

Council Communication

August 2, 2016, Business Meeting

Approval of a Resolution for Exercising the Power of Eminent Domain for the Hersey Street CMAQ Sidewalk Construction Project

FROM:

Scott Fleury, Engineering Services Manager, Public Works, fleurys@ashland.or.us

SUMMARY

This is a resolution authorizing the power of eminent domain with respect to easement acquisition from property owners for the Hersey Street sidewalk construction project. The resolution is required as part of a previously approved intergovernmental agreement (IGA) between the City of Ashland and the Oregon Department of Transportation (ODOT). If approved, the City will continue to work with ODOT and the consultant engineer to negotiate easements without the need to exercise eminent domain.

BACKGROUND AND POLICY IMPLICATIONS:

At the June 4, 2013, business meeting ([minutes](#)) the City Council approved a Congestion Mitigation and Air Quality (CMAQ) improvement grant to fund engineering and construction of a sidewalk connection between N. Main St. and Oak St. along the northern edge of Hersey St. The engineering design was awarded to OBEC Engineering consultants through a qualification based selection process.

At the April 21, 2015, business meeting ([minutes](#)) the City Council approved an IGA for right of way services associated with the Hersey St. sidewalk project. ODOT requires a separate IGA for right of way services associated with grant projects. OBEC was also tasked with acquiring any necessary easements from property owners along the corridor in order to engineer and construct the sidewalk improvement project. OBEC has identified 15 properties that will require either a temporary construction easement and/or a permanent slope easement as part of the project.

The right of way services IGA allows ODOT to conduct right of way documentation review and ensure all applicable laws are met. The resolution to exercise eminent domain is required as part of the right of way services IGA 30285, reference Exhibit A, B.1.c of attachment two. The option to exercise eminent domain only comes into play if the consultant cannot successfully obtain any necessary easements voluntarily from property owners. This resolution is required as part of the project and shows the City is willing to take the necessary steps in order to construct the grant funded project.

FISCAL IMPLICATIONS:

The maximum available grant for this project is \$531,000 with a minimum 10.27% in City matching funds. The City is required to fund at a minimum the match, but also obligated to cover any additional monies past the match to complete the project. Staff expects to exceed the match requirement to complete the project. The ODOT fee for right of way review is \$20,000. OBEC has estimated



\$121,000 with contingency for all 15 required easements files. Public Works staff has budgeted matching funds in the current biennium to cover project costs through fiscal year 2017.

STAFF RECOMMENDATION AND REQUESTED ACTION:

Staff recommends approving the Resolution exercising the power of eminent domain.

SUGGESTED MOTION:

Move to approve a resolution titled, "A resolution exercising the power of eminent domain".

ATTACHMENTS:

1. A resolution exercising the power of eminent domain
2. Intergovernmental Agreement no. 30285 for right of way services
3. Local Agency Agreement no. 29101, Congestion Mitigation and Air Quality Grant
4. June 4, 2013 Business meeting minutes
5. April 21, 2015 Business meeting minutes



RESOLUTION NO. 2016-

A RESOLUTION EXERCISING THE POWER OF EMINENT DOMAIN

RECITALS:

- A. The City of Ashland may exercise the power of eminent domain pursuant to its charter and the law of the State of Oregon generally, when the exercise of such power is deemed necessary by the City's governing body to accomplish public purposes for which the City has a responsibility.
- B. The City has the responsibility of providing safe transportation routes for commerce, convenience and to adequately serve the traveling public.
- C. The project or projects known as *Hersey Street* have been planned in accordance with appropriate engineering standards for construction, maintenance or improvement of said transportation infrastructure such that property damage is minimized, transportation promoted, travel safeguarded; and
- D. To accomplish the project or projects set forth above it is necessary to acquire the interests in property described in "Exhibit A," attached to this resolution and, by this reference incorporated herein; now, therefore.

THE CITY OF ASHLAND RESOLVES AS FOLLOWS:

SECTION 1. The foregoing statements of authority and need are, in fact, the case. The project or projects for which the property is required and is being acquired are necessary in the public interest, and the same have been planned, designed, located, and will be constructed in a manner which will be most compatible with the greatest public good and the least private injury.

SECTION 2. The power of eminent domain is hereby exercised with respect to each of the interests in the property described in Exhibit A. Each is acquired subject to payment of just compensation and subject to procedural requirements of Oregon Law;

SECTION 3. City's staff and Counsel are authorized and requested to attempt to agree with the owner and other persons in interest as to the compensation to be paid for each acquisition, and, in the event that no satisfactory agreement can be reached, to commence and prosecute such condemnation proceedings as may be necessary to finally determine just compensation or any other issue appropriate to be determined by a court in connection with the acquisition. This authorization is not intended to expand the jurisdiction of any court to decide matters determined above or determinable by the Ashland City Council.

SECTION 4. City expressly reserves its jurisdiction to determine the necessity or propriety of any acquisition, its quantity, quality, or locality, and to change or abandon any acquisition.

SECTION 5. This resolution was duly PASSED and ADOPTED this _____ day of _____, 2016, and takes effect upon signing by the Mayor.

This resolution was duly PASSED and ADOPTED this _____ day of _____, 2016, and takes effect upon signing by the Mayor.

Barbara Christensen, City Recorder

SIGNED and APPROVED this ____ day of _____, 2016.

John Stromberg, Mayor

Reviewed as to form:

David H. Lohman, City Attorney

**INTERGOVERNMENTAL AGREEMENT
FOR RIGHT OF WAY SERVICES**

Hersey Street Sidewalk: N Main Street to Oak Street (Ashland)

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

RECITALS

1. By the authority granted in Oregon Revised Statute (ORS) 190.110, 283.110, 366.572 and 366.576, state agencies may enter into agreements with units of local government or other state agencies 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. By the authority granted in ORS 366.425, State may accept deposits of money or an irrevocable letter of credit from any county, city, road district, person, firm, or corporation for the performance of work on any public highway within the State. When said money or a letter of credit is deposited, State shall proceed with the Project. Money so deposited shall be disbursed for the purpose for which it was deposited.
3. That certain Hersey Street is a city street under the jurisdiction and control of Agency and Agency may enter into an agreement for the acquisition of real property.
4. N/A, is a part of the state highway system under the jurisdiction and control of the Oregon Transportation Commission (OTC).
5. This Agreement shall define roles and responsibilities of the Parties regarding the real property to be used as part of right of way for road, street or construction of public improvement. The scope and funding is further described in Local Agency Agreement number 29101. Hereinafter, all acts necessary to accomplish services in this Agreement shall be referred to as "Project."
6. As of this time there are no local public agencies (LPAs) certified to independently administer federal-aid projects for right of way services. Therefore, State is ultimately responsible for the certification and oversight of all right of way activities under this Agreement (except as provided under "Agency Obligations" for LPAs in State's certification program for consultant selection).

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

TERMS OF AGREEMENT

1. Under such authority, to accomplish the objectives in Agreement No. 29101, State and Agency agree to perform certain right of way activities shown in Special Provisions - Exhibit A, attached hereto and by this reference made a part hereof. For the right of way services

State performs on behalf of the Agency, under no conditions shall Agency's obligations exceed a maximum of \$20,000.00, including all expenses, unless agreed upon by both Parties.

2. The work shall begin on the date all required signatures are obtained and shall be completed no later than July 31, 2019, on which date this Agreement automatically terminates unless extended by a fully executed amendment.
3. The process to be followed by the Parties in carrying out this Agreement is set out in Exhibit A.
4. It is further agreed both Parties will strictly follow the rules, policies and procedures of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, ORS Chapter 35 and the "State Right of Way Manual."

STATE OBLIGATIONS

1. State shall perform the work described in Special Provisions - Exhibit A.
2. With the exception of work related to appraisals, State shall not enter into any subcontracts for any of the work scheduled under this Agreement without obtaining prior written approval from Agency.
3. State shall perform the service under this Agreement 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.
4. State's right of way contact person for this Project is Jayne Randleman, Senior Right of Way Agent, 100 Antelope Road, White City, OR 97503, 541-774-6394, jayne.a.randleman@odot.state.or.us, or assigned designee upon individual's absence. State shall notify the other Party in writing of any contact changes during the term of this Agreement.

AGENCY OBLIGATIONS

1. Agency shall perform the work described in Special Provisions - Exhibit A.
2. Agency certifies, at the time this Agreement is executed, that sufficient funds are available and authorized for expenditure to finance costs of this Agreement within Agency's current appropriation or limitation of current budget. Agency is willing and able to finance all, or its pro-rata share of all, costs and expenses incurred in the Project up to its maximum.
3. Agency's needed right of way services, as identified in Exhibit A, may be performed by qualified individuals from any of the following sources:
 - a. Agency staff,

- b. State staff,
- c. Staff of another local public agency, as described in ODOT's Right of Way Manual and approved by the State's Region Right of Way Office;
- d. Consultants from State's Full Service Architectural and Engineering (A&E) Price Agreement 2 Tier Selection Process. Tier 2 procurements must be requisitioned through State's Local Agency Liaison (LAL) with solicitation process administered by State Procurement Office. Forms and procedures for Tier 2 process are located at: <http://www.oregon.gov/ODOT/CS/OPO/docs/fs/tier2guide.doc>;
- e. *Appraiser services procured by Agency from State's Qualified Appraiser List (on line at <http://www.oregon.gov/ODOT/HWY/ROW/Pages/index.aspx>);
- f. *Other right of way related services procured by Agency from any source of qualified contractors or consultants.

* Selections may be based on price alone, price and qualifications, or qualifications alone followed by negotiation. **Federally funded procurements** by Agency for right of way services must be conducted under State's certification program for consultant selection and must comply with requirements in the [LPA A&E Requirements Guide](#) (and must use the State's standard [A&E Contract Template for LPAs](#) which may be modified to include State-approved provisions required by Agency). **State and local funded procurements** by Agency must be in conformance with applicable State rules and statutes for A&E "Related Services" (and Agency may use its own contract document).

- 4. If Agency intends to use Agency staff, staff of another local public agency, consultants (except for consultants on State's Qualified Appraiser List), or contractors to perform right of way services scheduled under this Agreement, Agency must receive prior written approval from State's Region Right of Way Office.
- 5. The LPA A&E Requirements Guide and A&E Contract Template referenced above under paragraph 3 are available on the following Internet page: [http://www.oregon.gov/ODOT/CS/OPO/Pages/ae.aspx#Local Public Agency \(LPA\) Consultant Templates and Guidance Docs](http://www.oregon.gov/ODOT/CS/OPO/Pages/ae.aspx#Local Public Agency (LPA) Consultant Templates and Guidance Docs).
- 6. Agency or its subcontractor will strictly follow the rules, policies and procedures of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, ORS Chapter 35 and the "State Right of Way Manual."
- 7. Agency represents that this Agreement is signed by personnel authorized to do so on behalf of Agency.
- 8. Agency's right of way contact person for this Project is Scott Fleury, Engineering Services Manager, 51 Winburn Way, Ashland, OR 97520, 541-552-2412, fleury@ashland.or.us, or assigned designee upon individual's absence. Agency shall notify the other Party in writing of any contact information changes during the term of this Agreement.

PAYMENT FOR SERVICES AND EXPENDITURES:

1. In consideration for the services performed by State (as identified in the attached Exhibit A), Agency agrees to pay or reimburse State a maximum amount of \$20,000.00. Said maximum amount shall include reimbursement for all expenses, including travel expenses. Travel expenses shall be reimbursed to State in accordance with the current Oregon Department of Administrative Services' rates. Any expenditure beyond federal participation will be from, or reimbursed from, Agency funds. Payment in Agency and/or federal funds in any combination shall not exceed said maximum, unless agreed upon by both Parties.
2. Agency agrees to reimburse salaries and payroll reserves of State employees working on Project, direct costs, costs of rental equipment used, and per-diem expenditures.

GENERAL PROVISIONS:

1. This Agreement may be terminated by either Party upon thirty (30) days' notice, in writing and delivered by certified mail or in person, under any of the following conditions:
 - a. If either Party fails to provide services called for by this Agreement within the time specified herein or any extension thereof.
 - b. If either Party fails to perform any of the other provisions of this Agreement or so fails to pursue the work as to endanger performance of this Agreement in accordance with its terms, and after receipt of written notice fails to correct such failures within ten (10) days or such longer period as may be authorized.
 - c. If Agency fails to provide payment of its share of the cost of the Project.
 - d. If State fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow State, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement.
 - e. If federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the work under this Agreement is prohibited or State is prohibited from paying for such work from the planned funding source.
2. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
3. Agency acknowledges and agrees that State, the Oregon Secretary of State's Office, the federal government, and their duly authorized representatives shall have access to the books, documents, papers, and records of Agency which are directly pertinent to 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 shall be made available upon request. Payment for costs of copies is reimbursable by State.

