CITY COUNCIL MEETING PACKET

MARCH 22, 2016

City of Madras
City Council Meeting
City Council Chambers

March 22, 2016
7:00 p.m.

AGENDA

I Call to Order

II Pledge of Allegiance and Prayer

III Consent Agenda

All matters listed within the Consent Agenda have been distributed to each member of the Madras City Council for reading and study, are considered to be routine, and will be enacted by one motion of the Council with no separate discussions. If separate discussion is desired, that item may be removed from the Consent Agenda and placed on the Regular Agenda by request.

A. Approval of Minutes From the March 8, 2016 Special City Council Meeting

B. Approval of Minutes From the March 8, 2016 City Council Meeting

C. Approval of Arbor Day Proclamation Proclaiming April 3-9, 2016 as Arbor Week and April 22, 2016 as Arbor Day Within the City of Madras

D. Approval of Contract Change Order No.1 – Construction Services Contract With R-2 Contractors, Inc. for Additional Work Extending the Electrical to Street Trees, Additional ADA Ramp, Addition of Drip Irrigation on Street Light & Credit for Deleted Street Tree and Irrigation Highway 97 and S.W. "L" Street Sidewalk Improvements Project # 2015-03

E. Approval of Contract Change Order No. 2 for Professional Services Contract H.A. McCoy Engineering and Surveying, LLC to Perform Design and Construction Services for the "H" Street Pedestrian Improvements Project #2015-10

F. Approval of Land Use Agreements for Control and Tenure for the Madras Skate Park to Youth Fishing Pond Trail Project, Deschutes Valley Water District, Jefferson County Fairgrounds, Cascade Ridge Apartments

IV Visitor Comments

V Economic Development for Central Oregon's Annual Report

Jefferson County EDCO Manager, Janet Brown

VI Madras Municipal Airport West Access Road (aka Daimler Road) Procurement of Testing Services, Construction Materials, Labor, Rental Equipment, and Waterline

Building, Fleet, Street Supervisor, Rod Fulton

VII Resolutions

A. Resolution No. 06-2016

A resolution authorizing the City of Madras to apply for Local Government Grant Program funding from the Oregon Parks and Recreation Department for the "Madras Bike and Skate Park to Youth Fishing Pond Trail Connection Project Phase 2" in the amount of $660,000.

Public Works Director, Jeff Hurd

B. Resolution No. 07-2016

A resolution authorizing the City of Madras to apply for a Clean Water State Revolving Fund Loan from the Oregon Department of Environmental Quality for the "Herzberg Heights and Bel Air Subdivision Wastewater Improvement Project in the amount of $1,115,000.

Public Works Director, Jeff Hurd

VIII Installation of a "Splash Pad" at Sahalee Park by the Bean Foundation and Keith Investments, LLC

Public Works Director, Jeff Hurd

IX Ordinance No. 886

An ordinance amending, restating, superseding, and replacing Madras Ordinance No. 808 in its entirety, which ordinance concerns Public Contracting Rules and Procedures; and declaring an emergency.

1) Motion by Council to read Ordinance No. 886 by title only. Vote is then taken on the motion.

City Attorney or his designee will read Ordinance No. 886 by title only.

2) Motion by Council to approve and adopt Ordinance No. 886 (if Council so chooses).

City Recorder will then need to take a roll call vote.

City Attorney, Jeremy Green
City Administrator, Gus Burril

X Urban Renewal Action Plan Review and Concurrence

Community Development Director, Nicholas Snead

XI Wilbur-Ellis Company, LLC.

A. Amended and Restated Lease Agreement

B. Rail Transfer Agreement Transfer of Ownership and Responsibility of Connect Oregon IV Rail Improvements

C. Purchase and Sale Agreement - 5.22 Acres Per FAA Land Release Request

City Administrator, Gus Burril
City Attorney, Jeremy Green

D. Authorization of Necessary Expenses for Land Partition and Related Professional Services

Community Development Director, Nicholas Snead

XII Process to Prepare Draft Recreational Marijuana Regulations

Community Development Director, Nicholas Snead

XIII Annual Strategic Implementation Plan - Council to Provide Comments to City Administrator

City Administrator, Gus Burril

XIV Jefferson County Request for Funding Assistance for the Juniper Hills County Park Rehabilitation Grant Project (Verbal)

City Administrator, Gus Burril

XV Additional Comments, Announcements, and Department Reports

XVI Adjourn

Pursuant to ORS 192.640, this agenda includes a list of the principal subjects anticipated to be considered at the above referenced meeting; however, the agenda does not limit the ability of the City Council to consider additional subjects. Meetings are subject to cancellation without notice.

This meeting is open to the public and interested citizens are invited to attend. This is an open meeting under Oregon Revised Statutes, not a community forum; audience participation is at the discretion of the Council. The meeting may be audio taped. Minutes of this and all public meetings are available for review at the Madras City Hall. The meeting place is handicapped accessible. Those needing assistance should contact the City Recorder two (2) days in advance of the meeting.

Executive Sessions are not open to the public; however, members of the press are invited to attend.

The City of Madras is an Equal Opportunity Provider.

OFFICIAL MINUTES

CITY COUNCIL, CITY OF MADRAS
SPECIAL CITY COUNCIL MEETING
MARCH 8, 2016

I CALL TO ORDER

The Special City Council meeting was called to order by Mayor Royce Embanks at 6:15 p.m. on Tuesday, March 8, 2016 in the Madras City Hall Conference Room located at 125 SW "E" Street rather than in the City Council Chambers as there were no news media or visitors in the Council Chambers at the time the Council moved into the Conference Room for the Executive Session.

CITY COUNCIL MEMBERS IN ATTENDANCE WERE:
Mayor Royce Embanks Jr., and Councilors Chuck Schmidt, Bill Montgomery, Bartt Brick; Richard Ladeby, Tom Brown, and Gary Walker.

STAFF MEMBERS IN ATTENDANCE WERE:
City Administrator, Gus Burril; City Attorneys, Jeremy Green and Heather Hansen, with the firm of Bryant, Lovlien, and Jarvis PC, and City Recorder, Karen J. Coleman.

ABSENT WERE:
HR and Administrative Coordinator, Sara Puddy; Community Development Director, Nicholas Snead; Public Works Director, Jeff Hurd, and Finance Director, Brandie McNamee were not required to attend the Special City Council meeting.

VISITORS IN ATTENDANCE WERE:
There were no visitors or news media in attendance at this time.

Mayor Embanks read the following statement into the record prior to Council going into an Executive Session:

The City Council of the City of Madras will now meet in Executive Session. The Executive Session is held pursuant to:

> ORS 192.660 (2) (f), which allows the Council to meet in Executive Session to consider information or records that are exempt by law from public inspection.

Representatives of the news media and designated staff shall be allowed to attend the Executive Session. All other members of the audience are asked to leave the room. Representatives of the news media are specifically directed not to report on any of the deliberations during the Executive Session, except to state the general subject of the session as previously announced. No decision may be

made in Executive Session. At the end of the Executive Session, we will return to open session and welcome the audience back into the room.

II EXECUTIVE SESSION - ORS 192.660 (2) (f)

To consider information or records that are exempt by law from public inspection.

The Executive Session under ORS 192.660 (2) (f) was called to order at 6:15 p.m.

The Executive Session was adjourned at 7:02 p.m.

No formal action was taken during or following the Executive Session.

III ADJOURN

The Special City Council meeting was adjourned at 7:03 p.m.

Karen J. Coleman, City Recorder

Royce Embanks, Mayor

OFFICIAL MINUTES

CITY COUNCIL, CITY OF MADRAS
MARCH 8, 2016

I CALL TO ORDER

The City Council meeting was called to order by Mayor Royce Embanks at 7:05 p.m. on Tuesday, March 8, 2016 in the Madras City Hall Council Chambers located at 125 S.W. "E" Street.

CITY COUNCIL MEMBERS IN ATTENDANCE WERE:
Mayor Royce Embanks Jr., and Councilors Chuck Schmidt, Bill Montgomery, Bartt Brick; Richard Ladeby, Tom Brown, and Gary Walker.

STAFF MEMBERS IN ATTENDANCE WERE:
City Administrator, Gus Burril; City Attorneys, Jeremy Green and Heather Hansen, with the firm of Bryant, Lovlien, and Jarvis PC; Police Chief, Tanner Stanfill; Community Development Director, Nicholas Snead; Public Works Director, Jeff Hurd; Utility Supervisor, Keith Bedell; Golf Course Superintendent / Parks Supervisor, Jonathan Burchell, and City Recorder, Karen J. Coleman.

ABSENT WERE:
HR and Administrative Coordinator, Sara Puddy, and Finance Director, Brandie McNamee.

VISITORS IN ATTENDANCE WERE:
Susan Matheny, with the Madras Pioneer.

II PLEDGE OF ALLEGIANCE AND PRAYER

Mayor Embanks asked Councilor Schmidt to lead the pledge of allegiance to the flag of the United States of America, which he did.

The Mayor then offered the prayer.

III CONSENT AGENDA

All matters listed within the Consent Agenda have been distributed to each member of the Madras City Council for reading and study, are considered to be routine, and will be enacted by one motion of the Council with no separate discussions. If separate discussion is desired, that item may be removed from the Consent Agenda and placed on the Regular Agenda by request.

A. Approval of Vouchers

B. Approval of Minutes From the February 23, 2016
City Council Work Session

C. Approval of Minutes From the February 23, 2016
City Council Meeting

D. Approval of Memorandum of Understanding - Water Rights (1.2 acres)
Jefferson County Rod and Gun Club

E. Approval of Contract Change Order No. 2 - Latham Excavation
Load, Haul, and Spread Fill Materials Removed From
St. Charles Madras Site for use on the
Madras Municipal Airport West Access Road Project #2015-09

F. Approval of First Amendment to Professional Services Contract
Bend Mailing Services, LLC dba BMS Technologies
Deletes Professional Liability Insurance Requirement

G. Approval of Contract Amendment to Oregon Department of Transportation
Grant Agreement No. 30770
Madras Cascades East Transit Project #2015-01

H. Acceptance of Councilor Brown's Resignation From his Position on the
Urban Forestry Commission and Appointment of Councilor Gary Walker
to fill the Vacancy

Councilor Gary Walker Term: April 1, 2016 to December 31, 2016

Mayor Embanks mentioned the need to add the following items to the meeting agenda:

- North Wastewater Treatment Plant Effluent Irrigation Pump Repair

  Utility Supervisor, Keith Bedell

- Introduction of Jason Blackman, Madras Police Reserve

  Police Chief, Tanner Stanfill

Introduction of Jason Blackman, Madras Police Reserve

Police Chief Stanfill introduced Jason Blackman to the Council at this time and explained that he had been sworn in as a Madras Police Reserve on May 17, 2013. During his first year Jason volunteered many hours working patrol and providing law enforcement services at high school games and dances. Jason started the Central Oregon Reserve Law Enforcement Academy January 22, 2015. The academy is similar to the full time academy that includes human behavior, patrol procedures, investigation, firearms, and physical skills. In all Jason attended 458 hours of classroom training. This included 14 tests, a midterm, final exam, and four days of practical exams where he put what he had learned into practice scenarios. Jason graduated on November 14, 2015 with an average score of 90%. Jason accomplished this while working full-time (e.g. 40 to 60 hours) with Crestview Cable. This reserve academy is a major commitment. It takes a lot of hours, weekends, and being away from his wife. The Department is looking forward to having him back. Now that he is done with the academy he can put in more patrol time and put everything he learned into practice.

A MOTION WAS MADE BY COUNCILOR RICHARD LADEBY AND SECONDED BY COUNCILOR TOM BROWN THAT COUNCIL ACCEPT THE [CONSENT AGENDA AND REGULAR MEETING] **AGENDA AS WRITTEN WITH THE TWO CHANGES. THE MOTION PASSED UNANIMOUSLY, 6/0.**

Mayor Embanks reminded the Council that the minutes are going to be summarized so they all need to make sure that when they make a motion or second a motion that they say it clearly, into the microphone, and when they are speaking they need to make sure that the microphone is on so that it can be clearly recorded as the minutes are not going to be verbatim now.

IV VISITOR COMMENTS

Mayor Embanks provided those in attendance with an opportunity to present comments at this time.

There were no comments offered.

V DEER RIDGE AMERICAN LEGION POST 131 - VETERAN MEMORIAL FLAG POLE REQUEST

Councilor Ladeby indicated that he did not have a lot of details on this request, but understands that the Veteran inmates would like to make a memorial for all branches of service at the Deer Ridge Correctional Institution.

Mr. Daniel Coleman was wondering if the City would be willing to donate the flag pole at Bean Park since it did not appear that it was being used.

Mayor Embanks pointed out that the staff report indicates that the existing flagpole and dedication plaque had been dedicated by the Bean Foundation. The City does not want to offend the Bean Foundation by removing their flagpole. The staff report also indicated that the reason the flag pole is not being utilized at the present time is due to the fact that there is currently no ability to light the flag pole at night. The staff has provided the following four recommendations for consideration:

> Option 1: Council can suggest that Mr. Coleman submit a request for funds through the City's Community Grant Program. It may be too late to submit a request this year unless there are some unprogrammed funds available after the Budget Committee makes the funding awards for Fiscal Year 2016-2017.
>
> Option 2: Council can suggest that staff place in the Fiscal Year 2016-2017 Budget a sufficient amount to have electricity installed to the flagpole at a cost of approximately $5,000.
>
> Option 3: Council can ask that staff budget in the Fiscal Year 2016-2017 Budget for the installation of a Gray LED Solar Light and paint for the pole at Bean Park if Option 2 seems too expensive.
>
> Option 4: Council can deny the request from the Oregon Department of Corrections based on the fact that the existing flagpole was a gift from the Bean Foundation and should remain at Bean Park.

Councilor Walker suggested that Option 3 is something that could be considered for the existing flagpole. They can also consider Option 1 to either buy or help them buy the $1,100 flagpole as it would be a lot less expensive than spending $5,000 to have electricity installed when the solar light listed under Option 3 would probably do the job.

Mayor Embanks pointed out to the Council that there are two different issues here that need to be considered:

1) Somebody wants the Bean Park flagpole up at Deer Ridge Correctional Institution; and

2) Lighting for the flagpole at Bean Park.

Lighting the flagpole in Bean Park would allow a flag to be flown at night. If there is no light on the flagpole, the flag would have to be taken down every day. Council needs to decide whether they are going to support the request and come up with the money or a portion of the money for a new flagpole, and whether the City is going to light the existing flagpole.

Councilor Brick wanted to know if the Bean Foundation had been contacted to determine if they would be okay with the flagpole and plaque being moved to the prison for a memorial.

Councilor Brown advised Councilor Brick that the Bean Foundation had donated the land for Bean Park, so he would suggest that the City not ask them to allow the flagpole to be relocated. He indicated that he would go with Option 3, the solar light as he uses a solar light on his flagpole and it works great. It comes on at night and goes off when the sun comes up.

He suggested the possibility of contacting the American Legion and VFW (Veterans of Foreign Wars) to see if they might be willing to help with the cost by doing a fund raiser or something like that. He recommended that the Council consider delaying their decision at this time to think a little more about this.

Councilor Ladeby explained that they have been looking all through Central Oregon and Oregon to see if there would be anyone willing to help them get a flagpole. They have been unsuccessful up to this point. The idea came up when Mr. Coleman saw the flagpole in Bean Park which was not being utilized.

Councilor Montgomery asked if there would be any additional costs involved once the light has been installed in terms of operating it so we can put the flag up.

Golf Course Superintendent/Parks Supervisor Burchell estimated that the only extra cost that would be involved would be the time it would take for someone to raise and lower the flag from time to time to half mast, as well as the cost that would be involved to purchase the flag and light.

City Administrator Burril mentioned that if the Council would like to put some funding towards the purchase of a new flagpole, they could consider it in a Community Grant Application request.

Councilor Montgomery agreed with Councilor Brown that they may want to talk to some of the Veteran groups in town to see if they would like to participate in this, but commit to look at it officially in the next budget period.

Councilor Ladeby pointed out that this will be the first American Legion post inside a prison. They have a lot of enthusiasm. He said that we should certainly see if the American Legion and VFW would be willing to contribute. He volunteered to contact Mr. Coleman and ask that he put a proposal together for the Budget Committee meeting in April 2016.

Mayor Embanks explained that it appears to be the consensus that the City is willing to help out with the Transient Occupancy Tax at some time, but they are going to have to put it in a formal application. The City will somehow work with them to raise some money through Veteran's groups and organizations that are available and willing to donate funding to help raise enough to buy the flagpole.

Councilor Ladeby agreed to make sure that they receive the form and understand what the process is. If they choose to go forward with it then they can bring that forward in April 2016.

City Administrator Burril mentioned that what he thinks that he is hearing from the Council is that staff should make some preparations to budget for the solar light.

A MOTION WAS MADE BY COUNCILOR GARY WALKER AND SECONDED BY COUNCILOR TOM BROWN THAT THE CITY BUDGET THE MONEY NEEDED TO PUT THE SOLAR LIGHT AND THE FLAG ON THE BEAN PARK FLAGPOLE. THE MOTION PASSED UNANIMOUSLY, 6/0.

VI AWARD OF CONSTRUCTION SERVICES CONTRACT, 7-PEAKS PAVING, LLC DESERT PEAKS GOLF COURSE CART PATH PAVING PROJECT

Golf Course Superintendent/Parks Supervisor Burchell advised Council that this item has been budgeted in the FY 2015-2016 Budget. The proposal is to install 1,000 lineal feet of cart path in a highly traveled area at the golf course. This is where a cart path can save the grass. Staff is recommending that Council award the bid to 7-Peaks Paving, the lowest responsive bidder.

A MOTION WAS MADE BY COUNCILOR CHUCK SCHMIDT AND SECONDED BY COUNCILOR TOM BROWN THAT COUNCIL APPROVE THE CONSTRUCTION SERVICES CONTRACT BETWEEN THE CITY OF MADRAS AND 7-PEAKS PAVING, LLC FOR THE DESERT PEAKS GOLF COURSE CART PATH PAVING PROJECT PHASE 2 IN THE AMOUNT OF $14,490 AND APPROVE THE PROJECT NOT TO EXCEED $15,000. THE MOTION PASSED UNANIMOUSLY, 6/0.

VII PUBLIC CONTRACT REIVEW BOARD MEETING

A. SPECIAL PROCUREMENT UNDER ORS 279B.085 FOR 2017 SOLAR ECLIPSE EVENT PLANNER CONTRACT

1) Open Public Contract Review Board Meeting

The Public Contract Review Board Meeting was opened at 7:25 p.m.

2) Staff Report

City Administrator Burril explained that this has to do with services for a Solar Eclipse Event Planner which has grown in the capacity of not only helping coordinate the event, but actually setting up folks to organize services (i.e. garbage and sanitary).

He reported that the City has gone through a process of trying to solicit directly to firms that do this type of work for Cycle Oregon and others. We started last fall in October with a solicitation and advertised locally, but did not receive any proposals. HR and Administrative Coordinator Puddy was, at that time, leading that effort through the Requests for Proposal (RFP) and contacted some of those firms to find out if there was a different way that the City could have approached this that would have encouraged them to submit an RFP or if there is something else that they would recommend. They encouraged the City at that time to consider finding some local folks that might be interested in doing this event. He said that he believes that from their perspective this was something that was pretty unique. They were either booked or not interested.

Staff solicited a second time in January 2016 where it was left more open ended for a group to say how they would approach it, outlined the general categories of things that we wanted assistance with, and asked how they would propose it? We did get a local group to make a proposal to us. They spent some time attending some of the Solar Eclipse Committee meetings to get a feel for what was being discussed and some idea of the areas being considered to stage people upon.

At the same time they were also preparing an agreement to administer putting on an event at the Fairgrounds for people to camp there, rent that facility, and do something there, and saw this as an opportunity to expand their activities. They put together a proposal outlining how the cash flow

outlay would go from their perspective. They laid it out in such a fashion that base services for organizing parties, getting it planned, advertising and marketing, all those things would be a base price of $88,000. For them to have groups of people come out and stage people in parking areas, arrange for camping, schedule garbage services, and provide for sanitary services they proposed a cost share on the ticket sales. Their proposal was a certain percentage if they were just overnight camping versus day parking on the management and coordination of that.

He explained that it is hard to determine how many ticket sales will happen as we have never done this event before and do not have a basis to work from. It could potentially take them over a certain value that could be considered a formal solicitation where we would need to do a statewide circulation and have a more detailed proposal. Staff analyzed this with legal counsel to see if there is a need to advertise this again. We are not sure if it will or will not go over that amount. It could.

There are two options:

1. Is it in the City's best interest upon these categories and these steps to work with this firm; or

2. Does staff need to go back out and do a statewide broadcast and try again under the formal solicitation process.

If we are going to work with the local firm there is a certain number of steps and procedures we will need to follow.

City Attorney Green advised Council that essentially staff is asking the Council to make a decision to declare this a special procurement, as outlined in the staff report, which would enable us to basically solicit and ultimately bring back a contract with this particular firm, for these particular services, or they can direct staff to go back through the formal solicitation process, request proposals from outside of the area, etc. and bring back those proposals for their review and evaluation.

It is staff's opinion that we have more or less already done that as we have reached out to folks across the state, and that effort obviously didn't result in any dividends by way of receiving multiple proposals. We have received one; therefore staff is of the opinion that going back through the process is essentially a waste of time.

He told the Council that if they declare this to be a special procurement authorized under ORS 279B.085, we will work directly with the proposer, begin to negotiate a contract, and bring back a contract for them to approve.

3) Comments From the Public

Mayor Embanks provided those in attendance with an opportunity to present comments at this time.

There were no comments offered.

4) Council Deliberations (Questions and/or Comments)

Councilor Montgomery mentioned that as he understands it, the group that bid has just formed. They do not have a track record. This is not necessarily a bad thing because looking at their resumes they appear to have a bunch of the right kinds of experience to be able to do this. It seems to him that there is some value in having a local company. We may be putting someone in the business that would be a valuable asset over time as we look at other events.

In his opinion, as part of the agreement, we need to have a clear understanding as to what we expect from them in terms of reporting, etc. Someone in the City needs to take the responsibility of overseeing them and making sure that they are on track to take care of everything that needs to be taken care of. This in his mind needs to be part of the contract.

He expressed concerns on splitting proceeds as we have no idea as to what the costs are going to be at this point. He suggested the need to come up with a negotiated price that doesn't go down that path, so we can at least cover the costs.

City Administrator Burril explained that, in discussing this with them, their intent is that they will be responsible for all costs under this proposal. He said that he thought to some extent that the City would be cost sharing garbage and sanitary services, but they had told him that they would, in that cost structure, supply the garbage and sanitary services. He indicated that he had looked at the proposal a bit differently after he heard that. He indicated that he hadn't seen this in the proposal, but he had reiterated this in talking

through what he, the proposer, was going to do. He assured the Council that the agreement will be written to that effect with more clarity.

City Attorney Green advised Council that he had found that the proposal had quite a few ambiguities and that they will flush those issues out assuming that they authorize this as a special procurement. Staff will then bring back an agreement that will contain the details that they are requesting.

Councilor Brick explained that he had similar concerns in turning over a project that could be this large. We have no idea as to how many people will be coming to Madras for this event. There could be between 1 and 50,000. It requires a special level of expertise in managing events to be able to manage this. They are new and have no experience with this large of an event and no experience with this type of event, but we have exhausted the other options. Their management of this project will require a lot of management from the City.

Their financial structure is completely off. In his opinion, if they are going to make a formal proposal to a Request for Proposals (RFP) they need to write down what they are going to do. Some kind of net agreement needs to be done. He also noticed that the RFP was fairly limited in scope in terms of the money generating opportunities (e.g. parking or camping) as opposed to also holding other events. An example would be getting an astronomer from the University of Oregon to make a presentation at the new performing arts center before and after to expand that three minutes to three hours. There are a lot of things that could be done adjacent to that, but the RFP doesn't cover that.

On the other hand, this group stepped up, they are local, and they appear to have expertise. If they are willing to step up to the tight management of that then it is a good idea.

Councilor Brown expressed concerns about the $88,000. When looking at this some of it is in the 2017-2018 year and by then there should be dollars coming in to cover this. The website marketing and website sales for the camping and the parking, etc. should be bringing in money within the next couple of months. We know that the motels have already been booked and that they have been paid. He said that he is not comfortable with putting out that much money ahead of time, especially not knowing what is going to happen.

The website sales are very easy to track. It could be arranged in such a way that some of those dollars would come into a City bank account, and we would share it with them rather than them sharing it with us. He explained that he has been checking on what other areas are doing and in his opinion, there is more thinking yet to do.

City Attorney Green advised Council that if they allow staff to go forward with this as a special procurement, staff will sit down with the proposers to try to pound out some details and can come back to the Council with those details. He suggested the possibility of perhaps scheduling a work session for 45 minutes or an hour to discuss what we are hearing from the proposer, come up with terms that work both for the City and the proposer, and then move forward with finalizing or memorializing those terms in an agreement.

Councilor Brick wanted to know if the Council goes forward with this special procurement process, and it turns out that negotiations for the contract is just not going to work, can they go back?

Attorney Green assured him that they could.

Mayor Embanks indicated that in his opinion, local is better in a lot of ways. We can probably craft an agreement that will actually be beneficial to the City. This is a onetime event, is the first time these folks has done this, and is the first time Madras has done it. We don't know how many people are going to come here and how many are going to require services. He mentioned the need to work out the best plan for the City and if they don't agree to it then we can always change our direction.

5) Council Takes Formal Action

A MOTION WAS MADE BY COUNCILOR TOM BROWN AND SECONDED BY COUNCILOR GARY WALKER THAT COUNCIL GO WITH OPTION 1 [ALLOWING STAFF TO GO FORWARD WITH THIS AS A SPECIAL PROCUREMENT AND AUTHORIZING STAFF TO NEGOTIATE AN AGREEMENT WITH THE LOCAL PROPOSER]. **THE MOTION PASSED UNANIMOUSLY, 6/0.**

6) CLOSE PUBLIC CONTRACT REVIEW BOARD MEETING

The Public Contract Review Board Meeting was closed at 7:42 p.m.

VIII NORTH WASTEWATER TREATMENT PLANT EFFLUENT IRRIGATION PUMP REPAIR

Utility Supervisor Bedell explained that this pump is the pump that is used to irrigate the golf course, and the fields at the Airport. All of the water, the wastewater, that is brought in goes to the North plant and is used to irrigate the fields. This is the pump that pumps it out to those locations. Staff took it in to have it checked out before this irrigation season, which is April 1, 2016. Staff didn't know how the Spotted Frog issue would turn out, and wanted to take precautions and have water available from the wastewater plant to irrigate the golf course.

He mentioned that he had received the quote yesterday to repair the pump and motor to a like new condition. He advised Council that they haven't had any problems with this pump and that it has been in use for 15 to 20 years. It is long due.

Mayor Embanks said that this will keep an option open for irrigation if the water is cut back.

Utility Supervisor Bedell agreed that this is part of it, but they always irrigate the golf course. They wanted to make sure that everything was working in top order before the irrigation season came.

Councilor Ladeby requested clarification that this is more preventive maintenance.

Utility Supervisor Bedell indicated that it is.

City Administrator Burril pointed out that this pump was showing wear.

Councilor Schmidt mentioned that he has used Wadell Electrical before and they do a good job.

Utility Supervisor Bedell explained that they took the pump in to have them check it over, but once it is taken apart, it is hard to go out and get somebody else to give you another quote on it.

Per Section B (4) of the City's Public Contracting Rules and Procedures, the Chief Procurement Officer, acting on behalf of the City, may enter into a Public Contract for equipment repair or overhaul without competitive bidding, subject to the following conditions:

(A) Conditions

(i) Service or parts required are unknown and the cost cannot be determined without extensive preliminary dismantling or testing;

Councilor Brown inquired as to the cost of a new pump.

Utility Supervisor Bedell explained that they had estimated the cost of a new pump at $12,000 to $15,000. The rebuilt pump will be like new once they are done with it.

A MOTION WAS MADE BY COUNCILOR CHUCK SCHMIDT AND SECONDED BY COUNCILOR TOM BROWN THAT COUNCIL APPROVES WADDELL ELECTRICAL AND MECHANICS TO REPAIR THE CITYS NORTH WASTEWATER TREATMENT PLANT EFFLUENT IRRIGATION PUMP IN THE AMOUNT OF $7,827.36. THE MOTION PASSED UNANIMOUSLY, 6/0.

IX ADDITIONAL COMMENTS, ANNOUNCEMENTS, AND DEPARTMENT REPORTS

COMMUNITY DEVELOPMENT DEPARTMENT REPORT

Code Enforcement - 179 S.E. "D" Street

Community Development Director Snead reported that the City's Public Works staff and Jefferson County Parole and Probation Work Crew will be installing plywood over the openings for the building located at 179 S.E. "D" Street where they have been working on abating the nuisance for almost two months. He has received reports that the front door was wide open and citizens had asked that they secure that.

St. Charles - Madras Hospital Expansion

Community Development Director Snead mentioned that staff has signed off on the substantial permits for the majority of the St. Charles Madras Hospital expansion. This project is moving ahead and is generally on schedule from what we understands.

"J" Street Business Directory Signage

Community Development Director Snead explained that he had received a phone call today from a business that is eligible to place signage on one of the three business directory signs that were placed on the "J" Street Project. There were

certain businesses that have had their accesses changed and as a result the City and Oregon Department of Transportation (ODOT) are having three monument signs installed. There had been some concern about the size of the sign. Staff is working on this and at the same time ODOT's contractor is beginning the installations. In November 2015, staff sent a letter to each of the affected businesses notifying them of the steps that are required to install signage on these signs.

PUBLIC WORKS DEPARTMENT REPORT

Public Works Director Hurd advised Council that the Public Works Department is starting to get really busy as it is springtime. He then reported on the following issues:

- **Highway 97 and "L" Street Sidewalk Improvement Project #2015-03**

  The Highway 97 and "L" Street Project is well underway. Parks Supervisor Burchell is managing this project.

- **Spotted Frog Issue - NWWTP Preparedness**

  Utility Supervisor Bedell is busy getting the North Wastewater Treatment Plant ready. With the concern of what is going on with the North Unit Irrigation District and the Spotted Frog, they just wanted to ensure that the plant would be running at 100% in case there was an issue with water, so it could be relied upon for irrigation purposes for the golf course.

- **Oregon Parks and Recreation Department - Local Government Grant Program Funding**
  Madras Bike and Skate Park to Youth Fishing Pond Trail Connection Project - Phase 2

  He explained that he and Public Works Administrative Assistant Quinn are working on a couple of grants. They have applied for the Recreational Trails Program Grant for the first phase of the trail from the Skate Park down to the Fishing Pond and have also found out that Local Government Grant Funding is going to be available for application by April 1, 2016. They will be bringing a resolution to the next City Council meeting to apply for the next phase. They had originally thought that they would

have to apply for the Recreational Trails Program Grant funds this year and the Local Government Grant Funding next year and then build the trail the following year if they were awarded all of the funds, but it is timing out just right that they may be able to get both grants this year and build next year.

They have to go to the Deschutes Valley Water District and Jefferson County Commission Board meetings to get some land donation agreements signed over the next couple of weeks.

- **Clean Water State Revolving Fund Loan - Herzberg Heights and Bel Air Subdivision Wastewater Improvement Project**

  They are going to be applying for a principal forgiveness loan from the Clean Water State Revolving Fund for the installation of sewer in the Bel Air area. The Department of Environmental Quality offers loans that have a certain percentage of principal forgiveness (e.g. this is their way of giving a grant). Right now they are offering 50% principal forgiveness. The intent is that the City will apply to do both subdivisions and if we get awarded the grant, we will pull that loan out once we have built up enough for our side of the portion of the loan so we can have 50% forgiven and can pay off the loan right away.

- **4th of July Parade**

  Some of the Public Works Department employees wanted the City to participate beyond just driving the water truck in the parade, so this sparked putting together a Float Committee. Public Works and a few other staff members will be meeting and putting some proposals together for some floats and whatever ideas they come up with will be brought back to Council for approval.

POLICE DEPARTMENT REPORT

Police Chief Stanfill advised Council that Brent Shokey, Range Master, is currently at DPSST Fire Arms Range Academy Training. This is a two week program. They have been hitting miscellaneous trainings as they have gone along. Morale is really high in the Police Department. The guys are keeping up with things and are staying busy.

CITY ADMINISTRATOR COMMENTS

City Administrator Burril introduced Heather Hansen from Bryant, Lovlien and Jarvis PC. and explained that Ms. Hansen works closely with City Attorney, Jeremy Green. She has been helping the City with some lease work (e.g. the Wilbur-Ellis Company Lease, and the Grass Runway Lease), as well as helping with some Professional Services Contracts and some other T-hangar leases that are getting underway up there.

Daimler Lease

City Administrator Burril announced that the Daimler Ground Breaking Ceremony is scheduled for Monday, March 21, 2016 at 10:00 a.m. at the Airport. Staff will get Council a map and some directions. They have asked that he invite the Council and send some additional invites out to the media, the County Commissioners, the County Planning Department staff, and some of the Oregon Regional Solutions Teams and grant agencies that have helped bring this together. We have a lot of folks in support of it. The lease is in their Court for signing. They are anticipating that the Mayor will sign the lease any day now as the City has received confirmation that we are in good standing with the lease.

Once the lease agreement is signed we will have the Public Works Department crew building three quarters of a mile of new road up there. The plan review is underway. It will be busy up there this year.

Madras Police Employees Association

City Administrator Burril advised Council that the current Police Employees Association Contract ends on July 1, 2016. They are tentatively working with Police Chief Stanfill in putting together a new draft agreement to bring before them. It is progressing well.

COUNCIL COMMENTS

Mayor Embanks mentioned that he had spent some time with Floyd Courtain regarding the Tomi City, Sister City Organization. One thing that he confided in him is that he and his wife are getting to an age now where the frequency of travel is being cut back. They do not feel like they will be able to do this much longer and would like to get somebody that is younger to replace them in this

organization that can go back and forth. He suggested the possibility of Melanie Widmer and her husband. She is very interested in this, but had indicated that she would need to talk to her husband to see whether or not they could do that.

This is pending until such time as Floyd Courtain decides he no longer wants to continue. If Melanie, and her husband Sid, accepts this he believes that they would be a good choice since they have been involved in this program since the time she was serving as the Mayor and earlier when she was serving on Council.

He suggested the need for the City to look to the future about sending people to Tomi City. Our Sister City has sent over twelve to thirteen people or more for the past six or seven years. In his opinion it would be good at some point for the City to reciprocate by sending a group over there. This would be something that would have to be budgeted for and would have to involve people that were able to get away.

City Administrator Burril wanted to know if this is something that the Council would like to discuss during the Budget Committee process and asked City Recorder Coleman to remind him to have this issue placed on the Budget Committee meeting agenda.

X ADJOURN

The City Council meeting was adjourned at 8:02 p.m.

Karen J. Coleman, City Recorder

Royce Embanks, Mayor

CITY OF MADRAS
Request for Council Action

Date Submitted: March 16, 2016

Agenda Date Requested: March 22, 2016

To: Mayor and City Council Members

Through: City Administrator, Gus Burril

From: City Recorder, Karen J. Coleman

Subject: **ARBOR WEEK-ARBOR DAY PROCLAMATION FOR 2016**

TYPE OF ACTION REQUESTED: (Check One)

[ ] **Resolution**

[ ] **Ordinance**

[X] **Formal Action/Motion Included in the Consent Agenda**

[ ] **Other**

[ ] **No Action - Report Only**

DESCRIPTION:

Being designated as a "Tree City USA" places the City under specific requirements to continue to achieve this designation. One of the requirements is that the City must participate in an Arbor Week and Arbor Day celebration by proclaiming the week of April 3 - 9, 2016 as Arbor Week within the City of Madras.

The Madras Urban Forestry Commission has selected April 22, 2016 as Arbor Day within the City of Madras.

Materials that were received indicate that Arbor Day, which means "Tree Day", is now observed in every State in the Union, primarily in the schools. Past activities have included actual tree plantings, poster contests for the children, receipt of a plaque for once again achieving the Tree City USA designation, and discussion with our State Representatives and/or Mayor in recognition of the importance of trees to us as a nation, and of what they yield in adornment, comfort, environmental benefits, and useful products for our community.

STAFF ANALYSIS:

The Urban Forestry Commission coordinates the Arbor Week and Arbor Day activities on behalf of the City of Madras and works very hard to see that the activities are successful. A number of young children have participated in the Arbor Day celebration, tree plantings, and poster contests over the years, teaching them the importance of our natural resources. Staff feels that this is a very beneficial celebration for the Madras community.

The City of Madras began work on the Urban Forestry Program Project in 1992 and has been recognized as a Tree City USA for the past 23 years.

SUMMARY:

A. Fiscal Impact

There will be no fiscal impact associated with approval of the proposed Arbor Week/Arbor Day Proclamation.

B. Explanation of Impact

Not Applicable.

C. Supporting Documentation

A copy of the proposed proclamation has been attached for Council's review and approval.

STAFF'S RECOMMENDATION IS:

That the City Council approve the Arbor Week/Arbor Day Proclamation, as proposed.

THE CITY OF
MADRAS

EST. 1910

PROCLAMATION

ARBOR WEEK, APRIL 3 - 9, 2016
ARBOR DAY WITHIN THE CITY OF MADRAS, APRIL 22, 2016

WHEREAS: Trees can reduce the erosion of our precious topsoil by wind and water, cut heating and cooling costs, moderate the temperature, clean the air, produce life-giving oxygen, and provide habitat for our wildlife; and

WHEREAS: Trees are a renewable resource giving us paper, wood for our homes, fuel for our fires and countless other wood products; and

WHEREAS: The legislature of the State of Oregon adopted an Act designating Arbor Week, and by that Act has designated the week of April 3 - 9, 2016 as Arbor Week within the state; however, Arbor Day within the City of Madras will be celebrated on Friday, April 22, 2016; and

WHEREAS: It is the purpose of the designation of this week throughout the nation to encourage the planting of shade and forest trees, to encourage the harvesting of our forest crops by approved conservation methods, and to encourage the protection of our forest from the scourge of devastating fires, insects, and diseases that destroy the beauty and usefulness of our woodlands as well as their wildlife; and

WHEREAS: Through the cooperation of all residents of the City of Madras, the beneficial effects of forest tree plantings, proper conservation practices in harvesting timber, and the protection from the natural enemies of the forest can be materially increased and we can pass on an enduring heritage of a vital natural resource to succeeding generations.

NOW, THEREFORE: I, Royce Embanks, Mayor of the City of Madras, do hereby proclaim the week of April 3 - 9, 2016 as **ARBOR WEEK** and April 22, 2016 as **ARBOR DAY** within the City of Madras, and urge everyone able to do so to observe these days by the planting of one or more trees and by participating in one or more programs that sponsors of Arbor Week may provide.

_____
Royce Embanks, Mayor

ATTEST:

_____
Karen J. Coleman, City Recorder

CITY OF MADRAS

Request for Council Action

Date Submitted:	March 15, 2016
Agenda Date Requested:	March 22, 2016
To:	Mayor and City Council Members
From:	Jonathan Burchell, Golf Course Superintendent; Parks Supervisor
Subject:	Contract Change Order No. 1 Construction Services Contract with R-2 Contractors, Inc. for additional work extending electrical to street trees, ADA ramp, drip irrigation on street light and credit for deleted tree and irrigation

TYPE OF ACTION REQUESTED:

[ ] Resolution [ ] Ordinance

[X] Formal Action/Motion [X] Contract Review Board

[ ] None - Report Only

Formal Action/Motion for Council to approve Contract Change Order No. 1 for the Hwy 97 and L Street Pedestrian Improvement Project in the amount of $1,849.00 from R-2 Contractors, Inc.

DESCRIPTION:

Change Order No. 1 includes the following:

- ADA Ramp = $1,469.00
- Concrete = $336.00
- Additional trenching for light = $1,000.00
- Additional Conduit for street tree = $600.00
- Additional wiring for light and street trees = $ 1,080.00
- Irrigation install on street tree = $594.00
- Credit for deleted street tree = $2,550.00
- Credit for deleted 4" PVC sleeve = $400.00
- Credit for deleted irrigation = $280.00

Total amount for Contract Change Order #1 is $1,849.00

STAFF ANALYSIS:

Staff met with the lowest winning bidder at the jobsite to verify field measurements and look over approved plans. Staff found several differences in the field from the plans. The water meter needed

to be relocated; the Northernmost street tree conflicted with a sign in the right-of-way and needed to be removed. Also there was a missing sidewalk ADA handicap ramp not included in the original drawings because staff was not aware of the corresponding adjacent sidewalk ramp that was part of the South Y Project.

Staff had the Contractor submit a change order to remedy the above listed items. Staff also spoke with DVWD to determine the costs of a new water meter relocate. After receiving the contractors change order and the DVWD water meter estimate, staff concluded that there was sufficient funds to pay for the added extra items discussed above.

Staff recommends approval of the Contract Change Order No. 1 with R-2 Contractors, Inc. in the amount of $1,849.00.

SUMMARY:

A. Fiscal Impact

Cost

•	Construction Expenses	=	$ 64,707.25
•	Design Services	=	$ 5,500.00
•	Additional Engineering	=	$ 500.00
•	24" hanging basket arm	=	$ 240.00
•	CCO #1	=	$ 1,849.00
•	DVWD water meter install	=	$ 1,673.97
•	Contingency	=	$ 737.03
	Total Cost	=	$ 75,207.25

Revenue

•	Walkway Bikeway Agreement ODOT	=	$ 51,386.00
•	Additional ODOT Funding	=	$ 13,821.25
•	City Funds (original)	=	$ 5,000.00
•	City Funds (additional)	=	$ 5,000.00
	Total Revenue	=	$ 75,207.25

B. Funding Source

- Transportation Operations Fund – 204-040-540-1315
- This CCO #1 for Hwy 97 & L Street Pedestrian Improvement Project is budgeted for fiscal year 2015-16. No Budget Resolution Required.

C. Recognition of collateral material

- Contract Change Order No.1 between R-2 Contractors, Inc. and the City of Madras.

RECOMMENDATION:

Formal Action/Motion for Council to approve Contract Change Order No. 1 for the Hwy 97 and L Street Pedestrian Improvement Project in the amount of $1,849.00 from R-2 Contractors, Inc.

THE CITY OF MADRAS

EST. 1919

125 SW "E" Street, Madras, OR 97741 Phone: (541) 475-2344 Fax: (541) 475-1038

CONTRACT CHANGE ORDER

Date: 3/8/2016
Change Order No. 1

TO: R-2 Contractors, Inc.
P.O Box 6598
Bend Oregon 97708

Phone: 541-312-4143
Fax:

PROJECT: Hwy 97 & L Street Pedstrian Improvement Project

The Contract for the above described work is modified as follows:

1 Increase Bid Items 5,10,11 for additional ADA Ramp
2 Reduce Bid Items 18 and 19 to remove one tree from the project
3 Add additional trenching to tie in to existing street lighting
4 Add additional trenching to extend conduit to street trees
5 Add additional wiring and conduit to tie into existing steet lighting and provide electricial to street trees
6 Add installation of drip irrigation on street light, installation of control valve, valve box, water lateral to pole.
7 Add additonal work for Pouring of Concrete ADA Ramp
8 Credit for deleted Irrigation from water meter to ROW

☐ Fixed Price ☐ T & M

☐ Per Quotation Attached.

☐ Details Attached.

All other terms and conditions of the Contract remain unchanged except:

☐ None
☐ Describe:

ORIGINAL CONTRACT AMOUNT: $ 64,707.25
PREVIOUS CHANGE ORDER AMOUNT $ -

ITEM	UM	QTY	UP	DESCRIPTION	
5	SF	112.00	$ 1.50	4" of 3/4" State Spec Aggregate Base for Curb and Gutter and	$ 168.00
10	SF	112.00	$ 5.50	8' Wide Concrete Sidewalk (Class 3600)	$ 616.00
11	EA	1.00	$ 685.00	ADA Cast Iron Dectable Warning Plates	$ 685.00
18	EA	-1.00	$ 2,550.00	Street Trees	$ (2,550.00)
19	EA	-1.00	$ 400.00	4" PVC Irrigation Sleeves	$ (400.00)
CCO1	LS	1.00	$ 1,000.00	Additional Trenching for Street Light	$ 1,000.00
CCO2	LS	1.00	$ 336.00	Add for ADA Ramp Additional Work	$ 336.00
CCO3	LS	1.00	$ 600.00	Additional Conduit for Street Trees	$ 600.00
CCO4	LS	1.00	$ 1,080.00	Additional Wiring for Lights and Street Trees	$ 1,080.00
CCO5	LS	1.00	$ 594.00	Irrigation Install on Street Light	$ 594.00
CCO6	LS	-1.00	$ 280.00	Credit for Deleted Irrigation	$ (280.00)

TOTAL CCO # 1 AMOUNT: $ 1,849.00

TOTAL REVISED CONTRACT AMOUNT: $ 66,556.25

CITY OF MADRAS:

Royce Embanks, Mayor; Council President or Mayor Pro Tem

Signature: _____

Date Signed: _____

R-2 Contractors, Inc.

Name: _____

Signature: _____

Date Signed: _____

CITY OF MADRAS

Request for Council Action

Date Submitted:	March 15, 2016
Agenda Date Requested:	March 22, 2016
To:	Mayor and City Council Members
Through	Jeff Hurd, Public Works Director
From:	Michele Quinn, Public Works Administrative Assistant
Subject:	Contract Change Order No. 2 for Professional Services Contact H.A. McCoy Engineering & Surveying, LLC to perform design and construction services for the H Street Pedestrian Improvements Project

TYPE OF ACTION REQUESTED:

[ ] Resolution

[ ] Ordinance

[X] Formal Action/Motion

[X] Contract Review Board

[ ] None - Report Only

Formal Action/Motion that Council approves Contract Change Order No.2 for H.A. McCoy Engineering & Surveying Professional Services Contract to extend the contract to June 30, 2016.

DESCRIPTION:
Contract Change Order No. 2 includes a contract extension from March 31, 2016 until June 30, 2016. No additional costs are added to the project.

STAFF ANALYSIS:
Staff has spoken with H.A. McCoy about the progress on the design and construction services for the H Street Pedestrian Improvement Project. At this time Staff and H.A. McCoy feels it is necessary to extend the Professional Contract to June 30, 2016 to give adequate time to finalize the project.

Staff is recommending Council approve Change Order No. 2 to extend H. A. McCoy Engineering & Surveying, LLC. Professional Services Contract to June 30, 2016.

SUMMARY:

A. Fiscal Impact:
- NA

B. Funding Source:
- Transportation Operations Fund, Capital Outlay, H Street Pedestrian Improvement Project, 204-040-540-1317
- Change Order No. 2 requires no additional cost to the project therefore a budget resolution will not be required.

C. Recognition of Collateral Material and Technical Report:
- Change Order No. 2

RECOMMENDATION:
Formal Action/Motion that Council approves Contract Change Order No.2 for H.A. McCoy Engineering & Surveying Professional Services Contract to extend the contract to June 30, 2016.

THE CITY OF MADRAS

EST. 1910

125 SW "E" Street, Madras, OR 97741 Phone: (541) 475-2344 Fax: (541) 475-1038

CONTRACT CHANGE ORDER

Date: 3/14/2016
Change Order No. 2

TO: H.A. McCoy Engineering & Surveying
P.O. Box 533
Redmond, Oregon 97756

Phone: 541-604-6735
Fax:

PROJECT: H Street Pedestrian Improvements Project

The Contract for the above described work is modified as follows:

1 Increase contract time to June 30, 2016

☐ Fixed Price ☐ T & M

☐ Per Quotation Attached.

☐ Details Attached.

All other terms and conditions of the Contract remain unchanged except:

☐ None

☑ Describe:

Contract time increased to June 30, 2016.

ORIGINAL CONTRACT AMOUNT:					$ 20,500.00
PREVIOUS CHANGE ORDERS					$ -
ITEM	UM	QTY	UP	DESCRIPTION	
					$ -
					$ -
					$ -
TOTAL REVISED CONTRACT AMOUNT:					$ 20,500.00

CITY OF MADRAS:

Royce Embanks, Mayor; Council President or Mayor Pro Tem

Signature: _____

Date Signed: _____

H.A. McCoy Engineering and Surveying

Name: _____

Signature: _____

Date Signed: _____

CITY OF MADRAS

Request for Council Action

Date Submitted:	March 10, 2016
Agenda Date Requested:	March 22, 2016
To:	Mayor and City Council Members
Through:	Jeff Hurd, Public Works Director
From:	Michele Quinn, Public Works Administrative Assistant
Subject:	Land Use Agreements for Control and Tenure for the Madras Bike and Skate Park to Youth Fishing Pond Trail Project

TYPE OF ACTION REQUESTED:

[ ] Resolution

[ ] Ordinance

[X] Formal Action/Motion

[ ] Contract Review Board

[ ] None - Report Only

Formal action / motion that Council approves the land use agreement for control and tenure for the Jefferson County Property, Deschutes Valley Water Property, and Cascade Ridge Property to donate property to City to construct and maintain a public access trail system for the Madras Bike and Skate Park to the Youth Fishing Pond.

DESCRIPTION:

Jefferson County, Deschutes Valley Water District and Cascade Ridge Apartments are willing to donate property to the City in order to construct the next phase of the Madras trail loop from the Skate Park to the Fishing Pond. The attached Land Use Agreement for Control and Tenure documents depict the amount of property to be donated, the value of the property, that the property owner is willing to donate the property and any other specific requirements related to the transaction.

STAFF ANALYSIS:
City staff is in the process of applying for the Local Government Grant Program to obtain funding to complete the City's trail system. The City must obtain permission via the attached land use agreement for control & tenure from property owners. The agreements allow the City to construct and maintain the bike and pedestrian trail section from J Street to the Youth Fishing Ponds property as described on the attached exhibit.

Staff has met with each of the property owners and all owners have agreed to sign the attached land use agreements for control and tenure. Since the property is donated, staff will be able to utilize the property as in kind match for the grant.

SUMMARY:

A. **Fiscal Impact:**
- N/A

B. **Funding Source:**
- N/A

C. **Recognition of Collateral Material and Technical Report:**
See attached Land Use Agreement for Control & Tenure; property exhibit

RECOMMENDATION:
Formal action / motion that Council approves the land use agreement for control and tenure for the Jefferson County Property, Deschutes Valley Water Property, and Cascade Ridge Property to donate property to City to construct and maintain a public access trail system for the Madras Bike and Skate Park to the Youth Fishing Pond.

Land Use Agreement for Control & Tenure

Jefferson County Approval (Donation of 18,112 square feet of land to the City of Madras according to the attached legal description and exhibit and per conditions listed below.)	
Name:	Title:
Signature:	Date:
Maintenance Agreement by the City of Madras (Commitment for long-term maintenance and responsibility for bike and pedestrian trail area by the City of Madras at the location referenced in the attached legal description and exhibit per the conditions listed below, contingent on grant approval.)	
Name:	Title:
Signature:	Date:

<u>Understanding for Donation of Land</u>:

1) The legally described properties (13,124 square feet of Right of Way and 4,988 feet of Slope Easement) in the attached exhibits "A" and depicted in the attached exhibits "B" will be donated to the City of Madras by Jefferson County for the purpose of constructing a bike and pedestrian trail upon the City receiving funding to construct the improvements; and

2) The legally described property has been appraised by the Oregon State Certified General Appraiser #C000148, Harold G. Brainerd of Brainerd Appraisals, Inc. The appraisal conducted was to establish the market value of the legally described property, valued at $9,100.00 (see attached appraisal summary); and

3) At the timing of this agreement, the City is applying for an Oregon Parks and Recreation Department grant to build this trail section. The City has not been guaranteed the funding to do so at the time of signing this agreement; and

4) Upon the City receiving funding to construct the trail the City will prepare the necessary documents to transfer the property from Jefferson County to the City of Madras; and

5) As part of the trail construction the City will install fencing on tax lot 11-13-11 AB 200 adjacent to the trail and also include a 20 foot swing gate and a man gate for access to the trail for the County; and

6) The City will be responsible for all maintenance to the trail and slope easement, including maintenance of the gate and fence and abatement of weeds.

Exhibit "A"

Right-of-Way Dedication

A portion of Parcel II, Book 37, Page 598, Jefferson County Deed Records, located in the Northwest One-Quarter of the Northeast One-Quarter of Section 14, Township 11 South, Range 13 East, Willamette Meridian, Jefferson County, Oregon, being more particularly described as follows:

Beginning at the southwest corner of Parcel 2, Partition Plat 1994-11, being a 5/8" iron rod with a 2" aluminum cap marked "DEJARNATT LS2208", thence along the north line of said Parcel II, N89°48'10"W 169.95 feet to the TRUE POINT OF BEGINNING; thence continuing along the north line of said Parcel II, N89°48'10"W 320.05 feet; thence along the said west line of said Parcel II, S00°12'51"W 294.78 feet; thence leaving the said west line, S89°47'09"E 20.00 feet; thence along a line 20.00 feet parallel and easterly of said west line of said Parcel II, N00°12'51"E 230.04 feet; thence leaving said parallel line, N38°01'20"E 56.65 feet; thence along a line 20.00 parallel and southerly of said north line of Parcel II, S89°48'10"E 265.33 feet; thence leaving said parallel line, N00°11'50"E 20.00 feet to the said TRUE POINT OF BEGINNING.

The above described land contains 12,674 square feet, more or less. The Basis of Bearings is per Partition Plat 1994-11, Jefferson County Survey Records.

5-28-15

REGISTERED PROFESSIONAL LAND SURVEYOR

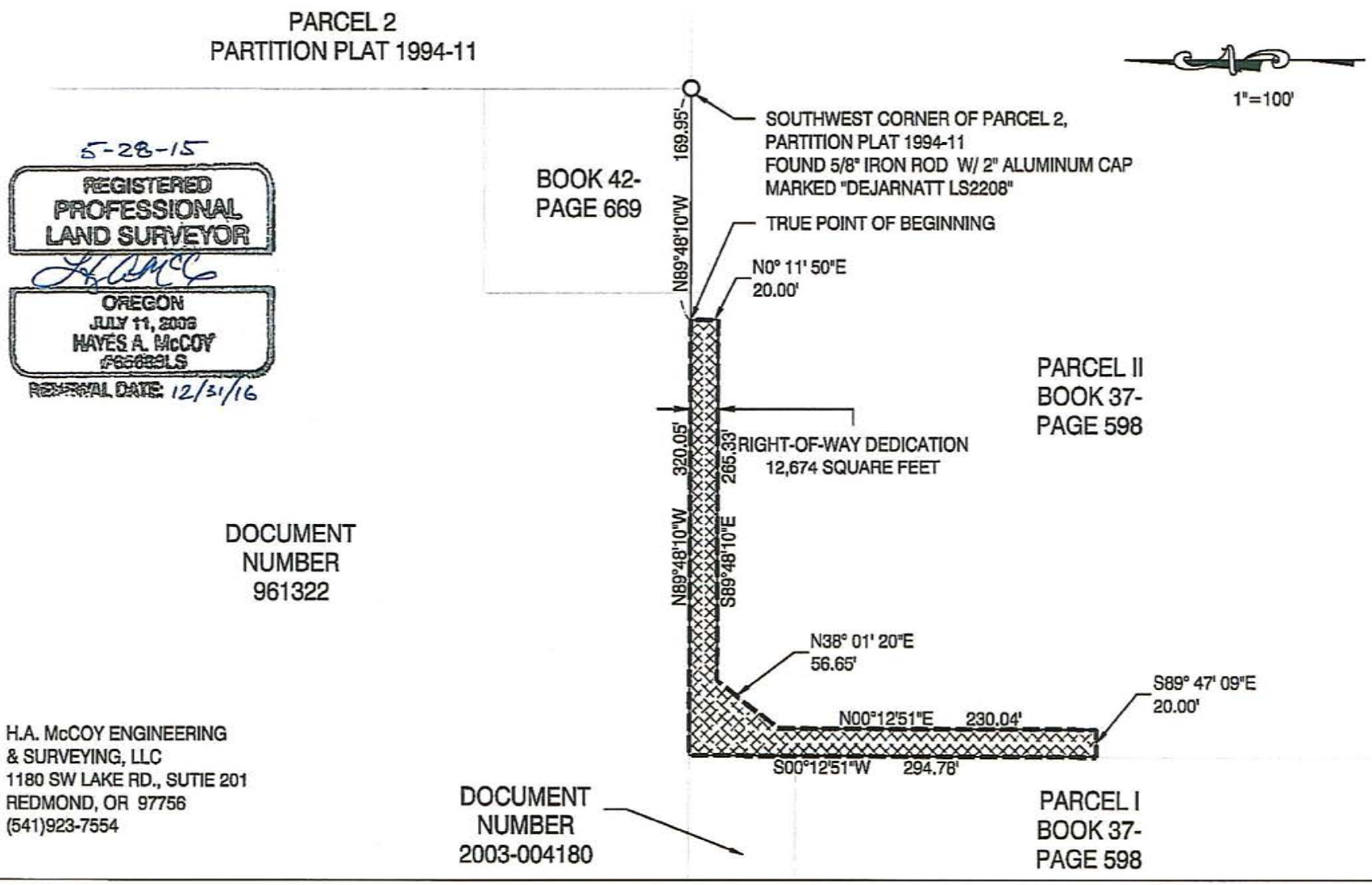
OREGON
JULY 11, 2003
HAYES A. McCOY
#65888LS

RENEWAL DATE: 12/31/16

EXHIBIT "B"

RIGHT-OF-WAY DEDICATION

A PORTION OF PARCEL II, LOCATED IN THE NORTHWEST ONE-QUARTER OF THE NORTHEAST ONE-QUARTER OF SECTION 14, TOWNSHIP 11 SOUTH, RANGE 13 EAST, WILLAMETTE MERIDIAN, JEFFERSON COUNTY, OREGON



H.A. McCOY ENGINEERING
& SURVEYING, LLC
1180 SW LAKE RD., SUTIE 201
REDMOND, OR 97756
(541)923-7554

Exhibit "A"

Right-of-Way Dedication

A portion of Parcel I, Book 37, Page 598, Jefferson County Records located in the Northeast One-Quarter of the Northwest One-Quarter of Section 14, Township 11 South, Range 13 East, Willamette Meridian, Jefferson County, Oregon, being more particularly described as follows:

Being the easterly 18 feet and the northerly 292 feet of the Northeast One-Quarter of the Northwest One-Quarter of said Section 14.

EXCEPTING THEREFROM the northerly 267 feet of said easterly 18 feet of the Northeast One-Quarter of the Northwest One-Quarter of said Section 14.

The above described land contains 450 square feet, more or less.

9/9/15

REGISTERED
PROFESSIONAL
LAND SURVEYOR

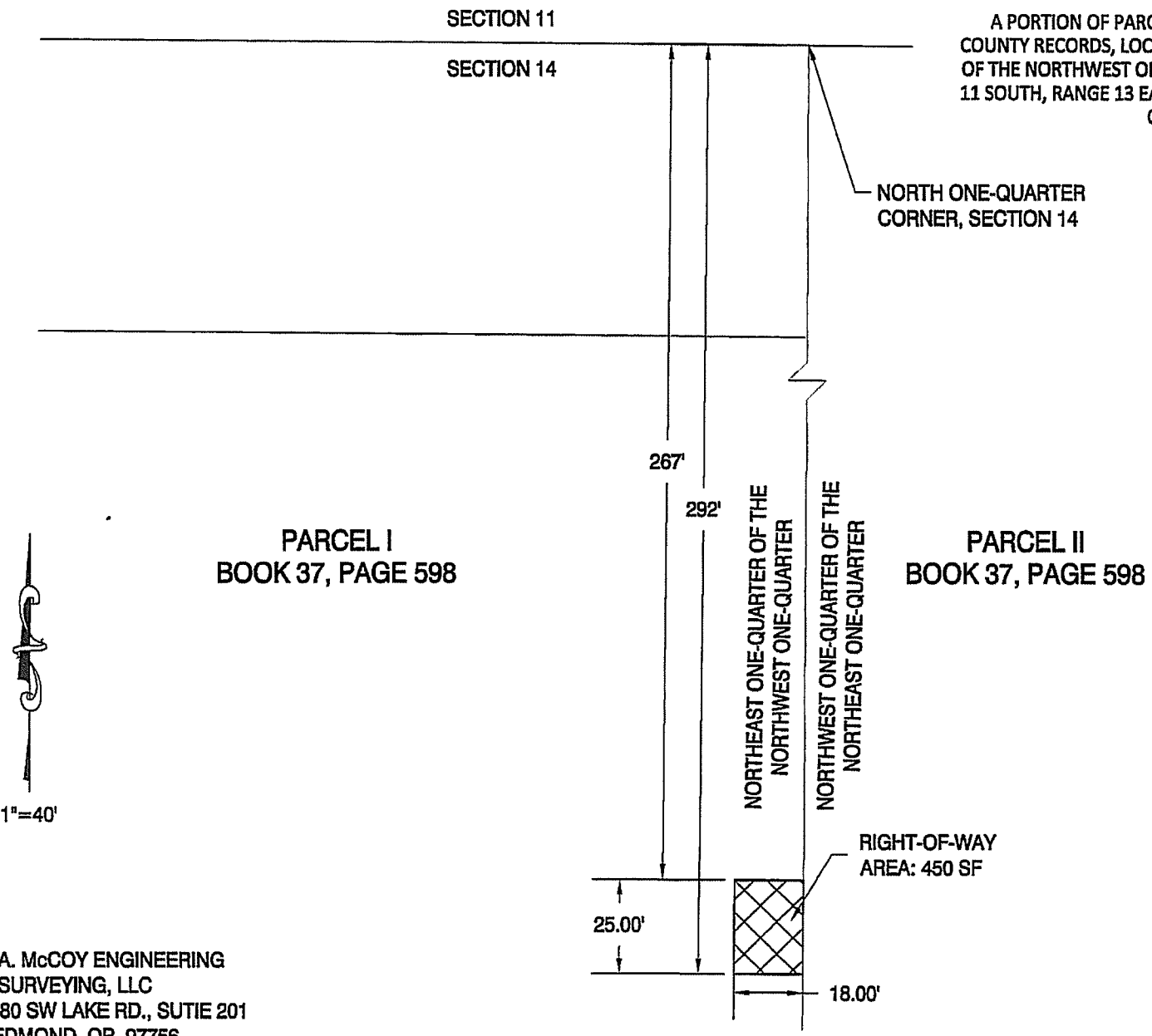
OREGON
JULY 11, 2003
HAYES A. McCOY
[illegible]

RENEWAL DATE: 12/31/16

EXHIBIT "B"

RIGHT-OF-WAY DEDICATION

A PORTION OF PARCEL I, BOOK 37, PAGE 598, JEFFERSON COUNTY RECORDS, LOCATED IN THE NORTHEAST ONE-QUARTER OF THE NORTHWEST ONE-QUARTER OF SECTION 14, TOWNSHIP 11 SOUTH, RANGE 13 EAST, WILLAMETTE MERIDIAN, JEFFERSON COUNTY, OREGON



9/9/15

REGISTERED PROFESSIONAL LAND SURVEYOR

OREGON
JULY 11, 2003
HAYES A. McCOY

RENEWAL DATE: 12/31/16

H.A. McCOY ENGINEERING
& SURVEYING, LLC
1180 SW LAKE RD., SUTIE 201
REDMOND, OR 97756
(541)923-7554

Exhibit "A"

Slope Easement

A portion of Parcel II, Book 37, Page 598, Jefferson County Deed Records, located in the Northwest One-Quarter of the Northeast One-Quarter of Section 14, Township 11 South, Range 13 East, Willamette Meridian, Jefferson County, Oregon, being more particularly described as follows:

Beginning at the southwest corner of Parcel 2, Partition Plat 1994-11, being a 5/8" iron rod with a 2" aluminum cap marked "DEJARNATT LS2208", thence along the north line of said Parcel II, N89°48'10"W 169.95 feet; thence leaving the said north line of Parcel II, S00°18'20"W 20.00 to the TRUE POINT OF BEGINNING, thence along a line 20.00 feet parallel and southerly of said north line of said Parcel II, N89°48'10"W 265.33 feet; thence leaving said parallel line, S38°01'20"W 56.65 feet; thence along a line 20.00 feet parallel and easterly of the west line of said Parcel II, S00°12'51"W 230.04 feet; thence leaving the said parallel line, S89°47'09"E 5.00 feet; thence along a line 25.00 feet parallel and easterly of the west line of said Parcel II, N00°12'51"E 203.86 feet; thence leaving parallel line, N38°01'20"E 77.14 feet; thence along a line 30.00 feet parallel and southerly of said north line of parcel II, S89°48'10"E 247.77 feet; thence leaving the said parallel line, N00°11'50"E 10.00 feet to the said TRUE POINT OF BEGINNING.

The above described land contains 4,988 square feet, more or less. The Basis of Bearings is per Partition Plat 1994-11, Jefferson County Survey Records.

5-28-15

REGISTERED
PROFESSIONAL
LAND SURVEYOR

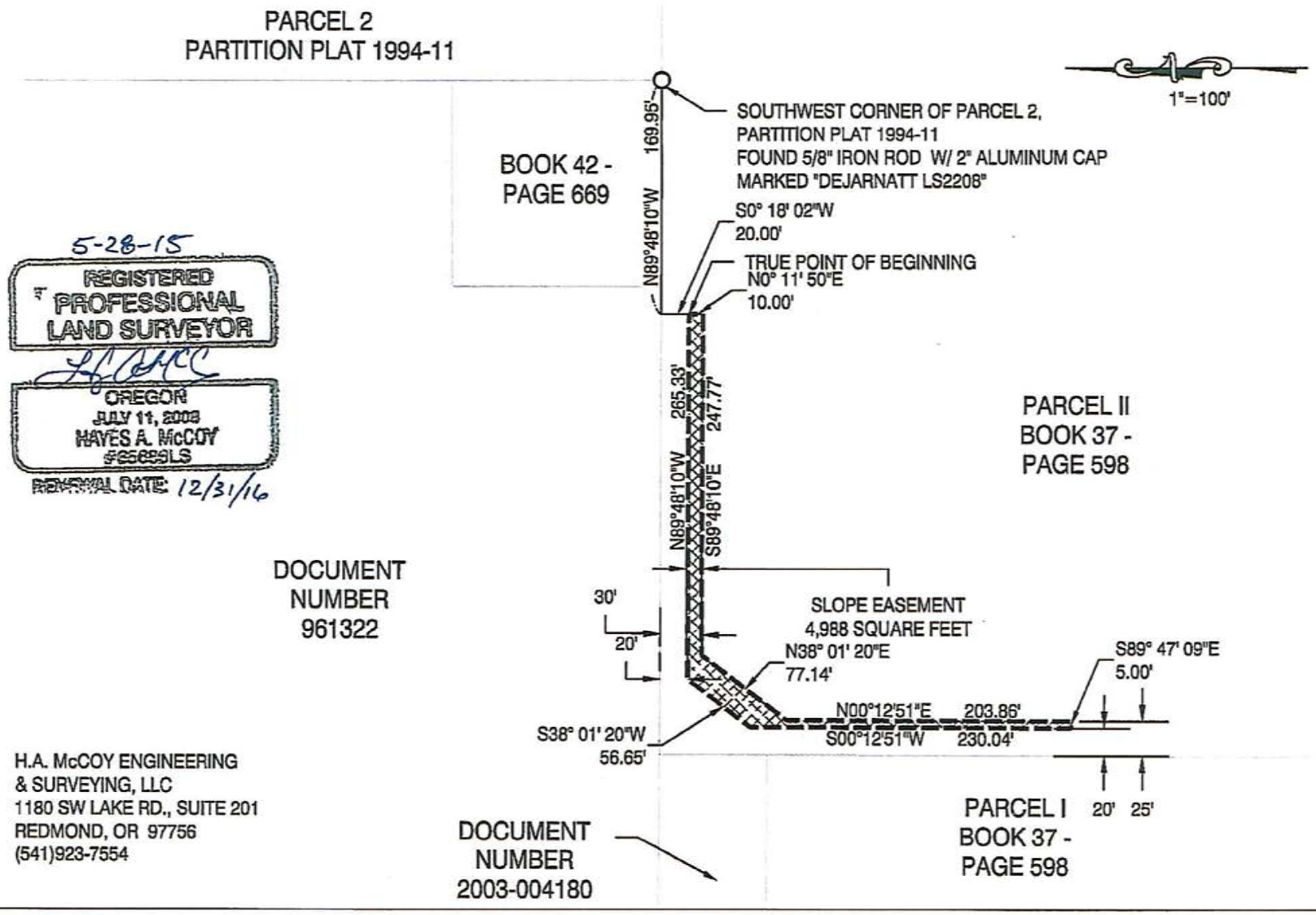
OREGON
JULY 11, 2000
HAYES A. McCOY
#66633LS

RENEWAL DATE: 12/31/16

EXHIBIT "B"

SLOPE EASEMENT

A PORTION OF PARCEL II, LOCATED IN THE NORTHWEST ONE-QUARTER OF THE NORTHEAST ONE-QUARTER OF SECTION 14, TOWNSHIP 11 SOUTH, RANGE 13 EAST, WILLAMETTE MERIDIAN, JEFFERSON COUNTY, OREGON



5-28-15
REGISTERED PROFESSIONAL LAND SURVEYOR
OREGON
JULY 11, 2003
HAYES A. McCOY
RENEWAL DATE: 12/31/16

H.A. McCOY ENGINEERING
& SURVEYING, LLC
1180 SW LAKE RD., SUITE 201
REDMOND, OR 97756
(541)923-7554

Land Use Agreement for Control & Tenure

Deschutes Valley Water District Approval (Donation of 22,692 square feet of land to the City of Madras according to the attached legal description and exhibit and per conditions listed below.)	
Name:	Title:
Signature:	Date:
Maintenance Agreement by the City of Madras (Commitment for long-term maintenance and responsibility for bike and pedestrian trail area by the City of Madras at the location referenced in the attached legal description and exhibit per the conditions listed below, contingent on grant approval.)	
Name:	Title:
Signature:	Date:

Understanding for Donation of Land:

1) The legally described property (22,692 square feet of Right of Way) in the attached exhibit "A" and depicted in the attached exhibit "B" will be donated to the City of Madras by Deschutes Valley Water District for the purpose of constructing a bike and pedestrian trail upon the City receiving funding to construct the improvements; and

2) The legally described property has been appraised by the Oregon State Certified General Appraiser #C000148, Harold G Brainerd, Brainerd Appraisals, Inc. The appraisal conducted was to establish the market value of the legally described property, valued at $12,350.00 (see attached appraisal summary); and

3) At the timing of this agreement, the City is applying for a Local Government grant to build this trail section. The City has not been guaranteed the funding to do so at the time of signing this agreement; and

4) Upon the City receiving funding to construct the trail the City will prepare the necessary documents to transfer the property from Deschutes Valley Water District to the City of Madras; and

5) In conjunction with trail construction the City will construct a 6' chain link security fence adjacent to the trail on Deschutes Valleys Water Property (map 11-13-11 DC Tax Lot 700) to provide security for Deschutes Valley Waters Operation. The fence will be similar like kind to the existing fence on the site.

Exhibit "A"

Right-of-Way Dedication

A portion of Document Number 961322, Jefferson County Deed Records, located in the Southwest One-Quarter of the Southeast One-Quarter of Section 11, Township 11 South, Range 13 East, Willamette Meridian, Jefferson County, Oregon, being more particularly described as follows:

Beginning at the northeast corner of Document Number 961322, being a 5/8" iron rod with a 2" aluminum cap marked "DEJARNATT LS2208", thence along the east line of said Document Number 961322, S00°04'00"W 317.95 feet; thence along the common line to said Document Number 961322 and Book 42, page 669, Jefferson County Deed Records, N89°47'17"W 150.00 feet; thence continuing along said common line, S00°04'00"W 150.00 feet; thence along said south line of said Document Number 961322, N89°47'17"W 50.00 feet; thence along a line 50.00 feet parallel and westerly of the west line of Book 42, Page 669, N00°04'00"W 181.28 feet; thence along a line 25.00 feet parallel and northerly of said north line of Book 42, Page 669, S89°47'17"E 165.00 feet; thence along a line 35.00 feet parallel and westerly of said east line of Document Number 961322, N00°04'00"W 293.10 feet, thence along said north line of said Document Number 961322, S89°31'43"E 35.00 feet to the said POINT OF BEGINNING.

