,000 when the work is related to a project included in the Statewide Transportation Improvement Program, other system plans approved by the Commission such as the Traffic Safety Performance Plan, or in a line item in the approved biennial budget.

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

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

Approval Recommended:

\_\_\_\_\_  
Kelly Taylor,  
Rail Division Administrator

Approved as to legal sufficiency  
(If required by agency)

By \_\_\_\_\_  
Legal Counsel

**City of Lebanon, by and through its  
Officials**

By \_\_\_\_\_

By \_\_\_\_\_

Date \_\_\_\_\_

**BEFORE THE OREGON DEPARTMENT  
OF TRANSPORTATION**

**RX 1181**

In the Matter of the Investigation on the Department's )  
Own Motion into the Need for Safety Improvements )  
at the Railroad-Highway Grade Crossing at Hansard )  
Avenue 706 and ALBANY & EASTERN RAILROAD )  
COMPANY (AERC), Mill City Branch (West End), in )  
Lebanon, Linn County, Oregon. )

**ORDER**

In the furtherance of its duties in the administration of ORS 824.206, Rail Division staff has investigated the adequacy of the safety at the subject grade crossing. The affected railroad is Albany & Eastern Railroad Company (AERC). The public authority in interest is City of Lebanon.

A diagnostic team reviewed the crossing site on May 15, 2004. The team consisted of representatives from AERC, City of Lebanon, and ODOT Rail Division. The diagnostic team reached agreement regarding the proposed safety improvements at the crossing. Based upon that agreement, by letter dated August 3, 2004, staff served a Proposed Final Order (PFO) and its Appendix A for all parties to review and acknowledge their agreement with its terms. No objections to the terms of the PFO were received from any party.

All parties in this matter have agreed that the proposed crossing alterations are required by the public safety, necessity, convenience and general welfare. Therefore, under ORS 824.214, the Department may enter this Order without hearing.

Appendix A to this Order depicts the crossing vicinity of Hansard Avenue, including the alignment of the roadway and tracks at the crossing. It also illustrates the scope of proposed work at the crossing. The track intersects the roadway at an angle of  $\approx 66$  degrees. The two-track crossing is equipped with passive warning devices consisting of crossbucks, advance warning signs, advance warning pavement markings, multiple tracks signs, and vehicle STOP signs. The average daily traffic volume is approximately 521 vehicles at the crossing, and is expected to increase in the near future. The average speed of vehicles is approximately 25 miles per hour (mph). There is a daily average of two freight trains and 20 or more switch trains over the crossing. The maximum authorized speed on this track is 10 mph. There has been one reported train-vehicle collision at the crossing in the last 10 years. The collision resulted in no injuries.

It is proposed that flashing light and automatic gate signals be installed at the crossing. The automatic signals will be installed to accommodate the roadway configuration, as depicted in Appendix A to this Order. It is further proposed that the crossing be reconstructed to accommodate the travel lanes and sidewalks depicted in Appendix A to this Order.

ORDER NO. 50254

From the foregoing, the Department finds that the requested crossing alterations are required by the public safety, convenience and general welfare, and that it is appropriate to authorize expenditure of federal Section 130 funds, as set forth in ORS 824.240(3) and 824.250, in the amount agreed upon by the parties.

IT IS THEREFORE ORDERED that:

1. The authority to alter the crossing is granted. All alterations shall be substantially in progress within 15 months from the date of approval of federal funds for this project.
2. City of Lebanon shall:
  - a. Subject to reimbursement as set forth below, construct that portion of the crossing lying outside lines drawn perpendicular to the end of ties of each track to accommodate the roadway configuration and sidewalks, as depicted in Appendix A to this Order. The roadway approaches shall comply with OAR 741-120-0020.
  - b. Subject to reimbursement as set forth below, furnish and install standard curb according to OAR 741-110-0030(7) adjacent to the ordered automatic signals. Curbs shall commence not less than 10 feet from the centerline of the nearest track and extend at full height not less than 50 feet in advance of the automatic signals.
  - c. Subject to reimbursement as set forth below, furnish and install standard curb median islands, as depicted in Appendix A to this Order. The median islands shall be located not less than 10 feet from the nearest rail.
  - d. Subject to reimbursement as set forth below, furnish and install two stop clearance lines at the crossing, as depicted in Appendix A to this Order, located according to OAR 741-110-0040(4).
  - e. Subject to reimbursement as set forth below, furnish and install advance warning signs and advance warning pavement markings on the roadway approaches to the crossing, as depicted in Appendix A to this Order. The signs and markings shall be located according to OAR 741-110-0040(5).
  - f. Maintain the ordered advance warning signs, advance warning pavement markings, stop clearance lines, median islands, standard curbs, that portion of the crossing lying outside lines drawn perpendicular to the end of ties of each track at the crossing, and bear all the costs.
3. AERC shall:
  - a. Subject to reimbursement as set forth below, procure crossing surfacing material to accommodate the roadway configuration and sidewalks, as depicted in Appendix A to this Order.