4. Agency shall comply with all federal, state, and local laws, regulations, executive orders and ordinances applicable to the work under this Agreement, including, without limitation, the provisions of ORS 279B.220, 279B.225, 279B.230, 279B.235 and 279B.270 incorporated herein by reference and made a part hereof. Without limiting the generality of the foregoing, Agency expressly agrees to comply with (i) Title VI of Civil Rights Act of 1964; (ii) Title V and Section 504 of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659A.142; (iv) all regulations and administrative rules established pursuant to the foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.
5. All employers 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 \$500,000 must be included. Both Parties shall ensure that each of its subcontractors complies with these requirements.
6. If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third Party Claim") against State or Agency with respect to which the other Party may have liability, the notified Party must promptly notify the other Party in writing of the Third Party Claim and deliver to the other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Each Party is entitled to participate in the defense of a Third Party Claim and to defend a Third Party Claim with counsel of its own choosing. Receipt by a Party of the notice and copies required in this paragraph and meaningful opportunity for the Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to that Party's liability with respect to the Third Party Claim.
7. With respect to a Third Party Claim for which State is jointly liable with Agency (or would be if joined in the Third Party Claim), State shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by Agency in such proportion as is appropriate to reflect the relative fault of State on the one hand and of Agency on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of State on the one hand and of Agency on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. State's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if State had sole liability in the proceeding.
8. With respect to a Third Party Claim for which Agency is jointly liable with State (or would be if joined in the Third Party Claim), Agency shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and

reasonably incurred and paid or payable by State in such proportion as is appropriate to reflect the relative fault of Agency on the one hand and of State on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of Agency on the one hand and of State on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. Agency's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if it had sole liability in the proceeding.

9. The Parties shall attempt in good faith to resolve any dispute arising out of this Agreement. In addition, the Parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation.
10. When federal funds are involved in this Agreement, Exhibits B and C are attached hereto and by this reference made a part of this Agreement, and are hereby certified to by Agency.
11. When federal funds are involved in this Agreement, Agency, as a recipient of federal funds, pursuant to this Agreement with the State, shall assume sole liability for Agency's breach of any federal statutes, rules, program requirements and grant provisions applicable to the federal funds, and shall, upon Agency's breach of any such conditions that requires the State to return funds to the Federal Highway Administration, hold harmless and indemnify the State for an amount equal to the funds received under this Agreement; or if legal limitations apply to the indemnification ability of Agency, the indemnification amount shall be the maximum amount of funds available for expenditure, including any available contingency funds or other available non-appropriated funds, up to the amount received under this Agreement.
12. The Parties hereto agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be invalid, unenforceable, illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.
13. 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.
14. This Agreement and attached exhibits and Agreement No. 29101 constitute the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either Party unless in writing and signed by both Parties and all

necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of State to enforce any provision of this Agreement shall not constitute a waiver by State of that or any other provision.

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.

Signature Page to Follow

CITY OF ASHLAND, by and through
elected officials

By _____
Mayor

Date _____

By _____
City Recorder

Date _____

APPROVED AS TO LEGAL SUFFICIENCY

By _____
Agency Counsel

Date _____

Agency Contact:

Scott Fleury
Engineering Services Manager
51 Winburg Way
Ashland, OR 97520
541-552-2412
fleurys@ashland.or.us

State Contact:

Kelli Sparkman
Local Agency Liaison
100 Antelope Road
White City, OR 97503
541-774-6382
kelli.sparkman@odot.state.or.us

STATE OF OREGON, by and through
its Department of Transportation

By _____
State Right of Way Manager

Date _____

APPROVAL RECOMMENDED

By _____
Region 3 Right of Way Manager

Date _____

By _____

Date _____

APPROVED AS TO LEGAL SUFFICIENCY

By N/A _____
Assistant Attorney General

Date _____

APPROVED

(If Litigation Work Related to Condemnation is
to be done by State)

By N/A _____
Chief Trial Counsel

Date _____

SPECIAL PROVISIONS EXHIBIT A
Right of Way Services

THINGS TO BE DONE BY STATE OR AGENCY

1. Pursuant to this Agreement, the work performed on behalf of the Agency can be performed by the Agency, the Agency's consultant, the State or a State Flex Services consultant, as listed under Agency Obligations, paragraph 3 of this Agreement. The work may be performed by Agency staff or any of these representatives on behalf of Agency individually or collectively provided they are qualified to perform such functions and after receipt of approval from the State's Region 3 Right of Way Manager.
2. With the exception of work related to appraisals, State shall not enter into any subcontracts for any of the work scheduled under this Agreement without obtaining prior written approval from Agency.

Instructions: Insert either: State, Agency, or N/A on each line.

A. Preliminary Phase

1. Agency shall provide preliminary cost estimates.
2. Agency shall make preliminary contacts with property owners.
3. Agency shall gather and provide data for environmental documents.
4. Agency shall develop access and approach road list.
5. Agency shall help provide field location and Project data.

B. Acquisition Phase

1. General:
 - a. When doing the Acquisition work, as described in this Section, Agency shall provide State with a status report of the Project monthly.
 - b. Title to properties acquired shall be in the name of the Agency.
 - c. The Agency shall adopt a resolution of intention and determination of necessity in accord with ORS 35.235 and ORS 35.610, authorizing acquisition and condemnation, such approval will be conditioned on passage of a resolution by Agency substantially in the form attached hereto as Exhibit D, and by this reference made a part hereof. If the Oregon Department of Justice is to handle condemnation work, prior approval evidenced by Chief Trial Counsel, Department of Justice, signature on this Agreement is required; and authorization for such representation shall be included in the resolution adopted by the Agency. Prior approval by Oregon Department of Justice is required.

2. Legal Descriptions:

- a. Agency shall provide sufficient horizontal control, recovery and retracement surveys, vesting deeds, maps and other data so that legal descriptions can be written.
- b. Agency shall provide construction plans and cross-section information for the Project.
- c. Agency shall write legal descriptions and prepare right of way maps. If the Agency acquires any right of way on a State highway, the property descriptions and right of way maps shall be based upon centerline stationing and shall be prepared in accordance with the current "ODOT Right of Way & Rail/Utility Coordination Contractor Services Guide" and the "Right of Way Engineering Manual." The preliminary and final versions of the property descriptions and right of way maps must be reviewed and approved by the State.
- d. Agency shall specify the degree of title to be acquired (e.g., fee, easement).

3. Real Property and Title Insurance:

- a. Agency shall provide preliminary title reports, if State determines they are needed, before negotiations for acquisition commence.
- b. Agency shall determine sufficiency of title (taking subject to). If the Agency acquires any right of way on a State highway, sufficiency of title (taking subject to) shall be determined in accordance with the current "State Right of Way Manual" and the "ODOT Right of Way & Rail/Utility Coordination Contractor Services Guide." Agency shall clear any encumbrances necessary to conform to these requirements, obtain Title Insurance policies as required and provide the State copies of any title policies for the properties acquired.
- c. State shall conduct a Level 1 Initial Site Assessment within project limits to detect presence of hazardous materials on any property purchase, excavation or disturbance of structures, as early in the project design as possible, but at a minimum prior to property acquisition or approved design.
- d. State shall conduct a Level 2 Preliminary Site Investigation of sufficient scope to confirm the presence of contamination, determine impacts to properties and develop special provisions and cost estimates, if the Level 1 Corridor study indicates the potential presence of contamination that could impact the properties.
 - If contamination is found, a recommendation for remediation will be presented to Agency.
- e. Agency shall be responsible for proper treatment and cost of any necessary remediation.

- f. State shall conduct asbestos, lead paint and other hazardous materials surveys for all structures that will be demolished, renovated or otherwise disturbed. Asbestos surveys must be conducted by an AHERA (asbestos hazard emergency response act) certified inspector.
4. Appraisal:
 - a. Agency shall conduct the valuation process of properties to be acquired.
 - b. Agency shall perform the Appraisal Reviews to set Just Compensation.
 - c. Agency shall recommend Just Compensation, based upon a review of the valuation by qualified personnel.
 5. Negotiations:
 - a. Agency shall tender all monetary offers to land-owners in writing at the compensation shown in the appraisal review. Agency shall have sole authority to negotiate and make all settlement offers. Conveyances taken for more or less than the approved Just Compensation will require a statement justifying the settlement. Said statement will include the consideration of any property trades, construction obligations and zoning or permit concessions.
 - b. State and Agency shall determine a date for certification of right of way and agree to cosign the State's Right of Way Certification form. State and Agency agree possession of all right of way shall occur prior to advertising for any construction contract, unless exceptions have been agreed to by Agency and State.
 - c. Agency agrees to file all Recommendations for Condemnation at least seventy (70) days prior to the right of way certification date if negotiations have not been successful on those properties.
 6. Relocation:
 - a. Agency shall perform any relocation assistance, make replacement housing computations, and do all things necessary to relocate any displaced parties on the Project.
 - b. Agency shall make all relocation and moving payments for the Project.
 - c. Agency shall facilitate the relocation appeal process.

C. Closing Phase

1. Agency shall close all transactions. This includes drawing of deeds, releases and satisfactions necessary to clear title, obtaining signatures on release documents, and making all payments. State shall submit all signed Final Report packets, information required by the Uniform Act, and agreements to the Agency.

2. Agency shall record conveyance documents, only upon acceptance by appropriate agency.

D. Property Management

1. Agency shall take possession of all the acquired properties. There shall be no encroachments of buildings or other private improvements allowed upon the State highway right of way.
2. Agency shall dispose of all improvements and excess land consistent with State prevailing laws and policies.

E. Condemnation

1. Agency may offer mediation if the Agency and property owners have reached an impasse.
2. Agency shall perform all administrative functions in preparation of the condemnation process, such as preparing final offer and complaint letters.
3. Agency shall perform all legal and litigation work related to the condemnation process. Agency is responsible for passage of a resolution substantially in the form attached hereto as Exhibit D, and by this reference made a part hereof, specifically identifying the property being acquired.
4. When State shall perform legal or litigation work related to the condemnation process, Agency acknowledges, agrees and undertakes to assure that no member of Agency's board or council, nor Agency's mayor, when such member or mayor is a practicing attorney, nor Agency's attorney nor any member of the law firm of Agency's attorney, board or council member, or mayor, will represent any party, except Agency, against the State of Oregon, its employees or contractors, in any matter arising from or related to the Project which is the subject of this Agreement.

F. Transfer of Right of Way to State

When right of way is being acquired in Agency's name, Agency agrees to transfer and State agrees to accept all right of way acquired on the State highway. The specific method of conveyance will be determined by the Agency and the State at the time of transfer and shall be coordinated by the State's Region Right of Way Manager. Agency agrees to provide the State all information and file documentation the State deems necessary to integrate the right of way into the State's highway system. At a minimum, this includes: copies of all recorded conveyance documents used to vest title in the name of the Agency during the right of way acquisition process, and the Agency's Final Report or Summary Report for each acquisition file that reflects the terms of the acquisition and all agreements with the property owner(s).

G. Transfer of Right of Way to Agency

When right of way is being acquired in State's name, State agrees to transfer and Agency agrees to accept all right of way acquired on the Agency's facility. The specific method of conveyance will be determined by the State and the Agency at the time of transfer and shall be coordinated by the State's Region Right of Way Manager. If requested, State agrees to provide Agency information and file documentation associated with the transfer.

For purposes of Exhibits B and C, references to Department shall mean State, references to Contractor shall mean Agency, and references to Contract shall mean Agreement.

EXHIBIT B (Local Agency or State Agency)

CONTRACTOR CERTIFICATION

Contractor certifies by signing this Contract that Contractor has not:

- (a) Employed or retained for a commission, percentage, brokerage, contingency fee or other consideration, any firm or person (other than a bona fide employee working solely for me or the above Contractor) to solicit or secure this Contract,
- (b) agreed, as an express or implied condition for obtaining this Contract, to employ or retain the services of any firm or person in connection with carrying out the Contract, or
- (c) paid or agreed to pay, to any firm, organization or person (other than a bona fide employee working solely for me or the above Contractor), any fee, contribution, donation or consideration of any kind for or in connection with, procuring or carrying out the Contract, except as here expressly stated (if any):

Contractor further acknowledges that this certificate is to be furnished to the Federal Highway Administration, and is subject to applicable State and Federal laws, both criminal and civil.

DEPARTMENT OFFICIAL CERTIFICATION

Department official likewise certifies by signing this Contract that Contractor or his/her representative has not been required directly or indirectly as an expression of implied condition in connection with obtaining or carrying out this Contract to:

- (a) Employ, retain or agree to employ or retain, any firm or person or
- (b) pay or agree to pay, to any firm, person or organization, any fee, contribution, donation or consideration of any kind except as here expressly stated (if any):

Department official further acknowledges this certificate is to be furnished to the Federal Highway Administration, and is subject to applicable State and Federal laws, both criminal and civil.