The above described land contains 22,692 square feet, more or less. Basis of Bearings is per Partition Plat 1994-11, Jefferson County Survey Records.

5-28-15

REGISTERED PROFESSIONAL LAND SURVEYOR

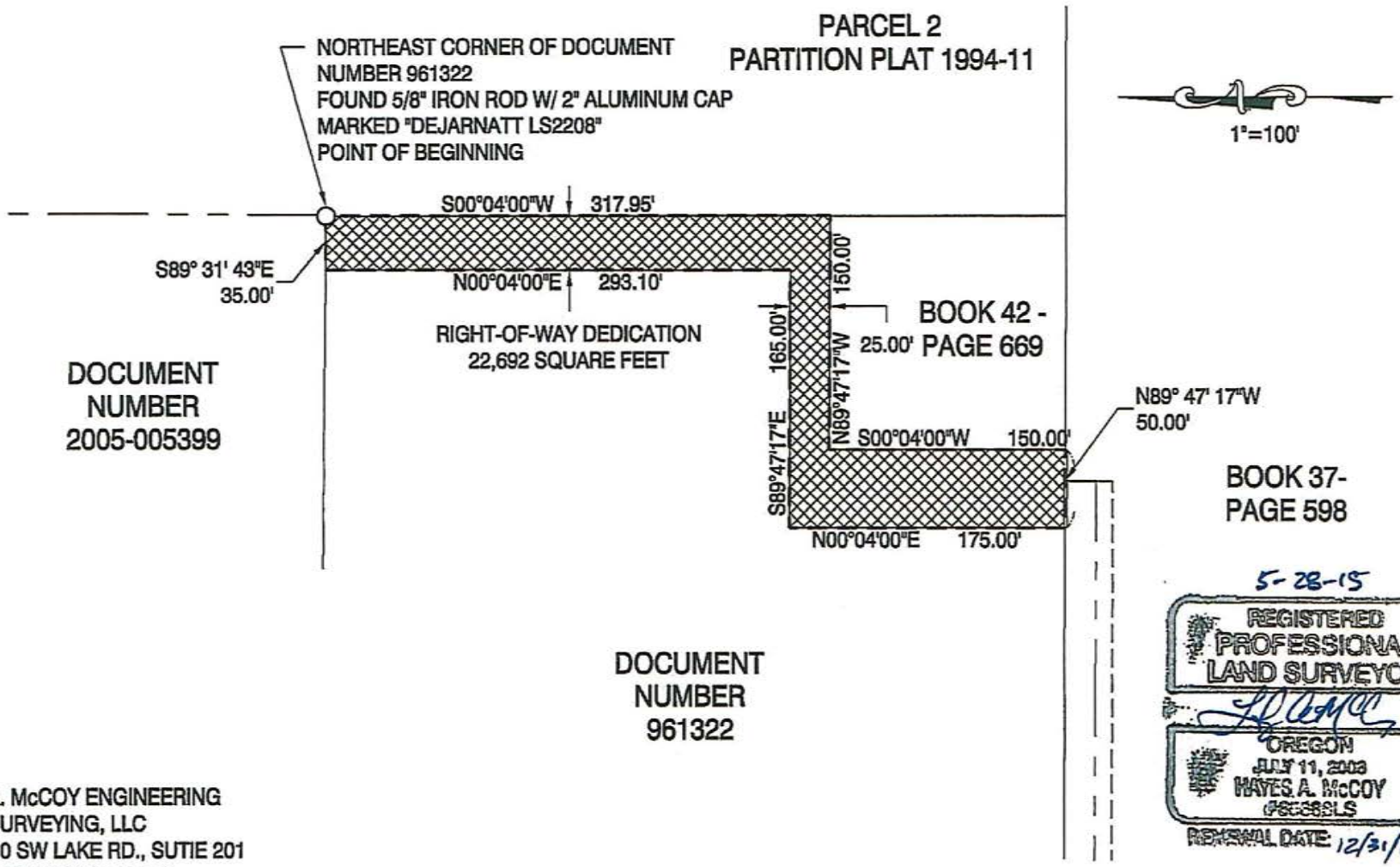
OREGON
JULY 11, 2008
HAYES A. McCOY
#66683LS

REVIEWAL DATE: 12/31/16

EXHIBIT "B"

RIGHT-OF-WAY DEDICATION

A PORTION OF DOCUMENT NUMBER 961322, LOCATED IN THE SOUTHWEST ONE-QUARTER OF THE SOUTHEAST ONE-QUARTER OF SECTION 11, TOWNSHIP 11 SOUTH, RANGE 13 EAST, WILLAMETTE MERIDIAN, JEFFERSON COUNTY, OREGON



5-28-15

REGISTERED PROFESSIONAL LAND SURVEYOR

OREGON
JULY 11, 2003
HAYES A. McCOY
RENEWAL DATE: 12/31/16

H.A. McCOY ENGINEERING
& SURVEYING, LLC
1180 SW LAKE RD., SUTIE 201
REDMOND, OR 97756
(541)923-7554

Land Use Agreement for Control & Tenure

Cascade Ridge of Madras, LLC Approval (Donation of 24,675 square feet of land to the City of Madras according to the attached legal description and exhibit and per conditions listed below.)	
Name:	Title:
Signature:	Date:
Maintenance Agreement by the City of Madras (Commitment for long-term maintenance and responsibility for bike and pedestrian trail area by the City of Madras at the location referenced in the attached legal description and exhibit per the conditions listed below, contingent on grant approval.)	
Name:	Title:
Signature:	Date:

<u>Understanding for Donation of Land</u>:

1) The legally described properties (23,481 square feet of Right of way and 1,194 square feet of slope and storm drainage easement) in the attached exhibits "A" and depicted in the attached exhibits "B", will be donated to the City of Madras by Cascade Ridge of Madras, LLC for the purpose of constructing a bike and pedestrian trail upon the City receiving funding to construct the improvements; and

2) The legally described property has been appraised by the Oregon State Certified General Appraiser #C000148, Harold G. Brainerd, of Brainerd Appraisals, Inc. The appraisal conducted was to establish the market value of the legally described property, valued at $7,425.00 (see attached appraisal summary); and

3) At the timing of this agreement, the City is applying for an Oregon Parks and Recreation Department grant to build this trail section. The City has not been guaranteed the funding to do so at the time of signing this agreement; and

4) Upon the City receiving funding to construct the trail the City will prepare the necessary documents to transfer the property from Cascade Ridge of Madras to the City of Madras; and

5) Due to the location of the trail to the Apartment Complex, as part of the project the City will install a 6' chain link fence with a man gate per the attached exhibit "C". The City will also provide fill along the western and northern edge of the parking lot.

Exhibit "A"

Right-of-Way Dedication

A portion of Parcel 2 of Partition Plat 1994-11, located in the Southwest One-Quarter of the Southeast One-Quarter of Section 11, Township 11 South, Range 13 East, Willamette Meridian, Jefferson County, Oregon, being more particularly described as follows:

Beginning at the northeast corner of Parcel 2, Partition Plat 1994-11, being a 5/8" iron rod with yellow plastic cap marked "DEJARNATT LS2208", thence along southerly right-of-way line of SW J Street also being 30 feet from the centerline of said SW J Street, N89°49'10"W 30.53 feet to the TRUE POINT OF BEGINNING; thence along a line 27.00 feet parallel and easterly of the west line of said Parcel 2, S00°10'50"W 362.17 feet; thence leaving the said parallel line, S38°57'55"W 60.01 feet; thence along a line 27.00 feet parallel and easterly of the west line of said Parcel 2, S00°04'00"W 411.07 feet; thence leaving said parallel line, N89°48'10"W 27.00 feet; thence along the said west line said Parcel 2, N00°04'00"E 470.01 feet; thence S89°49'10"E 37.71 feet; thence along the west line of said Parcel 2, N00°10'50"E 350.00 feet to the south right-of-way line of SW J Street; thence along said south right-of-way line of SW J Street, S89°49'10"E 27.00 feet to the said TRUE POINT OF BEGINNING.

The above described land contains 23,481 square feet, more or less. The Basis of Bearings is per Partition Plat 1994-11, Jefferson County Survey Records.

5-28-15

REGISTERED
PROFESSIONAL
LAND SURVEYOR

OREGON
JULY 11, 2003
HAYES A. McCOY
[illegible]

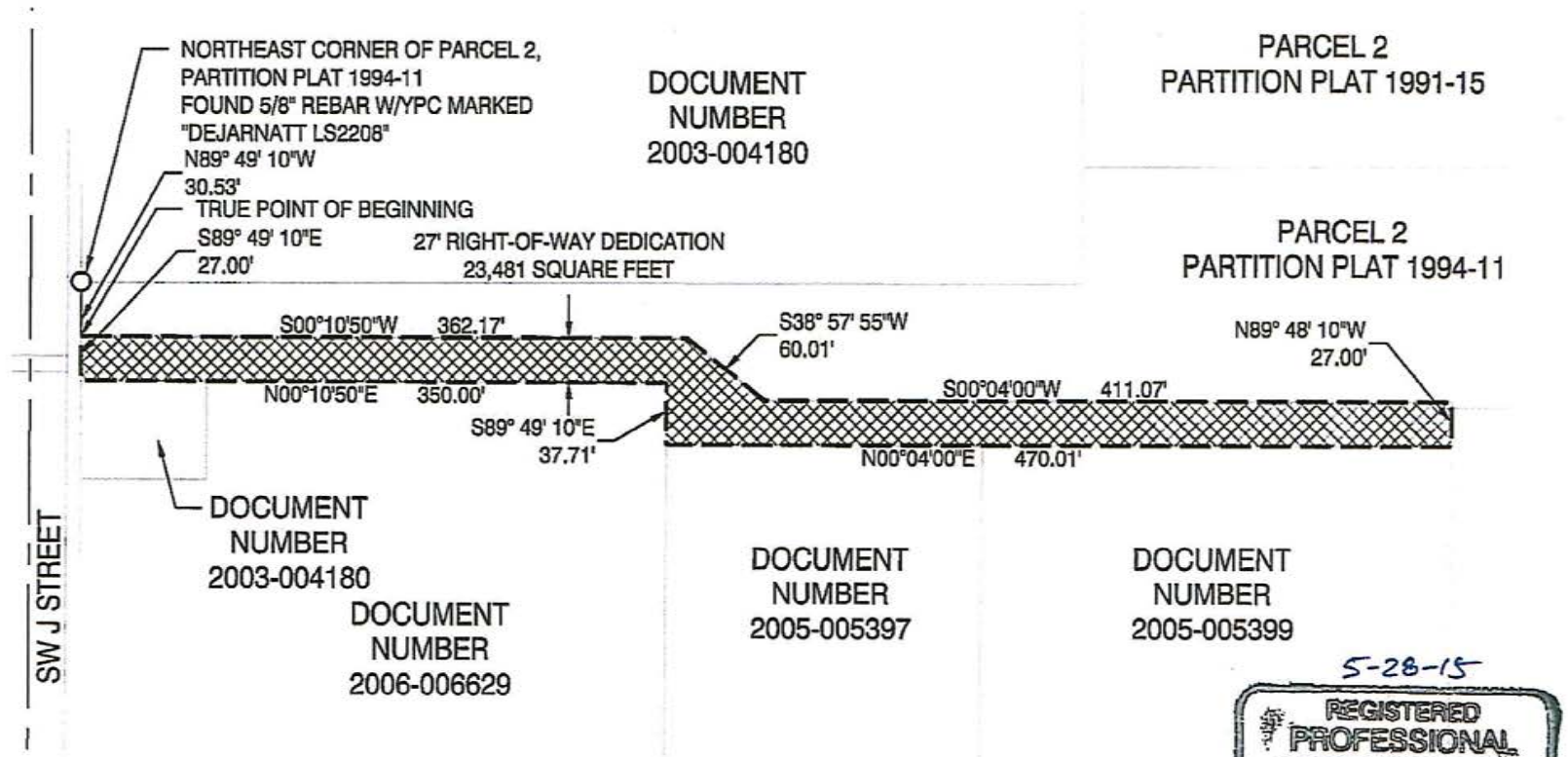
RENEWAL DATE: 12/31/16

EXHIBIT "B"

RIGH-OF-WAY DEDICATION

A PORTION OF PARCEL 2, PARTITION PLAT 1994-11, LOCATED IN THE SOUTHWEST ONE-QUARTER OF THE SOUTHEAST ONE-QUARTER OF SECTION 11, TOWNSHIP 11 SOUTH, RANGE 13 EAST, WILLAMETTE MERIDIAN, JEFFERSON COUNTY, OREGON

1"=100'



5-28-15

REGISTERED PROFESSIONAL LAND SURVEYOR

OREGON
JULY 11, 2003
HAYES A. McCOY
[illegible]LS

RENEWAL DATE: 12/31/16

H.A. McCOY ENGINEERING
& SURVEYING, LLC
1180 SW LAKE RD., SUTIE 201
REDMOND, OR 97756
(541)923-7554

Exhibit "A"

Slope and Storm Drainage Easement

A portion of Parcel 2 of Partition Plat 1994-11, located in the Southwest One-Quarter of the Southeast One-Quarter of Section 11, Township 11 South, Range 13 East, Willamette Meridian, Jefferson County, Oregon, being more particularly described as follows:

Beginning at the northeast corner of Parcel 2, Partition Plat 1994-11, being a 5/8" iron rod with yellow plastic cap marked "DEJARNATT LS2208", thence along southerly right-of-way line of SW J Street also being 30 feet from the centerline of said SW J Street, N89°49'10"W 2.47 feet to the TRUE POINT OF BEGINNING; thence leaving said right-of-way line, S19° 45'25"W 91.12 feet, thence along a line 27.00 feet parallel and easterly of the west line of said Parcel 2, N00°10'50"E 85.85 feet; thence returning to said right-of-way line, S89°49'10"E 30.53 feet to the said TRUE POINT OF BEGINNING.

The above described land contains 1,194 square feet, more or less. The Basis of Bearings is per Partition Plat 1994-11, Jefferson County Survey Records.

5-28-15

REGISTERED
PROFESSIONAL
LAND SURVEYOR

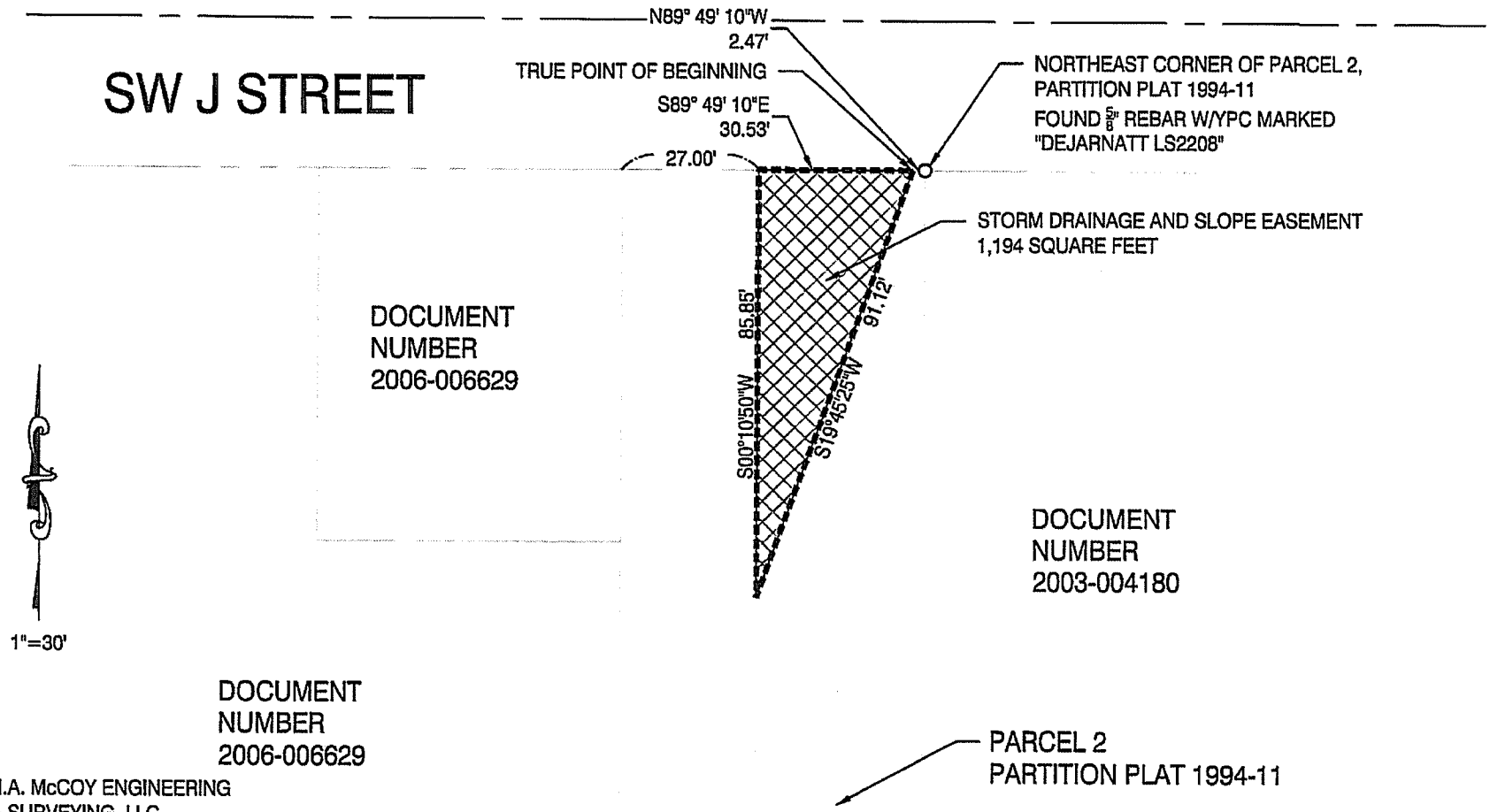
OREGON
JULY 11, 2003
HAYES A. McCOY
[illegible]LS

RENEWAL DATE: 12/31/16

EXHIBIT "B"

SLOPE AND STORM DRAINAGE EASEMENT

A PORTION OF PARCEL 2, PARTITION PLAT 1994-11, LOCATED IN THE SOUTHWEST ONE-QUARTER OF THE SOUTHEAST ONE-QUARTER OF SECTION 11, TOWNSHIP 11 SOUTH, RANGE 13 EAST, WILLAMETTE MERIDIAN, JEFFERSON COUNTY, OREGON



H.A. McCOY ENGINEERING
& SURVEYING, LLC
1180 SW LAKE RD., SUTIE 201
REDMOND, OR 97756
(541)923-7554

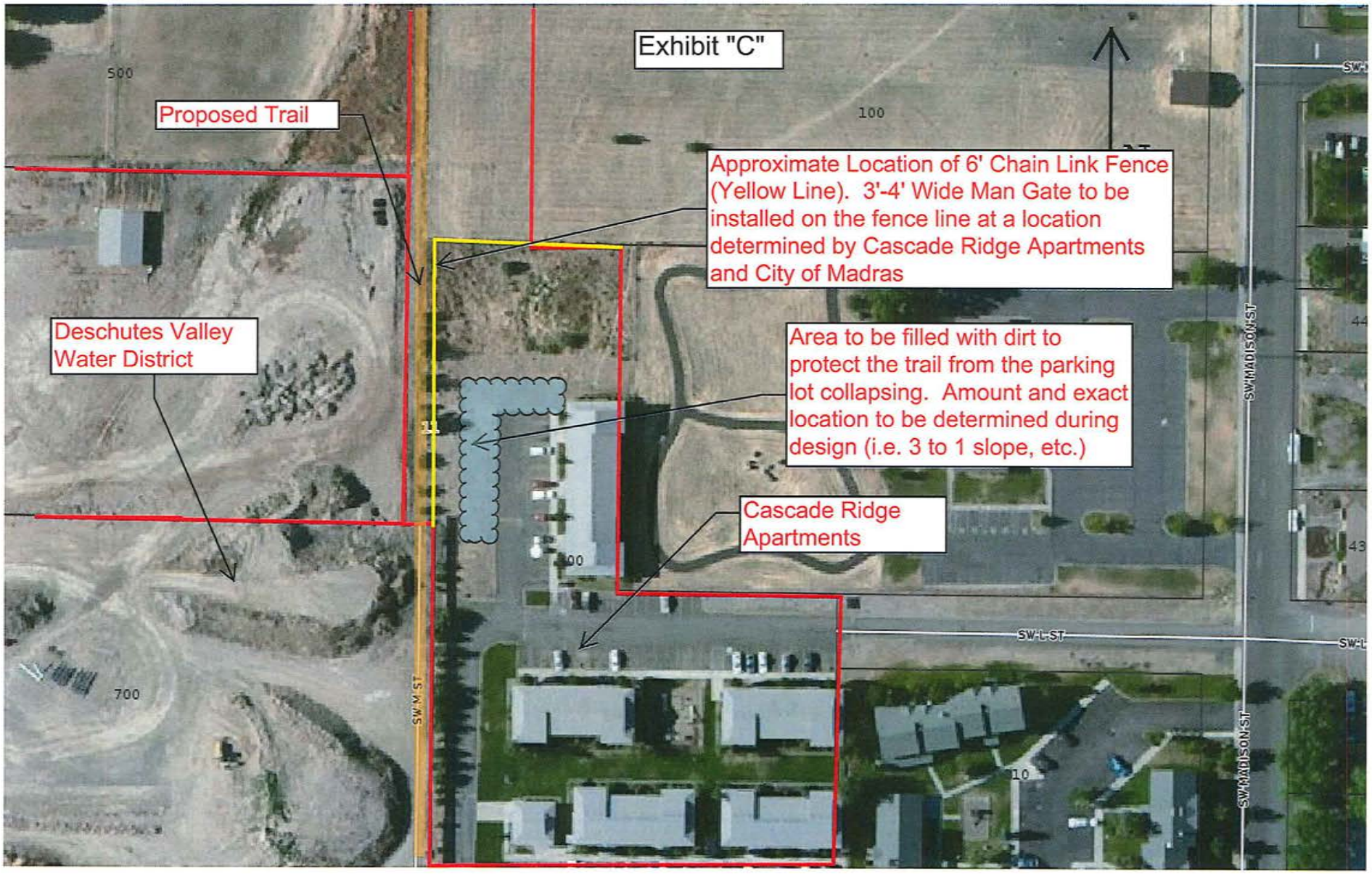


Exhibit "C"
Proposed Trail
Approximate Location of 6' Chain Link Fence (Yellow Line). 3'-4' Wide Man Gate to be installed on the fence line at a location determined by Cascade Ridge Apartments and City of Madras
Deschutes Valley Water District
Area to be filled with dirt to protect the trail from the parking lot collapsing. Amount and exact location to be determined during design (i.e. 3 to 1 slope, etc.)
Cascade Ridge Apartments
500
100
700
SW M ST
SW L ST
SW MADISON ST

CITY OF MADRAS

Request for Council Action

Date Submitted:	March 14, 2016
Agenda Date Requested:	March 22, 2016
To:	Mayor and City Council Members
From:	Rod Fulton, Building, Fleet, Street Supervisor
Subject:	Madras Municipal Airport West Access Road (aka Daimler Road) procurement of Testing Services, Construction Materials, Labor, Rental Equipment and Waterline.

TYPE OF ACTION REQUESTED:

[ ] Resolution

[ ] Ordinance

[X] Formal Action/Motion

[ ] Contract Review Board

[ ] None - Report Only

Formal Action/Motion that Council approves the Public Works Department to procure construction materials, testing services, contracted labor and rental equipment in the amount of $50,895.37 & approve DVWD to install waterline in the amount of $137,304.00 for construction of the Madras Municipal Airport West Access Road Project. (aka Daimler Road)

DESCRIPTION:
City forces will be constructing the subgrade as well as installing silt fence and drainage culverts. City crews will also be backfilling and compacting the water line installed by Deschutes Valley Water District.

STAFF ANALYSIS:
Staff has compiled estimates for materials to complete the necessary work for the 2015/2016 West Access Road Project. (aka Daimler Road) The attached items are the estimated cost for materials, rental, testing & new a waterline in the amount of $137,304.00

Staff is recommending council approve the procurement of materials, rental, labor in the amount of $50,895.37 & approve DVWD to install waterline in the amount of $137,304.00 needed to complete the construction of the West Access Road Project (aka Daimler Road).

SUMMARY:

A. Fiscal Impact:

Madras Municipal West Access Road Project (aka Daimler Road)

• Design and Const. Engineering (Century West)	=	$ 125,473.00
• Construction Services Contract Material (Latham)	=	$ 35,700.00
▪ Change Order #1 (Time Extension)	=	$ 0.00
▪ Change Order #2	=	$ -14,700.00
• **Revised Contract Amount**	**=**	**$ 21,000.00**
• Mat. and Equip. for Road Construction (estimated)	=	$ 50,895.37
• Road Construction (City Forces In Kind)	=	$ 131,415.00
• Land Dedication for Road	=	$ 154,149.00
• Water Line Estimated (DVWD)	=	$ 137,304.00
• Road Construction – Contracted (TBA)	=	$1,430,945.42
• Contingency	=	$ 235,854.63
• **Total Road Project Cost**	**=**	**$2,287,036.42**

Revenue

• Infrastructure Finance Authority	=	$ 150,000.00
• Immediate Opportunity Fund	=	$ 841,137.21
• City (land & labor/equipment grading)	=	$ 285,564.06
• Developer (Daimler) Cost Share	=	$1,010,335.15
• **Total Revenue**	**=**	**$2,287,036.42**

B. Funding Source:

- Airport Operations Fund, Capital Outlay, 509-090-540-1003
- This project has been budgeted for FY 15-16 therefore a budget resolution is not required.

C. Recognition of Collateral Material and Technical Report:

See attached Quotes:

- Rental Equipment
- Labor
- Materials
- Testing
- Deschutes Valley Water District

RECOMMENDATION:

Formal Action/Motion that Council approves the Public Works Department to procure construction materials, testing services, contracted labor and rental equipment in the amount of $50,895.37 & approve DVWD to install waterline in the amount of $137,304.00 for construction of the Madras Municipal Airport West Access Road Project. (aka Daimler Road)

BULLET RENTAL AND SALES - MADRAS

712 NE 10TH STREET
MADRAS, OR 97741
www.bulletrental.com

541-325-5544 Phone
541-475-6652 Fax

Status: Quote
Quote #: q1795-2

Quote To: Mon 3/ 7/2016 8:00AM

Operator: MEDINA, ROBERT

Customer #: 38

CITY OF MADRAS
125 SW E STREET
MADRAS, OR 97741

541-475-2622 Phone
541-475-7061 Fax

Salesman: John Perkins IV

Qty	Item#	Items	Status	Quote Date	Price
5	10269	SILT FENCE 36"X100	Retail		$265.00

Quote valid for 30 days.

Sales:	$265.00
Subtotal:	$265.00
\S - CHARGE SALES:	$0.00
Total:	$265.00
Paid:	$0.00
Amount Due:	$265.00

Signature:

CITY OF MADRAS

BULLET RENTAL AND SALES - MADRAS

712 NE 10TH STREET
MADRAS, OR 97741
·w.bulletrental.com

541-325-5544 Phone
541-475-6652 Fax

Status: Quote

Quote #: q1789-2

Quote To: Mon 4/ 4/2016 9:00AM

Operator: PERKINS, JOHN

Customer #: 38

CITY OF MADRAS
125 SW E STREET
MADRAS, OR 97741

541-475-2622 Phone
541-475-7061 Fax

Salesman: John Perkins IV

Qty	Item#	Items	Status	Quote Date	Price
1	1	D-6 CAT	Rental	Mon 5/30/2016 9:00AM	$7,000.00
	4Hrs $0.01 1day $500.00 1week $1,500.00 4weeks $3,500.00				
2	1898	DELIVERY- TRUCK UP TO 10 MILES	Delivery		$140.00

Delivery and Pickup

Delivery: Mon 4/ 4/2016 9:00AM
Pickup Date: Mon 5/30/2016 9:00AM
Delivery Notes:

Contact:
Phone:

Quote valid for 30 days.

Rental:	$7,000.00
Delivery Charge:	$140.00
Subtotal:	$7,140.00
ɔRAS - CHARGE SALES:	$0.00
Total:	$7,140.00
Paid:	$0.00
Amount Due:	$7,140.00

Signature:

CITY OF MADRAS

Modification # 1

Rod Fulton

From: John Nason <JohnN@hookercreek.net>
Sent: Monday, March 07, 2016 2:39 PM
To: Rod Fulton
Cc: Jeffrey Hurd
Subject: Silt Fence

Hello again sir, ok now that all of our ducks are in a row and I am not going to have the Silt Fence sale of the century, here is more appropriate numbers☺

Again the GEOTK product is not in stock and will take 5-7 days to get here, but is on the QPL.
GEOTK **Black** silt fence with wood stakes - $42.00 per 100' roll

GEOTK **Orange** silt fence with wood stakes - $44.00 a 100' roll.
Plus $85 in freight.

Now if you don't need a QPL blessing you could go with the product we have in stock but is not on the QPL.
We stock Mutual Industries Silt fence and only have it in Black.

Your price on this Silt Fence is $24.00 a roll, no freight, and I can bring it with me on Thursday.

Either way, just let me know and well get you guys squared away

Thank you

JN

John T. Nason

Hooker Creek Companies Equipment & Supply

Cell- 541-480-5428

Office- 541-389-4677

Fax- 541-389-3994

jnason@hookercreek.net

www.hookercreek.net

Hooker Creek Companies LLC made the following annotations

---

*Electronic Privacy Notice. This e-mail, and any attachments, contains information that is, or may be, covered by electronic communications privacy laws, and is also confidential and proprietary in nature. If you are not the intended recipient, please be advised that you are legally prohibited from retaining, using, copying, distributing, or otherwise disclosing this information in any manner. Instead, please reply to the sender that you have received this communication in error, and then immediately delete it. Thank you in advance for your cooperation.

Rod Fulton

'om: John Nason <JohnN@hookercreek.net>
ɔent: Friday, March 04, 2016 2:14 PM
To: Rod Fulton
Subject: Equipment

Hi Rod,

It figures that the first request you have is something that I can't get!?!?!?

So we sold our D6 in November and won't have a replacement until 2017.
I do have 2 machines that are smaller and bigger, so I will give you the price and specs on those and see if either of them works.

We have a JD 650 Dozer which is a 24,000 lb machine
That piece runs $5000 a month + Freight $300

And we have the big guy
The Cat D8R which is a 87,000lb machine
That Piece runs (hope your sitting down) $16,000 a month + $400 freight.

Thanks Rod, I really do appreciate it buddy, have a great weekend.

JN

John T. Nason

Hooker Creek Companies Equipment & Supply

Cell- 541-480-5428

Office- 541-389-4677

Fax- 541-389-3994

jnason@hookercreek.net

www.hookercreek.net

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Rod Fulton

From: Charitie Gamble <charitie@MidOregonPersonnel.com>
Sent: Friday, March 11, 2016 10:52 AM
To: Rod Fulton
Subject: Price request

Hi Rod

As you requested here are the numbers (cost) for a 10 week job with Danny Taylor.

Danny Taylor Hourly wage is $11.00 hour

Wage + Fee = $14.19

$14.19 x 40 hour work week = $567.60

$567.60 x 10 weeks = $5676.00 this would be your potential cost as long as it stayed in the hours and time frame that you gave me.

This does NOT include any over time rate or wages.

I hope this works for you my friend!

Blessings on your day,

Charitie Gamble
Mid Oregon Personnel
213 SW 4th St. Suite 100
Madras Or. 97741
541-475-7640 Office
541-475-7656 Fax

Mid Oregon PERSONNEL

4 R EQUIPMENT LLC

phone: (541) 382-8182
fax: (541) 382-0277

TAX I.D. 93-1100544

April 28, 2015

Attn: Rod Fulton
Project: Rock Del.
RE: 3/4" spec quote

Item Description	Quantity	Unit Cost	Sub Total
3/4" state spec base, Del.	1 ton	$8.00	$8.00

Respectfully,

Jared Calder
Jack Robinson & Sons Inc.

P.O. BOX 5006 ■ BEND, OREGON 97708

H.D. FOWLER COMPANY

Redmond Branch
155 NE 11TH ST
Redmond, OR 97756
(541) 923-2090 or (866) 923-2090

Date: 02/16/16

ESTIMATION

Project: 24" AND 18" PIPE
Location: MADRAS, OREGON

Engineer:
Owner/Agency:

Estimate #: E291543
Bid Date: 03/17/16
Estimator: Trevor Anderson
trevora@hdfowler.com

TO CONTRACTORS:

Attached is the H. D. Fowler Company estimate of materials that may be required for the above-listed project. This estimate may have been made without reviewing any project plans and/or specifications and is intended for general budgeting and planning purposes only. It is possible that unforeseen project requirements have been left out of this general estimate.

To accurately bid any project, it is necessary for the contractor to perform their own materials and quantities take-off. We strongly suggest that the contractor request a quotation of the project material from H. D. Fowler Company before bidding or ordering material for a project.

This estimation does not make any representations, expressed or implied, that may constitute a binding agreement between any parties.

H.D. FOWLER COMPANY

Customer: CITY OF MADRAS
Estimator: Trevor Anderson
Job Name: 24" AND 18" PIPE
Location: MADRAS, OREGON

Estimate: E291543
Bid Date: 3/17/2016

Line	Qty	UoM	Description	Unit Price	Extended Price
			**** DUCTILE IRON ****		
1	255.5	FT	18" CL 50 DI PIPE TJ,C151/A21.51,C104,C/L,18.25' NOM. LGTH,SBR GASKET (68.1 LBS/FT)	47.94	12,248.67
2	91.25	FT	24" CL 50 DI PIPE TJ, C151/A21.51,C104,C/L,18.25' NOM. LGTH,SBR GASKET (98.1 LB/FT)	69.82	6,371.08
			Section Subtotal:		**18,619.75**
			**** GALVANIZED CMP ****		
3	240	EA	18" GALVANIZED 16GA CMP PIPE	14.34	3,441.60
4	12	EA	18" GALVANIZED 16GA BANDS FOR CMP	20.88	250.56
5	82	EA	24" GALVANIZED 16GA CMP PIPE	17.83	1,462.06
6	5	EA	24" GALVANIZED 16GA BANDS FOR CMP	26.11	130.55
			Section Subtotal:		**5,284.77**
			**** HDPE CULVERT ****		
7	240	FT	18"X 20' ADS BLUE SEAL CORR POLY,TESTABLE, AASHTO M294,TYPE "S", 18650020IB	16.56	3,974.40
8	100	FT	24"X 20' ADS BLUE SEAL CORR POLY PIPE,AASHTO M294, TYPE "S",DUAL WALL,WT (10.8), 24650020IB	29.79	2,979.00
			Section Subtotal:		**6,953.40**
			Approximate Total		**30,857.92**

FERGUSON Waterworks

REDMOND, OR WW #1614
3292 SOUTH HIGHWAY 97
REDMOND, OR 97756-0000

Deliver To: mark.boucher@ferguson.com
From: Mark Boucher
Comments:

11:00:42 FEB 18 2016

FEI #3011 WATERWORKS
Price Quotation
Phone : 541-548-2865
Fax : 541-548-2664

Bid No.....: B213894
Bid Date....: 02/17/16
Quoted By.: MXB

Cust 541-475-2622
Terms.....: NET 10TH PROX

Customer: CITY OF MADRAS
DEPT OF PUBLIC WORKS
125 SW E ST
MADRAS, OR 97741

Ship To: CITY OF MADRAS
DEPT OF PUBLIC WORKS
125 SW E ST
MADRAS, OR 97741

Cust PO#...: CULVER PIPE

Job Name: DI, CMP, CORR. HDPE

Item	Description	Quantity	Net Price	UM	Total
	PRICING VALID FOR 30 DAYS				

	LEAD TIME APPROX. 7-10 DAYS ARO, PENDING MATERIAL AVAILABLITY AT TIME OF ORDER				

	DUCTILE IRON PIPE				

AFT50PD24	24 CL50 DCL DI FASTITE PIPE	100	70.756	FT	7075.60
AFT50PD18	18 CL50 DCL DI FASTITE PIPE	260	48.589	FT	12633.14
	SUBTOTAL				19708.74

	CORRUGATED HDPE				

A24650020IB	24X20 AASHTO W/TITE HDPE PIPE BE	100	20.000	FT	2000.00
A18650020IB	18X20 AASHTO W/TITE HDPE PIPE BE	260	14.412	FT	3747.12
	SUBTOTAL				5747.12

	GALV CORR METAL PIPE				

CP242016GA	24X20 16GA MTL COR PIPE	100	16.988	FT	1698.80
CC2416GA	24 16GA MTL COR COUP	5	36.250	EA	181.25

CP182016GA	18X20 16GA MTL COR PIPE	260	13.412	FT	3487.12
CC1816GA	18 16GA MTL COR COUP	13	28.750	EA	373.75
	SUBTOTAL				5740.92

** Quotation **

Bid #: S7652220
Page #: 1

Consolidated Supply Co.

Send P/O To:
CONSOLIDATED SUPPLY CO - BEND
20625 BRINSON BLVD
BEND, OR 97701

Phone # : 541-382-1999

Bid To:
CITY OF MADRAS
125 SW E Street
MADRAS, OR 97741

Ship To:
CITY OF MADRAS
125 SW E ST
MADRAS, OR 97741

Phone # : 541-475-2344

JOB: 18" & 24" DIP

Bid-Date	Expr-Date	Writer	Salesperson	Ship Via
02/18/16	03/19/16	Greg Clark - Bend	Jeff Cahill - Bend	OT OUR TRUCK

Quantity	Description	Unit Price	Ext
	**********		
	PRESSURE CLASS DUCTILE		
	**********		
	*		
237'	18"X18.125 CL250 TYTON JOINT DI PIPE W/ GASKET	43.000FT	10191.00
	** This is a special order item **		
91'	24"X18.2' CL200 TYTON JOINT DI PIPE W/ GASKET CL	69.150FT	6292.65
	** This is a special order item **		

	Subtotal -------		16483.65
	*		
	**********		
	ODOT CLASS-50 DUCTILE		
	**********		
	*		
237'	18"X18.2' CL50 TYTON JOINT DI PIPE W/ GASKET CL	49.100FT	11636.70
	** This is a special order item **		
91'	24"X18.2' CL50 TYTON JOINT DI PIPE W/ GASKET CL	71.550FT	6511.05
	** This is a special order item **		

	Subtotal -------		18147.75
	*		
	**********		
	**********		

	Bid Total		34631.40

	Bid Amount		34631.40

.. Reprint .. Reprint .. Reprint .. Reprint ..

Thank you for requesting a quotation from Consolidated Supply Co. ("Consolidated") for certain materials you need for the project identified in the attached or enclosed quotation document (the "Project"). The enclosed quotation to you is made subject to the following terms and nditions:

1. You must carefully review the quotation to confirm that it meets your requirements before using it for a bid. Unless you have provided Consolidated with a detailed bill of materials and specifications with your requirements (with any applicable addendums), this quotation is only a good-faith estimate and does not constitute an offer which can be accepted or relied on in any manner. Building plans alone do not constitute a detailed bill of materials or specifications, particularly if more than one supplier or subcontractor may be involved in supplying plumbing and/or waterworks materials. Unless the quotation is based on your detailed bill of materials and specifications, you agree that all risk of loss arising from the use of this quotation for bidding purposes-including any loss relating to errors in scope, quantity, price, time, and place of delivery-is on you. All quotations are conditioned upon availability of labor and materials at the time an order actually is placed. You are responsible to specify and select appropriate materials for your intended use. CSCO provides no design, engineering, or other professional services and cannot recommend or warrant goods to be fit for your particular purposes.

2. If you place an order with Consolidated for work or materials for the Project, the resulting contract will be subject to Consolidated's General Terms and Conditions of Sale. If credit is provided by Consolidated, then that credit is provided on Consolidated's general credit terms and conditions. These terms and conditions are available to you upon request d can be viewed on our website at www.consolidatedsupply.com.

3. Delivery under this quotation is FOB Consolidated's OR manufacturer's facility. If the quotation includes delivery to a jobsite, Consolidated may use a method and carrier of Consolidated's choice, unless otherwise stated in the quotation, and Consolidated assumes that the location is legally and physically accessible to interstate freight carriers operating under ICC regulations. Unloading labor will be provided by purchaser. Additional charges may apply if these assumptions are incorrect or if multiple deliveries are required. Consolidated will make a good faith effort to meet delivery dates agreed to in writing, but cannot guaranty delivery dates for goods not in stock or for which the terms of delivery are outside our control.

4. Pricing in this quotation is based on unit amounts and is firm and valid only if the goods are ordered within 30 calendar days from the date of the quotation. Consolidated may extend quoted prices on a case-by-case basis beyond the 30-day period. Consolidated reserves the right to correct or withdraw this quotation in the case of clerical error. Any change in quantities ordered or time for delivery may result in a change of the quoted prices, including unit prices, unless otherwise agreed to by Consolidated in writing. In the case of commodity items subject to dramatic price increases from the manufacturer such as PVC pipe, plastics, iron and copper, Consolidated reserves the right to modify prices in this quotation after the date that it is issued. This quotation is not a bid or a lump-sum quote, unless specifically stated in the quotation.

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Laboratory and Construction Services Rates 2016

Labor Rates

AAA	ADMINISTRATION	$ 58.00
AAD	PROJECT ADMINISTRATION	$ 58.00
CAD	CONSTRUCTION OBSERV/QA	$ 65.00
DAA	REPORT/DOCUMENT PREP	$ 95.00
DAC	DATA MGMT/EVALUATION	$ 95.00
DAE	PROFESSIONAL ENGR CONSULT	$ 145.00
DAR	PROFESSIONAL ENGR REVIEW	$ 165.00
FAA	GENERAL FIELD ACTIVITIES	$ 65.00
FAE	ASPHALT SERVICES	$ 65.00
FAF	CONCRETE SERVICES	$ 65.00
FAH	MASONRY SERVICES	$ 65.00
FAI	STEEL / WELDING SERVICES	$ 72.00
FAJ	SHOW UP/STAND BY	$ 60.00
FAN	NON-DESTRUCTIVE TESTING	$ 75.00
FAS	SOIL SERVICES	$ 65.00
F08	COMPACTION TSTNG/NUCLEAR	$ 65.00
F18	FIREPROOFING OBSERVATION	$ 65.00
F21	PAINT THICKNESS	$ 65.00
F25	R-METER TESTING	$ 65.00
F28	SAMPLE PICK-UP/DELIVERY	$ 59.00
F30	SHOTCRETE OBSERVATION	$ 65.00
F41	CORING/CONCRETE	$ 65.00
F42	CORING/ASPHALT	$ 65.00
F45	BOLT TESTING	$ 65.00
F47	FLOOR MOISTURE TESTING	$ 65.00
F48	REBAR PLACEMENT OBSERV	$ 65.00
F62	SHOW-UP/NO WORK PERFORMED	$ 65.00
F70	ANCHOR BOLT/EPOXY WITNESS	$ 65.00
L09	FIELD COORDINATION/SCHED	$ 95.00
LAB	GEN. LAB ACTIVITIES/SAMPLE PREI	$ 65.00
PAA	PROJECT MANAGEMENT	$ 95.00
PAB	HEALTH & SAFETY MANAGEMENT	$ 95.00
PAC	CONSULTATION/MEETINGS	$ 95.00
QAA	QUALITY ASSURANCE	$ 95.00
TAB	TRAVEL	$ 59.00

Activity Code - M

Non-Labor Rates

IN-HOUSE TESTING SERVICES:	ATTERBERG LIMITS	$ 165.00
	ASTM D-698; AASHTO T99	$ 210.00
	ASTM D1557; AASHTO T180	$ 220.00
	CHECK POINT	$ 90.00
	CORR OVERSZ MTL 301	$ 90.00
	SIEVE ANALYSIS / WASH (C136/117,WASH)	$ 140.00
	SIEVE ANALYSIS /COARSE(C136,DRY)	$ 100.00
	HYDROMETER/SIEVE	$ 210.00
	C127/D854 SPEC GRAV	$ 90.00
	C217 SAND EQUIVALENT	$ 125.00
	SAND EQUIVALENT/1 PT	$ 80.00
	MOIST DETERM/UNIT WT	$ 90.00
	MOISTURE DETERM ONLY	$ 27.00
	UNCONFINED COMPRESSION	$ 110.00
	DIRECT SHEAR	$ 400.00
	CONSOLIDATION/SWELL	$ 210.00
	C127 ABSORPTION/GRAVEL	$ 90.00
	C29 UNIT WEIGHT	$ 85.00
	C29 UNIT WEIGHT (AVG 3)	$ 115.00
	LA ABRASION ASTM C131	$ 210.00
	SULFATE SOUND C88	$ 300.00
	CONCRETE COMP TEST	$ 22.00
	COMP TEST/CORED SPEC	$ 75.00
	GROUT/MORTAR COMPRES	$ 22.00
	C140 MASONRY UNITS / UNIT	$ 75.00
	8X8X16 PRISMS (PER UNIT)	$ 95.00
	10X8X16 PRISMS (PER UNIT)	$ 120.00
	12X8X16 PRISMS (PER UNIT)	$ 135.00
	MAS ABSOR/RCVD MOIST	$ 85.00
	D2041 MAX THEOR SPEC	$ 110.00
	DMSO ACCL WEATHERING	$ 260.00
	OREGON AIR DEGRADATION	$ 180.00
	EXTRACTION W/GRADATION	$ 200.00
	OIL CONT BY IGN OVEN	$ 185.00
	FIREPROOFING DENSITY / TEST	$ 60.00
EQUIPMENT & SUPPLIES:	CORING MACHINE w/GEN / DAY	$ 175.00
	FLOOR FLATNESS EQUIP./DAY	$ 250.00
	NUCLEAR DENSITY GAUGE/DAY	$ 60.00
	NUCLEAR DENSITY GAUGE/HR.	$ 10.00
	FLOOR SLAB MOISTURE / TEST	$ 17.00
	SKIDMORE DEVICE (HS BOLTS) / HR.	$ 70.00
	TORQUE WRENCH / DAY	$ 70.00
TRAVEL & SUBSISTENCE:	MILEAGE	$ 0.60
	PER DIEM / DAY / PERSON	$ 150.00

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2016 STANDARD RATE SCHEDULE

PROFESSIONAL STAFF RATES (hourly)

Professional (Engineer or Geologist)	$ 89.00
Staff Professional	$103.00
Project Professional	$130.00
Senior Professional	$145.00
Project Manager	$155.00
Principal Professional	$165.00

TECHNICAL STAFF RATES (hourly)

Technician / Special Inspector	$ 65.00
Steel / Welding Inspector	$ 72.00
Draftsperson	$ 89.00
Administrative Personnel	$ 58.00

COMMON LABORATORY AND SELECTED UNIT RATES

Standard Proctor (ASTM D698, AASHTO T99)	$210.00
Modified Proctor (ASTM D1557, AASHTO T180)	$220.00
Sieve Analysis (dry)	$100.00
Sieve Analysis (washed C&F)	$140.00
Los Angeles Abrasion	$210.00
Moisture Content	$ 27.00
Atterberg Limits	$165.00
Concrete/Grout/Mortar Compression Test	$ 22.00
Wildcat Penetrometer	$ 525 / day
Handheld Field GPS Unit	$ 45 / day
Vehicle Mileage	$ 0.60 / mile
Per Diem	$150 / day

Rates for other laboratory tests and field equipment are available upon request

Carlson Testing, Inc.

Bend Office (541) 330-9155
Geotechnical Office (503) 601-8250
Eugene Office (541) 345-0289
Salem Office (503) 589-1252
Tigard Office (503) 684-3460

February 12, 2016

Re: Materials Testing Services for
Madras Airport West Access Road Project – Madras, Oregon

Carlson Testing, Inc. (CTI) offers its services at the following unit rates for the required technician services on the above referenced project. CTI proposes to bill its services on a time and materials basis with technician hours closely monitored by your project manager. Following are the unit rates proposed for use on the project.

1. Density Technician (earthwork/aggregate base).....$69.00/hour
2. Project Management.....$90.00/hour
3. Administration.....$50.00/hour
4. Overtime: Time in excess of 8 hours per day on project site, or before 7:00 a.m. and after 4:00 p.m. & Saturdays, Sundays, and Holidays.....1.5 x hourly
5. Mileage.....$0.65/mile
6. Maximum Density Curve (proctor).....$230.00/each
7. 1-point Curve Check.....$90.00/each
8. Sieve Analysis (dry).....$130.00/day

Item: Density Technician (3.5 hour trip – 2 hour site time)
Quantity:

Activity	Unit	# of Units	Unit Price	Total Price
QA/QC Trip Rate	Trip		$270.75	$
Sieve Analysis (coarse particles)	Each	2	$130.00	$260.00
Maximum Density	Each	2	$230.00	$460.00
Administration (job set-up)	Hour	1	$50.00	$50.00

Item Total = $

QA/QC trip rate based on weekday work shifts, 2-hours of site time, technician travel and mileage. This quote was based on the assumption that the fill material will be non-density testable in nature. Proctor curves were budgeted for native subgrade prior to fill placement.

If there are any further questions regarding this matter, please do not hesitate in contacting me at this office.

Respectfully submitted,
CARLSON TESTING, INC.

Scott M. Jordan
President

BENDSHARE/WORDREPORTS/BIDS/2016/MADRASAIRPORTWESTACCESSROAD

CITY OF MADRAS

Request for Council Action

Date Submitted:	March 10, 2016
Agenda Date Requested:	March 22, 2016
To:	Mayor and City Council Members
Through:	Jeff Hurd, Public Works Director
From:	Michele Quinn, Public Works Administrative Assistant
Subject:	Resolution No. 06-2016 – A resolution authorizing the City to apply for Local Government Grant Program Funding for the Madras Bike and Skate Park to Youth Fishing Pond Trail Connection Project.

TYPE OF ACTION REQUESTED:

[X] Resolution

[ ] Ordinance

[X] Formal Action/Motion

[ ] Contract Review Board

[ ] None - Report Only

Formal action / motion for Council to authorize the Mayor to sign, on behalf of the City, Resolution No. 06-2016 authorizing the City to apply for Local Government Grant Program Funding for the Madras Bike and Skate Park to Youth Fishing Pond Trail Connection Project – Phase 2 in the amount of $660,000.

DESCRIPTION:

Resolution No. 06-2016 authorizes the City to apply for Local Government Grant Program funding for the Madras Bike and Skate Park to Youth Fishing Pond Trail Connection Project – Phase 2. The project includes approximately 3,050 lineal feet of paved trail, 10 feet in width; and, non-motorized, multi-use trail with drainage, trail lighting, and landscaping. Staff is proposing this project be financed in conjunction with an Oregon Parks and Recreation Department Recreational Trails Program Grant Funding in the amount of $125,000, Oregon Parks and Recreation Department Local Government Grant Program Funding in the amount of $394,972; City cash $108,153; and in kind funding of $31,875

STAFF ANALYSIS:
Staff has applied for the Recreational Trails Program grant in the amount of $125,000 to complete the trail section from the Skate Park to J Street and now has the opportunity to apply for the remaining section from J Street to the Youth Fishing Pond through the Local Government Grant Program.

Staff is proposing to leverage the potential funds of $125,000 from RTP to the LGGP grant to help met the City's match requirement of 40% to the grant funding. If awarded funding by both the RTP program and LGGP program construction would be estimated to begin in the spring of 2017.

Both phases together estimate a total project cost of $660,000 (RTP $125,000, LGGP $394,972, In Kind $31,875, Cash $108,153).

SUMMARY:

A. **Fiscal Impact:**

- Project Cost of the Skate Park to Fishing Trail is estimated at $660,000

- Revenue
  - RTP Grant: $125,000
  - LGGP Grant: $394,972
  - City In Kind $31,875
  - City Cash $108,153
  - Total Revenue = $660,000

B. **Funding Source:**
- Transportation Operations Fund, Capital Outlay
- Upon receiving grant funding a budget resolution will need to be performed to recognize additional revenue and expenditure for the project.

C. **Recognition of Collateral Material and Technical Report:**
- Resolution No. 06-2016
- Project Estimate
- Project Preliminary Plans

RECOMMENDATION:
Formal action / motion for Council to authorize the Mayor to sign, on behalf of the City, Resolution No. 06-2016 authorizing the City to apply for Local Government Grant Program Funding for the Madras Bike and Skate Park to Youth Fishing Pond Trail Connection Project – Phase 2 in the amount of $660,000.

RESOLUTION NO. 06-2016

A RESOLUTION AUTHORIZING THE CITY OF MADRAS TO APPLY FOR LOCAL GOVERNMENT GRANT PROGRAM FUNDING FROM THE OREGON PARKS AND RECREATION DEPARTMENT FOR THE "MADRAS BIKE AND SKATE PARK TO YOUTH FISHING POND TRAIL CONNECTION PROJECT PHASE 2" IN THE AMOUNT OF $660,000.

WHEREAS, the Oregon Parks and Recreation Department (OPRD) is currently accepting applications for the 2016 Local Government Grant Program; and

WHEREAS, the City of Madras desires to participate in this grant program to the greatest extent possible as a means of constructing a new (non-motorized) recreational multi-use trail; and

WHEREAS, the City proposes to construct approximately 3,050 lineal feet of paved trail, 10 feet in width, from the Madras Bike and Skate Park to the Youth Fishing Pond; and

WHEREAS, the estimated project cost is 660,000; and

WHEREAS, the City has applied for Recreational Trail Grant Funds in the amount of $125,000 for Phase 1 (Madras Bike and Skate Park to J Street); and

WHEREAS, the City owns Map #11-13-11DB, Tax Lot #2803, Tax Lot #2805, and Tax Lot #2822, the property where Phase 1 will be constructed; and

WHEREAS, the City will be acquiring property from willing property owners on Map #11-13-11DC, Tax Lot #200 and #700, Map #11-13-14AB, Tax Lot #200, and Map #11-13-14BA, Tax Lot #200 where Phase 2 will be constructed; and

WHEREAS, the City is proposing this project be financed in conjunction with an Oregon Parks and Recreation Department Recreational Trails Program Grant in the amount of $125,000, Local Government Grant Program Funding through the Oregon Parks and Recreation Department in the amount of $394,972; City cash $108,153; and an in-kind match of $31,875; and

NOW, THEREFORE, BE IT HEREBY RESOLVED by the Common Council of the City of Madras as follows:

SECTION 1: The City of Madras supports the proposed project and is hereby authorized to apply for a grant though the Oregon Parks and Recreation Department Local Government Grant Program in the amount of $394,972 to design & construct the recreational trail

connection project titled the "Madras Bike and Skate Park to Youth Fishing Pond Trail Connection Project Phase 2."

The total project cost is estimated at $660,000, with the remaining 40% of the funding to be made up of grant funding from the Oregon Parks and Recreation Department Recreational Trails Program in the amount of $125,000 and City cash and in-kind services totaling $140,028.

The City of Madras is hereby authorized to commit the funds and resources necessary to deliver proposed project.

SECTION 2: Mayor Royce Embanks Jr. is hereby empowered to sign the resolution on the City's behalf.

SECTION 3: This resolution shall become effective immediately upon its passage by the Council and execution by the Mayor.

APPROVED AND ADOPTED by the City Council of the City of Madras and signed by the Mayor this _____ day of _____, 20___.

Ayes: _____
Nays: _____
Abstentions: _____
Absent: _____
Vacancies: _____

_____
Royce Embanks Jr, Mayor

ATTEST:

_____
Karen J. Coleman, City Recorder

City of Madras Bike and Skate Park to Youth Fishing Pond Trail Connection Project
City of Madras
Date Prepared 1/25/16

	Description	Unit	Measure	Unit Price	Total	City In Kind	City Cash	LGGP	RTP	Total
Phase 1 - Skate Park to Youth Fishing Ponds 3,050										
1	Pre-agreement planning costs	1.0	LS	$0.00	$0.00	$ -	$ -			$ -
2	Land Acquistion (Easements, ROW)	1.0	LS	$28,875.00	$28,875.00	$ 28,875.00				$ 28,875.00
3	Mobilization	1.0	LS	$25,000.00	$25,000.00		$ 25,000.00			$ 25,000.00
4	Clear and Grub	2.0	Acres	$6,500.00	$13,000.00		$ 8,450.00	$ -	$ 4,550.00	$ 13,000.00
5	Remove Existing Fence	1.0	LS	$3,500.00	$3,500.00		$ -	$ 3,500.00		$ 3,500.00
6	Excavation and Embankment	1.0	LS	$80,000.00	$80,000.00	$ -	$ 10,000.00	$ 30,000.00	$ 40,000.00	$ 80,000.00
7	Base Rock 6" for Trail	4,745.0	SY	$7.20	$34,164.00	$ -	$ -	$ 24,084.00	$ 10,080.00	$ 34,164.00
8	Asphalt Trail Paving (10' width)	3,389.0	SY	$10.65	$36,092.85			$ 25,442.85	$ 10,650.00	$ 36,092.85
9	Concrete Ramps Include Base	2.0	EA	$6,500.00	$13,000.00		$ -	$ 6,500.00	$ 6,500.00	$ 13,000.00
10	18" Culvert	165.0	LF	$60.00	$9,900.00			$ 7,500.00	$ 2,400.00	$ 9,900.00
11	24" CMP	67.0	LF	$70.00	$4,690.00			$ 4,690.00		$ 4,690.00
12	36" Culvert	164.0	LF	$70.00	$11,480.00	$ -		$ 6,440.00	$ 5,040.00	$ 11,480.00
13	Retaining Wall	150.0	LF	$150.00	$22,500.00	$ -			$ 22,500.00	$ 22,500.00
14	Hand Railing	150.0	LF	$65.00	$9,750.00	$ -			$ 9,750.00	$ 9,750.00
15	Way Finding Sign	1.0	EA	$5,000.00	$5,000.00			$ 5,000.00		$ 5,000.00
16	Pedestrian Crossing Sign	2.0	EA	$500.00	$1,000.00			$ 1,000.00		$ 1,000.00
17	Crosswalk Striping	1.0	LS	$1,500.00	$1,500.00			$ 1,500.00		$ 1,500.00
18	Fencing	1,211.0	LF	$40.00	$48,440.00			$ 48,440.00		$ 48,440.00
19	Gate	1.0	EA	$7,500.00	$7,500.00		$ -	$ 7,500.00		$ 7,500.00
20	Light Pole Base (14')	21.0	EA	$650.00	$13,650.00	$ -		$ 13,650.00	$ -	$ 13,650.00
21	Luminares, Lamps, and Ballast (14' poles)	21.0	EA	$4,100.00	$86,100.00			$ 86,100.00	$ -	$ 86,100.00
22	Power Meter Ped	1.0	LS	$3,500.00	$3,500.00	$ -		$ 3,500.00	$ -	$ 3,500.00
23	PPL Service	1.0	LS	$6,513.60	$6,513.60			$ 6,513.60	$ -	$ 6,513.60
24	Switching, Conduit and Wiring	3,050.0	LF	$12.00	$36,600.00	$ -		$ 36,600.00	$ -	$ 36,600.00
25	Trees	52.0	EA	$250.00	$13,000.00	$ -		$ 13,000.00	$ -	$ 13,000.00
26	Water Service	1.0	LS	$5,000.00	$5,000.00			$ 5,000.00		$ 5,000.00
27	Irrigation System	1.0	LS	$20,000.00	$20,000.00	$ -		$ 20,000.00	$ -	$ 20,000.00
				Subtotal	$539,755.45	$ 28,875.00	$ 43,450.00	$ 355,960.45	$ 111,470.00	$ 539,755.45
				Design Engineering and Surveying	$37,986.40	7% $ 3,000.00	$ 6,456.40	$ 15,000.00	$ 13,530.00	$ 37,986.40
				Contingency	$82,258.15		$ 58,246.60	$ 24,011.55		$ 82,258.15
				Total	$660,000.00	$ 31,875.00	$ 108,153.00	$ 394,972.00	$ 125,000.00	$ 660,000.00
					$660,000.00	$0.00 4.83%	16.39%	59.84%	18.94%	100.00%

Funding

RTP	$125,000.00
LGGP	$394,972.00
Force Account	$31,875.00
City Cash	$108,153.00

MADRAS SKATE PARK TRAIL

PRELIMINARY 30% DESIGN

FEBRUARY, 2015

VICINITY MAP

NTS

OWNER
CITY OF MADRAS
71 SE D STREET
MADRAS, OREGON 97741
541-475-2344

CIVIL ENGINEER/ SURVEYOR
H.A. MCCOY ENGINEERING & SURVEYING
CONTACT: HAYES MCCOY
1165 SW LAKE RD, SUITE 201
REDMOND, OR 97756
PH: 541-923-7024

ATTENTION EXCAVATORS:

OREGON LAW REQUIRES YOU TO FOLLOW RULES ADOPTED BY THE OREGON UTILITY NOTIFICATION CENTER. THOSE RULES ARE SET FORTH IN OAR 952-001-0010 THROUGH OAR 952-001-0090. YOU MAY OBTAIN COPIES OF THESE RULES FORM THE CENTER BY CALLING 1-800-332-2344. IF YOU HAVE ANY QUESTIONS ABOUT THE RULES, YOU MAY CONTACT THE CENTER. YOU MUST NOTIFY THE CENTER AT LEAST TWO BUSINESS DAYS, BEFORE COMMENCING AN EXCAVATION. CALL 1-800-332-2344.

VERTICAL DATUM

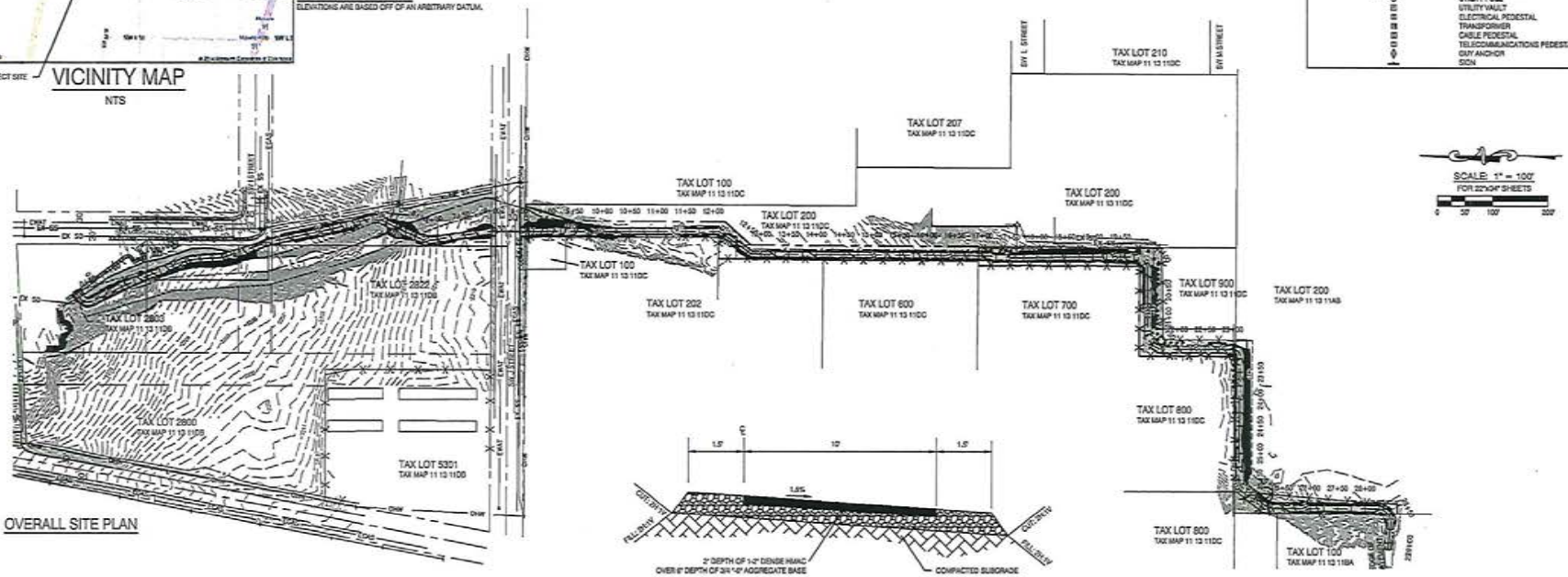
ELEVATIONS ARE BASED OFF OF AN ARBITRARY DATUM.

SHEET INDEX

P1.0 COVER SHEET AND EXISTING CONDITIONS
P1.1 PLAN AND PROFILE (STA.0+00 TO 4+00)
P1.2 PLAN AND PROFILE (STA.4+00 TO 8+00)
P1.3 PLAN AND PROFILE (STA.8+00 TO 16+00)
P1.4 PLAN AND PROFILE (STA.16+00 TO 20+00)
P1.5 PLAN AND PROFILE (STA.20+00 TO 24+00)
P1.6 PLAN AND PROFILE (STA.24+00 TO 29+64)

LEGEND

EPOWER	EXISTING POWER
EX SS	EXISTING SANITARY SEWER
EX SD	EXISTING STORM DRAIN
ECOMM	EXISTING TELECOMMUNICATIONS
EWAT	EXISTING WATER
EGAS	EXISTING GAS
OHW	EXISTING OVERHEAD LINES
	RAILING
	FENCING
	TREE
	MAILBOX
	BACKFLOW PREVENTER
	WATER VALVE
	SANITARY SEWER MANHOLE
	STORM DRAIN MANHOLE
	GAS VALVE
	WATER VALVE, AIR RELEASE VALVE
	WATER METER, GAS METER
	FIRE HYDRANT
	CATCH BASIN/CURB INLET
	CLEAN OUT
	RAIN DRAIN
	STREET LIGHT, PARKING LOT LIGHT
	UTILITY POLE
	UTILITY VAULT
	ELECTRICAL PEDESTAL
	TRANSFORMER
	CABLE PEDESTAL
	TELECOMMUNICATIONS PEDESTAL
	GUY ANCHOR
	SIGN



OVERALL SITE PLAN

TYPICAL PAVED TRAIL SECTION 0+00 TO 29+11

NOT TO SCALE

GENERAL NOTES

1. ALL WORKS AND MATERIAL SHALL CONFORM TO THE CITY OF MADRAS STANDARDS, CURRENT ODOT STANDARD SPECIFICATIONS AND DRAWINGS, AND THESE PLANS.

2. THE CONTRACTOR SHALL OBTAIN ALL REQUIRED PERMITS AND LICENSES BEFORE STARTING CONSTRUCTION.

3. THE LOCATION OF EXISTING UTILITIES SHOWN ON THE PLANS ARE APPROXIMATE AND SHOWN FOR INFORMATION PURPOSES ONLY. THE CONTRACTOR SHALL HAVE ALL UTILITIES LOCATED PRIOR TO COMMENCING CONSTRUCTION. NOTIFY ENGINEER OF ANY DISCREPANCIES PRIOR TO CONSTRUCTION. ADDITIONAL UNDERGROUND UTILITIES MAY EXIST.

4. CONTRACTOR MUST VERIFY ALL EXISTING UTILITIES FOR BOTH VERTICAL ELEVATION AND HORIZONTAL LOCATION PRIOR TO START OF WORK (POTHOLE BEFORE DIGGING IF NECESSARY). SHOULD CONFLICTS ARISE AND REDESIGN OR RELOCATION OF FACILITIES BE NECESSARY, IT SHALL BE DONE AT THE CONTRACTORS EXPENSE. CHANGE MUST BE APPROVED BY THE PROJECT ENGINEER AND CITY IN ADVANCE OF WORK. CONTRACTOR SHALL COORDINATE THE WORK WITH UTILITY AGENCIES.

5. THE CONTRACTOR SHALL MAKE PROVISIONS TO KEEP ALL EXISTING UTILITIES IN SERVICE AND PROTECT THEM DURING CONSTRUCTION. CONTRACTOR SHALL IMMEDIATELY REPAIR OR REPLACE ANY DAMAGED UTILITIES USING MATERIALS AND METHODS APPROVED BY THE UTILITY OWNER. NO SERVICE INTERRUPTIONS SHALL BE PERMITTED WITHOUT PRIOR WRITTEN AGREEMENT WITH THE UTILITY PROVIDER.

8. ALL WATER LINE CROSSINGS SHALL BE IN CONFORMANCE WITH OAR CHAPTER 333. THE CITY MAY REQUIRE MORE STRINGENT STANDARDS.

9. THE CONTRACTOR SHALL REMOVE AND DISPOSE OF TREES, STUMPS, BRUSH, ROOTS, TOPSOIL, AND OTHER MATERIAL IN THE ROADWAY AND WHERE INDICATED ON THE PLANS. MATERIAL SHALL BE DISPOSED OF IN SUCH A MANNER AS TO MEET ALL APPLICABLE REGULATIONS.

10. CONTRACTOR SHALL KEEP AN APPROVED SET OF PLANS ON THE PROJECT SITE AT ALL TIMES.

11. UPON COMPLETION OF CONSTRUCTION, THE CONTRACTOR SHALL SUBMIT "REDLINE DRAWINGS" TO THE CITY FOR PREPARATION OF RECORD DRAWINGS. "REDLINE DRAWINGS" DOCUMENT ALL DEVIATIONS AND REVISIONS TO THE APPROVED PLANS; THEY ALSO RECORD A DESCRIPTION OF CONSTRUCTION MATERIALS ACTUALLY USED (PIPE MATERIALS, ETC.)

12. THE CONTRACTOR SHALL ERECT AND MAINTAIN TRAFFIC CONTROL PER THE "MANUAL ON UNIFORM TRAFFIC CONTROL DEVICES", PART IV, CONSTRUCTION AND MAINTENANCE, AS ADOPTED AND MODIFIED BY ODOT. SHOULD WORK BE IN AN EXISTING PUBLIC RIGHT OF WAY THAT IS OPEN TO TRAFFIC, THE CONTRACTOR SHALL SUBMIT A TRAFFIC CONTROL PLAN TO THE APPROPRIATE CITY, COUNTY, AND STATE PERSONNEL FOR APPROVAL. APPROVALS SHALL BE OBTAINED PRIOR TO START OF WORK.

13. OPEN TRENCHES SHALL BE STRICTLY LIMITED TO A MAXIMUM OF 100 LINEAR FEET WITHIN STREET RIGHT-OF-WAYS UNLESS LIMITED TO A LESSER AMOUNT BY PERMIT. NO TRENCHES WILL BE ALLOWED TO REMAIN OPEN OVERNIGHT.

14. THE CONTRACTOR SHALL MAINTAIN AND COORDINATE ACCESS TO ALL AFFECTED PROPERTIES.

15. ANY PAVEMENT DISTORTION CAUSED BY THE CONSTRUCTION OPERATIONS SHALL BE TEMPORARILY REPAIRED THE SAME DAY OF OCCURRENCE (OR IN A TIME PERIOD AGREED TO WITH THE CITY INSPECTOR), USING COLD OR HOT A/C MIX. OWNER/CONTRACTOR SHALL BE REQUIRED TO MAINTAIN REPAIRED AREAS UNTIL CITY FINAL ACCEPTANCE IS GRANTED.

16. SUBSEQUENT SETTLEMENT OR CRACKING OF FINISHED SURFACE WITHIN THE WARRANTY PERIOD SHALL BE CONSIDERED TO BE A FAILURE OF THE SUBGRADE AND REPAIRED IN A MANNER ACCEPTABLE TO AND AT NO COST TO THE CITY OF MADRAS.

17. THE CONTRACTOR SHALL COORDINATE AND SCHEDULE ALL EARTHWORK, TRENCH BACKFILL, ROAD CONSTRUCTION COMPACTION TESTS, AND GEOTECHNICAL REVIEWS WITH THE PROJECT'S GEOTECHNICAL ENGINEER. CONTRACTOR IS RESPONSIBLE FOR ALL TESTING.

18. CONTRACTOR SHALL MAINTAIN BENCHMARKS, PROPERTY CORNERS, MONUMENTS, AND OTHER REFERENCE POINTS. IF SUCH POINTS ARE DISTURBED OR DESTROYED BY CONSTRUCTION ACTIVITIES, THE CONTRACTOR SHALL NOTIFY THE PROJECT ENGINEER AND PAY FOR THEIR REPLACEMENT BY EMPLOYING A PROFESSIONAL LAND SURVEYOR TO RESET PROPERTY CORNERS AND OTHER SUCH MONUMENTS.

