

**CITY OF CENTRAL POINT
City Council Meeting Agenda
July 16, 2015**

**Central Point
City Hall
541-664-3321**

City Council

Mayor
Hank Williams

Ward I
Bruce Dingler

Ward II
Michael Quilty

Ward III
Brandon Thueson

Ward IV
Allen Broderick

At Large
Rick Samuelson
Tanea Browning

Administration
Chris Clayton, City
Manager
Deanna Casey, City
Recorder

**Community
Development**
Tom Humphrey,
Director

Finance
Bev Adams, Director

Human Resources
Barb Robson, Director

**Parks and Public
Works**
Matt Samitore,
Director
Jennifer Boardman,
Manager

Police
Kris Allison Chief

Next Res. 1422
Next Ord. 2014

- I. REGULAR MEETING CALLED TO ORDER – 7:00 P.M.**
- II. PLEDGE OF ALLEGIANCE**
- III. ROLL CALL**
- IV. PUBLIC APPEARANCES – *Comments will be limited to 3 minutes per individual or 5 minutes if representing a group or organization.***
- V. SPECIAL PRESENTATION**
- VI. CONSENT AGENDA**

Page 2 - 6 A. Approval of June 25, 2015 Council Minutes

VII. ITEMS REMOVED FROM CONSENT AGENDA

VIII. PUBLIC HEARING, ORDINANCES, AND RESOLUTIONS

- 8 - 33 A. Resolution No. _____, A Resolution of the City of Central Point Allowing the City Manager or His Designee to Execute the Revised Local Agency Agreement with ODOT for the Twin Creeks Crossing (Samitore)
- 35 - 51 B. Resolution No. _____, A Resolution Authorizing the city Manager to Enter Into An Agreement for Purchase of Right-of-Way with James Sutton of 4511 Hamrick Road in Lieu of Condemnation Proceedings (Samitore)
- 53 - 55 C. Resolution No. _____, A Resolution Directing the city Manager or his Designee to Enter Into A Second Amendment to a Road Easement Agreement Between Central Oregon & Pacific Railroad, Inc., and the City of Central Point (Humphrey)

IX. BUSINESS

- 57 - 58 A. Consideration of a Letter from the City Manager Endorsing the Vietnam Veteran's Memorial Wall (Humphrey)
- 60 – 61 B. Planning Commission Report (Humphrey)
- 63 - 88 C. Discussion of Agreement with Jackson County Justice Court Building to include a Central Point Police Department Sub-Station (Clayton)

X. MAYOR'S REPORT

XI. CITY MANAGER'S REPORT

XII. COUNCIL REPORTS

XIII. DEPARTMENT REPORTS

XIV. EXECUTIVE SESSION

The City Council may adjourn to executive session under the provisions of ORS 192.660. Under the provisions of the Oregon Public Meetings Law, the proceedings of an executive session are not for publication or broadcast.

XV. ADJOURNMENT

Consent Agenda

**CITY OF CENTRAL POINT
City Council Meeting Minutes
June 25, 2015**

I. REGULAR MEETING CALLED TO ORDER

Mayor Williams called the meeting to order at 7:00 p.m.

II. PLEDGE OF ALLEGIANCE

III. ROLL CALL: Mayor: Hank Williams
Council Members: Bruce Dingler, Brandon Thueson, Tanea Browning, Rick Samuelson, and Mike Quilty were present. Allen Broderick was excused.

City Manager Chris Clayton; City Attorney Sydnee Dreyer; Police Chief Kris Allison; Community Development Director Tom Humphrey; Parks and Public Works Director Matt Samitore; and City Recorder Deanna Casey were also present.

IV. PUBLIC APPEARANCES - None

V. CONSENT AGENDA

- A. Approval of June 11, 2015 City Council Minutes
- B. Approval of D.A.R.E. Cruise Street Closures

Mike Quilty moved to approve the Consent Agenda as presented. Rick Samuelson Seconded. Roll call: Hank Williams, yes; Bruce Dingler, yes; Tanea Browning, yes; Brandon Thueson, yes; Rick Samuelson, yes; and Mike Quilty, yes. Motion approved.

VI. ITEMS REMOVED FROM CONSENT AGENDA - None

VII. PUBLIC HEARINGS, ORDINANCES AND RESOLUTIONS

- A. Second Reading – Ordinance No. 2013, An Ordinance Amending the Comprehensive Plan Map (Minor) to Add Approximately 47 Acres to the Central Point Urban Growth Boundary North of Interstate 5, East and West of Blackwell Road in the Vicinity of the Seven Oaks Interchange (Exit 35) Including Portions of Dean Creek Road**

Community Development Director Tom Humphrey explained this is the second reading of an Ordinance to add approximately 47 acres to the City of Central Point Urban Growth Boundary in the area of Seven Oaks Interchange including portions of Dean Creek Road.

The land proposed for the amendment includes property that is in the ownership of the Card Family and Stallion Land Company. There are some portions of right-of-way that are either under the jurisdiction of Jackson County or the Oregon

Department of Transportation. The City conducted a public hearing on this item at their last meeting, made no revisions and moved to a second reading.

Brandon Thueson moved to approve Ordinance No. 2013, An Ordinance Amending the Comprehensive Plan Map (Minor) to Add Approximately 47 Acres to the Central Point Urban Growth Boundary North of Interstate 5, East and West of Blackwell Road in the Vicinity of the Seven Oaks Interchange (Exit 35) Including Portions of Dean Creek Road. Mike Quilty seconded. Roll call: Hank Williams, yes; Bruce Dingler, yes; Tanea Browning, yes; Brandon Thueson, yes; Rick Samuelson, yes; and Mike Quilty, yes. Motion approved.

VIII. BUSINESS

A. Discussion of the Draft Franchise Agreement between City of Central Point and Rogue Valley Sanitary Sewer

City Manager Chris Clayton explained the history of the general utility license fee ordinance. The Council wanted to have an option in place for utilities using our right-of-ways but did not have a franchise agreement in place. The City currently maintains franchise agreements with eight utilities.

RVSS and the City have been in discussion regarding a franchise agreement. They have been working with the City in anticipation of the Oregon Supreme Court ruling going in the favor of the City of Phoenix. They are willing to sign a Franchise Agreement with the stipulation that the fees are not collected until the Supreme Court has made a ruling.

The proposed franchise agreement represents the initial review by both the City of Central Point and Rogue Valley Sewer Services. Council discussion and feedback will be useful in determining the specifics of a final agreement. The target for having an adopted agreement in place is early August.

There was discussion regarding Section 8 of the agreement which states that it would not cost the city if lines need to be relocated because of construction. RVSS would like the city to reimburse them 50% of the cost to relocate lines due to construction that we have approved. Other utilities charge each other when required to relocate lines for one reason or another. In Section 10 RVSS would like to have a signature line to sign off on Subdivision Plats, it would be an additional step for developers to check off.

Staff will meet with RVSS again for final revisions and bring back to council in August for a final approval. No motion is needed at this time.

B. Discussion Related to the Medford Water Commission's Recent Announcement That Cash Flow-Related Issues Could Result in Substantial Rate Increases for the "Other Cities" Customer Group

Mr. Clayton explained that on June 3rd the Medford Water Commission (MWC) held a study session titled "Financial Policies", it was revealed that the MWC is considering dramatic rate increases of 11.9% for 3 consecutive years, to offset recently discovered cash flow related issues. The proposed rate increases would be in addition to the recent "interim" 5% across the board rate increase. The MWC is currently engaged in an ongoing rate study, being performed by a third party consultant, which will likely recommend future rate increases beginning in January 2016. Given all of these potential increases, the "other cities" customer group could realize overall rate increases as high as 40% to 50% in the calendar year of 2016.

Mr. Clayton spoke of a letter that was given to the MWC at their meeting this week explaining our concerns regarding these potential increases and their capital projections. The MWC has had revenue problems for many years and are acting like this is new to them.

Mayor Williams explained his concern regarding their rate of return being charged to other cities. They have not been paying attention to what they spend their money on and capital projects should be postponed if they do not have the funds to pay for them.

Mr. Clayton stated that he and the Mayor will be attending all of their Public Hearings regarding any rate increases. There have been discussions that the "Other Cities" may take the MWC to court regarding their negligence in this matter. Staff will keep the Council updated when additional information is available.

IX. MAYOR'S REPORT

Mayor Williams reported that:

- He attended the Medford Water Commission meeting.
- He attended the Central Point Chamber mixer and ribbon cutting ceremony for InHome Care business.
- The County is trying to partner with the Expo on maintenance of the Fairgrounds.

X. CITY MANAGER'S REPORT

City Manager Chris Clayton reported that:

- The recruitment window for the Human Resource Director is coming to a close. He is currently reviewing the applications and hopes to start interviews in July.
- They will be presenting a sponsor check to the Quarter Horse Association tomorrow.
- The city is very proud of Community Development Director Tom Humphrey for the excellent presentation he gave at the Policy Committee meeting. The County will be making a final decision next week. He has done a great job for the City to expand the Urban Growth Boundary.
- There are 4 new welcome videos almost ready for display on our website.

- There will be a short Executive Session tonight.

XI. COUNCIL REPORTS

Council Member Mike Quilty reported that:

- He attended the Airport Advisory Committee meeting. Flights are still on the rise and he explained some of the upgrades to the Medford Airport.
- He attended an MPO meeting on Tuesday, Mr. Humhrey did a great job explaining the need to expand the Central Point Urban Growth Boundary.
- Rogue Disposal is breaking ground on their new CNG facility in White City.

Council Member Brandon Thueson reported that:

- He attended the Police Department recruit testing at Scenic Middle School. It was an interesting course.

Council Member Rick Samuelson reported that:

- He attended an RVCOG meeting yesterday where Cave Junction representatives spoke regarding their law suit about marijuana dispensaries.
- The City of Grants Pass was self-insured but have signed up with CIS to lower their rates and can now afford to keep the jail beds open.

Council Member Bruce Dingler reported that he thought the letter to the Medford Water Commission was excellent but that they should already be aware of these issues.

Council Member Tanea Browning reported that:

- The Fire District entered fire season 5 weeks early this year because of the dry winter and high temperatures.
- She met with Chief Allison regarding mental health of our police officers.

XII. DEPARTMENT REPORTS

Parks and Public Works Director Matt Samitore reported that:

- Battle of the Bones starts this weekend. We are concerned about the high temperatures and hopes that everyone will attend. There are 18 BBQ teams working on People's Choice Awards and 25 teams cooking for the KC points.
- There are now issues regarding pipes on adjoining roads to Freeman. WE have provided a project page on the website with updates and what is currently happening to the project. Please direct any citizens to that page. There have been issues with people moving the barricades. The Police Department is trying to stop that activity.

Police Chief Kris Allison reported that:

- They have had a successful police officer applicant process. She is encouraged by the amount of applications they received and the applicants that took the tests.
- They are working on promotions within the Police Department.

- They are working on the ATM scam that hit the Rogue Credit Union. They have good photos of the suspects and have posted the photos to social media.
- We will be assigning one of our officers to MADGE, this will help us with drug related crimes in our city.

Community Development Director Tom Humphrey reported that:

- There will be a conference call with the Bootcamp attendees on Tuesday.
- There will be a Planning Commission meeting in July to discuss the Gebhard Road alignment. The White Hawk subdivision is waiting on this discussion to proceed.
- Staff will be working on code amendments to clean up some of the outdated codes currently being used.
- He has been working on the IAMP plans for Exits 33 and 35 in advance of the UGB Amendments.

XIII. EXECUTIVE SESSION – ORS192.660 (2)(e)

Mike Quilty moved to adjourn to Executive Session under ORS 192.660 (2)(e) real property transactions. Rick Samuelson seconded, all said “aye” and the meeting was adjourned into executive session at 8:01 p.m.

Council returned to regular session at 8:19 p.m. No more business was discussed.

XIV. ADJOURNMENT

Mike Quilty moved to adjourn, Rick Samuelson seconded, all said “aye” and the Council Meeting was adjourned at 8:19 p.m.

The foregoing minutes of the June 25, 2015, Council meeting were approved by the City Council at its meeting of July 16, 2015.

Dated:

Mayor Hank Williams

ATTEST:

City Recorder

Resolution

Agreement with ODOT
for Twin Creeks
Crossing



ADMINISTRATION DEPARTMENT

140 South 3rd Street · Central Point, OR 97502 · (541) 664-7602 · www.centralpointoregon.gov

STAFF REPORT

July 7, 2015

AGENDA ITEM: Resolution No. _____, A resolution allowing the City Manager or his designee to execute the revised Local Agency Agreement with the Oregon Department of Transportation for the Twin Creeks Rail Crossing.

STAFF SOURCE:

Matt Samitore, Parks & Public Works Director

BACKGROUND/SYNOPSIS:

The City of Central Point was awarded a grant in the amount of \$2,670,000 for the construction of the Twin Creeks Rail Crossing associated with the 2015-2018 Oregon Surface Transportation Improvement Program (STIP). The grant originally required a match of \$994,406.55. Since the time of the original agreement the developer, Twin Creeks Development LLC, has completed several physical improvements that were associated with the grant project. Those commitments have been subtracted from the agreement. The revised grant match is \$787,515.

Previously, the City reached an agreement with Twin Creeks Development, LLC for \$500,000 cash for its share of the crossing. With both of these agreements in place the City's contribution will be a maximum of \$287,515, but could be substantially less depending on how much value is associated with the work that is currently underway and how much contingency is used in the project construction.

This agreement is the formal document binding the City to the project.

FISCAL IMPACT:

Positives: Upon completion of the project all the remaining land associated with the Twin Creeks Development will be available for development.

Negatives: The City and the Development Commission could be obligated up to \$287,515 towards the project

ATTACHMENTS:

1. Resolution authorizing the signatures for the Twin Creeks Rail Crossing.

RECOMMENDATION:

City Staff: City staff recommends approving the resolution authorizing the City Manager or his designee to sign the Project Letter of Understanding.

PUBLIC HEARING REQUIRED:

No

SUGGESTED MOTION:

I move to approve Resolution ____ Authorizing the City Manager or his designee to sign the Local Agency Agreement with the Oregon Department of Transportation for the Twin Creeks Rail Crossing.

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A RESOLUTION OF THE CITY OF CENTRAL POINT ALLOWING THE CITY MANAGER OR HIS DESIGNEE TO EXECUTE THE REVISED LOCAL AGENCY AGREEMENT WITH ODOT FOR THE TWIN CREEKS CROSSING

Recitals:

- A. In 2012 the City of Central Point was notified by the Oregon Department of Transportation State Transportation Improvement Program that it had received approval for a grant to construct the Twin Creeks Rail Crossing on Highway 99.
- B. In 2014 the City and the developer, Twin Creeks Development LLC, entered into an agreement obligating the developer to make a cash contribution towards the grant match as well as physical improvements associated with the grant at that time.
- C. The developer has completed two of the three physical improvements and is in the process of completing the third. Additionally, the developer has paid its first financial contribution of \$125,000 toward the project. The next scheduled payment is December of 2015.
- D. The revised IGA reflects the physical improvements completed by the developer reducing the grant amount to \$3,457,515.
- E. The state will contribute 77% of the project up to a maximum amount of \$2,670,000. The City and developer will contribute the remaining dollars of \$787,515.
- F. The City previously reached an agreement with the developer requiring the developer to make a cash contribution totaling \$500,000 for its share of the crossing. With both of these agreements in place the City's contribution will be a maximum of \$287,515

The City of Central Point resolves as follows:

Section 1. The agreement is set forth on the attached Exhibit "A".

Passed by the Council and signed by me in authentication of its passage this _____ day of July, 2015.

Mayor Hank Williams

ATTEST:

City Recorder

**LOCAL AGENCY AGREEMENT
MULTIMODAL TRANSPORTATION ENHANCE PROGRAM (MTEP)
TWIN CREEKS RAIL CROSSING (CENTRAL POINT)**

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 CENTRAL POINT, acting by and through its elected officials, hereinafter referred to as "Agency," both herein referred to individually or collectively as "Party" or "Parties."

RECITALS

1. By the authority granted in Oregon Revised Statutes (ORS) 190.110, 366.572 and 366.576, State may enter into cooperative agreements with counties, cities and units of local governments for the performance of work on certain types of improvement projects with the allocation of costs on terms and conditions mutually agreeable to the contracting parties.
2. By the authority granted in ORS 810.080 State has the authority to establish marked pedestrian crosswalks on its highway facilities.
3. By the authority granted in ORS 810.210, State 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 State 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 State, except with its written approval. Traffic signal work on this Project will conform to the current State standards and specifications.
4. Portions of Rogue Valley Highway (OR 99) are a part of the state highway system under the jurisdiction and control of the Oregon Transportation Commission (OTC). Twin Creeks Crossing, Boulder Ridge Drive and portions of Rogue Valley Highway (OR 99) are a part of the city street system under the jurisdiction and control of Agency.

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

DEFINITIONS

1. "Contract Award" (construction projects) means the issuance of a Notice to Proceed (NTP) to the construction contractor.
2. "Contract Time" means amount of time for completing the bid item work under the contract.
3. "Establishment Period" means the time specified in the construction contract to assure satisfactory establishment and growth of planted materials.
4. "Final Acceptance" means written confirmation by Agency and State that the project has been completed according to the contract, with the exception of latent defects and warranty obligations, if any, and has been accepted.