Exhibit C
Federal Provisions
Oregon Department of Transportation

CERTIFICATION OF NONINVOLVEMENT IN ANY DEBARMENT AND SUSPENSION

Contractor certifies by signing this Contract that to the best of its knowledge and belief, it and its principals:

- 1. Are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any Federal department or agency;
- 2. Have not within a three-year period preceding this Contract been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (federal, state or local) transaction or contract under a public

transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery falsification or destruction of records, making false statements or receiving stolen property;

3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
4. Have not within a three-year period preceding this Contract had one or more public transactions (federal, state or local) terminated for cause or default.

Where the Contractor is unable to certify to any of the statements in this certification, such prospective participant shall submit a written explanation to Department.

List exceptions. For each exception noted, indicate to whom the exception applies, initiating agency, and dates of action. If additional space is required, attach another page with the following heading: Certification Exceptions continued, Contract Insert.

EXCEPTIONS:

Exceptions will not necessarily result in denial of award, but will be considered in determining Contractor responsibility. Providing false information may result in criminal prosecution or administrative sanctions.

The Contractor is advised that by signing this Contract, the Contractor is deemed to have signed this certification.

II. INSTRUCTIONS FOR CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS—PRIMARY COVERED TRANSACTIONS

1. By signing this Contract, the Contractor is providing the certification set out below.
2. The inability to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The Contractor shall explain why he or she cannot provide the certification set out below. This explanation

will be considered in connection with the Department determination to enter into this transaction. Failure to furnish an explanation shall disqualify such person from participation in this transaction.

3. The certification in this clause is a material representation of fact upon which reliance was placed when the Department determined to enter into this transaction. If it is later determined that the Contractor knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government or the Department may terminate this transaction for cause of default.
4. The Contractor shall provide immediate written notice to the Department if at any time the Contractor learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
5. The terms "covered transaction", "debarred", "suspended", "ineligible", "lower tier covered transaction", "participant", "person", "primary covered transaction", "principal", and "voluntarily excluded", as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the Department's Program Section (Tel. (503) 986-3400) to which this proposal is being submitted for assistance in obtaining a copy of those regulations.
6. The Contractor agrees by entering into this Contract that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transactions with a person who is debarred, suspended, declared ineligible or voluntarily excluded from participation in this covered transaction, unless authorized by the Department or agency entering into this transaction.
7. The Contractor further agrees by entering into this Contract that it will include the Addendum to Form FHWA-1273 titled, "Appendix B--Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transactions", provided by the Department

entering into this covered transaction without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List published by the U. S. General Services Administration.
9. Nothing contained in the foregoing shall be construed to require establishment of a system of records to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government or the Department, the Department may terminate this transaction for cause or default.

III. ADDENDUM TO FORM FHWA-1273, REQUIRED CONTRACT PROVISIONS

This certification applies to subcontractors, material suppliers, vendors, and other lower tier participants.

- Appendix B of 49 CFR Part 29 -

Appendix B--Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion--Lower Tier Covered Transactions

Instructions for Certification

1. By signing and submitting this Contract, the prospective lower tier participant is providing the certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to which this Contract is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms "covered transaction", "debarred", "suspended", "ineligible", "lower tier covered transaction", "participant", "person", "primary covered transaction", "principal", "proposal", and "voluntarily excluded", as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this Contract is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this Contract that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this Contract that it will include this clause titled, "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower

Tier Covered Transaction", without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the nonprocurement list.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion--Lower Tier Covered Transactions

- a. The prospective lower tier participant certifies, by entering into this Contract, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any Federal department or agency.

- b. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall submit a written explanation to Department.

IV. EMPLOYMENT

1. Contractor warrants that he has not employed or retained any company or person, other than a bona fide employee working solely for Contractor, to solicit or secure this Contract and that he has not paid or agreed to pay any company or person, other than a bona fide employee working solely for Contractors, any fee, commission, percentage, brokerage fee, gifts or any other consideration contingent upon or resulting from the award or making of this Contract. For breach or violation of this warranting, Department shall have the right to annul this Contract without liability or in its discretion to deduct from the Contract price or consideration or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.
2. Contractor shall not engage, on a full or part-time basis or other basis, during the period of the Contract, any professional or technical personnel who are or have been at any time during the period of this Contract, in the employ of Department, except regularly retired employees, without written consent of the public employer of such person.
3. Contractor agrees to perform consulting services with that standard of care, skill and diligence normally provided by a professional in the performance of such consulting services on work similar to that hereunder. Department shall be entitled to rely on the accuracy, competence, and completeness of Contractor's services.

V. NONDISCRIMINATION

During the performance of this Contract, Contractor, for himself, his assignees and successors in interest, hereinafter referred to as Contractor, agrees as follows:

1. Compliance with Regulations. Contractor agrees to comply with Title VI of the Civil Rights Act of 1964, and Section 162(a) of the Federal-Aid Highway Act of 1973 and the Civil Rights Restoration Act of 1987. Contractor shall comply with the regulations of the Department of Transportation relative to nondiscrimination in Federally assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are incorporated by reference and made a part of this Contract. Contractor, with regard to the work performed after award and prior to completion of the Contract work, shall not discriminate on grounds of race, creed, color, sex or national origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment. Contractor shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices, when the Contract covers a program set forth in Appendix B of the Regulations.
 - a. Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex or national origin. Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notice setting forth the provisions of this nondiscrimination clause.
 - b. Contractor will, in all solicitations or advertisements for employees placed by or on behalf of Contractor, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, sex or national origin.
2. Solicitation for Subcontractors, including Procurement of Materials and Equipment. In all solicitations, either by competitive bidding or negotiations made by Contractor for work to be performed under a subcontract, including procurement of materials and equipment, each potential subcontractor or supplier shall be notified by Contractor of Contractor's obligations under this Contract and regulations relative to nondiscrimination on the grounds of race, creed, color, sex or national origin.
3. Nondiscrimination in Employment (Title VII of the 1964 Civil Rights Act). During the performance of this Contract, Contractor agrees as follows:
 - a. Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex or national origin. Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notice setting forth the provisions of this nondiscrimination clause.
 - b. Contractor will, in all solicitations or advertisements for employees placed by or on behalf of Contractor, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, sex or national origin.
4. Information and Reports. Contractor will provide all information and reports required by the Regulations or orders and instructions issued pursuant thereto, and will permit access to his books, records, accounts, other sources of information, and his facilities as may be determined by Department or FHWA as appropriate, and shall set forth what efforts he has made to obtain the information.
5. Sanctions for Noncompliance. In the event of Contractor's noncompliance with the nondiscrimination provisions of the Contract, Department shall impose such agreement sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:
 - a. Withholding of payments to Contractor under the agreement until Contractor complies; and/or
 - b. Cancellation, termination or suspension of the agreement in whole or in part.
6. Incorporation of Provisions. Contractor will include the provisions of paragraphs 1 through 6 of this section in every subcontract, including procurement of

materials and leases of equipment, unless exempt from Regulations, orders or instructions issued pursuant thereto. Contractor shall take such action with respect to any subcontractor or procurement as Department or FHWA may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event Contractor becomes involved in or is threatened with litigation with a subcontractor or supplier as a result of such direction, Department may, at its option, enter into such litigation to protect the interests of Department, and, in addition, Contractor may request Department to enter into such litigation to protect the interests of the State of Oregon.

VI. DISADVANTAGED BUSINESS ENTERPRISE (DBE) POLICY

In accordance with Title 49, Code of Federal Regulations, Part 26, Contractor shall agree to abide by and take all necessary and reasonable steps to comply with the following statement:

DBE POLICY STATEMENT

DBE Policy. It is the policy of the United States Department of Transportation (USDOT) to practice nondiscrimination on the basis of race, color, sex and/or national origin in the award and administration of USDOT assist contracts. Consequently, the DBE requirements of 49 CFR 26 apply to this Contract.

Required Statement For USDOT Financial Assistance Agreement. If as a condition of assistance the Agency has submitted and the US Department of Transportation has approved a Disadvantaged Business Enterprise Affirmative Action Program which the Agency agrees to carry out, this affirmative action program is incorporated into the financial assistance agreement by reference.

DBE Obligations. The Department and its Contractor agree to ensure that Disadvantaged Business Enterprises as defined in 49 CFR 26 have the opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds. In this regard, Contractor shall take all

necessary and reasonable steps in accordance with 49 CFR 26 to ensure that Disadvantaged Business Enterprises have the opportunity to compete for and perform contracts. Neither Department nor its contractors shall discriminate on the basis of race, color, national origin or sex in the award and performance of federally-assisted contracts. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of such contracts. Failure by the Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as Department deems appropriate.

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

Records and Reports. Contractor shall provide monthly documentation to Department that it is subcontracting with or purchasing materials from the DBEs identified to meet Contract goals. Contractor shall notify Department and obtain its written approval before replacing a DBE or making any change in the DBE participation listed. If a DBE is unable to fulfill the original obligation to the Contract, Contractor must demonstrate to Department the Affirmative Action steps taken to replace the DBE with another DBE. Failure to do so will result in withholding payment on those items. The monthly documentation will not be required after the DBE goal commitment is satisfactory to Department.

Any DBE participation attained after the DBE goal has been satisfied should be reported to the Departments.

DBE Definition. Only firms DBE certified by the State of Oregon, Department of Consumer & Business Services, Office of Minority, Women & Emerging Small Business, may be utilized to satisfy this obligation.

CONTRACTOR'S DBE CONTRACT GOAL

DBE GOAL 0 %

By signing this Contract, Contractor assures that good faith efforts have been made to meet the goal for the DBE participation specified in

the Contract for this project as required by ORS 200.045, and 49 CFR 26.53 and 49 CFR, Part 26, Appendix A.

\$100,000 and that all such subrecipients shall certify and disclose accordingly.

VII. LOBBYING

The Contractor certifies, by signing this agreement to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress in connection with this agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U. S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor also agrees by signing this agreement that he or she shall require that the language of this certification be included in all lower tier subagreements, which exceed

FOR INQUIRY CONCERNING
DEPARTMENT'S DBE PROGRAM
REQUIREMENT CONTACT OFFICE OF
CIVIL RIGHTS AT (503)986-4354.

RESOLUTION EXERCISING THE POWER OF EMINENT DOMAIN EXHIBIT D
Right of Way Services

WHEREAS (insert title of agency) may exercise the power of eminent domain pursuant to (Agency's charter) (statutes conferring authority) and the Law of the State of Oregon generally, when the exercise of such power is deemed necessary by the (insert title of agency)'s governing body to accomplish public purposes for which (insert title of agency) has responsibility;

WHEREAS (insert title of agency) has the responsibility of providing safe transportation routes for commerce, convenience and to adequately serve the traveling public;

WHEREAS the project or projects known as (insert Project name) have been planned in accordance with appropriate engineering standards for the construction, maintenance or improvement of said transportation infrastructure such that property damage is minimized, transportation promoted, travel safeguarded; and

WHEREAS to accomplish the project or projects set forth above it is necessary to acquire the interests in the property described in "Exhibit A," attached to this resolution and, by this reference incorporated herein; now, therefore

BE IT HEREBY RESOLVED by (Agency's Council, Commission, or Board)

1. The foregoing statements of authority and need are, in fact, the case. The project or projects for which the property is required and is being acquired are necessary in the public interest, and the same have been planned, designed, located, and will be constructed in a manner which will be most compatible with the greatest public good and the least private injury;
2. The power of eminent domain is hereby exercised with respect to each of the interests in property described in Exhibit A. Each is acquired subject to payment of just compensation and subject to procedural requirements of Oregon law;
3. The (insert title of agency)'s staff and the (Agency's Attorney, Counsel, or District's Counsel (or) (The Oregon Department of Transportation and the Attorney General) are authorized and requested to attempt to agree with the owner and other persons in interest as to the compensation to be paid for each acquisition, and, in the event that no satisfactory agreement can be reached, to commence and prosecute such condemnation proceedings as may be necessary to finally determine just compensation or any other issue appropriate to be determined by a court in connection with the acquisition. This authorization is not intended to expand the jurisdiction of any court to decide matters determined above or determinable by the (Agency's Council, Commission, or Board).
4. (insert title of agency) expressly reserves its jurisdiction to determine the necessity or propriety of any acquisition, its quantity, quality, or locality, and to change or abandon any acquisition.

DATED this ____ day of _____, 20__

**LOCAL AGENCY AGREEMENT
CONGESTION MITIGATION AND AIR QUALITY PROGRAM
Hersey Street Sidewalk: N. Main Street to Oak Street
City of Ashland**

THIS AGREEMENT is made and entered into by and between the STATE OF OREGON, acting by and through its Department of Transportation, hereinafter referred to as "State," and the City of Ashland, acting by and through its elected officials, hereinafter referred to as "Agency," both herein referred to individually or collectively as "Party" or "Parties."

RECITALS

1. Hersey Street is a part of the city street system under the jurisdiction and control of Agency.
2. By the authority granted in Oregon Revised Statutes (ORS) 190.110, and 366.576, State may enter into cooperative agreements with counties, cities, and units of local governments for the performance of work on certain types of improvement projects with the allocation of costs on terms and conditions mutually agreeable to the contracting parties.

