



-NOTICE OF PUBLIC MEETING
CITY OF ALBANY
CITY COUNCIL
 Council Chambers
 333 Broadalbin Street SW
 Wednesday, July 23, 2008
 7:15 p.m.

OUR MISSION IS
*"Providing quality public services
 for a better Albany community."*

OUR VISION IS
*"A vital and diversified community
 that promotes a high quality of life,
 great neighborhoods, balanced
 economic growth, and quality public
 services."*

AGENDA

1. CALL TO ORDER

2. PLEDGE OF ALLEGIANCE TO THE FLAG

3. ROLL CALL

4. SCHEDULED BUSINESS

a. Communications

1) Albany Visitors' Association updates and upcoming events. [verbal]

Action: _____

2) Request from the League of Oregon Cities for Albany's top four priorities for 2009 legislative proposals. [Pages 1-8]

Action: _____

3) Second time extension request from Bob Mitchell for the airport restaurant property. [Pages 9-13]

Action: _____

b. Business from the Public

c. Second Reading of Ordinance

1) VC-01-08, vacating a portion of Jackson Street NE, north of Water Avenue and adopting findings. [Pages 14-41]

Action: _____ ORD. NO. _____

d. Adoption of Resolutions

1) ST-07-03, 53rd Avenue Bridge and Roadway Improvements, declaring a necessity that the City acquire certain real property located within and outside the city limits of the city of Albany, Linn County, Oregon, for the purpose of improving and creating a public right-of-way. [Pages 42-71]

Action: _____ RES. NO. _____

2) Authorizing the Mayor to sign the financing contract with the Oregon Economic and Community Development Department to provide financing for infrastructure improvements related to the SVC development agreement and the Oak Creek Revitalization Area. [Pages 72-105]

Action: _____ RES. NO. _____

3) Authorizing the Mayor to sign the intergovernmental agreement with the Albany Revitalization Agency pledging certain revenues for repayment of the Oregon Economic and Community Development Department special public works fund loan. [Pages 106-110]

Action: _____ RES. NO. _____

e. Adoption of Consent Calendar

1) Approval of Minutes

a) June 9, 2008, City Council Work Session

b) June 25, 2008, City Council Meeting

2) Annual liquor license renewals. [Page 111]

3) Authorizing the Fire Department to apply for a 2008 Homeland Security Grant. [Pages 112-113]

RES. NO. _____

4) Accepting a right-of-way dedication from KCH Enterprises. [Pages 114-118]

RES. NO. _____

5) Accepting Federal Aviation Administration (FAA) grant funds and a commitment to provide the required local match. [Pages 119-120]

RES. NO. _____

Action: _____

f. Award of Bid

- 1) AR-08-01, Security Fence Improvements, and AR-08-02, Drainage Improvements at the Albany Municipal Airport. [Pages 121-122]

Action: _____

g. Report

- 1) Receiving Code Enforcement Team Year-end Report for Fiscal Year 2007-2008. [Pages 123-125]

Action: _____

5. BUSINESS FROM THE COUNCIL

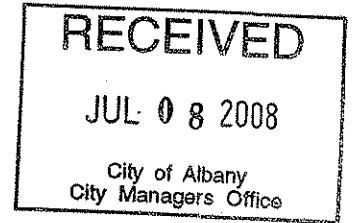
6. NEXT MEETING DATE: Work Session July 28, 2008
Regular Session August 13, 2008

7. ADJOURNMENT

City of Albany Web site: www.cityofalbany.net



P.O. Box 928 • Salem, Oregon 97308
(503) 588-6550 • (800) 452-0338 • Fax: (503) 399-4863
www.orcities.org