5. "Final Payment"-the amount of final payment will be the difference between the total amount due the contractor and the sum of all payments previously made. All prior partial estimates and payments shall be subject to correction in the final estimate and payment.
6. "Funding Ratio" means the relationship between MTEP funds and Total Project Cost and Other Funds and the Total Project Cost. This ratio is established at the time the agreement is executed and does not change during the course of the project. The ratio governs the obligation of MTEP funds at the time of construction/consultant award or Project Closeout..
7. "Match" means the minimum amount State or Agency must contribute to match the federal aid funding portion of the project.
8. "MTEP" means Multimodal Transportation Enhance Program and may be funded by a combination of federal and state funds.
9. "Obligation" means Federal Highway Administration (FHWA) approval that allows a specific phase of a project to commence with spending that can be reimbursed with federal funds.
10. "Other Funds" means other funding required to complete the project including but not limited to state, federal, and agency funds.
11. "Project Completion" (construction projects) means Final Acceptance of the project, Final Payment to the contractor has been made by the State and project documentation is completed per the ODOT Construction Manual.
12. "Project Overruns" means the final cost estimate at contract award exceeds the estimated Total Project Cost estimate in this Agreement, or the final actual project costs exceeds the final cost estimate at contract award.
13. "Project Underrun" means the final cost estimate at Contract Award is below the estimated Total Project Cost in this Agreement, or the final actual project costs are below the final cost estimate at contract award.
14. "Project Closeout" means project is ready to close as there are no more expenditures associated with project.
15. "Second Notification" means written acknowledgment by the Engineer of the end of Contract Time in accordance with ODOT Standard Specification 000180.50(g). "Third Notification" means written acknowledgment by the Engineer, subject to Final Acceptance, that as of the date of the notification the Contractor has completed the Project according to the Contract, including without limitation completion of all minor corrective work, equipment and plant removal, site clean-up, and submittal of all certifications, bills, forms and documents required under the Contract.
16. "Total Project Cost" means the estimated amount as shown in this agreement. This amount will include MTEP funds, local matching funds, and Other Funds as required to complete the project as stated in this agreement.

TERMS OF AGREEMENT

1. Under such authority, Agency and State agree to fund, design and construct a new access route into the Twin Creeks development from OR 99, hereinafter referred to as "Project." The location of the Project is as shown on the sketch map attached hereto, marked "Exhibit A," and by this reference made a part hereof.
2. The Project shall be conducted as a part of the Multimodal Transportation Enhance Program (MTEP) with funds provided under Title 23, United States Code and may include a combination of federal and state funds. The Total Project Cost is estimated at \$3,457,515, which is subject to change. MTEP federal and state funding for this Project shall be limited to \$2,670,000. Agency shall be responsible for all remaining costs, including the 10.27 percent match for all MTEP eligible costs, any non-participating costs, and all costs in excess of the available federal or state funds.
3. The Funding Ratio for this Project is 77% of MTEP funds to 23% Agency funds and applies to Project Underruns. The Funding Ratio does not apply in the case of Project Overruns.
4. If, at the time of Contract Award or Project Closeout, the Project Underruns the estimated Total Project Cost in this Agreement, MTEP funding and Other Funds will be obligated proportionally based on the Funding Ratio. Any unused MTEP funds, will be retained by State, and will not be available for use by Agency for this Agreement or any other projects.
5. Project Overruns which occur at the time of Contract Award, or at the time of Project Closeout is the responsibility of the Agency.
6. Project decisions regarding design standards, design exceptions, utility relocation expenses, right of way needs, preliminary engineering charges, construction engineering charges, and Contract Change Orders as applicable shall be mutually agreed upon between Agency and State, as these decisions may impact the Total Project Cost. However, State may award a construction contract at ten (10)% over engineer estimate without prior approval of Agency.
7. The scope, schedule, progress report requirements, and Project Change Request process are described in Exhibit B, attached hereto and by this reference made a part hereof. Agency agrees to the conditions set forth in Exhibit B.
7. State will submit the requests for federal funding to Federal Highway Administration (FHWA). The federal funding for this Project is contingent upon approval of each funding request by FHWA. Any work performed prior to acceptance by FHWA or outside the scope of work will be considered non-participating and paid for at Agency expense.
8. State considers Agency a subrecipient of the federal funds it receives as reimbursement under this Agreement. The Catalog of Federal Domestic Assistance (CFDA) number and title for this Project is 20.205, Highway Planning and Construction.
9. The term of this Agreement shall begin on the date all required signatures are obtained and

shall terminate upon completion of the Project and final payment or ten (10) calendar years following the date all required signatures are obtained, whichever is sooner.

10. Agency shall require its contractor(s) and subcontractor(s) that are not units of local government as defined in ORS 190.003, if any, to indemnify, defend, save and hold harmless the State of Oregon, Oregon Transportation Commission and its members, Department of Transportation and its officers, employees and agents from and against any and all claims, actions, liabilities, damages, losses, or expenses, including attorneys' fees, arising from a tort, as now or hereafter defined in ORS 30.260, caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Agency's contractor or any of the officers, agents, employees or subcontractors of the contractor ("Claims"). It is the specific intention of the Parties that State shall in all instances, except for Claims arising solely from the negligent or willful acts or omissions of State, be indemnified by the contractor and subcontractor from and against any and all Claims.
11. Any such indemnification shall also provide that neither Agency's contractor and subcontractor nor any attorney engaged by Agency's contractor and subcontractor shall defend any claim in the name of the State of Oregon or any agency of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without the prior written consent of the Oregon Attorney General. The State of Oregon may, at any time at its election assume its own defense and settlement in the event that it determines that Agency's contractor is prohibited from defending the State of Oregon, or that Agency's contractor is not adequately defending the State of Oregon's interests, or that an important governmental principle is at issue or that it is in the best interests of the State of Oregon to do so. The State of Oregon reserves all rights to pursue claims it may have against Agency's contractor if the State of Oregon elects to assume its own defense.
12. This Agreement may be terminated by mutual written consent of both Parties.
13. 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 ten (10) days or such longer period as State may authorize.
 - c. If Agency fails to provide payment of its share of the cost of the Project.
 - d. If State fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow State, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement.

- e. If federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the work under this Agreement is prohibited or if State is prohibited from paying for such work from the planned funding source.

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

Information required by 2 CFR 200.331(a), except for (xiii) Indirect cost rate, shall be contained in the USDOT FHWA Federal Aid Project Agreement for this Project, a copy of which shall be provided by ODOT to Agency with the Notice to Proceed.

The indirect cost rate for this project at the time the agreement is written is Zero percent.

15. The Special and Standard Provisions attached hereto, marked Attachments 1 and 2, respectively, are by this reference made a part hereof. The Standard Provisions apply to all federal-aid projects and may be modified only by the Special Provisions. The Parties hereto mutually agree to the terms and conditions set forth in Attachments 1 and 2. In the event of a conflict, this Agreement shall control over the attachments, and Attachment 1 shall control over Attachment 2.

16. Agency, as a recipient of federal funds, pursuant to this Agreement with the State, shall assume sole liability for Agency's breach of any federal statutes, rules, program requirements and grant provisions applicable to the federal funds, and shall, upon Agency's breach of any such conditions that requires the State to return funds to the Federal Highway Administration, hold harmless and indemnify the State for an amount equal to the funds received under this Agreement; or if legal limitations apply to the indemnification ability of Agency, the indemnification amount shall be the maximum amount of funds available for expenditure, including any available contingency funds or other available non-appropriated funds, up to the amount received under this Agreement.

17. 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.

18. Agency certifies and represents that the individual(s) signing this Agreement has been authorized to enter into and execute this Agreement on behalf of Agency, under the direction or approval of its governing body, commission, board, officers, members or representatives, and to legally bind Agency.

19. This Agreement may be executed in several counterparts (facsimile or otherwise) all of which when taken together shall constitute one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of this Agreement so executed shall constitute an original.

20. This Agreement and attached exhibits constitute the entire agreement between the Parties on the subject matter hereof. In the event of conflict, the body of this Agreement and the attached Exhibits will control over Project application and documents provided by Agency to

State. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either Party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of State to enforce any provision of this Agreement shall not constitute a waiver by State of that or any other provision.

21. State's Contact for this Agreement is Kelli Sparkman, 100 Antelope Rd, White City, OR 97503-1674, (541) 774-6383, kelli.sparkman@odot.state.or.us or assigned designee upon individual's absence. State shall notify the other Party in writing of any contact information changes during the term of this Agreement.
22. Agency's Contact for this Project is Matt Samitore, Public Works Director, 140 S. Third Street, Central Point, OR 97502, (541) 423-1017, Matt.Samitore@centralpointoregon.gov or assigned designee upon individual's absence. Agency shall notify the other Party in writing of any contact information changes during the term of this Agreement.

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

CITY OF CENTRAL POINT, by and through its elected officials

By _____

Title _____

Date _____

By _____

Title _____

Date _____

APPROVED AS TO LEGAL SUFFICIENCY

By _____
Agency Counsel

Date _____

Agency Contact:

Matt Samitore
Public Works Director
140 S. Third Street
Central Point, OR 97502
(541) 423-1017
Matt.Samitore@centralpointoregon.gov

State Contact:

Kelli Sparkman
100 Antelope Rd
White City, OR 97503-1674
541.774.6383
kelli.sparkman@odot.state.or.us

STATE OF OREGON, by and through its Department of Transportation

By _____
Highway Division Administrator

Date _____

APPROVAL RECOMMENDED

By _____
Region 3 Manager

Date _____

APPROVED AS TO LEGAL SUFFICIENCY

By _____
Assistant Attorney General

Date _____

EXHIBIT A – Project Location Map

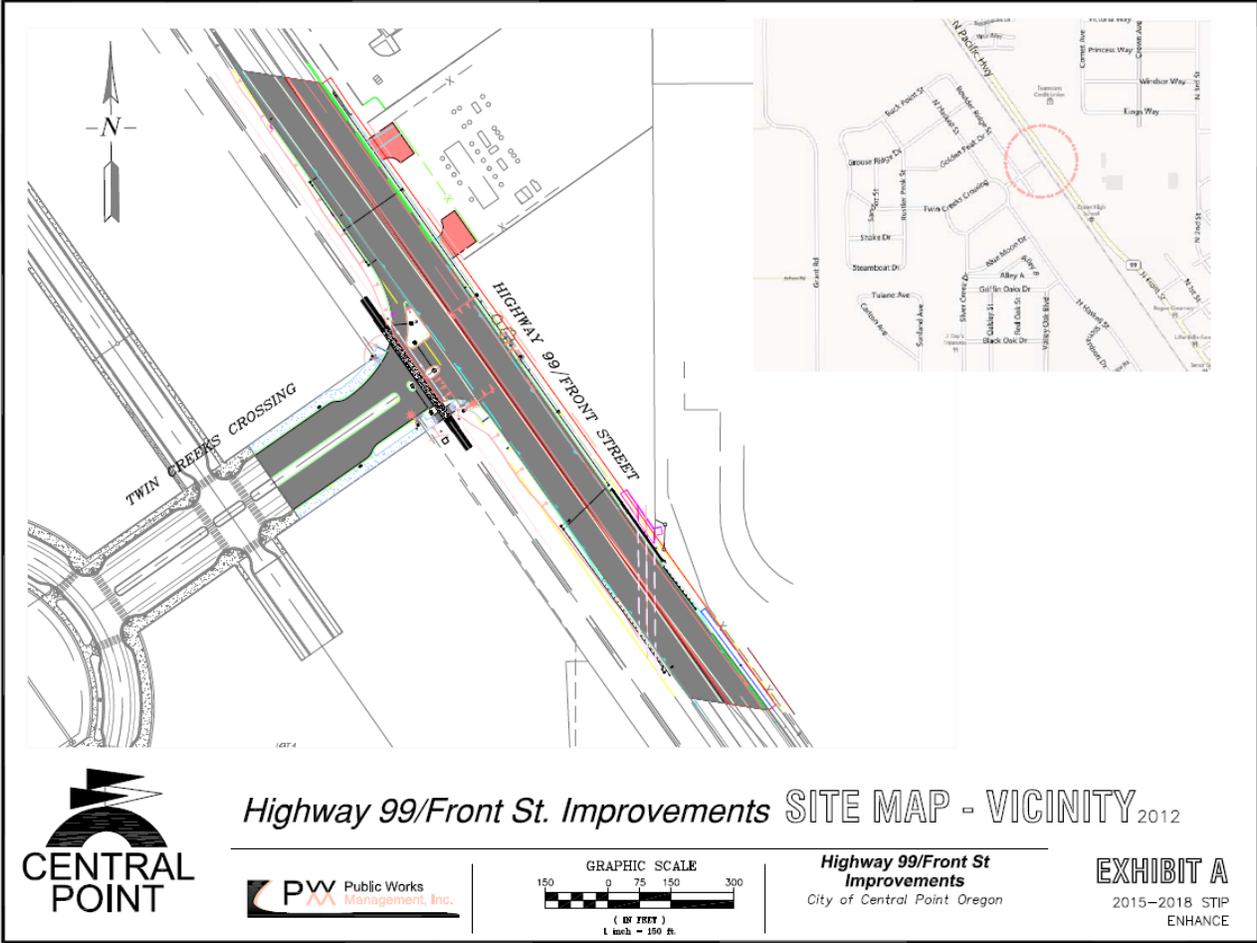


EXHIBIT B

Project Cost Estimate, Progress Reports and Project Change Request Process

Agreement No. 30321

Key Number: 18972

Project Name: TWIN CREEKS RAIL CROSSING (CENTRAL POINT)

1. Project Description

The Project will construct the following improvements:

- A. A new roadway of approximately 80 LF on Twin Creeks Crossing between the railroad right of way and OR 99 consisting of four travel lanes, sidewalks and bike lanes and approximately 160 LF of paving and sidewalks on Twin Creeks Crossing between the railroad right of way and Boulder Ridge Drive.
 - B. A new at grade rail crossing on Twin Creeks Crossing.
 - C. A new signalized intersection at Twin Creeks Crossing and OR 99.
 - D. Approximately 790 LF of roadway and sidewalk improvements along OR 99 including a sidewalk crossing of Griffin Creek.
2. This Project is subject to progress reporting and project change process as stated below.
3. **Monthly Progress Reports (MPR)** - Agency shall submit monthly progress reports using MPR Form 734-2862, incorporated by reference and made a part of this Agreement. The Monthly Progress Report is due by the 5th day of each month, starting the first month after execution of this Agreement, and continuing through the first month after State issues Project Acceptance (Second Note) for the Project's construction contract.

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

http://www.oregon.gov/ODOT/TD/AT/Pages/Forms_Applications.aspx

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

Table 1: Project Milestones – Construction Project

| | Milestone Description | Completion Date |
|--|------------------------------|------------------------|
|--|------------------------------|------------------------|

| | | |
|---|--|-----------|
| 1 | Obligation (Federal Authorization) of federal funds for the Preliminary Engineering phase of the Project | 9/30/2015 |
| 2 | Obligation (Federal Authorization) of federal funds for the Right of Way phase of the Project | 3/31/2016 |
| 3 | Obligation (Federal Authorization) of federal funds for the Construction phase of the Project | 9/30/2016 |

5. Requirements for Construction Projects

a. Second Notification –Upon completion of on-site work Second Notification shall be issued. Second Notification is further defined in the Definitions Section of this Agreement. The anticipated and actual date for issuance of Second Notification shall be reported in the required monthly report as described in paragraph 3, above.

b. Third Notification – Issuance of Third Notification must be received within 120 days from the issuance of Second Notification as stated above with the exception of any Establishment Period noted in the Construction Contract or any remaining responsibilities of the Contractor. If Third notification is not issued within the required timeframe, Consequences for Non-Performance, paragraph 7 below may apply.

6. Project Change Request (PCR) Process - Agency must obtain approval from State’s Contact for changes to the Project’s scope, schedule, or budget as specified in paragraphs 6a, 6b and 6c, below. Agency shall be fully responsible for all costs that occur outside the established Project scope, schedule or budget and prior to an approved PCR. Amendments to this Agreement are required for all approved PCRs.

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

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

c. Budget – Total Project Cost and approved funds for the Project are controlled by Terms of Agreement, paragraph 2 of this Agreement.

7. PCR Form - Agency must submit all change requests using PCR Form 734-2936, attached by reference and made a part of this Agreement. The PCR Form is due no later than thirty (30) days after the need for change becomes known to Agency. The PCR shall explain what change is being requested, the reasons for the change, and any efforts to mitigate the change. A Project Change Request may be rejected at the discretion State’s Area Manager.

The fillable PCR form and its instructions are available at the following web site:
http://www.oregon.gov/ODOT/TD/AT/Pages/Forms_Applications.aspx

8. **Consequence for Non-Performance** - If Agency fails to fulfill its obligations in paragraphs No. 3 through No. 7 above, or does not assist in advancing the Project or perform tasks that the Agency is responsible for under the Project Milestones, State's course of action through the duration of Agency's default may include: (a) restricting Agency consideration for future funds awarded through State's managed funding programs, (b) withdrawing unused Project funds, and (c) terminating this Agreement as stated in Terms of Agreement, Paragraphs No. 14a and 14b of this Agreement. State may also choose to invoice Agency for expenses incurred by State for staff time to assist in completion of the final Project documentation and issuance of Third Notification.