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

TERMS OF AGREEMENT

1. Under such authority, State and Agency agree to fund, design and construct sidewalks on Hersey Street, from North Main Street to Oak Street, hereinafter referred to as "Project." The location of the Project is approximately as shown on the sketch map attached hereto, marked "Exhibit A," and by this reference made a part hereof.
2. This Project shall be conducted as a part of the Congestion Mitigation and Air Quality (CMAQ) Program under Title 23, United States Code. The total Project cost is estimated at \$592,000, which is subject to change. The CMAQ funds are limited to \$531,000 with Agency providing the match and non-participating costs, including all costs in excess of the available federal funds. Agency shall be responsible for determining the amount of federal funds to be applied to each phase of the Project. Agency is not guaranteed the use of unspent funds for a particular phase of work. It is Agency's responsibility to notify State in advance of State obligating the funds for a subsequent phase if Agency wants to release funds on the current authorized phase(s) of work.
3. The federal funding for this Project is contingent upon approval by the Federal Highway Administration (FHWA). Any work performed prior to acceptance by FHWA or outside the scope of work will be considered nonparticipating and paid for at Agency expense.

4. State considers Agency a subrecipient of the federal funds it receives as reimbursement under this Agreement. The Catalog of Federal Domestic Assistance (CFDA) number for this Project is 20.205, title Highway Planning and Construction.
5. The term of this Agreement shall begin on the date all required signatures are obtained and shall terminate upon completion of the Project and final payment or ten (10) calendar years following the date all required signatures are obtained, whichever is sooner.
6. This Agreement may be terminated by mutual written consent of the Parties.
7. State may terminate this Agreement effective upon delivery of written notice to Agency, or at such later date as may be established by State, under any of the following conditions:
 - a. If Agency fails to provide services called for by this Agreement within the time specified herein or any extension thereof.
 - b. If Agency fails to perform any of the other provisions of this Agreement, or so fails to pursue the work as to endanger performance of this Agreement in accordance with its terms, and after receipt of written notice from State fails to correct such failures within ten (10) days or such longer period as State may authorize.
 - c. If Agency fails to provide payment of its share of the cost of the Project.
 - d. If State fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow State, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement.
 - e. If federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the work under this Agreement is prohibited or if State is prohibited from paying for such work from the planned funding source.
10. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
11. The Special and Standard Provisions attached hereto, marked Attachments 1 and 2, respectively, are by this reference made a part hereof. The Standard Provisions apply to all federal-aid projects and may be modified only by the Special Provisions. The Parties hereto mutually agree to the terms and conditions set forth in Attachments 1 and 2. In the event of a conflict, this Agreement shall control over the attachments, and Attachment 1 shall control over Attachment 2.
12. Agency, as a recipient of federal funds, pursuant to this Agreement with the State, shall assume sole liability for Agency's breach of any federal statutes, rules, program requirements and grant provisions applicable to the federal funds, and shall, upon

Agency's breach of any such conditions that requires the State to return funds to the Federal Highway Administration, hold harmless and indemnify the State for an amount equal to the funds received under this Agreement; or if legal limitations apply to the indemnification ability of Agency, the indemnification amount shall be the maximum amount of funds available for expenditure, including any available contingency funds or other available non-appropriated funds, up to the amount received under this Agreement.

13. Agency certifies and represents that the individual(s) signing this Agreement has been authorized to enter into and execute this Agreement on behalf of Agency, under the direction or approval of its governing body, commission, board, officers, members or representatives, and to legally bind Agency.
14. 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.
15. This Agreement and attached exhibits constitute the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either Party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of State to enforce any provision of this Agreement shall not constitute a waiver by State of that or any other provision.
16. State's Project Manager for the Agreement is Kelli Sparkman, ODOT Local Agency Liaison, 100 Antelope Road, White City, OR 97503; (541) 774-6383; kelli.sparkman@odot.state.or.us, or assigned designee upon individual's absence. State shall notify the other Party in writing of any contact information changes during the term of this Agreement.
17. Agency's Project Manager for this Agreement is Scott Fleury, City of Ashland Engineering Services Manager, 51 Winburn Way, Ashland, OR 97520; (541) 552-2412; fleurys@ashland.or.us, or assigned designee upon individual's absence. Agency shall notify the other Party in writing of any contact information changes during the term of this Agreement.

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

This Project is in the 2012-2015 Statewide Transportation Improvement Program, (Key #18250) that was adopted by the Oregon Transportation Commission on March 21, 2012 (or subsequently approved by amendment to the STIP).

Agency/State
Agreement No. 29101

City of Ashland, by and through its
elected officials

By John Stronberg
Title Mayor

Date 6/4/2013

By Burhna Christensen

Title City Recorder

Date 6/4/2013

**APPROVED AS TO LEGAL
SUFFICIENCY**

By Paul Solman
Agency Counsel

Date 6-4-13

Agency Contact:

Scott Fleury
City of Ashland Engineering Services
Manager
51 Winburn Way
Ashland, OR 97520
(541) 552-2412
fleurys@ashland.or.us

STATE OF OREGON, by and through
its Department of Transportation

By [Signature]
Highway Division Administrator

Date 7/8/13

APPROVAL RECOMMENDED

By [Signature]
CMAQ Program Coordinator

Date 7/1/13

**APPROVED AS TO LEGAL
SUFFICIENCY**

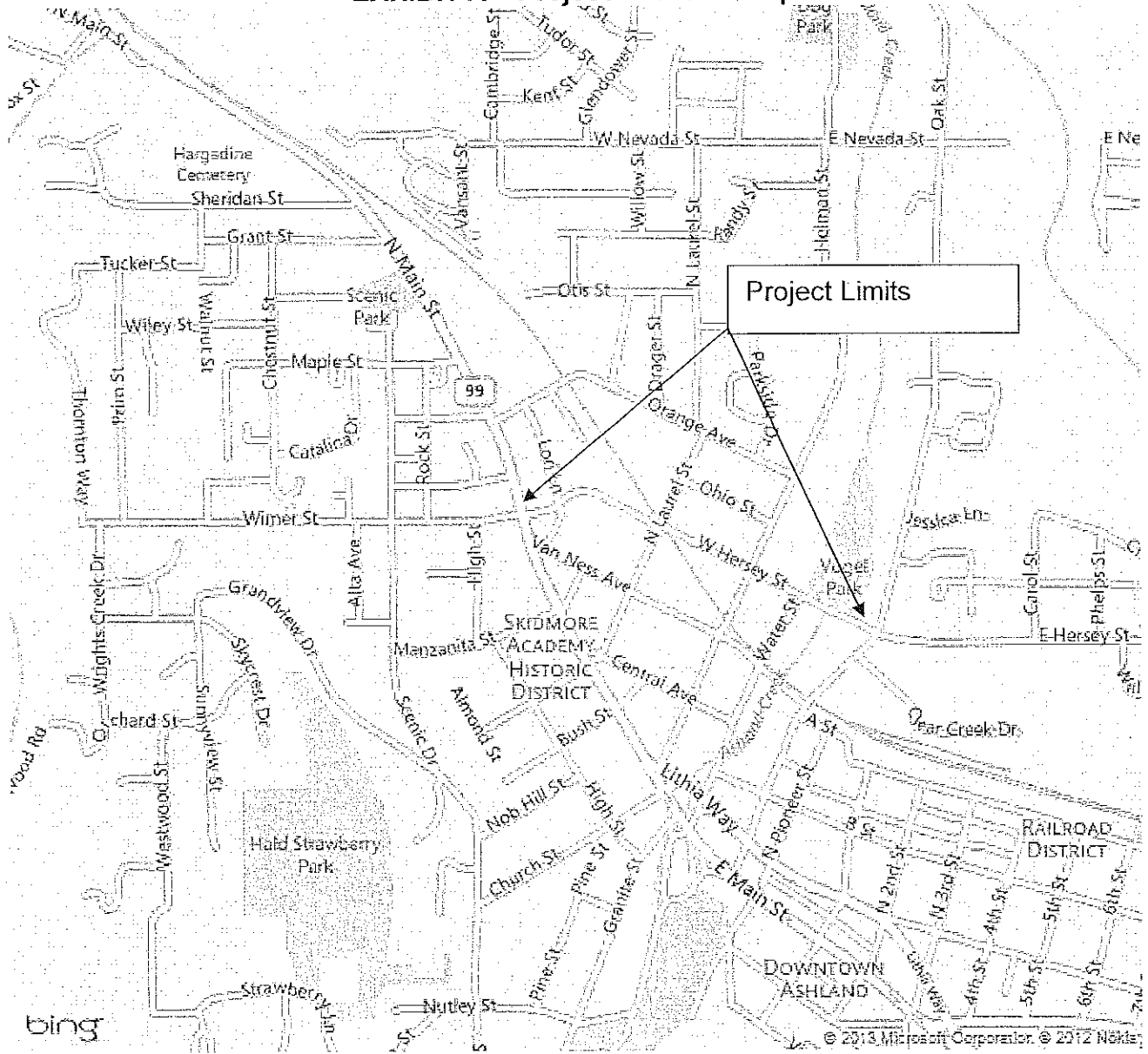
By Kathy A. Lincoln
Assistant Attorney General

Date 4/19/13

State Contact:

Kelli Sparkman
ODOT Region 3 Local Agency Liaison
100 Antelope Road
White City, OR 97503
(541) 774-6383
Kelli.sparkman@odot.state.or.us

EXHIBIT A – Project Location Map



**ATTACHMENT NO. 1 to Agreement No. 29101
SPECIAL PROVISIONS**

1. Agency or its consultant shall, as a federal-aid participating preliminary engineering function, conduct the necessary field surveys, environmental studies, traffic investigations, foundation explorations, and hydraulic studies, identify and obtain all required permits, assist State with acquisition of necessary right of way and/or easements, and perform all preliminary engineering and design work required to produce final plans, preliminary/final specifications and cost estimates. State shall perform a Hazardous Materials Investigation to detect the presence of hazardous materials within the project limits and, if remediation is required, present a recommendation for remediation to the Agency.
2. Upon State's award of the construction contract, Agency, or its consultant, shall be responsible to perform all construction engineering, field testing of materials, technical inspection and project manager services for administration of the contract.
3. State may make available Region 3's On-Call Preliminary Engineering (PE), Design and Construction Engineering Services consultant for Local Agency Projects upon written request. If Agency chooses to use said services, Agency agrees to manage the work performed by the consultant and make funds available to the State for payment of those services. All eligible work shall be a federally participating cost and included as part of the total cost of the Project.
4. Indemnification language in the Standards Provisions, Paragraphs 46 and 47, shall be replaced with the following language:
 - a. If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third Party Claim") against State or Agency with respect to which the other Party may have liability, the notified Party must promptly notify the other Party in writing of the Third Party Claim and deliver to the other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Each Party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by a Party of the notice and copies required in this paragraph and meaningful opportunity for the Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to that Party's liability with respect to the Third Party Claim.
 - b. With respect to a Third Party Claim for which State is jointly liable with Agency (or would be if joined in the Third Party Claim), State shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by Agency in such proportion as is appropriate to reflect the relative fault of State on the one hand and of Agency on the other hand in connection with the events which resulted in such expenses,

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

- c. With respect to a Third Party Claim for which Agency is jointly liable with State (or would be if joined in the Third Party Claim), Agency shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by State in such proportion as is appropriate to reflect the relative fault of Agency on the one hand and of State on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of Agency on the one hand and of State on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. Agency's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if it had sole liability in the proceeding.
 - d. The Parties shall attempt in good faith to resolve any dispute arising out of this Agreement. In addition, the Parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation.
5. Agency shall, at its own expense, maintain and operate the Project upon completion at a minimum level that is consistent with normal depreciation and/or service demand.