19. PRIOR TO FINAL ACCEPTANCE AND PAYMENT, THE CONTRACTOR SHALL CLEAN THE WORK SITE AND ADJACENT AREAS OF ANY DEBRIS, DISCARDED ASPHALTIC CONCRETE MATERIAL, OR OTHER ITEMS DEPOSITED BY THE CONTRACTOR'S PERSONNEL DURING THE PERFORMANCE OF THIS CONTRACT.

20. MAINTENANCE OF THE WORK AREA AND APPROACH ROADS IS THE RESPONSIBILITY OF THE CONTRACTOR. THE WORK AREA AND APPROACH ROADS SHALL BE MAINTAINED IN A CLEAN AND SANITARY CONDITION, FREE FROM OBSTRUCTIONS, HAZARDS, DEBRIS, AND TRASH AT ALL TIMES. A COPY OF THE CONTRACTOR CERTIFICATE OF INSURANCE SHALL BE AVAILABLE AT THE WORK AREA.

21. THE SPREADING OF MUD OR DEBRIS OR STORAGE OF MATERIAL OR EQUIPMENT OF ANY KIND UPON ANY PUBLIC ROADWAY IS STRICTLY PROHIBITED AND VIOLATION SHALL BE CAUSED FOR IMMEDIATE SUSPENSION OF THE PERMIT. THE PROJECT ENGINEER AND/OR CITY MAY AT ANY TIME ORDER IMMEDIATE CLEANUP AND STOPPAGE OF WORK TO ACCOMPLISH CLEANUP.

22. ANY INSPECTION BY THE CITY, COUNTY, STATE, FEDERAL AGENCY OR PROJECT ENGINEER SHALL NOT, IN ANY WAY, RELIEVE THE CONTRACTOR FROM ANY OBLIGATION TO PERFORM THE WORK IN COMPLIANCE WITH THE APPLICABLE CODES, REGULATION, CITY STANDARDS AND PROJECT CONTACT DOCUMENTS.

23. WORK PROVIDED FOR UNDER THE PERMIT SHALL INCLUDE REPAIR OF EXISTING FACILITIES (ROAD, DITCHES, ETC.) AS MAY BE NECESSARY, IN THE PROJECT ENGINEERS OPTION, TO OVERCOME DETERIORATION OR DAMAGE WHICH OCCURRED IN CONJUNCTION WITH THE WORK AUTHORIZED BY THE PERMIT. CORRECTIVE WORK SHALL BE DON AT THE CONTRACTORS EXPENSE.

24. THE CONTRACTOR IS TO COORDINATE CONSTRUCTION OF DRY UTILITIES WITH THE UTILITY COMPANIES (POWER, TELEPHONE, GAS, CABLE AND TELEVISION).

25. STREET LIGHT INSTALLATION AND WIRING SHALL BE PROVIDED BY CONTRACTOR IN CONJUNCTION WITH THE POWER COMPANY WITH THE FINAL LOCATION AS INDICATED ON THESE PLANS & REQUIRED BY CITY OF MADRAS.

26. THE OWNER AND/OR APPLICANT THROUGH THE CONTRACTOR SHALL DESIGN, CONSTRUCT AND MAINTAIN ALL SAFETY DEVICES, INCLUDING SHORING, AND SHALL BE SOLELY RESPONSIBLE FOR CONFORMING TO ALL LOCAL, STATE, AND HEALTH STANDARDS, LAW AND REGULATIONS.

27. THE CONTRACTOR SHALL BE RESPONSIBLE FOR ANY DEBRIS OR DAMAGE OCCURRING ALONG THE HAUL ROUTE OR ADJACENT STREETS AS A RESULT OF THE CONSTRUCTION OPERATION.

28. THE PROJECT ENGINEER RESERVES THE RIGHT TO ADJUST GRADES OR ALIGNMENT TO ACCOMMODATE OTHER UTILITIES AS REQUIRED; SUCH ADJUSTMENTS OR REVISIONS SHALL BE REVIEWED AND APPROVED BY THE CITY PRIOR TO COMMENCEMENT OF WORK.

29. SAW CUT STRAIGHT MATCH LINES WHERE EXISTING PAVEMENT MEETS NEW PAVEMENT. SAND AND SEAL JOINT (TYPICAL).

30. PROPERTY AND RIGHT-OF-WAY LINES SHOWN ARE APPROXIMATE. THIS MAP IS NOT MEANT TO SERVE BOUNDARY SURVEY PURPOSES.

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H.A. MCCOY ENGINEERING & SURVEYING LLC

PROJECT: MADRAS SKATE PARK TRAIL

PROJECT LOCATION: MADRAS, OREGON

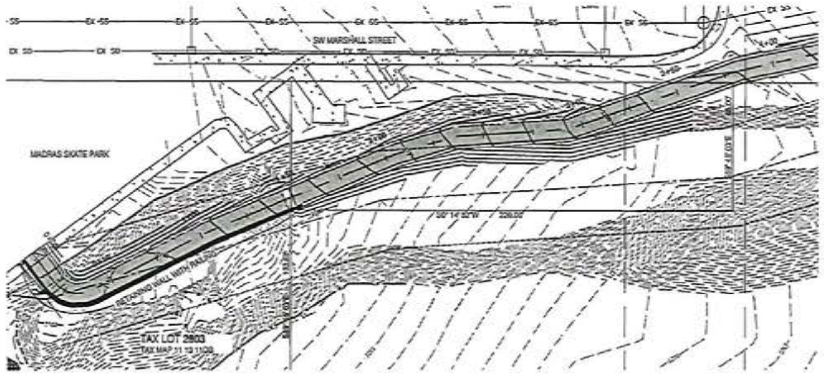
CLIENT: CITY OF MADRAS

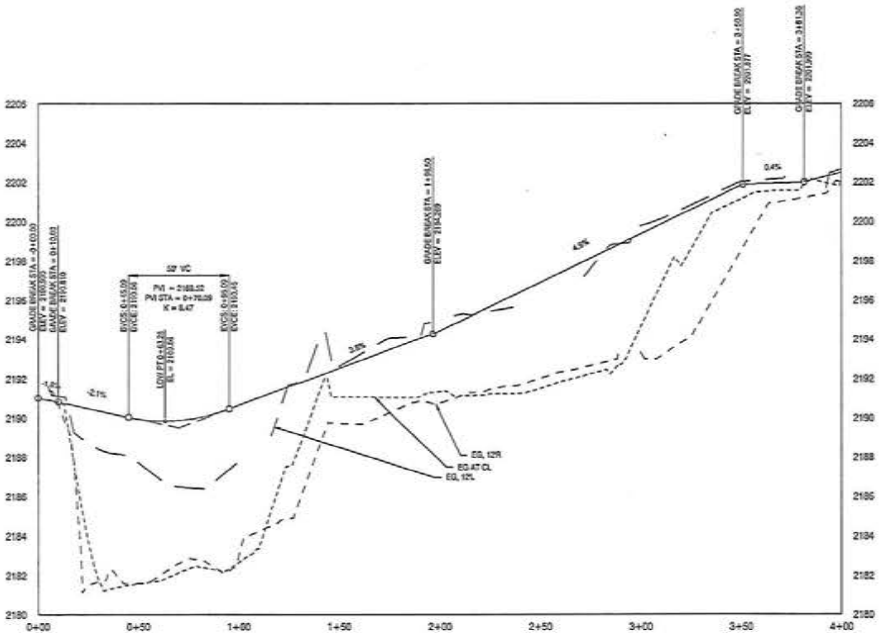
SHEET TITLE: COVER SHEET/EXISTING CONDITIONS

JOB NO. 14-71

DRAWN BY: TL

DRAWING: P1.0





PROFILE OF SKATE PARK TRAIL (STA 0+00 TO 4+00)
HOR: 1"=30'
VER: 1"=5'

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TLA McCOY ENGINEERING & SURVEYING, LLC

PROJECT: MADRAS SKATE PARK TRAIL

PROJECT LOCATION: MADRAS, OREGON

CLIENT: CITY OF MADRAS

SHEET TITLE: PLAN AND PROFILE (STA 0+00 TO 4+00)

JOB NO. 14-71
DRAWN BY: TL
DRAWING: P1.1

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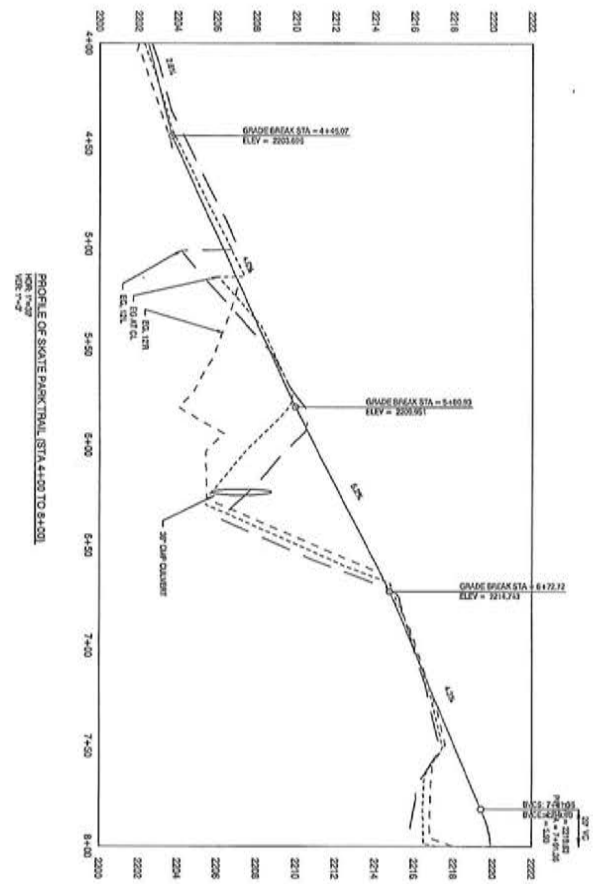

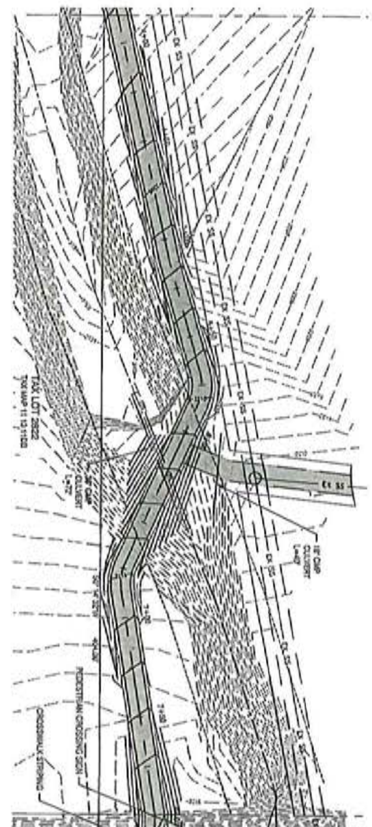

JOB NO.	14-71
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DRAWING:	P1.2

SHEET TITLE:
PLAN AND PROFILE
(STA 4+00 TO 8+00)

PROJECT:
MADRAS SKATE PARK TRAIL

PROJECT LOCATION:
MADRAS, OREGON

CLIENT:
CITY OF MADRAS

H.A. McCOY
ENGINEERING & SURVEYING, LLC
Hayes McCoy

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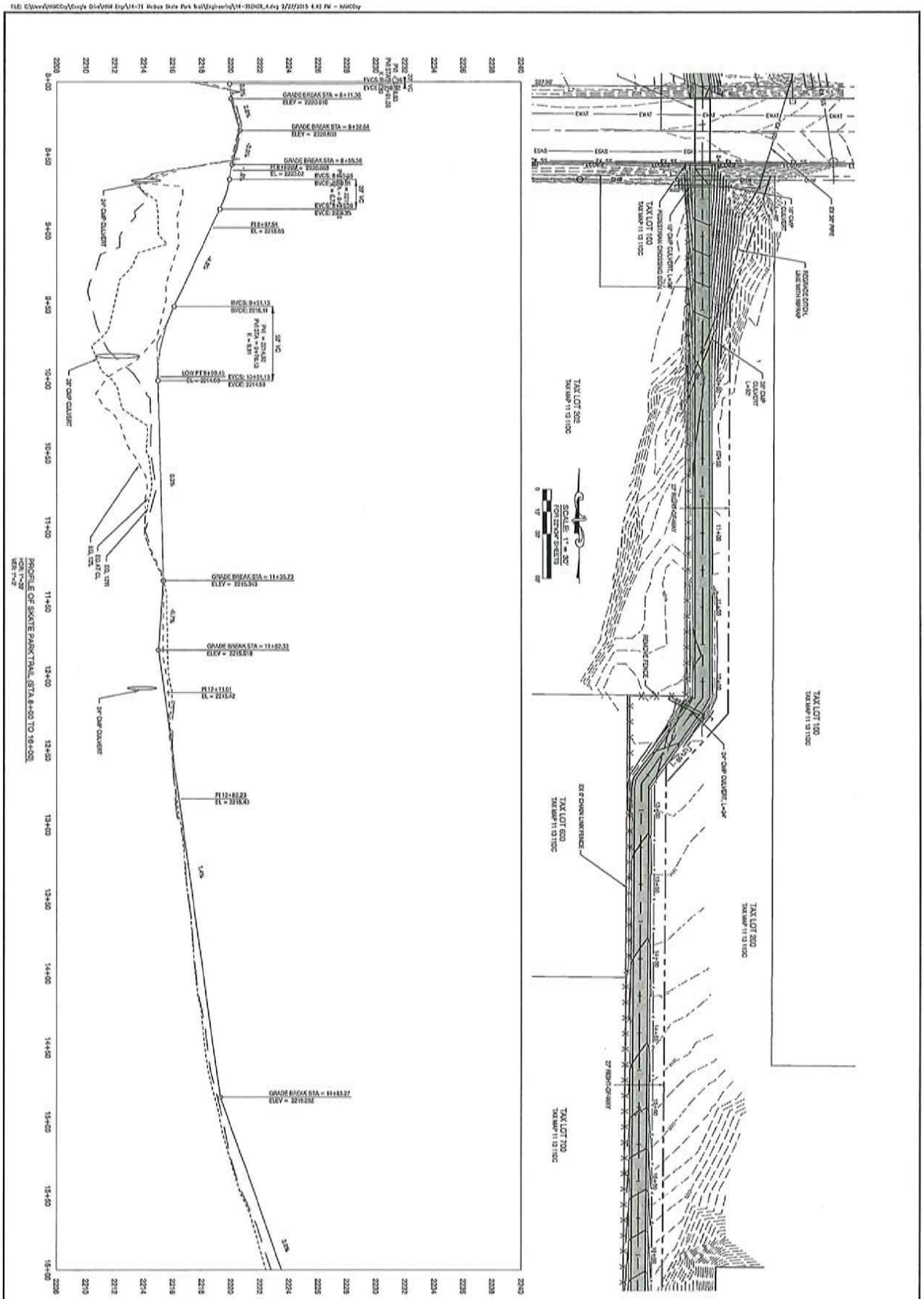
REGISTERED PROFESSIONAL ENGINEER
PRELIMINARY
HAYES A. McCOY
RENEWAL DATE: 12/31/16

FILE: C:\Users\HAMCCoy\Google Drive\HAM Engr\14-71 Madras Skate Park Trail\Engineering\14-71ENGR_4.dwg 2/27/2015 4:40 PM - HAMCCoy



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DRAWN BY: TL		PROJECT LOCATION: MADRAS, OREGON	
DRAWING: P1.3		CLIENT: CITY OF MADRAS	

H.A. McCOY ENGINEERING & SURVEYING, LLC
Hayes McCoy
PLAN NO. 5116-016/35 • hayes@hamcoy.com

DRAWING STATUS:	DATE:	No.	REVISION:	DATE:
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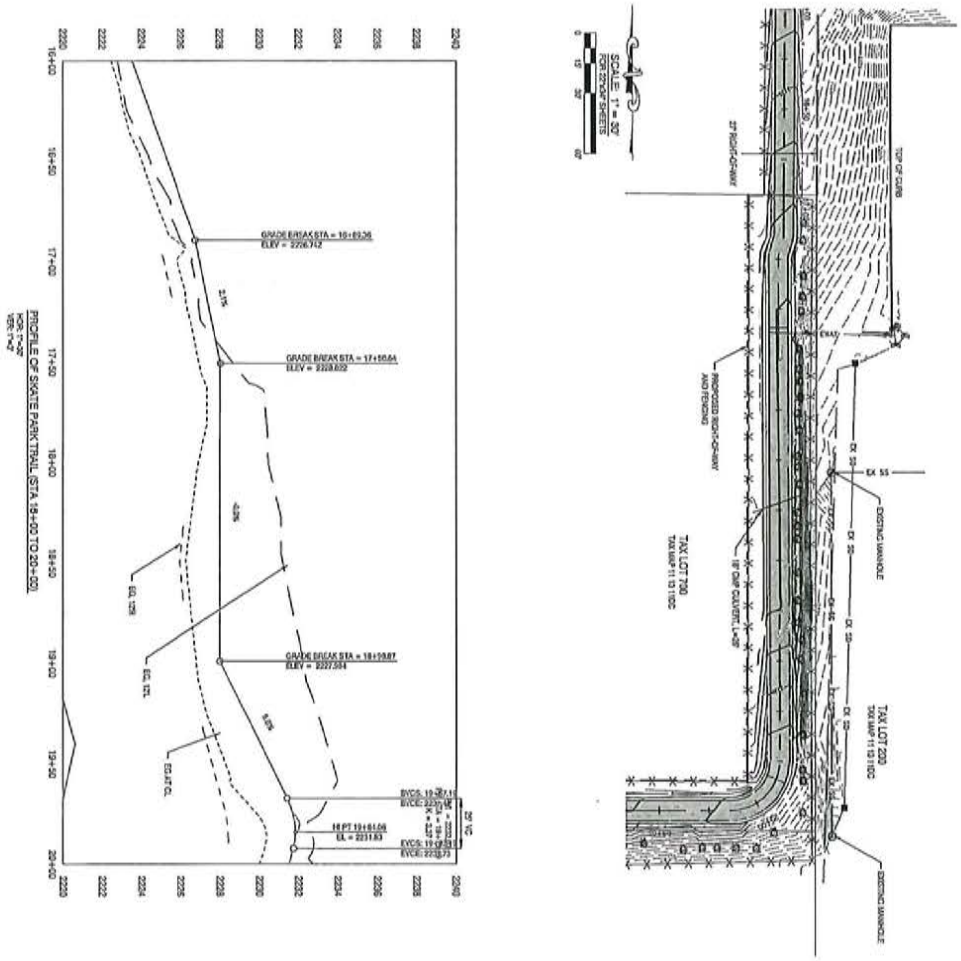
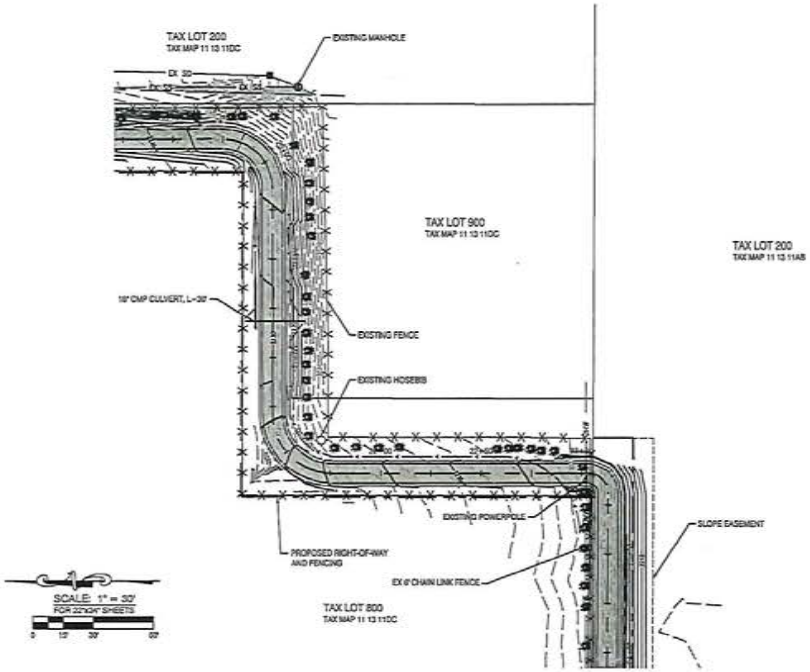
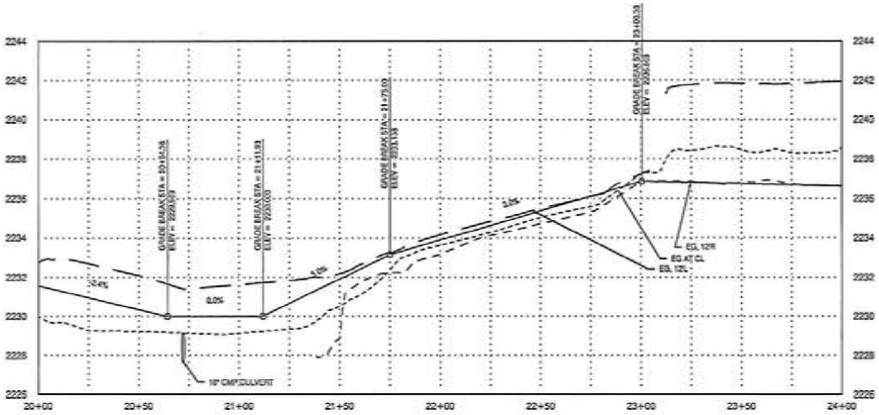
REGISTERED PROFESSIONAL ENGINEER
PRELIMINARY
HAYES A. McCOY
RENEWAL DATE: 12/31/15



JOB NO. 14-71	SHEET TITLE: PLAN AND PROFILE (STA 16+00 TO 20+00)	PROJECT: MADRAS SKATE PARK TRAIL	H.A. McCOY ENGINEERING & SURVEYING, LLC	DRAWING STATUS: 30% DESIGN 2/8/15; REVISION 2/27/15
DRAWN BY: TL		PROJECT LOCATION: MADRAS, OREGON		
DRAWING: P1.4		CLIENT: CITY OF MADRAS		

REVISED PROFESSIONAL ENGINEER PRELIMINARY HAYES A. McCOY
REVIEWAL DATE: 12/31/16





PROFILE OF SKATE PARK TRAIL (STA 20+00 TO 24+00)
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VER: 1"=3'

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H.A. MCCOY
ENGINEERING & SURVEYING, LLC

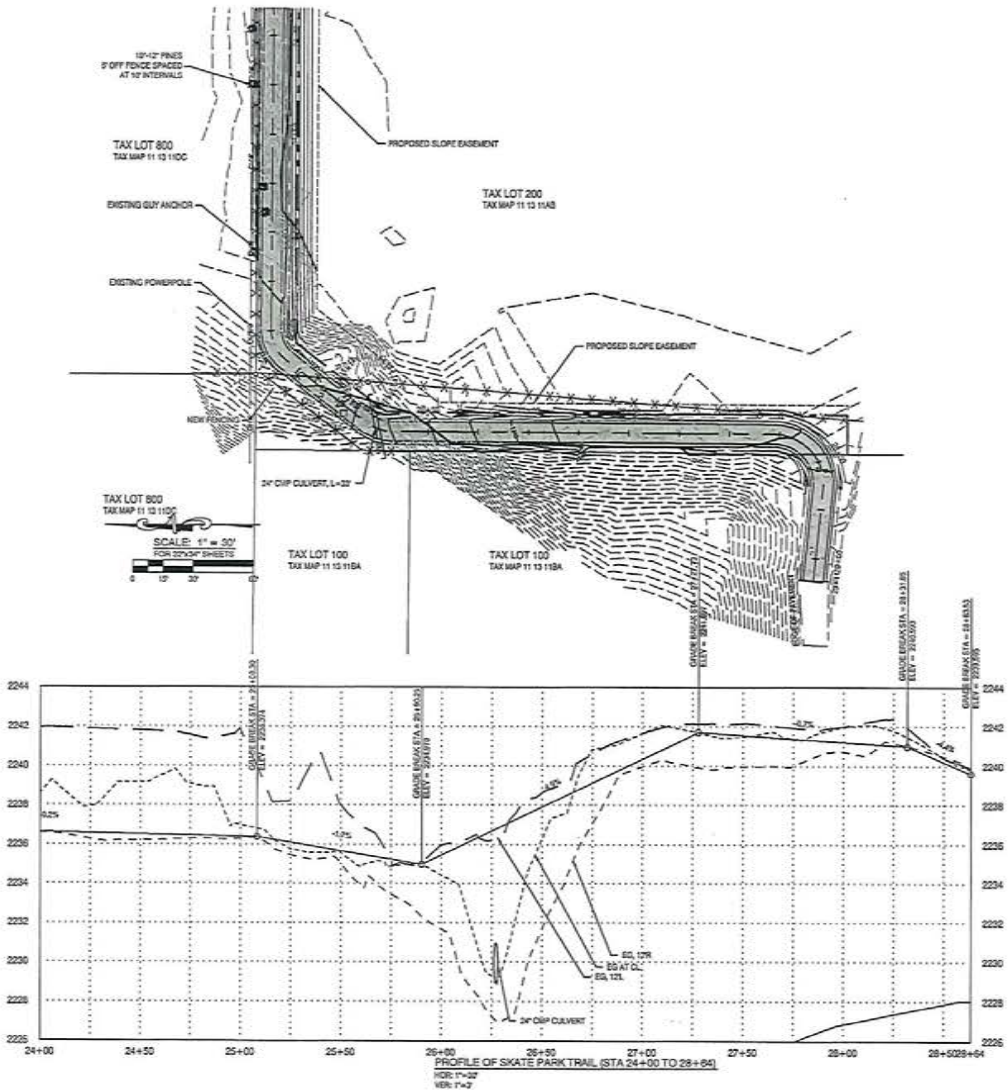
PROJECT: MADRAS SKATE PARK TRAIL

PROJECT LOCATION: MADRAS, OREGON

CLIENT: CITY OF MADRAS

SHEET TITLE: PLAN AND PROFILE (STA 20+00 TO 24+00)

JOB NO. 14-71
DRAWN BY: TL
DRAWING: P1.5



PROFILE OF SKATE PARK TRAIL (STA 24+00 TO 28+64)
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VER: 1"=3'

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H.A. McCOY
ENGINEERING & SURVEYING, LLC
1100 NW Gate Blvd, Suite 200, Bend, OR 97701
Phone: 541-382-2377
Fax: 541-382-2378
Surveying • Engineering • Planning

PROJECT:
MADRAS SKATE PARK TRAIL

PROJECT LOCATION:
MADRAS, OREGON

CLIENT:
CITY OF MADRAS

SHEET TITLE:
PLAN AND PROFILE
(STA 24+00 TO 28+64)

JOB NO. 14-71
DRAWN BY: TL
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CITY OF MADRAS

Request for Council Action

Date Submitted:	March 10, 2016
Agenda Date Requested:	March 22, 2016
To:	Mayor and City Council Members
Through:	Jeff Hurd, Public Works Director
From:	Michele Quinn, Public Works Administrative Assistant
Subject:	Resolution No. 07-2016 – A Resolution authorizing the City to apply for funding from Clean Water State Revolving Fund Loan for the Herzberg Heights and Bel Air Subdivision Wastewater Improvement Project

TYPE OF ACTION REQUESTED:

[X] Resolution

[ ] Ordinance

[X] Formal Action/Motion

[ ] Contract Review Board

[ ] None - Report Only

Formal action / motion for Council to authorize the Mayor to sign, on behalf of the City, Resolution No. 07-2016 authorizing the City to apply for Clean Water State Revolving Loan Funds for the Herzberg Heights and the Bel Air Subdivision Wastewater Improvement Project in the amount of $1,115,000.

DESCRIPTION:

Resolution No. 07-2016 authorizes the City to apply for funding through the Department of Environmental Quality's Clean Water State Revolving Fund for a loan to construct Wastewater infrastructure in the Bel Air Subdivision and Herzberg Heights Subdivision per the attached map.

STAFF ANALYSIS:

The Clean Water State Revolving Fund Loan application deadline is April 8, 2016. Staff wishes to apply for the Clean Water State Revolving Fund loan to fund the construction of the sewer

main providing approximately 65 sewer connections for homes in the Herzberg Heights and Bel Air Subdivisions. This project will also include a 2 inch overlay on Cedar, Beverly, Royal, and Shady Lane. The City has applied for this loan in the past for sewer projects. The Clean Water State Revolving Fund has a lessor of 50% or $500,000 principle forgiveness on their loans. Staff will budget for the pay back portion of the loan so that when construction is finished the City will have the funds to pay the loan back in full. Staff needs approval from Council in order to apply for the loan.

BUDGET ESTIMATE

Bel Air and Herzberg Heights

Item	Description	QTY	UM	Unit Price	Total Price
1	Mobilization	1	LS	$ 70,000.00	$ 70,000.00
2	Demo/Sawcuts	1	LS	$ 6,900.00	$ 6,900.00
3	8" 3034	5100	LF	$ 73.00	$ 372,300.00
4	Services	65	EA	$ 1,100.00	$ 71,500.00
5	manhole	23	EA	$ 2,800.00	$ 64,400.00
6	3" AC Patch	53000	SF	$ 2.90	$ 153,700.00
7	2" AC Overlay	1790	TN	$ 91.00	$ 162,890.00
8	Joint Grinds	8	EA	$ 800.00	$ 6,400.00
9	Traffic Control/Flagging	1	LS	$ 10,000.00	$ 10,000.00
10	Curb Repair	1	LS	$ 5,000.00	$ 5,000.00
11	Test/mandrel/TV	1	LS	$ 8,400.00	$ 8,400.00
				Sub	$ 931,490.00
				Design	$ 74,519.20
				Environmental	$ 5,000.00
				Administration and Legal Fees	$ 3,500.00
				Contingency	$ 100,490.80
				Total	$ 1,115,000.00

SUMMARY:

A. Fiscal Impact:

Cost

• Estimated project cost	$1,115,000.00

Revenue

• DEQ CWSRF Loan Amount	$1,115,000.00
• Principal Forgiveness	$500,000.00
• Actual Loan Obligation	$615,000.00
• City Funds	$494,500.00
• Jefferson County Funds	$120,500.00
• Remaining Balance Due	$ 0.00

Upon Completion of Project CWSRF will forgive 50% of the loan or up to $500,000. The City's obligation at that time will be $615,000. Staff has proposed $345,000 in savings for FY 16-17 budget and proposes an additional $270,000 to the FY 17-18 budget.

B. Funding Source:

- SDC Wastewater Improvement Fund, Capital Outlay
- Dependent on Budget Committee approving funding, this project would be appropriated for the year it will be constructed which is anticipated in FY 17-18.

C. Recognition of Collateral Material and Technical Report:

- Resolution No. 07-2016
- Map of proposed Improvements

RECOMMENDATION:

Formal action / motion for Council to authorize the Mayor to sign, on behalf of the City, Resolution No. 07-2016 authorizing the City to apply for Clean Water State Revolving Loan Funds for the Herzberg Heights and the Bel Air Subdivision Wastewater Improvement Project in the amount of $1,115,000.

RESOLUTION NO. 07-2016

A RESOLUTION AUTHORIZING THE CITY OF MADRAS TO APPLY FOR A CLEAN WATER STATE REVOLVING FUND LOAN FROM THE OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY FOR THE "HERZBERG HEIGHTS AND BEL AIR SUBDIVISION WASTEWATER IMPROVEMENT PROJECT IN THE AMOUNT OF $1,115,000.

WHEREAS, the Oregon Department of Environmental Quality is accepting applications for the Clean Water State Revolving Fund Loan program; and

WHEREAS, the City of Madras desires to participate in this loan program to the greatest extent possible as a means of constructing wastewater infrastructure in both the Herzberg Heights and the Bel Air Subdivision's; and

WHEREAS, The Herzberg Heights Subdivision and Bel Air Subdivision do not have City Sewer within the majority of the subdivision; and

WHEREAS, the City proposes to construct approximately 5,100 lineal feet of 8" sewer main with manholes and sewer services; and

WHEREAS, this project will provide property owners with the ability to connect to the City Sewer System should their on-site septic systems begin to fail; and

WHEREAS, the estimated project cost is $1,115,000; and

WHEREAS, the City is proposing this project be financed with Oregon Department of Environmental Quality Clean Water State Revolving Fund Loan Funding in the amount $1,115,000; and

WHEREAS, if awarded the requested funding, the Oregon Department of Environmental Quality will forgive 50% or $500,000 of the principal amount once construction is completed; and

WHEREAS, the City intends to pay the remaining loan funding upon completion of the project as one lump sum payment in the amount of $615,000.

NOW, THEREFORE, BE IT HEREBY RESOLVED by the Common Council of the City of Madras as follows:

SECTION 1: The City of Madras supports the proposed project and is hereby authorized to apply for an Oregon Department of Environmental Quality Clean Water State Revolving Fund Loan in the amount of $1,115,000 to design & construct the wastewater infrastructure

project titled "Herzberg Heights and Bel Air Subdivision Wastewater Improvement Project". The total project cost is estimated at $1,115,000. The City of Madras is hereby authorized to commit the funds and resources necessary to deliver the proposed project.

SECTION 2: Mayor Royce Embanks Jr. is hereby empowered to sign the resolution on the City's behalf.

SECTION 3: This resolution shall become effective immediately upon its passage by the Council and execution by the Mayor.

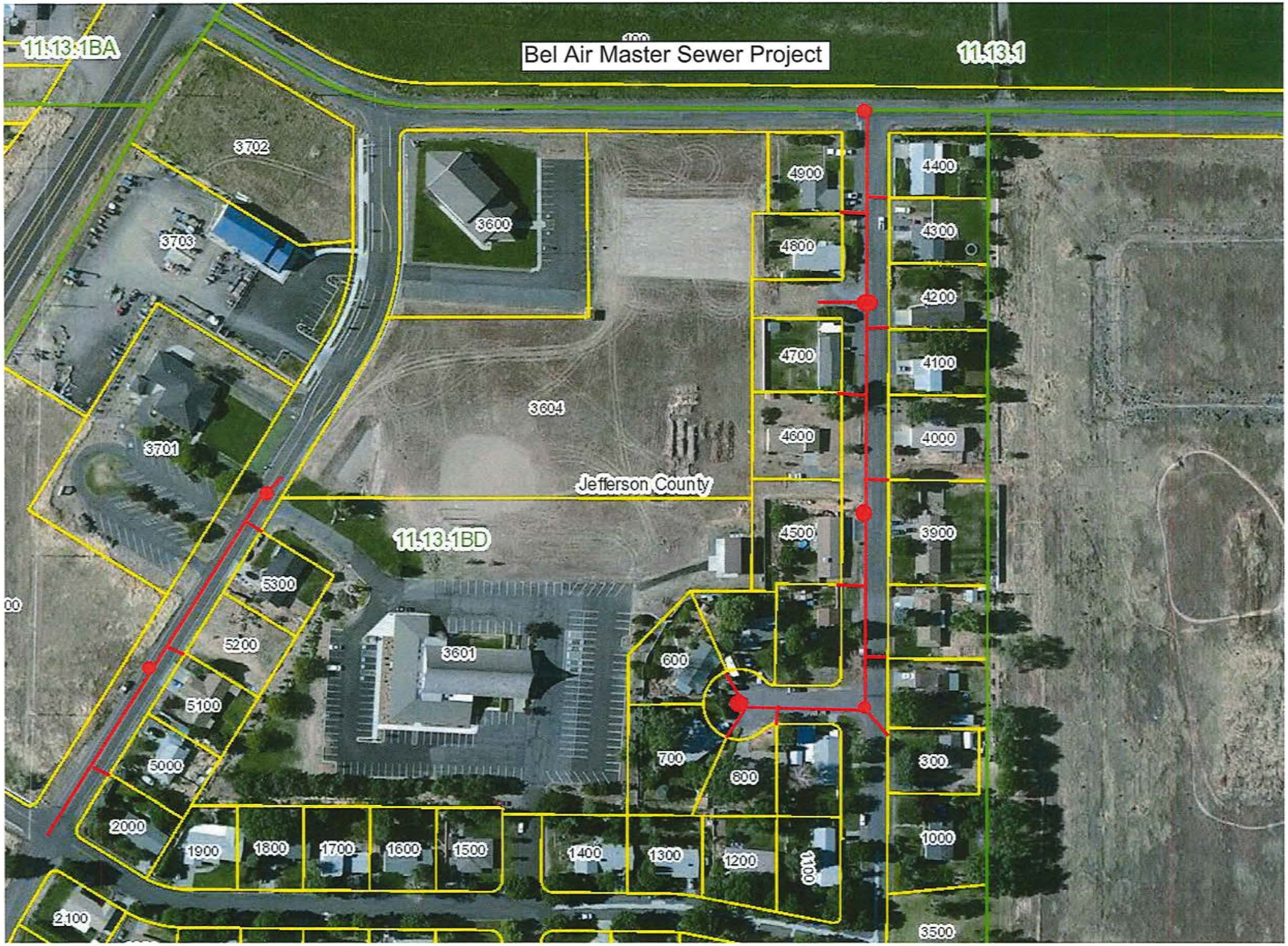
ADOPTED by the Common Council of the City of Madras and signed by the Mayor this _____ day of _____, 20____.

Ayes: _____
Nays: _____
Abstentions: _____
Absent: _____
Vacancies: _____

_____
Royce Embanks Jr, Mayor

ATTEST:

_____
Karen J. Coleman, City Recorder


Bel Air Master Sewer Project
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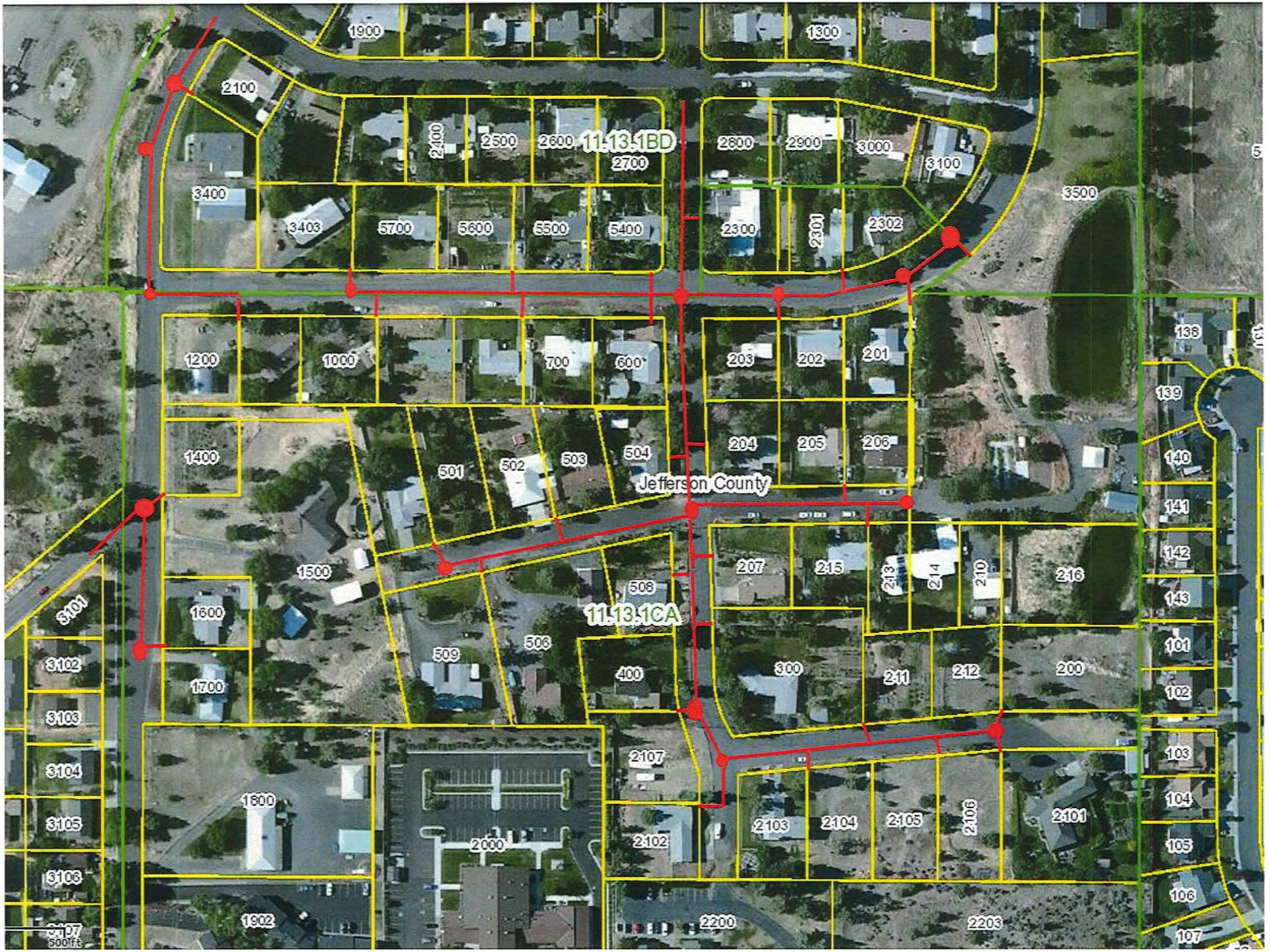
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CITY OF MADRAS

Request for Council Action

Date Submitted: March 14, 2016

Agenda Date Requested: March 22, 2016

To: Mayor and City Council Members

From: Jeff Hurd, Public Works Director

Subject: Installation of Splash Pad at Sahalee Park by the Bean Foundation and Keith Investments, LLC.

TYPE OF ACTION REQUESTED:

[ ] Resolution

[ ] Ordinance

[X] Formal Action/Motion

[ ] Contract Review Board

[ ] None - Report Only

Formal Action/Motion: That Council agree to allow the Bean Foundation to install a "splash pad" at Sahalee Park as a public donation, and to award the goods and services as a direct appointment, find that approval of the goods and services is unlikely to encourage favoritism by awarding the work which is reasonably expected to result in a substantial cost savings to the City and the public, and require the Bean Foundation to enter into an agreement with the City for the design and construction of the "splash pad" to protect the interests of the public.

DESCRIPTION:

The Bean Foundation, with the donations from Keith Investments, LLC, wishes to construct a splash pad at Sahalee Park and donate the improvements to the City upon completion. Staff needs guidance from the City Council on whether to enter into an agreement between the Bean Foundation and the City of Madras or to simply permit the work with conditions.

STAFF ANALYSIS:

The Bean Foundation approached staff and expressed their willingness to donate the funds necessary to construct a splash pad in Sahalee Park. The splash pad is a long term goal of the City's Park and Open Space Master Plan. Staff is excited to have the opportunity to construct the improvements for the citizens of Madras; however, concerns as to whether the City would be violating any public contracting rules by allowing the Bean Foundation to construct the

improvements and with ensuring protection for the City during construction and thereafter (insurance, bonding, warranty, etc.).

Staff has vetted with legal counsel that this process does not violate public contracting rules if the following occurs (see attached memo and email from Alan Dale, Bryant, Lovlien and Jarvis PC):

1. The City pursued a contract specific special procurement under ORS 279B.085 to exempt an agreement with the Bean Foundation for the Project.
2. No City funds are used on the project.
3. Staff resources must be limited to those activities identified in ORS 279C.810

To determine if a contract is a specific special procurement under ORS 279B.085, the following must occur:

1. The City must submit a written request to the local contract review board (i.e. the council) that describes: (a) the contracting procedure; (b) the goods or services that are subject to the special procurement; and (c) the circumstances that justify the use of a special procurement designation.

   Staff requests that the local contract review board approves the installation of the splash pad at Sahalee Park and directly appoints the Bean Foundation to provide the goods and services. The goods and services that are subject to the special procurement are for design and construction of one splash pad located at Sahalee Park. The design parameters of the splash pad are to be determined in conjunction with the City, the Bean Foundation and Keith Investments, LLC. The City will enter into a contract with the Bean Foundation to provide these special services due to the nature of the work being donated by the Bean Foundation. No City Funds are being used for the work.

2. Council may approve a special procurement if Council <u>finds</u> that the written request demonstrates that the use of a special procurement:

   (a) Is unlikely to encourage favoritism in the awarding of public contracts or to substantially diminish competition for public contracts; and

   Council may determine that the project does not encourage favoritism in awarding the contract since no City funds are involved nor has the City been approached by any other organization to install a splash pad at Sahalee Park.

   (b)(A) Is reasonably expected to result in substantial cost savings to the City or to the public; or

   Council may determine that by directly appointing the work to the Bean Foundation it would substantially reduce the cost of the project to the City by allowing the Bean Foundation to provide all of the funding.

(B) Otherwise substantially promotes the public interest in a manner that could not practicably be realized by complying with requirements that are applicable under ORS 279B.055 [competitive sealed bidding], 279B.060 [competitive sealed proposals], 279B.065 [small procurements] or 279B.070 [intermediate procurements] or under any rules adopted thereunder.

3. Finally, the City must publish notice of the approval of the special procurement. Notice must be published at least once in a newspaper of general circulation in the area where the contract is to be performed. Council, by rule or order, may authorize public notice to be published electronically if the council determines that electronically providing public notice is likely to be cost-effective. The public notice will describe the goods or services or class of goods or services to be acquired through the special procurement process. City will give affected persons at least seven days from the date of the notice of approval of the special procurement to protest the special procurement.

   Council may direct staff to publish the approval of the Direct Appointment of the Bean Foundation to install the splash pad at Sahalee Park in the Madras Pioneer and allow seven days for protest of the special procurement. If no protests are received within seven days then Council may award the contract to the Bean Foundation.

In addition with receiving the goods and services of installation of the splash pad from the Bean Foundation, staff and legal counsel recommend entering into an agreement with the Bean Foundation to include the following requirements at a minimum to protect the public interests:

1. **Insurance provided by the Contractor completing the work listing the City of Madras and its officers, agents, and employees and Keith Investments, LLC as an additional insured:**
   a. **General Liability Insurance:** For any and all losses and/or claims arising out of or related to Contractor's performance of its obligations under this Agreement (including, without limitation, damages as a result of death or injury to any person or destruction or damage to any property) with limits of not less than $1,000,000 per occurrence, $2,000,000 in the aggregate.

   b. **Comprehensive Automobile Liability Insurance:** For all owned, non-owned, and hired vehicles that are or may be used by Contractor in connection with Contractor's performance of the Services with limits of not less than $1,000,000 per occurrence, $2,000,000 in the aggregate.

   c. **Workers' Compensation Insurance:** If required under applicable law, in form and amount sufficient to satisfy the requirements of applicable Oregon law (the workers' compensation insurance must contain a waiver of subrogation in favor

of City). Contractor will furnish certificates of insurance to the City of Madras as evidence of the insurance coverage required by the agreement. Certificates of Insurance shall be accompanied by a copy of the additional insured endorsement.

2. **Indemnification Clause:** That the Bean Foundation releases and will defend, indemnify, and hold Keith Investments, LLC, City of Madras and its officers, employees, agents, and representatives harmless for, from, and against any claims, actions, proceedings, damages, liabilities, injuries, losses, and expenses , whether known or unknown, including, without limitation, reasonable attorney fees and related costs and expenses, resulting from or arising out of, whether directly or indirectly, the following: (a) damage, injury, and/or death to person or property caused by Contractor (and/or Contractor's officers, directors, shareholders, members, managers, employees, agents, contractors, and/or representatives) and/or otherwise arising out of or related to Contractor's performance of the Services; and/or (b) Contractor's breach and/or failure to perform any Contractor representation, warranty, covenant, and/or obligation contained in this Agreement.

3. **Licenses and Bonding:** Contractor performing the work is required to obtain any and all licenses, approval, and certificates necessary to perform the Services, including, without limitation, licensing with the Oregon Landscape Contractors Board or Oregon Contractors Board. The contractor and all subcontractors must have a public works bond filed with CCB before starting work on the project, unless exempt.

4. **Performance and Payment Bonds:** The contractor performing the work shall provide a Performance Bond and a Payment Bond to both the Bean Foundation and the City, of not less than the Contract price. The Surety Company furnishing this bond shall have a sound financial standing and a record of service satisfactory to the City, and shall be authorized to do business in the State of Oregon. Alternatively, the Contractor may file a certified or cashier's check made payable to City in lieu of all or a portion of the Performance Bond.

5. **Plans and Specifications:** Plans and specifications will be provided by a licensed engineer registered in the state of Oregon to be reviewed and approved by the Bean Foundation, Keith Investments, LLC, and City before installation occurs.

6. **Asbuilts:** Record asbuilts and manufacturer information to be provided to the Bean Foundation, Keith Manufacturing, and City upon completion of the project.

7. **Training:** Training from the manufacturer or contractor on the installed system for maintenance and proper operation shall be provided to the City upon completion of the project.

8. **Warranty:** Contractor guarantees to perform the Work in a first class, workmanlike manner and guarantees all Work against defects in material or workmanship for a period of one (1) year from the date of acceptance of the Work or final payment by the Owner, whichever is later.

SUMMARY:

A. **Fiscal Impact:**
- Estimated cost of the improvement is near $100,000

B. **Funding Sources:**
- Funding would be provided entirely by the Bean Foundation and Keith Investments, LLC.

C. **Recognition of Collateral Material and Technical Report:**
- Memo from Alan Dale concerning Public Contracting Rules
- Email from Alan Dale Dated February 22, 2016
- ORS 279B.085
- ORS 279C.810

RECOMMENDATION:
That Council agree to allow the Bean Foundation to install a "splash pad" at Sahalee Park as a public donation, and to award the goods and services as a direct appointment, find that approval of the goods and services is unlikely to encourage favoritism by awarding the work which is reasonably expected to result in a substantial cost savings to the City and the public, and require the Bean Foundation to enter into an agreement with the City for the design and construction of the "splash pad" to protect the interests of the public.

Memorandum

To: Jeff Hurd, City of Madras Public Works Director

From: City Attorney's Office, Alan R. Dale, Bryant, Lovlien & Jarvis, P.C.

Date: March 13, 2016

Re: Sahalee Spray Park

Background

The Bean Foundation desires to pay for the construction of a spray park at Sahalee Park (the "Project"). The Bean Foundation will be responsible for all costs associated with the Project, including, without limitation, engineering, construction, and labor. City funds will not be used for the construction of the Project. The Bean Foundation intends to donate the Project to the City.

The City and the Bean Foundation desire to avoid the application of the public procurement process and prevailing wage requirements.

Issues

A. Whether the City must follow formal public procurement procedures.

B. Whether prevailing wage requirements apply to the construction of the Project.

Short Answers

A. To avoid the application of formal procurement procedures, the City may pursue a contract-specific special procurement under ORS 279B.085.

B. Because City funds will not be used to construct the Project, prevailing wage requirements do not apply.

Discussion and Analysis

A. Public Procurement Procedures

To avoid the application of the formal public procurement procedures, the City may pursue a contract-specific special procurement under ORS 279B.085 to exempt an agreement with the Bean Foundation for the Project.

1. Under ORS 279A.010(1)(cc) a public improvement means a project for construction, reconstruction, or major renovation on real property by or for a contracting agency. Public contracts involving public improvements are subject to ORS chapter 279C. However, a public improvement does not include "projects for which no funds of a contracting agency are directly or indirectly used, except for participation that is incidental or related primarily to project design or inspection." ORS 279A.010(1)(cc)(A).

2. When a construction contract is not defined as a public improvement under ORS 279A.010, a contracting agency shall follow the provisions of ORS chapter 278B to award the contract. ORS 279C.320(1). However, awarding a construction contract under ORS chapter 279B does not relieve the contracting agency or contractors of any relevant requirement under ORS chapter 279C, including payment of prevailing wage rates when applicable. ORS 279C.320(2). Also, when construction services are not considered to be a public improvement because no funds of a public agency are used, directly or indirectly, the benefiting public body may nonetheless condition acceptance of the services on receipt of such protections as the public body considered to be in the public interest, including a performance bond, a payment bond, and appropriate insurance. ORS 279C.320(3).

3. As a result, the City may seek a contract-specific special procurement under ORS 279B.085 allowing the Bean Foundation to construct the Project on City property.

B. Prevailing Wage – public Funds

As mentioned above, prevailing wage requirements may apply to a construction contract even if it does not meet the definition of a public improvement. Nevertheless, if no funds of the City are directly or indirectly used, prevailing wage requirements do not apply.

1. Prevailing wage requirements apply to a construction project if it is a public works project and it uses public funds.

2. Public works are improvements whose construction, reconstruction, or major renovation is carried on or contracted for by a public agency to serve the public interest. ORS 279C.800(5). To meet the "carried on or contracted for" requirement, the public agency need not be the developer and need not have a contract with the construction contractor. Rather, "carried on or contracted for" means "the public agency must (1) conduct or manage, i.e., have substantial control over, the construction, or (2) have entered into a binding agreement for the construction, even if the agreement was not with the contractor directly." Oregon Attorney General Opinion OP-2005-1, dated May 13, 2005. Assuming the City enters into an agreement with the Bean Foundation pursuant to which the Bean Foundation will be responsible for the construction of the spray ground, BOLI may find that the project is "carried on or contracted for" by the City.

3. Notwithstanding that the Project may be "carried on or contracted for" by the City, ORS 279C.810(2) includes exemptions to prevailing wage requirements. Notably, the prevailing wage requirements do not apply to projects for which "no funds of a public agency are directly or indirectly used." ORS 279C.810(2)(b). In other words, "***some*** public funds must be used for the project, directly or indirectly, in order for the prevailing wage law to apply." Oregon Attorney General Opinion OP-2005-1, dated May 13, 2005 (emphasis in original).

4. Definitions of "directly used" and "indirectly used" funds of a public agency are located in applicable BOLI regulations. "'Directly used funds of a public agency' means revenue, money, or that which can be valued in money collected for a public agency or derived from a public agency's immediate custody and control..." OAR 839-025-0004(9)(a)(A).

5. "'Indirectly used funds of a public agency' means that a public agency ultimately bears the cost of all or part of the project, even if a public agency is not paying for the project directly or completing payment at the time it occurs or shortly thereafter." OAR 839-025-0004(9)(a)(B). Examples of how a

public agency might bear the cost include, without limitation, (a) amortization, (b) subsidizing the cost of construction that would normally be borne by the contractor, and/or (c) creating a private entity as a conduit for funding a project when the private entity is in fact an alter ego of the public agency.

6. Since no direct or indirect funds of the City are being used for the Project, the Project qualifies for the exemption under ORS 279C.810(2)(b).

7. Finally, funds of a public agency do not include staff resources of the public agency used to manage a project or provide a principal source of supervision, coordination or oversight of the project. ORS 279C.810(1)(a)(F). Funds of a public agency also do not include staff resources used to design or inspect one or more components of a project. ORS 279C.810(1)(a)(G).

Conclusion

In order to ensure that the Project qualifies for the exemption to the prevailing wage requirements, it is imperative that no City funds are used for the construction of the Project. In addition, any staff resources used on the Project must be limited to those activities identified in ORS 279C.810.

From: Alan Dale
To: Jeffrey Hurd
Cc: Jeremy Green
Subject: Contract-Specific special procurement
Date: Monday, February 22, 2016 2:18:11 PM
Attachments: image001.png

Good afternoon Jeff,

This email provides the procedure to follow for a contract-specific special procurement. If the City needs to enter into a contract where it is clear that competitive procurement will not result in satisfactory results (e.g. because of complex systems), and the contract does not qualify under an existing class special procurement or exemption, staff may present to council, for council's approval, a contract-specific special procurement or exemption. Under the Madras Public Contracting Rules and Procedures, the council may approve such a contract-specific special procurement or exemption to address any single unique contracting circumstance. Subsection C of the proposed rules provides that the City must follow the procedures of ORS 279B.085 to award a contract-specific special procurement.

1. Under ORS 279B.085, to seek approval of a contract-specific special procurement, the City must submit a written request to the local contract review board (i.e. council) that describes: (a) the contracting procedure; (b) the goods or services that are subject to the special procurement; and (c) the circumstances that justify the use of a special procurement.

2. Council may approve a special procurement if Council finds that the written request demonstrates that the use of a special procurement:

(a) Is unlikely to encourage favoritism in the awarding of public contracts or to substantially diminish competition for public contracts; and

(b)(A) Is reasonably expected to result in substantial cost savings to the City or to the public; or

(B) Otherwise substantially promotes the public interest in a manner that could not practicably be realized by complying with requirements that are applicable under ORS 279B.055 [competitive sealed bidding], 279B.060 [competitive sealed proposals], 279B.065 [small procurements] or 279B.070 [intermediate procurements] or under any rules adopted thereunder.

3. Finally, the City must publish notice of the approval of the special procurement. Notice must be published at least once in a newspaper of general circulation in the area where the contract is to be performed. Council, by rule or order, may authorize public notice to be published electronically if the council determines that electronically providing public notice is likely to be cost-effective. The public notice will describe the goods or services or class of goods or services to be acquired through the special procurement. City will give affected persons at least seven days from the date of the notice of approval of the special procurement to protest the special procurement.

Please feel free to contact me if you have any questions regarding these steps or this email.

Thank you,

Alan

Alan R. Dale *Attorney*
E dale@bljlawyers.com | **P** 541-382-4331 | **F** 541-389-3386 | 591 SW Mill View Way, Bend, OR 97702 | www.bljlawyers.com

BLJ BRYANT, LOVLIEN & JARVIS

NOTICE: This communication may contain privileged or other confidential information. If you are not the intended recipient or believe that you may have received this communication in error, please reply to the sender indicating that fact and delete the copy you received. In addition, you should not print, copy, retransmit, disseminate, or otherwise use this information. Thank you.

2013 ORS § 279B.085[1]
Special procurements

(1) As used in this section and ORS 279B.400 (Protests and judicial review of approvals of special procurements):

(a) Class special procurement means a contracting procedure that differs from the procedures described in ORS 279B.055 (Competitive sealed bidding), 279B.060 (Competitive sealed proposals), 279B.065 (Small procurements) and 279B.070 (Intermediate procurements) and is for the purpose of entering into a series of contracts over time or for multiple projects.

(b) Contract-specific special procurement means a contracting procedure that differs from the procedures described in ORS 279B.055 (Competitive sealed bidding), 279B.060 (Competitive sealed proposals), 279B.065 (Small procurements) and 279B.070 (Intermediate procurements) and is for the purpose of entering into a single contract or a number of related contracts on a one-time basis or for a single project.

(c) Special procurement means, unless the context requires otherwise, a class special procurement, a contract-specific special procurement or both.

(2) Except as provided in subsection (3) of this section, to seek approval of a special procurement, a contracting agency shall submit a written request to the Director of the Oregon Department of Administrative Services or the local contract review board, as applicable, that describes the contracting procedure, the goods or services or the class of goods or services that are the subject of the special procurement and the circumstances that justify the use of a special procurement under the standards set forth in subsection (4) of this section.

(3) When the contracting agency is the office of the Secretary of State or the office of the State Treasurer, to seek approval of a special procurement, the contracting agency shall submit a written request to the Secretary of State or the State Treasurer, as applicable, that describes the contracting procedure, the goods or services or the class of goods or services that are the subject of the special procurement and the circumstances that justify the use of a special procurement under the standards set forth in subsection (4) of this section.

(4) The director, a local contract review board, the Secretary of State or the State Treasurer may approve a special procurement if the director, board, Secretary of State or State Treasurer finds that a written request submitted under subsection (2) or (3) of this section demonstrates that the use of a special procurement as described in the request, or an alternative procedure prescribed by the director, board, Secretary of State or State Treasurer:

(a) Is unlikely to encourage favoritism in the awarding of public contracts or to substantially diminish competition for public contracts; **and**

(b) (A) Is reasonably expected to result in substantial cost savings to the contracting agency or to the public; **or**

(B) Otherwise substantially promotes the public interest in a manner that could not practicably be realized by complying with requirements that are applicable under ORS 279B.055 (Competitive sealed bidding), 279B.060 (Competitive sealed proposals), 279B.065 (Small procurements) or 279B.070 (Intermediate procurements) or under any rules adopted thereunder.

(5) Public notice of the approval of a special procurement must be given in the same manner as provided in ORS 279B.055 (Competitive sealed bidding) (4).

(6) If a contracting agency intends to award a contract through a special procurement that calls for competition among prospective contractors, the contracting agency shall award the contract to the offeror the contracting agency determines to be the most advantageous to the contracting agency.

(7) When the director, a local contract review board, the Secretary of State or the State Treasurer approves a class special procurement under this section, the contracting agency may award contracts to acquire goods or services within the class of goods or services in accordance with the terms of the approval without making a subsequent request for a special procurement. [2003 c.794 §57; 2005 c.103 §8d; 2007 c.764 §7]

• • •

(No annotations for this section.)

Related Statutes[3]

- 183.335
  Notice
- 279A.010
  Definitions for Public Contracting Code
- 279A.025
  Application of Public Contracting Code
- 279A.060
  Local contract review boards

- 279A.165
  Report concerning special procurements
- 279A.180
  Purchases through federal programs
- 279A.190
  Transfers of fire protection equipment between fire departments
- 279A.200
  Definitions for ORS 279A.200 to 279A.225
- 279A.210
  Joint cooperative procurements
- 279B.050
  Methods of source selection
- 279B.135
  Notice of intent to award
- 279B.145
  Finality of determinations
- 279B.400
  Protests and judicial review of approvals of special procurements
- 279B.405
  Protests and judicial review of solicitations
- 413.033
  Oregon Health Authority director

[1] Legislative Counsel Committee, *CHAPTER 279B—Public Contracting - Public Procurements*, https://-www.oregonlegislature.gov/bills_laws/lawsstatutes/2013ors279B.html (2013) (last accessed Apr. 27, 2014).

[2] OregonLaws.org contains the contents of Volume 21 of the ORS, inserted alongside the pertinent statutes. See the preface to the ORS Annotations for more information.

[3] OregonLaws.org assembles these lists by analyzing references between Sections. Each listed item refers back to the current Section in its own text. The result reveals relationships in the code that may not have otherwise been apparent.

Currency Information

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2013 ORS § 279C.810[1]
Exemptions

• rules

(1) As used in this section:

(a) Funds of a public agency does not include:

(A) Funds provided in the form of a government grant to a nonprofit organization, unless the government grant is issued for the purpose of construction, reconstruction, major renovation or painting;

(B) Building and development permit fees paid or waived by the public agency;

(C) Tax credits or tax abatements;

(D) Land that a public agency sells to a private entity at fair market value;

(E) The difference between:

(i) The value of land that a public agency sells to a private entity as determined at the time of the sale after taking into account any plan, requirement, covenant, condition, restriction or other limitation, exclusive of zoning or land use regulations, that the public agency imposes on the development or use of the land; **and**

(ii) The fair market value of the land if the land is not subject to the limitations described in sub-subparagraph (i) of this subparagraph;

(F) Staff resources of the public agency used to manage a project or to provide a principal source of supervision, coordination or oversight of a project;

(G) Staff resources of the public agency used to design or inspect one or more components of a project;

(H) Moneys derived from the sale of bonds that are loaned by a state agency to a private entity, unless the moneys will be used for a public improvement;

(I) Value added to land as a consequence of a public agencys site preparation, demolition of real property or remediation or removal of environmental contamination, except for value added in excess of the expenses the public agency incurred in the site preparation, demolition or remediation or removal when the land is sold for use in a project

otherwise subject to ORS 279C.800 (Definitions for ORS 279C.800 to 279C.870) to 279C.870 (Civil action to enforce payment of prevailing rates of wage); **or**

(J) Bonds, or loans from the proceeds of bonds, issued in accordance with ORS chapter 289 or ORS 441.525 (Definitions for ORS 441.525 to 441.595) to 441.595 (Construction of ORS 441.525 to 441.595), unless the bonds or loans will be used for a public improvement.

(b) Nonprofit organization means an organization or group of organizations described in section 501(c)(3) of the Internal Revenue Code that is exempt from income tax under section 501(a) of the Internal Revenue Code.

(2) ORS 279C.800 (Definitions for ORS 279C.800 to 279C.870) to 279C.870 (Civil action to enforce payment of prevailing rates of wage) do not apply to:

(a) Projects for which the contract price does not exceed $50,000. In determining the price of a project, a public agency:

(A) May not include the value of donated materials or work performed on the project by individuals volunteering to the public agency without pay; **and**

(B) Shall include the value of work performed by every person paid by a contractor or subcontractor in any manner for the persons work on the project.

(b) Projects for which no funds of a public agency are directly or indirectly used. In accordance with ORS chapter 183, the Commissioner of the Bureau of Labor and Industries shall adopt rules to carry out the provisions of this paragraph.

(c) Projects:

(A) That are privately owned;

(B) That use funds of a private entity;

(C) In which less than 25 percent of the square footage of a completed project will be occupied or used by a public agency; **and**

(D) For which less than $750,000 of funds of a public agency are used.

(d) Projects for residential construction that are privately owned and that predominantly provide affordable housing. As used in this paragraph:

(A) Affordable housing means housing that serves occupants whose incomes are no greater than 60 percent of the area median income or, if the occupants are owners, whose incomes are no greater than 80 percent of the area median income.

(B) Predominantly means 60 percent or more.

(C) Privately owned includes:

(i) Affordable housing provided on real property owned by a public agency if the

real property and related structures are leased to a private entity for 50 or more years; **and**

(ii) Affordable housing owned by a partnership, nonprofit corporation or limited liability company in which a housing authority, as defined in ORS 456.005 (Definitions for ORS chapters 456 and 458), is a general partner, director or managing member and the housing authority is not a majority owner in the partnership, nonprofit corporation or limited liability company.

(D) Residential construction includes the construction, reconstruction, major renovation or painting of single-family houses or apartment buildings not more than four stories in height and all incidental items, such as site work, parking areas, utilities, streets and sidewalks, pursuant to the United States Department of Labors All Agency Memorandum No. 130: Application of the Standard of Comparison Projects of a Character Similar Under Davis-Bacon and Related Acts, dated March 17, 1978. However, the commissioner may consider different definitions of residential construction in determining whether a project is a residential construction project for purposes of this paragraph, including definitions that:

(i) Exist in local ordinances or codes; **or**

(ii) Differ, in the prevailing practice of a particular trade or occupation, from the United States Department of Labors description of residential construction. [2003 c.794 §172; 2005 c.153 §1; 2005 c.360 §8; 2007 c.764 §35]

• • •

(No annotations for this section.)

Related Statutes[3]

- 279A.010
  Definitions for Public Contracting Code
- 279C.800
  Definitions for ORS 279C.800 to 279C.870
- 352.138
  Applicability of laws to universities with governing boards

[1] Legislative Counsel Committee, *CHAPTER 279C—Public Contracting - Public Improvements and Related Contracts*, https://www.oregonlegislature.gov/bills_laws/lawsstatutes/2013ors279C.html (2013)

(last accessed Apr. 27, 2014).

[2] OregonLaws.org contains the contents of Volume 21 of the ORS, inserted alongside the pertinent statutes. See the preface to the ORS Annotations for more information.

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CITY OF MADRAS
Request for Council Action

Date Submitted: March 16, 2016

Agenda Date Requested: March 22, 2016

To: Mayor and City Council

Through: City Administrator, Gus Burril

From: City Recorder, Karen J. Coleman

Subject: **ORDINANCE NO. 886**
An ordinance amending, restating, superseding, and replacing Madras Ordinance No. 808 in its entirety, which ordinance concerns public contracting rules and procedures; and declaring an emergency.

TYPE OF ACTION REQUESTED: (Check One)

[ ]	**Resolution**	[X]	**Ordinance**
[X]	**Formal Action/Motion**	[ ]	**Other**
[ ]	**No Action - Report Only**	[ ]	**Consent Agenda**

DESCRIPTION AND STAFF ANALYSIS:

Ordinance No. 808 [an ordinance adopting public contracting rules and procedures to the public contracting code] was adopted by the Council on August 26, 2008 based upon the Oregon Public Contracting Code which is found under ORS 279A, 279B, and 279C. The way the Public Contracting Code is set up is that municipalities and counties are subject to the code unless they adopt their own Public Contracting Code or procedures.

The City's code has not been updated since 2008 making it extremely outdated, inefficient, and in non-compliance with some of the changes that have been made to the code. The advice from the City's legal counsel is to take the State Code as a basis and then make changes to facilitate what is more practical for the City. A City Council Work Session was held on February 23, 2016 to discuss the proposed changes to the Public Contracting Rules and Procedures and review the "draft" ordinance. Ordinance No. 886 being presented for Council's review and consideration was prepared by the City Attorney to replace Ordinance No. 808 to bring the City's Public Contracting Rules up-to-date.

If Ordinance No. 886 is adopted by the Council, staff will start work on preparing and adopting internal policies to implement the code. The internal policies established by staff will stay within the parameters of the Public Contracting Code approved by the Council.

A copy of Ordinance No. 886 was provided to each City Council member, three copies of the ordinance were made available for public inspection in the office of the custodian of city records, and notice of its availability was given by written notice posted at the City Hall, the U.S. Post Office, and the Jefferson County Clerk's Office, as well as on the City website at least one (1) week prior to the reading.

SUMMARY:

A. Fiscal Impact

Not Applicable.

B. Supporting Documentation

A copy of Ordinance No. 886 has been attached for Council's review and consideration.

STAFF'S RECOMMENDATION IS:

That the City Council approve and adopt Ordinance No. 886 as proposed.

ORDINANCE NO. 886

AN ORDINANCE AMENDING, RESTATING, SUPERSEDING, AND REPLACING MADRAS ORDINANCE NO. 808 IN ITS ENTIRETY, WHICH ORDINANCE CONCERNS PUBLIC CONTRACTING RULES AND PROCEDURES; AND DECLARING AN EMERGENCY.

WHEREAS, the City of Madras ("City") is a municipality in the State of Oregon which is subject to Oregon's public contracting laws; and

WHEREAS, the Madras City Council (the "Council") serves as City's local contract review board ("LCRB"); and

WHEREAS, pursuant to ORS 279A.065(6), City may adopt its own rules of procedure for public contracting that (a) specifically state that the model rules adopted by the Attorney General do not apply to the contracting agency, and (b) prescribe the rules of procedure that the contracting agency will use for public contracts, which may include portions of the model rules adopted by the Attorney General; and

WHEREAS, the Oregon Public Contracting Code (the "Code") allows City to establish class special procurements and exemptions to provide for the award of one or more contracts for one or more projects within certain classes without following the competitive sealed bidding, competitive sealed proposals, or small or intermediate procurements that would otherwise be required under the circumstances; and

WHEREAS, by the passage of this Ordinance No. 886 (this "Ordinance"), City will establish local rules and procedures governing public contracts, and adopt class special procurements and exemptions, subject to the terms and conditions contained in this Ordinance.

NOW, THEREFORE, THE CITY OF MADRAS ORDAINS AS FOLLOWS:

1. Findings. The above-stated findings are hereby adopted.

2. Short Title. This Ordinance will be known as the "City of Madras Public Contracting Ordinance."

3. Adoption. The Council hereby adopts the Oregon Attorney General's Model Public Contracting Rules (the "Model Rules"), Oregon Administrative Rules Chapter 137, Divisions 46, 47, 48, and 49, except for those provisions modified or replaced by the Public Contracting Rules and Procedures attached hereto as Exhibit A (the "Public Contracting Rules"), as the public contracting rules for City, as such Model Rules or Public Contracting Rules presently exist or as they may be amended in the future. If any conflict between the Model Rules and the Public Contracting Rules should arise, the Public Contracting Rules will control. If any conflict between the Public Contracting Rules and the Code should arise, the Code will control. The Model Rules, Public Contracting Rules, and any amendments to the Model Rules or Public Contracting Rules, will collectively be referred to as the City of Madras Public Contracting Rules (the "Rules").

4. Class Special Procurements and Exemptions. The Council hereby adopts the Class Special Procurements and Exemptions contained in the attached Exhibit B as well as the applicable Findings in Support of Adopting Class Special Procurements and Exemptions found in the attached Exhibit C.

5. Amendment and Replacement; Review. This Ordinance amends, restates, supersedes, and replaces City Ordinance No. 808 in its entirety, and supersedes any and all ordinances, resolutions, and/or policies in conflict with this Ordinance, including, without limitation, the Purchase Order Policy Procedures approved by the Council on April 14, 2009. The Council may amend the Public Contracting Rules at any time in the same manner as that required for the Council to adopt an ordinance. City will regularly review the Rules to ensure that the Rules are consistent with applicable law.