ATTACHMENT NO. 1 to Agreement No. 30321
SPECIAL PROVISIONS

1. Agency, or the consultant, shall conduct the necessary field surveys, environmental studies, traffic investigations, foundation explorations, hydraulic studies, assist State with acquisition of necessary right of way and easements; obtain all required permits and arrange for all utility relocations/adjustments.
2. Upon State's award of the construction contract, Agency, or the consultant, shall be responsible for all required materials testing and quality documentation; and prepare necessary documentation with State-qualified personnel, to allow State to make all contractor payments. Contract administration, construction engineering and inspection will follow the most current version of the *ODOT Construction Manual* and the *ODOT Inspector's Manual*.
3. Agency guarantees the availability of Agency funding in an amount required to fully fund Agency's share of the Project.
4. State may make available the Region's On-Call Preliminary Engineering (PE), Design and Construction Engineering Services consultant for Local Agency Projects upon written request. If Agency chooses to use said services, Agency agrees to manage the work done by the Consultant and reimburse State for payment of any Consultant costs that are not eligible as MTEP participating costs or that are not included as part of the total cost of the Project.
5. State will perform work throughout the duration of the Project and shall provide a preliminary estimate of State costs for this work. Prior to the start of each Project phase State shall provide an updated estimate of State costs for that phase. Such phases generally consist of Preliminary Engineering, Right of Way, Utility, and Construction. Agency understands that State's costs are estimates only and agrees to reimburse State for actual cost incurred per of this Agreement.
6. State and Agency agree that the useful life of this Project is defined as 20 years.
7. Agency shall obtain a miscellaneous permit to occupy State right of way through the State District 8 Office prior to the commencement of construction.
8. State grants authority to Agency to enter upon State right of way for the construction of this Project as provided for in miscellaneous permit to be issued by State District 8 Office.
9. Agency grants State the right to enter onto Agency right of way for the performance of duties as set forth in this Agreement.
10. If Agency fails to meet the requirements of this Agreement or the underlying federal regulations, State may withhold the Agency's proportional share of Highway Fund

Agency/State
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distribution necessary to reimburse State for costs incurred by such Agency breach. Agency will be ineligible to receive or apply for any Title 23, United States Code funds until State receives full reimbursement of the costs incurred.

ATTACHMENT NO. 2 FEDERAL STANDARD PROVISIONS

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 act for Agency in other matters pertaining to the Project. Prior to taking such action, State will confer with Agency concerning actions necessary to meet federal obligations. 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 person in responsible charge "liaison" to coordinate activities and assure that the interests of both Parties are considered during all phases of the Project.
2. Any project that uses federal funds in project development is subject to plans, specifications and estimates (PS&E) review and approval by FHWA or State acting on behalf of FHWA prior to advertisement for bid proposals, regardless of the source of funding for construction.
3. Non-certified agencies must contract with State or a State certified local public agency to secure services to perform plans, specifications and estimates (PS&E), construction contract advertisement, bid, award, contractor payments and contract administration. Non-certified agencies may use a State-approved consultant to perform preliminary engineering, and construction engineering services.

PROJECT FUNDING REQUEST

4. State shall submit a separate written Project funding request to FHWA requesting approval of federal-aid participation for each project phase including a) Program Development (Planning), b) Preliminary Engineering (National Environmental Policy Act - NEPA, Permitting and Project Design), c) Right of Way Acquisition, d) Utilities, and e) Construction (Construction Advertising, Bid and Award). Any work performed prior to FHWA's approval of each funding request will be considered nonparticipating and paid for at Agency expense. Agency shall not proceed on any activity in which federal-aid participation is desired until such written approval for each corresponding phase is obtained by State. State shall notify Agency in writing when authorization to proceed has been received from FHWA. All work and records of such work shall be in conformance with FHWA rules and regulations.

FINANCE

5. 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 for the federal funds and any portion of the Project, which is not covered by federal funding, unless otherwise agreed to and specified in the intergovernmental Agreement (Project Agreement). Agency must obtain written approval from State to use in-kind contributions rather than cash to satisfy all or part of the matching funds requirement. If federal funds are used, State will specify the Catalog of Federal Domestic Assistance (CFDA) number in the Project Agreement. State will also determine and clearly state in the Project Agreement if recipient is a subrecipient or vendor, using criteria in 2 CFR 200.330.
6. 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 pay one hundred (100) percent of the cost of any item in which FHWA will not participate. If Agency has not repaid any non-participating cost, future allocations of federal funds or allocations of State Highway Trust Funds to Agency may be withheld to pay the non-participating costs. If State approves processes, procedures, or contract administration outside the *Local Agency Guidelines Manual* that result in items being declared non-participating by FHWA, such items deemed non-participating will be negotiated between Agency and State.

7. Agency agrees that costs incurred by State and Agency for services performed in connection with any phase of the Project shall be charged to the Project, unless otherwise mutually agreed upon by the Parties.
8. Agency's estimated share and advance deposit.
 - a) Agency shall, prior to commencement of the preliminary engineering and/or right of way acquisition phases, deposit with State its estimated share of each phase. Exception may be made in the case of projects where Agency has written approval from State to use in-kind contributions rather than cash to satisfy all or part of the matching funds requirement.
 - b) Agency's construction phase deposit shall be one hundred ten (110) percent of Agency's share of the engineer's estimate and shall be received prior to award of the construction contract. Any additional balance of the deposit, based on the actual bid must be received within forty-five (45) days of receipt of written notification by State of the final amount due, unless the contract is cancelled. Any balance of a cash deposit in excess of amount needed, based on the actual bid, will be refunded within forty-five (45) days of receipt by State of the Project sponsor's written request.
 - c) Pursuant to Oregon Revised Statutes (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 State's Active Transportation Section, Funding and Program Services Unit, or 2) an Irrevocable Letter of Credit issued by a local bank in the name of State, or 3) cash.
9. If Agency makes a written request for the cancellation of a federal-aid project; Agency shall bear one hundred (100) percent of all costs incurred as of the date of cancellation. If State was the sole cause of the cancellation, State shall bear one hundred (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 costs, whether incurred by State or Agency, either directly or through contract services, and State shall bear any State administrative costs incurred. After settlement of payments, State shall deliver surveys, maps, field notes, and all other data to Agency.
10. Agency shall follow the requirements stated in the Single Audit Act. Agencies expending \$500,000 or more in Federal funds (from all sources) in its fiscal year beginning prior to December 26, 2014, shall have a single organization-wide audit conducted in accordance with the Single Audit Act of 1984, PL 98-502 as amended by PL 104-156 and subject to the requirements of 49 CFR parts 18 and 19. Agencies expending \$750,000 or more in federal funds (from all sources) in a fiscal year beginning on or after December 26, 2014 shall have a single organization-wide audit conducted in accordance with the provisions of 2 CFR part 200, subpart F. Agencies expending less than \$500,000 in Federal funds in a fiscal year beginning prior to December 26, 2014, or less than \$750,000 in a fiscal year beginning on or after that date, is exempt from Federal audit requirements for that year. Records must be available for review or

audit by appropriate officials based on the records retention period identified in the Project Agreement. The cost of this audit can be partially prorated to the federal program.

11. Agency shall make additional deposits, as needed, upon request from State. Requests for additional deposits shall be accompanied by an itemized statement of expenditures and an estimated cost to complete the Project.
12. Agency shall present invoices for one hundred (100) percent of actual costs incurred by Agency on behalf of the Project directly to State's Liaison for review, approval and reimbursement to Agency. Costs will be reimbursed consistent with federal funding provisions and the Project Agreement. Such invoices shall identify the Project by the name of the Project Agreement, reference the Project Agreement number, and shall itemize and explain all expenses for which reimbursement is claimed. Invoices shall be presented for periods of not less than one-month duration, based on actual expenses to date. All invoices received from Agency must be approved by State's Liaison prior to payment. Agency's actual costs eligible for federal-aid or State participation shall be those allowable under the provisions of the Federal-Aid Policy Guide (FAPG), Title 23 CFR parts 1.11, 140 and 710. Final invoices shall be submitted to State for processing within forty-five (45) days from the end of each funding phase as follows: a) preliminary engineering, which ends at the award date of construction b) last payment for right of way acquisition and c) contract completion for construction. Partial billing (progress payment) shall be submitted to State within forty-five (45) days from date that costs are incurred. Invoices submitted after 45 days may not be eligible for reimbursement by FHWA. Agency acknowledges and agrees that State, the Oregon Secretary of State's Office, the federal government, and their duly authorized representatives shall have access to the books, documents, papers, and records of Agency which are directly pertinent to the Project Agreement for the purpose of making audit, examination, excerpts, and transcripts for a period ending on the later of six (6) years following the date of final voucher to FHWA or after resolution of any disputes under the Project Agreement. 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 ((2 CFR 200.333(c)).
13. Agency shall, upon State's written request for reimbursement in accordance with Title 23, CFR part 630.112(c) 1 and 2, as directed by FHWA, reimburse State for federal-aid funds distributed to Agency if any of the following events occur:
 - a) Right of way acquisition is not undertaken or actual construction is not started by the close of the twentieth federal fiscal year following the federal fiscal year in which the federal-aid funds were authorized for right of way acquisition. Agency may submit a written request to State's Liaison for a time extension beyond the twenty (20) year limit with no repayment of federal funds and State will forward the request to FHWA. FHWA may approve this request if it is considered reasonable.
 - b) 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 federal fiscal year following the federal fiscal year in which the federal-aid funds were authorized. Agency may submit a written request to State's Liaison for a time extension beyond the ten (10) year limit with no repayment of federal funds and State will forward the request to FHWA. FHWA may approve this request if it is considered reasonable.
14. 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 the Project is completed in conformance with approved plans and specifications.

15. State shall submit all claims for federal-aid participation to FHWA in the normal manner and compile accurate cost accounting records. State shall pay all reimbursable costs of the Project. 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 one hundred (100) percent of the final total actual cost. Any portion of deposits made in excess of the final total costs of the 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.

STANDARDS

16. Agency agrees that minimum design standards on all local agency jurisdictional roadway or street projects on the National Highway System (NHS) and projects on the non-NHS shall be the American Association of State Highway and Transportation Officials (AASHTO) standards and be in accordance with *State's Oregon Bicycle & Pedestrian Design Guide* (current version). Agency shall use either AASHTO's A Policy on Geometric Design of Highways and Streets (current version) or State's Resurfacing, Restoration and Rehabilitation (3R) design standards for 3R projects. Agency may use AASHTO for vertical clearance requirements on Agency's jurisdictional roadways or streets.
17. Agency agrees that if the Project is on the Oregon State Highway System or State-owned facility, that design standards shall be in compliance with standards specified in the current *ODOT Highway Design Manual* and related references. Construction plans for such projects shall be in conformance with standard practices of State and all specifications shall be in substantial compliance with the most current *Oregon Standard Specifications for Highway Construction* and current *Contract Plans Development Guide*.
18. Agency agrees that for all projects on the Oregon State Highway System or State-owned facility any design element that does not meet *ODOT Highway Design Manual* design standards must be justified and documented by means of a design exception. Agency further agrees that for all projects on the NHS, regardless of funding source; any design element that does not meet AASHTO standards must be justified and documented by means of a design exception. State shall review any design exceptions on the Oregon State Highway System and retains authority for their approval. FHWA shall review any design exceptions for projects subject to Focused Federal Oversight and retains authority for their approval.
19. Agency agrees all traffic control devices and traffic management plans shall meet the requirements of the current edition of the *Manual on Uniform Traffic Control Devices and Oregon Supplement* as adopted in Oregon Administrative Rule (OAR) 734-020-0005. Agency must obtain the approval of the State Traffic Engineer prior to the design and construction of any traffic signal, or illumination to be installed on a state highway pursuant to OAR 734-020-0430.
20. The standard unit of measurement for all aspects of the Project shall be English Units. All Project documents and products shall be in English. This includes, but is not limited to, right of way, environmental documents, plans and specifications, and utilities.

PRELIMINARY & CONSTRUCTION ENGINEERING

21. Preliminary engineering and construction engineering may be performed by either a) State, b) Agency, c) State-approved consultant, or d) certified agency. Engineering work will be monitored by State or certified agency to ensure conformance with FHWA rules and regulations. Project plans, specifications and cost estimates shall be performed by either a) State, b) State-approved consultant or c) certified agency. State shall review and approve Project plans, specifications and cost estimates. State shall, at project expense, review, process and approve, or submit for approval to the federal regulators, all environmental statements. State or certified agency shall, if they prepare any of the documents identified in this paragraph, offer Agency the opportunity to review and approve the documents prior to advertising for bids.
22. Agency may request State's two-tiered consultant selection process as allowed by OAR 137-048-0260 to perform architectural, engineering, photogrammetry, transportation planning, land surveying and related services (A&E Services) as needed for federal-aid transportation projects. Use of the State's processes is required to ensure federal reimbursement. State will award and execute the contracts. State's personal services contracting process and resulting contract document will follow Title 23 CFR part 172, 2 CFR part 1201, ORS 279A.055, 279C.110, 279C.125, OAR 137-048-0130, OAR 137-048-0220(4) and State Personal Services Contracting Procedures as approved by the FHWA. Such personal services contract(s) shall contain a description of the work to be performed, a project schedule, and the method of payment. No reimbursement shall be made using federal-aid funds for any costs incurred by Agency or the consultant prior to receiving authorization from State to proceed.
23. 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.
24. State or certified agency shall prepare construction contract and bidding documents, advertise for bid proposals, and award all construction contracts.
25. Upon State's or certified agency's award of a construction contract, State or certified agency shall perform quality assurance and independent assurance testing in accordance with the FHWA-approved Quality Assurance Program found in State's *Manual of Field Test Procedures*, 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.
26. State shall, as a Project expense, assign a liaison to provide Project monitoring as needed throughout all phases of Project activities (preliminary engineering, right-of-way acquisition, and construction). State's liaison shall process reimbursement for federal participation costs.

REQUIRED STATEMENT FOR United States Department of Transportation (USDOT) FINANCIAL ASSISTANCE AGREEMENT

27. By signing the Federal-Aid Agreement to which these Federal Standard Provisions are attached, Agency agrees to adopt State's DBE Program Plan, available at http://www.oregon.gov/ODOT/CS/CIVILRIGHTS/pages/sbe/dbe/dbe_program.aspx#plan. Agency shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any USDOT-assisted contract or in the administration of its DBE program or the requirements of 49 CFR part 26. Agency agrees to take all necessary and reasonable steps under 49 CFR part 26 to ensure nondiscrimination in the award and administration of USDOT-assisted contracts. State's DBE program, as required by 49 CFR part 26 and as approved by USDOT, is

incorporated by reference in this Project Agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this Project Agreement. Upon notification to the recipient of its failure to carry out its approved program, the USDOT may impose sanctions as provided for under part 26 and may, in appropriate cases, refer the matter for enforcement under 18 United States Code (USC) 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 USC 3801 et seq.).

Disadvantaged Business Enterprises (DBE) Obligations

28. State and Agency agree to incorporate by reference the requirements of 49 CFR part 26 and State's DBE Program Plan, as required by 49 CFR part 26 and as approved by USDOT, into all contracts entered into under this Project Agreement. The following required DBE assurance shall be included in all contracts:

"The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of Title 49 CFR part 26 in the award and administration of federal-aid contracts. Failure by the contractor 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 Agency deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b))."

29. Agency agrees to comply with all applicable civil rights laws, rules and regulations, including Title V and Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990 (ADA), and Titles VI and VII of the Civil Rights Act of 1964.
30. The Parties hereto agree and understand that they will comply with all applicable federal, state, and local laws, regulations, executive orders and ordinances applicable to the work including, but not limited to, the provisions of ORS 279C.505, 279C.515, 279C.520, 279C.530 and 279B.270, incorporated herein by reference and made a part hereof; Title 23 CFR parts 1.11, 140, 635, 710, and 771; Title 49 CFR parts 24 and 26; 2 CFR 1201, Title 23, USC, Federal-Aid Highway Act; Title 41, Chapter 1, USC 51-58, Anti-Kickback Act; Title 42 USC; Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970, as amended, the provisions of the FAPG and *FHWA Contract Administration Core Curriculum Participants Manual & Reference Guide*. State and Agency agree that FHWA-1273 Required Contract Provisions shall be included in all contracts and subcontracts verbatim and not by reference.