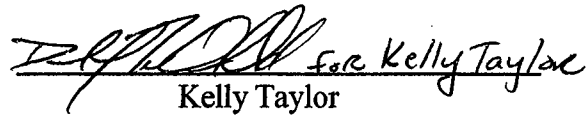
ORDER NO. 50254

- b. Subject to reimbursement as set forth below, furnish and install two Standard No. 2 flashing light signals, equipped with Standard No. 1M multiple tracks signs, and two Standard No. 4 automatic gate signals at the crossing. The signals shall be located as depicted in Appendix A to this Order and activated according to OAR 741-110-0070.
  - c. Subject to reimbursement as set forth below, remove the previously ordered Standard No. 1 crossbucks.
  - d. Using the surfacing material obtained under paragraph 3.a. above, reconstruct that portion of the crossing lying between lines drawn perpendicular to the end of ties at the crossing to accommodate the roadway configuration and sidewalks, as depicted in Appendix A to this Order, and bear all the costs.
  - e. Maintain the ordered automatic signals and circuitry, multiple tracks signs, and that portion of the crossing lying between lines drawn perpendicular to the end of ties of each track at the crossing, and bear all the costs.
  - f. Notify the Rail Division of the Department in writing or by facsimile transmission not less than five working days prior to the date that the ordered automatic signals will be activated and placed in service.
- 4. Using Section 130 federal funding, the Department shall bear 100 percent of the cost of work items in paragraphs 2.a., 2.b., 2.c., 2.d., 2.e., 3.a., 3.b., and 3.c.
  - 5. Each party shall notify the Rail Division of the Department in writing upon completion of its portion of the project.
  - 6. Upon completion of the ordered reimbursable work, City of Lebanon and AERC shall present claims for reimbursement for Department approval.

All previous Orders of the Public Utility Commission or the Department pertaining to this crossing, not in conflict with this Order, remain in full effect.