6. Interpretation; Severability; Corrections. All pronouns contained in this Ordinance and any variations thereof will be deemed to refer to the masculine, feminine, or neutral, singular or plural, as the identity of the parties may require. The singular includes the plural and the plural includes the singular. The word "or" is not exclusive. The words "include," "includes," and "including" are not limiting. Any reference to a particular law, statute, rule, regulation, code, or ordinance includes the law, statute, rule, regulation, code, or ordinance as now in force and hereafter amended. The provisions of this Ordinance are hereby declared to be severable. If any section, subsection, sentence, clause, and/or portion of this Ordinance is for any reason held invalid, unenforceable, and/or unconstitutional, such invalid, unenforceable, and/or unconstitutional section, subsection, sentence, clause, and/or portion will (a) yield to a construction permitting enforcement to the maximum extent permitted by applicable law, and (b) not affect the validity, enforceability, and/or constitutionality of the remaining portion of this Ordinance. This Ordinance may be corrected at any time by order of the Council to cure editorial and/or clerical errors.

7. Emergency Declaration. The Council finds that passage of this Ordinance is necessary for the immediate preservation of the peace, health, and safety of City's citizens. Therefore, an emergency is hereby declared to exist. This emergency Ordinance will be in full force and effect upon its passage and adoption by the Council and signing by the mayor.

ADOPTED by the City Council of the City of Madras and signed by the mayor this ____ day of _____, 2016.

Ayes: _____
Nays: _____
Abstentions: _____
Absent: _____
Vacancies: _____

_____
Royce Embanks, Mayor

ATTEST:

_____
Karen J. Coleman, City Recorder

Exhibit A
Public Contracting Rules and Procedures

A. Delegation.

(1) Except as otherwise provided by the Rules, the powers and duties given to the LCRB by the Code or the Model Rules must be exercised and performed by the Council.

(2) Except as otherwise limited by the Council or the Rules, all powers and duties given or assigned to local contracting agencies by the Rules may be exercised or performed by the city administrator, including the authority to enter into emergency contracts pursuant to ORS 279B.080 and 279C.320.

(3) All public contracts or amendments to public contracts with an estimated cost of $25,000 or more must be approved by the Council. All public contracts or amendments to public contracts with an estimated cost of less than $25,000 may be entered into by the city administrator without Council approval. The city administrator may, by written designation, allow other City staff members to enter into public contracts or amendments to public contracts with an estimated cost of $10,000 or less without Council approval. However, emergency contracts may be entered into by either the Council or the city administrator pursuant to Paragraph F of these Rules, regardless of dollar limits, but subject to ORS 294.481.

(4) For purposes of the Rules, the "city administrator" means the city administrator and/or his or her designee. Reference in the Model Rules to the "Chief Procurement Officer" will refer to the city administrator.

B. Personal Services.

(1) Definitions. "Personal Service(s)" is defined to include those services that require specialized technical, creative, professional, or communication skills or talents, unique and specialized knowledge, or the exercise of discretionary judgment, and for which the quality of the service depends on attributes that are unique to the service provider. Such services include, without limitation, the following: attorneys, accountants, auditors, and other licensed professionals; computer programmers; artists; graphic designers; performers; and consultants. The city administrator may determine whether any additional service not specifically mentioned in this paragraph is a "Personal Service" under this definition. "Personal Services Contract(s)" means a contract for the provision of Personal Services.

(2) Contracts for Personal Services. Except as provided in Paragraph (3), below, Personal Services Contracts may be directly appointed, or awarded from proposals that are solicited informally, either orally or in writing. When proposals are sought, they will be solicited from a sufficient number of qualified prospective proposers to ensure that no fewer than two qualified proposers submit proposals. If fewer than two qualified proposers submit proposals, the efforts made to solicit proposals will be documented in City's files. The selection may be based on criteria, including, without limitation, each proposer's: (a) particular capability to perform the services required; (b) experienced staff available to perform the services required, including each proposer's recent, current, and projected workloads; (c) performance history; (d) approach and philosophy used in providing services; (e) fees or costs; and (f) ability to provide timely performance in the area where the services are to be performed. Price may be considered, but need not be the determining factor. Proposals may also be solicited by using a written request for proposals, at City's discretion.

(3) Contracts for Architectural, Engineering and Surveying Services, and Related Services. Personal Services Contracts for architectural, engineer, photogrammetric mapping, transportation planning, land surveying, or related services, all as defined by ORS 279C.100, will be awarded in accordance with the source selection procedures set forth in ORS 279C and Division 48 of the Model Rules (except as otherwise provided in these Rules). Notwithstanding the foregoing, such Personal Services Contracts may be awarded pursuant to ORS 279C.115 or 279C.120 when applicable. When using the informal selection procedures described in OAR 137-048-0210, the city administrator will submit Request for Proposals to a minimum of three prospective consultants drawn from the following:

(a) City's list of consultants that is created and maintained under OAR 137-048-0120;

(b) Another contracting agency's list of consultants that is created and maintained under OAR 137-048-0120; or

(c) All consultants that the contracting agency reasonably can locate that offer the desired architectural, engineering, photogrammetric mapping, transportation planning or land surveying services or related services, or any combination of the foregoing.

Where the city administrator is unable to located three prospective consultants from the sources listed above, the city administrator will submit requests for proposals to those prospective consultants identified from the sources listed above and document efforts to locate a minimum of three prospective consultants.

C. Special Procurements and Exemptions.

(1) The Council may exempt from competitive bidding certain contracts or classes of contracts for the procurement of goods and services according to the procedures described in ORS 279B.085. In accordance with OAR 137-047-0285(2), City will give public notice of City's approval of a special procurement for goods and services in the same manner as public notice of competitive sealed bids under ORS 279B.055(4) and OAR 137-047-0300. The public notice will describe the goods or services or class of goods or services to be acquired through the special procurement. City will give affected persons at least seven days from the date of the notice of approval of the special procurement to protest the special procurement.

(2) The Council may exempt certain contracts or classes of contracts for public improvements from competitive bidding according to the procedures described in ORS 279C.335. When exempting a public improvement from competitive bidding, the Council may authorize the contract to be awarded using a request for proposal process for public improvements, according to the processes described in OAR 137-049-0640 through 137-049-0690.

D. Small Procurements.

(1) Public contracts for goods and services $10,000 or less are not subject to competitive bidding requirements. The city administrator may make a reasonable effort to obtain competitive quotes in order to ensure the best value for City. City may amend a public contract awarded as a small procurement beyond the $10,000 limit in accordance with OAR

137-047-0800, provided the cumulative amendments do not increase the total contract price to a sum that is greater than $12,500.

(2) Public contracts for public improvements $5,000 or less are not subject to competitive bidding requirements. The city administrator may make reasonable efforts to obtain competitive quotes in order to ensure the best value for City. City may amend a public contract for a public improvement awarded as a small procurement beyond the $5,000 limit, provided the cumulative amendments do not increase the total contract price to a sum that is greater than $6,250.

E. Intermediate Procurements.

(1) A contract for procurement of goods and services that exceeds $10,000 but does not exceed $150,000 may be awarded according to the processes for intermediate procurements described in ORS 279B.070. City may amend a public contract awarded as an intermediate procurement in accordance with OAR 137-047-0800.

(2) A contract for a public improvement that exceeds $5,000 but does not exceed $100,000 may be awarded according to the processes for intermediate procurements described in OAR 137-049-0160. City may increase the contract price of a public improvement awarded as an intermediate procurement through change order or amendment pursuant to OAR 137-049-0160.

F. Emergency Contracts.

(1) "Emergency" is defined as circumstances that (a) could not have reasonably been foreseen, (b) create a substantial risk of loss, damage, or interruption of services or a substantial threat to property, public health, welfare or safety, and (c) require prompt execution of a contract to remedy the condition.

(2) The mayor or city administrator has the authority to determine when emergency conditions exist sufficient to warrant an emergency contract. The nature of the emergency and the method used for the selection of the contractor will be documented.

(3) Emergency contracts may be awarded as follows:

(a) Goods and Services. Emergency contracts for procurement of goods, services, and construction services that do not constitute public improvements may be awarded pursuant to ORS 279B.080 and Paragraph A, "Delegation," of these Rules.

(b) Public Improvements. City hereby adopts the procedures of OAR 137-049-0150 for awarding a public improvement contracts under emergency conditions, pursuant to ORS 279B.080. For emergency contracts awarded under this section, City will ensure competition that is reasonable and appropriate under the Emergency circumstances which may include, without limitation, written requests for offers, oral requests for offers, or direct appointment, without competition in cases of extreme necessity.

G. Appeals of Prequalification Decisions and Debarment Decisions.

Review of City's prequalification and debarment decisions will be as set forth in ORS 279B.425. The procedures in ORS 279B.425 will apply to hearings on such decisions.

H. Cooperative Purchases.

Subject to applicable Council approval requirements stated in the Rules, City may purchase goods under the Oregon Cooperative Purchasing Program or from any similar federal or regional program, including 10 USC 381, the Electronic Government Act of 2002 (Public Law 107-347). Purchases under other federal or state laws will be permitted upon a finding by the Council that the law is sufficiently similar in effectuating or promoting transfers of property between contracting agencies.

I. Electronic Advertising.

Pursuant to ORS 279B.055 and 279C.360, electronic advertisement of public contracts in lieu of publication in a newspaper of general circulation in the area where the contract is to be performed is authorized when it is likely to be cost-effective to do so. The city administrator will have the authority to determine when electronic publication is appropriate, and consistent with City's public contracting policies. Notwithstanding the foregoing, publication of public improvement contracts with an estimated cost in excess of $125,000 will also be made in at least one trade newspaper of general statewide circulation.

J. Brand Names or Products, "or Equal."

(1) City may enter into public contracts for the procurement of Brand Name "or Equal" products, including products to be incorporated into a public improvement, subject to the requirements of this rule.

(a) Specifications. Solicitation specifications for public contracts must not expressly or implicitly require any product of any particular manufacturer or seller except as expressly authorized in subsections (i) and (ii) of this Rule.

(i) "Or Equal" Specification. City may specify a particular brand name, make or product suffixed by "or equal," "or approved equal," "or equivalent," "or approved equivalent," or similar language if there is no other practical method of specification.

(ii) Specifying a Particular Make or Product. City may specify a brand name, make, or product without an "or equal" or equivalent suffix if there is no other practical method of specification, after documenting the procurement file with the following information:

(I) A brief description of the solicitation(s) to be covered including volume of contemplated future purchases;

(II) The brand name, mark, or product to be specified; and

(III) The reasons for seeking this procurement method, which must include at least one of the following findings in the procurement file:

(A) It is unlikely that specification of the brand name, mark or product will encourage favoritism in the award of the public contracts or substantially diminish competition; or

(B) Specification of the brand name, mark or product would result in substantial cost savings to City; or

(C) Efficient utilization of existing equipment or supplies requires the acquisition of compatible equipment or supplies.

(2) Public Notice. City will make reasonable effort to notify all known suppliers of the specified product and invite such suppliers to submit competitive bids or proposals; or document the procurement file with findings of current market research to support the determination that the product is available from only one seller. This requirement is satisfied by electronically posting a notice as provided in OAR 137-047-0330 for a reasonable period of time or by documenting direct contact with such suppliers in the procurement file.

K. Single Seller and Sole Source.

(1) Sole Source Purchasing. City may purchase a particular product or service available from only one source if City meets the requirements of ORS 279B.075 and OAR 137-047-0275. Prior to purchase and in accordance with ORS 279B.075, City must determine in writing that the product or service is available from only one seller or source. City's single seller/sole source determination (which will be placed in the procurement file) will include: (a) a description of the product or service to be purchased; (b) a brief description of the contract or contracts to be covered including volume of contemplated future purchases; and (c) City's findings in support of a single seller/sole source which may include those items listed in ORS 279B.075(2).

(2) Sole Source, Multiple Purchases. If City intends to make several purchases of the product of a particular manufacturer or seller over an extended period, City must so state in the solicitation file, the solicitation document, if any, and the public notice required pursuant to OAR 137-047-0275(2). Such documentation and public notice constitute sufficient notice as to subsequent purchases. Such purchase may not be made for a period in excess of five years without new findings supporting continuation of the sole source procurement.

Exhibit B
Class Special Procurements and Exemptions

I. CLASS SPECIAL PROCUREMENTS.

City may award a public contract under a Class Special Procurement pursuant to the requirements of ORS 279B.085. Such procurements allow City to enter into one or more contracts over time without following the requirements of competitive sealed bidding, competitive sealed proposals, or small or intermediate procurements.

The Council declares the following as class special procurements. Unless otherwise specified in a particular special procurement rule, such contracts may be awarded in any manner that the city administrator deems appropriate to City's needs, including by direct appointment or otherwise. Except as otherwise provided, the city administrator will make a record of the method of award.

1. Advertising Contracts, Purchase Of.

The city administrator, acting on behalf of city, may purchase media advertising, regardless of dollar value, without competitive bidding.

[Prev. adopt. in Res. No. 12-2006]

2. Advertising Contracts, Sale Of.

The city administrator, acting on behalf of City, may authorize the sale of advertising in City publications and for City activities, regardless of dollar value, without competitive bidding.

[Prev. adopt. in Res. No. 12-2006]

3. Equipment Repair and Overhaul.

The city administrator, acting on behalf of City, may enter into a public contract for equipment repair or overhaul without competitive bidding, subject to the following conditions:

(A) Conditions.

(i) Service and/or parts required are unknown and the cost cannot be determined without extensive preliminary dismantling or testing; or

(ii) Service and/or parts required are for sophisticated equipment for which specially trained personnel are required and such personnel are available from only one source; and

(iii) City purchases within the limits and pursuant to the methods in Paragraph (B) of this Rule.

(B) Process and Criteria. The city administrator will use competitive methods wherever possible to achieve best value and must document in the procurement file the reasons why a competitive process was deemed to be impractical. If the

anticipated purchase is more than $150,000 competitive quotes must be obtained and retained in the procurement file.

4. Purchase of Used Personal Property.

If the anticipated purchase does not exceed $150,000, City may directly purchase used personal property and equipment if such property is suitable for City's needs and can be purchased for a lower cost than substantially similar new property. City's research determining that the property can be purchased for a lower cost than substantially similar new property must be documented in the procurement file. For the purpose of this rule, the cost of used property will be based upon the life-cycle cost of the property over the period for which the property will be used by City.

[Prev. adopt. in Res. No. 12-2006]

5. Information Technology Contracts.

The city administrator, acting on behalf of City, will comply with the requirements of this rule for the procurement of information technology contracts. Competitive methods will be used wherever possible to achieve best value. The reasons why a competitive process was deemed to be impractical must be documented in the procurement file.

(A) If the anticipated purchase is $10,000 or more but less than $150,000, competitive quotes will be obtained and retained in the procurement file pursuant to the rules governing intermediate procurements.

(B) If the anticipated purchase exceeds $150,000, City will solicit written proposals in accordance with City rules governing requests for proposals.

[Prev. adopt. in Res. No. 12-2006]

6. Telecommunications Systems - Hardware and Software Contracts.

The city administrator, acting on behalf of City, will comply with the requirements of this rule for the procurement of telecommunications systems contracts. Competitive methods will be used wherever possible to achieve best value. The reasons why a competitive process was deemed to be impractical must be documented in the procurement file.

(A) If the anticipated purchase is $10,000 or more but less than $150,000 competitive quotes will be obtained and retained in the procurement file pursuant to the rules governing intermediate procurements.

(B) If the anticipated purchase exceeds $150,000, City will solicit written proposals in accordance with City rules governing requests for proposals.

[Prev. adopt. in Res. No. 12-2006]

7. Telecommunications Services.

The city administrator, acting on behalf of City, may enter into a public contract for telecommunications services without competitive bidding, if no competition exists within the area

for the service required. To determine whether competition exists, the city administrator will consider the following factors:

(A) Determination of alternative providers available within the geographic and service market area.

(B) The extent to which alternative services offered are comparable or substitutable in technology, service provided and performance.

(C) The extent to which alternative providers can respond to City's interest in consistency and continuity of services throughout its service area, volume discounts, equitable service for all users, centralized management and limiting City liability.

(D) City will use competitive methods wherever possible to achieve best value. If competition exists as defined above and the anticipated purchase is $10,000 or more but less than $150,000 competitive quotes will be obtained and retained in the procurement file pursuant to the rules governing Intermediate Procurements. If the anticipated purchase exceeds $150,000, City will solicit written proposals in accordance with City rules governing requests for proposals.

[Prev. adopt. in Res. No. 12-2006]

8. <u>Copyrighted and Library Materials</u>.

City may purchase copyrighted materials where there is only one known supplier available for such goods. This includes, without limitation, new books, periodicals, curriculum materials, reference materials, audio and visual media, and non-mass marketed software from a particular publisher or its designated distributor.

[Prev. adopt. in Res. No. 12-2006]

9. <u>Requirements Contracts</u>.

The city administrator, acting on behalf of City, may establish requirements contracts for the purposes of minimizing paper work, achieving continuity of products, securing a source of supply, reducing inventory, combining City requirements for volume discounts, standardization among City departments and reducing lead time for ordering. Purchases under requirements contracts may be utilized in accordance with the following:

(A) The requirement contract must have originally been let by competitive procurement procedures unless otherwise allowed by City's rules; and

(B) City departments may purchase the goods or services from the awarded contractor without first undertaking additional competitive procurement procedures; and

(C) The term of any City requirements contract, including renewals, will not exceed five years unless otherwise exempted pursuant to ORS 279B.085.

[Prev. adopt. in Res. No. 12-2006]

10. Purchases under Federal Contracts.

When the price of goods and services has been established by a contract of the federal government pursuant to a federal contract award, City may purchase the goods and services in accordance with the federal contract without subsequent competitive bidding. In exercising its authority under this exemption, City will obtain and document permission from the appropriate federal agency to purchase under the federal contract and document the cost savings to be gained for City from the anticipated purchases under the federal contract. City will not contract pursuant to this rule in the absence of a cost savings to City by using this method.

[Prev. adopt. in Res. No. 12-2006]

11. Hazardous Material Removal and Cleanup.

City may directly acquire services to remove or clean up hazardous material or oil from any vendor in an emergency or when ordered to do so by the Oregon Department of Environmental Quality pursuant to its authority under ORS Chapter 466. In doing so, the following conditions apply:

(A) To the extent reasonable under the circumstances, City will encourage competition by attempting to obtain informal price quotations or proposals from potential suppliers of goods and services; and

(B) City department responsible for managing or coordinating the clean-up will prepare a written description of the circumstances that require it and/or a copy of the DEQ order for the cleanup to the city administrator, together with a request for contract authorization; and

(C) City department responsible for managing or coordinating the clean-up will record whether there was time for competition, and, if so, the measures taken to encourage competition, the amount of the price quotations obtained, if any, and the reason for selecting the contractor to whom award is made; and

(D) The timeline for cleanup does not permit use of intermediate procurement procedures.

[Prev. adopt. in Res. No. 12-2006]

12. Insurance—Employee Benefit and Other.

City may purchase employee benefit insurance and other insurance without competitive bidding, regardless of dollar amount, subject to the terms of any collective bargaining agreement between City and represented employee groups.

[Prev. adopt. in Res. No. 12-2006]

13. Disposal of Abandoned, Seized or Non-owned Property.

Contracts or arrangements for the sale or other disposal of abandoned, seized or other personal property not owned by City at the time City obtains possession are not subject to competitive

procurement procedures. The city administrator may select any method of disposal including, without limitation, donation to a charitable organization.

[Prev. adopt. in Res. No. 12-2006]

14. Disposal of Surplus Property.

(A) Methods. Surplus property may be disposed of by any commercially reasonable method upon a determination by the city administrator that the method of disposal is in the best interests of City. Factors that may be considered by the city administrator include costs of sale, administrative costs, and public benefits to City. The city administrator will maintain a record of the reason for the disposal method selected, and the manner of disposal, including the name of the person to whom the surplus property was transferred. For the purpose of this rule, "commercially reasonable method" includes, without limitation, transfer or sale to another City department or agency, auction, bid, liquidation sale, fixed-price sale, trade-in, donation, and any other method determined reasonable under the circumstances by the city administrator.

(B) Disposal of Property with Minimal Value. Surplus property which has a value of less than $500, or for which the costs of sale are likely to exceed sale proceeds, may be disposed of by any means determined to be cost-effective, including by disposal as waste. Prior to disposing property pursuant to this subsection (B), the City official proposing to dispose the property will obtain a written confirmation from another City official determining that the value of the property is less than $500. City official making the disposal will make a record of the value of the item and the manner of disposal.

(C) Restriction on Sale to City Employees. City employees will not be restricted from competing, as members of the public, for the purchase of publicly-sold surplus property, but will not be permitted to offer to purchase property to be sold to the first qualifying bidder until at least three days after the first date on which notice of the sale is first publicly advertised.

15. Temporary Extensions or Renewals.

City may enter into contracts for a single period of one year or less, for the temporary extension or renewal of an expiring and non-renewable, or recently expired, contract, other than a contract for public improvements, without competitive bidding.

[Prev. adopt. in Res. No. 12-2006]

16. Temporary Use of City Property.

City may negotiate and enter into a license, permit or other contract for the temporary use of City-owned property without using a competitive selection process under the following circumstances:

(A) The contract results from an unsolicited proposal to City based on the unique attributes of the property or the unique needs of the proposer; and

(B) The proposed use of the property is consistent with City's use of the property and the public interest; and

(C) City reserves the right to terminate the contract without penalty, in the event that City determines that the contract is no longer consistent with City's present or planned use of the property or the public interest.

[Prev. adopt. in Res. No. 12-2006]

17. <u>Sponsorship Agreements</u>.

Sponsorship agreements, under which City receives or makes a gift, donation, or consideration in exchange for official recognition may be awarded by any method deemed appropriate by City, including without limitation, by direct appointment, private negotiation, from a qualified pool, or using a competitive process.

[Prev. adopt. in Res. No. 12-2006]

18. <u>Concession Agreements</u>.

City may enter into contracts that grant a franchise or concession to a private entity, individual, or other government to promote or sell, for its own business purposes, specified types of goods or services from City property and under which the concessionaire or promoter makes payments to City based, at least in part, on the concessionaire's revenues from sales or the value of such promotion to the sponsor's business, whether on or off City property. A concession agreement does not include an agreement which represents a rental, lease, license, permit or other arrangement for the use of public property. Concession agreements may be awarded by any method deemed appropriate by the city administrator including without limitation, by direct appointment, private negotiation, from a qualified pool, or using a competitive process.

[Prev. adopt. in Res. No. 12-2006]

19. <u>Donated Materials and/or Services</u>.

City may accept donated services and/or materials regardless of dollar amount under the following circumstances:

(A) The donor has agreed to donate all, or a portion of, the materials and/or services necessary to perform the work; and

(B) The donator enters into a license or agreement with City whereby the donator agrees to comply with public contract requirements applicable to the particular project and any requirements that City deems necessary or beneficial.

II. <u>EXEMPTIONS FOR PUBLIC IMPROVEMENT CONTRACTS</u>.

City may award a public improvement contract under an exemption to competitive procurement pursuant to the requirements of ORS 279C.335. Such procurements allow City to enter into one or more contracts over time without following the requirements of competitive sealed bidding, competitive sealed proposals, or small or intermediate procurements.

The Council declares the following public improvement contracts to be exempt from competitive bidding. Unless otherwise specified in a particular exemption rule, such contracts may be awarded in any manner that the city administrator deems appropriate to City's needs, including by direct appointment or otherwise. Except as otherwise provided, the city administrator will make a record of the method of award.

1. <u>Use of Existing Contractors</u>.

When a public improvement is in need of minor alteration, repair or maintenance at or near the site of work being performed by a City contractor, City may hire that contractor to perform such work, provided:

(A) The contractor was hired through a selection process permitted by City's public contracting rules; and

(B) The city administrator first obtains a price quotation for the additional work from the contractor that is competitive and reasonable; and

(C) The total cost of the proposed work will not exceed the Bureau of Labor and Industries' threshold specified in ORS 279C.810(2); and

(D) The original contract is amended to reflect the new work and is approved by the city administrator before work begins.

[Prev. adopt. in Res. No. 12-2006]

Exhibit C

Findings in Support of Adopting Class Special Procurements and Exemptions

ORS 279B.085 and 279C.335 authorize the LCRB, upon adoption of appropriate findings, to establish special selection, evaluation and award procedures for, or exempt from competition, the award of a specific contract or classes of contracts. Pursuant to that authority, the Council has, after notice and an opportunity to comment at a regular meeting of the Council, adopted Ordinance No. 886, which establishes classes of contracts and the solicitation methods for their award, together with the following specific findings in support thereof, or a determination that no findings are required.

I. SPECIFIC FINDINGS – CLASS SPECIAL PROCUREMENTS.

The Council approves the specific findings for the establishment of special solicitation methods for the classes of public contracts described below and also finds that the establishment of each class of contracts and the methods approved for their award (1) is unlikely to encourage favoritism in the awarding of public contracts or substantially diminish competition for public contracts, and (2) the awarding of public contracts under the exemption will result in substantial cost savings to City, or otherwise substantially promote the public interest in a manner that could not practicably be realized by complying with requirements that are applicable under ORS 279B.055, 279B.060, 279B.065 or 279B.070 or under any rules adopted thereunder.

1. Advertising Contracts, Purchase of.

(A) Alternate Award Process: city administrator's discretion.

(B) Cost Savings and Other Benefits: Size of and frequency of average advertisement (including all notices required to be published to City by applicable statute or regulation) does not justify the cost of solicitation. Time period of recognition of need to advertise until date of advertisement is too short to issue solicitation.

(C) Effect on Competition: The potential market is limited because not all advertisers work in all markets. Choice of advertising medium is somewhat price sensitive, but is primarily driven by location and size of circulation compared to City's target audience.

(D) Effect on Favoritism: Minimal. Due to the lack of competitors and specialized contracting needs.

2. Advertising Contracts, Sale of.

(A) Alternate Award Process: The city administrator may authorize the sale of advertising in City publications and for City activities, regardless of dollar value, without competitive bidding.

(B) Cost Savings and Other Benefits: Avoids an unnecessary solicitation expense.

(C) Effect on Competition: The sale of advertising is not for the purpose of generating revenue for City, but rather is utilized to offset the cost of publication.

Businesses generally purchase advertising space in the spirit of good will and as a means of supporting community activities.

(D) Effect on Favoritism: Minimal. Any interested individual or business who wishes to advertise may do by contacting City staff.

3. Equipment Repair and Overhaul.

(A) Alternate Award Process: Contracts may be awarded in the city administrator's discretion.

(B) Cost Savings and Other Benefits: The need for equipment repair cannot be planned for and often must be handled on an expedited basis to avoid additional expense and adverse impact on the public's ability to utilize City's services. Experience with a single contractor can help improve reliability over the course of several projects.

(C) Effect on Competition: Allows contractor be selected based on ability to provide accurate, reliable and fast service.

(D) Effect on Favoritism: Requirement that city administrator obtain competitive quotes when practical helps ensure that favoritism will not be greater than if statutory request for proposals process were used.

4. Purchase of Used Personal Property.

(A) Alternate Award Process: Contracts to be awarded in city administrator's discretion.

(B) Cost Savings and Other Benefits: City is responsible to manage expenditures in the best interests of the public. Cost savings can be achieved through the purchase of used property and equipment in certain instances. City purchases used property and equipment when it meets City's needs and is cost-effective. Considerations include type, quantity and estimated useful life of the used item.

(C) Effect on Competition: No impact. Allows City to respond to unique opportunities that become available sporadically and without notice. Used equipment and property is usually sold on a first-come, first-served basis. When used equipment or property does become available, City must be able to respond immediately in order to obtain the property or equipment.

(D) Effect on Favoritism: No impact. City is responding to unique opportunities. When a used item is available, there is often little competition available and sources for used items of the type, quality and quantity required by City are inconsistent.

5. Information Technology Contracts.

(A) Alternate Award Process: Competitive methods will be used wherever possible to achieve best value. In situations where a competitive process is deemed to be impractical, the reasons must be documented in the procurement file.

(B) Cost Savings and Other Benefits: Rapid changes in technology and technology pricing make it necessary for City to be able to purchase needed computer equipment quickly. It is frequently possible to take advantage of lower pricing due to the frequent price changes in the market place.

(C) Effect on Competition: Generally, there is sufficient competition among vendors in the area of information technology and software for City to secure competitive quotes. City is required to make a good-faith effort to secure competitive quotes under this rule.

(D) Effect on Favoritism: Minimal. City is required to obtain competitive quotes where practical. As price is the primary factor, it is unlikely that this special procurement will encourage favoritism in the awarding of public contracts.

6. <u>Telecommunications Systems – Hardware and Software Contracts</u>.

(A) Alternate Award Process: Competitive methods will be used whenever possible to achieve best value. The reasons why a competitive process was deemed to be impractical must be documented in the procurement file.

(B) Cost Savings and Other Benefits: Rapid changes in technology and technology pricing make it necessary for City to able to purchase needed telecommunications hardware and software quickly. It is important that City be able to take advantage of price competition in the market place.

(C) Effect on Competition: Since deregulation, there is generally sufficient competition among vendors of telecommunications hardware and software for City to secure competitive quotes. City is required to make a good-faith effort to secure competitive quotes under this rule.

(D) Effect on Favoritism: Minimal. City is required to obtain competitive quotes where practical. As price is the primary factor, it is unlikely that this special procurement will encourage favoritism in the awarding of public contracts.

7. <u>Telecommunications Services</u>.

(A) Alternate Award Process: The Chief Procurement Office may enter into a public contract for telecommunications services without competitive bidding, if no competition exists within the area for the service required.

(B) Cost Savings and Other Benefits: The city administrator will use competitive methods wherever possible to achieve best value. If competition exists, competitive quotes will be obtained.

(C) Effect on Competition: It is important that City take advantage of price competition in the market plan. There may be circumstances, however, where sufficient competition does not exist in the relative geographic and service market area. In such cases, City will follow this rule in determining whether sufficient competition exists to make a competitive procurement.

(D) Effect on Favoritism: Since deregulation, there is generally sufficient competition among vendors of telecommunications services for City to secure competitive quotes. Because price is a primary factor, it is unlikely that this special procurement will encourage favoritism in the awarding of public contracts.

8. Copyrighted and Library Materials.

(A) Alternate Award Process: Contracts may be awarded in the city administrator's discretion.

(B) Cost Savings and Other Benefits: This special procurement is necessary to allow City to acquire special needs products that are unique and for which a single copyright owner or licensee is the only source of the material. Eliminates unnecessary competitive solicitation when a competitive market does not exist.

(C) Effect on Competition: By their nature, copyrighted materials are protected for the use of a single owner and are often produced by a single supplier who may be the owner of the copyright or its licensee. Instructional materials are adopted through a statewide process under the authority of the Oregon Department of Education, City generally purchases its instructional materials through Northwest Textbook Depository. This allows City to benefit from the regional purchase and warehousing of these materials and the associated savings. This rule allows City to participate in the largest possible bulk purchasing activity of instructional materials in the region.

(D) Effect on Favoritism: Not applicable due to the lack of competitors and specialized contracting needs.

9. Requirements Contracts.

(A) Alternate Award Process: City initially awards requirements contracts as a result of competitive procurement or an applicable exemption. This special procurement allows such a contract to be converted into one that will allow City to secure a constant source of supply for the contracted-for goods.

(B) Cost Savings and Other Benefits: Allows City to reduce inventory, combine City requirements for volume discounts, standardize goods among City departments and reduce lead time for ordering.

(C) Effect on Competition: It is unlikely that this exemption will diminish competition for City contracts as City initially enters into such contracts through a competitive process or applicable exemption.

(D) Effect on Favoritism: Minimal. City initially enters into such contracts through a competitive process or exemption.

10. Purchases under Federal Contracts.

(A) Alternate Award Process: This special procurement allows the city administrator to make purchases of goods and services when the price has been established

by a contract of the federal government, which contract was awarded through a competitive procurement process.

(B) Cost Savings and Other Benefits: City may use this special procurement method when it determines that there is a cost savings to be made in avoiding the solicitation process.

(C) Effect on Competition: The contracts are awarded through competitive processes that meet the standards of the Oregon public contracting code. Oregon companies are not excluded or disadvantaged in participating in bidding on federal contracts.

(D) Effect on Favoritism: Minimal. The contracts are awarded at the price most advantageous to the federal government. City is required to document the cost savings it will achieve by using the contract. These facts ensure that City purchases the desired goods or services at the best price available, rather than from a preferred contractor.

11. Hazardous Material Removal and Cleanup.

(A) Alternate Award Process: Contracts may be awarded in the city administrator's discretion.

(B) Cost Savings and Other Benefits: When City is ordered to remove or clean up hazardous material, it must respond within a very short time period. This time period does not generally allows for City to take the time necessary to solicit written bids or proposals for the work to be performed. Failure to comply within the allotted time period could make City liable for delays in responding to cleanup or removal orders. Such delay might also expose City to potential liability from third parties if the cleanup is not completed quickly.

(C) Effect on Competition: This special procurement will only be used in an emergency or in situations where a remedial order is in effect and therefore there is no time to employ a competitive procurement method. Routine competitive procurement methods will used where time permits.

(D) Effect on Favoritism: Minimal. City will follow competitive procurement procedures unless precluded by time constraints.

12. Insurance – Employee Benefit and Other.

(A) Alternate Award Process: City may purchase employee benefit insurance and other insurance without competitive bidding, regardless of dollar amount subject to the terms of any collective bargaining agreement.

(B) Cost Savings and Other Benefits: The nature, type, specific services to be provided and timing of employee benefit insurance are dictated by collective bargaining agreements between City and represented labor groups. City must fulfill its contractual obligations to represented employee groups to provide appropriate employee benefits. City relies on its professional insurance broker or

agent-of-record to solicit competitive proposals from responsible companies to furnish employee benefit coverages and other insurance coverages.

(C) Effect on Competition: Minimal. City's agent-of-record, solicits proposals from employee benefit insurance providers and other insurance providers under conditions that foster competition among a sufficient number of potential suppliers. City evaluates the proposals submitted to furnish employee benefit insurance for the best value to City given the requirements specified by the employee benefits portions of City's agreements with represented labor groups.

(D) Effect on Favoritism: No impact. Responds to unique opportunities.

13. Disposal of Abandoned, Seized or Non-owned Property.

(A) Alternate Award Process: Abandoned, seized or non-owned property may be disposed of in the city administrator's discretion.

(B) Cost Savings and Other Benefits: Avoids an unnecessary solicitation expense by allowing the city administrator to determine whether the cost of solicitation is justified by the value of the property to be disposed. Allows the city administrator to establish programs for donation to charitable organizations.

(C) Effect on Competition: No impact. Responds to unique opportunities.

(D) Effect on Favoritism: No impact. Responds to unique opportunities.

14. Disposal of Surplus Property.

(A) Alternate Award Process: Surplus property may be disposed of in the City administrator's discretion.

(B) Cost Savings and Other Benefits: Avoids an unnecessary solicitation expense by allowing the city administrator to determine whether the cost of solicitation is justified by the value of the property to be disposed. Allows the city administrator to establish programs for donation to charitable organizations.

(C) Effect on Competition: No impact. Responds to unique opportunities.

(D) Effect on Favoritism: No impact. Responds to unique opportunities.

15. Temporary Extensions or Renewals.

(A) Alternate Award Process: Renewal: No competitive selection required:

(B) Cost Savings and Other Benefits: Allows City to prepare for competitive solicitation when existing contracts expire without notice due to administrative error.

(C) Effect on Competition: Delays competition by not more than one year.

(D) Effect on Favoritism: No impact. At expiration of temporary extension, standard competitive procedures will apply.

16. **Temporary Use of City Property.**

(A) Alternate Award Process: Contracts may be awarded in city administrator's discretion.

(B) Cost Savings and Other Benefits: Allows City to respond to unsolicited proposals for unique revenue opportunities.

(C) Effect on Competition: None. No competitive market.

(D) Effect on Favoritism: No impact. Responds to unique opportunities.

17. **Sponsorship Agreements.**

(A) Alternate Award Process: Contracts may be awarded in the city administrator's discretion.

(B) Cost Savings and Other Benefits: This special procurement allows City to respond to unsolicited proposals for revenue or marketing opportunities that would otherwise be unknown or unavailable.

(C) Effect on Competition: Mandatory open competition would likely discourage creative proposals from sponsors or City participation. Sponsorship often results from the match between a unique attribute of an event or asset and unique characteristics of the sponsor for which no competitive market exists.

(D) Effect on Favoritism: Minimal. Responds to unique opportunities.

18. **Concession Agreements.**

(A) Alternate Award Process: city administrator to adopt rules for award similar to those used for personal service contracts.

(B) Cost Savings and Other Benefits: Allows City to take advantage of unique revenue opportunities. Not a contract for the acquisition or disposal of goods or services. Most similar to personal services contracts because the quality of the concession may be more important than price factors. Allows a private entity or individual to promote or sell, for its own business purposes, specified types of goods or services from City property. Concessionaire makes payments to City based, in part, on the Concessionaire's revenues from the concession.

(C) Effect on Competition: Minimal. Responds to unique opportunities.

(D) Effect on Favoritism: Minimal. Responds to unique opportunities.

19. **Donated Materials and/or Services.**

(A) Alternate Award Process: Subject to the requirements of this special procurement, the city administrator will award such contracts in the city administrator's discretion, including through direct solicitation.

(B) Cost Savings and Other Benefits: Avoids unnecessary expenditure when services and/or materials are donated to City. Affords City the ability to take advantage of such donated materials and/or services, enables City to use its limited funds in other areas, and frequently results in materials and/or services City would not otherwise be able to afford.

(C) Effect on Competition: No competitive market exists or equivalent vendors will be identified and allowed to compete.

(D) Effect on Favoritism: Minimal. Not applicable where services and/or materials are donated.

II. SPECIFIC FINDINGS – EXEMPTIONS FOR PUBLIC IMPROVEMENT CONTRACTS.

The Council approves the specific findings for the exemptions for each class of public improvement established in the provisions described below and also finds that the establishment of each class of contracts and the methods approved for their award (1) is unlikely to encourage favoritism in the awarding of public improvements contracts or substantially diminish competition for public improvement contracts, and (2) the awarding of public improvement contracts under each exemption will result in substantial cost savings to City.

1. Use of Existing Contractors.

(A) Alternate Award Process: From time to time, City needs to perform repair or maintenance functions at or near a site where a contractor, already hired by City through a competitive selection process, is performing other work. The city administrator may obtain an informal price quotation from the contractor already at or near the site to perform the additional work. If the city administrator determines that the informal price quotation is competitive for work of that type, then the contractor may be awarded this additional work without the need for competitive bidding provided that the value of the additional work, as estimated by the contractor, does not exceed $25,000.

(B) Cost Savings and Other Benefits: City will achieve cost savings because the cost of the additional work will be lower than if the work was competitively bid because the contractor is already mobilized at or near the site of the work and will not need to recover the cost of mobilization as a new contractor would.

(C) Effect on Competition: It is unlikely that this special procurement will substantially diminish competition in the award of City contracts, as the contractor was originally selected through a competitive bidding process.

(D) Effect on Favoritism: Not applicable where the contractor has already been selected through an appropriate contracting method. The occurrence of such additional work is haphazard and often was not foreseen and City is not required to provide the contractor with the work if the estimated price is not competitive.

THE CITY OF MADRAS

EST. 1910

PUBLIC NOTICE

ORDINANCES NO. 886

The City Council of the City of Madras, Oregon, will be considering approval of proposed Ordinance No. 886 during their regularly scheduled City Council meeting on Tuesday, March 22, 2016 at 7:00 p.m. in the Madras City Hall Council Chambers.

ORDINANCE NO. 886

An ordinance amending, restating, superseding, and replacing Madras Ordinance No. 808 in its entirety, which ordinance concerns public contracting rules and procedures; and declaring an emergency.

A copy of the proposed ordinance will be available for review at the Madras City Hall, located at 125 S.W. 'E' Street, during the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday. The proposed ordinance can also be found on the City's website at www.ci.madras.or.us .

Publish Date: March 16, 2016 (Madras Pioneer)

Posting Locations: Jefferson County Clerk's Office
Madras City Hall
U.S. Post Office

POSTING CHECKLIST

PUBLIC NOTICE

ORDINANCES NO. 886
PUBLIC CONTRACTING RULES AND PROCEDURES
MARCH 22, 2016

1) Public Notices need to be e-mailed and/or mailed to the news media, Jefferson County Commissioners, and City Council members, as well as the other individuals listed on the attached list:

Copies E-Mailed: March 10, 2016

2) A copy was E-mailed to the Madras Pioneer on: March 10, 2016
(as required by the Madras Pioneer)

For Publication on: March 16, 2016

3) A copy of the Public Notice must be posted at the following locations:

- Madras City Hall
- Jefferson County Courthouse Annex
- Jefferson County Library (Only if the notice pertains to original annexation hearing)
- U.S. Post Office

Dated Posted:

Madras City Hall	March 10, 2016	Posted by Michele Quinn
Jefferson County Courthouse Annex	March 10, 2016	
U.S. Post Office	March 10, 2016	

4) The Jefferson County Commissioners should receive a copy for each Commissioner of any Public Notices, especially if they pertain to City Council-County Commission meetings.

A copy was hand delivered _____ or E-mailed ✓ to the Jefferson County Commissioners on: March 10, 2016

5) Posted on City's Web Page: March 10, 2016

Karen Coleman

From: JLantz@MadrasPioneer.com
Sent: Thursday, March 10, 2016 3:42 PM
To: Karen Coleman
Subject: RE: Public Notice - Proposed Ordinance No. 886 (Public Contract Rules and Procedures)

Karen,
I have this set to publish as requested- thank you,
Joey

From: Karen Coleman [mailto:kcoleman@ci.madras.or.us]
Sent: Thursday, March 10, 2016 3:19 PM
To: Joey Lantz <JLantz@MadrasPioneer.com>
Subject: Public Notice - Proposed Ordinance No. 886 (Public Contract Rules and Procedures)

Joey:

Please publish the attached Public Notice pertaining to proposed Ordinance No. 886 in the Madras Pioneer on Wednesday, March 16, 2016 and provide written confirmation that you received the notice and will publish it as requested. Thank you.

Karen J. Coleman
City Recorder
125 S.W. "E" Street
Madras, Oregon 97741-1346

(541) 325-0302

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PUBLIC RECORDS LAW DISCLOSURE: Under Oregon's Public Records Law (ORS 192.410 - 192.505), e-mails are generally considered "public records". Therefore, this e-mail (including any attachments) may be subject to public inspection unless exempt from disclosure under Oregon's Public Records Law.

Thank you.

Karen Coleman

From: Karen Coleman
Sent: Thursday, March 10, 2016 3:26 PM
To: Alexa Gassner (Alexa.Gassner@co.jefferson.or.us); Barbara Andresen; Bartt Brick (bbrick@ci.madras.or.us); Bill Montgomery (williamd41@gmail.com); Chuck Schmidt (schmidthouse1986@Q.com); Gary Walker (gwalker@ci.madras.or.us); Gus Burril ; Holly Gill (hgill@madraspioneer.com); Janet Brown; Jeff Hurd (jhurd@ci.madras.or.us); Jeff Rasmussen (Jeff.rasmussen@co.jefferson.or.us); Jeremy Green; Joe Ditzler (jditzler@bendbulletin.com); Karole Stockton; KTVZ (stories@ktvz.com); KWSO Radio (kwsonews@wstribes.org); Mae Huston (mae.huston@co.jefferson.or.us); Mike Ahern (Mike.ahern@co.jefferson.or.us); Mike Throop (mthroop55@hotmail.com); Nick Snead (nsnead@ci.madras.or.us); Pamela Andrews; Richard Ladeby (LadebyRichard@gmail.com); Richard Ladeby (rladeby@ci.madras.or.us); Rod Fulton; Royce Embanks Jr.; Sara Puddy; Sue Matters (smatters@wstribes.org); Tammy McHaney; Tom and Janet Brown; Wayne Fording (Wayne.fording@co.jefferson.or.us)
Subject: Proposed Ordinance No. 886 - Public Contract Rules and Procedures
Attachments: PublicNotice-OrdinanceNumber886-PublicContractRulesAndProcedures.03-10-2016.pdf

Attached is a copy of proposed Ordinance No. 886 which will be presented to the Council on March 22, 2016 for review and consideration. Please do not hesitate to call should you have any questions. Thank you.

Karen J. Coleman
City Recorder
125 S.W. "E" Street
Madras, Oregon 97741-1346

(541) 325-0302

CONFIDENTIALITY NOTICE: This e-mail (including any attachments) is for the sole use of the intended recipient(s) and may contain confidential and/or privileged information. Any unauthorized review, use, disclosure, and/or distribution of this e-mail is prohibited. If you are not the intended recipient, please contact the sender by reply e-mail and destroy all copies of the e-mail (including the attachments).

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Thank you.

CITY OF MADRAS

Request for Council Action

Date Submitted:	March 17, 2016
Agenda Date Requested:	March 21, 2016
To:	Mayor and City Council Members
Through:	Gus Burril, City Administrator
From:	Sara Puddy, HR and Administrative Coordinator
Subject:	Approval of the following Wilbur Ellis Documents: 1) Purchase and Sale Agreement; 2) Amended and Restated Lease Agreement; and 3) Rail Transfer Agreement

TYPE OF ACTION REQUESTED:

[ ] Resolution [ ] Ordinance

[X] Formal Action/Motion [ ] Contract Review Board

[ ] None - Report Only; Discussion item only

Formal action/motion that Council approve the following draft documents, contingent on FAA approval and concurrence, authorizes the City Administrator and the City Attorney to finalize the following documents as they pertain to Wilbur Ellis Company, LLC.: 1) Purchase and Sale Agreement; 2) Amended and Restated Lease Agreement; and 3) Rail Transfer Agreement.

DISCUSSION AND STAFF ANALYSIS:

Staff is presenting three documents for council's approval. These documents are consistent with past work performed and presented to City Council for Connect Oregon IV rail improvements and from documents presented for Federal Aviation Administration (FAA) land release approval.

1) Purchase and Sale Agreement (contingent on FAA land release approval)

- Approximately 5.22 acres
- Sale price based on real market value, negotiated at $224,460.00
    - Deduct rent credit of $29,350.24
    - Deduct common area and airport improvements completed by tenant $23,146.80

- See attached agreement

2) Amended and Restated Lease Agreement (result of purchase and sale agreement)
- Original lease dated January 1, 1995; amended April 9, 2002
- Amended/restated lease agreement expires January 1, 2025
- Tenant has ability to extend terms of lease for two additional terms of ten years each
- Agreement stipulates the terms/conditions of rent, escalation and other applicable charges
- See attached agreement

3) Rail Transfer Agreement (result of purchase and sale agreement)
- Rail spur and conveyor system is currently being operated by Wilbur Ellis, and is located on the property covered under their purchase and sale agreement and amended and restated lease agreement
- See attached agreement

Additional finalizing of each respective document still needs to occur. In an effort to keep this process moving forward, staff is asking for council's authorization to allow staff and legal counsel to work with Wilbur Ellis and finalize these documents on behalf of the City.

SUMMARY:

A. **Fiscal Impact:**

Purchase and Sale Revenue:

• Sale Price	$224,640 (determined by appraisal)
• Excess Rent Credit	<$29,350.24>
• Mill St. Imp. Credit	<$23,146.80>
• Land sale partition/ closing costs	$ 3,662.50 (50% portion from Wilbur Ellis)

Estimated Net Revenue: $175,805.46

Lease Agreement Revenue:

• Base rent (first premises)	$1,787.62 per acre per year
• Base rent (2nd premises)	$3,010.00 per acre per year
• Escalation fees apply	
• Rail spur fee	$16.00 per rail car per year

B. **Funding Source:**
- *Revenue (estimated):*
  - Airport Operations Fund $175,042.96
  - Community Development Fund $762.50

- *Expenses (estimated):*
    - Airport Operations Fund $14,800.00
        - Legal fees
        - Professional services (partition, closing, etc.)
    - Community Development Fund $1,525.00 (partition fee)

C. <u>Recognition of Collateral Material and Technical Report:</u>

- Attached is: 1) Purchase and Sale Agreement; 2) Amended and Restated Lease Agreement; and 3) Rail Transfer Agreement.

DRAFT

PURCHASE AND SALE AGREEMENT

This Purchase and Sale Agreement (this "Agreement") is made and entered into effective on _____, 2016 (the "Effective Date") between City of Madras, an Oregon municipal corporation ("Seller"), whose address is 125 SW E Street, Madras, Oregon 97741, and Wilbur-Ellis Company LLC, an California limited liability company ("Buyer"), whose address is 345 California Street, 27th Floor, San Francisco, California 94104.

RECITALS:

A. Seller and Buyer are parties to that certain Lease Agreement dated January 1, 1995 (the "Original Lease") concerning certain premises as defined in the Original Lease. The Original Lease was amended by a First Amendment to Lease Agreement ("First Amendment") on April 9, 2002 and certain additional premises were leased from Seller to Buyer. The Original Lease and First Amendment are collectively referred to as the "Lease."

B. Pursuant to the terms of the Lease and subject to certain terms and conditions, including, without limitation, the FAA Approval (defined below), Seller agreed to sell to Buyer certain property consisting of approximately 5.22 acres as generally depicted on Exhibit A (the "Property"). The legal description of the Property will be updated and attached to this Agreement after the completion of the Partition (as defined below).

C. Subject to the terms and conditions contained in this Agreement, Buyer now desires to purchase the Property from Seller and Seller agrees to sell the Property to Buyer.

AGREEMENT:

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

1. DEFINITIONS

Unless defined elsewhere in this Agreement, capitalized terms used in this Agreement have the meanings assigned to them in the attached Appendix A.

2. SALE OF PROPERTY

2.1 Sale; Purchase Price; Rent Credit. Subject to the terms and conditions contained in this Agreement, Seller will sell the Property to Buyer and Buyer will purchase the Property from Seller. The purchase price for the Property is Two Hundred Twenty Four Thousand Four Hundred Sixty Dollars ($224,460.00) (the "Purchase Price"). At the Closing and subject to the Closing Conditions (as defined below), Buyer will receive the following credits towards the Purchase Price ("Credits"): (a) a credit for common area and airport improvements completed by Buyer during the term of the Lease in the amount of $23,146.80; and (b) rent credits related to the Lease calculated by Seller and approved by Buyer and FAA. If Closing occurs on June, 1, 2016, Seller and Buyer agree that the rent credits (subject to FAA approval) will be calculated at $29,350.24, which amount will be adjusted at the Closing in accordance with the actual Closing Date. At or before Closing, Buyer shall deposit the balance of the

Purchase Price (the "Balance") by wire transfer of immediately available funds into an escrow ("Escrow") established with Title Company.

2.2 Property Sold AS-IS. Except for those representations and warranties made by Seller in this Agreement, (a) Seller expressly excludes all warranties with respect to the Property, express and implied, and (b) Seller will sell the Property to Buyer AS-IS and WITH ALL FAULTS. Buyer is currently in possession of the Property. Buyer represents and warrants to Seller as of the Effective Date and at Closing that (a) Buyer has entered into this Agreement on the basis of its own examination and personal knowledge of the Property, (b) Buyer has conducted an investigation and all due diligence Buyer deems necessary regarding the Property, (c) Buyer has not relied on any representations or warranties made by Seller and/or any of Seller's Representatives other than those expressly provided in this Agreement, and(d) Seller is in compliance with all the terms of the Lease. Subject to the terms and conditions contained in this Agreement, Buyer will accept the Property in its AS-IS condition as of the Closing Date.

2.3 Partition. The sale of the Property is subject to and contingent on Seller completing a partition and/or lot line adjustment(s) related to the Property (the "Partition"). Notwithstanding anything to the contrary in this Agreement, the costs of the Partition will be shared equally between Seller and Buyer, including, without limitation, all survey costs, filing fees, community development fees, and recording costs and excluding any attorney fees (the "Partition Costs"). Buyer will pay 50% of all Partition Costs within five (5) business days after written invoice from Seller.

3. SELLER'S REPRESENTATIONS AND WARRANTIES

Subject to the Closing Conditions, Seller represents and warrants to Buyer, on the Effective Date and as of the Closing Date, as follows:

3.1 Authority. Seller has full power and authority to sign and deliver this Agreement and to perform all of Seller's obligations under this Agreement

3.2. Enforceability. Each of this Agreement and the other agreements contemplated herein to which Seller is a party has been duly executed and delivered by Seller, and assuming due authorization, execution and delivery by Buyer to the extent Buyer is a party, constitutes the valid and binding agreement of Seller, enforceable in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization or other laws affecting the enforceability of creditors' rights generally or by principles of equity.

3.3 Title. If the Closing occurs, Seller will transfer and convey title to the Property to Buyer free and clear of any and all Encumbrances except for the Permitted Closing Encumbrances.

3.4 Brokers; Non-foreign Person. Seller has not incurred any liability or obligation – whether contingent or otherwise – for a brokerage commission, a finder's fee, or any other similar payment in connection with this Agreement or the Transaction. Seller is not a "foreign person" for purposes of Section 1445 of the Internal Revenue Code.

4. BUYER'S REPRESENTATIONS AND WARRANTIES

Buyer represents and warrants to Seller, on the Effective Date and as of the Closing Date, as follows:

4.1 Authority. Buyer has full power and authority to sign and deliver this Agreement and to perform all of Buyer's obligations under this Agreement

4.2. Enforceability. Each of this Agreement and the other agreements contemplated herein to which Buyer is a party has been duly executed and delivered by Buyer, and assuming due authorization, execution and delivery by Seller to the extent Seller is a party, constitutes the valid and binding agreement of Buyer, enforceable in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization or other laws affecting the enforceability of creditors' rights generally or by principles of equity.

5. PRELIMINARY TITLE REPORT; CONDITIONS TO CLOSING

5.1 Preliminary Title Report. Within twenty (20) days after the receipt of the FAA Approval and the completion of the Partition, Seller will order from the Title Company, a preliminary title report showing the condition of title to the Property, together with complete and legible copies of all exceptions listed therein (the "Preliminary Commitment"). Buyer will have ten (10) days after Buyer's receipt of the Preliminary Commitment within which to give notice in writing to Seller (the "Notice of Unpermitted Exceptions") of Buyer's disapproval of any exceptions shown in the Preliminary Commitment. If Buyer fails to provide Seller the Notice of Unpermitted Exceptions within the ten-day period, all exceptions set forth in the Preliminary Commitment will be Permitted Closing Encumbrances. If Buyer timely provides Seller the Notice of Unpermitted Exceptions, Seller will notify Buyer within ten (10) days after Seller's receipt of the Notice of Unpermitted Exceptions (the "Notice of Removal") whether Seller is willing and able to remove the unpermitted exceptions identified in the Notice of Unpermitted Exceptions. If Seller is willing and able to remove such unpermitted exceptions, Seller will do so at or prior to Closing. If Seller is not willing or unable to remove such unpermitted exceptions and/or fails to provide a Notice of Removal, Buyer may, by written notice to Seller within ten (10) days after Buyer's receipt of the Notice of Removal, exercise any of the following rights or remedies: (a) Buyer may terminate this Agreement, and thereafter neither party will have any further rights, remedies, and/or obligations with respect to the Property except for the Lease which remains in full force and effect; (b) Buyer may approve the Preliminary Commitment subject to the unpermitted exceptions; or (c) Buyer may attempt to remove the unpermitted exceptions or any of them with Seller's cooperation and assistance at no cost to Seller.

5.2 Restriction on Transfer. Until the Closing or the termination of this Agreement, Seller will not Transfer the Property or any interest in the Property without the prior written consent of Buyer.

5.3 Closing Conditions.

5.3.1 The obligation of Buyer to close the Transaction shall be subject to the fulfillment, or written waiver by Buyer, at or prior to the Closing, of each of the following conditions (the "Buyer Closing Conditions"): (a) all approvals necessary to complete the Partition of the Property must be completed and Buyer must have paid for its portion of such Partition Costs pursuant to the terms of this Agreement, (b) all necessary approvals to enter into this Agreement and transfer the Property to Buyer on the terms and conditions contained herein must be received, including, without limitation, the Federal Aviation Administration ("FAA") which must approve in writing this Agreement, including, without limitation, the Purchase Price and the Credits (the "FAA Approval"), and (c) Seller shall have deposited the Seller's Closing Documents (as defined below) into Escrow in accordance with Section 6.2.1 the Title Company is prepared

to record the Deed in the Official Records of Jefferson County, Oregon, and to issue to Buyer the Title Insurance in the amount of the Purchase Price subject only to the Permitted Closing Encumbrances.

5.3.2 The obligation of Seller to consummate the Transaction shall be subject to the fulfillment, or written waiver by Seller, at or prior to the Closing, of each of the following conditions (the "Seller Closing Conditions," and together with the Buyer Closing conditions, the "Closing Conditions"): (a) all approvals necessary to complete the Partition of the Property must be completed, (b) the FAA Approval must be obtained from the FAA, and (c) Buyer shall have deposited the Buyer's Closing Documents (as defined below) and the Closing Funds (as defined below) into Escrow in accordance with Section 6.2.2 and Buyer must have paid Buyer's share of the Partition Costs in accordance with Section 2.3.

6. ESCROW INSTRUCTIONS; CLOSING; PRORATIONS

6.1 Escrow Instructions. After receiving approval of the FAA, the parties hereto shall deposit a copy of this Agreement with the Title Company, and this instrument shall serve as the instructions to the Title Company as the escrow holder for consummation of the Transaction. Seller and Buyer agree to execute such reasonable additional and supplementary escrow instructions as may be appropriate to enable the Title Company to comply with the terms of this Agreement; provided, however, that in the event of any conflict between the provisions of this Agreement and any supplementary escrow instructions, the terms of this Agreement shall control.

6.2 Deposit of Documents and Closing Funds.

6.2.1 At or before the Closing, Seller shall deposit into Escrow the following items (collectively, "Seller's Closing Documents"):

(1) the duly executed and acknowledged Deed conveying the Property to Buyer;

(2) an affidavit pursuant to Section 1445(b)(2) of the Federal Code, and on which Buyer is entitled to rely, that Seller is not a "foreign person" within the meaning of Section 1445(f)(3) of the Federal Code; and

(3) the Amended and Restated Lease Agreement and Rail Transfer Agreement, each duly executed by Seller.

6.2.2 At or before Closing, Buyer shall deposit into Escrow the following items:

(1) the funds (including the Balance) that Buyer is responsible to pay pursuant to this Agreement in order to effect Closing hereunder (the "Closing Funds"), by wire transfer of immediately available funds; and

(2) the Amended and Restated Lease Agreement and Rail Transfer Agreement, each duly executed by Buyer (collectively, "Buyer's Closing Documents").

6.2.3 Seller and Buyer shall each deposit such other instruments as are reasonably required by the Title Company or otherwise required to close the Escrow and consummate the acquisition of the Property in accordance with the terms hereof. Seller and Purchaser hereby designate Title Company as the "Reporting Person" for the transaction pursuant to Section 6045(e) of the Internal Revenue Code and the regulations promulgated thereunder and agree to execute such documentation as is reasonably necessary to effectuate such designation.

6.3 Closing. Closing shall occur within thirty (30) days after the satisfaction of the Closing Conditions. As soon as:

6.3.1 Seller has delivered into Escrow the Seller's Closing Documents and Buyer has approved each of the same as satisfying the requirements of this Agreement;

6.3.2 Buyer has delivered into Escrow the Buyer's Closing Documents and Seller has approved each of the same as satisfying the requirements of this Agreement;

6.3.3 Buyer has delivered into Escrow the Closing funds; and

6.3.4 The Title Company is prepared to record the Deed in the Official Records of Jefferson County, Oregon, and to issue to Buyer the Title Insurance in the amount of the Purchase Price subject only to the Permitted Closing Encumbrances;

6.3.5 Then, and only then,

6.3.5.1 the Title Company shall: (a) record the Deed; (b) disburse to Seller's account the Balance, net of any applicable prorations as set forth in Section 6.4 below; (c) deliver to Buyer a conformed copy of the Deed showing all recording information, a buyer's closing statement, and the rest of Seller's Closing Documents; and (d) deliver to Seller a seller's closing statement, and the rest of Buyer's Closing Documents; and

6.3.5.2 Seller shall deliver exclusive possession of the Property to Buyer, subject to the Permitted Closing Encumbrances.

6.4 Prorations. Taxes for the current year and any expenses of the operation and maintenance of the Property incurred by Seller shall all be prorated as of 12:01 a.m. on the date the Deed is recorded, on the basis of a 365-day year. Seller shall receive credits at Closing for the amount of any utility or other deposits with respect to the Property. To the extent necessary, Buyer shall cause all utilities to be transferred into Buyer's name and account at the time of Closing. Seller and Buyer hereby agree that if any of the aforesaid prorations and credits cannot be calculated accurately on the Closing Date, then the same shall be calculated as soon as reasonably practicable after the Closing Date and either party owing the other party a sum of money based on such subsequent proration(s) or credits shall promptly pay said sum to the other party. The provisions of this Section 6.4 shall survive the Closing.

6.5 Costs and Expenses. All Partition Costs will be paid as provided in Section 2.3. All deeds will be recorded at Buyer's expense, and all other escrow fees and closing costs (other than the fees and expenses of legal counsel, accountants and other advisors) associated with the Transfer shall be divided equally between Seller and Buyer. Except as expressly set forth herein, each party hereto shall pay its own expenses incurred in connection with this Agreement and the Transaction, including, without limitation, the fees and expenses of its legal counsel, accountants and other advisors.

6.6 Title Insurance. Within thirty (30) days after the Closing Date, Title Company will furnish Buyer with an ALTA Owner's Policy of Title Insurance or an equivalent insurance policy (the "Title Insurance") in the amount of the Purchase Price, insuring Buyer as the owner of the Property subject only to Title Company's standard preprinted exceptions and the Permitted Closing Encumbrances. The premium for the standard Title Insurance shall be shared equally by the parties, and any additional premiums attributable to extended ALTA coverage shall be the responsibility of Buyer.

7. TERMINATION; DEFAULT; BUYER RELEASE

7.1 Termination. This Agreement will terminate upon the earliest to occur of the following: (a) upon notice from either party if Closing has not occurred by the Closing Deadline; or (b) upon written notice from the non-breaching to the breaching party if the breaching party has failed to cure its defaults alleged in a Default Notice (as defined below) within thirty (30) days after the breaching party's

receipt of such Default Notice. Upon termination pursuant to this Section 7.1, neither party thereafter will have any further rights, remedies, and/or obligations with respect to this Agreement.

7.2 Default. If Seller breaches and/or otherwise fails to perform any of Seller's representations, warranties, covenants, and/or obligations contained in this Agreement, time of payment and performance being of the essence, Buyer will have any and all remedies available at law or in equity, including, without limitation, the remedy of specific performance. All available remedies are cumulative and may be exercised singularly or concurrently.

7.3 Buyer Default. If Buyer defaults under the terms of this Agreement, Seller's damages as a result of the breach would be impracticable to ascertain. Accordingly, if Buyer breaches this Agreement, Seller's sole and exclusive remedy is to retain the Credits and Buyer will have no other liability of any kind or nature to Seller and Buyer will have no further rights to purchase the Property and/or receive any future rent credits pursuant to the terms of the Lease and the release provided in Section 7.7 will have been deemed automatically provided by Buyer to Seller.

7.4 Notice of Default. Prior to declaring a party in default under this Agreement, the non-defaulting party will provide the defaulting party written notice (the "Default Notice") specifying with reasonable particularity all defaults under this Agreement that the non-defaulting party believes exist. The defaulting party will have the right to cure the alleged defaults within thirty (30) days after receipt of the Default Notice to avoid any breach under this Agreement.

7.5 Remedies. Seller acknowledges that the remedies available at law for any breach of this Agreement by Seller will, by their nature, be inadequate. Accordingly, Buyer may obtain injunctive relief or other equitable relief to restrain a breach or threatened breach of this Agreement or to specifically enforce this Agreement, without proving that any monetary damages have been sustained.

7.6 Condemnation; Risk of Loss. If, prior to the Closing, all or any material portion of the Property is taken by condemnation, eminent domain, or is the subject of a pending or contemplated taking which has not been consummated, or if the Property is substantially destroyed or rendered unusable, Seller will notify Buyer of such fact in writing. In such event, Buyer will have the option to terminate this Agreement upon written notice to Seller. Upon such termination, neither party will have any further rights or obligations hereunder, other than pursuant to any provision hereof that expressly survives the termination of this Agreement. If Buyer elects not to terminate this Agreement, Seller will assign and turn over to Buyer, and Buyer will be entitled to receive and keep, all awards for the taking by condemnation or insurance proceeds and Buyer will be deemed to have accepted the Property subject to the taking or loss without reduction in Purchase Price.

7.7 Buyer Release. Subject to the terms and conditions of this Agreement, if all of the Closing Conditions are satisfied and Buyer fails to close the Transaction on or before the Closing Deadline (except as a result of default by Seller), Buyer releases Seller and the Seller's Representatives for, from, and against any and all claims, actions, proceedings, damages, liabilities, injuries, losses, and expenses of every kind, whether known or unknown, including, without limitation, attorney fees, resulting from or arising out of, whether directly or indirectly, the Lease prior to the Effective Date and hereby expressly waives Buyer's rights to purchase the Property and any and all options to purchase the Property previously granted to Buyer. The provisions of this Section 7.7 and the Buyer's release expressly survive the termination of this Agreement.

8. GENERAL PROVISIONS

8.1 Survival; Time of Essence; Attorney Fees. All of Seller's and Buyer's respective representations, warranties, covenants, and indemnity obligations arising under or made in this Agreement, along with the terms and provisions set forth in Section 8, will survive the closing of the Transaction and will not merge into the Deed. Time is of the essence with respect to each and every obligation of the parties hereunder. With respect to any dispute relating to this Agreement, or if a suit, action, arbitration, or other proceeding of any nature whatsoever is instituted to interpret or enforce the provisions of this Agreement, including, without limitation, any proceeding under the U.S. Bankruptcy Code and involving issues peculiar to federal bankruptcy law or any action, suit, arbitration, or proceeding seeking a declaration of rights or rescission, the prevailing party will be entitled to recover from the losing party its reasonable attorney fees, paralegal fees, expert fees, and all other fees, costs, and expenses incurred in connection therewith, as determined by the judge or arbitrator at trial, arbitration, or other proceeding, or on any appeal or review, in addition to all other amounts provided by law.

8.2 Binding Effect; Notices. Subject to Section 8.7, this Agreement will be binding on and will inure to the benefit of Seller, Buyer, and their respective heirs, legal representatives, successors, and assigns. All notices or other communications required or permitted by this Agreement must be in writing, must be delivered to the parties at the addresses first set forth above, or any other address that a party may designate by written notice to the other party, and are considered delivered upon actual receipt if delivered personally, by fax, or by a nationally recognized overnight delivery service or at the end of the third business day after the date of deposit if deposited in the United States mail, postage pre-paid, certified, return receipt requested.

8.3 Entire Agreement; Applicable Law; Severability. This Agreement, the Rail Transfer Agreement, and the Amended and Restated Lease Agreement set forth the entire understanding of the parties with respect to the Transaction. This Agreement supersedes any and all prior negotiations, discussions, agreements, and understandings between the parties with respect to the Transaction. This Agreement may not be modified or amended except by written agreement executed by the parties to this Agreement. This Agreement will be construed, applied, and enforced in accordance with the laws of the State of Oregon. Any action or proceeding arising out of this Agreement will be litigated in courts located in Jefferson County, Oregon. Each party consents and submits to the jurisdiction of any local, state, or federal court located in Jefferson County, Oregon. If a provision of this Agreement is determined to be unenforceable in any respect, the enforceability of the provision in any other respect and of the remaining provisions of this Agreement will not be impaired.

8.4 Execution; Counterparts; Time. The parties may execute this Agreement in separate counterparts, each of which when executed and delivered will be an original, but all of which together will constitute one and the same instrument. Facsimile or email transmission of any signed original document will be the same as delivery of an original. At the request of any party, the parties will confirm facsimile or email transmitted signatures by signing and delivering an original document. If the date for performance of an obligation or delivery of any notice hereunder falls on a day other than a business day, the date for such performance or delivery of such notice will be postponed until the next ensuing business day. For purposes of this Agreement, a "business day" means a normal working day (i.e., Monday through Friday of each calendar week, exclusive of Federal and state holidays and one day following each of Thanksgiving, Christmas, and New Year's).

8.5 Person; Interpretation. For purposes of this Agreement, the term "person" means any natural person, corporation, limited liability company, partnership, joint venture, firm, association, trust, unincorporated organization, government or governmental agency or political subdivision, or any other entity. All pronouns contained herein and any variations thereof will be deemed to refer to the masculine, feminine, or neutral, singular or plural, as the identity of the parties may require. The singular includes the plural and the plural includes the singular. The word "or" is not exclusive. The words "include," "includes," and "including" are not limiting. The titles, captions, or headings of the sections herein are inserted for convenience of reference only and are not intended to be a part of or to affect the meaning or interpretation of this Agreement.

8.6 Statutory Warning. THE PROPERTY DESCRIBED IN THIS INSTRUMENT MAY NOT BE WITHIN A FIRE PROTECTION DISTRICT PROTECTING STRUCTURES. THE PROPERTY IS SUBJECT TO LAND USE LAWS AND REGULATIONS THAT, IN FARM OR FOREST ZONES, MAY NOT AUTHORIZE CONSTRUCTION OR SITING OF A RESIDENCE AND THAT LIMIT LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, IN ALL ZONES. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO VERIFY THE EXISTENCE OF FIRE PROTECTION FOR STRUCTURES AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.

8.7 Further Assurances; Assignment; Waiver; Expenses. The parties will sign other documents and take all other actions reasonably necessary to further effect and evidence this Agreement. Neither party may assign or delegate any of the party's rights or obligations under this Agreement to any person without the prior written consent of the other party, which the other party may not unreasonably withhold, delay, or condition. No waiver will be binding on a party unless it is in writing and signed by the party making the waiver. A party's waiver of a breach of a provision in this Agreement will not be a waiver of any other provision or a waiver of a subsequent breach of the same provision. Except as otherwise provided in this Agreement, each party will bear the party's own fees, costs, and expenses incurred in connection with the Transaction, including, without limitation, the performance of this Agreement and the other agreements and documents relating to the Transaction.

[end of agreement – signature page immediately follows]

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be duly executed and effective as of the Effective Date.

SELLER:
City of Madras,
an Oregon municipal corporation

_____

By: Royce Embanks, Mayor

BUYER:
Wilbur-Ellis Company LLC,
a California limited liability company

_____

By: _____
Its: _____

Appendix A
Definitions

"Agreement" has the meaning assigned to such term in the preamble.

"Amended and Restated Lease Agreement" means the Amended and Restated Lease Agreement in the form attached hereto as Exhibit B.

"Buyer" has the meaning assigned to such term in the preamble.

"Buyer's Representative(s)" means each present and future officer, employee, agent, contractor, and/or authorized representative of Buyer.

"Closing" means the closing of the Transaction.

"Closing Conditions" has the meaning assigned to such term under Section 5.3.2.

"Closing Date" means the date on which the Closing takes place.

"Closing Deadline" means September 1, 2016 or such other date that the parties may agree upon in writing.

"Credits" has the meaning provided in Section 2.1.

"Deed" means a bargain and sale deed conveying the Property to Buyer, which deed will be in form and substance satisfactory to Buyer.

"Default Notice" has the meaning assigned to such term under Section 7.4.

"Effective Date" has the meaning assigned to such term in the preamble.

"Encumbrance(s)" means any lien, mortgage, pledge, security interest, reservation, restriction, adverse claim, or other encumbrance.

"Escrow" has the meaning assigned to such term under Section 2.1.

"FAA Approval" has the meaning assigned to such term in under Section 5.3.1.

"Lease" has the meaning assigned to such term under Recital A.

"Notice of Removal" has the meaning assigned to such term under Section 5.1.

"Notice of Unpermitted Exceptions" has the meaning assigned to such term under Section 5.1.

"Partition" has the meaning assigned to such term under Section 2.3.

"Partition Costs" has the meaning assigned to such term under Section 2.3.

"Permitted Closing Encumbrance(s)" means with respect to the Property any exception that is disclosed on the Preliminary Commitment and accepted by Buyer in accordance with Section 5.1 and includes any and all deed restrictions related to the Property.