RIGHT OF WAY

31. Agency and the consultant, if any, agree that right of way activities shall be in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, ORS Chapter 35, FAPG, CFR, and the *ODOT Right of Way Manual*, Title 23 CFR part 710 and Title 49 CFR part 24. State, at Project expense, shall review all right of way activities engaged in by Agency to ensure compliance with all laws and regulations.
32. State is responsible for proper acquisition of the necessary right of way and easements for construction and maintenance of projects. Agency may perform acquisition of the necessary right of way and easements for construction and maintenance of the Project provided Agency or the consultant are qualified to do such work, as required by the *ODOT Right of Way Manual*, and Agency has obtained prior approval from State's Region Right of Way office to do such work.
33. Regardless of who acquires or performs any of the right of way activities, a right of way services agreement shall be created by State's Region Right of Way office setting forth the responsibilities

and activities to be accomplished by each Party. If the Project has the potential of needing right of way, to ensure compliance in the event that right of way is unexpectedly needed, a right of way services agreement will be required. State, at Project expense, shall be responsible for requesting the obligation of project funding from FHWA. State, at Project expense, shall be responsible for 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 State's Liaison, who will forward the request to State's Region Right of Way office on all projects. Agency must receive written authorization to proceed from State's Right of Way Section prior to beginning right of way activities. All projects must have right of way certification coordinated through State's Region Right of Way office to declare compliance and project readiness for construction (even for projects where no federal funds were used for right of way, but federal funds were used elsewhere on a project). Agency shall contact State's Liaison, who will contact State's Region Right of Way office for additional information or clarification on behalf of Agency.

34. Agency agrees that 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.
35. Agency ensures that all project right of way monumentation will be conducted in conformance with ORS 209.155.
36. State and Agency grants each other authority to enter onto the other's right of way for the performance of non-construction activities such as surveying and inspection of the Project.

RAILROADS

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

UTILITIES

38. Agency shall follow State established statutes, policies and procedures when impacts occur to privately or publicly-owned utilities. Policy, procedures and forms are available through the State Utility Liaison or State's Liaison. Agency shall provide copies of all signed utility notifications, agreements and Utility Certification to the State Utility Liaison. Only those utility relocations, which are eligible for reimbursement under the FAPG, Title 23 CFR part 645 subparts A and B, shall be included in the total Project costs; all other utility relocations shall be at the sole expense of Agency, or others. Agency may send a written request to State, at Project expense, to arrange for utility relocations/adjustments lying within Agency jurisdiction. This request must be submitted no later than twenty-one (21) weeks prior to bid let date. However, State is under no obligation to agree to perform said duties. Agency shall not perform any utility work on state highway right of way without first receiving written authorization from State.

GRADE CHANGE LIABILITY

39. 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.

40. 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.
41. Agency, if a City, by execution of the Project 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 Project Agreement.

MAINTENANCE RESPONSIBILITIES

42. Agency shall, at its own expense, maintain operate, and provide power as needed upon Project completion at a minimum level that is consistent with normal depreciation and/or service demand and throughout the useful life of the Project. The useful life of the Project is defined in the Special Provisions. State may conduct periodic inspections during the life of the Project to verify that the Project is properly maintained and continues to serve the purpose for which federal funds were provided. Maintenance and power responsibilities shall survive any termination of the Project Agreement. In the event the Project will include or affect a state highway, this provision does not address maintenance of that state highway.

CONTRIBUTION

43. If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third Party Claim") against State or Agency with respect to which the other Party may have liability, the notified Party must promptly notify the other Party in writing of the Third Party Claim and deliver to the other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Each Party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by a Party of the notice and copies required in this paragraph and meaningful opportunity for the Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to that Party's liability with respect to the Third Party Claim.
44. With respect to a Third Party Claim for which State is jointly liable with Agency (or would be if joined in the Third Party Claim), State shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by Agency in such proportion as is appropriate to reflect the relative fault of State on the one hand and of Agency on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of State on the one hand and of Agency on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. State's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if State had sole liability in the proceeding.
45. With respect to a Third Party Claim for which Agency is jointly liable with State (or would be if joined in the Third Party Claim), Agency shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by State in such proportion as is appropriate to reflect the relative fault of Agency on the one hand and of State on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of Agency on the one hand and of State on the other

hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. Agency's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if it had sole liability in the proceeding.

ALTERNATIVE DISPUTE RESOLUTION

46. The Parties shall attempt in good faith to resolve any dispute arising out of this Project Agreement. In addition, the Parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation.

WORKERS' COMPENSATION COVERAGE

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

LOBBYING RESTRICTIONS – pursuant to Form FHWA-1273, Required Contract Provisions

48. Agency certifies by signing the Project 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 one hundred thousand dollars (\$100,000), and that all such subrecipients shall certify and disclose accordingly.
- d) This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Title 31, USC Section 1352.

- e) Any person who fails to file the required certification shall be subject to a civil penalty of not less than ten thousand dollars (\$10,000) and not more than one hundred thousand dollars (\$100,000) for each such failure.

Resolution

**Agreement for
Right-of-Way at
Beebe/Hamrick
Intersection**



PARKS & PUBLIC WORKS DEPARTMENT

140 South 3rd Street · Central Point, OR 97502 · (541) 664-7602 · www.centralpointoregon.gov

STAFF REPORT

July 7, 2015

AGENDA ITEM: Resolution No. _____ Authorizing the City Manager to Enter into an Agreement for Purchase of Right of Way with James Sutton of 4511 Hamrick Road in Lieu of Condemnation Proceedings

STAFF SOURCE:

Matt Samitore, Parks & Public Works Director

BACKGROUND/SYNOPSIS:

The City of Central Point Public Works Department has been negotiating with Mr. James Sutton for well over a year on construction of a new right turn lane located on the easterly movement of Beebe Road as it approaches Hamrick Road. Additionally, it was determined it is in the City's long term interest to also purchase enough right-of-way for a future signal pole when a signal is warranted.

The final offer to Mr. Sutton includes \$8,000 for the purchase of 259 sq. ft of property, free water for 6 years plus the city will not force annex the property. In addition a new sound wall will be constructed parallel to Beebe and Hamrick associated with the actual construction.

FISCAL IMPACT:

Positives: Upon completion of the agreement all the necessary area will be needed for a designated right turn lane. This will help immediately with the issues associated with church related functions at the Catholic Church. Additionally, there will be enough land for a future signal. Additionally, the agreement avoids condemnation proceedings.

Negatives: The City will have an initial financial obligation that is \$3,000 more than what was originally budgeted for this project.

ATTACHMENTS:

1. Dedication Agreement.

RECOMMENDATION:

City Staff: City staff recommends approving the agreement authorizing the City Manager or his designee to sign the dedication agreement upon execution from Mr. Sutton.

PUBLIC HEARING REQUIRED:

No

SUGGESTED MOTION:

I move to approve Resolution No. _____ **Authorizing the City Manager to Enter into an Agreement for Purchase of Right of Way with James Sutton of 4511 Hamrick Road in Lieu of Condemnation Proceedings**

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN
AGREEMENT FOR PURCHASE OF RIGHT-OF-WAY WITH
JAMES SUTTON OF 4511 HAMRICK ROAD IN
LIEU OF CONDEMNATION PROCEEDINGS

Recitals:

- A. The City Public Works Department has been negotiating with Mr. James Sutton regarding the purchase of Right-of-Way for the south easterly corner of Hamrick and Beebe Road.
- B. The City's long term interest is to purchase enough right-of-way for a future signal pole when a signal is warranted at this intersection.
- C. The City and Mr. Sutton have agreed to the terms as stated in "Exhibit A" of this resolution.
- D. By signing the proposed agreement both parties will avoid the need for condemnation proceeding.

The City of Central Point resolves as follows:

Section 1. The agreement is set forth on the attached Exhibit "A".

Passed by the Council and signed by me in authentication of its passage this _____ day of July, 2015.

Mayor Hank Williams

ATTEST:

City Recorder

DEDICATION AGREEMENT / JAMES SUTTON

RECITALS

WHEREAS, James Sutton (“Sutton”) is the owner of real property described more particularly in the attached EXHIBIT A (the “Property”).

WHEREAS, the City of Central Point, a municipal corporation of the State of Oregon (“City”) is conducting a street widening project along Beebe Road, which will include a new right turn lane, including curbs adjacent to the Property (the “Project”).

WHEREAS, Sutton has agreed to dedicate land to the City for the Project in consideration for cash and other obligations on the part of the City.

WHEREAS, the parties desire to enter into this Agreement to set forth the obligations of the parties hereto.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

A. Sutton’s Obligations:

1. Sutton agrees to dedicate land to the City free and clear of any liens, encumbrances or encroachments, for right-of-way purposes, such land being more particularly described in the attached EXHIBIT B.

2. Sutton agrees to execute a Dedication Deed in substantially the form attached hereto as EXHIBIT B in order to effectuate the dedication of land.

3. Sutton agrees to execute a Consent to Annex agreement which provides that Sutton agrees to annex the Property subject to the condition that it cannot be annexed into the City without the Property owner’s consent for a period of fifteen (15) years in substantially the form attached hereto as EXHIBIT C.

4. Sutton’s obligations herein shall be binding upon his heirs, successors and assigns.

B. City’s Obligations:

1. In consideration for the dedication of land described above, the City agrees to pay Sutton \$8,000.00 upon execution of the Dedication Deed.

2. As additional consideration for such dedication the City agrees to construct and install the following:

a. The City will construct a new 6-foot high block sound wall along Beebe Road as measured from the highest adjacent grade on the Property line. The 6-foot sound wall shall be installed along the north Property line and will measure approximately 167-feet in length, but in no case to extend into the 42" site vision line. The approximate location of the Beebe Road sound wall is depicted on the attached EXHIBIT D.

b. The City will remove all vegetation and other material that is in the City's construction and dedication area at the City's sole cost.

c. The City will remove and preserve the existing 40-foot chain link fence and posts at its sole cost. At Sutton's request, the City will relocate said fence to another location on the Property at City's cost. In the event no such request is made prior to or during construction of the Project, the City shall leave the removed fence at the Property and shall have no further obligations to relocate said fence.

d. The City will construct a 42-inch high block sound wall along Hamrick Road along the east Property line. Said wall will begin at the site vision line and continue to the south Property line. The height of said sound wall will be measured from the highest adjacent grade. See EXHIBIT D for the approximate location of the Hamrick Road sound wall.

3. The City shall install asphalt driveways on both Hamrick Road and Beebe Road in the locations in which said driveways currently exist, the approximate location of which is depicted on the attached EXHIBIT D. The driveways will extend five feet from the property line onto the Property.

4. As further consideration for the dedication, the City will install a new five-eighth (5/8) inch water meter. For six (6) years following execution of this Agreement, the City agrees to provide water to the Property at no charge, and the owner of the Property will not be subject to street/storm water fees. Following expiration of said 6-year period, the Property owner will be responsible to pay any and all charges for water, street fees and storm water fees to the Property.

5. The City shall have a plumber remove the current holding tank and pressure tank located on the Property and move them to the another location on the Property at City's sole cost.

6. The City will install a backflow prevention device, pressure reducing valve, and any other work associated with hooking up the existing dwellings on the Property to the domestic water service at City's sole cost and shall remove the existing structure surrounding the holding tank at City's sole cost.

C. Miscellaneous Provisions

1. Maintenance of Sound Walls. Upon completion of construction of the sound walls identified in Subsections B(2)(a) and B(2)(d) above, City shall be responsible to maintain

and repair said sound walls, except where such damage or destruction is caused by Sutton, his guests, tenants, successors and assigns; in such event Sutton, his guests, tenants, successors or assigns, shall be responsible to repair or replace said walls.

2. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original and said counterparts shall together constitute one in the same agreement, binding all the parties hereto, notwithstanding all the parties are not signatory to the original or the same counterparts.

3. Indemnification. The parties hereby agree to indemnify, defend, hold harmless and protect the other party from and against any and all claims (including without limitation any claim for damage to property or injury to death of any persons, liens, or encumbrances asserted by any third person) that relate to the obligations under this Agreement, where such claims were caused by the negligence of the other party.

4. Notices. All notices, demands, consents, approves or other communication that are required or desired to be given by either party to the other under this Agreement shall be in writing and shall be (a) hand-delivered or (b) sent by first class mail addressed to the party at the address set forth below or at such other address as such party shall have last designated by notice to the other. Notices shall be deemed given when delivered or when placed in the mail. Notice addresses for the parties are as follows:

To City: Chris Clayton
City of Central Point
140 S. Third Street
Central Point, OR 97502

To Sutton: James Sutton

5. Binding Effect. This Agreement shall be binding on and inure to the benefit of the parties and their heirs, personal representatives, successors and assigns.

6. Assignment. This Agreement shall be freely assignable.

7. Attorney Fees. If any suit or action is filed by any party to enforce this Agreement or otherwise with respect to the subject matter of this Agreement, the prevailing party shall be entitled to recover reasonable attorney fees incurred in preparation or in prosecution or defense of such suit or action as fixed by the trial court, and if any appeal is taken from the decision of the trial court, reasonable attorney fees as fixed by the appellate court.

8. Amendments. This Agreement may be amended only by an instrument in writing executed by all the parties.

9. Entire Agreement. This Agreement (including the exhibits) sets forth the entire understanding of the parties with respect to the subject matter of this Agreement and supersedes any and all prior understandings and agreements, whether written or oral, between the parties with respect to such subject matter.

10. Severability. If any provision of this Agreement shall be invalid or unenforceable in any respect for any reason, the validity and enforceability of any such provision in any other respect and of the remaining provisions of this Agreement shall not be in any way impaired.

11. Waiver. A provision of this Agreement may be waived only by a written instrument executed by the party waiving compliance. No waiver of any provision of this Agreement shall constitute a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. Failure to enforce any provision of this Agreement shall not operate as a waiver of such provision or any other provision.

12. Further Assurances. From time to time, each of the parties shall execute, acknowledge, and deliver any instruments or documents necessary to carry out the purposes of this Agreement

13. No Third-Party Beneficiaries. Nothing in this Agreement, express or implied, is intended to confer on any person, other than the parties to this Agreement, any right or remedy of any nature whatsoever.

14. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the state of Oregon.

15. Venue. This Agreement has been made entirely within the state of Oregon. This Agreement shall be governed by and construed in accordance with the laws of the state of Oregon. If any suit or action is filed by any party to enforce this Agreement or otherwise with respect to the subject matter of this Agreement, venue shall be in the federal or state courts in *, Oregon.

16. Attorney Representation. The undersigned acknowledges (a) that he has read this Agreement in its entirety, (b) that he has had full opportunity to study and review this Agreement, (c) that this Agreement was prepared by Sydnee B. Dreyer, an attorney with the law firm of Huycke O'Connor Jarvis, LLP, as the attorney for the City of Central Point, (d) that Ms. Dreyer does not represent Mr. Sutton and he has not relied in any way upon any legal advice or actions of Ms. Dreyer in entering into this Agreement, (e) that Mr. Sutton understands that he should consult with independent legal counsel, and that he has the right to consult with independent legal counsel respecting his rights and duties under this Agreement, (f) that he has had full opportunity to review and discuss this Agreement with independent legal counsel and tax and other advisors, and (g) that he has been provided all information related hereto as has been requested.

IN WITNESS WHEREOF the parties have executed this Agreement this ___ day of July, 2015.

CITY OF CENTRAL POINT

By: _____
*

JAMES SUTTON

F:\9508S\DEDICATION AGREEMENT - JAMES SUTTON.DOC

EXHIBIT "A"
(Land Description Map Tax and Account)

BEGINNING AT A POINT ON THE EAST LINE OF DONATION LAND CLAIM NO. 55, TOWNSHIP 37 SOUTH, RANGE 2 WEST, WILLAMETTE MERIDIAN, JACKSON COUNTY, OREGON, SAID POINT BEING 1249.14 FEET NORTH OF THE SOUTHEAST CORNER OF SAID CLAIM; THENCE WEST, PARALLEL WITH THE SOUTH BOUNDARY OF SAID CLAIM, 220.0 FEET, TO THE EAST LINE OF TRACT DESCRIBED IN VOLUME 284, PAGE 213, JACKSON COUNTY, OREGON, DEED RECORDS; THENCE NORTH, ALONG SAID LINE, 156.0 FEET, TO THE NORTH LINE OF TRACT DESCRIBED IN VOLUME 279, PAGE 180, SAID DEED RECORDS; THENCE EAST, ALONG SAID LINE, 220.0 FEET, TO THE EAST LINE OF SAID CLAIM NO. 55; THENCE SOUTH, ALONG SAID CLAIM LINE, 156.0 FEET, TO THE POINT OF BEGINNING.

NOTE: This Legal Description was created prior to January 01, 2008.

Map No.: 372W01C 1700
Tax Account No.: 1-019549-1

AFTER RECORDING RETURN TO:

City of Central Point
140 S 3rd Street
Central Point OR 97502

DEDICATION OF RIGHT OF WAY

KNOW ALL MEN BY THESE PRESENTS that James W Sutton, a single man, as owner / Grantor does hereby dedicate to the public of THE CITY OF CENTRAL POINT, a municipal corporation of the State of Oregon the following described tract for public use for street right-of-way purposes,

SEE EXHIBIT "A2" ATTACHED HERETO

AND MADE A PART HEREOF and Further delineated on attached Exhibit "B"

IN WITNESS HEREOF, signed this _____ day of _____, 2015.

James W. Sutton

STATE OF OREGON

COUNTY OF JACKSON

This instrument was acknowledged before me this day _____ of _____, 2015 by James W. Sutton

Notary Public for Oregon

My commission expires

The City of Central Point, a municipal corporation of the State of Oregon, hereby accepts such grant of street right of way on behalf of the public.

City of Central Point

IN WITNESS HEREOF, signed this instrument this ____ day of _____ 2015.

By: _____

Title: _____

STATE OF OREGON)

) SS.