Made, entered, and effective

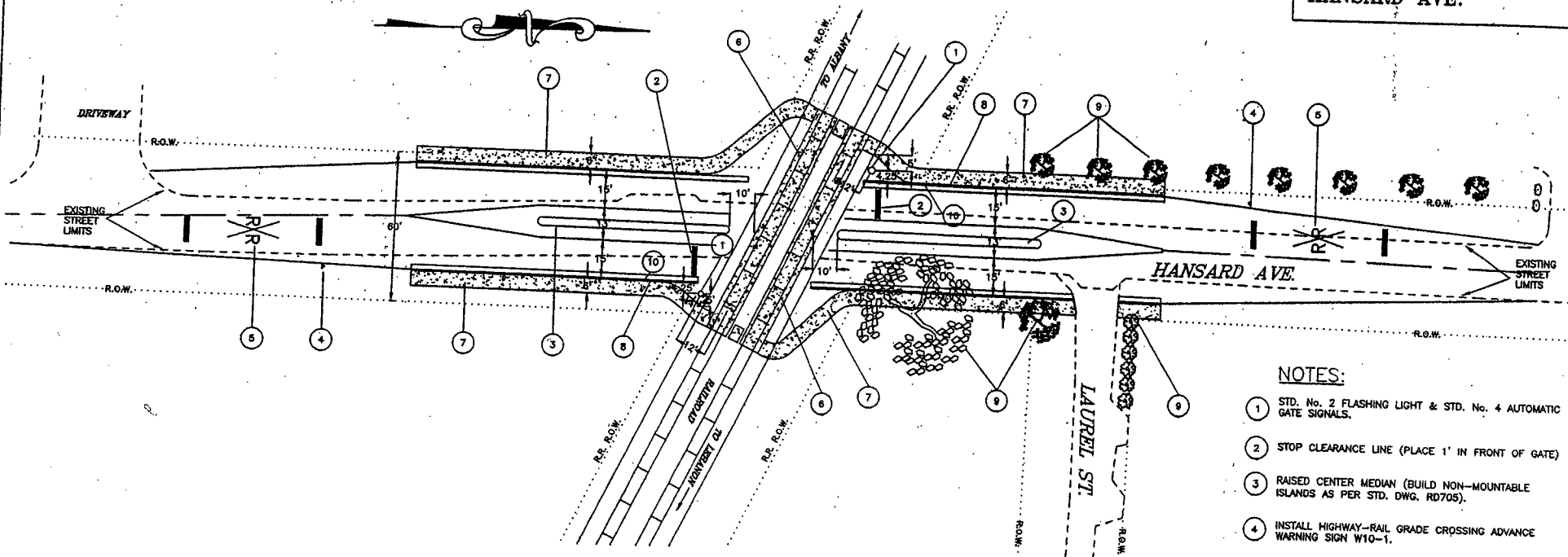
September 28, 2004

 for Kelly Taylor

Kelly Taylor  
Rail Division Administrator



ORDER NO. 50254  
 APPENDIX A  
 PAGE No.  
 CROSSING No. CLB-687.60  
 HANSARD AVE.



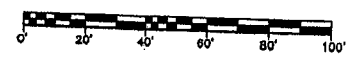
**NOTES:**

- ① STD. No. 2 FLASHING LIGHT & STD. No. 4 AUTOMATIC GATE SIGNALS.
- ② STOP CLEARANCE LINE (PLACE 1' IN FRONT OF GATE)
- ③ RAISED CENTER MEDIAN (BUILD NON-MOUNTABLE ISLANDS AS PER STD. DWG. RD705).
- ④ INSTALL HIGHWAY-RAIL GRADE CROSSING ADVANCE WARNING SIGN W10-1.
- ⑤ INSTALL ADVANCE WARNING PAVEMENT MARKING, 150 FT. MINIMUM FROM STOP CLEARANCE LINE.
- ⑥ RAILROAD CROSSING SURFACING.
- ⑦ CONSTRUCT SIDEWALK.
- ⑧ CONSTR. 7" FACE BARRIER CURB TO BEGGING NOT LESS THAN 10' FROM CENTERLINE OF TRACKS AND EXTEND NOT LESS THAN 50' IN ADVANCE OF SIGNAL.
- ⑨ REMOVE TREE.
- ⑩ 50' NO PARKING ZONE ON THE APPROACH LANE IN ADVANCE OF EACH SIGNAL (PAINT CURB YELLOW)



CITY OF  
 LEBANON

RAILROAD CROSSING  
 HANSARD AVE.



**ATTACHMENT NO. 1**

**SPECIAL PROVISIONS**

**Docket No. RX1181  
Misc. Contracts & Agreements No. 22111**

- 1. Construction work on this project is estimated to be more than \$50,000. The project will be constructed by contract, let by the State.**
- 2. Agency shall, as a federal-aid participating preliminary engineering function, conduct the necessary field surveys, environmental studies, traffic investigations, foundation explorations, and hydraulic studies, identify and obtain all required permits, and perform all preliminary engineering and design work required to produce final plans, preliminary/final specifications and cost estimates.**
- 3. Agency shall acquire right-of-way in accordance with the Uniform Relocation Assistance and Real Property Acquisition Act of 1980, as amended.**
- 4. Agency insures that all project right-of-way monumentation will be conducted in conformance with ORS 209.150.**
- 5. Agency shall, upon State's award of the construction contract, furnish all construction engineering, field testing of materials, technical inspection and project manager services for administration of the contract. The State shall obtain "Record Samples" at specified intervals for testing in the State Materials Laboratory in Salem.**
- 6. Upon completion of the project, refer to State Order No. 50254 for maintenance responsibilities, and any other issues that are not expressly addressed by this agreement.**