"Preliminary Commitment" has the meaning assigned to such term under Section 5.1.

"Property" has the meaning set forth in the Recital and includes the following: (a) Seller's plans and specifications, building permits, and other permits concerning the Property; (b) Seller's licenses, permits, registrations, and other governmental authorizations concerning the Property, together with all applications for governmental authorizations; and (c) all built-in appliances, floor coverings, window and door screens, storm doors and windows, irrigation, plumbing, ventilation, cooling and heating fixtures and equipment, water heaters, attached electrical fixtures, window coverings, awnings, attached television antenna, planted shrubs, plants, and trees, if any.

"Purchase Price" has the meaning assigned to such term under Section 2.1.

"Rail Transfer Agreement" means the Rail Transfer Agreement in the form attached hereto as Exhibit C.

"Seller" has the meaning assigned to such term in the preamble.

"Seller's Representative(s)" means each present and future officer, employee, agent, contractor, and/or authorized representative of Seller.

"Title Company" means AmeriTitle located at 748 SW 5th, Madras, Oregon 97741.

"Title Insurance" has the meaning assigned to such term under Section 6.3.

"Transaction" means the purchase and sale of the Property as provided under this Agreement.

"Transfer" means (a) any transfer, including, without limitation, any sale, exchange, gift, assignment, encumbrance, foreclosure of an Encumbrance, or attachment, regardless of whether the transfer occurs voluntarily or involuntarily, by operation of law, or because of any act or occurrence, and (b) any contract involving the lease or use of the Property.

Exhibit A
Property Description

[legal description attached]

Exhibit A

LEASE AREA EXHIBIT

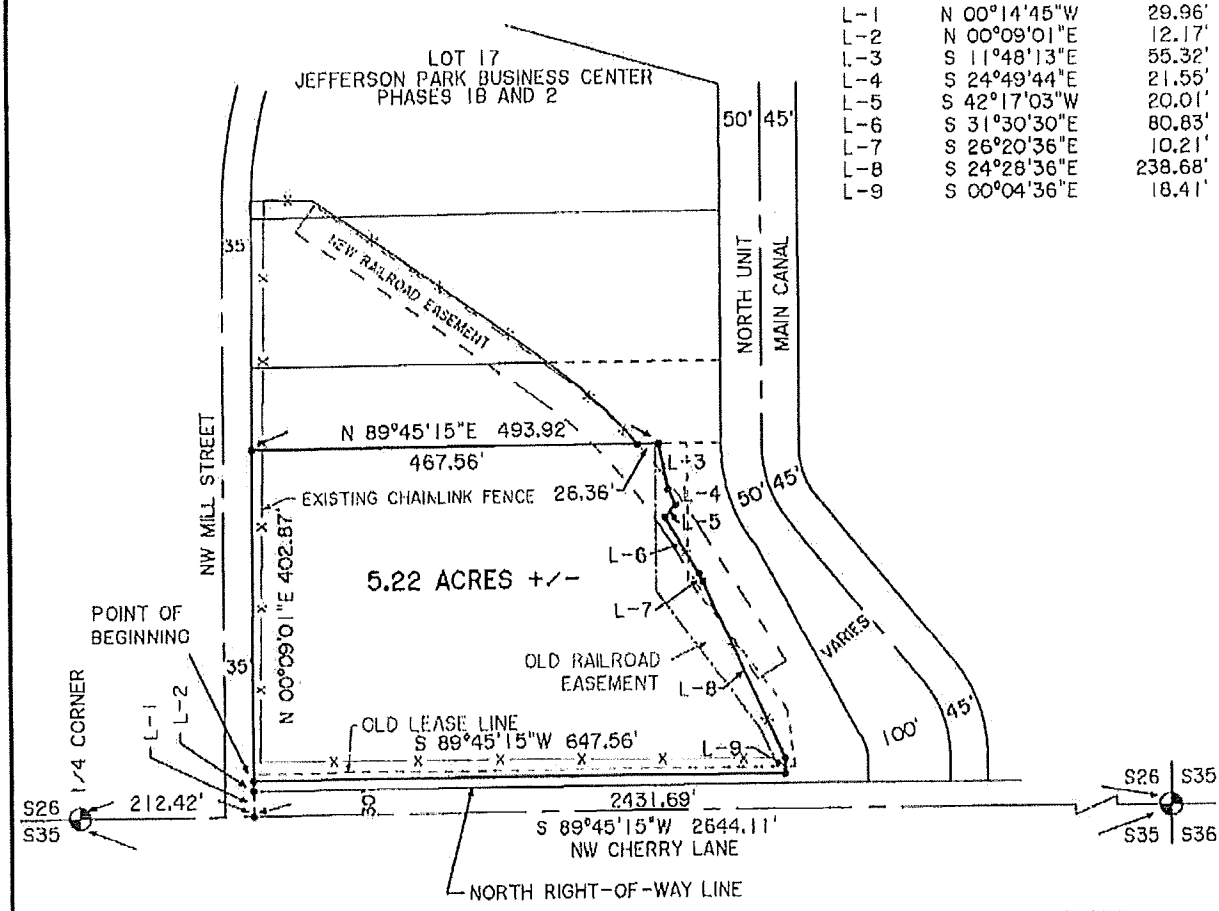
LOCATED IN THE SW 1/4 OF THE SE 1/4 OF SEC. 26, T. 10 S., R. 13 E., W.M., CITY OF MADRAS, JEFFERSON COUNTY, OREGON.

FOR: THE CITY OF MADRAS
WILBUR ELLIS SITE

SCALE: 1 INCH = 200 FEET

LINE TABLE:

COURSE	BEARING	DISTANCE
L-1	N 00°14'45"W	29.96'
L-2	N 00°09'01"E	12.17'
L-3	S 11°48'13"E	55.32'
L-4	S 24°49'44"E	21.55'
L-5	S 42°17'03"W	20.01'
L-6	S 31°30'30"E	80.83'
L-7	S 26°20'36"E	10.21'
L-8	S 24°28'36"E	238.68'
L-9	S 00°04'36"E	18.41'



S 89°45'15"W "BASIS OF BEARINGS" PER PLAT OF JEFFERSON PARK BUSINESS CENTER PHASE 1A

REGISTERED PROFESSIONAL LAND SURVEYOR

OREGON
JULY 17, 1986
GARY L. DEJARNATT
2208

RENEWS: 12/31/2015

PREPARED BY:

DEJARNATT LAND SURVEYS, INC.

20735 DOUBLE PEAKS DRIVE
BEND, OREGON 97701

PHONE: 541-382-4192

LAYER: 86 AND 83

DATE: MARCH 3, 2015

SHEET 1 OF 1

JOB # 15014

12066K.CRD SCREEN FILE 12066WE

Exhibit A

DeJarnatt Land Surveyors Inc.
20735 DOUBLE PEAKS DRIVE ▲ Bend, OR 97701 ▲ (541) 382-4192

March 3, 2015
City of Madras – Wilbur Ellis Site
Job# 15014E1

LEASE DESCRIPTION

A parcel of land located in the Southwest Quarter of the Southeast Quarter (SW ¼-SE ¼) of Section 26, Township 10 South, Range 13 East of the Willamette Meridian, City of Madras, Jefferson County, Oregon, being more particularly described as follows:

Commencing at the Southeast corner of said Section 26; thence South 89°45'15" West along the South line of said Section 26 a distance of 2431.69 feet; thence North 00°14'45" West a distance of 29.96 feet to the Northeast return of NW Mill Street and NW Cherry Lane; thence North 00°09'01" East a distance of 12.17 feet to the Point of Beginning of this description; thence continuing North 00°09'01" East a distance of 402.87 feet;
thence North 89°45'15" East a distance of 493.92 feet;
thence South 11°48'13" East a distance of 55.32 feet;
thence South 24°49'44" East a distance of 21.55 feet;
thence South 42°17'03" West a distance of 20.01 feet;
thence South 31°30'30" East a distance of 80.83 feet;
thence South 26°20'36" East a distance of 10.21 feet;
thence South 24°28'36" East a distance of 238.68 feet;
thence South 00°04'36" East a distance of 18.41 feet to the North right-of-way line of NW Cherry Lane; thence South 89°45'15" West a distance of 647.56 feet to the Point of Beginning.

Containing 5.22 acres more or less.

End of Description

REGISTERED
PROFESSIONAL
LAND SURVEYOR
OREGON
JULY 17, 1986
GARY L. DEJARNATT
2208

Renews: 12-31-2015

Exhibit B
Amended and Restated Lease Agreement

[attached]

Exhibit B

AMENDED AND RESTATED LEASE AGREEMENT
(Wilbur-Ellis)

DATED: _____, 2016

PARTIES: **CITY OF MADRAS,** **("LESSOR")**
an Oregon municipal corporation

AND: **WILBUR-ELLIS COMPANY LLC,** **("LESSEE")**
a California limited liability company

RECITALS:

A. Lessor and Lessee entered into that certain Lease Agreement dated January 1, 1995 (the "Original Lease") concerning certain Original Premises (as defined below). The Original Lease was amended by a First Amendment to Lease Agreement ("First Amendment") on April 9, 2002 and certain additional premises were leased from Lessor to Lessee.

B. This Amended and Restated Lease Agreement ("Lease") amends and supersedes in its entirety the Original Lease and First Amendment on and after the Effective Date as defined in Section 1.1.

AGREEMENT:

NOW, THEREFORE, in consideration of the parties' mutual obligations contained in this Lease, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. AGREEMENT TO LEASE

1.1 LEASE OF PREMISES. The effective date of this Lease will be the date of the recording of the deed from Lessor to Lessee pursuant to the terms and conditions of the Purchase and Sale Agreement between Lessor and Lessee dated the date first set forth above (the "Effective Date"). Subject to the terms and conditions contained in this Lease on the Effective Date, Lessor leases the Premises to Lessee and Lessee leases the following premises from Lessor (collectively the "Premises"):

a. The Premises described on Exhibit A (the "First Premises").

b. The Premises described on Exhibit B (the "Second Premises").

1.2 NO REPRESENTATIONS OR WARRANTIES. Lessee represents and warrants that (a) Lessee has entered into this Lease on the basis of its own examination and personal knowledge of the Premises, and (b) Lessee has not relied on any representations or warranties made by Lessor and/or Lessor's Agents (as defined below) other than those expressly provided in this Lease. Subject to the terms and conditions contained in this Lease, Lessee will accept the Premises in their AS-IS condition as of the Effective Date. Except as specifically provided in this Lease, Lessor has made no promise or agreement to repair, alter, construct, and/or improve the Premises.

2. TERM; RENEWAL

2.1 TERM. Subject to the terms and conditions contained in this Lease, the term of this Lease will commence on the Effective Date and will continue until January 1, 2025 (the "Lease Term"), unless sooner terminated or extended as provided in this Lease. For purposes of this Lease, the term "Lease Term" means the initial Lease Term and any extensions or renewals thereof.

2.2 RENEWALS. If Lessee is not then in default under this Lease, Lessee will have the option (each an "Extension Option") to extend the Lease Term for the entire Premises and only the entire Premises for two additional terms of ten (10) years each (each an "Extended Term"), subject to the following terms and conditions:

2.2.1 Lessee will exercise an Extension Option by providing Lessor written notice (the "Notice of Extension") not less than one hundred twenty (120) days prior to the last day of the then expiring Lease Term or Extended Term (as the case may be). Subject to the terms and conditions contained in this Lease, giving of the Notice of Extension will be sufficient to make this Lease binding for the applicable Extended Term without further act of the parties. Each Extended Term will commence on the day immediately following the expiration of the then expiring initial Lease Term or Extended Term (as the case may be). The terms and conditions for each Extended Term will be identical with the initial Lease Term, subject to Section 4.3, and Lessee will no longer have any Extension Option that has been exercised.

3. POSSESSION

Lessee's right to possession of the Premises will commence on the Effective Date. Subject to Lessee observing and performing all of the covenants, conditions and provisions on Lessee's part to be observed and performed hereunder, Lessee shall have quiet possession of the Premises for the entire Lease Term and each Extended Term subject to all of the provisions of this Lease.

4. RENT; SECURITY

4.1 BASE RENT. Subject to the terms and conditions contained in this Lease, commencing on the Effective Date, Lessee will pay Lessor guaranteed minimum rent ("Base Rent"), without offset prorated as applicable, as follows:

a. Base Rent for First Premises: The First Premises on the Effective Date consists of approximately 0.96 acres and Base Rent is calculated at the rate of $1,787.62 per acre for the total annual payment of $1,716.12.

b. Base Rent for Second Premises: The Second Premises consists of approximately 43,560 square feet (1.0 acres) at $3,010.00 per acre for the total annual payment of $3,010.00.

4.2 ADDITIONAL RENT. All taxes, insurance costs, utility charges (e.g., electricity, telephone, water, etc.), Spur Charges (as defined below) and any other sums Lessee is required to pay Lessor or any third-party pursuant to this Lease will be deemed "Additional Rent." For purposes of this Lease, "Rent" means both Base Rent and Additional Rent.

4.3 ESCALATION. Beginning on the one year anniversary of the Effective Date, and continuing each year thereafter during the Lease Term, Base Rent for each of the First Premises and the Second Premises will escalate (increase) by one and one-half percent (1.5%) over the Base Rent for the immediately preceding twelve-month period. During the Extended Term, if applicable, Base Rent will escalate (increase) by one and one-half percent (1.5%) over the Base Rent for the immediately preceding twelve-month period for the entire Premises.

4.4 ADDITIONAL CHARGES. In addition to any other charges provided under this Lease, Lessee will pay a railroad spur access and maintenance charge of $16.00 per rail car load ("Spur Charges"). These Spur Charges will be increased (escalated) annually in accordance with Section 4.3, above during the initial Term and any Extended Terms, if applicable.

4.5 GENERAL RENT PROVISION. Rent will be payable without deduction or offset to the order of Lessor at the address shown below or at such other address as may be designated from time to time by Lessor.

5. USE OF PREMISES

5.1 PERMITTED USE. Lessee may use the Premises, including use of a rail spur, to operate its agriculture based business that stores, ships, and processes fertilizers, chemicals, and related activities (collectively, the "Business"). Lessee will not use the Premises for any purpose other than

the Business. Notwithstanding anything contained in this Lease to the contrary, Lessee will operate the Business subject to and in accordance with all applicable Legal Requirements (as defined below).

5.2 LESSOR'S RIGHT TO ENTER. Lessor reserves the right to enter the Premises for the purpose of investigating compliance with the terms of this Lease, general safety inspections, and for any other purpose that Lessor finds necessary for the operation of the Airport and/or enforcement of the terms of this Lease. Except in the case of an emergency, Lessor will provide not less than forty-eight (48) hours' prior written notice to Lessee prior to entering the Premises for the purpose of investigation and such investigation shall occur during normal business hours.

5.3 RESTRICTIONS ON USE. In connection with Lessee's use of the Premises, Lessee will:

5.3.1 Conform and comply with any and all Legal Requirements. Lessee will correct, at Lessee's own expense, any failure of compliance created through Lessee's fault or by reason of Lessee's use of the Premises. For purposes of this Lease, the term "Legal Requirement(s)" means any and all rules, regulations, covenants, conditions, restrictions, easements, declarations, laws, statutes, liens, ordinances, orders, codes, rules, and regulations adopted by governmental authorities that, directly or indirectly, affect the Premises, the Airport, and/or the Business, including, without limitation, the Americans with Disabilities Act of 1990 (and the rules and regulations promulgated thereunder), any environmental laws, any rules or regulations promulgated by the Federal Aviation Administration or any other federal airport authority, and any Airport rules and regulations, all as now in force and/or which may hereafter be amended, modified, enacted, or promulgated.

5.3.2 Lessee agrees to maintain Lessee's rail and conveyor system improvements located on the Premises in good repair and to follow all Legal Requirements, and the Union Pacific Railroad and BNSF Railway Company rules and regulations and any of its designated representatives serving the Madras Industrial Park rail spur, now existing or hereinafter amended, modified, enacted or promulgated associated with the operation and maintenance of railroad system improvements and in the movement of freight via railcars and/or Lessee's use of the Premises.

5.3.3 The railroad system improvements are designed to provide railcar delivery of bulk fertilizer materials to the Premises and other products used by Lessee in its Business. Delivery and/or pickup of materials must be permitted, scheduled, and coordinated by

Lessee directly with Union Pacific Railroad and BNSF Railway who are the primary service providers to Lessor's rail spur.

5.3.4 Lessee shall not block any of the roads now in use by Lessor and/or any other third parties.

6. TAXES AND ASSESSMENTS; UTILITIES; ANNEXATION

6.1 PAYMENT BY LESSEE. Lessee will pay before delinquency all real and personal property taxes, general and special assessments, and any other charges of every description levied on and/or assessed against the Premises, any improvements located on the Premises, and/or personal property and/or fixtures located on the Premises. Lessee will make all such payments directly to the taxing authority. If any such tax assessment or charge may be paid in installments, Lessee may elect to do so as long as each installment together with interest is paid before it becomes delinquent.

6.2 PRORATIONS. Taxes, assessments, and charges concerning the Premises for the tax years in which the Effective Date commences or the Lease Term expires will be prorated between the parties on a daily basis as of the Effective Date or the Lease Term expiration, as applicable. If any tax, assessment, and/or charge is payable in installments and an election to so pay has been made with respect to the Premises, Lessee will pay all installments which fall due during the period from the Effective Date through the expiration of the Lease Term regardless of whether some installments fall due before the Effective Date or after the expiration of the Lease Term.

6.3 PROOF OF COMPLIANCE. Lessee will furnish to Lessor receipts or other proof of payment of taxes and assessments within thirty (30) days after Lessor's written request.

6.4 UTILITIES. Lessee will pay when due all charges for services and utilities incurred in connection with the use, occupancy, and/or maintenance of the Premises (including any improvements located thereon), including, without limitation, charges for electricity, fuel, power, natural gas, water, sewage, telephone, internet, refuse collection and all other services and utilities, if applicable.

6.5 ANNEXATION. If Lessor determines that it wishes to annex the Premises during the Lease Term, Lessor will comply with all requirements of law for annexation of the Premises, provided that Lessee agrees that it will not unreasonably withhold its consent, if Lessor requests Lessee's consent to annexation in accordance with Oregon law. In all events, Lessee's compliance with this Section 6.5 will be at no expense to Lessee; all annexing expense will be borne by Lessor.

7. INITIAL CONSTRUCTION

7.1 CONDITIONS OF CONSTRUCTION. For any improvements to be constructed by the Lessee to the Premises, Lessee shall obtain the prior written approval of Lessor prior to commencement of any construction on the Premises. The construction activities and use of the improvements shall not unreasonably interfere with the Madras Airport as determined by Lessor.

7.1.1 Lessee will submit a site plan application and pay the applicable fee to Lessor for Lessor's land use approval process. Lessee will follow the conditions of approval from the site plan decision.

7.1.2 Nothing contained in this Lease exempts Lessee from complying with underlying zoning, Airport operations, building, and/or other officially adopted standards and conditions.

7.2 COMPLETION OF CONSTRUCTION. Once construction has begun, Lessee will prosecute it to completion with diligence. The construction will be performed in a good and workmanlike manner and will comply with all applicable governmental permits, laws, ordinances and regulations, including, without limitation, any applicable Legal Requirements. Lessee will pay or cause to be paid the total cost of the construction.

7.3 LESSEE'S CONTRACTORS AND GENERAL DUTIES. Lessee will use only licensed and bonded contractors familiar with the Legal Requirements and of good reputation to complete any approved construction. Upon reasonable prior notice to Lessee, Lessor will have the right to inspect the construction at reasonable intervals to ensure Lessee is complying with its obligations under this Lease.

8. MAINTENANCE; ALTERATIONS; RECONSTRUCTION; EMINENT DOMAIN

8.1 MAINTENANCE. Maintenance of the rail system improvements and the Premises are as follows:

8.1.1 Lessee will own and be responsible, at Lessee's cost, for the maintenance of the following: rail improvements including, without limitation, track, ties, and switches.

8.1.2 Lessee will be responsible, at Lessee's sole cost, for the repairs and maintenance of the following: (a) conveyor system and railcar mover system improvements including, without limitation, electrical system, unloading pit(s), and structural framework for conveyor and railcar mover systems; (b) fencing and gates located or benefitting the Premises; (c) landscaping irrigation to the Premises; (d) any repairs necessary by the negligence of Lessee, its agents, employees, invitees; and (e) all other maintenance and repairs to

the Premises that are not the responsibility of Lessor as provided in this Lease.

8.1.3 Lessee is responsible for all Lessee obligations contained in that certain Rail Transfer Agreement between Lessor and Lessee dated the date first set forth above (the "Rail Transfer Agreement").

8.2 ALTERATIONS. Lessee shall not construct, improve, demolish, remove, replace, alter, reconstruct, remodel, and/or add to any existing improvements in whole or in part (collectively, "Alterations") without the written consent of Lessor which Lessor may withhold in Lessor's reasonable discretion.

8.2.1 All such work will be done at Lessee's cost and expense, in a good and workmanlike manner, and in compliance with all applicable building and zoning laws and all other laws, ordinances, orders and requirements of all authorities having or claiming jurisdiction, including, without limitation, any applicable Legal Requirements.

8.2.2 Except with respect to activities for which Lessor is responsible, Lessee will pay as and when due all claims for work done on and for services rendered or material furnished to the Premises and will keep the Premises free from any and all liens. If Lessee fails to pay any such claims or to discharge any lien, Lessor may do so and collect the costs as Rent. Any amount so added will bear interest at the rate of twelve percent (12%) per annum from the date expended by Lessor until paid and will be payable immediately on demand. Lessor's payment of Lessee's claims or discharge of any Lessee lien will not constitute a waiver of any other right or remedy which Lessor may have on account of Lessee's default. If a lien is filed as a result of nonpayment, Lessee will, within ten (10) days after knowledge of the filing, secure the discharge of the lien or deposit with Lessor cash or sufficient corporate surety bond or other security satisfactory to Lessor in an amount sufficient to discharge the lien plus any costs, reasonable attorney fees, and other charges that could accrue as a result of a foreclosure or sale under the lien. Lessee will indemnify, defend, and hold Lessor harmless for, from, and against any claim, loss, and/or liability arising out of Lessee's failure to comply with this Section 8.2.2.

8.3 RECONSTRUCTION AFTER DAMAGE.

8.3.1 If any improvement on the Premises is damaged or destroyed by fire or any other cause at any time during the Lease Term, whether or not covered by insurance, and Section 8.3.2, below, does not apply, Lessee will promptly repair the damage and restore the improvement.

8.3.2 Lessee will not be entitled to any abatement of Rent on account of any damage to or destruction of any improvements on the Premises, nor will any other obligations of Lessee under this Lease be altered or terminated except as specifically provided in this Lease.

8.4 EMINENT DOMAIN. If the Premises, or any such portion thereof as will make the Premises unusable for the Business, is taken by any legally constituted authority for any public use or purpose or by right of eminent domain, or be conveyed in lieu of or in anticipation of such taking or the exercise of such right, then in any of said events this Lease and all rights of the Lessee hereunder shall cease and terminate from the time possession thereof is taken by public authorities, and rent shall be accounted for as between Lessor and Lessee as of that date.

9. OWNERSHIP OF THE IMPROVEMENTS

All improvements constructed on the Premises by Lessee will be owned by Lessee, and Lessee shall be responsible for removing all such improvements prior to the expiration or termination of this Lease; provided, however, that Lessor may purchase such improvements (but not less than all such improvements) for the fair market value of the improvements as of the expiration or termination of the Lease, subject to the terms set forth in this Section 9. Lessor must notify Lessee in writing (a "Purchase Notice") of its intention to purchase such improvements not less than ninety (90) days prior to the proposed termination or expiration of the Lease.

If Lessor issues a Purchase Notice, then the fair market value of the improvements will be determined by the parties through good faith negotiation, which the parties will start in no event later than thirty (30) calendar days after Lessee's receipt of the Purchase Notice. If the parties cannot reach agreement within thirty (30) days of Lessee's receipt of the Purchase Notice, then the fair market value of the improvements will be determined by the following arbitration process: not later than thirty-five (35) days after Lessee's receipt of the Purchase Notice, each party will submit in confidence its written evaluation of the fair market value of the improvements on the Premises. At the same time, the parties will attempt in good faith to appoint a mutually acceptable, independent, qualified appraiser. Not later than thirty (30) days after the appraiser is appointed, the appraiser will choose one of the two proposals as the fair market value of the improvements on the Premises, which determination will be final and binding. If the parties cannot agree on an appraiser, then each party will appoint a qualified, independent appraiser not later than fifteen (15) days after Lessee's receipt of the Purchase Notice. The appraisers appointed by each party will select a qualified, independent appraiser, who will choose one of the two proposals as the fair market value of the improvements on the Premises, which determination will be final and binding. If a party fails to timely appoint a qualified appraiser, then the one appraiser timely appointed will determine the fair market value by choosing one of the two proposals as the fair market value

of the improvements on the Premises, which determination will be final and binding. If a party fails to timely submit its evaluation of the fair market value, then the timely submitted evaluation will be the final and binding fair market value of the improvements on the Premises. Each party will bear one-half of the expense of the mutually appointed appraiser and the entire expense of any appraiser appointed by the party unilaterally. Lessor will pay Lessee the agreed or determined fair market value, as the case may be, not later than thirty (30) days after it is determined. Following the purchase, the improvements on the Premises will be the sole responsibility of Lessor. Lessee will defend, indemnify, and hold Lessor harmless for, from, and against all liability and loss arising from Lessee's failure to deliver the improvements free and clear of all security interests, liens or other encumbrances.

If Lessor does not elect to purchase the improvements at the expiration or termination of this Lease, Lessee shall remove all improvements from the Premises at Lessor's sole cost and expense and restore the Premises to the same condition as received, normal wear and tear excepted. Notwithstanding the foregoing, Lessor shall have no obligation to pay for any improvements related to the Rail Spur as defined in the Rail Transfer Agreement.

10. ASSIGNMENT

Lessee will not sell, assign, mortgage, sublet, lien, convey, encumber, and/or otherwise transfer (whether directly, indirectly, voluntarily, involuntarily, or by operation of law) all or any part of Lessee's interest in this Lease and/or in the Premises (collectively, "Transfer") without Lessor's prior written consent. Upon any approved Transfer, (a) the terms and conditions of this Lease will in no way be deemed to have been waived or modified, (b) consent will not be deemed consent to any further Transfer, (c) the acceptance of Rent by Lessor from any other person will not be deemed to be a waiver by Lessor of any provision of this Lease, and (d) no Transfer relating to this Lease, whether with or without Lessor's consent, will modify, relieve, or eliminate any liability or obligations Lessee or any guarantor of this Lease may have under this Lease. For purposes of this Lease, a "Transfer" will be deemed to include the sale, assignment, encumbrance, and/or transfer - or series of related sales, assignments, encumbrances, and/or transfers - of fifty-one percent (51%) or more of the shares or other ownership interest of Lessee, regardless of whether the sale, assignment, encumbrance, and/or transfer occurs voluntarily or involuntarily, by operation of law, or because of any act or occurrence. Any Transfer which does not comply with this Lease will be void and will constitute a breach of this Lease.

11. INSURANCE

11.1 FIRE AND HAZARD INSURANCE. Lessee will throughout the Lease Term keep all the Premises and all improvements on the Premises insured against loss by fire and other hazards covered by a standard form of fire insurance policy with extended coverage endorsement including vandalism and malicious mischief. The amount of the insurance will be not less than one hundred percent (100%) of the replacement cost of the insured improvements

and will also be sufficient to prevent Lessee from becoming a coinsurer under the provisions of the policies.

11.2 PROCEEDS OF FIRE AND HAZARD INSURANCE.

11.2.1 The proceeds of the policies described above will be used to repair, restore, and replace any damaged or destroyed improvements as provided in this Lease. Lessor will cooperate fully with Lessee to obtain the largest possible recovery but Lessor will have no expense or cost in that connection.

11.2.2 All policies of insurance required by Section 11.1 will provide that the proceeds will be paid to Lessee and the proceeds will be deemed to be held in trust by Lessee for the uses and purposes required by this Lease.

11.3 BUILDER'S RISK INSURANCE. Before commencement of any construction activities on the Premises, Lessee will procure and maintain in force until completion and acceptance of the improvement an all risk builder's risk insurance policy including vandalism and malicious mischief in form reasonably acceptable to Lessor. Such insurance will cover the improvements in place and all materials and equipment at the job site with limits of not less than $50,000.00 per loss.

11.4 GENERAL LIABILITY INSURANCE; AUTOMOBILE INSURANCE; POLLUTION LIABILITY. Lessee will procure and continuously maintain during the Lease Term general liability insurance with initial limits of not less than $2,000,000.00 for injury to one person, $2,000,000.00 for any one accident or occurrence and $4,000,000.00 in the aggregate, and $2,000,000.00 for property damage.

At any time during the Lease Term, Lessor may, by written notice to Lessee, demand that the limits of Lessee's general liability insurance be raised to amounts specified in the written notice and Lessee will at the next succeeding policy renewal date, but not later than six (6) months after the date of the notice, raise the limits to those specified in the notice.

All limits demanded by Lessor will be commercially reasonable as of the date of the notice for the use Lessee is then making of the Premises and improvements. The insurance will be in a form reasonably sufficient to protect Lessor and Lessee against claims of third persons for personal injury, death or property damage arising from the use, occupancy or condition of the Premises or improvements on the Premises.

Lessee will procure and continuously maintain pollution liability insurance with limits of not less than $2,000,000.00 per occurrence, $4,000,000.00 in the

aggregate. Lessee will procure and continuously maintain comprehensive automobile liability insurance with limits of not less than $2,000,000.00.

11.5 GENERAL INSURANCE PROVISIONS. Lessee may not materially change or cancel any insurance policy Lessee is required to obtain and maintain under this Lease without first providing Lessor thirty (30) days' prior written notice. Notwithstanding anything contained in this Lease to the contrary, commencing on the ten-year anniversary of the Effective Date, Lessor may increase the minimum levels of insurance Lessee is required to carry under this Lease by providing Lessee ninety (90) days' prior written notice, provided that such increases must be commercially reasonable (taking into account Lessee's use of the Premises and improvements thereon). Lessee will provide Lessor with certificates of insurance coverage that Lessee is required to carry pursuant to this Lease within ten (10) days of Lessor's written request.

All policies of insurance which Lessee is required by this Lease to carry will:

11.5.1 Provide that the insurer waives the right of subrogation against Lessor and that except in the event of Lessor's negligence or willful misconduct, any loss will be payable notwithstanding any negligence or affirmative act of Lessor.

11.5.2 Be issued by a responsible insurance company which is licensed to practice in the State of Oregon.

11.5.3 Be primary policies.

11.5.4 All liability insurance policies will name Lessor and Lessor's Agents (as defined below) as additional insureds.

11.6 INDEMNIFICATION. Lessee will indemnify, defend, and hold Lessor and Lessor's officers, employees, contractors, and agents (collectively, "Lessor's Agents") harmless for, from, and against any and all claims, losses, damages, and/or liabilities ("Claims") arising out of or related to, whether directly or indirectly, the following: (a) any activity of Lessee and/or Lessee's members, managers, officers, employees, agents, and/or contractors (collectively, "Lessee's Agents") on or at the Premises; (b) any condition of the Premises (including, without limitation, any improvements constructed thereon) that is caused by Lessee and/or Lessee's Agents while the Premises are in the possession or under the control of Lessee; and/or (c) Lessee's breach and/or failure to perform any Lessee obligation, covenant, representation, and/or warranty under this Lease. Lessee's indemnification obligations under this Section 11.6 will survive the expiration or earlier termination of this Lease. Notwithstanding anything to the contrary set forth herein, Lessee's indemnity obligations under this Lease shall not extend to any claims, losses, damages, and/or liabilities to the extent caused by the negligence or willful misconduct of Lessor or Lessor's Agents.

Lessor will indemnify, defend, and hold Lessee and Lessee's Agents harmless for, from, and against any and all Claims arising out of or related to, whether directly or indirectly, the following: (a) any activity on or at the Premises by Lessor and/or Lessor's Agents; (b) any condition of the Premises or any portion thereof, that is caused in whole or in part by Lessor or Lessor's Agents; and/or (c) Lessor's breach and/or failure to perform any Lessor obligation, covenant, representation, and/or warranty under this Lease. Lessor will have no liability to Lessee for any loss or damage caused by any third-party or by any condition of the Premises. Lessor's indemnification obligations under this Section 11.6 will survive the expiration or earlier termination of this Lease.

12. DEFAULT

Each of the following events will constitute a default by Lessee and a breach of this Lease:

12.1 FAILURE TO PAY RENT. Failure of Lessee to pay any Rent or any other charge, cost, and/or expense within thirty (30) days after it is due; provided, however, Lessee will be provided with one notice of default for failure to pay Rent or any other charge, cost, and/or expense and a thirty-day opportunity to cure each calendar year.

12.2 OTHER PERFORMANCE FAILURES. Failure of Lessee to perform any other term, condition, and/or covenant of this Lease and/or the Rail Transfer Agreement (other than the payment of Rent or other charge, cost, and/or expense) within thirty (30) days after written notice from Lessor specifying the nature of the failure with reasonable particularity. If the failure is of such a nature that it cannot be completely remedied within the 30-day cure period, the failure will not be a default if Lessee begins correction of the failure within the 30-day cure period and thereafter proceeds with reasonable diligence and in good faith to correct the failure as soon as practicable.

12.3 ATTACHMENT. Attachment, execution, levy, and/or other seizure by legal process of any right or interest of Lessee under this Lease if not released within thirty (30) days.

12.4 INSOLVENCY. Lessee becomes insolvent within the meaning of the United States Bankruptcy Code, as amended from time to time; an assignment by Lessee for the benefit of creditors; the filing by Lessee of a voluntary petition in bankruptcy; an adjudication that Lessee is bankrupt or the appointment of a receiver of the properties of Lessee; the filing of any involuntary petition of bankruptcy and failure of Lessee to secure a dismissal of the petition within thirty (30) days after filing; attachment of or the levying of execution on the leasehold interest in the Premises and failure of Lessee to secure discharge of the attachment or release of the levy of execution within ten (10) days.

12.5 ABANDONMENT. Failure of Lessee for thirty (30) days or more to occupy the Premises for the purpose permitted under this Lease.

13. REMEDIES ON DEFAULT

13.1 LESSOR'S RIGHT TO CURE. After expiration of the applicable period during which Lessee could cure, and before that in the event of an emergency, Lessor may, but is not obligated to, make any payment required of Lessee under this Lease on the Premises or perform or comply with any other covenant or condition imposed on Lessee under this Lease. All amounts so paid by Lessor plus the cost of any performance or compliance, including reasonable attorney fees, plus interest on such sums at the rate of twelve percent (12%) per annum from the date of payment, performance or compliance will be deemed to be additional Rent payable by Lessee with the next due installment of Rent. No such payment or performance by Lessor will constitute a waiver of a default or of any other remedy for default or render Lessor liable for any loss or damage resulting from any such payment or performance.

13.2 LESSOR'S REMEDIES. Upon default, Lessor may elect any one or more of the following remedies:

13.2.1 Lessor may by notice to Lessee terminate this Lease as of the date of the notice. All of Lessee's rights in the Premises will terminate as of the date of termination. Promptly after such notice, Lessee will surrender and vacate the Premises in good condition, normal wear and tear excepted and remove the improvements, subject to the terms set forth in Section 9. Lessor may reenter and take possession of the Premises and eject some or all parties in possession except any sublessee qualifying under any nondisturbance agreement by Lessor. Termination under this Section 13.2.1 will not relieve Lessee from the payment of any sum then due to Lessor or from any claim for damages previously accrued or then accruing against Lessee.

13.3.2 Lessor may elect to use all or any part of Lessee's personal property and/or trade fixtures remaining on the Premises without compensation to Lessee and without liability for use or damage; or Lessor may store all or any of Lessee's personal property and trade fixtures for the account of and at the cost of Lessee. The election of one remedy for any one item will not preclude an election of any other remedy for another item or for the same item at a later date. If Lessor elects to use all or any part of Lessee's personal property and/or trade fixtures remaining on the Premises, Lessor's use is on an AS IS with all faults basis and Lessee makes no representations or warranties to Lessor regarding such personal property and/or trade fixtures.

13.3.3 Lessor will be entitled to Rent throughout the Lease Term until the date of any termination plus interest at the rate of twelve percent (12%) per annum from the due date of each such payment to the date of payment.

13.3.4 In the event of a termination, Lessor will be entitled to damages in the following amounts:

(a) any excess of the rental obligation of Lessee under this Lease from the date of termination to the last day of the Lease Term in which termination occurs over the reasonable rental value of the Premises, including improvements, for such period of time; and

(b) The reasonable cost of reentry and reletting, including the cost of any cleanup, broker's or finder's fees and attorney fees.

13.3.6 Lessor may sue periodically to recover damages during the period corresponding to the remainder of the Lease Term, and no action for damages will bar a later action for damages subsequently accruing. The foregoing remedies will be in addition to and will not exclude any other remedy available to Lessor under applicable law.

14. SURRENDER ON TERMINATION

14.1 SURRENDER. Except as provided for in Section 9 "Ownership of the Improvements," upon expiration or earlier termination of this Lease, Lessee will surrender possession of the Premises to Lessor, including all improvements then located on the Premises, free of occupants in good clean condition, normal wear and tear excepted. This condition does not require Lessee to remove gravel or other base placed on the Premises. Lessee must re-level any portion of the Premises which have been disturbed by foundations for structures or making each banks or pits unless first obtaining written consent of Lessor, which Lessor may withhold in its sole discretion, to leave on the Premises. All property that Lessee is required to surrender will become Lessor's property at the date of expiration of this Lease. All property that Lessee is not required to surrender, but that Lessee does abandon will, at Lessor's election, become Lessor's property on the date of expiration or termination of this Lease.

14.2 HOLDOVER. If Lessee does not vacate the Premises at the time required, Lessor will have the option to treat Lessee as a tenant from month-to-month, subject to all of the provisions of this Lease (except the provisions for term and renewal), except that Lessee's Base Rent will be equal to one hundred fifty percent (150%) of the Base Rent last paid by Lessee. Failure of Lessee to remove fixtures, furniture, furnishings, or trade fixtures which Lessee is required to remove under this Lease will constitute a failure to vacate to which this Section

14.2 will apply if the property not removed interferes with the occupancy of the Premises by another tenant or with the occupancy by Lessor for any purpose including preparation for a new lessee. If a month-to-month tenancy results from a holdover by Lessee under this Section 14.2, the tenancy will be terminable at the end of any monthly rental period on written notice from Lessor given not less than ten (10) days prior to the termination date which will be specified in the notice. Lessee waives any notice which would otherwise be provided by law with respect to a month-to-month tenancy.

15. HAZARDOUS SUBSTANCE

Lessee represents and warrants to Lessor as follows:

15.1 To Lessee's actual knowledge, Lessee has at all times during the Original Lease complied and will at all times during this Lease comply with all applicable federal, state and local environmental laws and regulations applicable to the Premises and any activities conducted thereon.

15.2 For purposes of this Lease, the term "Hazardous Substance" will have the meaning set forth in 40 C.F.R. Section 302.4 and will also include petroleum, petroleum products and used oil; the term "Solid Waste" will have the meaning set forth in 40 C.F.R. Section 261.2; and, the term "Release" will have the meaning set forth in 42 U.S.C. Section 9601.

15.3 Lessee represents, warrants, and covenants to Lessor that Lessee will not cause or permit any Hazardous Substances or other dangerous, toxic substances or any Solid Waste to be generated, manufactured, refined, transported, treated, stored, disposed, handled, processed, produced or Released on or about the Premises, except in compliance with all applicable Legal Requirements. Lessor acknowledges and agrees that the prudent and safe operation of the Business requires the use of certain Hazardous Substances, which use is approved. Lessee will defend, indemnify, and hold Lessor and Lessor's Agents harmless for, from, and against any and all damages, claims, losses, liabilities and expenses of any kind, including without limitation, legal and consulting expenses, incurred by Lessor or which are asserted against or imposed upon Lessor, its successors or assigns, by any other party (including, without limitation, any governmental entity) arising out of or connected with Lessee's breach and/or failure to comply with this Section 15.3.

15.4 Lessee shall at all times maintain compliance with all Department of Environmental Quality and Environmental Protection Agency regulations and shall annually file their spill containment plans as required by the Department of Environmental Quality and shall supply to the Lessor copies of their spill containment plan and any other documents submitted to any applicable authorities.

15.5 The representations and warranties made and the indemnity obligations provided for in this Section 15 will survive the termination of this Lease, notwithstanding any provision of this Lease to the contrary.

16. MISCELLANEOUS

16.1 NONWAIVER AND SUCCESSION. Waiver by either party of strict performance of any provision or term of this Lease will not be a waiver of or prejudice the party's right to require strict performance of the same provision or any other provision. Subject to the limitations concerning the transfer and/or assignment of this Lease under Section 10, this Lease will be binding upon and inure to the benefit of the parties, their respective successors and assigns.

16.2 NOTICES. All notices under this Lease will be effective on the earlier of actual receipt or two days after deposit as certified mail, return receipt requested, postage prepaid and addressed to Lessor or Lessee at the addresses stated below, or to such other address as either party may specify by notice to the other party. For clarity, all notices must be written and, in addition to being sent by certified mail, may be sent by overnight package express delivery service, by hand, or by facsimile.

LESSOR:

City of Madras
Attn: City Administrator
125 SW "E" Street
Madras, Oregon 97741
Facsimile: 541-475-7061

With a copy to (which will not constitute notice):

Bryant, Lovlien & Jarvis, P.C.
Attn: Jeremy M. Green
591 SW Mill View Way
Bend, Oregon 97702
Facsimile: 541-389-3386

LESSEE:

Wilbur-Ellis Company LLC, a California limited liability company
Attn: General Counsel
345 California Street 27th Floor
San Francisco, California 94104

16.3 ATTORNEY FEES. If suit or action is instituted to collect Rent, to enforce this Lease, and/or in connection with any claim or controversy arising out of this Lease, the prevailing party will be entitled to recover, in addition to costs, such

sum as the court may adjudge reasonable as attorney fees at trial and on any appeal of the suit or action. If arbitration is instituted in connection with any claim or controversy arising out of this Lease, attorney fees may be awarded by the arbitrators as they may decide, and if so awarded will be a part of the arbitrators' decision on which judgment may be rendered.

16.4 SEVERABILITY AND INTEREST. The invalidity or illegality of any provision of this Lease will not affect the remainder of the Lease. Except as otherwise provided in this Lease, any Rent or other payment required to be paid by Lessee under this Lease will, if not paid within ten (10) days after it is due, bear interest at the rate of twelve percent (12%) per annum from the due date until paid in full.

16.5 GOVERNING LAW. This Lease and each party's rights under it will be construed and regulated by the laws of the State of Oregon without regard to any conflict of law provisions. If any dispute arises regarding this Lease, the parties agree that the sole and exclusive venue for resolution of such dispute will be in Jefferson County, Oregon. All parties submit to the jurisdiction of courts located in Jefferson County, Oregon for any such disputes.

16.6 MEMORANDUM OF LEASE. At the request of either party, the parties will execute and acknowledge a memorandum of lease in recordable form which will include a legal description of the Premises and the term of this Lease. This Lease may be signed in counterparts. A fax or email transmission of a signature page will be considered an original signature page. At the request of a party, the other party will confirm a fax or email transmitted signature page by delivering an original signature page to the requesting party.

16.7 LESSOR DEFAULT. No act or omission of Lessor will be considered a default under this Lease until Lessor has received thirty (30) days' prior written notice from Lessee specifying the nature of the default with reasonable particularity. Commencing from Lessor's receipt of such default notice, Lessor will have thirty (30) days to cure or remedy the default before Lessor will be deemed in default of this Lease and Lessee shall be permitted to terminate this Lease as a result of such default; provided, however, that if the default is of such a nature that it cannot be completely remedied or cured within the thirty-day cure period, there will not be a default by Lessor under this Lease if Lessor begins correction of the default within the thirty-day cure period and thereafter proceeds with reasonable diligence to effect the remedy as soon as practical.

16.8 INTERPRETATION. All pronouns contained herein and any variations thereof will be deemed to refer to the masculine, feminine, or neutral, singular or plural, as the identity of the parties may require. The singular includes the plural and the plural includes the singular. The word "or" is not exclusive. The words "include," "includes," and "including" are not limiting. The term "person" means any natural person, corporation, limited liability company, partnership, joint venture, firm, association, trust, unincorporated organization, government or

governmental agency or political subdivision, or any other entity. The titles, captions, or headings of the sections herein are inserted for convenience of reference only and are not intended to be a part of or to affect the meaning or interpretation of this Lease.

[Remainder of page intentionally blank. Signatures on following page]

IN WITNESS WHEREOF, the parties have executed this Lease the day and year first above written.

LESSOR:
CITY OF MADRAS
an Oregon municipal corporation

_____
By: Royce Embanks, Mayor

Date Signed: _____

LESSEE:
WILBUR-ELLIS COMPANY LLC,
a California limited liability company

_____
By: _____
Its: _____
Date Signed: _____

Exhibit "A"

First Premises

[attached]

Exhibit A

LEASE AREA EXHIBIT

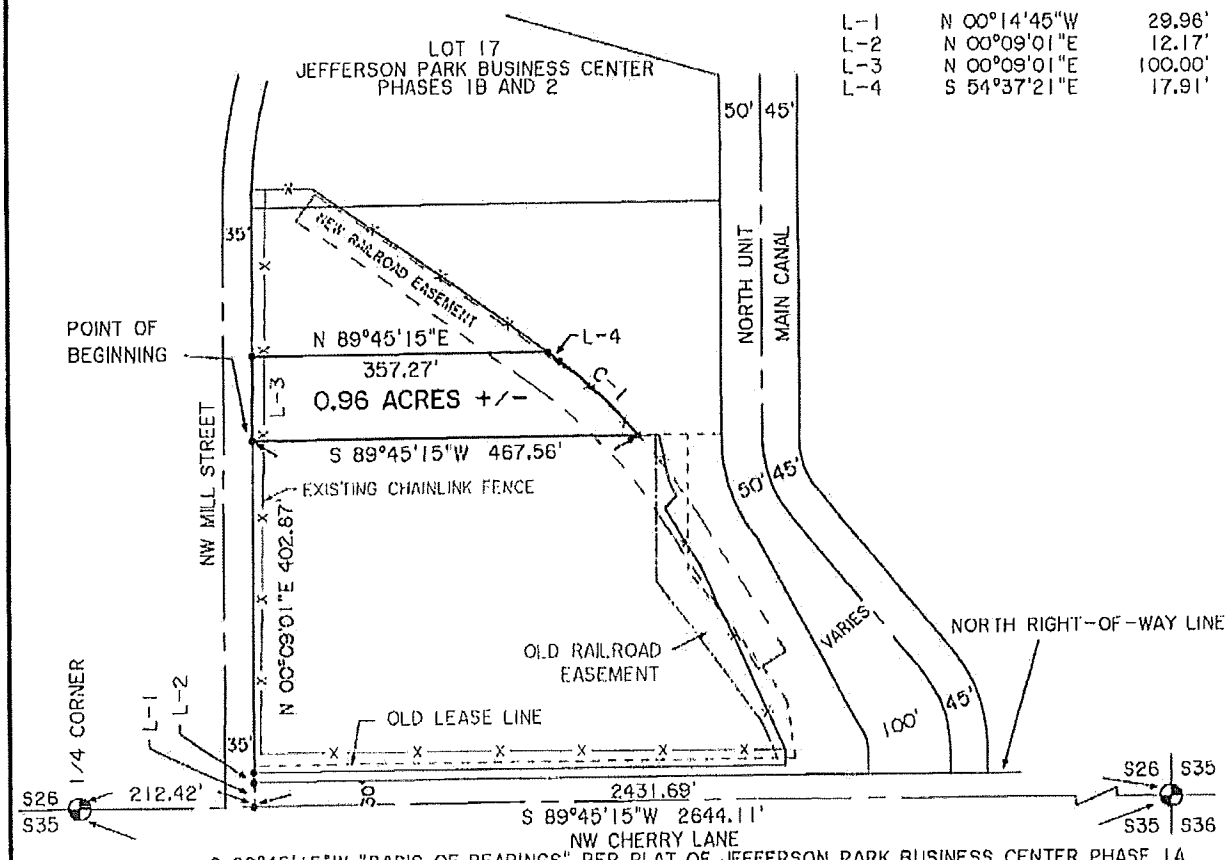
LOCATED IN THE SW 1/4 OF THE SE 1/4 OF SEC. 26, T. 10 S., R. 13 E., W.M., CITY OF MADRAS, JEFFERSON COUNTY, OREGON.

FOR: THE CITY OF MADRAS
WILBUR ELLIS SITE

SCALE: 1 INCH = 200 FEET

LINE TABLE:

COURSE	BEARING	DISTANCE
L-1	N 00°14'45"W	29.96'
L-2	N 00°09'01"E	12.17'
L-3	N 00°09'01"E	100.00'
L-4	S 54°37'21"E	17.91'



S 89°45'15"W "BASIS OF BEARINGS" PER PLAT OF JEFFERSON PARK BUSINESS CENTER PHASE 1A

CURVE TABLE:

CURVE	RADIUS	LENGTH	DELTA	CHORD	CH.BEARING
C-1	486.78'	130.99'	15°25'05"	130.60'	S 46°56'39"E

REGISTERED
PROFESSIONAL
LAND SURVEYOR

OREGON
JULY 17, 1986
GARY L. DEJARNATT
2208

RENEWS: 12/31/2015

PREPARED BY:

DEJARNATT LAND SURVEYS, INC.

20735 DOUBLE PEAKS DRIVE
BEND, OREGON 97701

PHONE: 541-382-4192

LAYER: 87 AND 83

DATE: MARCH 3, 2015

SHEET 1 OF 1

JOB # 15014

12066K.CRD SCREEN FILE 12066WE

Exhibit A

DeJarnatt Land Surveyors Inc.
20735 DOUBLE PEAKS DRIVE ▲ Bend, OR 97701 ▲ (541) 382-4192

March 3, 2015
City of Madras – Wilbur Ellis Site
Job# 15014E2

LEASE DESCRIPTION

A parcel of land located in the Southwest Quarter of the Southeast Quarter (SW ¼-SE ¼) of Section 26, Township 10 South, Range 13 East of the Willamette Meridian, City of Madras, Jefferson County, Oregon, being more particularly described as follows:

Commencing at the Southeast corner of said Section 26; thence South 89°45'15" West along the South line of said Section 26 a distance of 2431.69 feet; thence North 00°14'45" West a distance of 29.96 feet to the Northeast return of NW Mill Street and NW Cherry Lane; thence North 00°09'01" East a distance of 12.17 feet; thence continuing North 00°09'01" East a distance of 402.87 feet to the Point of Beginning;
thence North 00°09'01" East a distance of 100.00 feet;
thence North 89°45'15" East a distance of 357.27 feet;
thence South 54°37'21" East a distance of 17.91 feet;
thence 130.99 feet along the arc of a 486.78 foot radius curve to the right, the long chord of which bears South 46°56'39" East a distance of 130.60 feet;
thence South 89°45'15" West a distance of 467.56 feet to the Point of Beginning.

Containing 0.96 acres more or less.

End of Description

REGISTERED
PROFESSIONAL
LAND SURVEYOR
OREGON
JULY 17, 1986
GARY L. DEJARNATT
2208

Renews: 12-31-2015

Exhibit "B"

Second Premises

[attached]

Exhibit B

LEASE AREA EXHIBIT

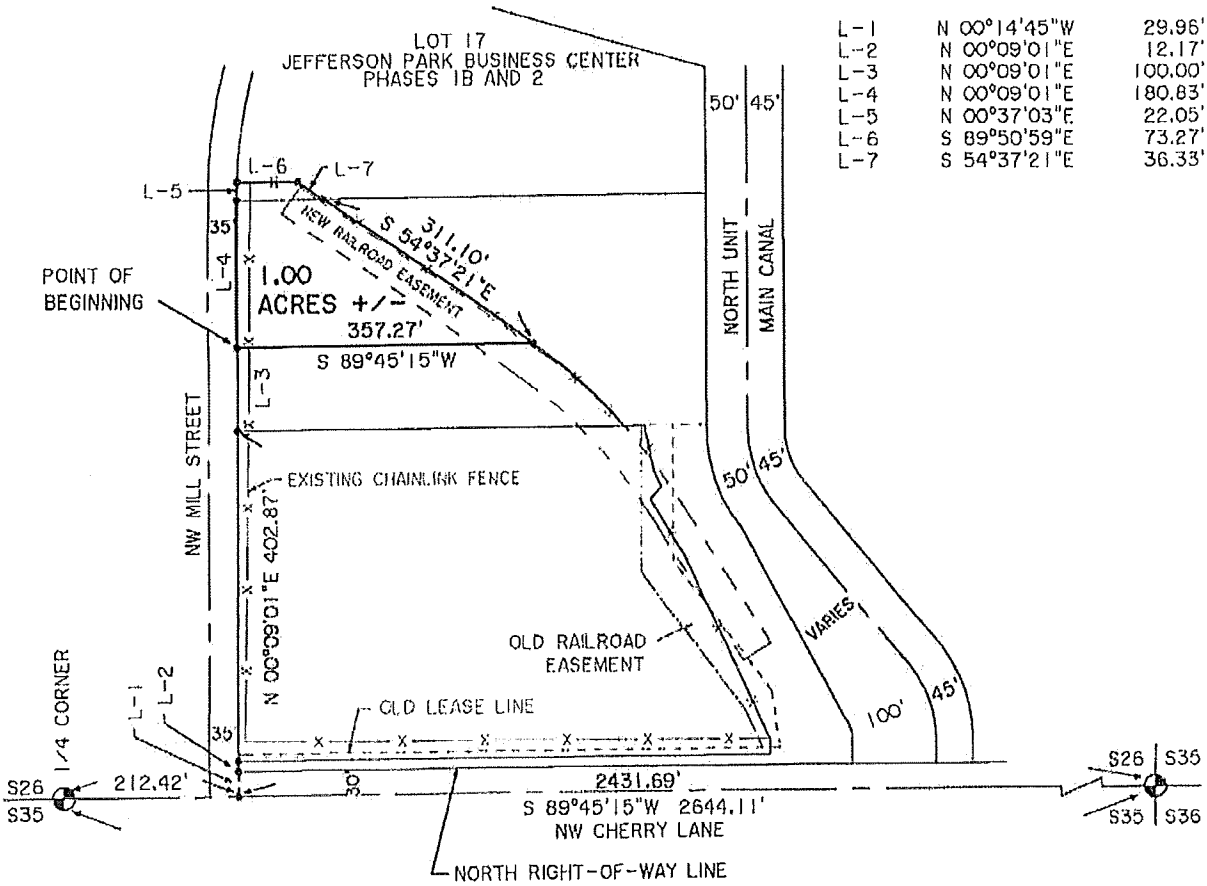
LOCATED IN THE SW 1/4 OF THE SE 1/4 OF SEC. 26, T. 10 S., R. 13 E., W.M., CITY OF MADRAS, JEFFERSON COUNTY, OREGON.

FOR: THE CITY OF MADRAS
WILBUR ELLIS SITE

SCALE: 1 INCH = 200 FEET

LINE TABLE:

COURSE	BEARING	DISTANCE
L-1	N 00°14'45"W	29.96'
L-2	N 00°09'01"E	12.17'
L-3	N 00°09'01"E	100.00'
L-4	N 00°09'01"E	180.83'
L-5	N 00°37'03"E	22.05'
L-6	S 89°50'59"E	73.27'
L-7	S 54°37'21"E	36.33'



S 89°45'15"W "BASIS OF BEARINGS" PER PLAT OF JEFFERSON PARK BUSINESS CENTER PHASE 1A

REGISTERED PROFESSIONAL LAND SURVEYOR

OREGON
JULY 17, 1980
GARY L. DEJARNATT
2208

RENEWS: 12/31/2015

PREPARED BY:

DEJARNATT LAND SURVEYS, INC.

20735 DOUBLE PEAKS DRIVE
BEND, OREGON 97701

PHONE: 541-382-4192

LAYER: 88 AND 83

DATE: MARCH 3, 2015

SHEET 1 OF 1

JOB # 15014

12066K.CRD SCREEN FILE 12066WE

Exhibit B

DeJarnatt Land Surveyors Inc.
20735 DOUBLE PEAKS DRIVE ▲ Bend, OR 97701 ▲ (541) 382-4192

March 3, 2015
City of Madras – Wilbur Ellis Site
Job# 15014E3

LEASE DESCRIPTION

A parcel of land located in the Southwest Quarter of the Southeast Quarter (SW ¼-SE ¼) of Section 26, Township 10 South, Range 13 East of the Willamette Meridian, City of Madras, Jefferson County, Oregon, being more particularly described as follows:

Commencing at the Southeast corner of said Section 26; thence South 89°45'15" West along the South line of said Section 26 a distance of 2431.69 feet; thence North 00°14'45" West a distance of 29.96 feet to the Northeast return of NW Mill Street and NW Cherry Lane; thence North 00°09'01" East a distance of 12.17 feet; thence continuing North 00°09'01" East a distance of 402.87 feet; thence North 00°09'01" East a distance of 100.00 feet to the Point of Beginning;
thence North 00°09'01" East a distance of 180.83 feet to the Southwest corner of Lot 17 of Jefferson Park Business Center Phases 1B and 2;
thence North 00°37'03" East a distance of 22.05 feet;
thence South 89°50'59" East a distance of 73.27 feet;
thence South 54°37'21" East a distance of 36.33 feet to the South line of said Lot 17;
thence continuing South 54°37'21" East a distance of 311.10 feet;
thence South 89°45'15" West a distance of 357.27 feet to the Point of Beginning.

Containing 1.00 acres more or less.

End of Description

REGISTERED
PROFESSIONAL
LAND SURVEYOR

OREGON
JULY 17, 1986
GARY L. DEJARNATT
2206

Renews: 12-31-2015

Exhibit C
Rail Transfer Agreement

[attached]

Exhibit C

RAIL TRANSFER AGREEMENT

This Rail Transfer Agreement (this "Agreement") is made and entered into effective on _____, 2016 between Wilbur-Ellis Company LLC, a California limited liability company ("Wilbur-Ellis"), whose address is 345 California Street, 27th Floor, San Francisco, California 94104, and City of Madras, an Oregon municipal corporation ("City"), whose address is 125 SW E Street, Madras, Oregon 97741.

RECITALS:

A. City and Wilbur-Ellis have entered into a Purchase and Sale Agreement concurrently herewith related to the sale of approximately 5.22 acres of real property from City to Wilbur-Ellis subject to certain terms and conditions (the "Purchase and Sale Agreement").

B. City and Wilbur-Ellis have entered into an Amended and Restated Lease Agreement concurrently herewith (the "Lease"), whereby the City has agreed to lease the Premises (as defined in the Lease) to Wilbur-Ellis, subject to the terms and conditions set forth in the Lease.

C. On the Effective Date (as defined in the Lease) and subject to the terms and conditions contained in this Agreement, City agrees to transfer the rail and conveyor system improvements described on Exhibit A (the "Rail Spur") to Wilbur-Ellis and Wilbur-Ellis agrees to accept the Rail Spur and assume the maintenance obligations related thereto as provided in this Agreement.

AGREEMENT:

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

1. DEFINITIONS

Unless defined elsewhere in this Agreement, capitalized terms used in this Agreement have the meanings assigned to them in the attached Appendix A.

2. TRANSFER OF RAIL SPUR

2.1 Transfer and Consideration. Subject to the terms and conditions contained in this Agreement, City will transfer the Rail Spur to Wilbur-Ellis on the Closing Date and Wilbur-Ellis will accept the Rail Spur from City. The consideration for the transfer of the Rail Spur is Wilbur-Ellis' agreement to assume the maintenance and repair obligations of the Rail Spur on the terms and conditions provided in this Agreement.

2.2 No City Representations; Transfer of Rail Spur AS-IS. Except for those representations and warranties made by City in this Agreement, (a) City expressly excludes all warranties with respect to the Rail Spur, express and implied, and (b) City will transfer the Rail Spur to Wilbur-Ellis AS-IS and WITH ALL FAULTS. Subject to the terms and conditions contained in this Agreement, Wilbur-Ellis will accept

the Rail Spur in its AS-IS condition as of the Closing Date.

3. WILBUR-ELLIS' REPRESENTATIONS AND WARRANTIES. Wilbur-Ellis represents and warrants to City and City's Representatives, on the date first set forth above and as of the Closing Date, as follows:

3.1 Authority; Binding Agreement. (a) Wilbur-Ellis has full power and authority to sign and deliver this Agreement and to perform all of Wilbur-Ellis' obligations under this Agreement; and (b) each of this Agreement and the other agreements contemplated herein to which Wilbur-Ellis is a party has been duly executed and delivered by Wilbur-Ellis, and assuming due authorization, execution and delivery by City to the extent City is a party, constitutes the valid and binding agreement of Wilbur-Ellis, enforceable in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization or other laws affecting the enforceability of creditors' rights generally or by principles of equity.

3.2 Investigation. (a) Wilbur-Ellis has entered into this Agreement on the basis of its own examination and personal knowledge of the Rail Spur, (b) Wilbur-Ellis has investigated and researched the Rail Spur, the condition of the Rail Spur, and all repair and maintenance obligations associated with the Rail Spur, (c) Wilbur-Ellis has obtained all the information desired in connection with this Agreement, the Grant Agreement, the Legal Requirements, and the Rail Spur; and (d) Wilbur-Ellis has not relied on any representations or warranties made by City and/or any of City's Representatives other than those expressly provided in this Agreement.

4. CITY'S REPRESENTATIONS AND WARRANTIES. City represents and warrants to Wilbur-Ellis and Wilbur-Ellis' Representatives, on the date first set forth above and as of the Closing Date, as follows:

4.1 Authority; Binding Agreement. (a) Subject to the Closing Conditions being satisfied, City has full power and authority to sign and deliver this Agreement and to perform all of City's obligations under this Agreement; and (b) each of this Agreement and the other agreements contemplated herein to which City is a party has been duly executed and delivered by City, and assuming due authorization, execution and delivery by Wilbur-Ellis to the extent Wilbur-Ellis is a party, constitutes the valid and binding agreement of City, enforceable in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization or other laws affecting the enforceability of creditors' rights generally or by principles of equity.

4.2 Title; Liens. Except as expressly set forth in the Grant Agreement and any rights that Union Pacific Railroad or BNSF Railway have in the Rail Spur that City has no actual knowledge of (without duty to investigate), City has good and marketable title to the Rail Spur, free from all Encumbrances and third party rights.

5. CONDITIONS TO CLOSING

5.1 Closing Conditions. The following are expressly required conditions of City's and Wilbur-Ellis' obligations to close the Transaction (the "Closing Conditions"): (a) all necessary approvals to complete the transfer of the Rail Spur must be received, including, without limitation, the Consent attached hereto; (b) the recording of the deed from City to Wilbur-Ellis pursuant to the terms and conditions of the Purchase and Sale Agreement must have occurred ; and (c) the parties must have executed and delivered the Lease.

6. CLOSING

6.1 Closing. As soon as reasonably possible but in no event more than thirty (30) days within the completion of all the Closing Conditions, City will transfer the Rail Spur to Wilbur-Ellis via a Bill of Sale in substantially the form attached hereto as Exhibit B.

6.2 Costs and Expenses. Each party will pay their own costs associated with this Agreement and the transfer of the Rail Spur from City to Wilbur-Ellis including, without limitation, all attorney fees, escrow fees, closing costs, and recording fees related to the Transaction.

7. TERMINATION; DEFAULT; CONDEMNATION; INDEMNIFICATION

7.1 Termination. This Agreement will terminate on written notice by either party if the Closing has not been completed on or before September 1, 2016. Upon termination pursuant to this Section 7.1, neither party thereafter will have any further rights, remedies, and/or obligations with respect to this Agreement.

7.2 Wilbur-Ellis Default. The occurrence of any of the following events constitutes a default by Wilbur-Ellis under this Agreement: (a) failure of Wilbur-Ellis to comply with any covenant, agreement, and/or obligation contained in this Agreement, (b) Wilbur-Ellis becomes insolvent within the meaning of the United States Bankruptcy Code, as amended from time to time; an assignment by Wilbur-Ellis for the benefit of creditors; the filing by Wilbur-Ellis of a voluntary petition in bankruptcy; an adjudication that Wilbur-Ellis is bankrupt or the appointment of a receiver of the properties of Wilbur-Ellis; the filing of any involuntary petition of bankruptcy and failure of Wilbur-Ellis to secure a dismissal of the petition within thirty (30) days after filing, (c) attachment, execution, levy, and/or other seizure by legal process of any of Wilbur-Ellis' right or interest in the Rail Spur, and/or (d) a breach by Wilbur-Ellis of any covenant, agreement, and/or obligation contained in the Lease.

7.3 City Default. The occurrence of any of the following events constitutes a default by City under this Agreement: (a) the failure of City to comply with any covenant, agreement, and/or obligation contained in this Agreement and/or (b) the failure to transfer the Rail Spur to Wilbur-Ellis in accordance with Section 6.1. In the event of a default by City, Wilbur-Ellis will have any and all remedies available at law or in equity, including, without limitation, the remedy of specific performance of the Transaction. All available remedies are cumulative and may be exercised singularly or concurrently.

7.4 Notice of Default. Prior to declaring a party in default under this Agreement, the non-defaulting party will provide the defaulting party with written notice (the "Default Notice") specifying with reasonable particularity all defaults under this Agreement that the non-defaulting party believes exist. The defaulting party will have the right to cure the alleged defaults thirty (30) days after receipt of the Default Notice to avoid any breach under this Agreement.

7.5 Condemnation; Risk of Loss. On and after the date of this Agreement, if all or any material portion of the Rail Spur is taken by condemnation, eminent domain, or is the subject of a pending or contemplated taking which has not been consummated, or if the Rail Spur is substantially destroyed or rendered unusable, Wilbur-Ellis will be entitled to all proceeds of the condemnation.

7.6 City Indemnification. City will indemnify, defend, and hold Wilbur-Ellis and Wilbur-Ellis'

Representatives harmless for, from, and against any and all claims, actions, proceedings, damages, liabilities, obligations, costs, and expenses of every kind, whether known or unknown, including, without limitation, reasonable attorney fees, resulting from, or arising out of, whether directly or indirectly from City's breach and/or failure to perform any City representation, warranty, covenant, and/or obligation contained in this Agreement. The indemnification covenants contained in this Section 7.6 will not merge into the Bill of Sale but will survive the Closing. Notwithstanding anything to the contrary set forth herein, City's indemnity obligations under this Agreement shall not extend to any claims, losses, damages, and/or liabilities to the extent caused by the acts or omissions of Wilbur-Ellis or Wilbur-Ellis' Representatives.

7.7 Wilbur-Ellis Indemnification. Wilbur-Ellis will indemnify, defend, and hold City and City's Representatives harmless for, from, and against any and all claims, actions, proceedings, damages, liabilities, obligations, costs, and expenses of every kind, whether known or unknown, including, without limitation, reasonable attorney fees, resulting from, or arising out of, whether directly or indirectly, the following: (a) the ownership, use, maintenance, leasing, and/or operation of the Rail Spur on and after the Closing Date; and/or (b) Wilbur-Ellis' breach and/or failure to perform any Wilbur-Ellis representation, warranty, covenant, and/or obligation contained in this Agreement. The indemnification covenants contained in this Section 7.7 will not merge into the Bill of Sale but will survive the Closing. Notwithstanding anything to the contrary set forth herein, Wilbur-Ellis' indemnity obligations under this Agreement shall not extend to any claims, losses, damages, and/or liabilities to the extent caused by the acts or omissions of City or City's Representatives.

8. USE OF RAIL SPUR; MAINTENANCE AND REPAIR OBLIGATIONS OF WILBUR-ELLIS; TRANSFER RESTRICTIONS

8.1. Use of Rail Spur. On and after the Closing Date, Wilbur-Ellis will use the Rail Spur for its intended purpose subject to the Grant Agreement (as defined below).

8.2 Maintenance and Repair Obligations. On and after the Closing Date, Wilbur-Ellis expressly assumes all obligations of City pursuant to that certain Grant Agreement between the State of Oregon acting by and through its Department of Transportation and City attached hereto as Exhibit C (the "Grant Agreement"), the Legal Requirements, any obligations that may be imposed by BNSF Railway, and any other repairs or maintenance obligations related to the Rail Spur. Wilbur-Ellis' obligations include, without limitation, all maintenance and repairs to the following: (a) the Rail Spur, (b) all rail improvements, track, ties, and switches related to the Rail Spur, (c) conveyor system and railcar mover system improvements including, without limitation, electrical system, unloading pit(s), (d) structural framework for conveyor and railcar mover systems; and (e) all fencing and gates associated with the Rail Spur and/or benefitting the Rail Spur. All repairs and maintenance conducted by Wilbur-Ellis and/or Wilbur-Ellis' Representatives shall be completed in accordance with this Agreement, the Grant Agreement, and the Legal Requirements. The maintenance and repair covenants contained in this Section 8.2 will not merge into the Bill of Sale but will survive the Closing.

8.3. No Transfer or Assignment. Wilbur-Ellis will not Transfer the Rail Spur without the express written consent of City, which City may withhold in its sole and absolute discretion. Wilbur-Ellis will not assign its rights and obligations pursuant to this Agreement without the express written consent of City, which City may withhold in its sole and absolute discretion.

8.4. Abandonment or Non-Use. If Wilbur-Ellis elects not to use the Rail Spur and/or ceases

operations for a period of 24 consecutive months and/or the Lease terminates, City may request a transfer of the Rail Spur to City and/or a third party designated by City provided that such transferee assume the obligations of Wilbur-Ellis pursuant to the terms of this Agreement from and after the transfer date. If the Rail Spur is transferred back to City, City must consent in writing to such transfer and such transfer must be at no cost or expense to City.

9. INSURANCE

9.1 Fire and Hazard Insurance. Wilbur-Ellis during its ownership of the Rail Spur will keep the Rail Spur insured against loss by fire and other hazards covered by a standard form of fire insurance policy with extended coverage endorsement including vandalism and malicious mischief. The amount of the insurance will be not less than one hundred percent (100%) of the replacement cost of the insured improvements and will also be sufficient to prevent City from becoming a coinsurer under the provisions of the policies.

9.2 General Liability Insurance. Wilbur-Ellis will procure and continuously maintain during its period of ownership of the Rail Spur general liability insurance with initial limits of not less than $2,000,000.00 for injury to one person, $2,000,000.00 for any one accident or occurrence and $2,000,000.00 for property damage, and $4,000,000.00 in the aggregate. City may, by written notice to Wilbur-Ellis, demand that the limits of Wilbur-Ellis' general liability insurance be raised to amounts specified in the written notice and Wilbur-Ellis will at the next succeeding policy renewal date, but not later than six (6) months after the date of the notice, raise the limits to those specified in the notice. All limits demanded by City will be commercially reasonable as of the date of the notice for the use Wilbur-Ellis is then making of the Rail Spur. The insurance will be in a form reasonably sufficient to protect City and Wilbur-Ellis against claims of third persons for personal injury, death or property damage arising from the use, occupancy or condition of the Rail Spur.

9.3. Pollution Liability Insurance and Automobile Insurance. Wilbur-Ellis will procure and continuously maintain during its period of ownership of the Rail Spur pollution liability insurance with limits of not less than $2,000,000.00 per occurrence, $4,000,000.000 in the aggregate. Wilbur-Ellis will procure and continuously maintain during its period of ownership of the Rail Spur comprehensive automobile liability insurance with limits of not less than $2,000,000 per occurrence, $4,000,000 in the aggregate.

9.4 General Insurance Provisions. Wilbur-Ellis may not materially change or cancel any insurance policy Wilbur-Ellis is required to obtain and maintain under this Agreement without first providing City thirty (30) days' prior written notice. Notwithstanding anything contained in this Agreement to the contrary, commencing on the ten-year anniversary of the Effective Date, City may increase the minimum levels of insurance Wilbur-Ellis is required to carry under this Agreement by providing Wilbur-Ellis ninety (90) days' prior written notice; provided that such increases must be commercially reasonable (taking into account Wilbur-Ellis' use of the Rail Spur). All policies of insurance which Wilbur-Ellis is required by this Agreement to carry will: (a) provide that the insurer waives the right of subrogation against City and that, except in the event of City's sole negligence, gross negligence or willful misconduct, any loss will be payable notwithstanding any negligence or affirmative act of City, (b) be issued by a responsible insurance company which is licensed to practice in the State of Oregon, (c) be primary policies, and (d) all liability insurance policies will name City and City Representatives as additional insureds. Wilbur-Ellis will provide City with certificates of insurance coverage that Wilbur-Ellis is required to maintain pursuant to this Agreement within ten (10) days of City's request.