County of Jackson)

Personally appeared the above-named _____, and acknowledged the foregoing instrument to be his/her voluntary act and deed and was signed on behalf of the City of Central Point. Before me:

Notary Public for Oregon

My commission expires: _____

EXHIBIT "A2"

Property Description
City of Central Point
Assessor's Map No. 372W01C-1700 a portion of

This description is a portion of that tract described in Instrument No 87-16607 as recorded in the Official Records of Jackson County, Oregon, more particularly described as follows:

Commencing at the Southeast corner of Donation Land Claim No 55 in Township 37 South, Range 2 West of the Willamette Meridian, Jackson County, Oregon; thence North 0°11'26" West, along the East line of said Claim, 1249.07 feet to the Southeast corner of that tract described in Instrument No 87-16607 as recorded in the Official Records of Jackson County, Oregon; thence South 89°54'00" West, parallel with the South boundary of said Claim, 31.31 feet to the existing right of way of Hamrick Road; thence North 0°15'01" West, along said right of way, 117.06 feet to the POINT OF BEGINNING; thence continuing North 0°15'01" West, along said right of way, 17.00 feet to the South right of way line of Beebe Road; thence South 89°33'59" West, along said Beebe Road right of way, 19.00 feet; thence South 24°08'33" East, 18.57 feet; thence North 89°33'59" East, parallel with said Beebe Road right of way, 11.48 feet to the POINT OF BEGINNING.

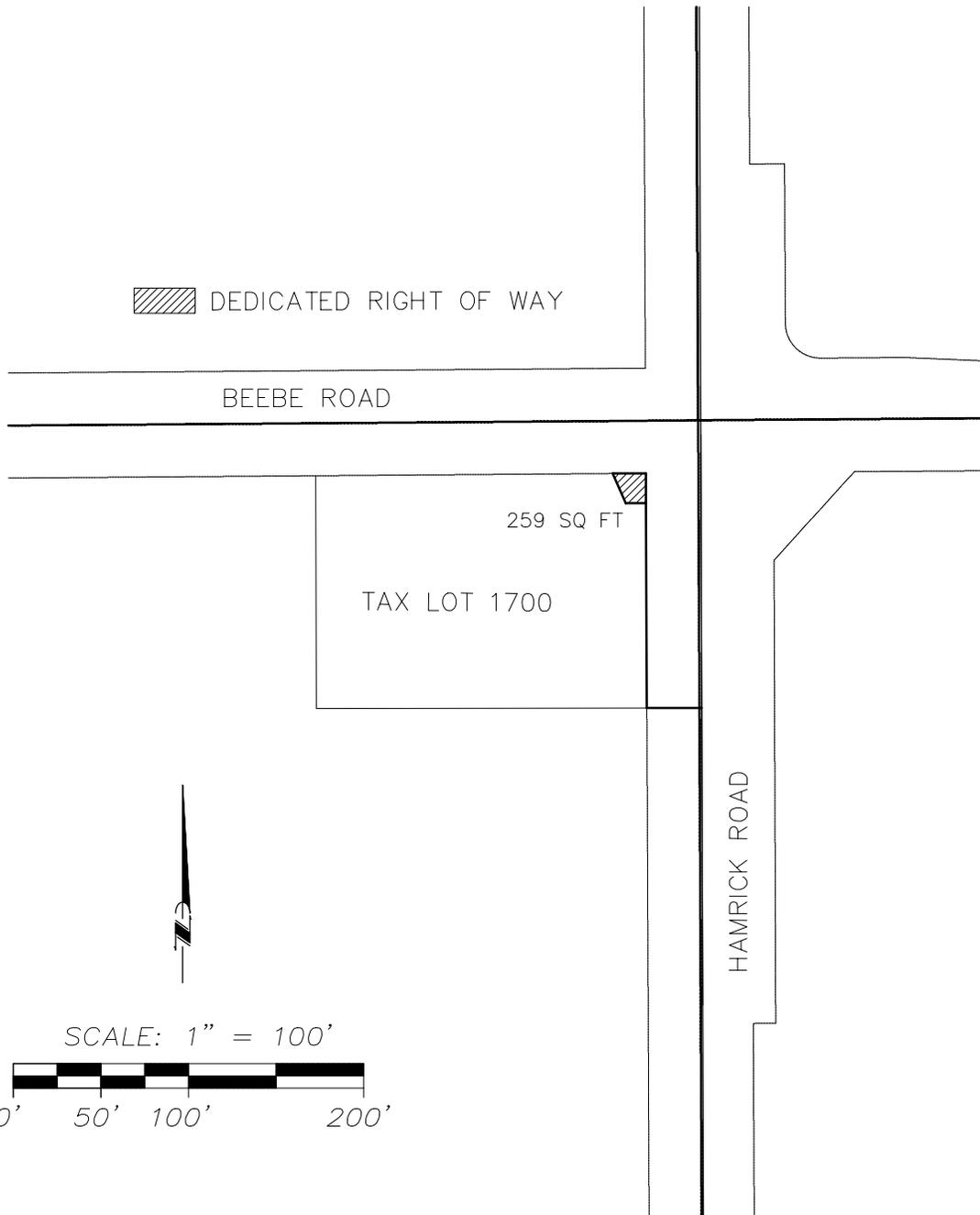
Containing 259 square feet, more or less.

Prepared By: Farber and Sons Inc
Farber Surveying
431 Oak Street
Central Point, OR 97502
(541) 664-5599

draft document

Date: June 11, 2015

EXHIBIT "B"



Prepared by:
FARBER & SONS, INC.
dba FARBER SURVEYING
431 Oak Street
Central Point, Oregon 97502
(541) 664-5599

REGISTERED
PROFESSIONAL
LAND SURVEYOR

OREGON
JULY 26, 1985
HERBERT A. FARBER
2189

DATE: June 13, 2015

JOB NO. 2023-13

central point\city CP\beebe hamrick\microsurey\exhibit 061215 re base.dwg

RENEWAL DATE 12-31-15

Exhibit C

CONSENT TO ANNEXATION AGREEMENT

This agreement, made and entered into this _____ day of _____, 20, by and between the City of Central Point, Oregon, an Oregon municipal corporation, hereinafter referred to as "City", and _____, hereinafter referred to as "Owners".

Agreement

1. **Warranty of Ownership.** Owners hereby warrant that they are the owners in fee of the real property, described as follows: See attached, Exhibit A

2. **Comprehensive Plan Amendment and Annexation.** Owners hereby give their continuing written and irrevocable consent to, and request for, the annexation of the property described above to City, and do hereby petition City for such annexation. In connection therewith, Owners certify that there are no electors residing on the subject property; Owners waive ORS 222.173, which limits the duration of the annexation agreement to one year, and agree to sign a separate document, as required by said statute, waiving said time until the property is annexed; and owners, consent and waiver are continuing and binding upon the heirs, successors and assigns of the owners, including, but not limited to, lessors, lessees, renters, and any other occupants of the property.

Owners agree to pay all costs in connection with the annexation, to be paid to the City upon request, and to participate fully in all City land use procedures necessary or advisable for the annexation, and the establishment of a zone for said property. Owners' cooperation shall include, but not be limited to, testifying and otherwise presenting evidence in favor of the annexation.

3. **Examinations and Inspections.** Owners grant to City, and any of its authorized-representatives, the right to go upon the property at all reasonable times to make such examinations and inspections as are reasonably necessary in City's opinion to determine that all terms and conditions hereof, and all City codes and ordinances, are being fully complied with by owner.

4. **City Codes and Ordinances.** From and after the date of the execution of this agreement, the property described herein and all structures and improvements situated thereon shall be subject to and shall comply with all City codes and ordinances, including, but not limited to, the City building, zoning, development and utility standards and procedures.

5. **Attorney Fees.** In the event of any suit, action, claim, or other legal proceeding to enforce any of the terms or provisions of this agreement, including rescission or declaratory judgment, the prevailing party in such action shall be entitled to recover its reasonable attorney fees incurred therein, including any appeal, in a sum to be determined by the Court.

EXECUTED IN DUPLICATE, each party retaining an original.

City of Central Point

Owners

By _____

Mayor

By _____

City Manager

STATE OF OREGON)
) ss.
County of Jackson)

On this _____ day of _____, 20____, personally appeared before me _____, known to me to be the Mayor for the City of Central Point, Oregon, and acknowledged the foregoing Consent to Annexation Agreement to be the voluntary act and deed of City of Central Point.

Notary Public for Oregon
My Commission Expires: _____

STATE OF OREGON)
) ss.
County of Jackson)

On this _____ day of _____, 20____, personally appeared before me _____, known to me to be the City Manager for the City of Central Point, Oregon, and acknowledged the foregoing Consent to Annexation Agreement to be the voluntary act and deed of City of Central Point.

Notary Public for Oregon
My Commission Expires:_____

STATE OF OREGON)
) ss.
County of Jackson)

On this _____ day of _____, 20____, personally appeared before me _____, and acknowledged the foregoing Consent to Annexation Agreement to be his voluntary act and deed.

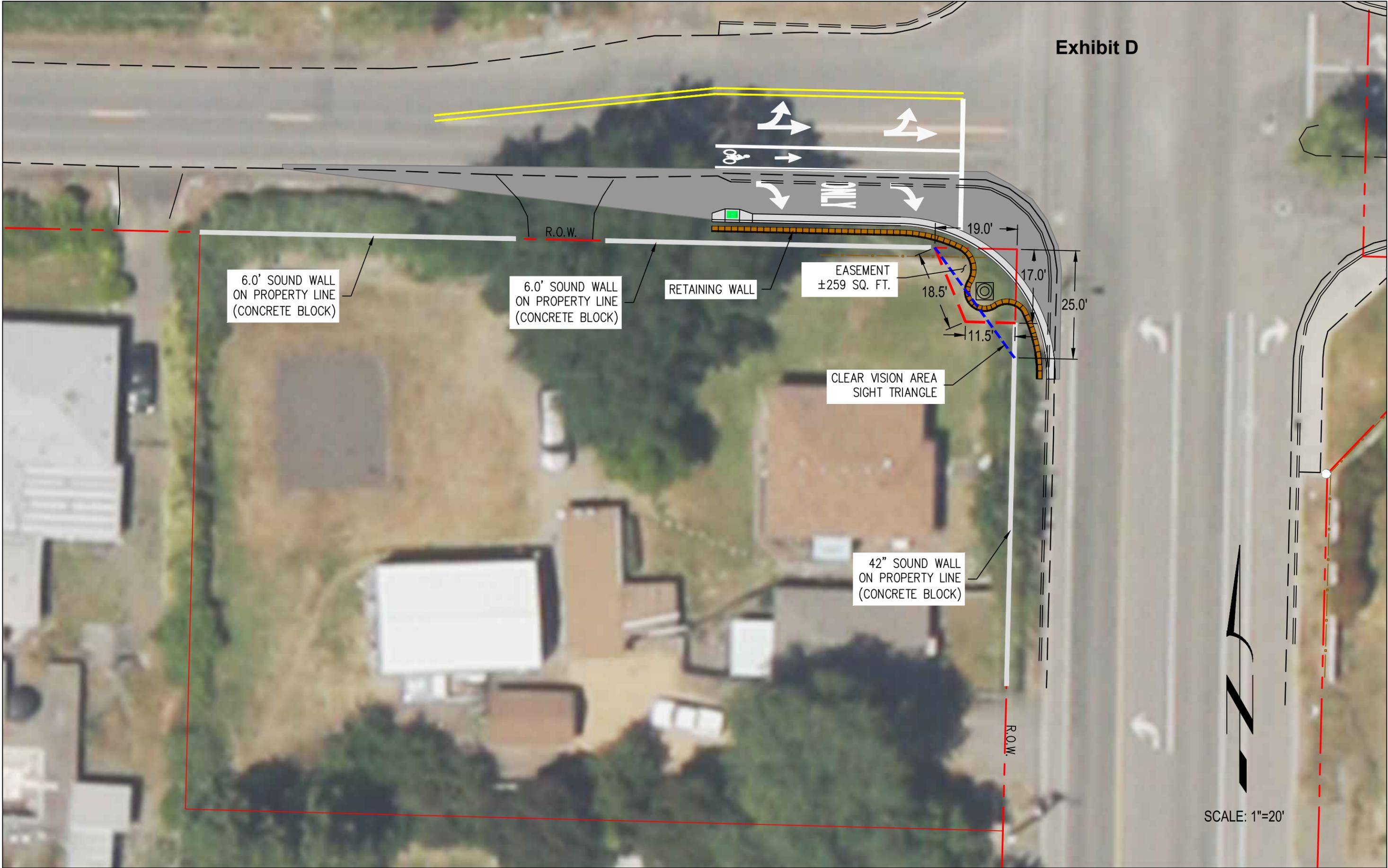
Notary Public for Oregon
My Commission Expires:_____

STATE OF OREGON)
) ss.
County of Jackson)

On this _____ day of _____, 20____, personally appeared before me _____, and acknowledged the foregoing Consent to Annexation Agreement to be his voluntary act and deed.

Notary Public for Oregon
My Commission Expires:_____

Exhibit D



SCALE: 1"=20'

Resolution

**Railroad Crossing
Agreement
Amendment**



STAFF REPORT

July 16, 2015

AGENDA ITEM:

Resolution Adopting the Second Amendment to a Road Easement Agreement between the City of Central Point and Central Oregon & Pacific Railroad, Inc.

STAFF SOURCE:

Tom Humphrey AICP, Community Development Director

BACKGROUND:

The City has entered into two previous agreements with the railroad beginning in June 2008. The Railroad Easement grants *the right to construct, reconstruct, maintain and use a street or highway upon and across* its right-of-way. Both parties expected to be under construction by the time the first 3-year agreement concluded. Unfortunately, the recession and revisions to the traffic signal layout at the crossing lead to an amendment of the agreement and year-to-year payments to the railroad which have been renegotiated. Attachment A is a Resolution that includes the second and final amendment to the original agreement as Exhibit "A. The language in the Amendment has been prepared in collaboration with the City Attorney and the railroad has agreed to its terms.

ISSUES:

There are no real issues with this item because the parties have mutually agreed to the recitals and substance of the agreement. Approval of the resolution directs staff to enact the agreement and to make one final payment to the railroad relative to a road easement for the Twin Creeks Crossing. The payment will be made after the railroad signs and returns the amendment. The agreement and final payment secure the city's right to the crossing location until such time as construction begins and a new crossing is completed.

ATTACHMENTS:

Attachment "A" – Resolution No. ____ A Resolution Directing the City Manager or His Designee to Enter Into a Second Amendment to a Road Easement Agreement Between Central Oregon & Pacific Railroad, Inc. and the City of Central Point

ACTION/RECOMMENDATION:

Approve Resolution No. ____ A Resolution Directing the City Manager or His Designee to Enter Into a Second Amendment to a Road Easement Agreement Between Central Oregon & Pacific Railroad, Inc. and the City of Central Point.

RESOLUTION NO. _____

A RESOLUTION DIRECTING THE CITY MANAGER OR HIS DESIGNEE TO ENTER INTO A SECOND AMENDMENT TO A ROAD EASEMENT AGREEMENT BETWEEN CENTRAL OREGON & PACIFIC RAILROAD, INC. AND THE CITY OF CENTRAL POINT

WHEREAS, the City of Central Point has an approved Final Order (FO) for the construction of a New Railroad-Highway Grade Crossing at Twin Creeks Road and Central Oregon & Pacific Railroad; and

WHEREAS, the First Amendment to Road Easement Agreement has expired and a subsequent amendment is necessary to ensure the construction of transportation and utility improvements; and

WHEREAS, the Twin Creeks/Highway 99 at-grade railroad crossing is identified in the City's 2008 Transportation System Plan (TSP) as a high priority Tier 1, Short-term project (Project No. 202) which is scheduled for funding and construction; and

WHEREAS, the completion of the Twin Creeks/Highway 99 at-grade railroad crossing is critical to subsequent completion of the Twin Creeks master plan and general economic development in the City of Central Point; and

WHEREAS, the City Council of the City of Central Point deems that the necessity, convenience and the general welfare of the public will benefit by this agreement;

NOW, THEREFORE, THE CITY OF CENTRAL POINT RESOLVES AS FOLLOWS, to approve the Second Amendment to Road Easement Agreement (No. CORP 080625) in the manner stated in said agreement which is Exhibit "A".

BE IT FURTHER RESOLVED that the City Council directs the City Manager to consummate the agreement (Exhibit "A") following the adoption of this resolution.

PASSED by the City Council and signed by me in authentication of its passage this _____ day of _____, 2015.

Mayor Hank Williams

ATTEST:

City Recorder

SECOND AMENDMENT TO ROAD EASEMENT AGREEMENT
Agreement Number: CORP 080625

This agreement made as of this _____ day _____, 2015.

Between:

Central Oregon and Pacific Railroad, Inc.
(in this Agreement called "Railroad")

And

City of Central Point
(in this Agreement called "Grantee")

Whereas, Railroad and Grantee are parties (or successors thereof) to a certain Easement Agreement (hereinafter "Original Agreement") dated June 24th, 2008 and an Amendment to said Original Agreement (hereinafter "Amendment") dated August 10, 2011 in the respect of a proposed at grade road crossing as described by Exhibit "A" of the Original Agreement.