# **ATTACHMENT NO. 2**

## **STANDARD PROVISIONS**

### **JOINT OBLIGATIONS**

#### **PROJECT ADMINISTRATION**

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

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

3. State, Agency, or others may perform preliminary and construction engineering. If Agency or others perform the engineering, State will monitor the work for conformance with FHWA rules and regulations. In the event that Agency elects to engage the services of a personal service consultant to perform any work covered by this agreement, Agency and Consultant shall enter into a State reviewed and approved personal service contract process and resulting contract document. State must concur in the contract prior to beginning any work. State's personal service contracting process and resulting contract document will follow Title 23 Code of Federal Regulations (CFR) 172, Title 49 CFR 18, ORS 279.051, the current State Administrative Rules and ODOT Personal Services Contracting Procedures as approved by the Federal Highway Administration (FHWA). Such personal service contract(s) shall contain a description of the work to be performed, a project schedule, and the method of payment. Subcontracts shall contain all required provisions of Agency as outlined in the agreement. No reimbursement shall be made using federal-aid funds for any costs incurred by Agency or its consultant prior to receiving authorization from State to proceed. Any amendments to such contract(s) also require State's approval.
4. On all construction projects where State is the signatory party to the contract, and where Agency is doing the construction engineering and project management, Agency, subject to any limitations imposed by State law and the Oregon Constitution, agrees to accept all responsibility, defend lawsuits, indemnify and hold State harmless, for all tort claims,

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

## **REQUIRED STATEMENT FOR USDOT FINANCIAL ASSISTANCE AGREEMENT**

5. If as a condition of assistance the Agency has submitted and the US Department of Transportation has approved a Disadvantaged Business Enterprise Affirmative Action Program which the Agency agrees to carry out, this affirmative action program is incorporated into the financial assistance agreement by reference. That program shall be treated as a legal obligation and failure to carry out its terms shall be treated as a violation of the financial assistance agreement. Upon notification to the Agency of its failure to carry out the approved program, the US Department of Transportation shall impose such sanctions as noted in Title 49, Code of Federal Regulations, Part 26, which sanctions may include termination of the agreement or other measures that may affect the ability of the Agency to obtain future US Department of Transportation financial assistance.
6. **DBE Obligations.** State and its contractor agrees to ensure that Disadvantaged Business Enterprises as defined in 49 CFR 26 have the opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds. In this regard, Agency shall take all necessary and reasonable steps in accordance with 49 CFR 26 to ensure that Disadvantaged Business Enterprises have the opportunity to compete for and perform contracts. Neither State nor Agency and its contractors shall discriminate on the basis of race, color, national origin or sex in the award and performance of federally-assisted contracts. The Agency shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of such contracts. Failure by the Agency to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as ODOT deems appropriate.

The DBE Policy Statement and Obligations shall be included in all subcontracts entered into under this contract.

7. The Agency further agrees to comply with all applicable civil rights laws, rules and regulations, including Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990 (ADA), and Titles VI and VII of the Civil Rights Act of 1964.
8. The parties hereto agree and understand that they will comply with all applicable federal, state, and local laws, regulations, executive orders and ordinances applicable to the work including, but not limited to, the provisions of ORS 279.312, 279.314, 279.316, 279.320 and 279.555, incorporated herein by reference and made a part hereof; Title 49 CFR, Parts 26 and 90, Audits of State and Local Governments; 49 CFR Parts 18 and 24; 23 CFR Part 771; Title 41, USC, Anti-Kickback Act; Title 23, USC, Federal-Aid Highway Act; 42 USC, Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970, as amended; provisions of Federal-Aid Policy Guide (FAPG), Title 23 Code of Federal Regulations (23 CFR) 1.11, 710, and 140; and the Oregon Action Plan.

## **STATE OBLIGATIONS**

### **PROJECT FUNDING REQUEST**

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

### **FINANCE**

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

### **PROJECT ACTIVITIES**

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

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

### **RIGHT-OF-WAY**

16. State is responsible for proper acquisition of the necessary right-of-way and easements for construction and maintenance of the project. Agency may perform acquisition of the necessary right-of-way and easements for construction and maintenance of the project, provided Agency (or Agency's consultant) are qualified to do such work as required by the ODOT Right of Way Manual and have obtained prior approval from ODOT Region Right of Way office to do such work.
17. Regardless of who acquires or performs any of the right-of-way activities, a right-of-way services agreement shall be created by ODOT Region Right of Way office setting forth the responsibilities and activities to be accomplished by each party. State shall always be responsible for requesting project funding, coordinating certification of the right-of-way, and providing oversight and monitoring. Funding authorization requests for federal right-of-way funds must be sent through the Region Right of Way offices on all projects. All projects must have right-of-way certification coordinated through Region Right of Way offices (even for projects where no federal funds were used for right-of-way, but federal funds were used elsewhere on the project). Agency should contact the Region Right of Way office for additional information or clarification.
18. State shall review all right-of-way activities engaged in by Agency to assure compliance with applicable laws and regulations. Agency agrees that right-of-way activities shall be in accord with the Uniform Relocation Assistance & Real Property Acquisition Policy Act of 1970, as amended, ORS 281.060 and ORS Chapter 35, FHWA Federal Aid Policy Guide, State's Right of Way Manual and the Code of Federal Regulations, Title 23, Part 710 and Title 49, Part 24.
19. If any real property purchased with federal-aid participation is no longer needed for the originally authorized purpose, the disposition of such property shall be subject to applicable rules and regulations, which are in effect at the time of disposition. Reimbursement to State and FHWA of the required proportionate shares of the fair market value may be required.
20. Agency insures that all project right-of-way monumentation will be conducted in conformance with ORS 209.150.
21. State and Agency grants each other authority to enter onto the other's right-of-way for the performance of the project.