10. GENERAL PROVISIONS

10.1 Survival; Time of Essence; Attorney Fees. All of City's and Wilbur-Ellis' representations, warranties, covenants, and indemnity obligations arising under or made in this Agreement will survive the Closing and will not merge into the Bill of Sale. Time is of the essence with respect to each and every obligation of the parties hereunder. With respect to any dispute relating to this Agreement, or if a suit, action, arbitration, or other proceeding of any nature whatsoever is instituted to interpret or enforce the provisions of this Agreement, including, without limitation, any proceeding under the U.S. Bankruptcy Code and involving issues peculiar to federal bankruptcy law or any action, suit, arbitration, or proceeding seeking a declaration of rights or rescission, the prevailing party will be entitled to recover from the losing party its reasonable attorney fees, paralegal fees, expert fees, and all other fees, costs, and expenses incurred in connection therewith, as determined by the judge or arbitrator at trial, arbitration, or other proceeding, or on any appeal or review, in addition to all other amounts provided by law.

10.2 Binding Effect; Notices. Subject to Section 10.3, this Agreement will be binding on and will inure to the benefit of City, Wilbur-Ellis, and their respective heirs, legal representatives, successors, and assigns. All notices or other communications required or permitted by this Agreement must be in writing, must be delivered to the parties at the addresses first set forth above, or any other address that a party may designate by written notice to the other party, and are considered delivered upon actual receipt if delivered personally, by fax, or by a nationally recognized overnight delivery service or at the end of the third business day after the date of deposit if deposited in the United States mail, postage pre-paid, certified, return receipt requested.

10.3 Entire Agreement; Applicable Law; Severability. This Agreement, the Purchase and Sale Agreement, and the Lease set forth the entire understanding of the parties with respect to the Transaction. This Agreement supersedes any and all prior negotiations, discussions, agreements, and understandings between the parties with respect to the Transaction. This Agreement may not be modified or amended except by written agreement executed by the parties to this Agreement. This Agreement will be construed, applied, and enforced in accordance with the laws of the State of Oregon. Any action or proceeding arising out of this Agreement will be litigated in courts located in Jefferson County, Oregon. Each party consents and submits to the jurisdiction of any local, state, or federal court located in Jefferson County, Oregon. If a provision of this Agreement is determined to be unenforceable in any respect, the enforceability of the provision in any other respect and of the remaining provisions of this Agreement will not be impaired.

10.4 Execution; Counterparts; Time. The parties may execute this Agreement in separate counterparts, each of which when executed and delivered will be an original, but all of which together will constitute one and the same instrument. Facsimile or email transmission of any signed original document will be the same as delivery of an original. At the request of any party, the parties will confirm facsimile or email transmitted signatures by signing and delivering an original document. If the date for performance of an obligation or delivery of any notice hereunder falls on a day other than a business day, the date for such performance or delivery of such notice will be postponed until the next ensuing business day. For purposes of this Agreement, a "business day" means a normal working day (i.e., Monday through Friday of each calendar week, exclusive of Federal and state holidays and one day following each of Thanksgiving, Christmas, and New Year's).

10.5 Person; Interpretation. For purposes of this Agreement, the term "person" means any

natural person, corporation, limited liability company, partnership, joint venture, firm, association, trust, unincorporated organization, government or governmental agency or political subdivision, or any other entity. All pronouns contained herein and any variations thereof will be deemed to refer to the masculine, feminine, or neutral, singular or plural, as the identity of the parties may require. The singular includes the plural and the plural includes the singular. The word "or" is not exclusive. The words "include," "includes," and "including" are not limiting. The titles, captions, or headings of the sections herein are inserted for convenience of reference only and are not intended to be a part of or to affect the meaning or interpretation of this Agreement.

10.6 Further Assurances; Waiver; Expenses. The parties will sign other documents and take all other actions reasonably necessary to further effect and evidence this Agreement. No waiver will be binding on a party unless it is in writing and signed by the party making the waiver. A party's waiver of a breach of a provision in this Agreement will not be a waiver of any other provision or a waiver of a subsequent breach of the same provision. Except as otherwise provided in this Agreement, each party will bear the party's own fees, costs, and expenses incurred in connection with the Transaction, including, without limitation, the performance of this Agreement and the other agreements and documents relating to the Transaction.

[end of agreement – signature page immediately follows]

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be duly executed and effective as of the Effective Date.

WILBUR-ELLIS:
Wilbur-Ellis Company LLC,
a California limited liability company

_____

By: _____
Its: _____

CITY:
City of Madras,
an Oregon municipal corporation

_____

By: Royce Embanks, Mayor

Appendix A
Definitions

"Agreement" has the meaning assigned to such term in the preamble.

"Bill of Sale" means a bill of sale concerning City's sale and transfer of the Rail Spur to Wilbur-Ellis, which bill of sale will be in the form attached hereto as Exhibit B.

"City's Representative(s)" means each present and future officer, employee, agent, contractor, and/or authorized representative of City.

"Closing" means the closing of the Transaction, which shall occur at the time periods provided in Section 6.1.

"Closing Date" means the date on which the Closing takes place.

"Default Notice" has the meaning assigned to such term under Section 7.4.

"Effective Date" has the meaning assigned to such term in the Lease.

"Encumbrance(s)" means any lien, mortgage, pledge, security interest, reservation, restriction, adverse claim, or other encumbrance.

"Environmental Law(s)" means any federal, state, and/or local statute, regulation, and/or ordinance, or any judicial or other governmental order pertaining to the protection of health, safety, or the environment and/or designed to minimize, prevent, punish, or remedy the consequences of actions that damage or threaten the environment or public health and safety, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §§9601 et seq., ORS 468B.195-197 (including any regulations promulgated thereunder), the Hazardous Materials Transportation Act, 49 U.S.C. §§1801 et seq., and the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq.

"Grant Agreement" has the meaning assigned to such term under Section 8.2.

"Hazardous Substance(s)" means any hazardous, toxic, infectious, and/or radioactive substance, waste, or material as defined, controlled, or listed by any Environmental Law, including, without limitation, petroleum oil and its fractions.

"Lease" has the meaning assigned to such term in Recital B.

"Legal Requirement(s)" means any and all laws, statutes, ordinances, codes, regulations, orders, rules, covenants, conditions, easements, declarations, leases, liens, and restrictions adopted by governmental authorities that, directly or indirectly, affect or concern the ownership, use, condition, maintenance, leasing, and/or operation of all or any part of the Rail Spur and associated property, including, without limitation, all Environmental Laws.

"Purchase and Sale Agreement" has the meaning assigned to such term in Recital A.

"Rail Spur" has the meaning set forth in Recital C and any additions or modifications thereto.

"Transaction" means the execution of the Bill of Sale and transfer of the Rail Spur to Wilbur-Ellis subject to the terms and conditions of this Agreement.

"Transfer" means (a) any transfer, including, without limitation, any sale, exchange, gift, assignment, Encumbrance, foreclosure of an Encumbrance, or attachment, regardless of whether the transfer occurs voluntarily or involuntarily, by operation of law, or because of any act or occurrence, (b) any contract involving the lease or use of the Rail Spur, and/or (c) the sale, assignment, encumbrance, and/or transfer - or series of related sales, assignments, encumbrances, and/or transfers - of fifty-one percent (51%) or more of the outstanding voting stock of Wilbur-Ellis, regardless of whether the sale, assignment, encumbrance, and/or transfer occurs voluntarily or involuntarily, by operation of law, or because of any act or occurrence; provided, however, that a transaction shall not be considered a Transfer if the persons who are the beneficial owners of the outstanding voting stock immediately prior to such transaction will beneficially own, directly or indirectly, at least 51% of the outstanding shares of the voting stock of Wilbur-Ellis following such transaction.

"Wilbur-Ellis" has the meaning assigned to such term in the preamble.

"Wilbur-Ellis' Representative(s)" means each present and future officer, employee, agent, contractor, and/or authorized representative of Wilbur-Ellis.

Exhibit A
Rail Spur Description

The Rail Spur is described as follows:

[attached]

DeJarnatt Land Surveys, Inc.
20735 DOUBLE PEAKS DRIVE ▲ Bend, OR 97701 ▲ (541) 382-4192

January 15, 2015
City of Madras – Wilbur Ellis Site
Job# 15014E

40.00 FOOT WIDE RAILROAD EASEMENT DESCRIPTION

A strip of land being 40.00 feet wide, located in the Southwest Quarter of the Southeast Quarter (SW ¼-SE ¼) of Section 26, Township 10 South, Range 13 East of the Willamette Meridian, City of Madras, Jefferson County, Oregon, the centerline being described as follows:

Commencing at the Southeast corner of said Section 26, from which the One-Quarter corner between Section 26 and Section 35, Township 10 South, Range 13 East bears South 89°45'15" West a distance of 2644.11 feet; thence North 84°56'11" West a distance of 1806.36 feet to engineer's railroad centerline station 1+81.92 of the "Existing Track" (per Harris Group BNSF Rail Improvement Plan with a revised date of 12/30/2013) and the **Point of Beginning**; thence North 32°14'35" West a distance of 90.18 feet to engineer's station 0+30.17 feet of "Track A"; thence continuing North 32°14'35" West a distance of 118.84 feet to engineer's station 1+49.00 of "Track A"; thence 236.17 feet along the arc of a 603.81 foot radius curve to the left to engineer's station 3+84.94 of "Track A", the chord of which bears North 43°26'45" West, 234.66 feet; thence North 54°39'14" West a distance of 358.28 feet to engineer's station 7+43.22 of "Track A" and the **End of this Description**; thence along the following courses to the Southwest corner of Lot 17, Jefferson Park Business Center Phases 1B and 2:

thence continuing North 54°39'14" West a distance of 3.52 feet to the South line of said Lot 17;

thence South 89°32'33" West along said South line a distance of 62.67 feet to the Southwest corner of said Lot 17.

The sidelines of said centerline are 20.00 feet each side and lie within a portion of said Lot 17.

Containing 0.74 acres more or less.

End of Description

REGISTERED
PROFESSIONAL
LAND SURVEYOR

OREGON
JULY 17, 1986
GARY L. DEJARNATT
2208

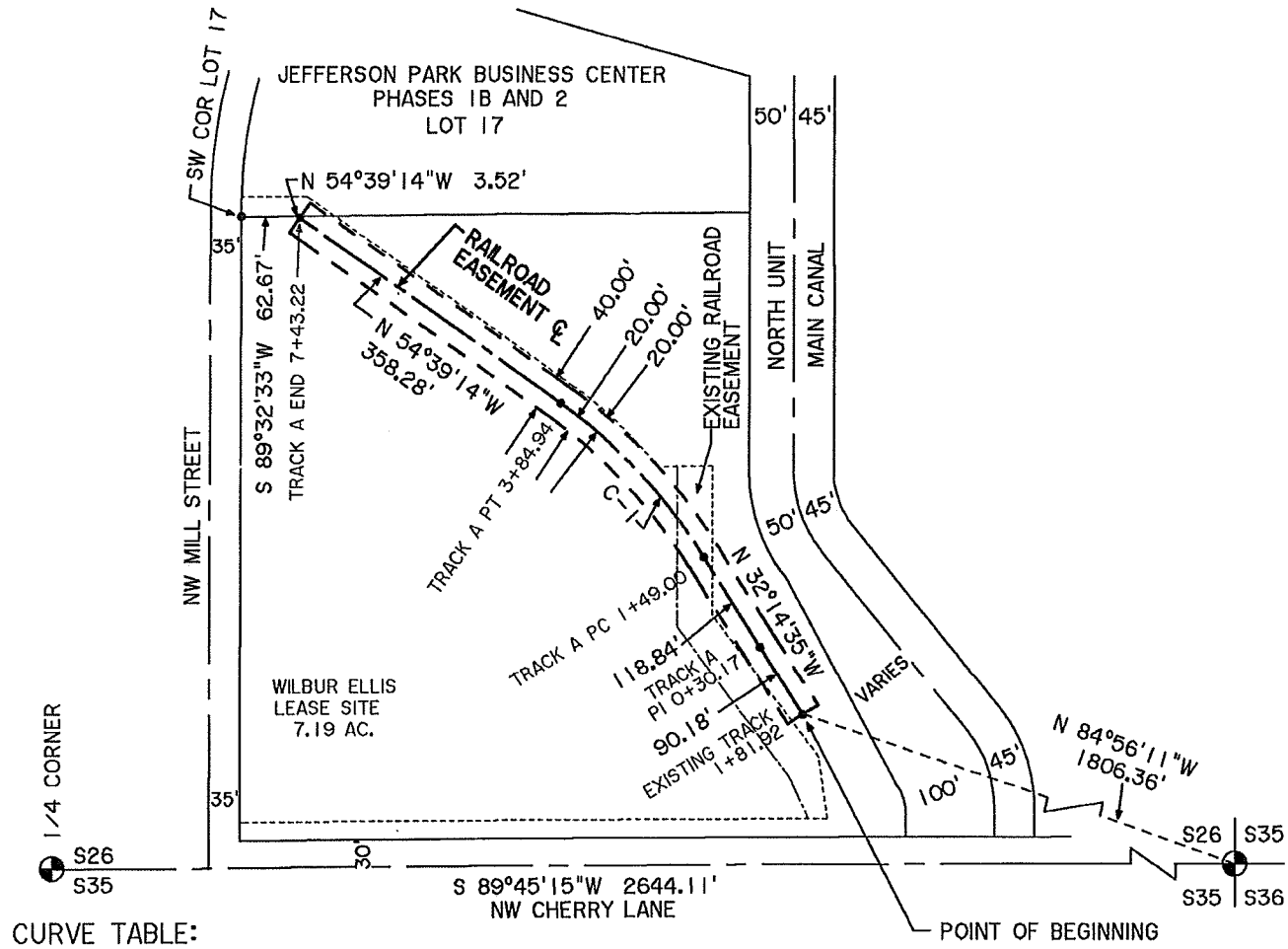
Renews: 12-31-2015

RAILROAD EASEMENT EXHIBIT _____

LOCATED IN THE SW 1/4 OF THE SE 1/4 OF SEC. 26, T. 10 S., R. 13 E., W.M., CITY OF MADRAS, JEFFERSON COUNTY, OREGON.

FOR: THE CITY OF MADRAS
WILBUR ELLIS SITE RAILROAD

SCALE: 1 INCH = 200 FEET



CURVE TABLE:

CURVE	RADIUS	LENGTH	DELTA	CHORD	CH.BEARING
C-1	603.81'	236.17'	22°24'36"	234.66'	N 43°26'45"W

REGISTERED PROFESSIONAL LAND SURVEYOR

OREGON
JULY 17, 1986
GARY L. DEJARNATT
2208

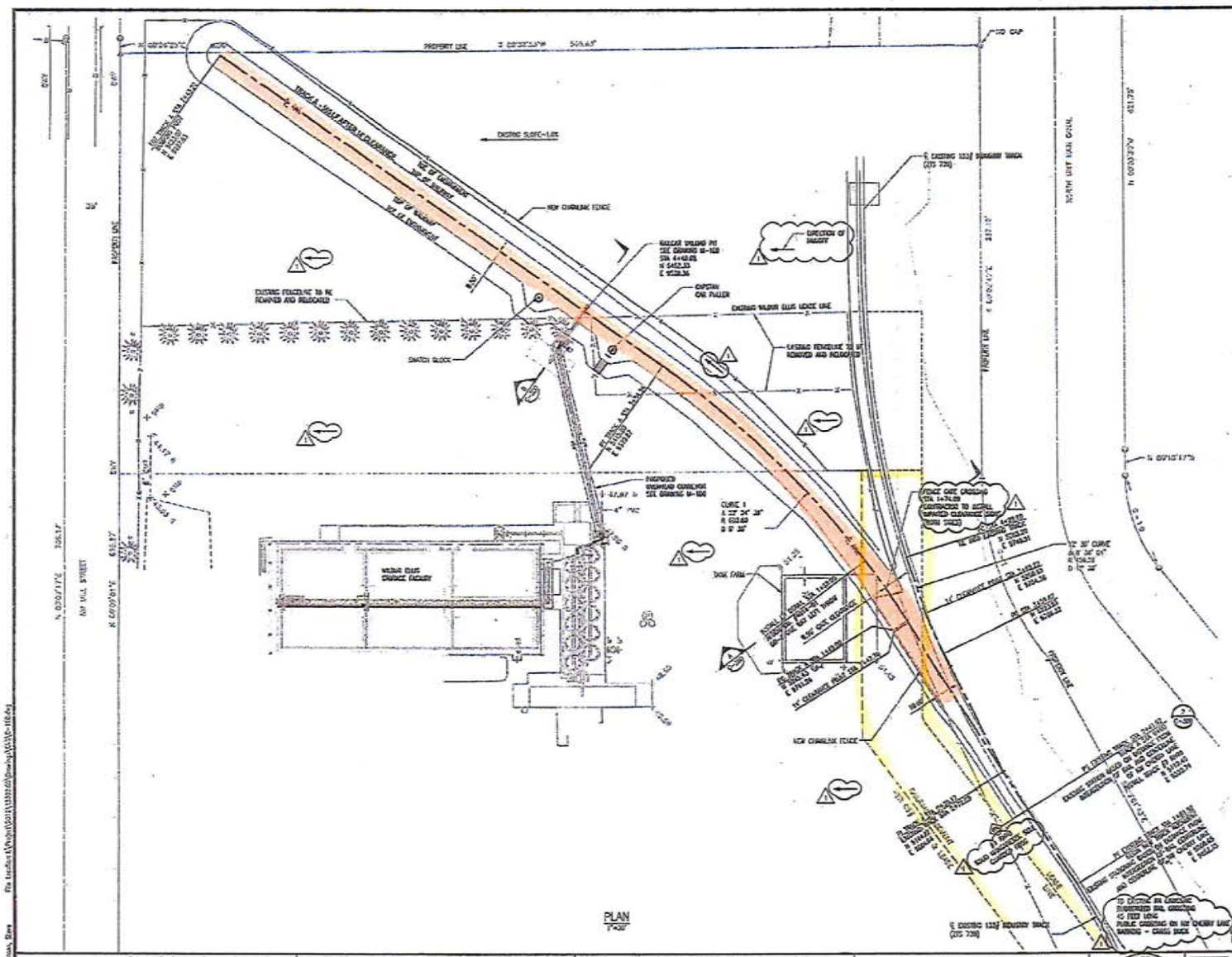
RENEWS: 12/31/2015

PREPARED BY:

DEJARNATT LAND SURVEYS, INC.

20735 DOUBLE PEAKS DRIVE
BEND, OREGON 97701
PHONE: 541-382-4192

DATE: JANUARY 15, 2015
SHEET 1 OF 1
JOB # 12066K
SCREEN FILE 12066WE - LAYER 61



GENERAL NOTES

1. FOR DRAWING INDEX SEE SHEET G-002.
2. ALL TRACK WORK SHALL BE DONE IN CONFORMANCE WITH THE APPLICABLE RECOMMENDATIONS OF THE AMERICAN RAILWAY ENGINEERING ASSOCIATION (AREMA) MANUAL FOR RAILWAY ENGINEERING (2010 EDITION), BNSF RAILWAY COMPANY "DESIGN GUIDELINES FOR INDUSTRIAL TRACK PROJECTS," AND THE CONTRACT DRAWINGS. IN THE EVENT OF ANY DISCREPANCY, CONFLICT OR AMBIGUITY BETWEEN THE AREMA, THE BNSF, THE CONTRACT DRAWINGS, AND THE CONTRACT SPECIFICATIONS, THE CONTRACTOR SHALL PROMPTLY NOTIFY THE OWNER'S REPRESENTATIVE FOR A WRITTEN DETERMINATION. IN SUCH EVENTS, THE MORE STRINGENT REQUIREMENT SHALL GOVERN AND THE CONTRACTOR SHALL BID FOR THE MORE STRINGENT REQUIREMENTS. ALL TRACK WORK NOT DETAILED ON THESE DRAWINGS OR IN THE SPECIFICATIONS SHALL BE PERFORMED IN ACCORDANCE WITH THE 2010 AREMA SPECIFICATIONS.
3. CONTRACTOR SHALL MAINTAIN EXISTING SURVEY CONTROL POINTS AND BENCH MARKS. SURVEY POINTS OR BENCH MARKS DAMAGED OR REMOVED BY CONTRACTOR SHALL BE RESTORED BY A REGISTERED LAND SURVEYOR AT CONTRACTOR'S EXPENSE. REPRESENTATIVE SURVEY PROVIDED BY:
   DEJANOVIC LAND SURVEYS, INC
   20475 SOUTH BEAVER POINTS DRIVE
   OSWEGO, OR 97034 – PH: 541.382.4182
4. ALL EXISTING BONDED RAIL AFFECTED BY CONSTRUCTION SHALL BE PROTECTED AND RETURNED TO A CONDITION EQUAL TO OR BETTER THAN EXISTING UPON THE COMPLETION OF RAIL REPLACEMENT, LINING AND SURFACING OPERATIONS.
5. THE CONTRACTOR SHALL ADHERE TO THE MINIMUM SAFETY REQUIREMENTS FOR CONTRACTORS WORKING ON OR ADJACENT TO BNSF TRACK.
6. THE CONTRACTOR SHALL ENSURE THE PROTECTION OF ALL UTILITIES ON THE PROJECT SITE.
7. THE ENGINEER OF RECORD HAS NOT BEEN RETAINED OR COMPENSATED TO PROVIDE DESIGN AND CONSTRUCTION REVIEW SERVICES RELATED TO THE CONTRACTORS SAFETY PRECAUTIONS OR TO MEANS, METHODS, TECHNIQUES, SEQUENCES OR PROCEDURES REQUIRED FOR THE CONTRACTOR TO PERFORM HIS WORK.
8. THE CONTRACTOR SHALL REMOVE AND DISPOSE OF TREES, STUMPS, BRUSH, ROOTS, TOPSOIL AND GRADE ORGANIC AS THE CONTRACTOR'S SITE, AND WHERE INDICATED ON THE TRACK ALIGNMENT PLANS. THE MATERIAL SHALL BE DISPOSED OF IN SUCH A MANNER AS TO MEET LOCAL REGULATIONS. UPON COMPLETION OF THE WORK, THE CONTRACTOR SHALL REMOVE FROM THE SITE ALL MACHINERY, EQUIPMENT, SURPLUS MATERIALS, RUBBISH OR OTHER TEMPORARY BEING USED DURING CONSTRUCTION, AND TO LEAVE THE SITE IN A CONDITION ACCEPTABLE BY THE OWNER.
9. THE CONTRACTOR SHALL RESTORE ALL EXISTING RAIL, SITE FACILITIES, AND OTHER ITEMS DISTURBED IN THE COURSE OF CONSTRUCTION TO A CONDITION EQUAL OR BETTER THAN THE EXISTING CONDITION. AT RAIL TIE-IN WITH THE EXISTING TRACK, THE CONTRACTOR SHALL PROVIDE A SMOOTH TRANSITION WITHOUT SHARP HORIZONTAL OR VERTICAL BREAKS.
10. ALL CONSTRUCTION, REGARDLESS OF TIME, MAY BE DONE IN NOT WORKER CONDITIONS. ALL CROSSES, INCLUDING SITE ACCESS, MAY BE MADE AND ALL SURFACES FULL OF WATER AT ANY TIME. CONTRACTOR TO PROVIDE WHATEVER MEANS REQUIRED TO POSITION THE PROJECT IN THE OPPORTUNE PROCESS AT THE TIME OF CONSTRUCTION.
11. COMPACT RAILROAD BALLAST TO 95% ASTM D1557 TO PROVIDE STABLE SURFACE FOR VEHICULAR CAR MATERIAL.
12. OREGON LAW REQUIRES FOLLOWING RULES ADOPTED BY THE OREGON UTILITY NOTIFICATION CENTER. THESE RULES ARE NOT FOUND IN OAR. 952-001-0010 THROUGH 952-001-0090. YOU MAY OBTAIN THESE RULES BY CALLING THE CENTER. THE CENTER RECEIVED NUMBER IS (503) 232-1987. ONE OF THE REQUIREMENTS OF THESE RULES IS THAT CONTRACTORS MUST NOTIFY THE CENTER AT LEAST 2 BUSINESS DAYS, BUT NOT MORE THAN 10 BUSINESS DAYS, BEFORE COMMENCING AN EXCAVATION. TO COMPLY WITH THIS REQUIREMENT, CALL 1-800-332-2344.

SCOPE OF WORK

1. WORK DONE BY BNSF – NONE
   WORK DONE BY CONTRACTOR:
   INSTALL 600 ft. 112/115 lb. COMP JOINT
   REMOVE 140 ft. 132 lb
   1-#9 – 132 RIGHT HAND TURNOUT
   1-STAMPED POSTS (SD FROGER RAIL TYPE NO OR APPROVED EQUAL)
   1-SIGNAL (ALDEN CO. #4014-01 SIG-1 SIDE MAY LEFT SIGNAL)
   1-SIGNAL PALLET SIGNAL
   INSTALL 2-IMPROVED CLEARANCE SIGNS AT GATE CROSSING
2. ALL STORAGE TRACKS 0.25 GRADE.
   LEAD TRACK < 1% GRADE.

OPERATING PLAN

BNSF TO SPOT 4 CARS OWED NEW RAIL SPUR (TRACK A). OWNER/OPERATOR TO UNLOAD CARS AND BE REMOVED BY BNSF.

BENCHMARK

ELEVATIONS ARE BASED ON THE 1/4 CORNER COMMON TO SECTIONS 26 AND 35 WITH AN NGVD 29 ELEVATION OF 2414.83 PER CO-CPD CONTROL MARK REPORT 1013.2004 ON FILE AT THE JEFFERSON COUNTY SURVEYOR'S OFFICE.

KEYED NOTES

1. NOT USED

ENGINEER

HARRIS GROUP INC.
7700 SW BEAVER PARKWAY, SUITE 200
PORTLAND, OR 97225
PH: (503) 223-7200

LEGEND

EXISTING CITY OF MADRAS OWNED TRACKAGE ℄ (133 LB)

PROPOSED CITY OF MADRAS OWNED TRACKAGE ℄ (112/115 LB RE NEW BONDED RAILRUE ON TRACK A) (133 LB AT REPLACED TRACK)

DIRECTION OF TRAFFIC

ISSUED FOR CONSTRUCTION

Reference Drawings		Revisions				Revisions			
Drawing No	Title	Rev	Date	Qty	Description	Rev	Date	Qty	Description
		0	10/07/13	SCI	ISSUED FOR CONSTRUCTION				
		1	12/20/13	MCI	REVISED PER UPRR CONSTRUCTION PLAN REVIEW				

CITY OF MADRAS

Rev | Date | Appd | Client Approval Signature

Harris Group Inc.
Engineering Solutions for a Better World
www.harrisgroup.com

Drawn: SHH
Engr:
Appr:
Check:
Check:
Appr:

BNSF RAIL IMPROVEMENTS
CIVIL
BNSF RAIL CONSTRUCTION PLAN
CONNECT OREGON IV TASK 1

Project No: 13302.00
Drawing: C-110
Rev: 1

Rev Date:12/20/13 By: Hosan, Steve

Exhibit B
Bill of Sale

[to be attached]

Exhibit B

BILL OF SALE

1. **Transfer**. On the Effective Date, City of Madras ("City") transfers and assigns to the Wilbur-Ellis Company, a California corporation ("Wilbur-Ellis") City's entire interest in and to the rail and conveyor system improvements identified on the attached Schedule 1 (the "Rail Spur").

2. **Exclusion of Representations and Warranties**. Except for the express representations and warranties provided in this Bill of Sale and the Rail Transfer Agreement between City and Wilbur-Ellis dated effective _____, 2016, City expressly excludes all warranties with respect to the Rail Spur, express and implied, including, without limitation, the warranty of merchantability, the warranty of fitness for particular purpose, and any warranties that may arise from course of dealing or usage of trade. City transfers its interest in the Rail Spur to Wilbur-Ellis "as is," "where is," and "with all faults."

3. **Governing Law**. This Bill of Sale is governed by the laws of the State of Oregon, without giving effect to any conflict-of-law principle that would result in the laws of any other jurisdiction governing this Bill of Sale. Any action, suit, or proceeding arising out of the subject matter of this Bill of Sale will be litigated in courts located in Jefferson County, Oregon. Each party consents and submits to the jurisdiction of any local, state, or federal court located in Jefferson County, Oregon.

4. **Attorney's Fees**. If any arbitration, action, suit, or proceeding is instituted to interpret, enforce, or rescind this Bill of Sale, or otherwise in connection with the subject matter of this Bill of Sale, including, without limitation, any proceeding brought under the United States Bankruptcy Code, the prevailing party on a claim will be entitled to recover with respect to the claim, in addition to any other relief awarded, the prevailing party's reasonable attorney's fees and other fees, costs, and expenses of every kind, including, without limitation, the costs and disbursements specified in ORCP 68 A(2), incurred in connection with the arbitration, action, suit, or proceeding, any appeal or petition for review, the collection of any award, or the enforcement of any order, as determined by the arbitrator or court.

5. **Acceptance**. Wilbur-Ellis accepts the Rail Spur subject to the terms and conditions contained in this Bill of Sale and the Rail Transfer Agreement.

Effective Date: _____, 2016

CITY:
City of Madras,
an Oregon municipal corporation

_____
By: Royce Embanks, Mayor

WILBUR-ELLIS:
Wilbur-Ellis Company,
a California corporation

_____
By: _____

Schedule 1

[To be inserted]

SCHEDULE 1

TO THE BILL OF SALE
HAS NOT YET BEEN DEVELOPED

SCHEDULE 1 TO THE BILL OF SALE WILL NEED TO DESCRIBE THE RAIL SYSTEM COMPONENTS THAT ARE BEING TRANSFERRED. THE CLOSING IS AROUND 4 MONTHS OUT. WILBUR-ELLIS WILL BE ASKED TO PREPARE THE PROPOSED LANGUAGE FOR REVIEW AND APPROVAL BY THE CITY.

Exhibit C
Grant Agreement

[to be attached]

Exhibit C

Misc. Contracts and Agreements
No. 28712

GRANT AGREEMENT
***Connect*Oregon IV**
MULTIMODAL TRANSPORTATION FUND PROGRAM 2012
Project Name: Madras-BNSF Rail Improvement Project

THIS GRANT PROGRAM AGREEMENT, hereinafter referred to as "Agreement" is made and entered into by and between the STATE OF OREGON, acting by and through its Department of Transportation, hereinafter referred to as "ODOT," and City of Madras, acting by and through its elected officials, hereinafter referred to as "Recipient," hereinafter individually referred to as the "Party" and collectively referred to as the "Parties."

RECITALS

1. By the authority granted in Oregon Revised Statute (ORS) 190.110, 366.572, and 366.576, state agencies may enter into agreements with counties, cities, and units of local government for the performance of any or all functions and activities that a party to the agreement, its officers, or agents have the authority to perform.

2. Pursuant to ORS 367.080 through 367.086, there is established the Multimodal Transportation Fund, separate and distinct from the General Fund, allowing for the issuance of lottery bonds for the purpose of financing grants and loans to fund Transportation Projects to public bodies and private entities that involve air, marine, rail or public transit.

3. The Multimodal Transportation Fund Program began through *Connect*Oregon, a one hundred million dollar ($100,000,000) lottery-bond-based initiative approved by the Oregon Legislative Assembly in 2005 (Oregon Laws 2005, Chapter 816), to invest in air, rail, public transit, and marine transportation projects to ensure Oregon's transportation system is strong, diverse and efficient. The Oregon Legislative Assembly added an additional one hundred million dollars ($100,000,000) in 2007 (Oregon Laws 2007, Chapter 859), one hundred million dollars ($100,000,000) in 2009 (Oregon Laws 2009, Chapter 865 – HB 2001), and forty million dollars ($40,000,000) in 2011 (Oregon Laws 2011, Chapter 624, HB 5036. The Multimodal Transportation Fund Program is focused on improving the connections between air, rail, marine and transit modes of transportation to reduce transportation costs to businesses, remove key bottlenecks, and increase connectivity.

4. The receipt and use of Multimodal Transportation Funds and the execution of this Agreement by Recipient are subject to conditions imposed by ORS 367.080 through 367.086 and Oregon Administrative Rule (OAR) Chapter 731, Division 35.

5. The Oregon Transportation Commission approved the projects to be funded under the Multimodal Transportation Fund Program at its August 2012 meeting. The Oregon Transportation Commission has set specific conditions on all approved projects and the inability to meet these Oregon Transportation Commission conditions may result in a loss of Project funding. Final approval for Project is subject to meeting all the Oregon Transportation Commission conditions as stated below.

6. Safety is of paramount concern to ODOT. ODOT encourages recipients of *Connect*Oregon grant funds to have safety as a high priority for all phases of work.

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

I. TERMS OF AGREEMENT

1. ODOT and Recipient agree that Recipient shall provide a track connection and equipment to Wilbur Ellis and improve three railroad crossings, hereinafter referred to as "Project", further described in Exhibit A, attached hereto and by this reference made a part hereof.

2. Project Cost is estimated at $779,800, which is subject to change. The *Connect*Oregon IV grant funds ("Grant Funds") are limited to $619,020 or eighty (80) percent of the total eligible Project Costs, whichever is less. Eligible costs for this Project will be reimbursed at eighty (80) percent until the $619,020 limit is reached. ODOT cannot reimburse Recipient for any work performed, or for Project Costs incurred prior to the effective date of this Agreement.

   a. Recipient must provide matching funds in an amount equal to twenty (20) percent of the eligible Project Costs. Matching funds must be used for elements necessary for implementation of Project, including land, excavation, permits, engineering, payroll, special equipment purchase, rental or lease. Recipient is responsible for all costs in excess of the Grant Funds. All Project Costs other than the Grant Funds are hereinafter referred to as "Recipient Contribution."

   a. If Project is not completed in accordance with, or consistent with, the application and documents provided by Recipient to ODOT prior to the execution of the Agreement, incorporated by reference into this Agreement, and this Agreement as they each may be amended, Recipient shall pay back all of the Grant Funds to ODOT. Any funds disbursed but not used for the approved Project must be returned to ODOT. Recipient understands eligibility for Grant Funds applies only to Project costs incurred on or after the effective date of this Agreement.

3. The term of this Agreement is effective on the date all required signatures are obtained and shall expire five (5) calendar years following the date all required signatures are obtained.

II. RECIPIENT OBLIGATIONS

1. Recipient shall perform Project work described in Exhibit A.

2. Recipient shall comply with all requirements of ORS 367.080 through ORS 367.086 and OAR Chapter 731, Division 35.

3. Recipient shall submit to ODOT's Project Liaison for review and approval monthly invoices and updated monthly progress reports on Project Key Milestones and Schedule in Exhibit A.

a. The invoice must adhere to generally accepted accounting principles and will identify Project, Agreement number, Project start and end date, the invoice number or the account number or both, and will itemize all expenses as well as provide a detailed breakdown of funds expended to date and dollars remaining. In the event an invoice is not necessary during a specific period, an updated monthly progress report on Project schedule must be submitted separately each month reflecting continuous progress.

b. The monthly progress report will be prepared using the *Connect*Oregon Monthly Progress Report (Form 734-2668), attached by reference and made a part of this Agreement, and will be submitted to the ODOT Project Liaison and ODOT's *Connect*Oregon Program Manager, by the first Wednesday of each month. The fillable form can be downloaded on-line at the following address:

http://www.oregon.gov/ODOT/HWY/LGS/online.shtml.

c. If Recipient anticipates Project key milestones will be delayed by more than ninety (90) days from the key milestones shown in Exhibit A, Recipient shall submit a Request for Change Order (Form 734-2648), which is hereby incorporated by reference, to ODOT's Project Liaison as soon as Recipient becomes aware of any possible delay. The Request for Change Order must be submitted prior to the milestone completion date shown in Exhibit A. The fillable form can be downloaded on-line at the following address: **http://www.oregon.gov/ODOT/HWY/LGS/online.shtml.**

d. Any changes to Project scope or delivery schedule must be approved by the *Connect*Oregon Oversight Committee or assigned designee prior to execution of an amendment to this Agreement. Recipient shall not proceed with any changes to Project scope prior to the Request for Change Order being approved by ODOT and the ensuing amendment executed. A Request for Change Order may be rejected at the discretion of the *Connect*Oregon Oversight Committee. The *Connect*Oregon Oversight Committee may choose to request review by the Oregon Transportation Commission.

e. Recipient shall submit a written report to ODOT's *Connect*Oregon Program Manager that identifies the number of jobs created or retained both during construction and after Project completion, as a direct result of this Project. The report must also include the number of jobs projected in the application. This report must also include data on the methodology which measures Project's success as described in the grant application. The report must be received within eighteen (18) months after the completion of Project. Recipient's obligation to provide this report will survive expiration of this Agreement.

4. Recipient must comply with ORS 280.518, which requires any economic development program financed with proceeds from the state lottery to display a sign in a conspicuous location on Project site or specify in the program information that Project is financed with proceeds from the state lottery. ODOT will provide standard signage as appropriate. If Recipient chooses to make a custom sign, it must be

approved by ODOT's *Connect*Oregon Program Manager and Recipient shall be responsible for the cost of such custom signage. If Project site is remote and a sign would not be visible to the public, then Recipient shall provide proof to ODOT's *Connect*Oregon Program Manager that Recipient has specified in its program information that Project is financed with proceeds from the state lottery.

5. Recipient must produce or provide, upon ODOT's request, any documents or information identified or referenced in Project application or in other documents provided by Recipient to ODOT prior to the execution of the Agreement. These may include, but are not limited to, information pertaining to Project key milestones, schedule, budget and cash flow, feasibility, readiness to construct, permits, likelihood of completion within planned time frame, and other items related to completion of promised Project elements.

6. Recipient shall provide a pre-construction estimate based on the final design prior to any construction (labor and material) costs being considered eligible for reimbursement and actually being reimbursed. Project Costs will only be reimbursed through the design phase of Project until all applicable documentation is received. Recipient shall provide this documentation to ODOT's *Connect*Oregon Program Manager.

7. Recipient shall, for design and construction, follow standards that meet or exceed American Railway Engineering and Maintenance-of-Way Association's standards. Railroad recipients shall ensure that any continuous welded rail used on Project meets or exceeds Federal Railroad Administration standards. Industrial recipients must submit a maintenance and installation plan to ODOT's *Connect*Oregon Program Manager prior to installation of 400 feet or more of continuous welded rail.

8. Recipient shall, prior to construction, submit a materials list, proposed construction plans and schedule to ODOT's *Connect*Oregon Program Manager. Project costs will only be reimbursed through the design phase of Project until the materials list; proposed construction plans and schedule have been submitted to ODOT's *Connect*Oregon Program Manager. Substantial changes to the scope of work will require a Request For Change Order and a revised materials list.

9. Recipient shall, once construction has begun on Project, submit a monthly construction schedule at the same time Recipient submits the monthly report detailed above under Section II.3.a of this Agreement.

10. Recipient shall, once Project has been completed and prior to the final inspection, submit a final materials list to the ODOT Project Liaison for use by the ODOT Inspector during the final inspection.

11. Upon execution of this Agreement, Recipient shall require its Contractor(s) performing the work under this Agreement to name ODOT as an additional obligee on Contractor(s) bond.

12. Recipient shall comply with all federal, state, and local laws, regulations, executive orders and ordinances applicable to the work under this Agreement, including, without limitation, the applicable provisions of ORS 279A, 279B and 279C. Without limiting the generality of the foregoing, Recipient expressly agrees to comply with (i) Title VI of Civil Rights Act of 1964; (ii) Title V and Section 504 of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659A.142; (iv) all regulations and administrative rules established pursuant to the foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.

13. Recipient shall, to the extent permitted by the Oregon Constitution and the Oregon Tort Claims Act, indemnify, defend, save, and hold harmless the State of Oregon, Oregon Transportation Commission and its members, Oregon Department of Transportation, its officers and employees from any and all claims, suits, or action of any nature arising out of activities of Recipient, its consultant, its contractor, its officers, subcontractors, agents, or employees under this Agreement. If Recipient is a local public agency, then Recipient's total liability shall not exceed the tort claims limits providing in the Oregon Tort Claims Act, ORS 30.260 and 30.300 for "local public bodies."

14. Notwithstanding the foregoing defense obligations in the paragraph above, neither Recipient nor any attorney engaged by Recipient shall defend any claim in the name of the State of Oregon or any agency of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without the prior written consent of the Oregon Attorney General. The State of Oregon may, at anytime at its election assume its own defense and settlement in the event that it determines that Recipient is prohibited from defending the State of Oregon, or that Recipient is not adequately defending the State of Oregon's interests, or that an important governmental principle is at issue or that it is in the best interests of the State of Oregon to do so. The State of Oregon reserves all rights to pursue any claims it may have against Recipient if the State of Oregon elects to assume its own defense.

15. Recipient acknowledges and agrees that ODOT, 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 Recipient which are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of six (6) years after final payment. Copies of applicable records will be made available upon request. Payment for costs of copies is reimbursable by the requesting Party.

16. If Recipient enters into a construction contract for performance of work on Project, then Recipient will require its contractor to provide the following:

    a. Contractor shall indemnify, defend and hold harmless ODOT from and against all claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature whatsoever resulting from, arising out of, or relating to the activities of

Contractor or its officers, employees, subcontractors, or agents under the resulting contract.

b. Contractor and Recipient shall name ODOT as a third party beneficiary of the resulting contract.

c. Commercial General Liability. Contractor shall obtain, at Contractor's expense, and keep in effect during the term of the resulting contract, Commercial General Liability Insurance covering bodily injury and property damage in a form and with coverages that are satisfactory to ODOT. This insurance will include personal and advertising injury liability, products and completed operations. Coverage may be written in combination with Automobile Liability Insurance (with separate limits). Coverage will be written on an occurrence basis. If written in conjunction with Automobile Liability the combined single limit per occurrence will not be less than one million dollars ($1,000,000) for each job site or location. Each annual aggregate limit will not be less than two million dollars ($2,000,000.)

d. Automobile Liability. Contractor shall obtain, at Contractor's expense, and keep in effect during the term of the resulting contract, Commercial Business Automobile Liability Insurance covering all owned, non-owned, or hired vehicles. This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits). Combined single limit per occurrence will not be less than one million dollars ($1,000,000.)

e. Additional Insured. The liability insurance coverage, except Professional Liability, Errors and Omissions, or Workers' Compensation, if included, required for performance of the resulting contract will include ODOT and its divisions, officers and employees as Additional Insured but only with respect to Contractor's activities to be performed under this Contract. Coverage will be primary and non-contributory with any other insurance and self-insurance.

f. Notice of Cancellation or Change. There will be no cancellation, material change, potential exhaustion of aggregate limits or non-renewal of insurance coverage(s) without thirty (30) days written notice from Contractor's or its insurer(s) to ODOT. Any failure to comply with the reporting provisions of this clause will constitute a material breach of the resulting contract and will be grounds for immediate termination of the resulting contract and this Agreement.

17. Recipient, and its Contractors, shall work as an independent contractor and shall be exclusively responsible for all costs and expenses related to its employment of individuals to perform the work under this Agreement including, but not limited to, retirement contributions, workers' compensation, unemployment taxes, and state and federal income tax withholdings.

18. All employers, including Recipient, that employ subject workers who work under this Agreement in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage unless such employers are exempt under ORS 656.126. Employers Liability insurance with coverage limits of not less

than five hundred thousand dollars ($500,000) must be included. Recipient shall ensure that each of its Contractors complies with these requirements.

19. Recipient shall, upon execution of this Agreement and as a condition to this Agreement, complete and file with the appropriate County Clerk, Exhibit B, "Memorandum of Agreement and Acknowledgment of ODOT Assistance", attached hereto and by this reference made a part hereof. Recipient shall provide confirmation of this filing by forwarding to ODOT's *Connect*Oregon Program Manager a notarized copy of the recorded Exhibit B. By means of said acknowledgment of Recipient's financial obligations, the continued use of said property for public purposes, and the maintenance of the facility or service at a level consistent with normal depreciation or demand or both is recognized and attached to the property as conditions. Any interest in said property by ODOT is proportional to the state participation in Project. While in default of conditions of this Agreement, Recipient will be ineligible to receive state funds from any ODOT-administered program for any project on a street, road or property. The Memorandum of Agreement and Acknowledgment of ODOT Assistance shall remain in place for the useful life of Project. The useful life of Project is defined as twenty (20) years. Reimbursement to Recipient will not be made until a copy of the recorded Exhibit B has been forwarded to the ODOT Project Liaison.

20. Recipient and ODOT's Project Liaison shall, upon completion of all on-site work for Project, perform an on-site review. Once review is completed, the ODOT Project Liaison shall recommend acceptance of Project by signing the *Connect*Oregon "Recommendation of Acceptance" (Form 734-2649), which will be signed by the ODOT Project Liaison and Recipient and is hereby incorporated by reference. The full text of the above referenced exhibit may be reviewed and downloaded at the following web address:

http://www.oregon.gov/ODOT/HWY/LGS/docs/Forms/COProjectAccept2649.doc

21. Recipient shall, at its own expense, maintain and operate Project upon completion and throughout the useful life of Project at a minimum level that is consistent with normal depreciation or service demand or both. ODOT and Recipient agree that the useful life of Project is defined as twenty (20) years. Recipient has, by submitting its application for this *Connect*Oregon IV grant, represented and certified to sufficient funds and to its ability to operate and maintain Project. ODOT may conduct periodic inspections following the execution of this Agreement to verify that Project is being properly maintained and continues to serve the purpose for which Grant Funds were provided. This paragraph shall survive any expiration of this Agreement.

22. Recipient certifies and represents that the individual(s) signing this Agreement has been authorized to enter into and execute this Agreement on behalf of Recipient, under the direction or approval of its governing body, commission, board, officers, members, or representatives, and to legally bind Recipient and shall provide ODOT proof of such authority upon request.

23. Recipient's Project Manager is Jeff Hurd, Public Works Director, 71 SE D St.; Madras; OR 97741; telephone: 541-475-2622; fax: 541-475-1038; jhurd@ci.madras.or.us or assigned designee upon individual's absence. Recipient shall notify ODOT's Project Liaison and ODOT's *Connect*Oregon Program Manager in writing when any contact information changes during the term of this Agreement.

III. ODOT OBLIGATIONS

1. Based upon the *Connect*Oregon IV Grant Fund allocation allowed, ODOT agrees to pay Recipient a maximum amount of $619,020, or eighty (80) percent of the total eligible Project costs, whichever is less. Eligible costs for this Project will be reimbursed at eighty (80) percent until the $619,020 limit is reached.

2. Upon receipt and approval by ODOT of a monthly invoice and updated monthly progress report on Project schedule submitted by Recipient, ODOT shall reimburse Recipient for approved eligible costs.

3. This Agreement is contingent upon issuance and sale of lottery bonds sufficient to fund Project. The Agreement is effective and work may begin upon execution of this Agreement, but ODOT's obligation to make Project payments is contingent upon the issuance and sale of lottery bonds by the State Treasurer.

4. Each disbursement of Grant Funds by ODOT is contingent upon ODOT receiving appropriations, limitations, allotments or other expenditure authority sufficient to allow ODOT, in the exercise of its reasonable administrative discretion, to continue to make payments under this Agreement.

5. ODOT shall monitor Project for compliance and notify Recipient in writing if it appears Recipient is failing to comply with Multimodal Transportation Fund Program requirements as specified in ORS Chapter 367; OAR Chapter 731, Division 35; the terms of this Agreement; or Recipient's application and documents provided by Recipient to ODOT prior to the execution of the Agreement.

6. ODOT may impose sanctions against Recipient for failing to comply with the requirements governing the Multimodal Transportation Fund Program. Before imposing sanctions, ODOT will send a notice to cure to Recipient if Recipient fails to comply with Program requirements. ODOT will allow fifteen (15) days from the date the notice to cure is sent for Recipient to respond and correct the deficiencies noted. The following circumstances may warrant sanctions:

    a. Work on the approved Project has not been substantially initiated within six (6) months of the effective date of this Agreement or if continuous progress on Project has not been maintained for six (6) months;

    b. State of Oregon statutory requirements have not been met;

c. There is a significant deviation from the terms and conditions of this Agreement or representations of Recipient's application and documents provided by Recipient to ODOT prior to the execution of the Agreement;

d. Significant corrective actions have been found to be necessary to protect the integrity of the funds for the approved Project, and those corrective actions are not, or will not, be made within a reasonable time;

e. Key Milestones shown in Project schedule are delayed by more than ninety (90) days; or

f. Failure to submit monthly progress reports as required in ODOT Obligations, Section III.3, of this Agreement.

7. One or more of the following sanctions may be imposed if the circumstances listed above are not remedied within the time specified in the notice to cure:

   a. Revocation of this grant award;

   b. Withholding of unexpended funds;

   c. The return of unexpended funds or repayment of expended funds;

   d. The barring of Recipient from applying for future assistance; or

   e. Other remedies that may be incorporated into this Agreement.

8. The remedies set forth in this Agreement are cumulative, are not exclusive, and are in addition to any other rights and remedies provided by law or under this Agreement.

9. ODOT's Project Liaison and Recipient shall, upon completion of all on-site work for Project, perform an on-site review. Once review is completed, ODOT's Project Liaison shall recommend acceptance of Project by signing the *Connect*Oregon Recommendation of Acceptance (Form 734-2649), which will be signed by ODOT's Project Liaison and Recipient. Upon receipt of signatures by the Parties, ODOT's Project Liaison shall forward a signed copy to ODOT's *Connect*Oregon Program Manager.

10. After execution of this Agreement, ODOT's *Connect*Oregon Program Manager shall have authority to execute amendments to this Agreement on behalf of ODOT when the changes provided in the amendments have been approved through the "Request For Change Order Process" described in Recipient Obligations Section II.3.d, of this Agreement. Such authority shall include modification to Project milestones, Project completion date, and the expiration date of the Agreement. Any other modifications, including without limitation to Project scope, Project Cost or grant amount may be effective only upon execution by all original signatories, or their assigned designee's in their absence.

11. ODOT's *Connect*Oregon Program Manager is Carol Olsen, Active Transportation Section, 555 13th Street NE, Salem, OR 97301, 503-986-3327, LGSConnectOregon@odot.state.or.us, or assigned designee upon individual's absence.

IV. GENERAL PROVISIONS

1. This Agreement may be terminated effective upon delivery of written notice to Recipient, or at such later date as may be established by ODOT under any of the following conditions:

   a. If Recipient fails to perform any of the provisions of this Agreement, or so fails to pursue the work as to endanger performance of this Agreement in accordance with its terms, and within ten (10) days or such longer period as ODOT may authorize, after receipt of written notice from ODOT, fails to correct such failures.

   b. The Legislature fails to approve, reduces, eliminates or otherwise interferes with appropriations of state expenditure limitation to the extent that legal authority is insufficient to enable ODOT, in its reasonable discretion, to continue making payments under this Agreement.

   c. ODOT, the Department of Justice, or a court of competent jurisdiction determines that state law, rules, regulation or guidelines are modified, changed, or interpreted in such a way that the activities described in Exhibit A are no longer allowable or no longer eligible for funding proposed by this Agreement.

2. ODOT may impose one (1) or more of the sanctions described in ODOT Obligations, Section III.6, of this Agreement, without prior notice and without opportunity to cure, in the event ODOT determines:

   a. Statements, information, or representations in the *Connect*Oregon IV application and documents provided by Recipient to ODOT prior to the execution of the Agreement, for Project were false, misleading, fraudulent or misrepresentations; or

   b. There has been a change in circumstances so that information provided in the application and documents provided by Recipient to ODOT prior to the execution of the Agreement, and relied upon in making the grant or loan, or representations concerning considerations in the selection of Project for *Connect*Oregon IV, pursuant to OAR 731-035-0060, are no longer true or accurate.

3. Recipient may terminate this Agreement effective upon delivery of written notice to ODOT under any of the following conditions:

   a. ODOT fails to make payments due under this Agreement, or

   b. ODOT fails to perform any of the provisions of this Agreement, or so fails to pursue the work as to endanger performance of this Agreement in accordance with its terms, and within ten (10) days or such longer period as Recipient may

authorize, after receipt of written notice from Recipient, fails to correct such failure.

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

5. ODOT and Recipient are the only Parties to this Agreement and, as such, are the only Parties entitled to enforce its terms. Nothing in this Agreement gives or shall be construed to give or provide any benefit, direct, indirect or otherwise to third persons unless such third persons are expressly identified by name and specifically described as intended to be beneficiaries of its terms.

6. ODOT and Recipient 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 will 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.

7a. The laws of the State of Oregon (without giving effect to its conflicts of law principles) govern all matters arising out of or relating to this Agreement, including, without limitation, its validity, interpretation, construction, performance, and enforcement.

b. Any Party bringing a legal action or proceeding against any other Party arising out of or relating to this Agreement shall bring the legal action or proceeding in the Circuit Court of the State of Oregon for Marion County. Each Party hereby consents to the exclusive jurisdiction of such court, waives any objection to venue, and waives any claim that such forum is an inconvenient forum.

c. Notwithstanding Section IV.7.b, if a claim must be brought in a federal forum, then it must be brought and adjudicated solely and exclusively within the United States District Court for the District of Oregon. This section applies to a claim brought against the State of Oregon only to the extent Congress has appropriately abrogated the State of Oregon's sovereign immunity and is not consent by the State of Oregon to be sued in federal court. This section is also not a waiver by the State of Oregon of any form of immunity, including but not limited to sovereign immunity and immunity based on the Eleventh Amendment to the Constitution of the United States.

8. 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.

9. This Agreement, Project application and documents provided by Recipient to ODOT prior to the execution of the Agreement, and attached exhibits constitute the entire agreement between the Parties on the subject matter hereof. In the event of a conflict, the body of this Agreement and the attached Exhibit A will control over

Project application and documents provided by Recipient to ODOT. 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 either Party to enforce any provision of this Agreement shall not constitute a waiver by that Party of that or any other provision.

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 and that the persons executing this Agreement have been duly authorized to do so.

The Oregon Transportation Commission at its August 2012 meeting approved the *Connect*Oregon IV project application list and delegated authority to the Director of the Oregon Department of Transportation to enter into project agreements.

City of Madras, acting by and through its elected officials

By Melanie Widmer
Melanie Widmer
Date October 23, 2012

ATTEST:
By Karen J. Coleman
Karen J. Coleman
City Recorder
Date October 23, 2012

APPROVED AS TO LEGAL SUFFICIENCY
By Bryant, Lovlien & Jarvis, P.C.
Recipient Counsel
Date 10/25/12

Recipient Contact:
Jeff Hurd, Public Works Director
City of Madras
71 SE D St.
Madras, OR 97741
541-475-2622
jhurd@ci.madras.or.us

STATE OF OREGON, by and through its Department of Transportation

By
Director
Date 11-5-12

APPROVAL RECOMMENDED
By
Freight Mobility Manager
Date 10/30/12
By
Active Transportation Section Manager
Date 10/29/12

APPROVED AS TO LEGAL SUFFICIENCY

By Keith L. Kutler, Assistant Attorney General by email dated October 9th, 2012

ODOT Contact:
Carol Olsen, *Connect*Oregon Program Manager
ODOT Active Transportation Section
555 13th Street NE
Salem, OR 97301
503-986-3327
carol.a.olsen@odot.state.or.us

EXHIBIT A

Agreement No. 28712

Application Number: 4R0201

Project Name: Madras-BNSF Rail Improvement Project

A. PROJECT DESCRIPTION

This project will construct approximately 700 feet of new spur track to serve a Wilbur Ellis dry bulk fertilizer plant in the Madras Industrial Park. The spur will be constructed of 112-pound or heavier rail and an existing turnout that was positioned to provide access to Wilbur Ellis from a lead track will be removed and replaced with a switch comprised of rail similar in size or heavier when compared to rail used to construct the spur. To allow unloading of fertilizer a pit or receptacle of appropriate dimensions will be created beneath the new spur and a conveyor system installed to move dry bulk material approximately 90 feet to the Wilbur Ellis storage facility. The project also will provide means for indexing rail cars over the product receiving pit. The mobility device can either be a Trackmobile or a cable and winch system powered by an electric motor, whichever method is determined to be most suitable and economical for this site.

Madras Industrial Park is connected to BNSF Railway's mainline by a lead track approximately 2,200 feet in length that is in need of general rehabilitation and upgrading. This project will rebuild the track structure where it approaches and intersects Harmon Street, Earl Street and Canal Street. The work at these locations will uncover the track by removing the crossing road surface, then salvaging the existing track comprised of 90-pound rail and deteriorated ties and replacing them with new ties and larger rail section. The road surface at each intersection will be restored with pre-cast concrete panels. At Harmon Street, timber planks on the road approaches will be replaced which Earl and Canal Streets will receive asphalt approaches. Rail joints within crossings will be Thermite welded and bolted compromise joint bars will be utilized for transition from 90-pound rail to larger rail section and vice versa.

B. PROJECT KEY MILESTONES AND SCHEDULE

Project has six Key Milestones. Key Milestones are used for evaluating performance on Project and determining level of compensation for completed work as described in the Agreement. Key Milestones cannot be changed without an amendment to the Agreement. Recipient may shift the estimated Grant Funds shown below between milestones without an amendment to the Agreement, but shall not, under any circumstances, exceed the "Total Not To Exceed Grant Fund Allocation." Recipient shall report changes to the Estimated Amounts corresponding to each Key Milestone, shown below, in Recipient's Monthly Report to the ODOT Project Liaison.

If Recipient anticipates Project Key Milestones will be delayed by more than ninety (90) days, Recipient shall submit a Request for Change Order to the ODOT Project Liaison as soon as Recipient becomes aware of any possible delay. The Request for Change Order must be submitted prior to the Key Milestone completion date shown in this Exhibit.

EXHIBIT A

The anticipated start date of Project is: 9/30/2012

The estimated completion date of Project is: 1/31/2014

Table 1: Key Milestones

Key Milestone	Description	Estimated Due Date	Estimated Amount
1	**Scoping and planning**	N/A	$0
2	**Right of way and land acquisition**	N/A	$0
3	**Permits**	5/1/2013	$0
4	**Final plans/bidding engineering documents**	4/1/2013	$111,400
5	**Construction contract award**	5/31/2013	$0
6	**Project completion**	1/31/2014	$668,400
	Total Project Cost		$779,800

Table 2 – Funding Breakdown

A	**Total Not To Exceed Grant Fund Allocation**	$619,020	
B	***Connect*Oregon IV twenty (20) percent required match**	$154,755	
C	***Connect*Oregon IV Total**		$773,775
D	**Other Funds In Addition to twenty (20) percent Required Match**	$6,025	
E	**Total Project Funding**		$779,800

C. BUDGET

Total Not To Exceed Grant Funds payable to Recipient is $619,020.

Total Project costs are estimated at $779,800. The *Connect*Oregon IV Grant Fund allocation for Project is $619,020. Recipient shall be responsible for any unanticipated costs over the identified *Connect*Oregon IV Grant Fund Allocation.

City of Madras/ODOT
Agreement No. 28712

After recording, return to:

_____

_____

_____

EXHIBIT B
MEMORANDUM OF AGREEMENT AND ACKNOWLEDGEMENT OF ODOT ASSISTANCE
[State Recording Authority: ORS 93.710 and ORS 205.130(2)]
Agreement Number: 28712
Project Name: Madras-BNSF Rail Improvement Project

Grant Agreement No. 28712 ("Grant Agreement") between the *City of Madras* and the State of Oregon, Department of Transportation (ODOT) was executed on . Pursuant to Recipient Obligations, Section II.19, of the Grant Agreement, upon the recording of this document, the *City of Madras* will receive Grant Funds for Project described in the Grant Agreement. The property and assets under the jurisdiction of the *City of Madras* will be improved with the assistance from the State of Oregon, Department of Transportation, in accordance with the terms of the Grant Agreement. Such assistance will be provided to *City of Madras*, in reimbursement of costs associated with the Madras-BNSF Rail Improvement Project. The use and disposition of said property is subject to the terms of the Grant Agreement, copies of which may be obtained from the Director of ODOT. A description of the improved property is attached.

City of Madras,

By: _____ (Notary Stamp)
(Name of person)

Title: _____

State of Oregon: County of _____

Signed or attested before me on _____ by _____
(Date) (name(s) of person(s)

_____My commission expires on _____.

STATE OF OREGON, DEPARTMENT OF TRANSPORTATION

By: _____ (Notary Stamp)
Darel Capps

Title: Active Transportation Section Manager

Signed or attested before me on _____ by _____
(Date) (name(s) of person(s)

_____My commission expires on _____.

Oregon Department of Transportation; 555 13th Street NE, Salem, OR 97301-4178.

Consent

The State of Oregon acting by and through its Department of Transportation consents to the Rail Transfer Agreement between City of Madras, an Oregon municipal corporation and Wilbur-Ellis Company LLC, a California limited liability company.

State of Oregon acting by and through its
Department of Transportation

_____

By: _____

Dated: _____

Consent

The Federal Aviation Administration consents to the Purchase and Sale Agreement between City of Madras, an Oregon municipal corporation and Wilbur-Ellis Company LLC, a California limited liability company and specifically consents to the Purchase Price and the allocation of Credits as each is defined above in the Purchase and Sale Agreement.

FAA:
Federal Aviation Administration

_____

By: _____

Dated: _____

DRAFT

AMENDED AND RESTATED LEASE AGREEMENT
(Wilbur-Ellis)

DATED: _____, 2016

PARTIES: **CITY OF MADRAS,** **("LESSOR")**
an Oregon municipal corporation

AND: **WILBUR-ELLIS COMPANY LLC,** **("LESSEE")**
a California limited liability company

RECITALS:

A. Lessor and Lessee entered into that certain Lease Agreement dated January 1, 1995 (the "Original Lease") concerning certain Original Premises (as defined below). The Original Lease was amended by a First Amendment to Lease Agreement ("First Amendment") on April 9, 2002 and certain additional premises were leased from Lessor to Lessee.

B. This Amended and Restated Lease Agreement ("Lease") amends and supersedes in its entirety the Original Lease and First Amendment on and after the Effective Date as defined in Section 1.1.

AGREEMENT:

NOW, THEREFORE, in consideration of the parties' mutual obligations contained in this Lease, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. AGREEMENT TO LEASE

1.1 LEASE OF PREMISES. The effective date of this Lease will be the date of the recording of the deed from Lessor to Lessee pursuant to the terms and conditions of the Purchase and Sale Agreement between Lessor and Lessee dated the date first set forth above (the "Effective Date"). Subject to the terms and conditions contained in this Lease on the Effective Date, Lessor leases the Premises to Lessee and Lessee leases the following premises from Lessor (collectively the "Premises"):

a. The Premises described on Exhibit A (the "First Premises").

b. The Premises described on Exhibit B (the "Second Premises").

1.2 NO REPRESENTATIONS OR WARRANTIES. Lessee represents and warrants that (a) Lessee has entered into this Lease on the basis of its own examination and personal knowledge of the Premises, and (b) Lessee has not relied on any representations or warranties made by Lessor and/or Lessor's Agents (as defined below) other than those expressly provided in this Lease. Subject to the terms and conditions contained in this Lease, Lessee will accept the Premises in their AS-IS condition as of the Effective Date. Except as specifically provided in this Lease, Lessor has made no promise or agreement to repair, alter, construct, and/or improve the Premises.

2. TERM; RENEWAL

2.1 TERM. Subject to the terms and conditions contained in this Lease, the term of this Lease will commence on the Effective Date and will continue until January 1, 2025 (the "Lease Term"), unless sooner terminated or extended as provided in this Lease. For purposes of this Lease, the term "Lease Term" means the initial Lease Term and any extensions or renewals thereof.

2.2 RENEWALS. If Lessee is not then in default under this Lease, Lessee will have the option (each an "Extension Option") to extend the Lease Term for the entire Premises and only the entire Premises for two additional terms of ten (10) years each (each an "Extended Term"), subject to the following terms and conditions:

2.2.1 Lessee will exercise an Extension Option by providing Lessor written notice (the "Notice of Extension") not less than one hundred twenty (120) days prior to the last day of the then expiring Lease Term or Extended Term (as the case may be). Subject to the terms and conditions contained in this Lease, giving of the Notice of Extension will be sufficient to make this Lease binding for the applicable Extended Term without further act of the parties. Each Extended Term will commence on the day immediately following the expiration of the then expiring initial Lease Term or Extended Term (as the case may be). The terms and conditions for each Extended Term will be identical with the initial Lease Term, subject to Section 4.3, and Lessee will no longer have any Extension Option that has been exercised.

3. POSSESSION

Lessee's right to possession of the Premises will commence on the Effective Date. Subject to Lessee observing and performing all of the covenants, conditions and provisions on Lessee's part to be observed and performed hereunder, Lessee shall have quiet possession of the Premises for the entire Lease Term and each Extended Term subject to all of the provisions of this Lease.

4. RENT; SECURITY

4.1 BASE RENT. Subject to the terms and conditions contained in this Lease, commencing on the Effective Date, Lessee will pay Lessor guaranteed minimum rent ("Base Rent"), without offset prorated as applicable, as follows:

a. Base Rent for First Premises: The First Premises on the Effective Date consists of approximately 0.96 acres and Base Rent is calculated at the rate of $1,787.62 per acre for the total annual payment of $1,716.12.

b. Base Rent for Second Premises: The Second Premises consists of approximately 43,560 square feet (1.0 acres) at $3,010.00 per acre for the total annual payment of $3,010.00.

4.2 ADDITIONAL RENT. All taxes, insurance costs, utility charges (e.g., electricity, telephone, water, etc.), Spur Charges (as defined below) and any other sums Lessee is required to pay Lessor or any third-party pursuant to this Lease will be deemed "Additional Rent." For purposes of this Lease, "Rent" means both Base Rent and Additional Rent.

4.3 ESCALATION. Beginning on the one year anniversary of the Effective Date, and continuing each year thereafter during the Lease Term, Base Rent for each of the First Premises and the Second Premises will escalate (increase) by one and one-half percent (1.5%) over the Base Rent for the immediately preceding twelve-month period. During the Extended Term, if applicable, Base Rent will escalate (increase) by one and one-half percent (1.5%) over the Base Rent for the immediately preceding twelve-month period for the entire Premises.

4.4 ADDITIONAL CHARGES. In addition to any other charges provided under this Lease, Lessee will pay a railroad spur access and maintenance charge of $16.00 per rail car load ("Spur Charges"). These Spur Charges will be increased (escalated) annually in accordance with Section 4.3, above during the initial Term and any Extended Terms, if applicable.

4.5 GENERAL RENT PROVISION. Rent will be payable without deduction or offset to the order of Lessor at the address shown below or at such other address as may be designated from time to time by Lessor.

5. USE OF PREMISES

5.1 PERMITTED USE. Lessee may use the Premises, including use of a rail spur, to operate its agriculture based business that stores, ships, and processes fertilizers, chemicals, and related activities (collectively, the "Business"). Lessee will not use the Premises for any purpose other than

the Business. Notwithstanding anything contained in this Lease to the contrary, Lessee will operate the Business subject to and in accordance with all applicable Legal Requirements (as defined below).

5.2 LESSOR'S RIGHT TO ENTER. Lessor reserves the right to enter the Premises for the purpose of investigating compliance with the terms of this Lease, general safety inspections, and for any other purpose that Lessor finds necessary for the operation of the Airport and/or enforcement of the terms of this Lease. Except in the case of an emergency, Lessor will provide not less than forty-eight (48) hours' prior written notice to Lessee prior to entering the Premises for the purpose of investigation and such investigation shall occur during normal business hours.

5.3 RESTRICTIONS ON USE. In connection with Lessee's use of the Premises, Lessee will:

5.3.1 Conform and comply with any and all Legal Requirements. Lessee will correct, at Lessee's own expense, any failure of compliance created through Lessee's fault or by reason of Lessee's use of the Premises. For purposes of this Lease, the term "Legal Requirement(s)" means any and all rules, regulations, covenants, conditions, restrictions, easements, declarations, laws, statutes, liens, ordinances, orders, codes, rules, and regulations adopted by governmental authorities that, directly or indirectly, affect the Premises, the Airport, and/or the Business, including, without limitation, the Americans with Disabilities Act of 1990 (and the rules and regulations promulgated thereunder), any environmental laws, any rules or regulations promulgated by the Federal Aviation Administration or any other federal airport authority, and any Airport rules and regulations, all as now in force and/or which may hereafter be amended, modified, enacted, or promulgated.

5.3.2 Lessee agrees to maintain Lessee's rail and conveyor system improvements located on the Premises in good repair and to follow all Legal Requirements, and the Union Pacific Railroad and BNSF Railway Company rules and regulations and any of its designated representatives serving the Madras Industrial Park rail spur, now existing or hereinafter amended, modified, enacted or promulgated associated with the operation and maintenance of railroad system improvements and in the movement of freight via railcars and/or Lessee's use of the Premises.

5.3.3 The railroad system improvements are designed to provide railcar delivery of bulk fertilizer materials to the Premises and other products used by Lessee in its Business. Delivery and/or pickup of materials must be permitted, scheduled, and coordinated by

Lessee directly with Union Pacific Railroad and BNSF Railway who are the primary service providers to Lessor's rail spur.

5.3.4 Lessee shall not block any of the roads now in use by Lessor and/or any other third parties.

6. TAXES AND ASSESSMENTS; UTILITIES; ANNEXATION

6.1 PAYMENT BY LESSEE. Lessee will pay before delinquency all real and personal property taxes, general and special assessments, and any other charges of every description levied on and/or assessed against the Premises, any improvements located on the Premises, and/or personal property and/or fixtures located on the Premises. Lessee will make all such payments directly to the taxing authority. If any such tax assessment or charge may be paid in installments, Lessee may elect to do so as long as each installment together with interest is paid before it becomes delinquent.

6.2 PRORATIONS. Taxes, assessments, and charges concerning the Premises for the tax years in which the Effective Date commences or the Lease Term expires will be prorated between the parties on a daily basis as of the Effective Date or the Lease Term expiration, as applicable. If any tax, assessment, and/or charge is payable in installments and an election to so pay has been made with respect to the Premises, Lessee will pay all installments which fall due during the period from the Effective Date through the expiration of the Lease Term regardless of whether some installments fall due before the Effective Date or after the expiration of the Lease Term.

6.3 PROOF OF COMPLIANCE. Lessee will furnish to Lessor receipts or other proof of payment of taxes and assessments within thirty (30) days after Lessor's written request.

6.4 UTILITIES. Lessee will pay when due all charges for services and utilities incurred in connection with the use, occupancy, and/or maintenance of the Premises (including any improvements located thereon), including, without limitation, charges for electricity, fuel, power, natural gas, water, sewage, telephone, internet, refuse collection and all other services and utilities, if applicable.

6.5 ANNEXATION. If Lessor determines that it wishes to annex the Premises during the Lease Term, Lessor will comply with all requirements of law for annexation of the Premises, provided that Lessee agrees that it will not unreasonably withhold its consent, if Lessor requests Lessee's consent to annexation in accordance with Oregon law. In all events, Lessee's compliance with this Section 6.5 will be at no expense to Lessee; all annexing expense will be borne by Lessor.

7. INITIAL CONSTRUCTION

7.1 CONDITIONS OF CONSTRUCTION. For any improvements to be constructed by the Lessee to the Premises, Lessee shall obtain the prior written approval of Lessor prior to commencement of any construction on the Premises. The construction activities and use of the improvements shall not unreasonably interfere with the Madras Airport as determined by Lessor.

7.1.1 Lessee will submit a site plan application and pay the applicable fee to Lessor for Lessor's land use approval process. Lessee will follow the conditions of approval from the site plan decision.

7.1.2 Nothing contained in this Lease exempts Lessee from complying with underlying zoning, Airport operations, building, and/or other officially adopted standards and conditions.

7.2 COMPLETION OF CONSTRUCTION. Once construction has begun, Lessee will prosecute it to completion with diligence. The construction will be performed in a good and workmanlike manner and will comply with all applicable governmental permits, laws, ordinances and regulations, including, without limitation, any applicable Legal Requirements. Lessee will pay or cause to be paid the total cost of the construction.