And, whereas the parties have mutually agreed to modify the terms of the Original Agreement and Amendment once more in the manner and to the extent hereafter set forth:

NOW THEREFORE THIS AGREEMENT WITNESSETH:

1. Section 4 of the Original Agreement and Amendment is amended in its entirety to read as follows: The rights herein granted shall lapse and become void upon construction or reconstruction of said highway by Grantee, its agents or assigns, except as otherwise extended in writing by Railroad."
2. Section 10 of the Original Agreement is hereby amended to read, "Grantee and Railroad acknowledge payment in full with execution of this amendment. This brings the total cash outlay for the easement described in the Original Agreement to One Hundred Twenty Five Thousand Dollars (\$125,000). This payment shall secure the right to this easement until such time as construction of the Twin Creeks Crossing begins and no further payment shall be required from Grantee to maintain the Easement granted herein."
3. In all other respects the Easement Agreement is hereby ratified and confirmed.

In WITNESS WHEREOF, the parties hereto have executed this agreement as and of the day of the year first written above.

City of Central Point

Print Name and Title

Central Oregon & Pacific Railroad, Inc.

Tony D. Long – Vice President

Business

Vietnam Veteran's

Letter



STAFF REPORT

July 16, 2015

AGENDA ITEM:

Consideration of a Letter from the City Manager Endorsing Vietnam Veteran's Memorial Wall

STAFF SOURCE:

Tom Humphrey, Community Development Director

BACKGROUND:

The City has been approached by the Southern Oregon Veterans Benefit (SOVB) organization about bringing an 80% replica of the Vietnam Veterans Memorial Wall to Central Point. Members of the group made a presentation to the City Council earlier this year and a land use pre-application has actually been submitted to the Community Development Department.

The success of this venture and the actual involvement of the City will be based upon the SOVB's ability to raise funds for Memorial Wall construction and its associated infrastructure. The SOVB organization has asked City staff to write a letter of endorsement for the project and its tentative location in Don Jones Memorial Park.

ISSUES:

There are no real issues with writing a letter of support for this project to aid the organization with fund raising, particularly if the Council thinks it's a good idea and has supported other similar ventures in the past (e.g. Fallen Heroes Memorial). The SOVB knows that they have to receive land use approval from the City for a Conditional Use Permit and the SOVB has started this process. The application will be considered by both the Parks Commission and by the Planning Commission this fall.

EXHIBITS/ATTACHMENTS:

Attachment "A" – Letter to Russ McBride from City Manager Chris Clayton dated July 17, 2015

ACTION:

Discuss the proposed letter and; 1) approve as written, 2) approve with revisions, or 3) elect not to write a letter of endorsement.

RECOMMENDATION:

Approve the letter and direct staff to follow-up with SOVB

City of Central Point, Oregon

140 S 3rd Street, Central Point, OR 97502
541.664.3321 Fax 541.664.6384
www.centralpointoregon.gov



Administration

Chris Clayton, City Manager
Deanna Casey, City Recorder
Sydney Dreyer, City Attorney

July 17, 2015

Mr. Russ McBride
Southern Oregon Veterans Benefit
Post Office Box 1013
Medford, OR 97501

Dear Russ:

I am writing this letter on behalf of the City to confirm the Council's support for bringing a replica Vietnam Veterans Memorial Wall to Central Point. Your preliminary conversations with City staff have identified Don Jones Memorial Park on Vilas Road as the prospective site. As you know, this is also the location of the Fallen Heroes Memorial and the site is next to the Historic Central Point Cemetery.

The City enthusiastically supported the concept, planning and establishment of the Fallen Heroes Memorial a few years ago and we are happy to follow similar steps in helping your organization develop and build the Vietnam Veterans Memorial Wall here. Our staff has been directed to work collaboratively with you in moving your project through the Planning Commission and the Parks Committee review process.

We view the addition of the Vietnam Veterans Memorial Wall as a significant destination in Southern Oregon and a 'place of healing' for service members, their families and friends who were affected by the Vietnam War. We agree with you that the Central Point location will be more accessible to many veterans who are unable to travel to Washington D.C. to view the original Memorial Wall.

The City welcomes the proposal of the Southern Oregon Veterans Benefit organization and invites your planning application(s). We understand that the success of your proposal is contingent upon your ability to gain public support and raise funds to actually build the wall. The City will await the outcome of your efforts. In the meantime we stand ready to assist you in whatever way we can.

Sincerely yours,

Chris Clayton
City Manager

Business

**Planning Commission
Report**

PLANNING DEPARTMENT MEMORANDUM

Date: July 16, 2015
To: Honorable Mayor & Central Point City Council
From: Tom Humphrey AICP, Community Development Director
Subject: Planning Commission Report

The following items were presented by staff and discussed by the Planning Commission at a meeting on July 7, 2015.

- A. **Consideration of a Preferred Route for Gebhard Road as Described in the Gebhard Road Alignment Study. File No. UR 2014-0002. Applicant: Central Point Development Commission.** The Planning Commission considered the alignment study and conducted a public hearing with affected parties and local residents. After considerable discussion, the Commission unanimously recommended Option “C” (with two roundabouts) to the City Council as the preferred route.
- B. **Consideration of a Transit Oriented Development (TOD) preliminary master plan on 18.91 acres in the Eastside TOD District. The project site is located east of Gebhard Road and north of Beebe Road, on property identified as 372W02 Tls 2700 and 2701. The project site is within the LMR-Low Mix Residential (2.69 ac) and MMR-Medium Mix (16.22 ac) zoning districts, File No. 14004. Applicant: People’s Bank of Commerce; Agent: Tony Weller, CES/NW.** The Commission conducted a public hearing and took testimony from the proponent and various property owners in the vicinity. Three major issues were discussed which included 1) the Gebhard Road alignment, 2) Soil contamination in the proposed park site and 3) shallow well impact and mitigation. The Commission felt that there were enough unanswered questions to continue the hearing (with the applicant’s concurrence) to their September meeting.
- C. **Consideration of a Tentative Partition Plan to create three (3) parcels in the LMR-Low Mix Residential and MMR-Medium Mix Residential zoning districts within the Eastside TOD District on property identified as 372W02 TL 2700. File No. 14016. Applicant: People’s Bank of Commerce; Agent: Tony Weller, CES/NW** The Planning Commission conducted a public hearing and took testimony from the proponent and various property owners in the vicinity. Since this application was associated with and dependent upon Master Plan approval, the Commission also continued this application to their September meeting.

D. Consideration of Various Amendments to the Zoning Ordinance as on-going maintenance of the Municipal Code and to ensure clear standards and efficient development. File No. 15016. Applicant: City of Central Point. The Commission was presented with eleven minor amendments which are administrative in nature and necessary for clear, concise and consistent use of the Zoning Ordinance. The Commission unanimously recommended in favor of the changes and directed staff to proceed. The changes will be reviewed with the City Attorney prior to bringing them to the City Council in August.

Interchange Area Management Plan (IAMP) for I-5 Exit 33 and a Proposed Schedule for IAMP 33 Adoption and Corresponding Transportation System Plan (TSP) Amendment were discussed with the Planning Commission who will expect to consider this at their meeting in August.

Business

Jackson County Justice Court Agreement for Police Substation



ADMINISTRATION DEPARTMENT

140 South 3rd Street · Central Point, OR 97502 · (541) 664-7602 · www.centralpointoregon.gov

STAFF REPORT

July 16th, 2015

AGENDA ITEM: Business Item/Possible Action – Council briefing and discussion related to the construction of a new Jackson County Justice Court (4173 Hamrick Road), including the possibility of a Central Point Police Department sub-station.

STAFF SOURCE:

Chris Clayton, City Manager

BACKGROUND/SYNOPSIS:

The city was notified by Jackson County in early July that bids for the proposed Jackson County Justice Court (4173 Hamrick Road) had been received and, by a wide margin, the submitted bids had exceeded preliminary cost estimates. Although estimates generated during the design process suggested a total project cost of \$1.5 million, the lowest responsible bid received was \$2.5 million (including a 10% contingency).

With the northeastern portion of the city being targeted for future commercial and residential growth, an established police sub-station facility in this portion of the community is strategically desirable when anticipating future public safety needs. The city and county have agreed that a police sub-station located within the new county court facility would be mutually advantageous. However, with the significantly increased building costs, the county has proposed a commensurate increase in lease costs associated with the sub-station.

FISCAL IMPACT:

Earlier project estimates were that the City of Central Point would enter a lease agreement with the following requirements:

1. Annual lease payment of \$7,000 (\$1.95 per square foot/month).
2. 10-year lease agreement.

The recent cost increases produced by the bid opening would alter the lease requirements as follows:

1. Annual lease payment of \$9,734 (\$2.72 per square foot/month).
2. 15-year lease agreement.

ATTACHMENTS:

1. Standard Jackson County facility lease agreement. *Note: a police sub-station specific lease agreement is currently under review (by both jurisdictions) and will be provided at the July 16th City Council meeting.*

RECOMMENDATION:

1. Council briefing/overview of proposed Jackson County Justice Court lease agreement and related City of Central Point Police sub-station.
2. Motion directing the City Manager regarding lease agreement execution.

PUBLIC HEARING REQUIRED:

No

COMMERCIAL LEASE

THIS COMMERCIAL LEASE ("Lease") is between the County of Jackson, a home-rule political subdivision of the State of Oregon, hereinafter referred to as "COUNTY," and the City of Central Point, Oregon, hereinafter referred to as "LESSEE."

RECITALS

WHEREAS, COUNTY is the owner of certain unimproved real property (Map and Taxlot 372W01C – 3300) commonly known as 4173 Hamrick Road, Central Point, Oregon (the "Property"), on which COUNTY will be constructing improvements for a new Justice Court Building (collectively the "Justice Building"); and

WHEREAS, LESSEE desires to lease certain space in the Building, on the terms and conditions set out in this Lease.

NOW THEREFORE, the parties, intending to be legally bound by the terms of this Lease, agree as follows:

AGREEMENT

SECTION 1 - LEASED PREMISES:

1.1 - Agreement to Lease and Description.

COUNTY leases to LESSEE and LESSEE leases from COUNTY _____ rooms totaling _____ square feet in the Justice Building to be built on the Property by COUNTY (the "Lease Space") as listed and described in Exhibit "A", attached hereto and by reference made a part thereof, together with all improvements existing or to be built in the Lease Space by COUNTY (collectively, "Improvements"). The Lease Space, together with all Improvements located thereon, is referred to herein as the "Premises". The parties understand and agree that the COUNTY will only be constructing the extra _____ square feet Lease Space as part of the Justice Building due to LESSEE's agreement to lease such area under the terms and conditions of this Lease.

1.2 - Reservations to COUNTY.

COUNTY reserves the right to install, lay, construct, maintain, repair, and operate such water, sewer, and gas lines; telephone and computer power lines; and the appliances and appurtenances necessary or convenient in connection therewith, in, over, upon, through, across, under, and along the leased Premises or any part thereof, and to enter the leased Premises for any and all such purposes. No right reserved by COUNTY in this Section shall be so exercised as to interfere unreasonably with LESSEE's operations hereunder.

SECTION 2 - TERM:

This Lease shall be binding upon the parties upon full execution ("Effective Date"). The term of this Lease shall commence on the Effective Date and shall continue through _____, 2025 ("Lease Term"), unless this Lease is sooner terminated under the provisions of this Lease ("Expiration Date").

SECTION 3 - RENTALS AND FEES:

For the privileges granted hereunder, LESSEE shall pay the following rentals and fees:

3.1 - Ground Area.

The initial rent per square foot per year is \$_____. LESSEE agrees to pay rent for the leased Premises in the sum of \$_____ per year, payable in twelve (12) monthly payments of \$_____, to be paid monthly by the first day of each month, without notice, so long as tenancy continues. Payments shall be made to: Jackson County, 10 S. Oakdale, Room 214, Medford, Oregon 97501.

All costs of, or charges for, utility (gas, water, electric, sewer and garbage) services furnished to LESSEE during the term hereof shall be included in the rent paid by LESSEE. LESSEE shall provide, at its own cost and expense, all telephone, internet and other services to maintain and operate the leased Premises.

3.2 - Periodic Adjustment.

The initial rent specified in Section 3.1 in this Lease shall be subject to automatic annual adjustments on March 1st of every year, beginning March 1st, 2016, and continuing each year thereafter. Said annual increases shall be based on the total percentage increase of the Consumer Price Index, All Urban Consumers (CPI-U), for the United States, published by the Bureau of Labor Statistics of the United States Department of Labor for the calendar year ending on December 31st of the previous year. In the event there is a negative percentage change in the CPI-U during the previous calendar year, the base rentals and fees will not be adjusted.

In the event that the Consumer Price Index is not issued or published for the period for which base rent and fees are to be adjusted and computed hereunder, and/or in the event that the Bureau of Labor Statistics of the United States Department of Labor should cease to publish said index figures, then any similar index published by any other branch or department of the United States Government shall be used and if none is so published, then another index generally recognized and authoritative shall be substituted by COUNTY.

3.3 - Proration.

For any period of less than one (1) calendar month that this Lease shall be in effect, said rentals and fees shall be calculated on a pro rata basis. All payments herein shall be in lawful money of the United States of America.

3.4 - Security Deposit.

A security deposit in the sum of \$_____ shall be provided to COUNTY by LESSEE.

A. Purposes:

- 1. The security deposit shall serve as security for the liquidated damages set forth in Section 9.2 of this Agreement if LESSEE terminates the lease prior to the end of the initial term; and
- 2. Regardless of the form in which LESSEE elects to make said security deposit as set forth below, all or a portion of the principal sum shall be available unconditionally to COUNTY for correcting any default or breach of this Lease by LESSEE, its successors or assigns, or for payment of expenses incurred by COUNTY as a result of the failure of LESSEE, its successors or assigns, to faithfully perform all terms, covenants and conditions of this Lease.

B. Form of Security Deposit: The security deposit shall take one of the forms set out below and shall guarantee LESSEE's full and faithful performance of all the terms, covenants, and conditions of this Lease:

- 1. A certified or cashier's check payable to Jackson County.
- 2. An instrument or instruments of credit from one or more financial institutions, subject to regulation by the state or federal government, pledging that funds necessary to secure performance of the Lease terms, covenants, and conditions are on deposit and guaranteed for payment, and agreeing that said funds shall be trust funds securing LESSEE's performance and that all or any part shall be paid to COUNTY, or order upon demand by COUNTY. Both the financial institution(s) and the form of the instrument(s) must be approved by COUNTY.
- 3. A Faithful Performance Bond executed by a surety company, and issued in a form, reasonably approved by

COUNTY. Under the bond, the surety company shall guarantee to COUNTY full and complete performance of all the terms, conditions and covenants herein to be performed on the part of LESSEE, including the payment of rents, fees, late charges, as well as any and all other payments. Said bond shall be maintained at the cost of LESSEE throughout the existence of this Lease or as earlier refunded as described below. Said surety shall give COUNTY at least thirty (30) days prior written notice of cancellation or material change in said bond. Such cancellation or material change without COUNTY's prior written consent shall constitute a default under this Lease.

Whether LESSEE elects to provide an instrument of credit or a faithful performance bond to fulfill the security deposit requirements of this Lease, said bond, or instrument shall have the effect of releasing the depository or creditor therein from liability to LESSEE on account of the payment of any or all of the principal sum to COUNTY, or order upon demand by COUNTY.

C. Adjustments to the Security Deposit:

1. COUNTY reserves the right to adjust the amount of the security deposit to reflect changes in operations or changes in rentals and fees established by COUNTY. Within thirty (30) days after notification of any change in required security deposit amount from COUNTY, LESSEE shall submit to COUNTY any additional security deposit as may be required.
2. Should LESSEE terminate this Agreement prior to the end of the initial term pursuant to Section 9.2 of this Agreement or fail to pay to COUNTY or any other rentals and fees established by COUNTY, COUNTY shall have the right to withdraw any or all of the security deposit to cover those overdue and unpaid rents and fees as provided herein.
3. If COUNTY is required to withdraw any or all of the security deposit, for any reason other than termination of this Agreement during the initial term pursuant to Section 9.2, LESSEE shall, within ten (10) days of any such withdrawal by COUNTY, replenish the security deposit to maintain it at amounts as herein required.

4. At the end of each 12 months, LESSEE may withdraw or decrease (depending on the form of security given) the security deposit by the amount of rent paid pursuant to Section 3 to COUNTY in the previous 12 months; however, in no event shall the security deposit ever be decreased to less than \$_____ during the term of this Lease.

3.5 - Late Charge.

All rentals and fees as specified in the section in this Lease entitled, "RENTALS AND FEES" not paid by LESSEE when due shall bear a delinquency charge at the rate (The "delinquency rate") established by COUNTY's then current ordinance, from the date such rentals and fees are due until they are paid in full. The delinquency rate is subject to periodic change by COUNTY. Imposition of a delinquency charge shall not constitute a waiver of any other right of action available to COUNTY in the event of default in payment of rentals and fees.

3.6 - Acceptance of Rentals and Fees.