## AGENCY OBLIGATIONS

### FINANCE

22. Federal funds shall be applied toward project costs at the current federal-aid matching ratio, unless otherwise agreed and allowable by law. Agency shall be responsible for the entire match amount, unless otherwise agreed to and specified in the intergovernmental agreement.
23. Agency's estimated share and advance deposit.
  - A. Agency shall, prior to commencement of the preliminary engineering and/or right-of-way acquisition phases, deposit with State its estimated share of each phase. Exception may be made in the case of projects where Agency has written approval from the State to use in-kind contributions rather than cash to satisfy all or part of the matching funds requirement.
  - B. Agency's construction phase deposit shall be 110 percent of Agency's share of the engineer's estimate and shall be received prior to award of the bid. Any additional balance of the deposit, based on the actual bid must be received within 45 days of receipt of written notification by the State of the final amount due, unless the contract is canceled. Any unnecessary balance of a cash deposit, based on the actual bid, will be refunded within 45 days of receipt by the State of the project sponsor's written request.
  - C. Pursuant to ORS 366.425, the advance deposit may be in the form of 1) money deposited in the State Treasury (an option where a deposit is made in the Local Government Investment Pool, and an Irrevocable Limited Power of Attorney is sent to the Highway Finance Office), or 2) an Irrevocable Letter of Credit issued by a local bank in the name of State, or 3) cash.
  - D. Agency may satisfy all or part of any matching funds requirements by use of in-kind contributions rather than cash when prior written approval has been given by State.
24. If the estimated cost exceeds the total matched federal funds available, Agency shall deposit its share of the required matching funds, plus 100 percent of all costs in excess of the total matched federal funds. Agency shall also pay 100 percent of the cost of any item in which the FHWA will not participate. If Agency has not repaid any non-participating cost, future allocations of federal funds, or allocations of State Highway Trust Funds, to that Agency may be withheld to pay the non-participating costs. If the State approves processes, procedures, or contract administration outside the *Local Agency Guidelines*, that result in items being declared non-participating, those items will not result in the withholding of Agency's future allocations of federal funds or the future allocations of State Highway Trust Funds.

25. Costs incurred by the State and Agency for services performed in connection with any phase of the project shall be charged to the project, unless otherwise mutually agreed upon.
26. If Agency makes a written request for the cancellation of a federal-aid project; Agency shall bear 100 percent of all costs as of the date of cancellation. If the State was the sole cause of the cancellation, the State shall bear 100 percent of all costs incurred. If it is determined that the cancellation was caused by third parties or circumstances beyond the control of State or Agency, Agency shall bear all development costs, whether incurred by the State or Agency, either directly or through contract services, and the State shall bear any State administrative costs incurred. After settlement of payments, State shall deliver surveys, maps, field notes, and all other data to Agency.
27. The requirements stated in the Single Audit Act must be followed by those local governments receiving \$300,000 or more in federal funds. The Single Audit Act of 1984, PL 98-502 as amended by PL 104-156, described in "Office of Management and Budget Circular A-133", requires local governments to obtain an audit that includes internal controls and compliance with federal laws and regulations of all federally-funded programs in which the local agency participates. The cost of this audit can be partially prorated to the federal program.
28. Additional deposits, if any, shall be made as needed upon request from the State. Requests for additional deposits shall be accompanied by an itemized statement of expenditures and an estimated cost to complete the project.
29. Agency shall present invoices for 100 percent of actual costs incurred by Agency on behalf of the project directly to State's Liaison Person for review and approval. Such invoices shall identify the project and agreement number, and shall itemize and explain all expenses for which reimbursement is claimed. Billings shall be presented for periods of not less than one-month duration, based on actual expenses to date. All billings received from Agency must be approved by State's Liaison Person prior to payment. Agency's actual costs eligible for federal-aid or State participation shall be those allowable under the provisions of FAPG, 23CFR 1.11, 710, and 140. Final billings shall be submitted to State for processing within three months from the end of each funding phase as follows: 1) award date of a construction contract for preliminary engineering 2) last payment for right-of-way acquisition and 3) third notification for construction. Partial billing (progress payment) shall be submitted to State within three months from date that costs are incurred. Final billings submitted after the three months may not be eligible for reimbursement.
30. The cost records and accounts pertaining to work covered by this agreement are to be kept available for inspection by representatives of State and the FHWA for a period of three (3) years following the date of final voucher to FHWA. Copies of such records and accounts shall be made available upon request. For real property and equipment, the retention period starts from the date of disposition (49 CFR 18.42).
31. State shall request reimbursement, and Agency agrees to reimburse State, for federal-aid funds distributed to Agency if any of the following events occur:
  - a) That right-of-way acquisition or actual construction of the facility for which preliminary engineering is undertaken is not started by the close of