July 1, 2008

Dear Chief Administrative Official,

As part of the League's revamped policy process, the Board asked the policy committees to propose specific legislative actions to assist in developing a pro-active legislative agenda. The committees have worked very diligently to develop specific proposed legislative actions, both for the League's legislative policies and for consideration in developing the League's action agenda for the 2009 Legislature. (The committees have also undertaken a review of the Oregon Municipal Policy that will be presented for membership consideration at the 2008 LOC conference in Salem.) The policy committees have identified 24 legislative outcomes that are fully set forth in the sheets following the enclosed input form. Those 24 outcomes span a wide array of issues and differ in the potential resources required to seek their achievement. As the Board adopts a legislative agenda, a prioritization is required in order to focus resources. The final legislative agenda may well encompass all of the committee recommendations, but identify some as priorities for 2009 (and in some cases as multi-year strategies), some for future years, and others as outcomes to be sought as opportunities and circumstances permit.

Each city is being asked to review the recommendations of the policy committees and provide input to the Board as it considers the adoption of a legislative agenda for 2009. Your city's input is sought on the enclosed form. After your city council has had an opportunity to review the 24 proposals and discuss the proposals with staff, please return the form with the top four issues that your city council would like to see the League focus on for the 2009 session. The League Board of Directors will review the results of this survey of member cities, along with the recommendations of the policy committees, as part of its adoption of the legislative policies for 2009 and the focused legislative agenda of outcomes to be actively pursued. Your city's participation in providing its input will assist the Board in creating a focused set of specific legislative targets that reflect the issues of greatest importance for cities. Thank you for your participation and thank you also to the many city officials who gave many hours of their time and expertise to develop the proposals. Rosters of the policy committees can be found on the LOC web site under the tab "About Us" followed by "Policy Committees".

If you have any questions, please contact me or any of the intergovernmental relations staff members.

Sincerely,

Michael J. McCauley
Executive Director

Enclosures

LOC Policy Committees' Legislative Recommendations

Priority	Description
Community Development	
A. Recapitalize the Special Public Works and Water/Wastewater fund with a minimum level of funding of \$80 million for local infrastructure projects.	The state's Special Public Works Fund and the Water/Wastewater Fund are used to finance water and sewer systems, public buildings, road construction, downtown revitalization, energy and communications facilities, land acquisition, environmental clean-up, and port facilities. There has not been a significant re-investment by the state in the fund for several biennia, despite growing infrastructure demand.
B. Fund the Regional Investment Board program with a minimum level of funding of \$15 million-providing an allocation of \$2 million per each of 7 regions, plus a maximum of \$1 million for administrative expenses.	The Regional Investment Program, a state-funded regional economic development and diversification program received minimal funding in the past session. The regional boards seek to develop strategies for economic development in each region of the state, focusing on investments that contribute to the creation/retention of jobs and the leverage of short and long term investments. Historical funding amounts have ranged from \$7-22 million per biennium.
Energy	
C. Initiate legislation to ensure that cities may collect franchise fees from all electricity providers that utilize city owned rights-of-way.	In 1999 the Oregon Legislature passed a law to deregulate the electricity market, meaning that large utility customers were allowed to purchase their electricity from an energy provider other than Portland General Electric or Pacific Power and Light. The Legislature had intended to protect city franchise fees by allowing cities to utilize an alternative calculation method for computing franchise fees based on power volume as opposed to gross revenue. An unforeseen flaw in the proscribed calculation method has resulted in significant franchise fee reductions in some Oregon cities.
D. Ensure that any carbon reporting legislation introduced be neither burdensome to cities administratively or financially and provides reliable data.	Legislation requiring carbon emitting entities to report their emissions failed during the 2008 February Special Session but is widely expected to return in 2009. Existing carbon reporting systems in other states have proven to be confusing for filers and may not provide accurate data for policy makers and the public.
E. Support climate change legislation that promotes the use of financially viable clean renewable resources and provides financial and technical assistance to cities for energy efficiency projects.	It is anticipated that that Governor Kulongoski will introduce legislation to promote additional energy efficiency and renewable energy production as well as a carbon "cap-and-trade" system. A cap-and-trade system would establish a maximum limit on carbon emissions but would give credits to entities that produce less than the limit that could be sold to businesses that are unable to or unwilling to reduce their emissions. A portion of the "carbon credit" sales would be placed in a fund to assist with energy efficiency and conservation projects. Making these funds available to cities would allow cities to continue to pursue energy and cost saving projects that benefit all rate and tax payers.