COUNTY's acceptance of a late or partial payment of rents and/fees and/or late charges shall not constitute a waiver of any Event of Default nor shall it prevent COUNTY from exercising any of its other rights and remedies granted to COUNTY under this Lease or by law. It is hereby agreed that any endorsements or statements on checks of waiver, compromise, payment in full or any other similar restrictive endorsement shall have no legal effect. LESSEE shall remain in violation of this Lease and shall remain obligated to pay all rents, fees, and other charges due even if COUNTY has accepted a partial or late payment of rents, fees, or other charges.

SECTION 4 - USES OF THE PREMISES:

4.1 - Operation of Municipal Services.

LESSEE's use of the leased Premises shall be limited for the purpose of providing municipal and related services for the City of Central Point, Oregon. LESSEE shall not permit any other use to be made of the leased Premises.

In connection with the use of the premises, LESSEE shall:

- A. Conform to all applicable laws and regulations of any public authority affecting the leased Premises and its use and correct at LESSEE's own expense, any failure of compliance created through LESSEE's failure or by reason of LESSEE's use.
- B. Refrain from any activity which would make it impossible to insure the leased Premises against casualty, would increase the insurance rate, or would prevent COUNTY from taking advantage of any ruling of the Oregon Insurance Rating Bureau or its successor, allowing COUNTY

to obtain reduced premium rates for long-term fire insurance policies, unless LESSEE pays the additional cost of the insurance and COUNTY agrees in writing to the same.

C. Refrain from any use which would be reasonably offensive to neighboring tenants in the Justice Building or which would tend to create a nuisance or damage the reputation of the leased Premises.

D. LESSEE agrees not to use the leased Premises for any unauthorized purpose nor to engage in or permit any unauthorized activity within or from the leased Premises. LESSEE agrees not to conduct or permit to be conducted any public or private nuisance in, on or from the leased Premises, or to commit or permit to be committed any waste within the leased Premises.

4.2 – Common Area Facilities.

LESSEE may use, in common with other tenants authorized to do so, the common area facilities and improvements in the Justice Building consisting of the restrooms and outside parking area on a first come basis.

4.3 - Signs.

LESSEE shall not erect, install, nor permit upon the leased Premises any sign or other advertising device without first having obtained COUNTY's written consent and the sign must meet regulatory requirements of city and any other entities with jurisdiction. LESSEE, at LESSEE's expense, shall remove all signs and sign hardware upon expiration or earlier termination of this Lease and restore the sign location to its former state, unless COUNTY elects to retain all or any portion of the signage.

4.4 - Restrictions on Use.

A. LESSEE's activities on, or use or possession of, the leased Premises must comply with all applicable laws, ordinances, codes, rules and regulations of state, federal, city, or other public government authority or agency, and any rules and regulations adopted in writing by Jackson County ("County's Rules"), as they may be amended from time to time. Current copies of the County's Rules, if any, may be obtained during normal office hours from the office of the Jackson County Administrator, 10 S. Oakdale Avenue, Room 214, Medford, Oregon 97501. LESSEE shall promptly provide COUNTY with copies of all communications from any government entity which relate to LESSEE's noncompliance or alleged noncompliance with any law, regulation or other governmental requirement relating to its operations on the leased Premises. LESSEE shall correct, at LESSEE's own expense, any failure of compliance created through LESSEE's use.

B. Hazardous Substance. "Hazardous Substance" shall be interpreted in the broadest sense to include any and all substances, emissions, pollutants, materials, or products defined or designated as hazardous, toxic, radioactive, dangerous or regulated wastes or materials or any other similar term in or under any Environmental Law. "Hazardous Substance" shall also include, but not be limited to, fuels, petroleum and petroleum-derived products.

LESSEE shall not cause or permit any Hazardous Substance to be spilled, leaked, disposed of, or otherwise released on the leased Premises. LESSEE may use or otherwise handle on the leased Premises only those Hazardous Substances typically used or sold in the prudent and safe operation of the business specified in this Lease. LESSEE may store such Hazardous Substances on the leased Premises only in quantities necessary to satisfy LESSEE's reasonably anticipated needs. LESSEE shall comply with all environmental laws, including federal, state or local statutes, regulations or ordinances, and shall exercise the highest degree of care in the use, handling, and storage of Hazardous Substances. LESSEE shall take all practicable measures to minimize the quantity and toxicity of Hazardous Substances used, handled, or stored on the leased Premises. Upon the expiration or termination of this Lease, LESSEE shall remove all Hazardous Substances from the leased Premises. LESSEE shall indemnify COUNTY per Section 7.3.

C. LESSEE may not use the leased Premises for any purpose other than the reasonable and customary use as a pharmacy. In the event LESSEE uses or permits the leased Premises to be used in any manner other than as expressly permitted under this Lease, LESSEE will be in breach of this Lease and subject to the default and cure provisions of Section 9 of this Lease.

D. Conduct of Business. At all times during this Lease, LESSEE shall be registered, and in good standing, to do business in Oregon. LESSEE shall continuously carry on the permitted uses at the leased Premises at all times after the Effective Date of this Lease. LESSEE agrees to notify COUNTY of any closure or cessation in operations expected to last more than one (1) weeks and shall in no event cease carrying on the Permitted Uses for any period longer than two (2) weeks without COUNTY's prior written consent.

4.6 - Exclusive Use.

LESSEE shall have the right to restrict use of the leased Premises to its employees.

SECTION 5 - OBLIGATIONS OF LESSEE:

5.1 - Net Lease.

LESSEE, at its sole expense, shall be responsible for the costs of maintenance, repair, and operation of the leased Premises, including all Improvements thereon, which is above and beyond normal maintenance and repair (“extraordinary maintenance and repair”). COUNTY will be responsible for general maintenance, repair, and operation of the leased Premises and will provide janitorial services. However, COUNTY will not be responsible for the cost of any extraordinary maintenance, repair and operation of the leased Premises.

5.2 - Condition of Premises.

LESSEE will accept the leased Premises upon issuance of a Certificate of Occupancy in its then present condition, subject to and including all defects latent and patent and LESSEE, without expense to COUNTY, shall repair and maintain all Improvements and facilities thereon in accordance with Section 5.4.

5.3 - Internet Services.

LESSEE shall provide, at its own cost and expense, all internet services to maintain and operate the leased Premises.

5.4 - Maintenance and Repairs.

LESSEE shall, at LESSEE’s expense, and to the satisfaction of the COUNTY, keep and maintain the leased Premises and all Improvements of any kind which may be erected, installed, or made thereon in good condition and in substantial repair. It shall be LESSEE’s responsibility to take all steps necessary or appropriate to maintain such a standard of condition and repair. LESSEE shall notify COUNTY immediately when the leased Premises are in need of general maintenance and repair.

LESSEE expressly agrees to maintain the leased Premises in a safe, clean, wholesome, sanitary condition, to the reasonable satisfaction of COUNTY’s Facility Maintenance Superintendent and in compliance with all applicable laws. LESSEE further agrees to use the containers provided by COUNTY for trash and garbage and to keep the leased Premises free and clear of rubbish and litter. COUNTY shall have the right to enter upon and inspect the leased Premises at any time for cleanliness and safety.

LESSEE shall designate in writing to the COUNTY an on-site representative who shall be responsible for the day-to-day operation and level of maintenance, cleanliness, and general order.

5.5 - Alterations and/or Construction.

LESSEE shall not perform any alterations and/or construction upon the leased Premises nor shall LESSEE modify, alter or remove any permanent capital improvements lying within the leased Premises without prior written approval of COUNTY. No structures, capital improvements, or facilities shall be constructed, erected, altered, removed or made within the leased Premises without prior written consent of COUNTY which consent may be withheld or conditioned in COUNTY's absolute discretion. Any conditions relating to the manner, method, design and construction of said structures, improvements, or facilities fixed by the COUNTY in COUNTY's good faith discretion, as a condition to granting such consent shall be conditions hereof as though originally stated herein. COUNTY may at any time stop work that creates a hazardous condition or is unsafe. LESSEE agrees to hold COUNTY harmless for any damages resulting from such interruption of work. LESSEE may, at any time and at its sole expense, install and place business fixtures and equipment within the leased Premises.

5.6- Trash, Garbage, and Refuse.

COUNTY shall provide or cause to be provided a complete and proper arrangement for the adequate and sanitary handling and disposal of all trash, garbage and other refuse caused as a result of LESSEE's operations conducted on the leased Premises. COUNTY shall provide and LESSEE shall use suitable covered receptacles for all such garbage, trash and other refuse. Piling of boxes, cartons, or other similar items, in an unsightly or unsafe manner, on or about the leased Premises, shall not be permitted.

5.7 - Removal and Demolition.

LESSEE shall not remove or demolish, in whole or in part, any improvements upon the leased Premises without the prior written consent of COUNTY which may, at its discretion, condition such consent upon the obligation of LESSEE to replace the same by an improvement specified in such consent.

5.8 - Taxes.

LESSEE agrees to pay all lawful taxes and assessments which may, during the term hereof or any extension as provided for herein, become a lien or which may be levied by any tax levying body, upon the leased Premises or upon any taxable interest by LESSEE acquired in this Lease, or any taxable possessory right which LESSEE may have on the Premises or facilities hereby leased by reason of its occupancy thereof, or otherwise, as well as all taxes on taxable property, real or personal, leased or owned by LESSEE in or on said Premises. Upon any termination of tenancy, all taxes then levied, or a lien on any of said property or taxable interest therein, shall be paid in full, without proration by LESSEE, forthwith, or as soon as a statement thereof has been issued by the tax collector, if the termination occurs during the interval between attachment of the lien and issuance of statement.

5.9 - Fire Extinguishers.

It is understood and agreed that COUNTY will, at its own expense, install and maintain fire extinguishers in and about the leased Premises. Said fire extinguishers shall be of a kind, and kept in such locations, as directed by the City Fire Marshall and shall be of sufficient number and capacity as to, in the opinion of the City Fire Marshall, adequately safeguard the leased Premises and improvements against fire hazards.

5.10 - Building Security Access.

LESSEE's access to the leased Premises affords access into other restricted areas of the Justice Building LESSEE shall take whatever steps are necessary to prevent persons from unauthorized access to the leased Premises or through any entryway controlled by LESSEE.

LESSEE shall be responsible for the security of that portion of the Justice Building allowing LESSEE access to the leased Premises. Entry points used by LESSEE in the Justice Building permitting entry to the leased Premises, other than those entry points open during business hours for the general public, shall be secured and locked at all times.

LESSEE shall exercise control over any person, including employees, on the leased Premises, whether badged or escorted by LESSEE in the leased Premises. LESSEE shall ensure persons comply with all COUNTY security regulations.

LESSEE shall work with COUNTY to ensure that all of LESSEE's employees that will be working in the leased Premises have received the proper COUNTY security badges for access into the leased Premises and common area facilities. LESSEE shall be solely responsible for the cost to replace lost or stolen employee security badges. Further, LESSEE shall immediately inform the COUNTY Health and Human Services Director when an employee of LESSEE has lost or had stolen the security badge issued to that employee.

5.11 - Required Verifications.

At such time that the Certificate of Occupancy is issued allowing LESSEE to move into the leased Premises, LESSEE will have in place and will provide COUNTY with all, but not limited to, applicable permits, bonds, security deposits, certificates of insurance, and worker's compensation, without exception.

SECTION 6 - SERVICES TO BE PROVIDED BY LESSEE:

6.1 - Type of Operation.

- A. LESSEE shall conduct municipal and related services for the City of Central Point, Oregon, from the leased Premises.

B. LESSEE shall furnish good, prompt and efficient service adequate to meet all the demands for its service at the leased Premises on a fair, equal and non-discriminatory basis to all users thereof.

6.2 - Non-exclusivity.

LESSEE understands and agrees that nothing herein contained shall be construed to grant or authorize the granting of an exclusive right to deliver services in the Justice Building

SECTION 7 - INDEMNIFICATION:

7.1 - LESSEE Independent Contractor.

For all purposes hereunder, LESSEE is and shall be deemed an independent contractor, and it is mutually agreed that nothing contained herein shall be deemed or construed to constitute a partnership or joint venture between the parties hereto. It is understood and agreed that LESSEE is not an agent or employee of COUNTY with respect to its acts or omissions hereunder.

7.2 - General Indemnity.

To the extent permitted by Article 11, Section 10 of the Oregon Constitution and subject to the limits of the Oregon Tort Claims Act as applied to COUNTY, LESSEE shall defend, save, hold harmless, and indemnify COUNTY, and its elected officials, officers, employees, agents, volunteers, and members from all claims, suits, or actions of whatever nature whether actual, threatened, or alleged including but not limited to personal injury, death, property damage and incidental and consequential damages, resulting from or arising out of the activities of LESSEE or its elected officials, officers, employees, agents, volunteers, guests, or customers arising out of or in connection with this Agreement, including the use of the HHS building and its facilities.

To the extent permitted by Article 11, Section 10 of the Oregon Constitution and subject to the limits of the Oregon Tort Claims Act as applied to LESSEE, COUNTY shall defend, save, hold harmless, and indemnify LESSEE, and its elected officials, officers, employees, agents, volunteers, and members from all claims, suits, or actions of whatever nature whether actual, threatened, or alleged including but not limited to personal injury, death, property damage and incidental and consequential damages, resulting from or arising out of the activities of COUNTY or its elected officials, officers, employees, agents, volunteers, guests, or customers arising out of or in connection with this Agreement.

7.3 - Environmental Indemnity.

Without in any way limiting the generality of Section 7.2, LESSEE shall be solely responsible for and agrees to defend (using legal counsel acceptable to COUNTY), indemnify and hold harmless COUNTY from and against all Environmental Costs claimed against or assessed against COUNTY or incurred by COUNTY arising,

in whole or in part, directly or indirectly, from acts or omissions of any person or entity at or about the leased Premises after the Effective Date of this Lease, or earlier if caused by LESSEE or LESSEE's agents or invitees. This indemnification shall require LESSEE to reimburse COUNTY for any diminution in value of the leased Premises, or other adjacent or nearby COUNTY property, caused by Hazardous Substances, including damages for loss of or restriction on use of rentable or usable property or of any amenity of the leased Premises or any other COUNTY property, including damages arising from any adverse impact on marketing of property in or near the leased Premises, including other COUNTY property. LESSEE's obligations shall not apply if the Hazardous Substances were deposited on the leased Premises by COUNTY. LESSEE shall be solely responsible to assure that no person brings any Hazardous Substance onto the leased Premises, except as permitted by this Lease. Notwithstanding the foregoing, LESSEE shall not indemnify COUNTY for any actions of the COUNTY or the COUNTY's employees, agents or contractors that cause environmental damage or a violation of any Environmental Law on, about or affecting the leased Premises.

SECTION 8 - INSURANCE:

LESSEE, at its own cost and expense, shall secure and maintain the following policies of insurance or substantially equivalent programs of self-insurance:

8.1 - Insurance.

LESSEE shall obtain and maintain, and cause COUNTY, its agents, employees, officers, boards and commissions to be named as additional insured on policies or insurance for liability and property damage to protect the COUNTY against the hazards that may be created in the performance of services authorized by this Lease.

- A. General Liability subject to the combined single limits of \$3,000,000 per occurrence.
- B. Automobile Liability subject to the combined single limits per occurrence of \$1,000,000.
- C. Property Insurance on a replacement cost basis covering Special Form Perils.

The initial insurance rates are set forth in this section but may be adjusted periodically by order of the Jackson County Board of Commissioners as determined by its then current county insurance carrier requirements, based upon industry-standard liability adjustments. The adjustment decision shall be reasonable and shall not be arbitrary or capricious.

8.2 - Certificate of Insurance.

A. Upon issuance of a Certificate of Occupancy allowing LESSEE to move into the leased Premises, a certificate evidencing such insurance coverage shall be filed with COUNTY upon execution of this Lease, and such certificate shall provide that such insurance coverage will not be canceled or reduced without at least thirty (30) days prior written notice to COUNTY. At least ten (10) days prior to the expiration of any such policy, a certificate showing that such insurance coverage has been renewed shall be filed with COUNTY. If such insurance coverage is canceled or reduced, LESSEE shall, within fifteen (15) days after receipt of written notice from COUNTY of such cancellation or reduction in coverage, file with COUNTY a certificate showing that the required insurance has been reinstated or provided through an insurance company or companies.

B. In the event that LESSEE shall at any time fail to furnish COUNTY with the certificate or certificates required, COUNTY, upon written notice to LESSEE of its intention to do so, shall have the right to secure the required insurance, at the cost and expense of LESSEE, and LESSEE agrees to reimburse COUNTY promptly for the cost thereof and ten percent (10%) for cost of administration.

8.3 - Proceeds From Property Insurance.

The proceeds from property insurance for other than personal property shall be held in a special account which requires joint execution by COUNTY and LESSEE for release of such funds and shall be used only to rebuild improvements on the leased Premises.

8.4 - Worker's Compensation and Social Security.

LESSEE shall, upon request, furnish to COUNTY, adequate evidence of provisions for Workers' Compensation Insurance, Social Security, and Unemployment Compensation, to the extent such provisions are applicable to LESSEE's operations hereunder.

SECTION 9 - TERMINATION:

9.1 - Expiration.

This Lease shall expire at the end of the full term hereof, unless sooner terminated as provided hereinafter, and LESSEE shall have no further rights, interests, or privileges hereby granted by this Lease.

9.2 - Termination Without Cause.