ATTACHMENT NO. 2

FEDERAL STANDARD PROVISIONS

JOINT OBLIGATIONS PROJECT ADMINISTRATION

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

PRELIMINARY & CONSTRUCTION ENGINEERING

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

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

5. If as a condition of assistance, Agency has submitted and the United States Department of Transportation (USDOT) has approved a Disadvantaged Business Enterprise Affirmative Action Program which Agency agrees to carry out, this affirmative action program is incorporated into the financial assistance agreement by reference. That program shall be treated as a legal obligation and failure to carry out its terms shall be treated as a violation of the financial assistance agreement. Upon notification from USDOT to Agency of its failure to carry out the approved program, USDOT shall impose such sanctions as noted in Title 49, CFR, Part 26, which sanctions may include termination of the agreement or other measures that may affect the ability of Agency to obtain future USDOT financial assistance.
6. **Disadvantaged Business Enterprises (DBE) Obligations.** State and its contractor agree to ensure that DBE as defined in Title 49, CFR, Part 26, have the opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with federal funds. In this regard, Agency shall take all necessary and reasonable steps in accordance with Title 49, CFR, Part 26, to ensure that DBE have the opportunity to compete for and perform contracts. Neither State nor Agency and its contractors shall discriminate on the basis of race, color, national origin or sex in the award and performance of federally-assisted contracts. Agency shall carry out applicable requirements of Title 49, CFR, Part 26, in the award and administration of such contracts. Failure by Agency to carry out these requirements is a material breach of this Agreement, which may result in the termination of this contract or such other remedy as State deems appropriate.
7. The DBE Policy Statement and Obligations shall be included in all subcontracts entered into under this Agreement.
8. Agency agrees to comply with all applicable civil rights laws, rules and regulations, including Title V and Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990 (ADA), and Titles VI and VII of the Civil Rights Act of 1964.
9. The parties hereto agree and understand that they will comply with all applicable federal, state, and local laws, regulations, executive orders and ordinances applicable to the work including, but not limited to, the provisions of ORS 279C.505, 279C.515, 279C.520, 279C.530 and 279B.270, incorporated herein by reference and made a part hereof; Title 23 CFR Parts 1.11, 140, 710, and 771; Title 49 CFR Parts 18, 24 and 26; 2 CFR 225, and OMB CIRCULAR NO. A-133, Title 23, USC, Federal-Aid Highway Act; Title 41, Chapter 1, USC 51-58, Anti-Kickback Act; Title 42 USC; Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970, as amended and provisions of Federal-Aid Policy Guide (FAPG).

STATE OBLIGATIONS

PROJECT FUNDING REQUEST

10. State shall submit a Project funding request to FHWA with a request for approval of federal-aid participation in all engineering, right-of-way acquisition, eligible utility relocations and/or construction work for the Project. **No work shall proceed on any activity in which federal-aid participation is desired until such approval has been obtained.** The

program shall include services to be provided by State, Agency, or others. State shall notify Agency in writing when authorization to proceed has been received from FHWA. Major responsibility for the various phases of the Project will be as outlined in the Special Provisions. All work and records of such work shall be in conformance with FHWA rules and regulations.

FINANCE

11. State shall, in the first instance, pay all reimbursable costs of the Project, submit all claims for federal-aid participation to FHWA in the normal manner and compile accurate cost accounting records. Agency may request a statement of costs to date at any time by submitting a written request. When the actual total cost of the Project has been computed, State shall furnish Agency with an itemized statement of final costs. Agency shall pay an amount which, when added to said advance deposit and federal reimbursement payment, will equal 100 percent of the final total actual cost. Any portion of deposits made in excess of the final total costs of Project, minus federal reimbursement, shall be released to Agency. The actual cost of services provided by State will be charged to the Project expenditure account(s) and will be included in the total cost of the Project.
12. If federal funds are used, State will specify the Catalog of Federal Domestic Assistance (CFDA) number in the Agreement. State will also determine and clearly state in the Agreement if recipient is a subrecipient or vendor, using criteria in Circular A-133.

PROJECT ACTIVITIES

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

RIGHT OF WAY

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

AGENCY OBLIGATIONS

FINANCE

24. Federal funds shall be applied toward Project costs at the current federal-aid matching ratio, unless otherwise agreed and allowable by law. Agency shall be responsible for the entire match amount, unless otherwise agreed to and specified in the intergovernmental agreement.
25. Agency's estimated share and advance deposit.
 - a) Agency shall, prior to commencement of the preliminary engineering and/or right of way acquisition phases, deposit with State its estimated share of

Agency/State
Agreement No. 29101

each phase. Exception may be made in the case of projects where Agency has written approval from State to use in-kind contributions rather than cash to satisfy all or part of the matching funds requirement.

- b) Agency's construction phase deposit shall be 110 percent of Agency's share of the engineer's estimate and shall be received prior to award of the construction contract. Any additional balance of the deposit, based on the actual bid must be received within forty-five (45) days of receipt of written notification by State of the final amount due, unless the contract is canceled. Any unnecessary balance of a cash deposit, based on the actual bid, will be refunded within forty-five (45) days of receipt by State of the Project sponsor's written request.
 - c) Pursuant to ORS 366.425, the advance deposit may be in the form of 1) money deposited in the State Treasury (an option where a deposit is made in the Local Government Investment Pool, and an Irrevocable Limited Power of Attorney is sent to the Highway Finance Office), or 2) an Irrevocable Letter of Credit issued by a local bank in the name of State, or 3) cash.
 - d) Agency may satisfy all or part of any matching funds requirements by use of in-kind contributions rather than cash when prior written approval has been given by State.
26. If the estimated cost exceeds the total matched federal funds available, Agency shall deposit its share of the required matching funds, plus 100 percent of all costs in excess of the total matched federal funds. Agency shall also pay 100 percent of the cost of any item in which FHWA will not participate. If Agency has not repaid any non-participating cost, future allocations of federal funds, or allocations of State Highway Trust Funds, to that Agency may be withheld to pay the non-participating costs. If State approves processes, procedures, or contract administration outside the Local Agency Guidelines that result in items being declared non-participating, those items will not result in the withholding of Agency's future allocations of federal funds or the future allocations of State Highway Trust Funds.
27. Costs incurred by State and Agency for services performed in connection with any phase of the Project shall be charged to the Project, unless otherwise mutually agreed upon.
28. If Agency makes a written request for the cancellation of a federal-aid project, Agency shall bear 100 percent of all costs as of the date of cancellation. If State was the sole cause of the cancellation, State shall bear 100 percent of all costs incurred. If it is determined that the cancellation was caused by third parties or circumstances beyond the control of State or Agency, Agency shall bear all development costs, whether incurred by State or Agency, either directly or through contract services, and State shall bear any State administrative costs incurred. After settlement of payments, State shall deliver surveys, maps, field notes, and all other data to Agency.
29. Agency shall follow requirements of the Single Audit Act. The requirements stated in the Single Audit Act must be followed by those local governments and non-profit organizations receiving \$500,000 or more in federal funds. The Single Audit Act of 1984, PL 98-502 as amended by PL 104-156, described in "OMB CIRCULAR NO. A-133", requires local

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governments and non-profit organizations to obtain an audit that includes internal controls and compliance with federal laws and regulations of all federally-funded programs in which the local agency participates. The cost of this audit can be partially prorated to the federal program.

30. Agency shall make additional deposits, as needed, upon request from State. Requests for additional deposits shall be accompanied by an itemized statement of expenditures and an estimated cost to complete the Project.
31. Agency shall present invoices for 100 percent of actual costs incurred by Agency on behalf of the Project directly to State's Liaison Person for review and approval. Such invoices shall identify the Project and Agreement number, and shall itemize and explain all expenses for which reimbursement is claimed. Billings shall be presented for periods of not less than one-month duration, based on actual expenses to date. All billings received from Agency must be approved by State's Liaison Person prior to payment. Agency's actual costs eligible for federal-aid or State participation shall be those allowable under the provisions of Title 23 CFR Parts 1.11, 140 and 710. Final billings shall be submitted to State for processing within three (3) months from the end of each funding phase as follows: 1) award date of a construction contract for preliminary engineering (PE) 2) last payment for right of way acquisition and 3) third notification for construction. Partial billing (progress payment) shall be submitted to State within three (3) months from date that costs are incurred. Final billings submitted after the three months shall not be eligible for reimbursement.
32. The cost records and accounts pertaining to work covered by this Agreement are to be kept available for inspection by representatives of State and FHWA for a period of six (6) years following the date of final voucher to FHWA. Copies of such records and accounts shall be made available upon request. For real property and equipment, the retention period starts from the date of disposition (Title 49 CFR 18.42).
33. State shall request reimbursement, and Agency agrees to reimburse State, for federal-aid funds distributed to Agency if any of the following events occur:
 - a) Right of way acquisition or actual construction of the facility for which preliminary engineering is undertaken is not started by the close of the tenth fiscal year following the fiscal year in which the federal-aid funds were authorized;
 - b) Right of way acquisition is undertaken utilizing federal-aid funds and actual construction is not started by the close of the twentieth fiscal year following the fiscal year in which the federal-aid funds were authorized for right of way acquisition.
 - c) Construction proceeds after the Project is determined to be ineligible for federal-aid funding (e.g., no environmental approval, lacking permits, or other reasons).
34. Agency shall maintain all Project documentation in keeping with State and FHWA standards and specifications. This shall include, but is not limited to, daily work records, quantity documentation, material invoices and quality documentation, certificates of origin, process

control records, test results, and inspection records to ensure that projects are completed in conformance with approved plans and specifications.

RAILROADS

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

UTILITIES

36. Agency shall follow State established Statutes, Policies and Procedures when impacts occur to privately or publicly-owned utilities. Only those utility relocations, which are eligible for federal-aid participation under, the FAPG, Title 23 CFR 645A, Subpart A and B, shall be included in the total Project costs; all other utility relocations shall be at the sole expense of Agency, or others. State will arrange for utility relocations/adjustments in areas lying within jurisdiction of State, if State is performing the preliminary engineering. Agency may request State in writing to arrange for utility relocations/adjustments lying within Agency jurisdiction, acting on behalf of Agency. This request must be submitted no later than twenty-one (21) weeks prior to bid let date. However, State is under no obligation to agree to perform said duties.
37. The State utility relocation policy, procedures and forms are available through the appropriate State's Region Utility Specialist or State Utility Liaison. Agency shall provide copies of all signed utility notifications, agreements and Utility Certification to the State Utility Liaison.

STANDARDS

38. Agency agrees that design standards for all projects on the National Highway System (NHS) and the Oregon State Highway System shall be in compliance to standards specified in the current "State Highway Design Manual" and related references. Construction plans shall be in conformance with standard practices of State for plans prepared by its own staff. All specifications for the Project shall be in substantial compliance with the most current "Oregon Standard Specifications for Highway Construction".
39. Agency agrees that minimum design standards for non-NHS projects shall be recommended AASHTO Standards and in accordance with the current "Oregon Bicycle and Pedestrian Design Guide", unless otherwise requested by Agency and approved by State.
40. Agency agrees and will verify that the installation of traffic control devices shall meet the warrants prescribed in the "Manual on Uniform Traffic Control Devices and Oregon Supplements".

41. All plans and specifications shall be developed in general conformance with the current "Contract Plans Development Guide" and the current "Oregon Standard Specifications for Highway Construction" and/or guidelines provided.
42. The standard unit of measurement for all aspects of the Project shall be English Units. All Project documents and products shall be in English. This includes, but is not limited to, right of way, environmental documents, plans and specifications, and utilities.

GRADE CHANGE LIABILITY

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

CONTRACTOR CLAIMS

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

MAINTENANCE RESPONSIBILITIES

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

WORKERS' COMPENSATION COVERAGE

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

Employers Liability Insurance with coverage limits of not less than \$500,000 must be included. Agency shall ensure that each of its contractors complies with these requirements.

LOBBYING RESTRICTIONS

50. Agency certifies by signing the Agreement that:

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

Paragraphs 36, 37, and 48 are not applicable to any local agency on state highway projects.

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Tuesday, June 04, 2013

**MINUTES FOR THE REGULAR MEETING
ASHLAND CITY COUNCIL
June 4, 2013
Council Chambers
1175 E. Main Street**

CALL TO ORDER

Mayor Stromberg called the meeting to order at 7:00 p.m. in the Civic Center Council Chambers.

ROLL CALL

Councilor Voisin, Morris, Slattery, Rosenthal, and Marsh were present. Councilor Lemhouse arrived at 7:55 p.m.

MAYOR'S ANNOUNCEMENTS

Mayor Stromberg announced vacancies on the Firewise, Housing, Transportation, and Tree Commissions and one vacancy on the Band Board.

He went on move the agenda item for the second reading of the ordinance to extend the Verde Village timetable following the Consent Agenda. He also explained the resolution and affiliation agreement between City of Ashland, Asante, Ashland Community Hospital, and the Ashland Community Hospital Foundation would occur when the representatives arrived.

APPROVAL OF MINUTES

The minutes of the Business Meeting of May 21, 2013 were approved as presented.

SPECIAL PRESENTATIONS & AWARDS

Mayor Stromberg introduced Ashland High School Princesses Katie Shammel and Vicki Lawton-Diez who gave a brief presentation of what they would perform during their stay in the City Sister of Guanajuato, Mexico.

CONSENT AGENDA

1. Approval of minutes from committees and commissions
2. Renewal of ambulance operator's license
3. Amendment to IGA with Jackson County for Emergency Notification System
4. Appointment of Dave Chapman to the Transportation Commission
5. Approval of Local Agency Agreement No. 29101 for a Congestion Mitigation and Air Quality improvement grant for construction of Hersey Street sidewalk

6. **Appointment of Carol Davis to the Planning Commission**
7. **Special procurement for the purchase of Type 1 fire pumpers**
8. **Award of contract to apparent low bidder for the miscellaneous concrete project**
9. **Approval of a contract with Pathway Enterprises for janitorial services**
10. **Declaration and authorization to dispose of surplus property in a sealed bid auction**
11. **Liquor license application for James Mills, dba Caldera Brewing Co.**
12. **Liquor license application for Robert Lindauer, dba Paddy Brannan's Irish Pub**
13. **An amendment to the IGA for a code assistance grant for the Unified Development Code**

Councilor Marsh pulled Consent Agenda items #3 and #8 for further discussion. She noted the IGA (Intergovernmental Agreement) with Jackson County for Emergency Notification System went through March 14, 2016 instead of 2015.