LOC Policy Committees' Legislative Recommendations

Finance & Taxation	
F. Support changes to the property tax system that maintains stability and predictability, while providing greater sufficiency for needed city revenue, and minimizing inequities for property owners.	Local government's ability to raise revenue is severely restricted by Measures 5 and 50, which have also imposed strict limitations on the ability of local governments to respond to changing fiscal conditions and to adequately fund essential services. Modifications to the property tax system may require a long term, multi-session effort, with revisions to the Oregon Revised Statutes and/or the Oregon Constitution.
G. Support statutory changes to allow increased flexibility of the use of transient lodging taxes to offset expenditures for tourism related services.	Many cities incur substantial service expenditures necessitated by out-of-area residents or tourists. This proposal would allow additional use of transient lodging tax revenues to offset expenditures for tourism related services, in addition to the current use of tourism related facilities.
H. Support new, statutory authority to allow cities to create service districts within city boundaries, establish a permanent property tax levy, and fund specific urban services within the district.	Federal funding for major infrastructure improvements has steadily declined for the past several decades. Existing state and local resources barely keep up with the need for replacement infrastructure for existing development, with no consideration to areas that are rapidly urbanizing with new development and needed infrastructure. The formation of city service districts, located solely within city limits, to provide urban services would increase the "tools" cities have to provide needed services.
General Government	
I. Work towards an ethics policy that protects the interest of the public but is clearly understood by all and does not intrude into the private lives of Oregon's city leaders.	Oregon's current ethics laws require public officials to disclose the names of family members to the Oregon Government Ethics Commission and extend gift limits and prohibitions to the family members of public officials. Additionally, gift limits, exemptions and reporting requirements are not clearly understood by public officials or the public at large.
J. Initiate legislation to allow local government to restrict the possession of a firearm in publically owned buildings.	Current law prohibits municipal governments from prohibiting the holders of concealed weapons permits from carrying a weapon into a public building but allows private building owners to prohibit such conduct. The General Government Committee believes that it should be left to the discretion of the city government as to whether or not it should be permissible to carry weapons in public buildings.
K. Work with other stakeholders to pass legislation to make it more difficult for thieves to profit from metal theft.	Metal theft has become a common method for drug addicts to support their addiction and has resulted in significant losses to the utility and construction industries as well as to public works departments. A coalition of industry and public safety stakeholders have proposed legislation that will require scrap metal dealers to mail checks to sellers instead of paying in cash, make it unlawful for scrap buyers to purchase obviously stolen material and require dealers to keep records of transactions and make those records available to police.
L. Pursue legislation that ensures city leaders are represented on the governance structure of the Oregon Wireless Interoperability Network and advocate for a funding level that will allow all public safety first responders to communicate seamlessly.	The Oregon Wireless Interoperability Network (OWIN) is a proposed communication system that will allow all emergency workers to communicate across agency lines. The league endorsed the project in 2006 with the condition that cities be included in the governance structure of OWIN, that subscription to OWIN be voluntary and that OWIN provide service to the entire state.