7.3 LESSEE'S CONTRACTORS AND GENERAL DUTIES. Lessee will use only licensed and bonded contractors familiar with the Legal Requirements and of good reputation to complete any approved construction. Upon reasonable prior notice to Lessee, Lessor will have the right to inspect the construction at reasonable intervals to ensure Lessee is complying with its obligations under this Lease.

8. MAINTENANCE; ALTERATIONS; RECONSTRUCTION; EMINENT DOMAIN

8.1 MAINTENANCE. Maintenance of the rail system improvements and the Premises are as follows:

8.1.1 Lessee will own and be responsible, at Lessee's cost, for the maintenance of the following: rail improvements including, without limitation, track, ties, and switches.

8.1.2 Lessee will be responsible, at Lessee's sole cost, for the repairs and maintenance of the following: (a) conveyor system and railcar mover system improvements including, without limitation, electrical system, unloading pit(s), and structural framework for conveyor and railcar mover systems; (b) fencing and gates located or benefitting the Premises; (c) landscaping irrigation to the Premises; (d) any repairs necessary by the negligence of Lessee, its agents, employees, invitees; and (e) all other maintenance and repairs to

the Premises that are not the responsibility of Lessor as provided in this Lease.

8.1.3 Lessee is responsible for all Lessee obligations contained in that certain Rail Transfer Agreement between Lessor and Lessee dated the date first set forth above (the "Rail Transfer Agreement").

8.2 ALTERATIONS. Lessee shall not construct, improve, demolish, remove, replace, alter, reconstruct, remodel, and/or add to any existing improvements in whole or in part (collectively, "Alterations") without the written consent of Lessor which Lessor may withhold in Lessor's reasonable discretion.

8.2.1 All such work will be done at Lessee's cost and expense, in a good and workmanlike manner, and in compliance with all applicable building and zoning laws and all other laws, ordinances, orders and requirements of all authorities having or claiming jurisdiction, including, without limitation, any applicable Legal Requirements.

8.2.2 Except with respect to activities for which Lessor is responsible, Lessee will pay as and when due all claims for work done on and for services rendered or material furnished to the Premises and will keep the Premises free from any and all liens. If Lessee fails to pay any such claims or to discharge any lien, Lessor may do so and collect the costs as Rent. Any amount so added will bear interest at the rate of twelve percent (12%) per annum from the date expended by Lessor until paid and will be payable immediately on demand. Lessor's payment of Lessee's claims or discharge of any Lessee lien will not constitute a waiver of any other right or remedy which Lessor may have on account of Lessee's default. If a lien is filed as a result of nonpayment, Lessee will, within ten (10) days after knowledge of the filing, secure the discharge of the lien or deposit with Lessor cash or sufficient corporate surety bond or other security satisfactory to Lessor in an amount sufficient to discharge the lien plus any costs, reasonable attorney fees, and other charges that could accrue as a result of a foreclosure or sale under the lien. Lessee will indemnify, defend, and hold Lessor harmless for, from, and against any claim, loss, and/or liability arising out of Lessee's failure to comply with this Section 8.2.2.

8.3 RECONSTRUCTION AFTER DAMAGE.

8.3.1 If any improvement on the Premises is damaged or destroyed by fire or any other cause at any time during the Lease Term, whether or not covered by insurance, and Section 8.3.2, below, does not apply, Lessee will promptly repair the damage and restore the improvement.

8.3.2 Lessee will not be entitled to any abatement of Rent on account of any damage to or destruction of any improvements on the Premises, nor will any other obligations of Lessee under this Lease be altered or terminated except as specifically provided in this Lease.

8.4 EMINENT DOMAIN. If the Premises, or any such portion thereof as will make the Premises unusable for the Business, is taken by any legally constituted authority for any public use or purpose or by right of eminent domain, or be conveyed in lieu of or in anticipation of such taking or the exercise of such right, then in any of said events this Lease and all rights of the Lessee hereunder shall cease and terminate from the time possession thereof is taken by public authorities, and rent shall be accounted for as between Lessor and Lessee as of that date.

9. OWNERSHIP OF THE IMPROVEMENTS

All improvements constructed on the Premises by Lessee will be owned by Lessee, and Lessee shall be responsible for removing all such improvements prior to the expiration or termination of this Lease; provided, however, that Lessor may purchase such improvements (but not less than all such improvements) for the fair market value of the improvements as of the expiration or termination of the Lease, subject to the terms set forth in this Section 9. Lessor must notify Lessee in writing (a "Purchase Notice") of its intention to purchase such improvements not less than ninety (90) days prior to the proposed termination or expiration of the Lease.

If Lessor issues a Purchase Notice, then the fair market value of the improvements will be determined by the parties through good faith negotiation, which the parties will start in no event later than thirty (30) calendar days after Lessee's receipt of the Purchase Notice. If the parties cannot reach agreement within thirty (30) days of Lessee's receipt of the Purchase Notice, then the fair market value of the improvements will be determined by the following arbitration process: not later than thirty-five (35) days after Lessee's receipt of the Purchase Notice, each party will submit in confidence its written evaluation of the fair market value of the improvements on the Premises. At the same time, the parties will attempt in good faith to appoint a mutually acceptable, independent, qualified appraiser. Not later than thirty (30) days after the appraiser is appointed, the appraiser will choose one of the two proposals as the fair market value of the improvements on the Premises, which determination will be final and binding. If the parties cannot agree on an appraiser, then each party will appoint a qualified, independent appraiser not later than fifteen (15) days after Lessee's receipt of the Purchase Notice. The appraisers appointed by each party will select a qualified, independent appraiser, who will choose one of the two proposals as the fair market value of the improvements on the Premises, which determination will be final and binding. If a party fails to timely appoint a qualified appraiser, then the one appraiser timely appointed will determine the fair market value by choosing one of the two proposals as the fair market value

of the improvements on the Premises, which determination will be final and binding. If a party fails to timely submit its evaluation of the fair market value, then the timely submitted evaluation will be the final and binding fair market value of the improvements on the Premises. Each party will bear one-half of the expense of the mutually appointed appraiser and the entire expense of any appraiser appointed by the party unilaterally. Lessor will pay Lessee the agreed or determined fair market value, as the case may be, not later than thirty (30) days after it is determined. Following the purchase, the improvements on the Premises will be the sole responsibility of Lessor. Lessee will defend, indemnify, and hold Lessor harmless for, from, and against all liability and loss arising from Lessee's failure to deliver the improvements free and clear of all security interests, liens or other encumbrances.

If Lessor does not elect to purchase the improvements at the expiration or termination of this Lease, Lessee shall remove all improvements from the Premises at Lessor's sole cost and expense and restore the Premises to the same condition as received, normal wear and tear excepted. Notwithstanding the foregoing, Lessor shall have no obligation to pay for any improvements related to the Rail Spur as defined in the Rail Transfer Agreement.

10. ASSIGNMENT

Lessee will not sell, assign, mortgage, sublet, lien, convey, encumber, and/or otherwise transfer (whether directly, indirectly, voluntarily, involuntarily, or by operation of law) all or any part of Lessee's interest in this Lease and/or in the Premises (collectively, "Transfer") without Lessor's prior written consent. Upon any approved Transfer, (a) the terms and conditions of this Lease will in no way be deemed to have been waived or modified, (b) consent will not be deemed consent to any further Transfer, (c) the acceptance of Rent by Lessor from any other person will not be deemed to be a waiver by Lessor of any provision of this Lease, and (d) no Transfer relating to this Lease, whether with or without Lessor's consent, will modify, relieve, or eliminate any liability or obligations Lessee or any guarantor of this Lease may have under this Lease. For purposes of this Lease, a "Transfer" will be deemed to include the sale, assignment, encumbrance, and/or transfer - or series of related sales, assignments, encumbrances, and/or transfers - of fifty-one percent (51%) or more of the shares or other ownership interest of Lessee, regardless of whether the sale, assignment, encumbrance, and/or transfer occurs voluntarily or involuntarily, by operation of law, or because of any act or occurrence. Any Transfer which does not comply with this Lease will be void and will constitute a breach of this Lease.

11. INSURANCE

11.1 FIRE AND HAZARD INSURANCE. Lessee will throughout the Lease Term keep all the Premises and all improvements on the Premises insured against loss by fire and other hazards covered by a standard form of fire insurance policy with extended coverage endorsement including vandalism and malicious mischief. The amount of the insurance will be not less than one hundred percent (100%) of the replacement cost of the insured improvements

and will also be sufficient to prevent Lessee from becoming a coinsurer under the provisions of the policies.

11.2 PROCEEDS OF FIRE AND HAZARD INSURANCE.

11.2.1 The proceeds of the policies described above will be used to repair, restore, and replace any damaged or destroyed improvements as provided in this Lease. Lessor will cooperate fully with Lessee to obtain the largest possible recovery but Lessor will have no expense or cost in that connection.

11.2.2 All policies of insurance required by Section 11.1 will provide that the proceeds will be paid to Lessee and the proceeds will be deemed to be held in trust by Lessee for the uses and purposes required by this Lease.

11.3 BUILDER'S RISK INSURANCE. Before commencement of any construction activities on the Premises, Lessee will procure and maintain in force until completion and acceptance of the improvement an all risk builder's risk insurance policy including vandalism and malicious mischief in form reasonably acceptable to Lessor. Such insurance will cover the improvements in place and all materials and equipment at the job site with limits of not less than $50,000.00 per loss.

11.4 GENERAL LIABILITY INSURANCE; AUTOMOBILE INSURANCE; POLLUTION LIABILITY. Lessee will procure and continuously maintain during the Lease Term general liability insurance with initial limits of not less than $2,000,000.00 for injury to one person, $2,000,000.00 for any one accident or occurrence and $4,000,000.00 in the aggregate, and $2,000,000.00 for property damage.

At any time during the Lease Term, Lessor may, by written notice to Lessee, demand that the limits of Lessee's general liability insurance be raised to amounts specified in the written notice and Lessee will at the next succeeding policy renewal date, but not later than six (6) months after the date of the notice, raise the limits to those specified in the notice.

All limits demanded by Lessor will be commercially reasonable as of the date of the notice for the use Lessee is then making of the Premises and improvements. The insurance will be in a form reasonably sufficient to protect Lessor and Lessee against claims of third persons for personal injury, death or property damage arising from the use, occupancy or condition of the Premises or improvements on the Premises.

Lessee will procure and continuously maintain pollution liability insurance with limits of not less than $2,000,000.00 per occurrence, $4,000,000.00 in the

aggregate. Lessee will procure and continuously maintain comprehensive automobile liability insurance with limits of not less than $2,000,000.00.

11.5 GENERAL INSURANCE PROVISIONS. Lessee may not materially change or cancel any insurance policy Lessee is required to obtain and maintain under this Lease without first providing Lessor thirty (30) days' prior written notice. Notwithstanding anything contained in this Lease to the contrary, commencing on the ten-year anniversary of the Effective Date, Lessor may increase the minimum levels of insurance Lessee is required to carry under this Lease by providing Lessee ninety (90) days' prior written notice, provided that such increases must be commercially reasonable (taking into account Lessee's use of the Premises and improvements thereon). Lessee will provide Lessor with certificates of insurance coverage that Lessee is required to carry pursuant to this Lease within ten (10) days of Lessor's written request.

All policies of insurance which Lessee is required by this Lease to carry will:

11.5.1 Provide that the insurer waives the right of subrogation against Lessor and that except in the event of Lessor's negligence or willful misconduct, any loss will be payable notwithstanding any negligence or affirmative act of Lessor.

11.5.2 Be issued by a responsible insurance company which is licensed to practice in the State of Oregon.

11.5.3 Be primary policies.

11.5.4 All liability insurance policies will name Lessor and Lessor's Agents (as defined below) as additional insureds.

11.6 INDEMNIFICATION. Lessee will indemnify, defend, and hold Lessor and Lessor's officers, employees, contractors, and agents (collectively, "Lessor's Agents") harmless for, from, and against any and all claims, losses, damages, and/or liabilities ("Claims") arising out of or related to, whether directly or indirectly, the following: (a) any activity of Lessee and/or Lessee's members, managers, officers, employees, agents, and/or contractors (collectively, "Lessee's Agents") on or at the Premises; (b) any condition of the Premises (including, without limitation, any improvements constructed thereon) that is caused by Lessee and/or Lessee's Agents while the Premises are in the possession or under the control of Lessee; and/or (c) Lessee's breach and/or failure to perform any Lessee obligation, covenant, representation, and/or warranty under this Lease. Lessee's indemnification obligations under this Section 11.6 will survive the expiration or earlier termination of this Lease. Notwithstanding anything to the contrary set forth herein, Lessee's indemnity obligations under this Lease shall not extend to any claims, losses, damages, and/or liabilities to the extent caused by the negligence or willful misconduct of Lessor or Lessor's Agents.

Lessor will indemnify, defend, and hold Lessee and Lessee's Agents harmless for, from, and against any and all Claims arising out of or related to, whether directly or indirectly, the following: (a) any activity on or at the Premises by Lessor and/or Lessor's Agents; (b) any condition of the Premises or any portion thereof, that is caused in whole or in part by Lessor or Lessor's Agents; and/or (c) Lessor's breach and/or failure to perform any Lessor obligation, covenant, representation, and/or warranty under this Lease. Lessor will have no liability to Lessee for any loss or damage caused by any third-party or by any condition of the Premises. Lessor's indemnification obligations under this Section 11.6 will survive the expiration or earlier termination of this Lease.

12. DEFAULT

Each of the following events will constitute a default by Lessee and a breach of this Lease:

12.1 FAILURE TO PAY RENT. Failure of Lessee to pay any Rent or any other charge, cost, and/or expense within thirty (30) days after it is due; provided, however, Lessee will be provided with one notice of default for failure to pay Rent or any other charge, cost, and/or expense and a thirty-day opportunity to cure each calendar year.

12.2 OTHER PERFORMANCE FAILURES. Failure of Lessee to perform any other term, condition, and/or covenant of this Lease and/or the Rail Transfer Agreement (other than the payment of Rent or other charge, cost, and/or expense) within thirty (30) days after written notice from Lessor specifying the nature of the failure with reasonable particularity. If the failure is of such a nature that it cannot be completely remedied within the 30-day cure period, the failure will not be a default if Lessee begins correction of the failure within the 30-day cure period and thereafter proceeds with reasonable diligence and in good faith to correct the failure as soon as practicable.

12.3 ATTACHMENT. Attachment, execution, levy, and/or other seizure by legal process of any right or interest of Lessee under this Lease if not released within thirty (30) days.

12.4 INSOLVENCY. Lessee becomes insolvent within the meaning of the United States Bankruptcy Code, as amended from time to time; an assignment by Lessee for the benefit of creditors; the filing by Lessee of a voluntary petition in bankruptcy; an adjudication that Lessee is bankrupt or the appointment of a receiver of the properties of Lessee; the filing of any involuntary petition of bankruptcy and failure of Lessee to secure a dismissal of the petition within thirty (30) days after filing; attachment of or the levying of execution on the leasehold interest in the Premises and failure of Lessee to secure discharge of the attachment or release of the levy of execution within ten (10) days.

12.5 ABANDONMENT. Failure of Lessee for thirty (30) days or more to occupy the Premises for the purpose permitted under this Lease.

13. REMEDIES ON DEFAULT

13.1 LESSOR'S RIGHT TO CURE. After expiration of the applicable period during which Lessee could cure, and before that in the event of an emergency, Lessor may, but is not obligated to, make any payment required of Lessee under this Lease on the Premises or perform or comply with any other covenant or condition imposed on Lessee under this Lease. All amounts so paid by Lessor plus the cost of any performance or compliance, including reasonable attorney fees, plus interest on such sums at the rate of twelve percent (12%) per annum from the date of payment, performance or compliance will be deemed to be additional Rent payable by Lessee with the next due installment of Rent. No such payment or performance by Lessor will constitute a waiver of a default or of any other remedy for default or render Lessor liable for any loss or damage resulting from any such payment or performance.

13.2 LESSOR'S REMEDIES. Upon default, Lessor may elect any one or more of the following remedies:

13.2.1 Lessor may by notice to Lessee terminate this Lease as of the date of the notice. All of Lessee's rights in the Premises will terminate as of the date of termination. Promptly after such notice, Lessee will surrender and vacate the Premises in good condition, normal wear and tear excepted and remove the improvements, subject to the terms set forth in Section 9. Lessor may reenter and take possession of the Premises and eject some or all parties in possession except any sublessee qualifying under any nondisturbance agreement by Lessor. Termination under this Section 13.2.1 will not relieve Lessee from the payment of any sum then due to Lessor or from any claim for damages previously accrued or then accruing against Lessee.

13.3.2 Lessor may elect to use all or any part of Lessee's personal property and/or trade fixtures remaining on the Premises without compensation to Lessee and without liability for use or damage; or Lessor may store all or any of Lessee's personal property and trade fixtures for the account of and at the cost of Lessee. The election of one remedy for any one item will not preclude an election of any other remedy for another item or for the same item at a later date. If Lessor elects to use all or any part of Lessee's personal property and/or trade fixtures remaining on the Premises, Lessor's use is on an AS IS with all faults basis and Lessee makes no representations or warranties to Lessor regarding such personal property and/or trade fixtures.

13.3.3 Lessor will be entitled to Rent throughout the Lease Term until the date of any termination plus interest at the rate of twelve percent (12%) per annum from the due date of each such payment to the date of payment.

13.3.4 In the event of a termination, Lessor will be entitled to damages in the following amounts:

(a) any excess of the rental obligation of Lessee under this Lease from the date of termination to the last day of the Lease Term in which termination occurs over the reasonable rental value of the Premises, including improvements, for such period of time; and

(b) The reasonable cost of reentry and reletting, including the cost of any cleanup, broker's or finder's fees and attorney fees.

13.3.6 Lessor may sue periodically to recover damages during the period corresponding to the remainder of the Lease Term, and no action for damages will bar a later action for damages subsequently accruing. The foregoing remedies will be in addition to and will not exclude any other remedy available to Lessor under applicable law.

14. SURRENDER ON TERMINATION

14.1 SURRENDER. Except as provided for in Section 9 "Ownership of the Improvements," upon expiration or earlier termination of this Lease, Lessee will surrender possession of the Premises to Lessor, including all improvements then located on the Premises, free of occupants in good clean condition, normal wear and tear excepted. This condition does not require Lessee to remove gravel or other base placed on the Premises. Lessee must re-level any portion of the Premises which have been disturbed by foundations for structures or making each banks or pits unless first obtaining written consent of Lessor, which Lessor may withhold in its sole discretion, to leave on the Premises. All property that Lessee is required to surrender will become Lessor's property at the date of expiration of this Lease. All property that Lessee is not required to surrender, but that Lessee does abandon will, at Lessor's election, become Lessor's property on the date of expiration or termination of this Lease.

14.2 HOLDOVER. If Lessee does not vacate the Premises at the time required, Lessor will have the option to treat Lessee as a tenant from month-to-month, subject to all of the provisions of this Lease (except the provisions for term and renewal), except that Lessee's Base Rent will be equal to one hundred fifty percent (150%) of the Base Rent last paid by Lessee. Failure of Lessee to remove fixtures, furniture, furnishings, or trade fixtures which Lessee is required to remove under this Lease will constitute a failure to vacate to which this Section

14.2 will apply if the property not removed interferes with the occupancy of the Premises by another tenant or with the occupancy by Lessor for any purpose including preparation for a new lessee. If a month-to-month tenancy results from a holdover by Lessee under this Section 14.2, the tenancy will be terminable at the end of any monthly rental period on written notice from Lessor given not less than ten (10) days prior to the termination date which will be specified in the notice. Lessee waives any notice which would otherwise be provided by law with respect to a month-to-month tenancy.

15. HAZARDOUS SUBSTANCE

Lessee represents and warrants to Lessor as follows:

15.1 To Lessee's actual knowledge, Lessee has at all times during the Original Lease complied and will at all times during this Lease comply with all applicable federal, state and local environmental laws and regulations applicable to the Premises and any activities conducted thereon.

15.2 For purposes of this Lease, the term "Hazardous Substance" will have the meaning set forth in 40 C.F.R. Section 302.4 and will also include petroleum, petroleum products and used oil; the term "Solid Waste" will have the meaning set forth in 40 C.F.R. Section 261.2; and, the term "Release" will have the meaning set forth in 42 U.S.C. Section 9601.

15.3 Lessee represents, warrants, and covenants to Lessor that Lessee will not cause or permit any Hazardous Substances or other dangerous, toxic substances or any Solid Waste to be generated, manufactured, refined, transported, treated, stored, disposed, handled, processed, produced or Released on or about the Premises, except in compliance with all applicable Legal Requirements. Lessor acknowledges and agrees that the prudent and safe operation of the Business requires the use of certain Hazardous Substances, which use is approved. Lessee will defend, indemnify, and hold Lessor and Lessor's Agents harmless for, from, and against any and all damages, claims, losses, liabilities and expenses of any kind, including without limitation, legal and consulting expenses, incurred by Lessor or which are asserted against or imposed upon Lessor, its successors or assigns, by any other party (including, without limitation, any governmental entity) arising out of or connected with Lessee's breach and/or failure to comply with this Section 15.3.

15.4 Lessee shall at all times maintain compliance with all Department of Environmental Quality and Environmental Protection Agency regulations and shall annually file their spill containment plans as required by the Department of Environmental Quality and shall supply to the Lessor copies of their spill containment plan and any other documents submitted to any applicable authorities.

15.5 The representations and warranties made and the indemnity obligations provided for in this Section 15 will survive the termination of this Lease, notwithstanding any provision of this Lease to the contrary.

16. MISCELLANEOUS

16.1 NONWAIVER AND SUCCESSION. Waiver by either party of strict performance of any provision or term of this Lease will not be a waiver of or prejudice the party's right to require strict performance of the same provision or any other provision. Subject to the limitations concerning the transfer and/or assignment of this Lease under Section 10, this Lease will be binding upon and inure to the benefit of the parties, their respective successors and assigns.

16.2 NOTICES. All notices under this Lease will be effective on the earlier of actual receipt or two days after deposit as certified mail, return receipt requested, postage prepaid and addressed to Lessor or Lessee at the addresses stated below, or to such other address as either party may specify by notice to the other party. For clarity, all notices must be written and, in addition to being sent by certified mail, may be sent by overnight package express delivery service, by hand, or by facsimile.

LESSOR:

City of Madras
Attn: City Administrator
125 SW "E" Street
Madras, Oregon 97741
Facsimile: 541-475-7061

With a copy to (which will not constitute notice):

Bryant, Lovlien & Jarvis, P.C.
Attn: Jeremy M. Green
591 SW Mill View Way
Bend, Oregon 97702
Facsimile: 541-389-3386

LESSEE:

Wilbur-Ellis Company LLC, a California limited liability company
Attn: General Counsel
345 California Street 27th Floor
San Francisco, California 94104

16.3 ATTORNEY FEES. If suit or action is instituted to collect Rent, to enforce this Lease, and/or in connection with any claim or controversy arising out of this Lease, the prevailing party will be entitled to recover, in addition to costs, such

sum as the court may adjudge reasonable as attorney fees at trial and on any appeal of the suit or action. If arbitration is instituted in connection with any claim or controversy arising out of this Lease, attorney fees may be awarded by the arbitrators as they may decide, and if so awarded will be a part of the arbitrators' decision on which judgment may be rendered.

16.4 SEVERABILITY AND INTEREST. The invalidity or illegality of any provision of this Lease will not affect the remainder of the Lease. Except as otherwise provided in this Lease, any Rent or other payment required to be paid by Lessee under this Lease will, if not paid within ten (10) days after it is due, bear interest at the rate of twelve percent (12%) per annum from the due date until paid in full.

16.5 GOVERNING LAW. This Lease and each party's rights under it will be construed and regulated by the laws of the State of Oregon without regard to any conflict of law provisions. If any dispute arises regarding this Lease, the parties agree that the sole and exclusive venue for resolution of such dispute will be in Jefferson County, Oregon. All parties submit to the jurisdiction of courts located in Jefferson County, Oregon for any such disputes.

16.6 MEMORANDUM OF LEASE. At the request of either party, the parties will execute and acknowledge a memorandum of lease in recordable form which will include a legal description of the Premises and the term of this Lease. This Lease may be signed in counterparts. A fax or email transmission of a signature page will be considered an original signature page. At the request of a party, the other party will confirm a fax or email transmitted signature page by delivering an original signature page to the requesting party.

16.7 LESSOR DEFAULT. No act or omission of Lessor will be considered a default under this Lease until Lessor has received thirty (30) days' prior written notice from Lessee specifying the nature of the default with reasonable particularity. Commencing from Lessor's receipt of such default notice, Lessor will have thirty (30) days to cure or remedy the default before Lessor will be deemed in default of this Lease and Lessee shall be permitted to terminate this Lease as a result of such default; provided, however, that if the default is of such a nature that it cannot be completely remedied or cured within the thirty-day cure period, there will not be a default by Lessor under this Lease if Lessor begins correction of the default within the thirty-day cure period and thereafter proceeds with reasonable diligence to effect the remedy as soon as practical.

16.8 INTERPRETATION. All pronouns contained herein and any variations thereof will be deemed to refer to the masculine, feminine, or neutral, singular or plural, as the identity of the parties may require. The singular includes the plural and the plural includes the singular. The word "or" is not exclusive. The words "include," "includes," and "including" are not limiting. The term "person" means any natural person, corporation, limited liability company, partnership, joint venture, firm, association, trust, unincorporated organization, government or

governmental agency or political subdivision, or any other entity. The titles, captions, or headings of the sections herein are inserted for convenience of reference only and are not intended to be a part of or to affect the meaning or interpretation of this Lease.

[Remainder of page intentionally blank. Signatures on following page]

IN WITNESS WHEREOF, the parties have executed this Lease the day and year first above written.

LESSOR:
CITY OF MADRAS
an Oregon municipal corporation

_____
By: Royce Embanks, Mayor

Date Signed: _____

LESSEE:
WILBUR-ELLIS COMPANY LLC,
a California limited liability company

_____
By: _____
Its: _____
Date Signed: _____

Exhibit "A"

First Premises

[attached]

Exhibit A

LEASE AREA EXHIBIT

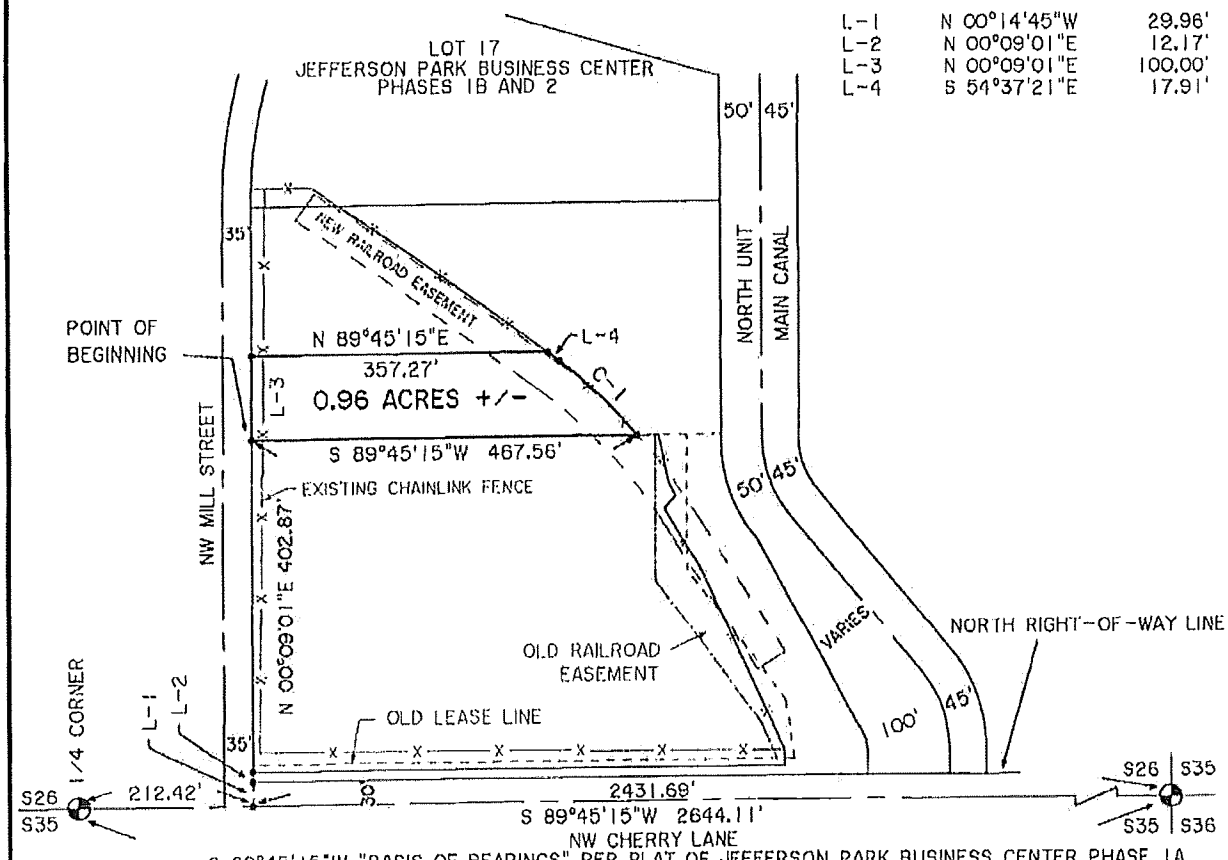
LOCATED IN THE SW 1/4 OF THE SE 1/4 OF SEC. 26, T. 10 S., R. 13 E., W.M., CITY OF MADRAS, JEFFERSON COUNTY, OREGON.

FOR: THE CITY OF MADRAS
WILBUR ELLIS SITE

SCALE: 1 INCH = 200 FEET

LINE TABLE:

COURSE	BEARING	DISTANCE
L-1	N 00°14'45"W	29.96'
L-2	N 00°09'01"E	12.17'
L-3	N 00°09'01"E	100.00'
L-4	S 54°37'21"E	17.91'



S 89°45'15"W "BASIS OF BEARINGS" PER PLAT OF JEFFERSON PARK BUSINESS CENTER PHASE 1A

CURVE TABLE:

CURVE	RADIUS	LENGTH	DELTA	CHORD	CH.BEARING
C-1	486.78'	130.99'	15°25'05"	130.60'	S 46°56'39"E

REGISTERED PROFESSIONAL LAND SURVEYOR
OREGON
JULY 17, 1986
GARY L. DEJARNATT
2208
RENEWS: 12/31/2015

PREPARED BY:
DEJARNATT LAND SURVEYS, INC.

20735 DOUBLE PEAKS DRIVE
BEND, OREGON 97701
PHONE: 541-382-4192
LAYER: 87 AND 83

DATE: MARCH 3, 2015
SHEET 1 OF 1
JOB # 15014
12066K.CRD SCREEN FILE 12066WE

Exhibit A

DeJarnatt Land Surveyors Inc.
20735 DOUBLE PEAKS DRIVE ▲ Bend, OR 97701 ▲ (541) 382-4192

March 3, 2015
City of Madras – Wilbur Ellis Site
Job# 15014E2

LEASE DESCRIPTION

A parcel of land located in the Southwest Quarter of the Southeast Quarter (SW ¼-SE ¼) of Section 26, Township 10 South, Range 13 East of the Willamette Meridian, City of Madras, Jefferson County, Oregon, being more particularly described as follows:

Commencing at the Southeast corner of said Section 26; thence South 89°45'15" West along the South line of said Section 26 a distance of 2431.69 feet; thence North 00°14'45" West a distance of 29.96 feet to the Northeast return of NW Mill Street and NW Cherry Lane; thence North 00°09'01" East a distance of 12.17 feet; thence continuing North 00°09'01" East a distance of 402.87 feet to the Point of Beginning;
thence North 00°09'01" East a distance of 100.00 feet;
thence North 89°45'15" East a distance of 357.27 feet;
thence South 54°37'21" East a distance of 17.91 feet;
thence 130.99 feet along the arc of a 486.78 foot radius curve to the right, the long chord of which bears South 46°56'39" East a distance of 130.60 feet;
thence South 89°45'15" West a distance of 467.56 feet to the Point of Beginning.

Containing 0.96 acres more or less.

End of Description

REGISTERED
PROFESSIONAL
LAND SURVEYOR
OREGON
JULY 17, 1986
GARY L. DEJARNATT
2208

Renews: 12-31-2015

Exhibit "B"

Second Premises

[attached]

Exhibit B

LEASE AREA EXHIBIT

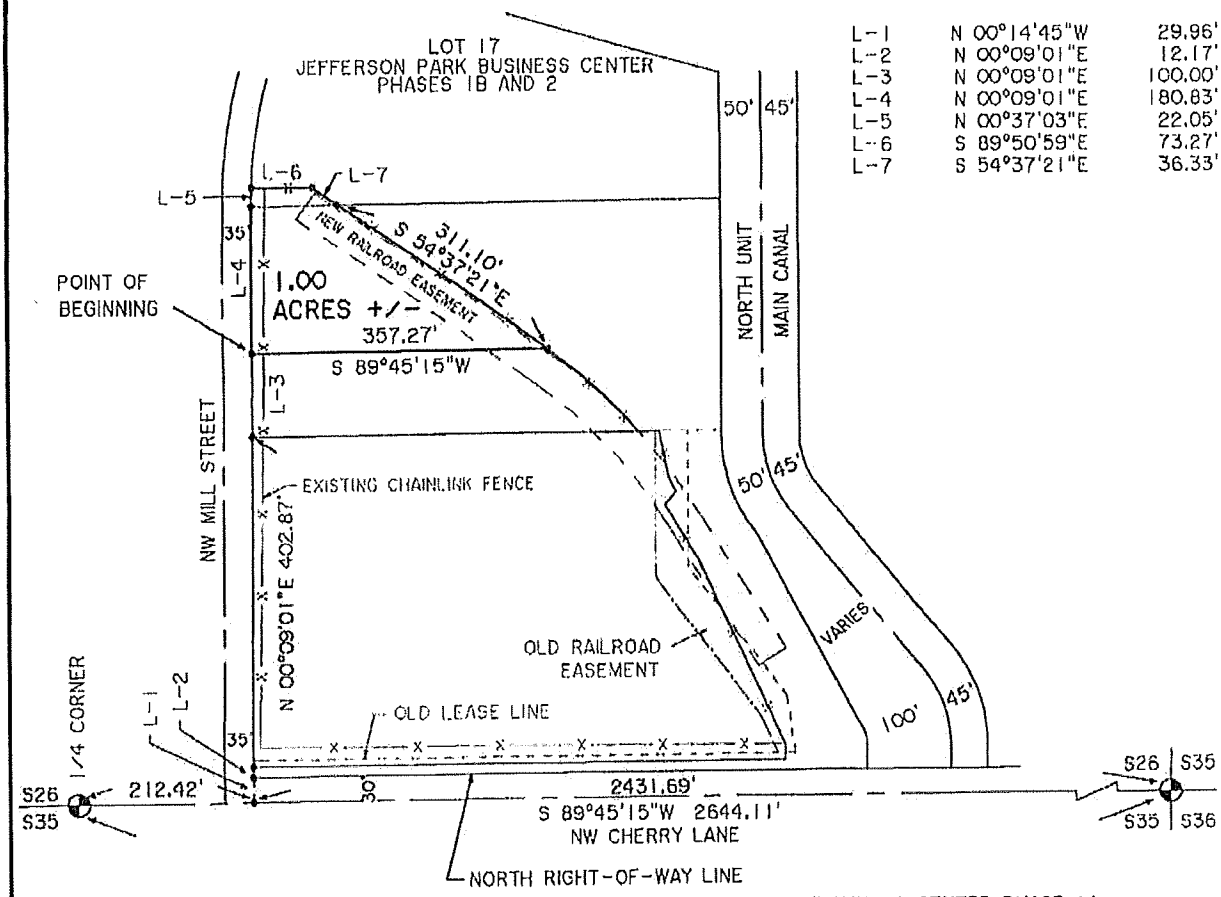
LOCATED IN THE SW 1/4 OF THE SE 1/4 OF SEC. 26, T. 10 S., R. 13 E., W.M., CITY OF MADRAS, JEFFERSON COUNTY, OREGON.

FOR: THE CITY OF MADRAS
WILBUR ELLIS SITE

SCALE: 1 INCH = 200 FEET

LINE TABLE:

COURSE	BEARING	DISTANCE
L-1	N 00°14'45"W	29.96'
L-2	N 00°09'01"E	12.17'
L-3	N 00°09'01"E	100.00'
L-4	N 00°09'01"E	180.83'
L-5	N 00°37'03"E	22.05'
L-6	S 89°50'59"E	73.27'
L-7	S 54°37'21"E	36.33'



S 89°45'15"W "BASIS OF BEARINGS" PER PLAT OF JEFFERSON PARK BUSINESS CENTER PHASE 1A

REGISTERED
PROFESSIONAL
LAND SURVEYOR

OREGON
JULY 17, 1986
GARY L. DEJARNATT
2208

RENEWS: 12/31/2015

PREPARED BY:

DEJARNATT LAND SURVEYS, INC.

20735 DOUBLE PEAKS DRIVE
BEND, OREGON 97701
PHONE: 541-382-4192
LAYER: 88 AND 83

DATE: MARCH 3, 2015
SHEET 1 OF 1
JOB # 15014
12066K.CRD SCREEN FILE 12066WE

Exhibit B

DeJarnatt Land Surveyors Inc.

20735 DOUBLE PEAKS DRIVE ▲ Bend, OR 97701 ▲ (541) 382-4192

March 3, 2015
City of Madras – Wilbur Ellis Site
Job# 15014E3

LEASE DESCRIPTION

A parcel of land located in the Southwest Quarter of the Southeast Quarter (SW ¼-SE ¼) of Section 26, Township 10 South, Range 13 East of the Willamette Meridian, City of Madras, Jefferson County, Oregon, being more particularly described as follows:

Commencing at the Southeast corner of said Section 26; thence South 89°45'15" West along the South line of said Section 26 a distance of 2431.69 feet; thence North 00°14'45" West a distance of 29.96 feet to the Northeast return of NW Mill Street and NW Cherry Lane; thence North 00°09'01" East a distance of 12.17 feet; thence continuing North 00°09'01" East a distance of 402.87 feet; thence North 00°09'01" East a distance of 100.00 feet to the Point of Beginning;
thence North 00°09'01" East a distance of 180.83 feet to the Southwest corner of Lot 17 of Jefferson Park Business Center Phases 1B and 2;
thence North 00°37'03" East a distance of 22.05 feet;
thence South 89°50'59" East a distance of 73.27 feet;
thence South 54°37'21" East a distance of 36.33 feet to the South line of said Lot 17;
thence continuing South 54°37'21" East a distance of 311.10 feet;
thence South 89°45'15" West a distance of 357.27 feet to the Point of Beginning.

Containing 1.00 acres more or less.

End of Description

REGISTERED
PROFESSIONAL
LAND SURVEYOR

OREGON
JULY 17, 1986
GARY L. DEJARNATT
2208

Renews: 12-31-2015

DRAFT

RAIL TRANSFER AGREEMENT

This Rail Transfer Agreement (this "Agreement") is made and entered into effective on _____, 2016 between Wilbur-Ellis Company LLC, a California limited liability company ("Wilbur-Ellis"), whose address is 345 California Street, 27th Floor, San Francisco, California 94104, and City of Madras, an Oregon municipal corporation ("City"), whose address is 125 SW E Street, Madras, Oregon 97741.

RECITALS:

A. City and Wilbur-Ellis have entered into a Purchase and Sale Agreement concurrently herewith related to the sale of approximately 5.22 acres of real property from City to Wilbur-Ellis subject to certain terms and conditions (the "Purchase and Sale Agreement").

B. City and Wilbur-Ellis have entered into an Amended and Restated Lease Agreement concurrently herewith (the "Lease"), whereby the City has agreed to lease the Premises (as defined in the Lease) to Wilbur-Ellis, subject to the terms and conditions set forth in the Lease.

C. On the Effective Date (as defined in the Lease) and subject to the terms and conditions contained in this Agreement, City agrees to transfer the rail and conveyor system improvements described on Exhibit A (the "Rail Spur") to Wilbur-Ellis and Wilbur-Ellis agrees to accept the Rail Spur and assume the maintenance obligations related thereto as provided in this Agreement.

AGREEMENT:

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

1. DEFINITIONS

Unless defined elsewhere in this Agreement, capitalized terms used in this Agreement have the meanings assigned to them in the attached Appendix A.

2. TRANSFER OF RAIL SPUR

2.1 Transfer and Consideration. Subject to the terms and conditions contained in this Agreement, City will transfer the Rail Spur to Wilbur-Ellis on the Closing Date and Wilbur-Ellis will accept the Rail Spur from City. The consideration for the transfer of the Rail Spur is Wilbur-Ellis' agreement to assume the maintenance and repair obligations of the Rail Spur on the terms and conditions provided in this Agreement.

2.2 No City Representations; Transfer of Rail Spur AS-IS. Except for those representations and warranties made by City in this Agreement, (a) City expressly excludes all warranties with respect to the Rail Spur, express and implied, and (b) City will transfer the Rail Spur to Wilbur-Ellis AS-IS and WITH ALL FAULTS. Subject to the terms and conditions contained in this Agreement, Wilbur-Ellis will accept

the Rail Spur in its AS-IS condition as of the Closing Date.

3. WILBUR-ELLIS' REPRESENTATIONS AND WARRANTIES. Wilbur-Ellis represents and warrants to City and City's Representatives, on the date first set forth above and as of the Closing Date, as follows:

3.1 Authority; Binding Agreement. (a) Wilbur-Ellis has full power and authority to sign and deliver this Agreement and to perform all of Wilbur-Ellis' obligations under this Agreement; and (b) each of this Agreement and the other agreements contemplated herein to which Wilbur-Ellis is a party has been duly executed and delivered by Wilbur-Ellis, and assuming due authorization, execution and delivery by City to the extent City is a party, constitutes the valid and binding agreement of Wilbur-Ellis, enforceable in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization or other laws affecting the enforceability of creditors' rights generally or by principles of equity.

3.2 Investigation. (a) Wilbur-Ellis has entered into this Agreement on the basis of its own examination and personal knowledge of the Rail Spur, (b) Wilbur-Ellis has investigated and researched the Rail Spur, the condition of the Rail Spur, and all repair and maintenance obligations associated with the Rail Spur, (c) Wilbur-Ellis has obtained all the information desired in connection with this Agreement, the Grant Agreement, the Legal Requirements, and the Rail Spur; and (d) Wilbur-Ellis has not relied on any representations or warranties made by City and/or any of City's Representatives other than those expressly provided in this Agreement.

4. CITY'S REPRESENTATIONS AND WARRANTIES. City represents and warrants to Wilbur-Ellis and Wilbur-Ellis' Representatives, on the date first set forth above and as of the Closing Date, as follows:

4.1 Authority; Binding Agreement. (a) Subject to the Closing Conditions being satisfied, City has full power and authority to sign and deliver this Agreement and to perform all of City's obligations under this Agreement; and (b) each of this Agreement and the other agreements contemplated herein to which City is a party has been duly executed and delivered by City, and assuming due authorization, execution and delivery by Wilbur-Ellis to the extent Wilbur-Ellis is a party, constitutes the valid and binding agreement of City, enforceable in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization or other laws affecting the enforceability of creditors' rights generally or by principles of equity.

4.2 Title; Liens. Except as expressly set forth in the Grant Agreement and any rights that Union Pacific Railroad or BNSF Railway have in the Rail Spur that City has no actual knowledge of (without duty to investigate), City has good and marketable title to the Rail Spur, free from all Encumbrances and third party rights.

5. CONDITIONS TO CLOSING

5.1 Closing Conditions. The following are expressly required conditions of City's and Wilbur-Ellis' obligations to close the Transaction (the "Closing Conditions"): (a) all necessary approvals to complete the transfer of the Rail Spur must be received, including, without limitation, the Consent attached hereto; (b) the recording of the deed from City to Wilbur-Ellis pursuant to the terms and conditions of the Purchase and Sale Agreement must have occurred ; and (c) the parties must have executed and delivered the Lease.

6. CLOSING

6.1 Closing. As soon as reasonably possible but in no event more than thirty (30) days within the completion of all the Closing Conditions, City will transfer the Rail Spur to Wilbur-Ellis via a Bill of Sale in substantially the form attached hereto as Exhibit B.

6.2 Costs and Expenses. Each party will pay their own costs associated with this Agreement and the transfer of the Rail Spur from City to Wilbur-Ellis including, without limitation, all attorney fees, escrow fees, closing costs, and recording fees related to the Transaction.

7. TERMINATION; DEFAULT; CONDEMNATION; INDEMNIFICATION

7.1 Termination. This Agreement will terminate on written notice by either party if the Closing has not been completed on or before September 1, 2016. Upon termination pursuant to this Section 7.1, neither party thereafter will have any further rights, remedies, and/or obligations with respect to this Agreement.

7.2 Wilbur-Ellis Default. The occurrence of any of the following events constitutes a default by Wilbur-Ellis under this Agreement: (a) failure of Wilbur-Ellis to comply with any covenant, agreement, and/or obligation contained in this Agreement, (b) Wilbur-Ellis becomes insolvent within the meaning of the United States Bankruptcy Code, as amended from time to time; an assignment by Wilbur-Ellis for the benefit of creditors; the filing by Wilbur-Ellis of a voluntary petition in bankruptcy; an adjudication that Wilbur-Ellis is bankrupt or the appointment of a receiver of the properties of Wilbur-Ellis; the filing of any involuntary petition of bankruptcy and failure of Wilbur-Ellis to secure a dismissal of the petition within thirty (30) days after filing, (c) attachment, execution, levy, and/or other seizure by legal process of any of Wilbur-Ellis' right or interest in the Rail Spur, and/or (d) a breach by Wilbur-Ellis of any covenant, agreement, and/or obligation contained in the Lease.

7.3 City Default. The occurrence of any of the following events constitutes a default by City under this Agreement: (a) the failure of City to comply with any covenant, agreement, and/or obligation contained in this Agreement and/or (b) the failure to transfer the Rail Spur to Wilbur-Ellis in accordance with Section 6.1. In the event of a default by City, Wilbur-Ellis will have any and all remedies available at law or in equity, including, without limitation, the remedy of specific performance of the Transaction. All available remedies are cumulative and may be exercised singularly or concurrently.

7.4 Notice of Default. Prior to declaring a party in default under this Agreement, the non-defaulting party will provide the defaulting party with written notice (the "Default Notice") specifying with reasonable particularity all defaults under this Agreement that the non-defaulting party believes exist. The defaulting party will have the right to cure the alleged defaults thirty (30) days after receipt of the Default Notice to avoid any breach under this Agreement.

7.5 Condemnation; Risk of Loss. On and after the date of this Agreement, if all or any material portion of the Rail Spur is taken by condemnation, eminent domain, or is the subject of a pending or contemplated taking which has not been consummated, or if the Rail Spur is substantially destroyed or rendered unusable, Wilbur-Ellis will be entitled to all proceeds of the condemnation.

7.6 City Indemnification. City will indemnify, defend, and hold Wilbur-Ellis and Wilbur-Ellis'

Representatives harmless for, from, and against any and all claims, actions, proceedings, damages, liabilities, obligations, costs, and expenses of every kind, whether known or unknown, including, without limitation, reasonable attorney fees, resulting from, or arising out of, whether directly or indirectly from City's breach and/or failure to perform any City representation, warranty, covenant, and/or obligation contained in this Agreement. The indemnification covenants contained in this Section 7.6 will not merge into the Bill of Sale but will survive the Closing. Notwithstanding anything to the contrary set forth herein, City's indemnity obligations under this Agreement shall not extend to any claims, losses, damages, and/or liabilities to the extent caused by the acts or omissions of Wilbur-Ellis or Wilbur-Ellis' Representatives.

7.7 Wilbur-Ellis Indemnification. Wilbur-Ellis will indemnify, defend, and hold City and City's Representatives harmless for, from, and against any and all claims, actions, proceedings, damages, liabilities, obligations, costs, and expenses of every kind, whether known or unknown, including, without limitation, reasonable attorney fees, resulting from, or arising out of, whether directly or indirectly, the following: (a) the ownership, use, maintenance, leasing, and/or operation of the Rail Spur on and after the Closing Date; and/or (b) Wilbur-Ellis' breach and/or failure to perform any Wilbur-Ellis representation, warranty, covenant, and/or obligation contained in this Agreement. The indemnification covenants contained in this Section 7.7 will not merge into the Bill of Sale but will survive the Closing. Notwithstanding anything to the contrary set forth herein, Wilbur-Ellis' indemnity obligations under this Agreement shall not extend to any claims, losses, damages, and/or liabilities to the extent caused by the acts or omissions of City or City's Representatives.

8. USE OF RAIL SPUR; MAINTENANCE AND REPAIR OBLIGATIONS OF WILBUR-ELLIS; TRANSFER RESTRICTIONS

8.1. Use of Rail Spur. On and after the Closing Date, Wilbur-Ellis will use the Rail Spur for its intended purpose subject to the Grant Agreement (as defined below).

8.2 Maintenance and Repair Obligations. On and after the Closing Date, Wilbur-Ellis expressly assumes all obligations of City pursuant to that certain Grant Agreement between the State of Oregon acting by and through its Department of Transportation and City attached hereto as Exhibit C (the "Grant Agreement"), the Legal Requirements, any obligations that may be imposed by BNSF Railway, and any other repairs or maintenance obligations related to the Rail Spur. Wilbur-Ellis' obligations include, without limitation, all maintenance and repairs to the following: (a) the Rail Spur, (b) all rail improvements, track, ties, and switches related to the Rail Spur, (c) conveyor system and railcar mover system improvements including, without limitation, electrical system, unloading pit(s), (d) structural framework for conveyor and railcar mover systems; and (e) all fencing and gates associated with the Rail Spur and/or benefitting the Rail Spur. All repairs and maintenance conducted by Wilbur-Ellis and/or Wilbur-Ellis' Representatives shall be completed in accordance with this Agreement, the Grant Agreement, and the Legal Requirements. The maintenance and repair covenants contained in this Section 8.2 will not merge into the Bill of Sale but will survive the Closing.

8.3. No Transfer or Assignment. Wilbur-Ellis will not Transfer the Rail Spur without the express written consent of City, which City may withhold in its sole and absolute discretion. Wilbur-Ellis will not assign its rights and obligations pursuant to this Agreement without the express written consent of City, which City may withhold in its sole and absolute discretion.

8.4. Abandonment or Non-Use. If Wilbur-Ellis elects not to use the Rail Spur and/or ceases

operations for a period of 24 consecutive months and/or the Lease terminates, City may request a transfer of the Rail Spur to City and/or a third party designated by City provided that such transferee assume the obligations of Wilbur-Ellis pursuant to the terms of this Agreement from and after the transfer date. If the Rail Spur is transferred back to City, City must consent in writing to such transfer and such transfer must be at no cost or expense to City.

9. INSURANCE

9.1 Fire and Hazard Insurance. Wilbur-Ellis during its ownership of the Rail Spur will keep the Rail Spur insured against loss by fire and other hazards covered by a standard form of fire insurance policy with extended coverage endorsement including vandalism and malicious mischief. The amount of the insurance will be not less than one hundred percent (100%) of the replacement cost of the insured improvements and will also be sufficient to prevent City from becoming a coinsurer under the provisions of the policies.

9.2 General Liability Insurance. Wilbur-Ellis will procure and continuously maintain during its period of ownership of the Rail Spur general liability insurance with initial limits of not less than $2,000,000.00 for injury to one person, $2,000,000.00 for any one accident or occurrence and $2,000,000.00 for property damage, and $4,000,000.00 in the aggregate. City may, by written notice to Wilbur-Ellis, demand that the limits of Wilbur-Ellis' general liability insurance be raised to amounts specified in the written notice and Wilbur-Ellis will at the next succeeding policy renewal date, but not later than six (6) months after the date of the notice, raise the limits to those specified in the notice. All limits demanded by City will be commercially reasonable as of the date of the notice for the use Wilbur-Ellis is then making of the Rail Spur. The insurance will be in a form reasonably sufficient to protect City and Wilbur-Ellis against claims of third persons for personal injury, death or property damage arising from the use, occupancy or condition of the Rail Spur.

9.3. Pollution Liability Insurance and Automobile Insurance. Wilbur-Ellis will procure and continuously maintain during its period of ownership of the Rail Spur pollution liability insurance with limits of not less than $2,000,000.00 per occurrence, $4,000,000.000 in the aggregate. Wilbur-Ellis will procure and continuously maintain during its period of ownership of the Rail Spur comprehensive automobile liability insurance with limits of not less than $2,000,000 per occurrence, $4,000,000 in the aggregate.

9.4 General Insurance Provisions. Wilbur-Ellis may not materially change or cancel any insurance policy Wilbur-Ellis is required to obtain and maintain under this Agreement without first providing City thirty (30) days' prior written notice. Notwithstanding anything contained in this Agreement to the contrary, commencing on the ten-year anniversary of the Effective Date, City may increase the minimum levels of insurance Wilbur-Ellis is required to carry under this Agreement by providing Wilbur-Ellis ninety (90) days' prior written notice; provided that such increases must be commercially reasonable (taking into account Wilbur-Ellis' use of the Rail Spur). All policies of insurance which Wilbur-Ellis is required by this Agreement to carry will: (a) provide that the insurer waives the right of subrogation against City and that, except in the event of City's sole negligence, gross negligence or willful misconduct, any loss will be payable notwithstanding any negligence or affirmative act of City, (b) be issued by a responsible insurance company which is licensed to practice in the State of Oregon, (c) be primary policies, and (d) all liability insurance policies will name City and City Representatives as additional insureds. Wilbur-Ellis will provide City with certificates of insurance coverage that Wilbur-Ellis is required to maintain pursuant to this Agreement within ten (10) days of City's request.

10. GENERAL PROVISIONS

10.1 Survival; Time of Essence; Attorney Fees. All of City's and Wilbur-Ellis' representations, warranties, covenants, and indemnity obligations arising under or made in this Agreement will survive the Closing and will not merge into the Bill of Sale. Time is of the essence with respect to each and every obligation of the parties hereunder. With respect to any dispute relating to this Agreement, or if a suit, action, arbitration, or other proceeding of any nature whatsoever is instituted to interpret or enforce the provisions of this Agreement, including, without limitation, any proceeding under the U.S. Bankruptcy Code and involving issues peculiar to federal bankruptcy law or any action, suit, arbitration, or proceeding seeking a declaration of rights or rescission, the prevailing party will be entitled to recover from the losing party its reasonable attorney fees, paralegal fees, expert fees, and all other fees, costs, and expenses incurred in connection therewith, as determined by the judge or arbitrator at trial, arbitration, or other proceeding, or on any appeal or review, in addition to all other amounts provided by law.

10.2 Binding Effect; Notices. Subject to Section 10.3, this Agreement will be binding on and will inure to the benefit of City, Wilbur-Ellis, and their respective heirs, legal representatives, successors, and assigns. All notices or other communications required or permitted by this Agreement must be in writing, must be delivered to the parties at the addresses first set forth above, or any other address that a party may designate by written notice to the other party, and are considered delivered upon actual receipt if delivered personally, by fax, or by a nationally recognized overnight delivery service or at the end of the third business day after the date of deposit if deposited in the United States mail, postage pre-paid, certified, return receipt requested.

10.3 Entire Agreement; Applicable Law; Severability. This Agreement, the Purchase and Sale Agreement, and the Lease set forth the entire understanding of the parties with respect to the Transaction. This Agreement supersedes any and all prior negotiations, discussions, agreements, and understandings between the parties with respect to the Transaction. This Agreement may not be modified or amended except by written agreement executed by the parties to this Agreement. This Agreement will be construed, applied, and enforced in accordance with the laws of the State of Oregon. Any action or proceeding arising out of this Agreement will be litigated in courts located in Jefferson County, Oregon. Each party consents and submits to the jurisdiction of any local, state, or federal court located in Jefferson County, Oregon. If a provision of this Agreement is determined to be unenforceable in any respect, the enforceability of the provision in any other respect and of the remaining provisions of this Agreement will not be impaired.

10.4 Execution; Counterparts; Time. The parties may execute this Agreement in separate counterparts, each of which when executed and delivered will be an original, but all of which together will constitute one and the same instrument. Facsimile or email transmission of any signed original document will be the same as delivery of an original. At the request of any party, the parties will confirm facsimile or email transmitted signatures by signing and delivering an original document. If the date for performance of an obligation or delivery of any notice hereunder falls on a day other than a business day, the date for such performance or delivery of such notice will be postponed until the next ensuing business day. For purposes of this Agreement, a "business day" means a normal working day (i.e., Monday through Friday of each calendar week, exclusive of Federal and state holidays and one day following each of Thanksgiving, Christmas, and New Year's).

10.5 Person; Interpretation. For purposes of this Agreement, the term "person" means any

natural person, corporation, limited liability company, partnership, joint venture, firm, association, trust, unincorporated organization, government or governmental agency or political subdivision, or any other entity. All pronouns contained herein and any variations thereof will be deemed to refer to the masculine, feminine, or neutral, singular or plural, as the identity of the parties may require. The singular includes the plural and the plural includes the singular. The word "or" is not exclusive. The words "include," "includes," and "including" are not limiting. The titles, captions, or headings of the sections herein are inserted for convenience of reference only and are not intended to be a part of or to affect the meaning or interpretation of this Agreement.

10.6 Further Assurances; Waiver; Expenses. The parties will sign other documents and take all other actions reasonably necessary to further effect and evidence this Agreement. No waiver will be binding on a party unless it is in writing and signed by the party making the waiver. A party's waiver of a breach of a provision in this Agreement will not be a waiver of any other provision or a waiver of a subsequent breach of the same provision. Except as otherwise provided in this Agreement, each party will bear the party's own fees, costs, and expenses incurred in connection with the Transaction, including, without limitation, the performance of this Agreement and the other agreements and documents relating to the Transaction.

[end of agreement – signature page immediately follows]

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be duly executed and effective as of the Effective Date.

WILBUR-ELLIS:
Wilbur-Ellis Company LLC,
a California limited liability company

_____
By: _____
Its: _____

CITY:
City of Madras,
an Oregon municipal corporation

_____
By: Royce Embanks, Mayor

Appendix A
Definitions

"Agreement" has the meaning assigned to such term in the preamble.

"Bill of Sale" means a bill of sale concerning City's sale and transfer of the Rail Spur to Wilbur-Ellis, which bill of sale will be in the form attached hereto as Exhibit B.

"City's Representative(s)" means each present and future officer, employee, agent, contractor, and/or authorized representative of City.

"Closing" means the closing of the Transaction, which shall occur at the time periods provided in Section 6.1.

"Closing Date" means the date on which the Closing takes place.

"Default Notice" has the meaning assigned to such term under Section 7.4.

"Effective Date" has the meaning assigned to such term in the Lease.

"Encumbrance(s)" means any lien, mortgage, pledge, security interest, reservation, restriction, adverse claim, or other encumbrance.

"Environmental Law(s)" means any federal, state, and/or local statute, regulation, and/or ordinance, or any judicial or other governmental order pertaining to the protection of health, safety, or the environment and/or designed to minimize, prevent, punish, or remedy the consequences of actions that damage or threaten the environment or public health and safety, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §§9601 et seq., ORS 468B.195-197 (including any regulations promulgated thereunder), the Hazardous Materials Transportation Act, 49 U.S.C. §§1801 et seq., and the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq.

"Grant Agreement" has the meaning assigned to such term under Section 8.2.

"Hazardous Substance(s)" means any hazardous, toxic, infectious, and/or radioactive substance, waste, or material as defined, controlled, or listed by any Environmental Law, including, without limitation, petroleum oil and its fractions.

"Lease" has the meaning assigned to such term in Recital B.

"Legal Requirement(s)" means any and all laws, statutes, ordinances, codes, regulations, orders, rules, covenants, conditions, easements, declarations, leases, liens, and restrictions adopted by governmental authorities that, directly or indirectly, affect or concern the ownership, use, condition, maintenance, leasing, and/or operation of all or any part of the Rail Spur and associated property, including, without limitation, all Environmental Laws.

"Purchase and Sale Agreement" has the meaning assigned to such term in Recital A.

"Rail Spur" has the meaning set forth in Recital C and any additions or modifications thereto.

"Transaction" means the execution of the Bill of Sale and transfer of the Rail Spur to Wilbur-Ellis subject to the terms and conditions of this Agreement.

"Transfer" means (a) any transfer, including, without limitation, any sale, exchange, gift, assignment, Encumbrance, foreclosure of an Encumbrance, or attachment, regardless of whether the transfer occurs voluntarily or involuntarily, by operation of law, or because of any act or occurrence, (b) any contract involving the lease or use of the Rail Spur, and/or (c) the sale, assignment, encumbrance, and/or transfer - or series of related sales, assignments, encumbrances, and/or transfers - of fifty-one percent (51%) or more of the outstanding voting stock of Wilbur-Ellis, regardless of whether the sale, assignment, encumbrance, and/or transfer occurs voluntarily or involuntarily, by operation of law, or because of any act or occurrence; provided, however, that a transaction shall not be considered a Transfer if the persons who are the beneficial owners of the outstanding voting stock immediately prior to such transaction will beneficially own, directly or indirectly, at least 51% of the outstanding shares of the voting stock of Wilbur-Ellis following such transaction.

"Wilbur-Ellis" has the meaning assigned to such term in the preamble.

"Wilbur-Ellis' Representative(s)" means each present and future officer, employee, agent, contractor, and/or authorized representative of Wilbur-Ellis.

Exhibit A
Rail Spur Description

The Rail Spur is described as follows:

[attached]

Exhibit B
Bill of Sale

[to be attached]

Exhibit B

BILL OF SALE

1. **Transfer.** On the Effective Date, City of Madras ("City") transfers and assigns to the Wilbur-Ellis Company, a California corporation ("Wilbur-Ellis") City's entire interest in and to the rail and conveyor system improvements identified on the attached Schedule 1 (the "Rail Spur").

2. **Exclusion of Representations and Warranties.** Except for the express representations and warranties provided in this Bill of Sale and the Rail Transfer Agreement between City and Wilbur-Ellis dated effective _____, 2016, City expressly excludes all warranties with respect to the Rail Spur, express and implied, including, without limitation, the warranty of merchantability, the warranty of fitness for particular purpose, and any warranties that may arise from course of dealing or usage of trade. City transfers its interest in the Rail Spur to Wilbur-Ellis "as is," "where is," and "with all faults."

3. **Governing Law.** This Bill of Sale is governed by the laws of the State of Oregon, without giving effect to any conflict-of-law principle that would result in the laws of any other jurisdiction governing this Bill of Sale. Any action, suit, or proceeding arising out of the subject matter of this Bill of Sale will be litigated in courts located in Jefferson County, Oregon. Each party consents and submits to the jurisdiction of any local, state, or federal court located in Jefferson County, Oregon.

4. **Attorney's Fees.** If any arbitration, action, suit, or proceeding is instituted to interpret, enforce, or rescind this Bill of Sale, or otherwise in connection with the subject matter of this Bill of Sale, including, without limitation, any proceeding brought under the United States Bankruptcy Code, the prevailing party on a claim will be entitled to recover with respect to the claim, in addition to any other relief awarded, the prevailing party's reasonable attorney's fees and other fees, costs, and expenses of every kind, including, without limitation, the costs and disbursements specified in ORCP 68 A(2), incurred in connection with the arbitration, action, suit, or proceeding, any appeal or petition for review, the collection of any award, or the enforcement of any order, as determined by the arbitrator or court.

5. **Acceptance.** Wilbur-Ellis accepts the Rail Spur subject to the terms and conditions contained in this Bill of Sale and the Rail Transfer Agreement.

Effective Date: _____, 2016

CITY:
City of Madras,
an Oregon municipal corporation

_____
By: Royce Embanks, Mayor

WILBUR-ELLIS:
Wilbur-Ellis Company,
a California corporation

_____
By: _____

Schedule 1

[To be inserted]

SCHEDULE 1

TO THE BILL OF SALE
HAS NOT YET BEEN DEVELOPED

SCHEDULE 1 TO THE BILL OF SALE WILL NEED TO DESCRIBE THE RAIL SYSTEM COMPONENTS THAT ARE BEING TRANSFERRED. THE CLOSING IS AROUND 4 MONTHS OUT. WILBUR-ELLIS WILL BE ASKED TO PREPARE THE PROPOSED LANGUAGE FOR REVIEW AND APPROVAL BY THE CITY.

Exhibit C
Grant Agreement

[to be attached]

Exhibit C

Misc. Contracts and Agreements
No. 28712

GRANT AGREEMENT
***Connect*Oregon IV**
MULTIMODAL TRANSPORTATION FUND PROGRAM 2012
Project Name: Madras-BNSF Rail Improvement Project

THIS GRANT PROGRAM AGREEMENT, hereinafter referred to as "Agreement" is made and entered into by and between the STATE OF OREGON, acting by and through its Department of Transportation, hereinafter referred to as "ODOT," and City of Madras, acting by and through its elected officials, hereinafter referred to as "Recipient," hereinafter individually referred to as the "Party" and collectively referred to as the "Parties."

RECITALS

1. By the authority granted in Oregon Revised Statute (ORS) 190.110, 366.572, and 366.576, state agencies may enter into agreements with counties, cities, and units of local government for the performance of any or all functions and activities that a party to the agreement, its officers, or agents have the authority to perform.

2. Pursuant to ORS 367.080 through 367.086, there is established the Multimodal Transportation Fund, separate and distinct from the General Fund, allowing for the issuance of lottery bonds for the purpose of financing grants and loans to fund Transportation Projects to public bodies and private entities that involve air, marine, rail or public transit.

3. The Multimodal Transportation Fund Program began through *Connect*Oregon, a one hundred million dollar ($100,000,000) lottery-bond-based initiative approved by the Oregon Legislative Assembly in 2005 (Oregon Laws 2005, Chapter 816), to invest in air, rail, public transit, and marine transportation projects to ensure Oregon's transportation system is strong, diverse and efficient. The Oregon Legislative Assembly added an additional one hundred million dollars ($100,000,000) in 2007 (Oregon Laws 2007, Chapter 859), one hundred million dollars ($100,000,000) in 2009 (Oregon Laws 2009, Chapter 865 – HB 2001), and forty million dollars ($40,000,000) in 2011 (Oregon Laws 2011, Chapter 624, HB 5036. The Multimodal Transportation Fund Program is focused on improving the connections between air, rail, marine and transit modes of transportation to reduce transportation costs to businesses, remove key bottlenecks, and increase connectivity.

4. The receipt and use of Multimodal Transportation Funds and the execution of this Agreement by Recipient are subject to conditions imposed by ORS 367.080 through 367.086 and Oregon Administrative Rule (OAR) Chapter 731, Division 35.

5. The Oregon Transportation Commission approved the projects to be funded under the Multimodal Transportation Fund Program at its August 2012 meeting. The Oregon Transportation Commission has set specific conditions on all approved projects and the inability to meet these Oregon Transportation Commission conditions may result in a loss of Project funding. Final approval for Project is subject to meeting all the Oregon Transportation Commission conditions as stated below.

6. Safety is of paramount concern to ODOT. ODOT encourages recipients of *Connect*Oregon grant funds to have safety as a high priority for all phases of work.

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

I. TERMS OF AGREEMENT

1. ODOT and Recipient agree that Recipient shall provide a track connection and equipment to Wilbur Ellis and improve three railroad crossings, hereinafter referred to as "Project", further described in Exhibit A, attached hereto and by this reference made a part hereof.

2. Project Cost is estimated at $779,800, which is subject to change. The *Connect*Oregon IV grant funds ("Grant Funds") are limited to $619,020 or eighty (80) percent of the total eligible Project Costs, whichever is less. Eligible costs for this Project will be reimbursed at eighty (80) percent until the $619,020 limit is reached. ODOT cannot reimburse Recipient for any work performed, or for Project Costs incurred prior to the effective date of this Agreement.

   a. Recipient must provide matching funds in an amount equal to twenty (20) percent of the eligible Project Costs. Matching funds must be used for elements necessary for implementation of Project, including land, excavation, permits, engineering, payroll, special equipment purchase, rental or lease. Recipient is responsible for all costs in excess of the Grant Funds. All Project Costs other than the Grant Funds are hereinafter referred to as "Recipient Contribution."

   a. If Project is not completed in accordance with, or consistent with, the application and documents provided by Recipient to ODOT prior to the execution of the Agreement, incorporated by reference into this Agreement, and this Agreement as they each may be amended, Recipient shall pay back all of the Grant Funds to ODOT. Any funds disbursed but not used for the approved Project must be returned to ODOT. Recipient understands eligibility for Grant Funds applies only to Project costs incurred on or after the effective date of this Agreement.

3. The term of this Agreement is effective on the date all required signatures are obtained and shall expire five (5) calendar years following the date all required signatures are obtained.

II. RECIPIENT OBLIGATIONS

1. Recipient shall perform Project work described in Exhibit A.

2. Recipient shall comply with all requirements of ORS 367.080 through ORS 367.086 and OAR Chapter 731, Division 35.

3. Recipient shall submit to ODOT's Project Liaison for review and approval monthly invoices and updated monthly progress reports on Project Key Milestones and Schedule in Exhibit A.

a. The invoice must adhere to generally accepted accounting principles and will identify Project, Agreement number, Project start and end date, the invoice number or the account number or both, and will itemize all expenses as well as provide a detailed breakdown of funds expended to date and dollars remaining. In the event an invoice is not necessary during a specific period, an updated monthly progress report on Project schedule must be submitted separately each month reflecting continuous progress.

b. The monthly progress report will be prepared using the *Connect*Oregon Monthly Progress Report (Form 734-2668), attached by reference and made a part of this Agreement, and will be submitted to the ODOT Project Liaison and ODOT's *Connect*Oregon Program Manager, by the first Wednesday of each month. The fillable form can be downloaded on-line at the following address:

http://www.oregon.gov/ODOT/HWY/LGS/online.shtml.

c. If Recipient anticipates Project key milestones will be delayed by more than ninety (90) days from the key milestones shown in Exhibit A, Recipient shall submit a Request for Change Order (Form 734-2648), which is hereby incorporated by reference, to ODOT's Project Liaison as soon as Recipient becomes aware of any possible delay. The Request for Change Order must be submitted prior to the milestone completion date shown in Exhibit A. The fillable form can be downloaded on-line at the following address: **http://www.oregon.gov/ODOT/HWY/LGS/online.shtml.**

d. Any changes to Project scope or delivery schedule must be approved by the *Connect*Oregon Oversight Committee or assigned designee prior to execution of an amendment to this Agreement. Recipient shall not proceed with any changes to Project scope prior to the Request for Change Order being approved by ODOT and the ensuing amendment executed. A Request for Change Order may be rejected at the discretion of the *Connect*Oregon Oversight Committee. The *Connect*Oregon Oversight Committee may choose to request review by the Oregon Transportation Commission.

e. Recipient shall submit a written report to ODOT's *Connect*Oregon Program Manager that identifies the number of jobs created or retained both during construction and after Project completion, as a direct result of this Project. The report must also include the number of jobs projected in the application. This report must also include data on the methodology which measures Project's success as described in the grant application. The report must be received within eighteen (18) months after the completion of Project. Recipient's obligation to provide this report will survive expiration of this Agreement.

4. Recipient must comply with ORS 280.518, which requires any economic development program financed with proceeds from the state lottery to display a sign in a conspicuous location on Project site or specify in the program information that Project is financed with proceeds from the state lottery. ODOT will provide standard signage as appropriate. If Recipient chooses to make a custom sign, it must be

approved by ODOT's *Connect*Oregon Program Manager and Recipient shall be responsible for the cost of such custom signage. If Project site is remote and a sign would not be visible to the public, then Recipient shall provide proof to ODOT's *Connect*Oregon Program Manager that Recipient has specified in its program information that Project is financed with proceeds from the state lottery.

5. Recipient must produce or provide, upon ODOT's request, any documents or information identified or referenced in Project application or in other documents provided by Recipient to ODOT prior to the execution of the Agreement. These may include, but are not limited to, information pertaining to Project key milestones, schedule, budget and cash flow, feasibility, readiness to construct, permits, likelihood of completion within planned time frame, and other items related to completion of promised Project elements.