Engineering Services Manager Scott Fleury clarified funds left over from the contract for the miscellaneous concrete project could go towards engineered projects associated with the miscellaneous concrete or to engineering on TSP (Transportation System Plan) projects budgeted for 2016-2019. The bid process awarded new projects to contractors as separate contracts. The standard amount of bonds for bids was 10%.

Councilor Rosenthal/Voisin m/s to approved Consent Agenda items. Voice Vote: all AYES. Motion passed.

ORDINANCES, RESOLUTIONS AND CONTRACTS

1. **Second reading of an ordinance titled, "An ordinance granting a timetable extension to the Verde Village Subdivision development agreement"**

EXPARTE CONTACT

Mayor Stromberg noted a conversation with the applicants regarding outdated energy items they had agreed on with the initial development. City Attorney Dave Lohman confirmed the conversation did not constitute Exparte contact, as it had no bearing on the decision currently before Council.

Councilor Marsh/Slattery m/s to approve Ordinance #3082. DISCUSSION: Staff confirmed nine items recommended by the Planning Commission were included in the development agreement.

Roll Call Vote: Councilor Voisin, Marsh, Morris, Slattery, and Rosenthal, YES. Motion passed.

PUBLIC HEARINGS

1. **Public hearing and approval of a resolution establishing rates for the Ashland Municipal Airport and repealing Resolution 2012-18**

Engineering Services Manager Scott Fleury explained the Airport Commission proposed rate increases for hangar rentals and tie down fees. Ground lease agreements adjusted automatically on the CPIU (Consumer Price Index for All Urban Consumers) annually. The Airport Commission recommended raising rental rates \$5 per month for hangar leases and increasing the monthly tie down fee by \$1. The Airport maintained a contingency fund and an End Fund Balance.

Public Hearing Open: 7:32 p.m.

Public Hearing Closed: 7:32 p.m.

Councilor Slattery/Marsh m/s to approve Resolution #2013-16. Roll Call Vote: Councilor Slattery, Morris, Voisin, Rosenthal, and Marsh, YES. Motion passed.

2. **Public Hearing to consider adopting the annual budget and approval of:**
Council delayed discussion and approval of the resolutions associated with the Annual

Budget to the next Council meeting.

Administrative Services Director Lee Tuneberg noted a change to the budget in the Water Fund for the Fire Resiliency Program. Instead of \$175,000, it should have shown \$350,000 for the biennium. The amount would come from the Ending Fund Balance but the total amount would remain the same for appropriations in the Forest Lands Management. The other items were Public Works projects not complete as originally projected.

PUBLIC HEARING OPEN: 7:42 p.m.

Stefani Seffinger/Chair of the Park Commission/448 Taylor Street/Explained that normally she would address the importance of the Parks and Recreation Commission retaining control of the Parks and Recreation budget and operations. Instead, she thanked the Council for the work they did and the citizens who supported the parks with their time and dedication. It was more important now to look to the future where the Parks and Recreation Commission and the Council worked effectively together.

Mary Wooding/727 Park Street/Opposed taking money from the Parks and Recreation Department and hoped the next budget would reinstate the 50%.

Abi Maghamfar/Ashland Lodging Association/451 N Main Street/Represented the Ashland Lodging Association and thanked the Council and Budget Committee for funding the position of Code Enforcement Officer. The position would help bring over 100 illegal vacation rental operations into compliance and the Ashland Lodging Association volunteered to assist in that process. The Association asked Council to have a quarterly report on the status of illegal vacation homes.

Rick Landt/468 Helman Street/Thought the budget was contrary to the City Charter and Council policy. It was a radical departure from the development of previous budgets for the Parks and Recreation Department and not in the best interest of the citizenry. It was unclear to him why the change was necessary other than a 1997 state law made it possible. The Parks Commission's sole responsibilities were the preservation and enhancement of the parks and recreation system. He would work with the public and the City Council/Parks and Recreation Commission ad hoc Committee to continue to shed light on this issue and work for a permanent solution to find dependable sufficient funding for city parks.

PUBLIC HEARING CLOSED: 7:50 p.m.

Councilor Voisin/Slattery m/s to approve First Reading of the Ordinance, "An ordinance levying taxes for the period of July 1, 2013 to and including June 30, 2014, such taxes in the sum of \$10,519,347 upon all the real and personal property subject to assessment and levy within the corporate limits of the City of Ashland, Jackson County, Oregon" and place on agenda for second reading.

DISCUSSION: Councilor Voisin explained the ordinance needed approval of First Reading to remain in compliance. Councilor Rosenthal supported the budget except for the change and methodology pertaining to the allocation for the Parks and Recreation Department and would not support the motion. The mission and vision outlined in the City Charter for the parks systems was still pertinent and significant. He was concerned in 5-10 years there might not be adequate funding for the parks system.

Councilor Marsh noted the process over the last year regarding the Parks and Recreation budget concerned several people. There was an opportunity through the City Council/Parks and Recreation Commission ad hoc Committee to start fresh and discuss how to fund parks in the future. Councilor Slattery commented there would be serious funding issues and challenges over the next 10-20 years and thought every department needed review. The City Council/Parks and Recreation Commission ad hoc Committee and the work the Council and the Parks and Recreation were doing collaboratively would result in a better plan that worked.

Councilor Lemhouse arrived at 7:55 p.m.

Roll Call Vote: Councilor Slattery, Morris, Voisin, Marsh, and Lemhouse, YES; Councilor Rosenthal NO. Motion passed 5-1.

NEW AND MISCELLANEOUS BUSINESS

1. Approval of a resolution titled, "A resolution authorizing Mayor and City Administrator signature of an affiliation agreement Asante, Ashland Community Hospital, the Ashland Community Hospital Foundation and the City of Ashland and authorizing the City Administrator to sign documents necessary to close the affiliation transaction."

City Administrator Dave Kanner provided background on the affiliation agreement and noted some slight changes to the Letter of Intent. One was a provision that if Asante failed to operate Ashland Community Hospital (ACH) as a general hospital under Oregon Administrative Rule, the City had the right to request the hospital revert to the City's sole ownership with a payment of \$8,000,000. What was new was Asante could reduce the \$8,000,000 to amounts equal to contributions in excess of on average \$900,000 per year paid into the ACH benefit pension plan. The reduction would not exceed \$2,000,000 and no payment at all if Asante satisfied the outstanding balance of the Umqua bank note the hospital took out in 2004. Also in the first three years, Asante would not cause any distributions of real property from ACH to Asante or any other entity.

Councilor Slattery/Lemhouse m/s to approve Resolution #2013-15.

DISCUSSION: Councilor Lemhouse appreciated the effort Councilor Slattery and everyone involved put into the affiliation agreement process. Councilor Morris also expressed appreciation for the effort. Mr. Kanner explained clarifications to the affiliation agreement better defined capital improvements and tied it to Section 5.2.1 of the GAAP (Generally Accepted Accounting Principles).

Asante President and CEO Roy Vinyard noted the negotiation process was complex and involved four parties, and commented that everyone kept the best interest of the community in the forefront. He was looking forward to rebuilding some of the services.

Councilor Marsh commented on good faith and Asante's commitment to provide the community with high quality services that reflected community values. Councilor Voisin would support the motion because the City was giving the buildings and land to Asante in exchange for 15 years of maintaining ACH as a general hospital. Councilor Slattery clarified the City was not giving anything away and Asante was paying \$8,000,000 loan, picking up a \$16,000,000 pension fund and \$10,000,000 of capital improvements. Councilor Voisin reiterated the importance of the community getting a general hospital for the next 15 years. **Roll Call Vote: Councilor Morris, Lemhouse, Slattery, Marsh, Voisin, and Rosenthal, YES. Motion passed.**

PUBLIC HEARINGS -continued

3. Public hearing and approval of a resolution titled, "A resolution adopting a miscellaneous fees and charges document and repealing prior fee resolution 2012-21"

Administrative Services Director Lee Tuneberg explained changes to miscellaneous fees and charges would go into effect July 1, 2013. Often departments did not charge enough for the services provided and fee increases were inflationary. Community Development Director Bill Molnar added the Planning Commission did not review fee amounts and staff based community development increases on changes in the CPI (Consumer Price Index). Community Development did not have an official policy regarding fees or waiving them. A study in 2000 indicated community development fees should cover approximately 75% of the department's resources that went to current development. The Ashland Municipal Code codified waiving fees on projects that met affordability criteria.

Mr. Tuneberg noted due to infrequent use, it was hard to calculate revenue from fees. He went on to clarify substantive changes to the fees would come back the following year or staff would go to Council directly. Staff would add fire and rescue recovery costs to the document.

Public Hearing Open: 8:36 p.m.

Public Hearing Closed: 8:36 p.m.

Councilor Voisin/Morris m/s to approve Resolution #2013-17. Voice Vote: all AYES. Motion passed.

PUBLIC FORUM - None

UNFINISHED BUSINESS - None

NEW AND MISCELLANEOUS BUSINESS - continued

2. Economic Development Strategy, phase two implementation plan

Management Analyst Adam Hanks addressed **3.3 Create coordinated economic development information and marketing plan to maximize public communication tools** and explained how it combined a variety of actions to one area for the business community. The concept was having a resource that fit different stages of development. Sub-actions would include a snapshot of the local economy using business license registration, total employees, residential, commercial construction permits, home occupation permits, and Transient Occupancy Tax (TOT) collections.

Council wanted to include an AFN (Ashland Fiber Network) strategy or priority action in the plan and have the specific action for the current year be completion of the 5-year plan. City Administrator Dave Kanner thought they could add wording to **6.4** to read, **"Pursue the expansion of a State E-commerce Zone for Ashland, and complete the 5-year AFN Business Plan."** He also suggested setting aside funds to help AFN market its service to potential E-commerce Zone developers.

Council was interested in revisiting **6.1 Evaluate the use of urban renewal districts to spur private reinvestment in targets commercial and employment areas of Ashland** and directed staff to change the status to ongoing and schedule a Study Session to discuss the matter further.

Mr. Kanner explained there was approximately \$150,000 budgeted for the economic development program from the TOT. Of the \$150,000, \$45,000 was set aside to cover a portion of Mr. Hanks' salary. The remaining \$105,000 would fund economic development projects:

- \$30,000 was set aside of short videos to promote innovation and recruit businesses to Ashland
- \$20,000 for a business portal program online
- \$20,000 for commercial property inventory
- \$10,000 to revive the Green Business program
- \$10,000 for the Jobs Commission
- \$15,000 for the City's contribution to the Festival of Lights instead of having the money come from the Electric Department

Mayor Stromberg noted it might cost more than \$10,000 to establish a Job Commission and suggested the Electric Department fund the Festival of Lights one more year. Mr. Kanner explained the budget included the \$105,000 for economic development projects, but did not specify individual projects. Council could adopt the updated Economic Development Strategy and discuss how to spend the \$105,000 at a separate meeting.

Council wanted to quantify the Economic Development Strategy to show how the City

benefited from the \$150,000 spent annually. Some of Council was not convinced it was worthwhile investing in a portal and thought a better intermediary goal for the next year was establishing a "Doing Business in Ashland" page on the city website with connections to community partners, license and permit information and business associations.

Mayor Stromberg clarified his memo of proposed additions to the Economic Development Strategy. He wanted to recognize the significance and importance of having good schools in the economic development strategy. He also wanted to include how parks fit into the economic development strategy as well. Finally, he wanted to create interaction between innovative and creative people to form something the entire community could access.

Councilor Lemhouse/Rosenthal m/s to accept the Economic Development Strategy Phase Two Implementation Plan Update as amended by Council as an appendix to the original Economic Development Strategy adopted by City Council in July 2011. Voice Vote: all AYES. Motion passed.

Staff would set up two meetings, a future Study Session on urban renewal and either a Study Session or Council meeting for economic strategy budget items and possibly have Sandra Slattery from the Ashland Chamber of Commerce attend to discuss the portal.

3. Update to financial management policies and account methods in consideration of a biennial budget.

Administrative Services Director Lee Tuneberg noted there were nine changes several critical. The first change was the review of required ending fund balance/carry forward minimums and calculations needed with a biennium budget. This revision proposes lowering the General Fund Ending Fund Balance to 10%, to reflect two year's worth of property taxes receipted in as operating income.

Council moved the agenda item to a Study Session for further discussion and clarification.

City Administrator Dave Kanner commented that one of the applicants submitting a proposal for the Help Center that Council would review during the June 17, 2013 Study Session wanted to provide a multi-media presentation regarding their proposal.

Councilor Voisin/Rosenthal m/s that the two applicants for the RFP for the Help Center have ten minutes to present their applications to the Council.