LOC Policy Committees' Legislative Recommendations

Human Resources	
M. Advocate for a funding level for the Employment Relations Board that will allow the Board to resolve cases in a timely manner.	The ERB is currently understaffed and the pay scale for board members is below the market for labor attorneys. A fully staffed ERB would be able to resolve labor disputes more quickly and improving the salary range would make board positions more attractive to qualified candidates.
N. Amend ORS 243.746(4)(a) to read "Interest and welfare of the public as determined by the governing officials of the jurisdiction"	Labor arbitrators are required to consider the interest and welfare of the public when resolving contract and labor disputes but current state law allows an unelected arbitrator to define what that interest and welfare are.
O. Initiate legislation to require labor arbitrators to consider the total cost to the employer of salary and benefit awards instead of benefit provided to employees.	Current collective bargaining statutes require arbitrators to consider the ability of an employer to pay before awarding a decision on salary and benefit packages but arbitrators typically use the amount paid to an employee to determine cost as opposed the to the total cost to the employer when making such a determination.
P. Work to ensure that labor arbitrators must use the same type and size of jurisdiction as comparables when comparing compensation and benefit packages.	Currently, it is common practice for an arbitrator compare rural cities to large metropolitan special service districts that also reach into rural areas thus inflating personnel costs beyond the ability of a city to pay. Additionally, arbitrators often compare larger Oregon cities to other West Coast cities that have larger populations and higher costs of living. Requiring arbitrators to compare Oregon's smaller and mid-sized cities to other Oregon small and mid-sized cities and allow larger Oregon cities to be compared to cities of similar size and cost of living regardless of what region of the United States they are in would provide a more accurate comparison.
Telecommunications	
Q. Move to an alternative revenue system for telecommunications providers and oppose preemption of city franchising, rights-of-way and taxing authority.	Technology has advanced rapidly in the last decade and will continue to evolve in ways that cities cannot predict. This has led to significant implications for city rights-of-way authority and telecommunications revenues. Cities have experienced an onslaught of challenges to franchising, rights-of-way, and taxing authority through local referrals, state and federal legislation and litigation. Meanwhile, the predominate system of franchising telecommunications providers has not kept pace with technology. In particular, the shift from landline telephones to wireless technologies has resulted in an erosion of telecommunications revenues. To protect city rights-of-way authority and preserve critical telecommunications revenues, cities need to consider moving to an alternative revenue system. The alternative revenue system proposal developed by a task force of city officials is a gross revenues tax specific to telecommunications providers. The League anticipates beginning discussions during the 2009 legislative session, but that this issue would be a multi-session effort. For additional information, please access the "Telecommunications Tool-Kit" located on the Premium section of the League's Web site.
R. Support a statewide broadband policy for Oregon.	Access to broadband services has become essential to Oregon's ability to compete in a global economy. While individual communities have been proactive in pursuing broadband technologies, to ensure Oregon remains competitive, Oregon must undertake a statewide comprehensive approach to meet the infrastructure and service demands of citizens and businesses. The benefits of a statewide broadband policy reach far beyond the economic gains of attracting businesses and workforce productivity to applications that are integral to peoples' quality of life. From applications such as telemedicine to distance learning, implementation of a statewide broadband policy has the unparalleled potential to reach rural and underserved areas—to change how people communicate and provide every Oregonian with the opportunity to participate in the information age.

LOC Policy Committees' Legislative Recommendations

Transportation

S. Support a city transportation package for preservation funding shortfall that contains:

- New resources need to be provided to cover a substantial portion of the \$160 million annual shortfall (2007 cost pricing) for city transportation system funding.
- The state funding formula for new resources should be distributed on the basis of "50-30-20" – 50 percent to the state, 30 percent to counties, 20 percent to cities.
- "Off-the-top" funding proposals – appropriating state highway funds prior to formula distribution – should be avoided as they reduce the ability of cities and counties to meet their existing needs.
- Maintaining city authority for creative transportation system funding with continued flexibility on how the funds are used – without referral to voters – is a vital component of the funding scheme.
- Index the state fuel tax for inflation or allow for other comparative cost adjustment factor.
- Identify new resources for urban and rural transit.
- Support the existing constitutional provisions regarding the use of the state highway funds and cost responsibility.
- Support the development of new, environmentally-friendly funding sources for maintenance/modernization/operations/multimodal, such as carbon emissions fees, VMT charges, and tolling new or existing transportation facilities.