the tenth fiscal year following the fiscal year in which the federal-aid funds were authorized;

b) That right-of-way acquisition is undertaken utilizing federal-aid funds and actual construction is not started by the close of the twentieth fiscal year following the fiscal year in which the federal-aid funds were authorized for right-of-way acquisition.

c) That construction proceeds after the project is determined to be ineligible for federal-aid funding (e.g., no environmental approval, lacking permits, or other reasons).

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

### **RAILROADS**

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

### **UTILITIES**

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

## **STANDARDS**

36. Design standards for all projects on the National Highway System (NHS) and the Oregon State Highway System shall be in compliance to standards specified in the current ODOT Highway Design Manual and related references. Construction plans shall be in conformance with standard practices of State for plans prepared by its own staff. All specifications for the project shall be in substantial compliance with the most current "Oregon Standard Specifications for Highway Construction".
37. Agency agrees that minimum design standards for non-NHS projects shall be recommended AASHTO Standards and in accordance with the current "Oregon Bicycle and Pedestrian Plan", unless otherwise requested by Agency and approved by State.
38. Agency agrees and will verify that the installation of traffic control devices shall meet the warrants prescribed in the "Manual on Uniform Traffic Control Devices and Oregon Supplements".
39. All plans and specifications shall be developed in general conformance with the current "Contract Road Plans Guide" and the current "Standard Specifications" and/or guidelines provided.
40. The standard unit of measurement for all aspects of the project will be System International (SI) Units (metric). This includes, but is not limited to, right-of-way, environmental documents, plans and specifications, and utilities.

## ***GRADE CHANGE LIABILITY***

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

## **CONTRACTOR CLAIMS**

44. Agency shall, to the extent permitted by State law, indemnify, hold harmless and provide legal defense for the State against all claims brought by the contractor, or others resulting from Agency's failure to comply with the terms of this agreement.

## **MAINTENANCE RESPONSIBILITIES**

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

## **WORKERS' COMPENSATION COVERAGE**

46. Agency, its subcontractors, if any, and all employers working under this agreement are subject employers under the Oregon Workers' Compensation Law and shall comply with ORS 656.017, which requires them to provide workers' compensation coverage for all their subject workers, unless such employers are exempt under ORS 656.126. Agency shall ensure that each of its contractors complies with these requirements.

## **LOBBYING RESTRICTIONS**

47. Agency certifies by signing the agreement that:
- A. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
  - B. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
  - C. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, and contracts and subcontracts under grants, subgrants, loans, and cooperative agreements) which exceed \$100,000, and that all such subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, US Code.

Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Paragraphs 34, 35, and 45 are not applicable

# Agenda Item 6



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City of Lebanon  
Administration

MEMORANDUM

To: Mayor and City Council

DATE: November 4, 2004

From: City Administrator

RE: City Administrator Report

I will provide the City Council a brief, oral update on the following matters:

1. Gill's Landing
2. Project Walden
3. Twin Cedars Mobile Home Park
4. Senior Center Progress
5. City Council Schedule
6. Miscellaneous Matters

# Executive Session

*Per ORS 192.660(1)(h) To consult with legal counsel concerning legal rights and duties of the Council regarding current litigation or litigation likely to be filed.*