DISCUSSION: Councilor Rosenthal thought ten minutes each was reasonable and the topic was important. Councilor Morris would not support the motion. It was too late in the process for presentations and the meeting should be a question and answer session. Councilor Slattery was not opposed to 5-minute presentations. **Roll Call Vote: Councilor Voisin, Rosenthal, and Marsh, YES; Councilor Morris, Lemhouse, and Slattery, NO. Mayor Stromberg broke the tie with a NO vote. Motion failed 3-4.**

Councilor Slattery/Marsh m/s give the applicants 5-minutes. Roll Call Vote: Councilor Voisin, Lemhouse, Slattery, Rosenthal, and Marsh, YES; Councilor Morris, NO. Motion passed 5-1.

OTHER BUSINESS FROM COUNCIL MEMBERS/REPORTS FROM COUNCIL LIAISONS

ADJOURNMENT

Meeting adjourned at 9:40 p.m.



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Tuesday, April 21, 2015

**MINUTES FOR THE REGULAR MEETING
ASHLAND CITY COUNCIL
April 21, 2015
Council Chambers
1175 E. Main Street**

CALL TO ORDER

Mayor Stromberg called the meeting to order at 7:00 p.m. in the Civic Center Council Chambers.

ROLL CALL

Councilor Marsh, Morris, Lemhouse, Seffinger, Rosenthal, and Voisin were present.

MAYOR'S ANNOUNCEMENTS**APPROVAL OF MINUTES**

The minutes of the Study Session of April 6, 2015, Executive Session of April 6, 2015 and Business Meeting of April 7, 2015 were approved as amended on page 7 of the Regular Meeting minutes, second paragraph, third sentence should read "**The weakness was Travel Oregon**" removing the word "**not.**"

SPECIAL PRESENTATIONS & AWARDS**1. Annual winter shelter program update**

Mark Wieczorek explained he was the Social Justice and Action Committee Director from the Rogue Valley Unitarian Universalist Fellowship (RVUUF) who worked in partnership with Temple Emek Shalom and the City Winter Shelter Program at Pioneer Hall. Heidi Parker was the volunteer coordinator for the shelter. Karen Amarotico and Russ Otte were shelter representatives for the First Presbyterian Church and the Trinity Episcopal Church shelters.

Mr. Wieczorek explained the shelter at Pioneer Hall provided 1,105 nights of sleep on Tuesday and Thursday nights. Guests consisted of 849 men, 256 women with an average of 25 people and 2 dogs per night. Three unsheltered males died this winter in Ashland, one a regular guest at the shelter.

Ms. Parker added from mid November to mid April Ashland volunteers provided overnight shelter to the homeless four nights a week from Monday through Thursday. The First Presbyterian Church on Monday nights, Pioneer Hall Tuesday and Thursday

nights, and Wednesday nights at the Trinity Episcopal Church. There were no emergency shelters activated. The four shelters combined provided 88 nights of shelter. Some volunteers spent the night at the shelters, some brought food and warm beverages, and others cleaned up. The total number of volunteers was 73. The Presbyterian shelter utilized 17 volunteers. The Episcopal shelter had 25 volunteers. Pioneer Hall had 13 volunteers on Tuesday nights and 18 for Thursday nights. She thanked everyone who participated in this endeavor.

Karen Amarotico was the shelter coordinator for the shelter at First Presbyterian Church that provided shelter for 408 guests for an average of 19 per night. The lowest number was 14 and the highest 33. First Presbyterian Church tried to provide warm meals since this was the first shelter night after three nights of no shelter. She shared comments and gratitude from guests and volunteers.

Russ Otte, the shelter coordinator for Trinity Episcopal Church Wednesday night shelter for the third season, hosted 521 guests over 22 nights, 411 men, and 109 women, 1 child and various pets. This was a 15% increase over the previous year and caused capacity issues. Another issue was volunteers. Many of the Trinity Episcopal Church volunteers were aging.

They did not know why the increase occurred over the mild winter and noted there were regular guests and others who appeared to be traveling through town. Other guests were homeless employed people.

2. 2015 Potential Drought Plan

Public Works Director Mike Faught addressed the water supply and explained snow pack was worse than the previous year. The snow depth for Caliban in 2014 was 38 inches and this year was 9 inches. Ski Bowl Road had 11 inches of snow in 2014 and this year zero. The weather was not predicting a substantial amount of snow over the next two weeks and staff was starting to prepare for the 2015 drought. The Talent Irrigation District (TID) supply was the same as 2014. TID will turn the water on May 4, 2015 and shut down the second or third week of September.

The Talent Ashland Phoenix (TAP) Intertie permanent pump station was an 18-month project and would not be completed by summer. Staff would bring in the temporary pump this year for two months at a cost of \$47,000. The City planned to ask customers to voluntarily cut back and conserve water usage. Staff planned to keep Reeder Reservoir as full as possible for water use at the end of the summer. The City would supplement water with TID before using TAP.

Conservation Specialist Julie Smitherman explained there were small and large changes people could do to help minimize the impact of drought and use water more efficiently without diminishing the quality of life. There were watering techniques and tools people could implement. One was not overwatering in the spring. Another watering technique was the cycle and soak method that would create deeper roots and drought tolerant plants and tree. Staff was currently working on a Surviving Drought 101 guide with the help of a Southern Oregon University (SOU) student from the Environmental Studies Department that should be ready in June.

She addressed prioritizing landscape as the drought began and thought the most important thing in the landscape was the trees. Another SOU intern was helping the City develop a tree care guide that would outline criteria for different trees. A tree needed approximately 10 gallons of water per inch of trunk diameter. Trees less than two years old would need water once or twice a week during the summer. Established trees would need watering once every other week or once a month depending on soil factor, tree type, and proximity to other water ways. The city would continue to run the lawn replacement program that resulted in a water savings of 10,000-15,000 gallons per resident, per summer. The City would continue free irrigation evaluations. The City also had a Water Wise Landscaping website and other information for water conservation as well as free aerators and showerheads.

Mr. Faught added the City would reactivate the Multi-modal Departmental Curtailment Committee, purchase new water wise signs, place ads in the local paper, the Oregon Shakespeare theatres, table top cards for restaurants and towel and bedding cards for the hotels.

Staff would meet with the TID users who would lose their water rights again this year. Last year and this year, users would use TID water until the City needed to supplement city water. Once that happened, the property owners would either use drinking water or create an alternative.

Mr. Faught addressed TAP and explained the reasons for running TAP water for a month each year was typical to ensure it ran flawlessly in the event of an emergency. He would provide the cost at a future meeting. Ms. Smitherman clarified watering new trees at the base of the trunk and to the canopy edge for mature trees.

3. AFR/AFAR update

Mayor Stromberg provided background on funding the Ashland Fire Resiliency (AFR) project. The AFR/AFAR team consisted of Chris Chambers, division chief for Ashland Fire and Rescue, Erin Kurtz, district conservationist for the Natural Resources Conservation Service (NRCS), Darren Borgias, the South Western Oregon program director for The Nature Conservancy (TNC), Executive Director Marko Bey of Lomakatsi Restoration Project, and Don Boucher, AFR project lead from the US Forest Service (USFS). The group went on to respond to the following questions:

1. What is AFR and when did it start?

Mr. Boucher explained AFR was conceived in 2003 to protect water quality and quantity, late-successional habitat, human life and property in the interface, and ecological sustainability. In 2004, the community created an alternative to the AFR proposal with two major goals. One goal would remove hazardous fuels, and encourage more resilience in the stands.

2. Why is AFR important to Ashland – what do we stand to gain and lose?

Mr. Borgias and Division Chief Chambers explained the goals of the AFR project was preserving quality of life, access to recreation, and the spiritual renewal the surrounding forests provided. A midpoint estimate of what would happen in the event of a severe wildfire in the watershed that created erosion and filled the reservoir was \$20,000,000. This did not take into account firefighting costs, home loss and property damage or the loss of use of recreational purposes and tourism.

The Nature Conservancy got involved to help integrate the needs of the community and the needs of natural systems with the project. The work helped protect a late-successional reserve established under the Northwest Forest Plan. It helped protect critical habitat for endangered species that depended on old growth forest and rebalanced closed and open forest canopies. The AFR project set the stage to manage fire going forward. Ashland was a model for proactive community engagement in federal land management. Eventually a fire will escape immediate suppression and the work AFR was doing would help ensure the area received the benefits of the fire and not just the catastrophic outcomes.

3. What are the AFR partners' roles and how has that translated into financial agreements and work accomplishments? And what does the future hold for AFR?

Mr. Boucher explained the partners' signed the master stewardship agreement in 2010 and were half way through the agreement. Each partner brought a unique role to the collaboration. The USFS funneled money into the project and the partnership did the

planning and implementation within the guidelines of the record of decision. The City provided the community engagement piece. The Nature Conservancy monitored the project. Lomakatsi Restoration Project brought the workforce and workforce-training piece. The USFS provided oversight and kept the project moving forward.

They were five years into the project and shifting to maintenance on previously treated areas while completing the remaining untreated half that would be completed 2020.

4. Where do we stand now with funding and how did we get here?

The project initially received over \$6,000,000 with approximately \$695,000 remaining after five years that was identified for work. This year AFR received \$1,700,000 from the Joint Chief's landscape Restoration Partnerships program as well as \$1,000,000 from the US Forest Service for hazardous fuels reduction funding. April 20, 2015 AFR received \$150,000 of Forest Healthy Protection funding to treat legacy trees.

5. What role did community involvement play in our current funding and what is the City's role going forward?

Division Chief Chambers explained AFR would not exist without community involvement. The community was responsible for generating the community alternative now incorporated into the AFR project. The Watershed Art Group formed. The Ashland Chamber of Commerce published a map of the watershed.

The money the City contributed in the current biennium made an impression in Washington DC that a municipality would invest in federal land. It helped leverage money recently received for the project, and directly \$175,000 in matching funds from the National Forest Foundation.

6. What does "ecosystem services collaboration" mean?, and "cohesive wildfire strategy" and how does Ashland fit into these concepts?

Ecosystem services, also considered "nature's benefits" consisted of a combination of intrinsic and instrumental values. The Cohesive Strategy brought together all levels of communities, government, non-government organizations into one policy and plan to manage wildfire on a landscape scale. It brought in Fire Adapted Communities, Resilient Landscapes, and Fire Suppression/Response. The Fire Adapted Communities was strong in Ashland with a position in the Fire Department. Ashland would experience longer fire seasons and an increased risk for fire with climate change.

7. What is AFAR? What is its relationship to AFR and how does its path forward relate to AFR's?

Ms. Kurtz explained that AFAR stood for Ashland Forest All-Lands Restoration project. AFR, through the stewardship agreement and work through core partners focused mostly within the Ashland watershed proper and implemented on federal public lands. The Natural Resources Conservation Service (NRCS) was a department under the US Department of Agriculture. Ms. Kurtz worked with private landowners to implement conservation treatments on all agricultural lands and non-industrial private forestlands. There was a total of 52,000 acres from Wagner Butte to Immigrant Lake and they would target 4,200 acres of private land through AFAR using a cross boundary approach. NRCS committed \$1,000,000 for treatments on private lands.

8. What are the socio-economic benefits of AFR/AFAR for Ashland and the Rogue Valley?

Mr. Bey explained they were able to sustain 17 full time equivalent (FTE) jobs and

employed 200 people throughout the year constituting a five-month season of a regular eleven-month forestry season for crews.

AFR partnership developed and maintained the implementation capacity over the past five years. Lomakatsi was implementing the work with the City of Ashland, AFR partners, and had hired ten additional contractors. They lodged and shopped in Ashland bringing local economic benefit. AFR sent 3.5 million board feet of timber to local mills. They supplied Jackson County Fuel Committee with firewood for those in need. Approximately 150 forest workers had participated in workforce training. The Lomakatsi Youth Program had engaged 2,000 young people through local schools in Ashland and the Rogue Valley with hands on Restoration Forest Stewardship education. Ashland Watershed Youth Training and Employment program was in its third year.

Mayor Stromberg concluded with a quote from Elizabeth Reinhardt, the Assistant Director of Fire and Aviation Management at the USFS supporting AFR and AFAR.

PUBLIC FORUM

Linda Cook/1389 Foss Road, Talent OR/ Explained that five days earlier, she lost her job because people in Ashland contacted her employer and said they would not go into the establishment if she remained an employee there. She thought this happened because she was a whistle blower who did not ignore corruption, nepotism, kleptocracy, social illness, human trafficking, and human rights violations, trading, hazing and bribes and stated the City of Ashland had participated in all of these. All of the incidences were reported and a case filed with the US Attorney General, the FBI, and President Obama's office as well as the ACLU. She would continue to be heard on all levels of government to prevent this type of targeting until she was treated the same as all other citizens in this community.