Either party may terminate this Lease without cause by giving 120 days' advance written notice to the other party. In the event LESSEE terminates this Lease without cause prior to the end of the Lease Term, LESSEE shall owe COUNTY the total of the remaining rental payments, including CPI adjustments, if any, that would have been payable by LESSEE to COUNTY for the remaining Lease Term as if LESSEE had not terminated this Lease without cause. LESSEE shall pay to COUNTY in a lump sum the remaining rental payments, including CPI adjustments, if any, at the same time that LESSEE gives COUNTY the 120 days' advance written notice.

9.3 - Cancellation by LESSEE for Cause.

- A. This Lease shall be subject to cancellation by LESSEE after the default by COUNTY in the performance of any covenant or agreement herein required to be performed by COUNTY, and the failure of COUNTY to remedy such default for a period of thirty (30) days after receipt from LESSEE of written notice to remedy the same;

- B. LESSEE may exercise such right of termination by written notice to COUNTY at any time after the lapse of the applicable periods of time, and this Lease shall terminate as of that date. Rentals and fees due hereunder shall be payable only to the date of said termination.

9.4 - Cancellation by COUNTY for Cause.

- A. Subject to the provisions of Section 9.1, this Lease shall be subject to cancellation by COUNTY in the event LESSEE shall:
 - 1. Default in the payment to COUNTY of the whole or any part of the amounts agreed upon hereunder if such default continues for a period of thirty (30) days after receipt of written notice from COUNTY of said default; or
 - 2. Make a general assignment for the benefit of creditors; or
 - 3. File a voluntary petition in bankruptcy; or
 - 4. Abandon the leased Premises; or
 - 5. Default in the performance of any of the covenants and conditions required herein (except rental payments) to be kept and performed by LESSEE, and such default continues for a period of thirty (30) days after receipt of written notice from COUNTY of said default. If the nature of the default is such that it cannot be cured within thirty (30) days, LESSEE shall be deemed to have cured such default if it, or its nominee, shall, within such

thirty (30) day period, commence performance and thereafter diligently prosecute the same to completion.

- B. In the event COUNTY terminates this Lease with cause prior to the end of the Lease Term pursuant to subsection A above and LESSEE is unable to cure such default, LESSEE shall owe COUNTY the total of the remaining rental payments, including CPI adjustments, if any, that would have been payable by LESSEE to COUNTY for the remaining Lease Term. LESSEE shall pay to COUNTY in a lump sum the remaining rental payments for the Lease Term, including CPI adjustments, if any, on the date set for termination of this Lease set forth in COUNTY's written notice of default to LESSEE.
- C. It is agreed that failure to declare this Lease terminated upon the default of LESSEE for any of the reasons set forth above shall not operate to bar or destroy the right of COUNTY to declare this Lease terminated by reason of any subsequent violation of the terms of this Lease.

SECTION 10 - ASSIGNMENT AND SUBLEASING:

10.1 – No Right to Sublease.

LESSEE shall not sublet all or any part of the leased Premises or the improvements on the Premises.

10.2 - Assignment.

LESSEE shall not assign, sublet, convey or transfer its contractual obligations under this Lease to another party and shall not permit its interest in this Lease to be vested in any third party by operation of law or otherwise without the prior written consent of COUNTY, which consent shall not be unreasonably withheld, conditioned or delayed.

SECTION 11 - TITLE TO IMPROVEMENTS:

Title to all structures, installations, or improvements placed on the leased Premises by LESSEE shall vest in the COUNTY at the termination of this Lease.

11.1- Quitclaim of LESSEE's Interest Upon Termination.

Upon termination of this Lease for any reason, including but not limited to termination, because of default by LESSEE, LESSEE shall execute, acknowledge, and deliver to COUNTY, within thirty (30) days after receipt of written demand therefor, a good and sufficient deed whereby all right, title and interest of LESSEE in the leased Premises is quit claimed to COUNTY. Should LESSEE fail or refuse to deliver the

required deed to COUNTY, COUNTY may prepare and record a notice reciting the failure of LESSEE to execute, acknowledge, and deliver such deed and said notice shall be conclusive evidence of the termination of this Lease and of all right of LESSEE or those claiming under LESSEE in and to the leased Premises.

11.2 - COUNTY’s Right to Re-Enter Leased Premises.

LESSEE agrees to yield and peaceably deliver possession of the leased Premises to COUNTY on the date of termination of this Lease, whatsoever the reason for such termination.

Upon giving written notice of termination to LESSEE, COUNTY shall have the right to re-enter and take possession of the leased Premises on the date such termination becomes effective without further notice of any kind and without institution of summary or regular legal proceedings. Termination of this Lease and re-entry of the leased Premises by COUNTY shall in no way alter or diminish any obligation of LESSEE under the lease terms and shall not constitute an acceptance or surrender.

LESSEE waives any and all right of redemption under any existing or future law or statute in the event of eviction from or dispossession of the leased Premises for any lawful reason or in the event COUNTY re-enters and takes possession of the leased Premises in a lawful manner.

SECTION 12 - DAMAGE TO OR DESTRUCTION OF IMPROVEMENTS:

In the event of damage to or destruction of LESSEE-owned or constructed improvements located within the leased Premises or in the event LESSEE-owned facilities, or improvements located within the leased Premises are declared unsafe or unfit for use or occupancy by a public entity with the authority to make and enforce such declaration, LESSEE shall, within thirty (30) days, commence and diligently pursue to completion the repair, replacement, or reconstruction of improvements to the same size and floor area as they existed immediately prior to the event causing the damage or destruction, as necessary to permit full use and occupancy of the leased Premises. Repair, replacement, or reconstruction of improvements within the leased Premises shall be accomplished in a manner and according to plans approved by COUNTY. Except as otherwise provided herein, termination of this Lease shall not reduce or nullify LESSEE’s obligation under this paragraph.

SECTION 13 - INSPECTION OF PREMISES:

COUNTY or its duly authorized agents or representatives, and other persons for it, may enter upon the leased Premises at reasonable times during normal business hours during the term hereof for the purpose of determining whether or not LESSEE is complying with the terms and conditions hereof, or for any other purpose incidental to the rights of COUNTY.

SECTION 14 - EVENTS BEYOND LESSEE'S CONTROL:

Any prevention, delay, or stoppage of performance of LESSEE's obligations hereunder due to strikes, lockouts, labor disputes, acts of God, inability to obtain labor or materials or reasonable substitutes therefore, governmental restrictions, governmental controls, governmental regulations, enemy or hostile government action, civil commotion, fire or other casualty, or any other causes beyond the reasonable control of LESSEE, shall not be deemed to be a breach of this Lease or a violation or failure to perform any covenants hereof, and LESSEE shall have a reasonable time after cessation of any of such causes within which to render performance delayed thereby.

SECTION 15 - COMPLIANCE AND ASSURANCES:

LESSEE shall comply with all federal, state and local laws and ordinances applicable to this Lease and LESSEE's use of the leased Premises. Failure to comply with such requirements shall constitute a breach of this Lease and shall be grounds for Lease termination. Without limiting the generality of the foregoing, LESSEE expressly agrees to comply with the following as applicable: i) Title VI and VII of Civil Rights Act of 1964, as amended; ii) Section 503 and 504 of the Rehabilitation Act of 1973, as amended; iii) the Health Insurance Portability and Accountability Act of 1996; iv) the Americans with Disabilities Act of 1990, as amended; v) ORS Chapter 659A; as amended; vi) all regulations and administrative rules established pursuant to the foregoing laws; and vii) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations. COUNTY's performance under this Lease is conditioned upon LESSEE's compliance with the provisions of ORS 279B.220, 279C.505, 279C.515, 279B.235, 279C.520, 279C.530, 279A.125, 279A.140-150, and 279B.270-280, which are incorporated by reference herein.

15.1 - Compliance with Non-Discrimination.

A. LESSEE, for itself, its successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that:

1. No person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of the leased Premises.

2. In the construction of any improvements on, over, or under the leased Premises and the furnishing of services thereon, no person on the grounds of race, color, or national original shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination.

B. In the event of breach of any of the above nondiscrimination covenants, COUNTY shall have the right to terminate this Lease and to reenter and repossess said leased Premises and hold the same as if said Lease had never been made or issued. This provision does not become effective until the procedures of 49 CFR Part 21 are followed and completed, including expiration of appeal rights.

C. LESSEE shall furnish its accommodations and/or services on a fair, equal and not unjustly discriminatory basis to all users thereof and it shall charge fair, reasonable and not unjustly discriminatory prices for each unit or service.

D. Noncompliance with Provision C above shall constitute a material breach thereof and in the event of such noncompliance COUNTY shall have the right to terminate this Lease and the estate hereby created without liability therefore or at the election of COUNTY or the United States either or both said governments shall have the right to judicially enforce Provisions A, B, and C.

SECTION 16 - REDELIVERY OF PREMISES:

LESSEE shall, upon termination of this Lease, quit and deliver up the leased Premises to COUNTY peaceable, quietly, and in as good order and condition as the same now are or may hereafter be improved by LESSEE or COUNTY, reasonable use and wear thereof excepted. Upon termination of this Lease, the existing fuel tanks (if any) will be required to meet the new requirements or be removed at a cost to the LESSEE.

SECTION 17 - HOLDING OVER:

In the event LESSEE remains in possession of the leased Premises after the expiration of this Lease without any written renewal thereof, such holding over shall not be deemed as a renewal or extension of this Lease but shall create only a tenancy from month-to-month which may be terminated at any time by COUNTY or LESSEE with thirty (30) days written notice.

SECTION 18 – EMINENT DOMAIN:

Nothing in this Lease shall limit, in anyway, the power and right of the COUNTY to exercise its governmental rights and powers, including its powers of eminent domain.

SECTION 19 - MISCELLANEOUS:

This Lease has been made, and shall be construed, in accordance with the laws of the State of Oregon. LESSEE and COUNTY agree that in any action or suit filed in regard to enforcement of this Lease, the same shall be filed or brought in Jackson County, Oregon.

19.1 - Successors.

This Lease shall bind and inure to the benefit of any successor of COUNTY and any successor, assignee, or sublessee of LESSEE, subject to Section 10.

19.2 - Headings.

The section and subsection headings contained herein are for convenience in reference and are not intended to define or limit the scope of any provision of this Lease.

19.3 - Attorney's Fees.

In any action or arbitration brought by the other party under this Lease, the prevailing party shall be entitled to recover interest, costs and reasonable attorney fees, including those of in-house counsel, as set by the court or arbitrator, or if on appeal, by the appellate court.

19.4 - Arbitration.

If any dispute arises between the parties, either party may request arbitration. If a dispute arises concerning any topic, the parties may jointly select a neutral arbitrator or either party may apply to the Jackson County Circuit Court for appointment of a single arbitrator. The arbitration shall proceed according to ORS Chapter 36 or its successor. The arbitration shall take place in Jackson County. Judgment upon the award rendered by the arbitrator(s) may be entered in the Jackson County Circuit Court. The prevailing party shall be entitled to recover its costs and reasonable attorney fees incurred in arbitration. For the purposes of this section, attorney fees may include the reasonable value of the services of staff counsel or in-house counsel.

19.5- Time of the Essence.

Time is of the essence of each of LESSEE's obligations under this Lease.

19.6- Notice.

Any notice required or permitted under this Lease is deemed received three (3) days after deposited in the United States mail, certified and postage paid, and addressed to the address set forth below or to such other address as may be specified from time to time by either of the parties in writing; or confirmed delivery date by facsimile or overnight mail; or upon the date of personal delivery or service.

COUNTY: Jackson County
ATTN: County Administrator
10 S. Oakdale, Room 214
Medford, OR 97501
Fax: 541-774-6705

LESSEE: City of Central Point, Oregon
Attention: City Manager
140 S. Third Street
Central Point, OR 97502
Fax: 541-664-6384

19.7 - Consent.

If approval or consent is required pursuant to the terms of this Lease, LESSEE agrees that approval or consent is in the absolute discretion of COUNTY.

19.8 - Public Records.

Any and all written information submitted to and/or obtained by COUNTY from LESSEE or any other person or entity having to do with or related to this Lease and/or the leased Premises, either pursuant to this Lease or otherwise, at the option of COUNTY, may be treated as a public record open to inspection by the public pursuant to the Oregon Public Records Statutes as now in force or hereafter amended, or any Act in substitution hereof, or otherwise made available to the public and LESSEE hereby waives, for itself, its agents, employees, subtenants and any person claiming by, through or under LESSEE, any right or claim that any such information is not a public record or that the same is a trade secret or confidential information and hereby agrees to indemnify and hold COUNTY harmless from any and all claims, demands, liabilities and/or obligations arising out of or resulting from a claim by LESSEE or any third party that such information is a trade secret, or confidential, or not subject to inspection by the public, including without limitation reasonable attorney's fees and costs.

19.9- Disposition of Abandoned Personal Property.

If LESSEE abandons or quits the leased Premises or is dispossessed thereof by process of law or otherwise, title to any personal property belonging to LESSEE and left on the leased Premises fifteen (15) days after such event shall be deemed to have been transferred to COUNTY. COUNTY shall have the right to remove and to dispose of such property without liability therefor to LESSEE or to any person claiming under LESSEE, and shall have no need to account therefor.

19.10 - Partial Invalidity.

If any term, covenant, condition, or provision of this Lease is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby.

19.11 - Non-Waiver of Rights.

The failure of COUNTY or LESSEE to insist upon strict performance of any of the terms, covenants, or conditions of this Lease shall not be deemed a waiver of any right or remedy that COUNTY or LESSEE may have, and shall not be deemed a waiver of the right to require strict performance of all the terms, covenants, and conditions of this Lease thereafter, nor a waiver of any remedy for the subsequent breach or default of any term, covenant or condition of the Lease. Any waiver, in order to be effective, must be signed by the party whose right or remedy is being waived.

19.12 - Brokers.

LESSEE and the COUNTY each represent to one another that they have not dealt with any leasing agent or broker in connection with this Lease and each (for purposes of this section only) agrees to indemnify and hold harmless the other from and against all damages, costs and expenses (including attorney, accountant and paralegal fees) arising in connection with any claim of an agent or broker.

19.13 - Recordation of Lease.

Either party may elect that a copy of this Lease or a memorandum thereof be recorded in the deed of records of Jackson County, Oregon, and each party agrees to execute and acknowledge a document suitable for recording. The requesting party shall pay the cost of recording.

19.14 - Entire Agreement.

This Lease represents the entire agreement between COUNTY and LESSEE relating to LESSEE's leasing of the leased Premises and shall supersede all previous communications, representations, or agreements, whether verbal or written, between the parties hereto with respect to such leasing. It is understood and agreed by LESSEE that neither COUNTY nor COUNTY's agents or employees have made any representations or promises with respect to this Lease or the making or entry into this Lease, except as in this Lease expressly set forth, and that no claim or liability or cause for termination shall be asserted by LESSEE against COUNTY for, and COUNTY shall not be liable by reason of, the claimed breach of any representations or promises not expressly stated in this Lease, any other oral agreement with COUNTY being expressly waived by LESSEE.

Any modifications, changes, additions, or deletions to this Lease must be approved by LESSEE and COUNTY in writing and attached and incorporated by reference into this Lease.

19.15 - Calculation of Time.

Unless referred to as Business Days, all periods of time referred to in this Lease include Saturdays, Sundays, and Legal Holidays. However, if the last day of any period falls on a Saturday, Sunday or legal holiday, then the period shall be extended to include the next day which is not a Saturday, Sunday or Legal Holiday. "Legal Holiday" shall mean any holiday observed by the Federal Government. "Business Days" shall mean Monday through Friday and shall exclude Saturday, Sunday and Legal Holidays.

19.16 - Lease Subject to Bonds and Ordinances.

This Lease shall be subject and subordinate to the bonds and ordinances which create liens and encumbrances affecting the Land or the Premises. LESSEE agrees that COUNTY may hereafter adopt bond ordinances which impose liens or encumbrances on said land and COUNTY's interest in the leasehold, and LESSEE shall, upon request by COUNTY, execute and deliver agreements of subordination consistent therewith. Furthermore, in order to comply with the requirements of existing County bond ordinances and any bond ordinances that may be enacted in the future, LESSEE hereby makes an irrevocable commitment not to claim depreciation, cost recovery, or an investment credit with respect to any of the leased land or to any improvements constructed by COUNTY using COUNTY funds or County Bond proceeds.

19.17 - Authority of LESSEE.

Because LESSEE is a corporation, the individual executing this Lease on behalf of said corporation represents and warrants that he or she is duly authorized to execute and deliver this Lease on behalf of said corporation, in accordance with the by-laws of said corporation, and that this Lease is binding upon said corporation.

including, but not limited to, roadways and rights-of-way, sidewalks, parking areas, driveways, landscaping, fencing, infrastructure and signs (collectively, "Improvements" on the second floor of the Justice Building

IN WITNESS WHEREOF, the parties or their duly authorized representatives have signed this Lease the day and year written below.

CITY OF CENTRAL POINT:

JACKSON COUNTY:

(Signature)

Danny Jordan, County Administrator

(Printed Name and Title)

(Date)

(Date)

Approved as to Legal Sufficiency:

Approved as to Legal Sufficiency:

EXHIBIT A – Rooms Leased by LESSEE