6. Recipient shall provide a pre-construction estimate based on the final design prior to any construction (labor and material) costs being considered eligible for reimbursement and actually being reimbursed. Project Costs will only be reimbursed through the design phase of Project until all applicable documentation is received. Recipient shall provide this documentation to ODOT's *Connect*Oregon Program Manager.

7. Recipient shall, for design and construction, follow standards that meet or exceed American Railway Engineering and Maintenance-of-Way Association's standards. Railroad recipients shall ensure that any continuous welded rail used on Project meets or exceeds Federal Railroad Administration standards. Industrial recipients must submit a maintenance and installation plan to ODOT's *Connect*Oregon Program Manager prior to installation of 400 feet or more of continuous welded rail.

8. Recipient shall, prior to construction, submit a materials list, proposed construction plans and schedule to ODOT's *Connect*Oregon Program Manager. Project costs will only be reimbursed through the design phase of Project until the materials list; proposed construction plans and schedule have been submitted to ODOT's *Connect*Oregon Program Manager. Substantial changes to the scope of work will require a Request For Change Order and a revised materials list.

9. Recipient shall, once construction has begun on Project, submit a monthly construction schedule at the same time Recipient submits the monthly report detailed above under Section II.3.a of this Agreement.

10. Recipient shall, once Project has been completed and prior to the final inspection, submit a final materials list to the ODOT Project Liaison for use by the ODOT Inspector during the final inspection.

11. Upon execution of this Agreement, Recipient shall require its Contractor(s) performing the work under this Agreement to name ODOT as an additional obligee on Contractor(s) bond.

12. Recipient shall comply with all federal, state, and local laws, regulations, executive orders and ordinances applicable to the work under this Agreement, including, without limitation, the applicable provisions of ORS 279A, 279B and 279C. Without limiting the generality of the foregoing, Recipient expressly agrees to comply with (i) Title VI of Civil Rights Act of 1964; (ii) Title V and Section 504 of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659A.142; (iv) all regulations and administrative rules established pursuant to the foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.

13. Recipient shall, to the extent permitted by the Oregon Constitution and the Oregon Tort Claims Act, indemnify, defend, save, and hold harmless the State of Oregon, Oregon Transportation Commission and its members, Oregon Department of Transportation, its officers and employees from any and all claims, suits, or action of any nature arising out of activities of Recipient, its consultant, its contractor, its officers, subcontractors, agents, or employees under this Agreement. If Recipient is a local public agency, then Recipient's total liability shall not exceed the tort claims limits providing in the Oregon Tort Claims Act, ORS 30.260 and 30.300 for "local public bodies."

14. Notwithstanding the foregoing defense obligations in the paragraph above, neither Recipient nor any attorney engaged by Recipient shall defend any claim in the name of the State of Oregon or any agency of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without the prior written consent of the Oregon Attorney General. The State of Oregon may, at anytime at its election assume its own defense and settlement in the event that it determines that Recipient is prohibited from defending the State of Oregon, or that Recipient is not adequately defending the State of Oregon's interests, or that an important governmental principle is at issue or that it is in the best interests of the State of Oregon to do so. The State of Oregon reserves all rights to pursue any claims it may have against Recipient if the State of Oregon elects to assume its own defense.

15. Recipient acknowledges and agrees that ODOT, 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 Recipient which are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of six (6) years after final payment. Copies of applicable records will be made available upon request. Payment for costs of copies is reimbursable by the requesting Party.

16. If Recipient enters into a construction contract for performance of work on Project, then Recipient will require its contractor to provide the following:

    a. Contractor shall indemnify, defend and hold harmless ODOT from and against all claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature whatsoever resulting from, arising out of, or relating to the activities of

Contractor or its officers, employees, subcontractors, or agents under the resulting contract.

b. Contractor and Recipient shall name ODOT as a third party beneficiary of the resulting contract.

c. Commercial General Liability. Contractor shall obtain, at Contractor's expense, and keep in effect during the term of the resulting contract, Commercial General Liability Insurance covering bodily injury and property damage in a form and with coverages that are satisfactory to ODOT. This insurance will include personal and advertising injury liability, products and completed operations. Coverage may be written in combination with Automobile Liability Insurance (with separate limits). Coverage will be written on an occurrence basis. If written in conjunction with Automobile Liability the combined single limit per occurrence will not be less than one million dollars ($1,000,000) for each job site or location. Each annual aggregate limit will not be less than two million dollars ($2,000,000.)

d. Automobile Liability. Contractor shall obtain, at Contractor's expense, and keep in effect during the term of the resulting contract, Commercial Business Automobile Liability Insurance covering all owned, non-owned, or hired vehicles. This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits). Combined single limit per occurrence will not be less than one million dollars ($1,000,000.)

e. Additional Insured. The liability insurance coverage, except Professional Liability, Errors and Omissions, or Workers' Compensation, if included, required for performance of the resulting contract will include ODOT and its divisions, officers and employees as Additional Insured but only with respect to Contractor's activities to be performed under this Contract. Coverage will be primary and non-contributory with any other insurance and self-insurance.

f. Notice of Cancellation or Change. There will be no cancellation, material change, potential exhaustion of aggregate limits or non-renewal of insurance coverage(s) without thirty (30) days written notice from Contractor's or its insurer(s) to ODOT. Any failure to comply with the reporting provisions of this clause will constitute a material breach of the resulting contract and will be grounds for immediate termination of the resulting contract and this Agreement.

17. Recipient, and its Contractors, shall work as an independent contractor and shall be exclusively responsible for all costs and expenses related to its employment of individuals to perform the work under this Agreement including, but not limited to, retirement contributions, workers' compensation, unemployment taxes, and state and federal income tax withholdings.

18. All employers, including Recipient, that employ subject workers who work under this Agreement in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage unless such employers are exempt under ORS 656.126. Employers Liability insurance with coverage limits of not less

than five hundred thousand dollars ($500,000) must be included. Recipient shall ensure that each of its Contractors complies with these requirements.

19. Recipient shall, upon execution of this Agreement and as a condition to this Agreement, complete and file with the appropriate County Clerk, Exhibit B, "Memorandum of Agreement and Acknowledgment of ODOT Assistance", attached hereto and by this reference made a part hereof. Recipient shall provide confirmation of this filing by forwarding to ODOT's *Connect*Oregon Program Manager a notarized copy of the recorded Exhibit B. By means of said acknowledgment of Recipient's financial obligations, the continued use of said property for public purposes, and the maintenance of the facility or service at a level consistent with normal depreciation or demand or both is recognized and attached to the property as conditions. Any interest in said property by ODOT is proportional to the state participation in Project. While in default of conditions of this Agreement, Recipient will be ineligible to receive state funds from any ODOT-administered program for any project on a street, road or property. The Memorandum of Agreement and Acknowledgment of ODOT Assistance shall remain in place for the useful life of Project. The useful life of Project is defined as twenty (20) years. Reimbursement to Recipient will not be made until a copy of the recorded Exhibit B has been forwarded to the ODOT Project Liaison.

20. Recipient and ODOT's Project Liaison shall, upon completion of all on-site work for Project, perform an on-site review. Once review is completed, the ODOT Project Liaison shall recommend acceptance of Project by signing the *Connect*Oregon "Recommendation of Acceptance" (Form 734-2649), which will be signed by the ODOT Project Liaison and Recipient and is hereby incorporated by reference. The full text of the above referenced exhibit may be reviewed and downloaded at the following web address:

http://www.oregon.gov/ODOT/HWY/LGS/docs/Forms/COProjectAccept2649.doc

21. Recipient shall, at its own expense, maintain and operate Project upon completion and throughout the useful life of Project at a minimum level that is consistent with normal depreciation or service demand or both. ODOT and Recipient agree that the useful life of Project is defined as twenty (20) years. Recipient has, by submitting its application for this *Connect*Oregon IV grant, represented and certified to sufficient funds and to its ability to operate and maintain Project. ODOT may conduct periodic inspections following the execution of this Agreement to verify that Project is being properly maintained and continues to serve the purpose for which Grant Funds were provided. This paragraph shall survive any expiration of this Agreement.

22. Recipient certifies and represents that the individual(s) signing this Agreement has been authorized to enter into and execute this Agreement on behalf of Recipient, under the direction or approval of its governing body, commission, board, officers, members, or representatives, and to legally bind Recipient and shall provide ODOT proof of such authority upon request.

23. Recipient's Project Manager is Jeff Hurd, Public Works Director, 71 SE D St.; Madras; OR 97741; telephone: 541-475-2622; fax: 541-475-1038; jhurd@ci.madras.or.us or assigned designee upon individual's absence. Recipient shall notify ODOT's Project Liaison and ODOT's *Connect*Oregon Program Manager in writing when any contact information changes during the term of this Agreement.

III. ODOT OBLIGATIONS

1. Based upon the *Connect*Oregon IV Grant Fund allocation allowed, ODOT agrees to pay Recipient a maximum amount of $619,020, or eighty (80) percent of the total eligible Project costs, whichever is less. Eligible costs for this Project will be reimbursed at eighty (80) percent until the $619,020 limit is reached.

2. Upon receipt and approval by ODOT of a monthly invoice and updated monthly progress report on Project schedule submitted by Recipient, ODOT shall reimburse Recipient for approved eligible costs.

3. This Agreement is contingent upon issuance and sale of lottery bonds sufficient to fund Project. The Agreement is effective and work may begin upon execution of this Agreement, but ODOT's obligation to make Project payments is contingent upon the issuance and sale of lottery bonds by the State Treasurer.

4. Each disbursement of Grant Funds by ODOT is contingent upon ODOT receiving appropriations, limitations, allotments or other expenditure authority sufficient to allow ODOT, in the exercise of its reasonable administrative discretion, to continue to make payments under this Agreement.

5. ODOT shall monitor Project for compliance and notify Recipient in writing if it appears Recipient is failing to comply with Multimodal Transportation Fund Program requirements as specified in ORS Chapter 367; OAR Chapter 731, Division 35; the terms of this Agreement; or Recipient's application and documents provided by Recipient to ODOT prior to the execution of the Agreement.

6. ODOT may impose sanctions against Recipient for failing to comply with the requirements governing the Multimodal Transportation Fund Program. Before imposing sanctions, ODOT will send a notice to cure to Recipient if Recipient fails to comply with Program requirements. ODOT will allow fifteen (15) days from the date the notice to cure is sent for Recipient to respond and correct the deficiencies noted. The following circumstances may warrant sanctions:

   a. Work on the approved Project has not been substantially initiated within six (6) months of the effective date of this Agreement or if continuous progress on Project has not been maintained for six (6) months;

   b. State of Oregon statutory requirements have not been met;

c. There is a significant deviation from the terms and conditions of this Agreement or representations of Recipient's application and documents provided by Recipient to ODOT prior to the execution of the Agreement;

d. Significant corrective actions have been found to be necessary to protect the integrity of the funds for the approved Project, and those corrective actions are not, or will not, be made within a reasonable time;

e. Key Milestones shown in Project schedule are delayed by more than ninety (90) days; or

f. Failure to submit monthly progress reports as required in ODOT Obligations, Section III.3, of this Agreement.

7. One or more of the following sanctions may be imposed if the circumstances listed above are not remedied within the time specified in the notice to cure:

   a. Revocation of this grant award;

   b. Withholding of unexpended funds;

   c. The return of unexpended funds or repayment of expended funds;

   d. The barring of Recipient from applying for future assistance; or

   e. Other remedies that may be incorporated into this Agreement.

8. The remedies set forth in this Agreement are cumulative, are not exclusive, and are in addition to any other rights and remedies provided by law or under this Agreement.

9. ODOT's Project Liaison and Recipient shall, upon completion of all on-site work for Project, perform an on-site review. Once review is completed, ODOT's Project Liaison shall recommend acceptance of Project by signing the *Connect*Oregon Recommendation of Acceptance (Form 734-2649), which will be signed by ODOT's Project Liaison and Recipient. Upon receipt of signatures by the Parties, ODOT's Project Liaison shall forward a signed copy to ODOT's *Connect*Oregon Program Manager.

10. After execution of this Agreement, ODOT's *Connect*Oregon Program Manager shall have authority to execute amendments to this Agreement on behalf of ODOT when the changes provided in the amendments have been approved through the "Request For Change Order Process" described in Recipient Obligations Section II.3.d, of this Agreement. Such authority shall include modification to Project milestones, Project completion date, and the expiration date of the Agreement. Any other modifications, including without limitation to Project scope, Project Cost or grant amount may be effective only upon execution by all original signatories, or their assigned designee's in their absence.

11. ODOT's *Connect*Oregon Program Manager is Carol Olsen, Active Transportation Section, 555 13th Street NE, Salem, OR 97301, 503-986-3327, LGSConnectOregon@odot.state.or.us, or assigned designee upon individual's absence.

IV. GENERAL PROVISIONS

1. This Agreement may be terminated effective upon delivery of written notice to Recipient, or at such later date as may be established by ODOT under any of the following conditions:

   a. If Recipient fails to perform any of the provisions of this Agreement, or so fails to pursue the work as to endanger performance of this Agreement in accordance with its terms, and within ten (10) days or such longer period as ODOT may authorize, after receipt of written notice from ODOT, fails to correct such failures.

   b. The Legislature fails to approve, reduces, eliminates or otherwise interferes with appropriations of state expenditure limitation to the extent that legal authority is insufficient to enable ODOT, in its reasonable discretion, to continue making payments under this Agreement.

   c. ODOT, the Department of Justice, or a court of competent jurisdiction determines that state law, rules, regulation or guidelines are modified, changed, or interpreted in such a way that the activities described in Exhibit A are no longer allowable or no longer eligible for funding proposed by this Agreement.

2. ODOT may impose one (1) or more of the sanctions described in ODOT Obligations, Section III.6, of this Agreement, without prior notice and without opportunity to cure, in the event ODOT determines:

   a. Statements, information, or representations in the *Connect*Oregon IV application and documents provided by Recipient to ODOT prior to the execution of the Agreement, for Project were false, misleading, fraudulent or misrepresentations; or

   b. There has been a change in circumstances so that information provided in the application and documents provided by Recipient to ODOT prior to the execution of the Agreement, and relied upon in making the grant or loan, or representations concerning considerations in the selection of Project for *Connect*Oregon IV, pursuant to OAR 731-035-0060, are no longer true or accurate.

3. Recipient may terminate this Agreement effective upon delivery of written notice to ODOT under any of the following conditions:

   a. ODOT fails to make payments due under this Agreement, or

   b. ODOT fails to perform any of the provisions of this Agreement, or so fails to pursue the work as to endanger performance of this Agreement in accordance with its terms, and within ten (10) days or such longer period as Recipient may

authorize, after receipt of written notice from Recipient, fails to correct such failure.

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

5. ODOT and Recipient are the only Parties to this Agreement and, as such, are the only Parties entitled to enforce its terms. Nothing in this Agreement gives or shall be construed to give or provide any benefit, direct, indirect or otherwise to third persons unless such third persons are expressly identified by name and specifically described as intended to be beneficiaries of its terms.

6. ODOT and Recipient 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 will 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.

7a. The laws of the State of Oregon (without giving effect to its conflicts of law principles) govern all matters arising out of or relating to this Agreement, including, without limitation, its validity, interpretation, construction, performance, and enforcement.

b. Any Party bringing a legal action or proceeding against any other Party arising out of or relating to this Agreement shall bring the legal action or proceeding in the Circuit Court of the State of Oregon for Marion County. Each Party hereby consents to the exclusive jurisdiction of such court, waives any objection to venue, and waives any claim that such forum is an inconvenient forum.

c. Notwithstanding Section IV.7.b, if a claim must be brought in a federal forum, then it must be brought and adjudicated solely and exclusively within the United States District Court for the District of Oregon. This section applies to a claim brought against the State of Oregon only to the extent Congress has appropriately abrogated the State of Oregon's sovereign immunity and is not consent by the State of Oregon to be sued in federal court. This section is also not a waiver by the State of Oregon of any form of immunity, including but not limited to sovereign immunity and immunity based on the Eleventh Amendment to the Constitution of the United States.

8. 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.

9. This Agreement, Project application and documents provided by Recipient to ODOT prior to the execution of the Agreement, and attached exhibits constitute the entire agreement between the Parties on the subject matter hereof. In the event of a conflict, the body of this Agreement and the attached Exhibit A will control over

Project application and documents provided by Recipient to ODOT. 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 either Party to enforce any provision of this Agreement shall not constitute a waiver by that Party of that or any other provision.

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 and that the persons executing this Agreement have been duly authorized to do so.

The Oregon Transportation Commission at its August 2012 meeting approved the *Connect*Oregon IV project application list and delegated authority to the Director of the Oregon Department of Transportation to enter into project agreements.

City of Madras, acting by and through its elected officials

By Melanie Widmer
Melanie Widmer
Date October 23, 2012
ATTEST:
By Karen J. Coleman
Karen J. Coleman
City Recorder
Date October 23, 2012

APPROVED AS TO LEGAL SUFFICIENCY
By Bryant, Loehrer, Jarvis, P.C.
Recipient Counsel
Date 10/25/12

Recipient Contact:
Jeff Hurd, Public Works Director
City of Madras
71 SE D St.
Madras, OR 97741
541-475-2622
jhurd@ci.madras.or.us

STATE OF OREGON, by and through its Department of Transportation

By
Director
Date 11-5-12

APPROVAL RECOMMENDED
By
Freight Mobility Manager
Date 10/30/12
By
Active Transportation Section Manager
Date 10/29/12

APPROVED AS TO LEGAL SUFFICIENCY

By Keith L. Kutler, Assistant Attorney General by email dated October 9th, 2012

ODOT Contact:
Carol Olsen, *Connect*Oregon Program Manager
ODOT Active Transportation Section
555 13th Street NE
Salem, OR 97301
503-986-3327
carol.a.olsen@odot.state.or.us

EXHIBIT A

Agreement No. 28712

Application Number: 4R0201

Project Name: Madras-BNSF Rail Improvement Project

A. PROJECT DESCRIPTION

This project will construct approximately 700 feet of new spur track to serve a Wilbur Ellis dry bulk fertilizer plant in the Madras Industrial Park. The spur will be constructed of 112-pound or heavier rail and an existing turnout that was positioned to provide access to Wilbur Ellis from a lead track will be removed and replaced with a switch comprised of rail similar in size or heavier when compared to rail used to construct the spur. To allow unloading of fertilizer a pit or receptacle of appropriate dimensions will be created beneath the new spur and a conveyor system installed to move dry bulk material approximately 90 feet to the Wilbur Ellis storage facility. The project also will provide means for indexing rail cars over the product receiving pit. The mobility device can either be a Trackmobile or a cable and winch system powered by an electric motor, whichever method is determined to be most suitable and economical for this site.

Madras Industrial Park is connected to BNSF Railway's mainline by a lead track approximately 2,200 feet in length that is in need of general rehabilitation and upgrading. This project will rebuild the track structure where it approaches and intersects Harmon Street, Earl Street and Canal Street. The work at these locations will uncover the track by removing the crossing road surface, then salvaging the existing track comprised of 90-pound rail and deteriorated ties and replacing them with new ties and larger rail section. The road surface at each intersection will be restored with pre-cast concrete panels. At Harmon Street, timber planks on the road approaches will be replaced which Earl and Canal Streets will receive asphalt approaches. Rail joints within crossings will be Thermite welded and bolted compromise joint bars will be utilized for transition from 90-pound rail to larger rail section and vice versa.

B. PROJECT KEY MILESTONES AND SCHEDULE

Project has six Key Milestones. Key Milestones are used for evaluating performance on Project and determining level of compensation for completed work as described in the Agreement. Key Milestones cannot be changed without an amendment to the Agreement. Recipient may shift the estimated Grant Funds shown below between milestones without an amendment to the Agreement, but shall not, under any circumstances, exceed the "Total Not To Exceed Grant Fund Allocation." Recipient shall report changes to the Estimated Amounts corresponding to each Key Milestone, shown below, in Recipient's Monthly Report to the ODOT Project Liaison.

If Recipient anticipates Project Key Milestones will be delayed by more than ninety (90) days, Recipient shall submit a Request for Change Order to the ODOT Project Liaison as soon as Recipient becomes aware of any possible delay. The Request for Change Order must be submitted prior to the Key Milestone completion date shown in this Exhibit.

EXHIBIT A

The anticipated start date of Project is: 9/30/2012

The estimated completion date of Project is: 1/31/2014

Table 1: Key Milestones

Key Milestone	Description	Estimated Due Date	Estimated Amount
1	**Scoping and planning**	N/A	$0
2	**Right of way and land acquisition**	N/A	$0
3	**Permits**	5/1/2013	$0
4	**Final plans/bidding engineering documents**	4/1/2013	$111,400
5	**Construction contract award**	5/31/2013	$0
6	**Project completion**	1/31/2014	$668,400
	Total Project Cost		$779,800

Table 2 – Funding Breakdown

A	**Total Not To Exceed Grant Fund Allocation**	$619,020	
B	***Connect*Oregon IV twenty (20) percent required match**	$154,755	
C	***Connect*Oregon IV Total**		$773,775
D	**Other Funds In Addition to twenty (20) percent Required Match**	$6,025	
E	**Total Project Funding**		$779,800

C. BUDGET

Total Not To Exceed Grant Funds payable to Recipient is $619,020.

Total Project costs are estimated at $779,800. The *Connect*Oregon IV Grant Fund allocation for Project is $619,020. Recipient shall be responsible for any unanticipated costs over the identified *Connect*Oregon IV Grant Fund Allocation.

City of Madras/ODOT
Agreement No. 28712

After recording, return to:

_____

_____

_____

EXHIBIT B
MEMORANDUM OF AGREEMENT AND ACKNOWLEDGEMENT OF ODOT ASSISTANCE
[State Recording Authority: ORS 93.710 and ORS 205.130(2)]
Agreement Number: 28712
Project Name: Madras-BNSF Rail Improvement Project

Grant Agreement No. 28712 ("Grant Agreement") between the *City of Madras* and the State of Oregon, Department of Transportation (ODOT) was executed on . Pursuant to Recipient Obligations, Section II.19, of the Grant Agreement, upon the recording of this document, the *City of Madras* will receive Grant Funds for Project described in the Grant Agreement. The property and assets under the jurisdiction of the *City of Madras* will be improved with the assistance from the State of Oregon, Department of Transportation, in accordance with the terms of the Grant Agreement. Such assistance will be provided to *City of Madras*, in reimbursement of costs associated with the Madras-BNSF Rail Improvement Project. The use and disposition of said property is subject to the terms of the Grant Agreement, copies of which may be obtained from the Director of ODOT. A description of the improved property is attached.

City of Madras,

By: _____ (Notary Stamp)
(Name of person)

Title: _____

State of Oregon: County of _____

Signed or attested before me on _____ by _____
(Date) (name(s) of person(s)

_____My commission expires on _____.

STATE OF OREGON, DEPARTMENT OF TRANSPORTATION

By: _____ (Notary Stamp)
Darel Capps

Title: Active Transportation Section Manager

Signed or attested before me on _____ by _____
(Date) (name(s) of person(s)

_____My commission expires on _____.

Oregon Department of Transportation; 555 13th Street NE, Salem, OR 97301-4178.

Consent

The State of Oregon acting by and through its Department of Transportation consents to the Rail Transfer Agreement between City of Madras, an Oregon municipal corporation and Wilbur-Ellis Company LLC, a California limited liability company.

State of Oregon acting by and through its
Department of Transportation

_____

By: _____

Dated: _____

CITY OF MADRAS
Request for Council Action

Date Submitted: March 16, 2016

Agenda Date Requested: March 22, 2016

To: Madras City Council

Through: Gus Burril, City Administrator

From: Nicholas Snead, Community Development Director

Subject: **Authorization of Necessary Expenses for Land Partition and Related Professional Services**

TYPE OF ACTION REQUESTED: (Check One)

[ ]	**Resolution**	[ ]	**Ordinance**
[X]	**Formal Action/Motion**	[ ]	**Other**
[ ]	**No Action - Report Only**		

OVERVIEW:

The City of Madras currently owns approximately 5.22 acres located west of U.S. Highway 26, and north of Cherry Lane. On February 23, 2016, the City Council took formal action to authorize the Mayor to sign a letter that would be submitted along with required exhibits to the Federal Aviation Administration (FAA) which, if approved, would allow the City to sell approximately 5.22 acres, previously released from the National Emergency Use Provisions and Surplus Property Act, to the Wilbur-Ellis Company. Pursuant to this action, the City needs to convey the 5.22 acres of City property by title to the Wilbur-Ellis Company once FAA approval has been obtained. Also, per the amended and restated lease with Wilbur Ellis, the City needs to reconfigure two lease areas (0.96 acres and 1.0 acres respectively – see attached exhibits) that reflect the new rail improvements being transferred to Wilbur Ellis per the Connect Oregon IV grant improvements to help retain jobs and provide rail access to this business.

In order for the City to transfer the 5.22 acres of property by title to the Wilbur Ellis Company, the properties owned by the City of Madras and the Wilbur Ellis Company need to be partitioned (i.e. divide and create a legally defined parcel of 5.22 acres) which requires a licensed land surveyor, City land use approval, and certain documents to be recorded at the Jefferson County Clerk's Office. The cost to partition the properties will be $7,300 (see Table 1 below). The City and the Wilbur Ellis Company have agreed to equally share (50%/50%) the cost for the land partition.

Formal action by the City Council at the March 22, 2016 Council meeting to approve the costs needed for the land partition process will not authorize the actual transfer of certain City property to the Wilbur Ellis Company. The actual request for Council action approving the transfer of property will be presented during a future meeting once FAA approval to sell the property has been received.

Staff is requesting authorization from the City Council for the City to incur $7,300.00 in expenses to partition the property pursuant to selling and conveying a portion of the property (e.g. 5.22 acres) to the Wilbur Ellis Company.

Table 1. Land Partition Costs

Expense	Amount
Prepare Tentative Partition Plat Map (3 Parcels)	$350
City of Madras Land Partition Application Fee	$1,500
Final Partition Plan	$4,704
Title Report	$200
Plat Review Fee (Crook County Surveyor)	$480
Jefferson County Clerk Plat Recording Fee	$66
Total	**$7,300**

SUMMARY:

A. **Fiscal Impact:** $7,300.00.

B. **Funding Source:** Airport Operations – Professional Services - $5,800
Community Development – In house services - $1,500 (50% by City, 50% by Wilbur Ellis)

C. **Explanation of Impact:**
The City will incur expenses totaling approximately $7,300.00 to partition the City and the Wilbur Ellis Company properties. $5,800 is the costs to hire Gary Dejarnatt Land Surveyor's Inc. to perform surveyor services.

D. **Supporting Documentation:**

Attachment A: DeJarnatt Land Surveys, Inc. Cost Estimate for Preparing Partition Plan
Other attachments: 3 lease area maps & legal descriptions

STAFF RECOMMENDATION:

That the City Council authorize the expenditure of City funds in the amount of $7.300.00 for the services itemized in this report to prepare the necessary land partition documents for the City and the Wilbur Ellis Company properties.

ATTACHMENT A

DeJarnatt Land Surveys, Inc.

20735 DOUBLE PEAKS DRIVE ▲ Bend, OR 97701 ▲ (541) 382-4192

February 4, 2016

Gus Burril
Administrator City of Madras
122 SW 'E' Street
Madras, OR 97741

Dear Gus,

Cost estimate for preparing partition plat of tax lots 2800 and 2700 of tax map 10-13-26D, City of Madras, Jefferson County, Oregon as follows:

- Prepare tentative map 3 parcel partition and road dedication along NW Cherry Lane - $ 350
- Final partition plat - $ 4,704 +-
- Title report $ 200 +-
- Plat review fee to Crook County Surveyor - $ 480
- Recording plat in County Clerk's Office - $ 66

Sincerely,

Gary L. DeJarnatt

Gary L. DeJarnatt, PLS

15014 pp cost

LEASE AREA EXHIBIT _____

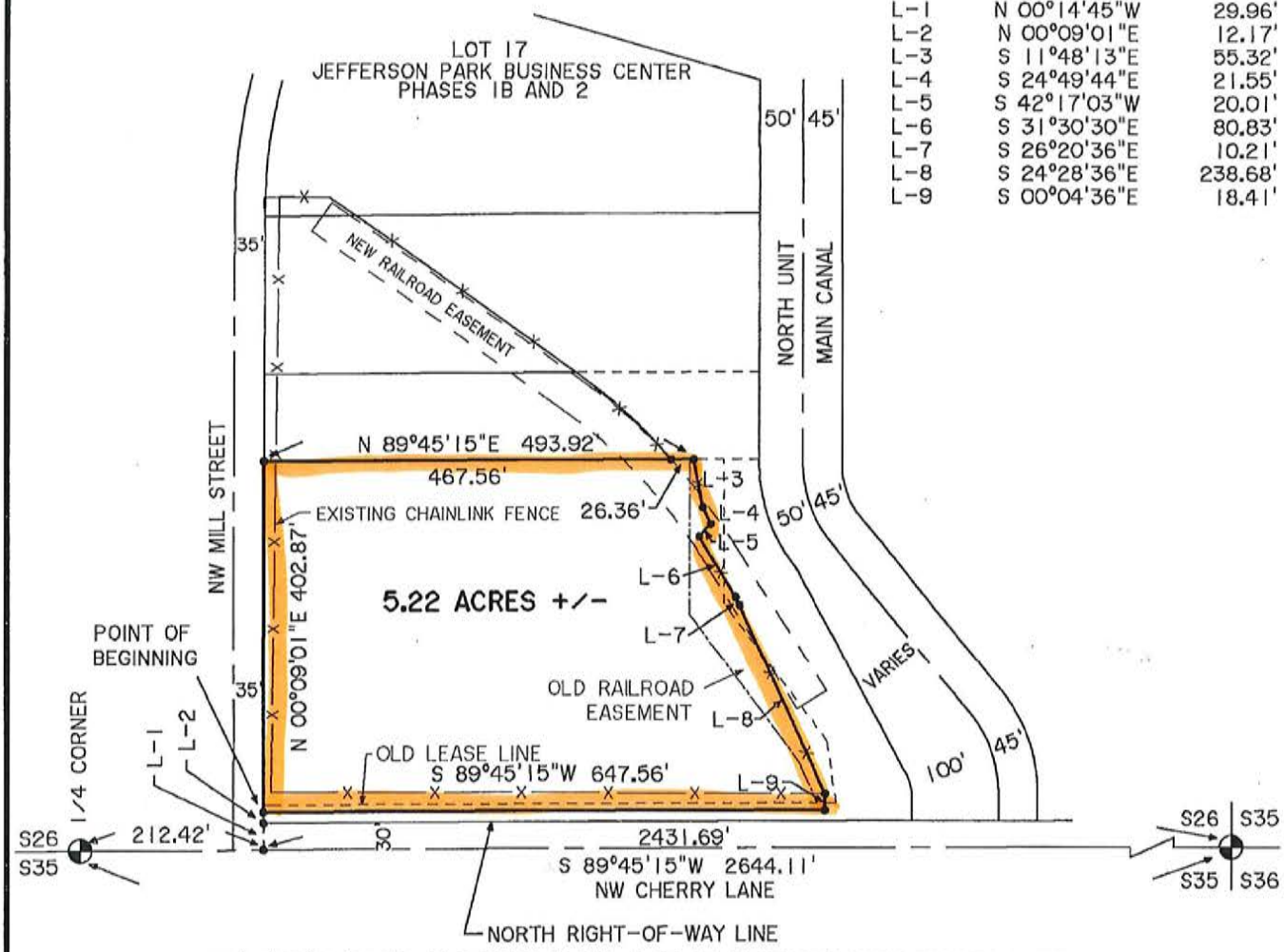
LOCATED IN THE SW 1/4 OF THE SE 1/4 OF SEC. 26, T. 10 S., R. 13 E., W.M., CITY OF MADRAS, JEFFERSON COUNTY, OREGON.

FOR: THE CITY OF MADRAS
WILBUR ELLIS SITE

SCALE: 1 INCH = 200 FEET

LINE TABLE:

COURSE	BEARING	DISTANCE
L-1	N 00°14'45"W	29.96'
L-2	N 00°09'01"E	12.17'
L-3	S 11°48'13"E	55.32'
L-4	S 24°49'44"E	21.55'
L-5	S 42°17'03"W	20.01'
L-6	S 31°30'30"E	80.83'
L-7	S 26°20'36"E	10.21'
L-8	S 24°28'36"E	238.68'
L-9	S 00°04'36"E	18.41'



S 89°45'15"W "BASIS OF BEARINGS" PER PLAT OF JEFFERSON PARK BUSINESS CENTER PHASE 1A

REGISTERED PROFESSIONAL LAND SURVEYOR

OREGON
JULY 17, 1986
GARY L. DEJARNATT
2208

RENEWS: 12/31/2015

PREPARED BY:

DEJARNATT LAND SURVEYS, INC.

20735 DOUBLE PEAKS DRIVE
BEND, OREGON 97701
PHONE: 541-382-4192
LAYER: 86 AND 83

DATE: MARCH 3, 2015
SHEET 1 OF 1
JOB # 15014
12066K.CRD SCREEN FILE 12066WE

DeJarnatt Land Surveys Inc.
20735 DOUBLE PEAKS DRIVE ▲ Bend, OR 97701 ▲ (541) 382-4192

March 3, 2015
City of Madras – Wilbur Ellis Site
Job# 15014E1

LEASE DESCRIPTION

A parcel of land located in the Southwest Quarter of the Southeast Quarter (SW ¼-SE ¼) of Section 26, Township 10 South, Range 13 East of the Willamette Meridian, City of Madras, Jefferson County, Oregon, being more particularly described as follows:

Commencing at the Southeast corner of said Section 26; thence South 89°45'15" West along the South line of said Section 26 a distance of 2431.69 feet; thence North 00°14'45" West a distance of 29.96 feet to the Northeast return of NW Mill Street and NW Cherry Lane; thence North 00°09'01" East a distance of 12.17 feet to the Point of Beginning of this description; thence continuing North 00°09'01" East a distance of 402.87 feet;
thence North 89°45'15" East a distance of 493.92 feet;
thence South 11°48'13" East a distance of 55.32 feet;
thence South 24°49'44" East a distance of 21.55 feet;
thence South 42°17'03" West a distance of 20.01 feet;
thence South 31°30'30" East a distance of 80.83 feet;
thence South 26°20'36" East a distance of 10.21 feet;
thence South 24°28'36" East a distance of 238.68 feet;
thence South 00°04'36" East a distance of 18.41 feet to the North right-of-way line of NW Cherry Lane; thence South 89°45'15" West a distance of 647.56 feet to the Point of Beginning.

Containing 5.22 acres more or less.

End of Description

REGISTERED
PROFESSIONAL
LAND SURVEYOR

Gary L. DeJarnatt

OREGON
JULY 17, 1986
GARY L. DEJARNATT
2208

Renews: 12-31-2015

15014E1
Layer 86 & 83

LEASE AREA EXHIBIT _____

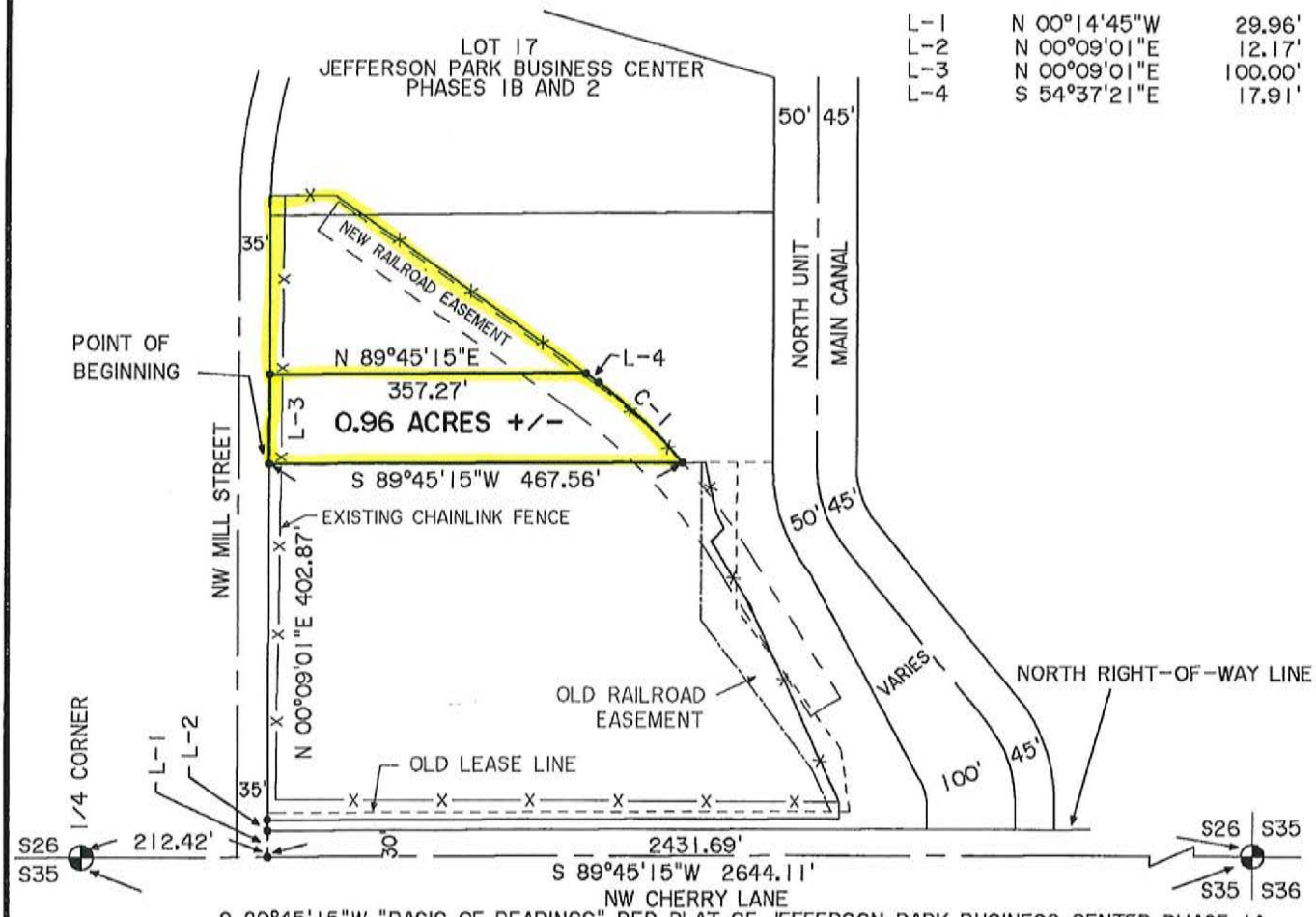
LOCATED IN THE SW 1/4 OF THE SE 1/4 OF SEC. 26, T. 10 S., R. 13 E., W.M., CITY OF MADRAS, JEFFERSON COUNTY, OREGON.

FOR: THE CITY OF MADRAS
WILBUR ELLIS SITE

SCALE: 1 INCH = 200 FEET

LINE TABLE:

COURSE	BEARING	DISTANCE
L-1	N 00°14'45"W	29.96'
L-2	N 00°09'01"E	12.17'
L-3	N 00°09'01"E	100.00'
L-4	S 54°37'21"E	17.91'



S 89°45'15"W "BASIS OF BEARINGS" PER PLAT OF JEFFERSON PARK BUSINESS CENTER PHASE 1A

CURVE TABLE:

CURVE	RADIUS	LENGTH	DELTA	CHORD	CH.BEARING
C-1	486.78'	130.99'	15°25'05"	130.60'	S 46°56'39"E

REGISTERED
PROFESSIONAL
LAND SURVEYOR

Gary L. DeJarnatt

OREGON
JULY 17, 1986
GARY L. DEJARNATT
2208

RENEWS: 12/31/2015

PREPARED BY:

DEJARNATT LAND SURVEYS, INC.

20735 DOUBLE PEAKS DRIVE
BEND, OREGON 97701

PHONE: 541-382-4192

LAYER: 87 AND 83

DATE: MARCH 3, 2015

SHEET 1 OF 1

JOB # 15014

12066K.CRD SCREEN FILE 12066WE

DeJarnatt Land Surveys Inc.
20735 DOUBLE PEAKS DRIVE ▲ Bend, OR 97701 ▲ (541) 382-4192

March 3, 2015
City of Madras – Wilbur Ellis Site
Job# 15014E2

LEASE DESCRIPTION

A parcel of land located in the Southwest Quarter of the Southeast Quarter (SW ¼-SE ¼) of Section 26, Township 10 South, Range 13 East of the Willamette Meridian, City of Madras, Jefferson County, Oregon, being more particularly described as follows:

Commencing at the Southeast corner of said Section 26; thence South 89°45'15" West along the South line of said Section 26 a distance of 2431.69 feet; thence North 00°14'45" West a distance of 29.96 feet to the Northeast return of NW Mill Street and NW Cherry Lane; thence North 00°09'01" East a distance of 12.17 feet; thence continuing North 00°09'01" East a distance of 402.87 feet to the Point of Beginning;
thence North 00°09'01" East a distance of 100.00 feet;
thence North 89°45'15" East a distance of 357.27 feet;
thence South 54°37'21" East a distance of 17.91 feet;
thence 130.99 feet along the arc of a 486.78 foot radius curve to the right, the long chord of which bears South 46°56'39" East a distance of 130.60 feet;
thence South 89°45'15" West a distance of 467.56 feet to the Point of Beginning.

Containing 0.96 acres more or less.

End of Description

REGISTERED
PROFESSIONAL
LAND SURVEYOR
OREGON
JULY 17, 1986
GARY L. DEJARNATT
2208

Renews: 12-31-2015

LEASE AREA EXHIBIT

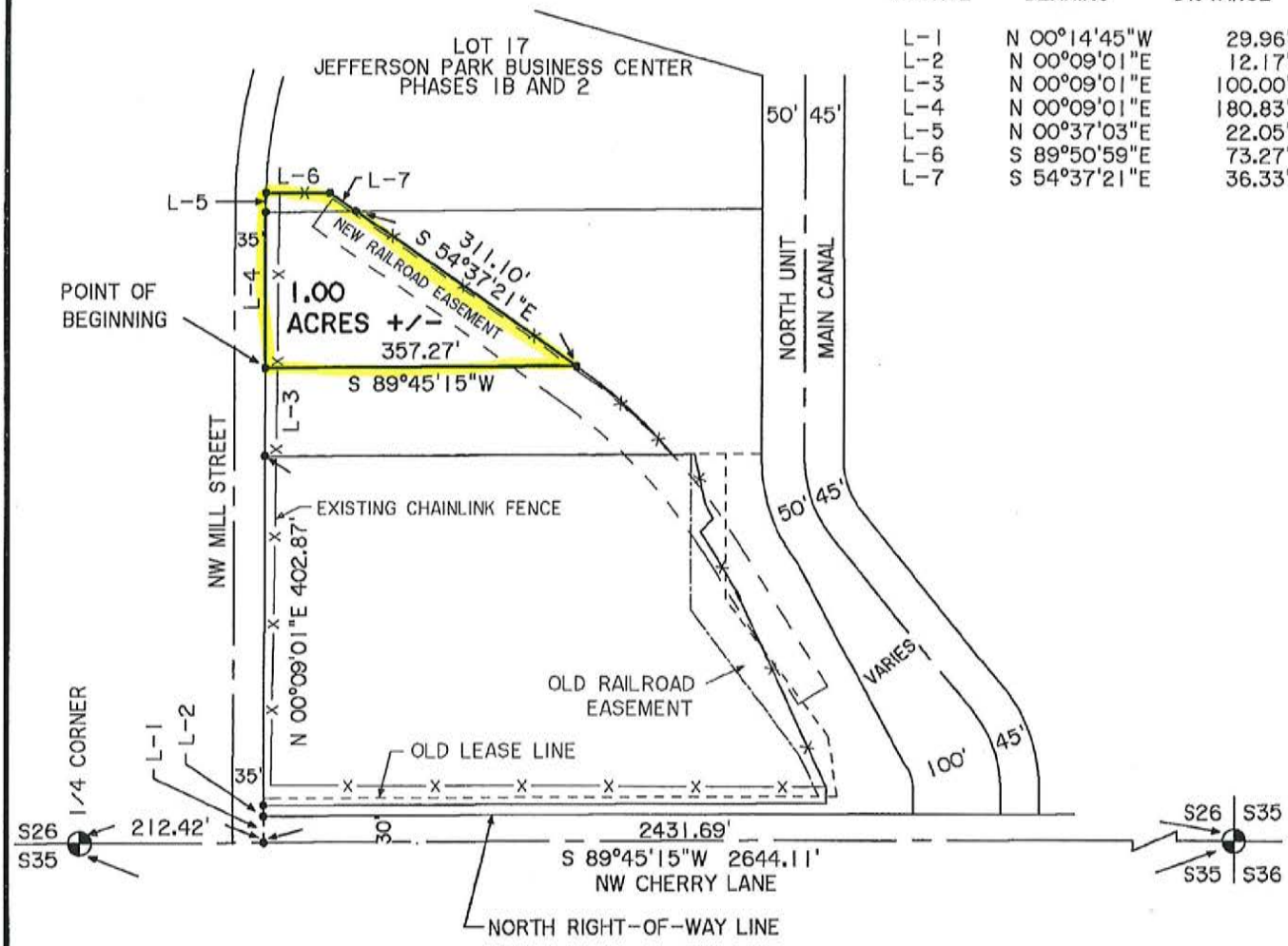
LOCATED IN THE SW 1/4 OF THE SE 1/4 OF SEC. 26, T. 10 S., R. 13 E., W.M., CITY OF MADRAS, JEFFERSON COUNTY, OREGON.

FOR: THE CITY OF MADRAS
WILBUR ELLIS SITE

SCALE: 1 INCH = 200 FEET

LINE TABLE:

COURSE	BEARING	DISTANCE
L-1	N 00°14'45"W	29.96'
L-2	N 00°09'01"E	12.17'
L-3	N 00°09'01"E	100.00'
L-4	N 00°09'01"E	180.83'
L-5	N 00°37'03"E	22.05'
L-6	S 89°50'59"E	73.27'
L-7	S 54°37'21"E	36.33'



S 89°45'15"W "BASIS OF BEARINGS" PER PLAT OF JEFFERSON PARK BUSINESS CENTER PHASE 1A

REGISTERED PROFESSIONAL LAND SURVEYOR

OREGON
JULY 17, 1986
GARY L. DEJARNATT
2208

RENEWS: 12/31/2015

PREPARED BY:

DEJARNATT LAND SURVEYS, INC.

20735 DOUBLE PEAKS DRIVE
BEND, OREGON 97701
PHONE: 541-382-4192
LAYER: 88 AND 83

DATE: MARCH 3, 2015
SHEET 1 OF 1
JOB # 15014
12066K.CRD SCREEN FILE 12066WE

DeJarnatt Land Surveys Inc.
20735 DOUBLE PEAKS DRIVE ▲ Bend, OR 97701 ▲ (541) 382-4192

March 3, 2015
City of Madras – Wilbur Ellis Site
Job# 15014E3

LEASE DESCRIPTION

A parcel of land located in the Southwest Quarter of the Southeast Quarter (SW ¼-SE ¼) of Section 26, Township 10 South, Range 13 East of the Willamette Meridian, City of Madras, Jefferson County, Oregon, being more particularly described as follows:

Commencing at the Southeast corner of said Section 26; thence South 89°45'15" West along the South line of said Section 26 a distance of 2431.69 feet; thence North 00°14'45" West a distance of 29.96 feet to the Northeast return of NW Mill Street and NW Cherry Lane; thence North 00°09'01" East a distance of 12.17 feet; thence continuing North 00°09'01" East a distance of 402.87 feet; thence North 00°09'01" East a distance of 100.00 feet to the Point of Beginning;
thence North 00°09'01" East a distance of 180.83 feet to the Southwest corner of Lot 17 of Jefferson Park Business Center Phases 1B and 2;
thence North 00°37'03" East a distance of 22.05 feet;
thence South 89°50'59" East a distance of 73.27 feet;
thence South 54°37'21" East a distance of 36.33 feet to the South line of said Lot 17;
thence continuing South 54°37'21" East a distance of 311.10 feet;
thence South 89°45'15" West a distance of 357.27 feet to the Point of Beginning.

Containing 1.00 acres more or less.

End of Description

REGISTERED
PROFESSIONAL
LAND SURVEYOR

Gary L. DeJarnatt

OREGON
JULY 17, 1986
GARY L. DEJARNATT
2208

Renews: 12-31-2015

CITY OF MADRAS
Request for Council Action

Date Submitted:	Mach 16, 2016
Agenda Date Requested:	March 22, 2016
To:	Madras City Council
Through:	Gus Burril, City Administrator
From:	Nicholas Snead, Community Development Director
Subject:	**Process to Prepare Draft Recreational Marijuana Regulations.**

TYPE OF ACTION REQUESTED: (Check One)

[ ]	**Resolution**	[ ]	**Ordinance**
[X]	**Formal Action/Motion**	[ ]	**Other**
[ ]	**No Action - Report Only**		

OVERVIEW:

The City of Madras has not adopted Time, Place, and Manner and Zoning regulations for recreational marijuana production or sales. On October 27, 2015 the City Council passed Ordinance No. 870, which in part, directed staff to prepare Time, Place, and Manner regulations for recreational marijuana. Later on January 12, 2016 the City Council passed Ordinance No. 884, that in part, referred the decision to allow recreational marijuana to the Madras voters in November of 2016. Additionally, at this time the 2016 Oregon State Legislative Session has concluded and therefore the State of Oregon will not adopt any more regulations related to marijuana. As such, staff would like to begin preparing to develop draft regulations for recreational marijuana. In doing so, staff requests the City Council's approval on the process by which the recreational regulations will be developed and drafted for the Planning Commission and City Council to consider adopting

DISCUSSION:

Staff recommends that a Recreational Marijuana Advisory Committee be formed to develop draft recreational marijuana regulations. This Advisory Committee would be composed of community members, marijuana related stakeholders, City Councilors, Planning Commissioners, and Madras Redevelopment Commissioners. The Advisory Committee would meet as frequently as they determine necessary. Additionally, the Advisory Committee meetings would be public meetings that would allow public comment on the draft recreational marijuana regulations. Furthermore, the Advisory Committee would ideally be

formed and begin meeting as soon as possible and conclude their work by June 30, 2016. At the conclusion of the work of the Advisory Committee, the Planning Commission would conduct a public hearing to consider the draft recreation marijuana regulations. The Planning Commission would take formal action to approve the draft recreational marijuana regulations. Subsequently the City Council would hold a public hearing on the proposed recreational marijuana and ultimately determine they are to be approved, amended, or not approved. If the City Council were to approve or approve with amendments the recreational marijuana regulations, staff would then prepare an adopting ordinance for the City Council to consider. Ideally, City Council action on the adopting ordinance would occur prior to the November 2016 election.

SUMMARY:

A. **Fiscal Impact:** The cost for facilitating the public process to develop recreational marijuana regulations is not known.

B. **Funding Source:** Not applicable at this time.

C. **Explanation of Impact:** City Council formal action will generally establish the process by which the Time, Place, and Manner and Zoning regulations for recreational marijuana would be developed.

D. **Supporting Documentation:** None.

RECOMMENDATION:

That the City Council approve the general process identified to develop and implement Time, Place, and Manner and Zoning regulations for recreational marijuana.

JEFFERSON COUNTY

COUNTY ADMINISTRATIVE OFFICER

66 S.E. "D" St., Suite A • Madras, Oregon 97741 • Ph: (541) 475-2449 • FAX: (541) 475-4454
jeff.rasmussen@co.jefferson.or.us

Est. 1914

March 14, 2016

Gus Burril, City Administrator
City of Madras
125 S.W. E Street
Madras, Oregon 97741

RE: Juniper Hills County Park Rehabilitation Grant Project

Dear Mr. Burril:

There is a citizen's effort to submit a Local Parks Grant Program application to the Oregon State Parks and Recreation Department for a Rehabilitation Grant for capital improvements in the amount of $500,000 for Jefferson County's Juniper Hills Park and Ballfields by April 1st. The Jefferson County Commissioners have requested that the Local Little League organization contact other Government agencies, non-profit organizations and the local Bean Foundation about contributing financial resources to participate and donate funds for the 20% required match or approximately $100,000 to receive $400,000 in grant funds for this project.

The primary Project Sponsor is Jefferson County, as the owner of the existing developed recreation areas and facilities, enjoyed by persons of all ages. Other identified stakeholders are the City of Madras, Madras Aquatics Center, Jefferson County School District, the Bean Foundation and Jefferson County Little League. Donations of cash and in-kind contributions including real property to Project Sponsors by private parties may be eligible as match. The value of in-kind contributions such as valuation and charges for volunteer services, material, and equipment may be used as all or part of the Project Sponsor's share of the project cost.

The last time the County applied and received State of Oregon Parks grant funding was in 2002 for $200,000 for the parks soccer fields complex, public restrooms, children's play apparatus and other site amenities. The County has an excellent opportunity to compete for up to $5 million in funding, since it's been 14 years since the County received funding for park improvements and it only has to provide a 20% match because the County population is under 30,000 residents.

According to the 2013-2017 Statewide Comprehensive Outdoor Recreation Plan (SCORP) done by Oregon State Parks, County residents indicated that they needed the types of recreation facilities listed in our Project's Scope of Work. Listed component items such as: site planning and site preparation, underground water, sewer, septic and electric utilities, new combination building to include restrooms, food concession, storage and covered picnic shelter, handicapped accessible (ADA) connecting trails,

replace all irrigation systems, ballfield lights on two fields, construct four players dugouts, add one little league size field, install topsoil, infield soil amendments and turf, park furniture and spectator bleachers.

Jefferson County requests that all agencies herein listed give consideration to the 20% or $100,000 match requirement and find funds in their 2017 budgets to become cost-sharing partners, as we all step up to the plate to address this community recreation priority. Please notify us of your agency's intent to provide match assistance by March 27th. We thank you in advance for consideration of Juniper Hills Park Rehabilitation Project endeavor.

Sincerely,

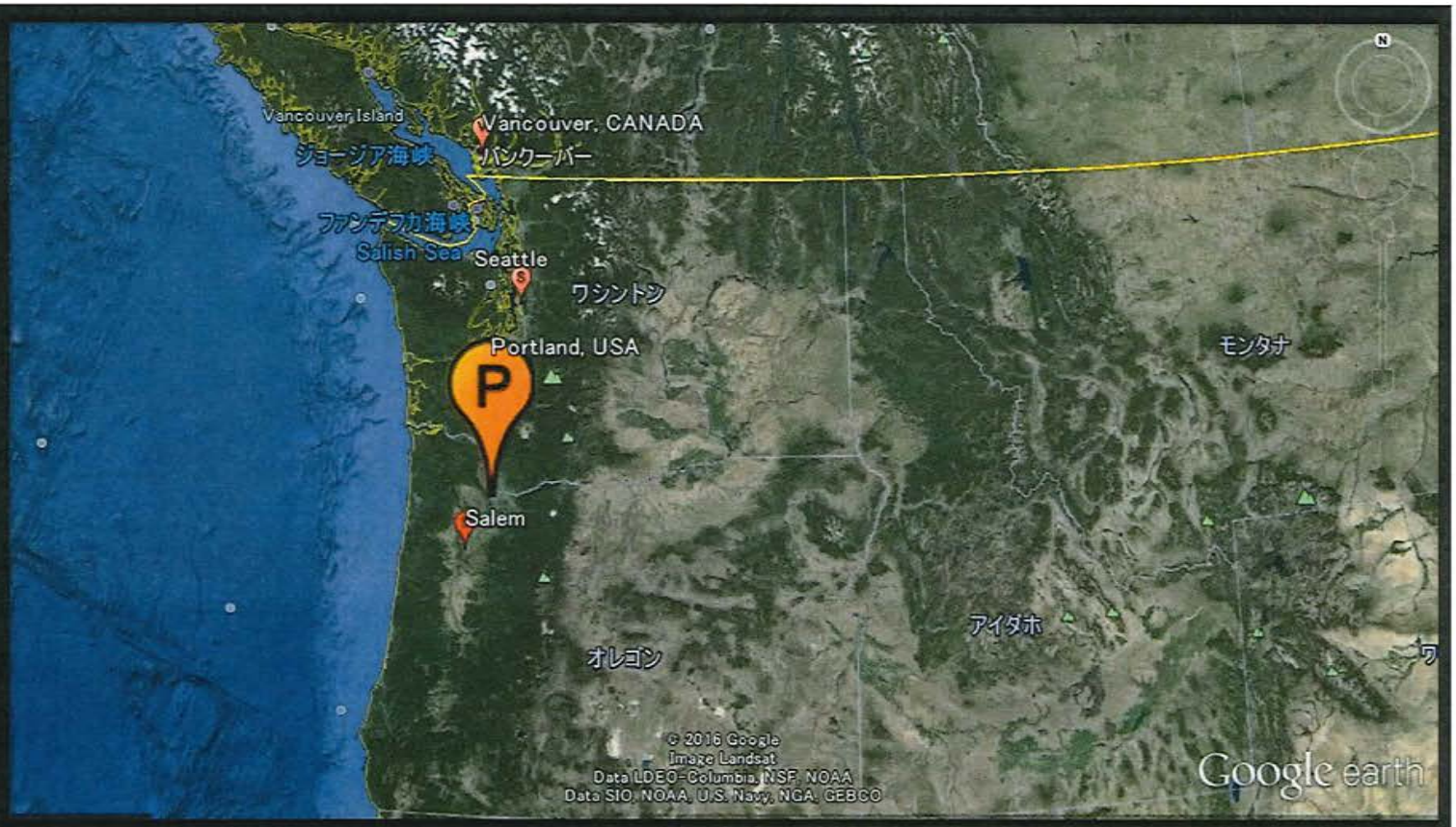
Jeff Rasmussen,
County Administrative Officer

ADDITIONAL PACKET INFORMATION

Introduction of Tomi city
Nagano, JAPAN

It's 8.000km (=5000mile) from Portland to Japan.

Time difference in time with Japan is 17 hours. Japan advances earlier.



Tomi city is center position of Japan.

It's 200km(=125mile)from Tokyo to Tomi city.

Information of Tomi city

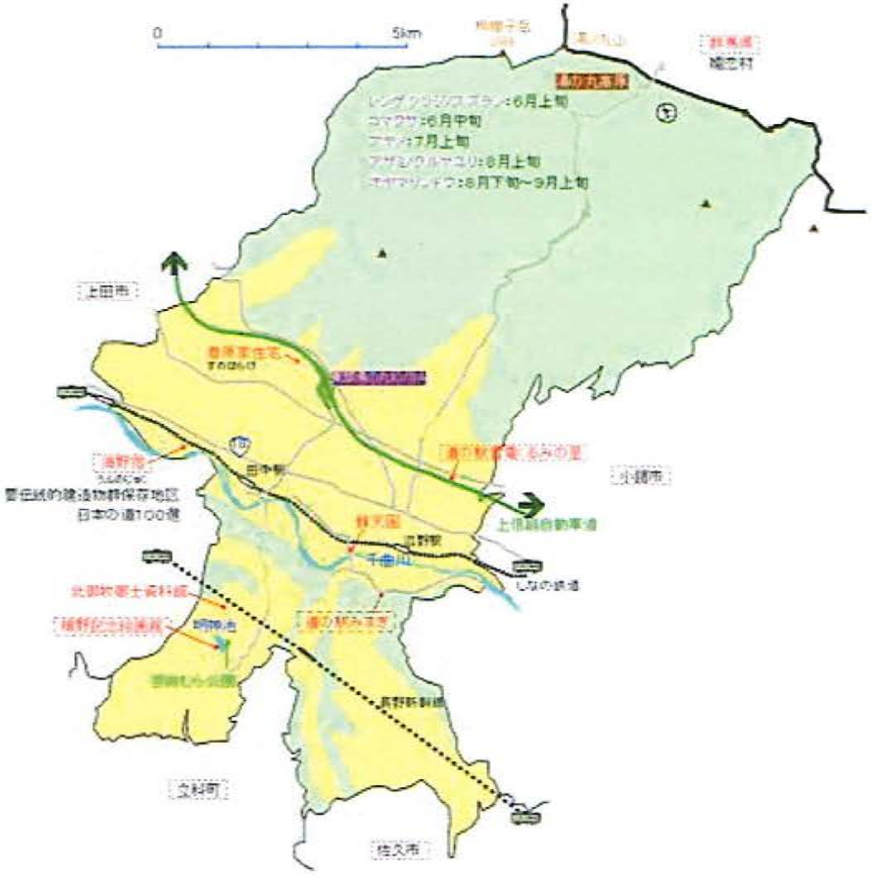
- Population (Feb 1st now)

Males	15,158	people
Females	15,594	people
Total	30,752	people

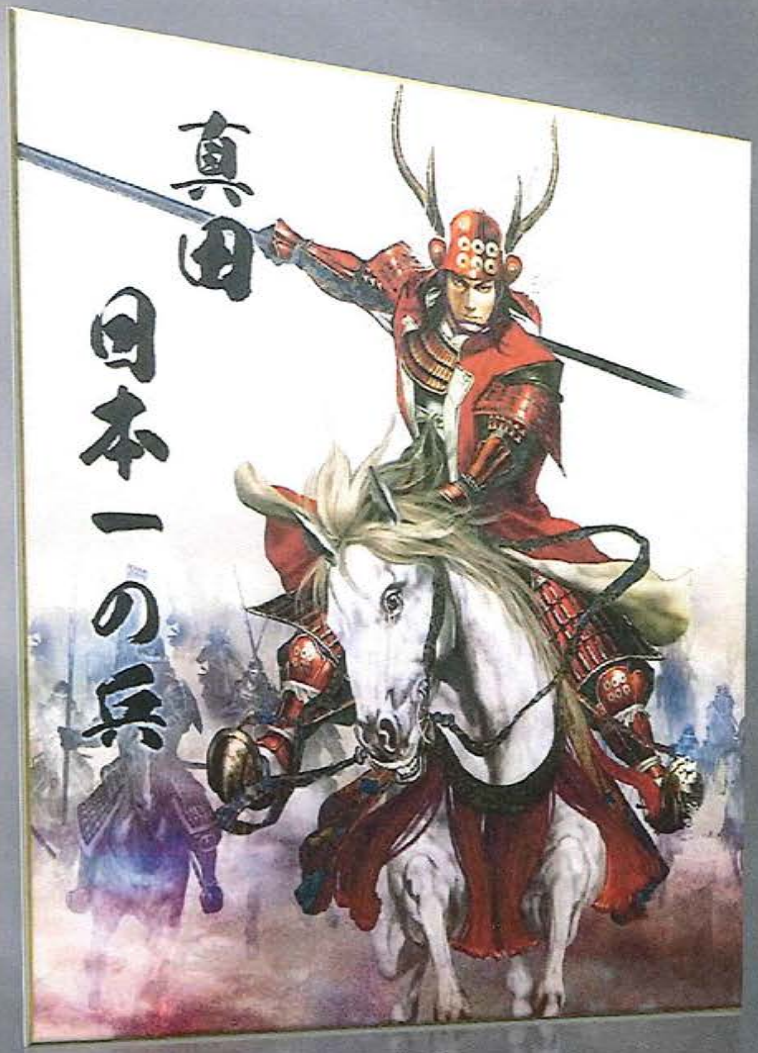
- Size of Tomi city

  112.37㎢

  It's one-third of Portland.



History



Doesn't use ventilator

Does use ventilator

Sweets ☞

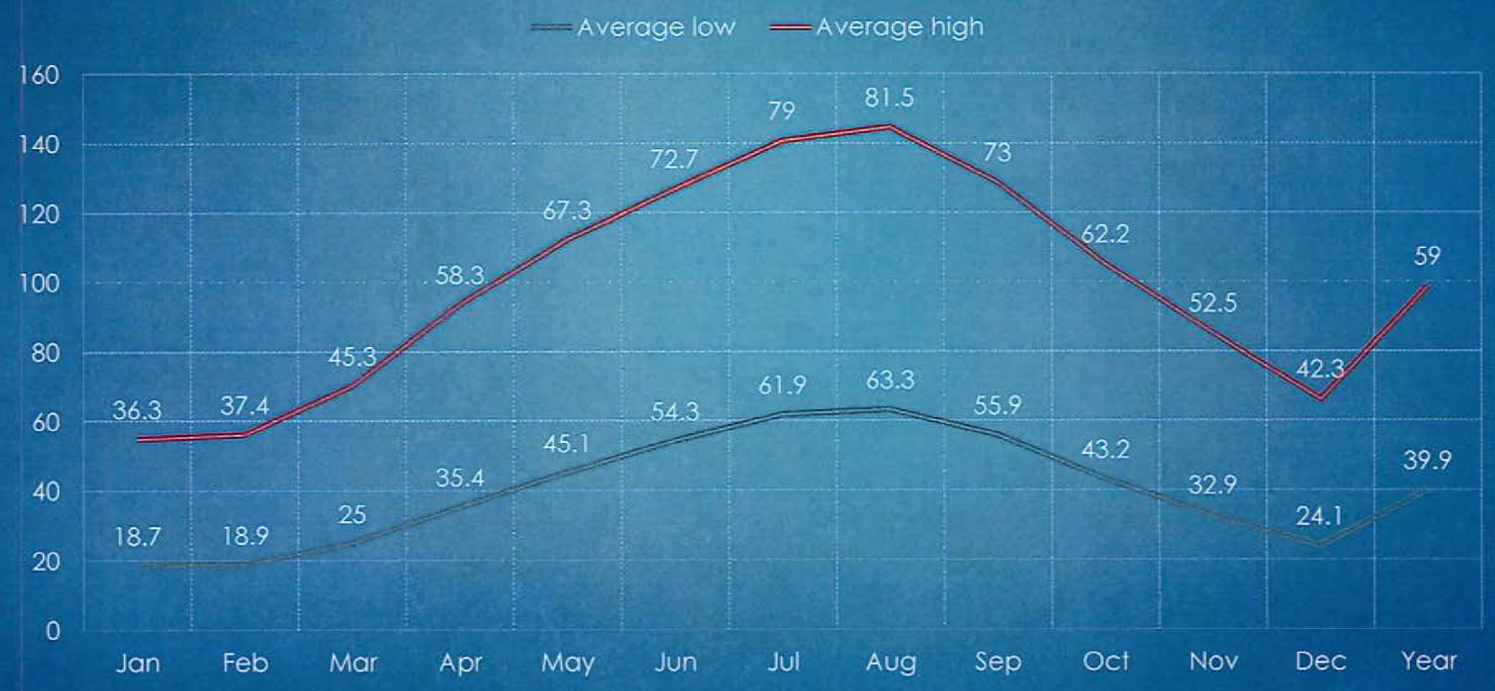
☜ Buckwheat noodles

The climate of Tomi-city

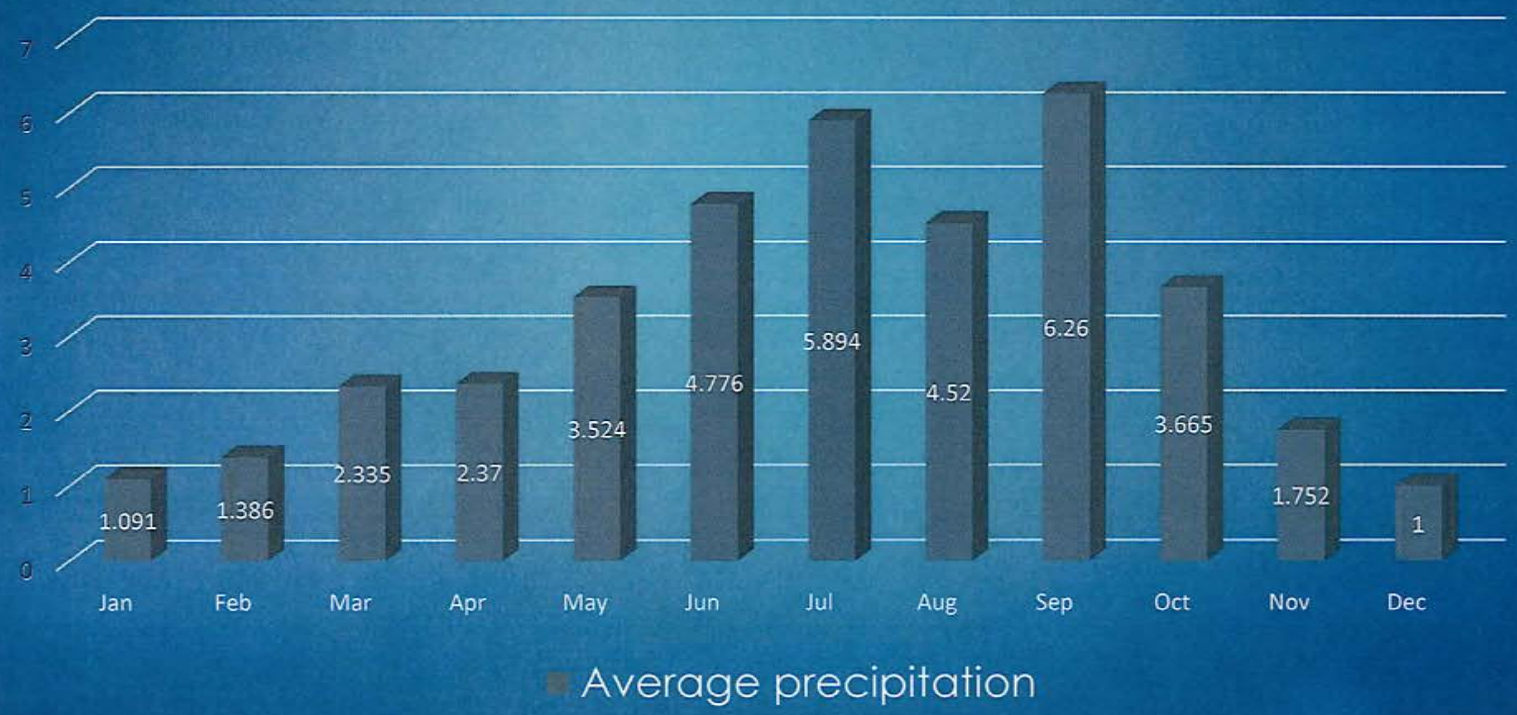
About the climate of Japan

- Humid subtropical climate (Cfa)
- East Asian rainy season (in June)
- Four seasons

Average temperature(° F) in Tomi-city



Average precipitation (inches) in Tomi-city



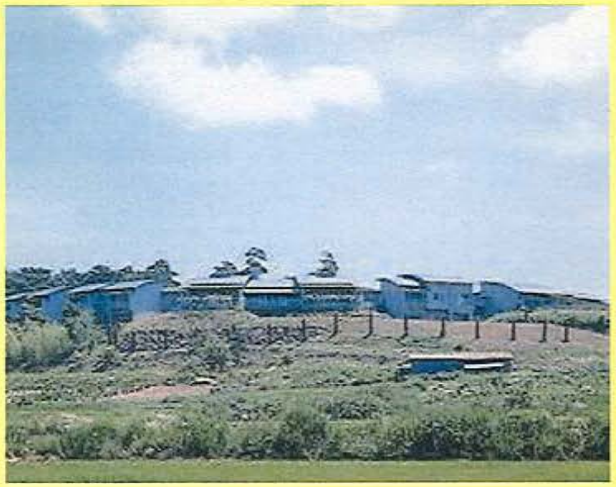
A HOT SPRING

温泉　Hot spring

Japanese style

↑
KARAOKE

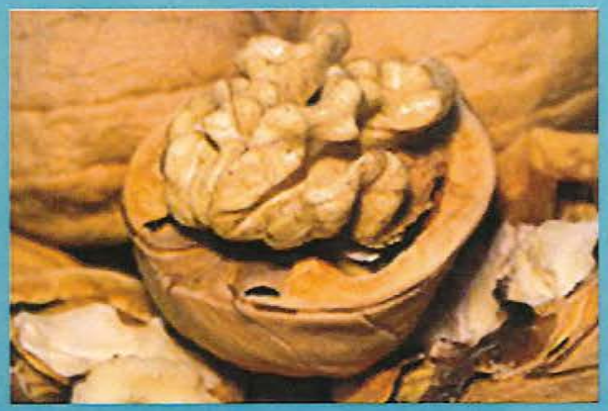
明神館　Myoujinkan



露天風呂　Open-air　bath

SPECIALTIES

Walnut



Kyoho grape

OH!LA!HO BEER

Pururu and Kyonta