CONSENT AGENDA

1. **Approval of minutes of boards, commissions, and committees**
2. **Liquor license application for Sean Simpson dba The Playwright Public House**
3. **Liquor license application for Jamie North dba Flip**
4. **Liquor license application for Hagen Opco North, LLC dba Hagen**
5. **Approval of an intergovernmental agreement for Hersey St. sidewalk construction project right-of-way services**
6. **Ambulance operator's license renewal**

Councilor Rosenthal/Voisin m/s to approve Consent Agenda items. Voice Vote: all AYES. Motion passed.

PUBLIC HEARINGS

1. **Public Hearing on the 2015 Community Development Block Grant Award and CDBG action plan development**

Housing Specialist Linda Reid explained the City received five applications for \$201,718 in available Community Development Block Grant (CDBG) funds. Two applicants submitted applications for the Public Service section that made up 15% of the total annual allocation for approximately \$24,832. The entire amount was available for capital improvement projects and the City received three applications. Senior Planner Brandon Goldman noted a disparity in recommendations made by staff and the Housing & Human Services (HHSC) Commission. Staff recommended distributing fund awards to four of the applicants with Options for Homeless Residents of Ashland (OHRA) receiving zero funding with a request to apply in subsequent years when they were ready to proceed. The HHSC requested Council award all five applicants, provide \$100,000 to OHRA, and reduce the awards to Rogue Valley Habitat for Humanity and Ashland Supportive Housing accordingly.

All five applicants were eligible for CDBG funds. Staff reviewed readiness to proceed and whether a project was likely to expend the awarded CDBG funds within the year. The Department of Housing and Urban Development (HUD) had a timeliness standard

where the City had to expend funds the same year awarded but in no case accumulate more than 1.5 times the annual allocation carried over to the following year. In the event the City exceeded that, the City had to demonstrate to HUD the fund would be spent within a twelve-month period. If an applicant was unable to complete their project, in this case, the \$100,000 requested for OHRA, or they were unable to complete the acquisition within that timeline the City was at risk of having the funds recaptured by HUD.

Ms. Reid further explained HUD would run the timeliness test in May. There was \$50,000 carried over from this year into next year. If the organization was unable to show they had raised a substantial amount of money and was unable to go further, the City could most likely expend \$50,000 in a shorter amount of time than \$100,000. Staff based the decision on getting the money out of the account before HUD ran the test.

Public Hearing Opened: 8:44 p.m.

Mary Ferrell/Maslow Project/Explained Maslow Project was a social service agency providing wrap around support to homeless children and families in Ashland. The goal was ensure all homeless children had the opportunity to stay in school and earn a high school diploma. Cheyenne Nichols, project case manager, had worked with 103 children who met the criteria. They identified 28 individuals from five different families that were homeless and now housed. Last year Maslow graduated 100% of their homeless seniors and was on track this year to graduate all seniors with 62% already enrolled in college. She went on to describe the credentials of Maslow Project case managers.

Cheyenne Nichols/Maslow Project Case Manager/Spoke on the collaboration within the community that contributed to the Maslow Project success and the importance of having a branch in Ashland.

Rich Hansen/St Vincent De Paul/Explained the \$19,000 grant St Vincent De Paul received the year before enabled them to help 21 Ashland households for a total of 36 residents. Of the 21 families, 15 were homeless. St Vincent De Paul spent approximately \$900 in HUD funds per family. In addition to the CDBG award, they spent over \$53,000 of their own funds on rent relief.

Charlotte Dorsey/St Vincent De Paul/Spoke on being a volunteer with St Vincent De Paul and the challenges that occur from working with the homeless community. The grant award allowed them to focus successfully on assisting the homeless.

Denise James/Habitat for Humanity/Explained she was the executive director for Habitat for Humanity. The \$80,000 grant award would help them continue the Low-Income Homeowner Repair Program in Ashland. She noted other donations received that helped the project further. The project was new with critical home repair and smaller repairs under the A Brush with Kindness project. The program started the year slow due to hiring and training staff, establishing policies but was gaining momentum.

Councilor Voisin/Rosenthal m/s to extend Public Hearing until 10:30 p.m. Voice Vote: all AYES. Motion passed.

Tabitha Wolf/Ashland Supportive Housing and Community Outreach/Explained she was the development coordinator for Ashland Supportive Housing (ASH). The special needs home remodel included demolishing the laundry room to extend the space of the current living area 10-feet then building a new laundry room next to the bathroom. Adding the solar panels would produce a savings in the utility bills within five years. The home would house five individuals on a rotation basis. She went on to clarify the estimates. The main priorities were the concrete project and the laundry room demolition. They could separate the solar project from the others if needed.

Leigh Madsen/Options for Homeless Residents of Ashland (OHRA)/Explained OHRA served 776 individuals since they opened. OHRA helped house over 30 families and 18 individuals attain employment. He listed the agencies that came to OHRA to help people in need. Acquiring a facility would allow more services and provide winter shelter for the homeless.

John Wieczorek/ Options for Homeless Residents of Ashland (OHRA)/Addressed the Council Communication that would award OHRA only \$50,000 of the \$260,000 requested due to the timeliness rule. They would not reach their funding goal to acquire a new building if they received \$50,000. They understood the HUD rule. OHRA developed their capital fund drive, attended non-profit board training, and established a fund raising sub-committee. The current location was ideal and securing the building secured the Ashland Community Resource Center and the homeless shelter program for the long-term.

The Masonic Temple was interested in selling the building to OHRA but could not commit to yes at this time. Currently OHRA could allocate \$15,000 from their accounts. The general funding campaign would correlate with the board's training on fund raising. They noted other funding mechanisms OHRA was researching. The CDBG award would leverage funding efforts from other agencies.

Public Hearing Closed: 9:29 p.m.

Councilor Seffinger left the meeting at 9:30 p.m.

City Administrator Dave Kanner supported the staff recommendation. The CDBG program was set up to provide funds for programs agencies would use now. The OHRA proposal would bank money to match future grant opportunities. Councilor Voisin provided examples where the City allowed an agency to bank funds and thought this was a similar opportunity.

Councilor Marsh/Rosenthal m/s to award \$17,432 to St. Vincent De Paul-Home Visitation Program and \$7,400 to the Maslow Project for Case Management Services. DISCUSSION: Councilor Marsh commented on the outstanding services each program provided. Councilor Rosenthal concurred.

Roll Call Vote: Councilor Voisin, Lemhouse, Morris, Rosenthal, and Marsh, YES. Motion passed.

Councilor Voisin motioned to direct staff to draft the 2014 Annual Action Plan for the use of Community Development Block Grant funds reflecting the award of CDBG funding for the 2015-16 programs as follows: \$16,156 to Ashland Supportive Housing; \$60,000 to Habitat for Humanity Rogue Valley and \$100,000 to OHRA building acquisition with the stipulation that they secure additional funding to assist with the acquisition by March 1, 2016. Motion denied for lack of a second.

Councilor Marsh/Voisin m/s to direct staff to draft the 2014 Annual Action Plan for the use of Community Development Block Grant funds reflecting the award of CDBG funding for the 2015-16 program as follows: Award \$76,886 to Ashland Supportive Housing; Award \$50,000 to Habitat for Humanity Rogue Valley, and Award \$50,000 in funds to be placed in reserve for OHRA with the stipulation that the City will re-evaluate that award. DISCUSSION: Councilor Marsh commented on the benefits the Ashland Supportive Housing and Habitat for Humanity provided the community. Allocating \$50,000 to OHRA was an impressive amount and would not incur a timeliness issue the following year. OHRA was doing terrific work and they used the building well. Councilor Voisin thought the \$50,000 would be helpful, wanted it to be more, and hoped it would help leverage as much as it could. The City gave OHRA \$100,000 to develop services and they used the money well. Councilor Lemhouse was concerned they received different recommendations from staff and the Housing and

Human Services Commission regarding OHRA. He thought the \$50,000 would help boost their fund raising program. Awarding a large amount put the City at risk and did not seem fair when Ashland Supportive Housing was ready to start their project and spend the funds. **Roll Call Vote: Councilor Voisin, Lemhouse, Morris, Rosenthal, and Marsh, YES. Motion passed.**

2. Public Hearing and decision on the 2015-2019 consolidated plan for use of Community Development Block Grant funds

Housing Specialist Linda Reid Explained the 2015-2019 Consolidated Plan was a five-year strategic plan to provide an outline of action for the community as it worked toward meeting the identified housing and community development needs for low and moderate income households. The plan was required by the Department of Housing and Urban Development (HUD) as a management tool to monitor performance and track federal funds provided through the formula grant program. The 2015-2019 Consolidated Plan spending priorities were similar to those included in previous plans. The primary goals of the CDBG program over the next five year period was create and maintain affordable housing units and units occupied by low and moderate income and presumed benefit populations, support services for homelessness, outreach, prevention, and transition, support housing and services for people with special needs, improve safety and access in neighborhoods and throughout the city. Improve transportation options for low-income and special needs populations and support economic development activities that assist in reducing poverty in low-income and special needs populations.

Councilor Rosenthal thought the 2015-2019 Consolidated Plan was insightful, strategic, and done well.

Public Hearing Opened: 9:58 p.m.

Public Hearing Closed: 9:58 p.m.

Councilor Voisin/Marsh m/s to approve the 2015-2019 Consolidated Plan for use of Community Development Block Grant Funds. DISCUSSION: Councilor Voisin thought the document was well written and provided a basic plan the City was proud to follow. Councilor Marsh agreed. **Roll Call Vote: Councilor Voisin, Lemhouse, Morris, Rosenthal, and Marsh, YES. Motion passed.**

UNFINISHED BUSINESS (None)

NEW AND MISCELLANEOUS BUSINESS (None)

ORDINANCES, RESOLUTIONS AND CONTRACTS

1. First reading by title only of an ordinance titled, "An ordinance amending Chapter 11.28 to authorize City Council to establish presumptive parking violation fines by resolution and to clarify determination of fines for single parking violations and their relationship with other penalties for parking violations"

City Attorney Dave Lohman explained the first three parking citations was \$11 and comprised of \$7 fine and a \$4 surcharge to pay for parking improvements, leases, and bonds to pay for parking improvements. The fine for 15 Minute parking was \$15. The fourth citation incurred a \$25 penalty. The ordinance added the \$25 penalty after the third parking citation but Diamond Parking did not have the ability to apply the penalty after three fines. The fifth citation was \$50 and the sixth went back to \$11. Fines not paid within 10 days received a \$10 penalty, 30 days resulted in a \$30 penalty, and a \$50 penalty for fines not paid within 50 days. If an individual took the fourth citation to court and it was dismissed, it went back to three citations.

The issue came up due to the Downtown Parking and Circulation Committee reviewing how to maximize the limited capacity for parking and increase turnover to make better use of that capacity. The City of Medford charged \$25 for parking citations. In 2014, Ashland had 11,474 parking citations downtown. Of those, 419 were appealed to the

municipal court, 104 were dismissed, and 235 were reduced to zero. To date in 2015 there were 73 vehicles with four or more citations. Diamond Parking estimated they spend 18 hours a month dealing with administrative issues related to appeals.

Mr. Lohman had several goals regarding parking fines. One was reduce violations, increase turnover, and more fairly share the existing parking capacity downtown. The second goal was clarify who set parking fines and define the process. The third was correlate references in the two different chapters. A fourth goal would clarify penalties and fines. A fifth goal would set a legal standard for deviating from presumptive fines. The legal standard required legal grounds. Municipal Court Judge Pam Turner had concerns regarding the legal standard and wanted to address Council or staff on the issue.

Mayor Stromberg also spoke to Judge Turner and invited her to come to the next Council meeting when parking violations were on the agenda and present on the topic for fifteen minutes and in the interim submit something in writing.

Councilor Marsh/Lemhouse m/s to table the item until the May 5, 2015 meeting. Voice Vote: all AYES. Motion passed.

OTHER BUSINESS FROM COUNCIL MEMBERS/REPORTS FROM COUNCIL LIAISONS

Councilor Lemhouse announced the Wildlife Mitigation Commission would have the fourth annual Firewise Clean-Up Day Saturday, April 25, 2015, 9:00 a.m. to 4:00 p.m. at the Valley View Transfer Station. The Public Arts Commission was exploring vinyl wraps for utility boxes instead of painting.

ADJOURNMENT OF BUSINESS MEETING






Meeting adjourned at 10:29 p.m.

Barbara Christensen, City Recorder

John Stromberg, Mayor

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| <p>Fire Danger Level</p>  <p>is High</p> | <p>Election Information</p>  <p>get details</p> | <p>Local Air Quality Info</p>  <p>learn more</p> | <p>Living with Deer & Wildlife</p>  <p>learn more</p> | <p>Climate & Energy Action Plan</p>  <p>learn more</p> |
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| <p>Pay Your Utility Bill</p>  | <p>Connect to AFN</p>  | <p>Request Conservation Evaluation</p>  | <p>Proposals, Bids, Notifications</p>  |
| <p>Request Building Inspection</p>  | <p>Apply for Building Permits</p>  | <p>Apply for Other Permits, Licenses</p>  | <p>Register for Recreation Programs</p>  |