Well maintained city streets provide vital vehicle, freight, pedestrian, bicycle, and transit connections in our communities. Local roads are falling into disrepair because:

- The state gas tax has not increased since 1993;
- Road and bridge repair costs have increased by 70 percent since 1993;
- City revenue from the gas tax is shrinking as city populations grow;
- The state has shifted costs to cities to pay for state-highway improvements; and
- The property tax limits enacted in the 1990s have forced cities to focus tax dollars on public safety- removing a historic source of local road funding.

Cities need legislative action that will provide new revenues and policies that will aid in maintaining and protecting this vital asset. In 2007, it was estimated that the funding gap for municipal maintenance needs is \$160 million per year – and will rise considerably as the cost of oil continues to rise. Cities, counties and the state cannot address the challenges of Oregon's transportation system alone – we must work together, as partners, to meet those challenges by finding efficiencies, raising revenues and preserving local revenue tools.

LOC Policy Committees' Legislative Recommendations

Water	
<p>T. Recapitalize the Agriculture and Community Water Act (SB 1069, 2008 session) - Support the Water Resources Department's Policy Option Package #118. \$5,279,000 General Fund, 2 FTE.</p>	<p>The legislature passed SB 1069 in the 2008 February session which established a grant fund for the up-front study costs of water supply, conservation, and reuse projects. While the original bill called for \$10 million to be placed in the fund, the Legislature only allocated \$1.25 million. Assuming those funds will be committed in 2008; this priority seeks to recapitalize the fund at \$5 million.</p>
<p>U. Establishment of a Water Supply, Conservation, and Reuse Construction Fund - Support the Water Resources Department's Policy Option Package #119. \$50,000,000 Lottery Backed Bonds.</p>	<p>The Water Resources Department is introducing a Policy Option Package to establish a fund for the construction of water supply, conservation, and reuse projects. The fund would issue both loans and grants for project construction and would be funded through the issuance of \$50 million in lottery backed bonds.</p>
<p>V. Climate Change and Basin Yield Analysis - Support the Water Resources Department's Policy Option Package #108. \$470,000 General Fund, 1 FTE.</p>	<p>The Committee believes it is imperative to gain an understanding of our changing hydrograph. This package seeks to dedicate \$300,000 in research funds to model how surface water hydrographs will change in Oregon's rivers and streams as a result of decreased winter snowpack, early seasonal run-off, and other effects of climate change. This package would also provide funding for one surface water hydrologist to estimate the volume of water per month that runs off of each basin in Oregon. This information will help water providers project their water demands in the future and better understand the effects of climate change.</p>
<p>W. Establish a Statewide Drug Takeback Program - Support the Drug Takeback Task Force Recommendations</p>	<p>The Committee supports a toxics reduction and source prevention approach to reducing bio-accumulative toxins in the environment in lieu of implementing expensive wastewater treatment technologies. One of the areas of concern is pharmaceuticals entering the waste stream. A task force has been working on the potential of developing legislation to institute a drug take-back program based on the model of the electronic waste take-back program instituted by the 2007 legislature. The Task Force is targeting this fall for a timeframe to release the specifics of such a proposal.</p>
<p>X. Oppose legislative attempts to require end of pipe standards by preempting mixing zones.</p>	<p>Mixing zones are zones of dilution for wastewater discharges which allow wastewater treatment plants to meet Clean Water Act permit requirements. Over the last two legislative sessions certain interest groups have introduced legislation to eliminate the use of mixing zones in Oregon. These proposals would require municipal wastewater treatment plant to remove discharges into rivers and streams or implement very expensive, energy intensive technologies. Municipalities have instead focused on toxic reduction and source prevention as the most effective way to remove toxics in the environment.</p>

City of:

Please mark 4 boxes with an X that reflect the top 4 issues that your city recommends be the priorities for the League's 2009 legislative agenda.

Community Development

- A. Recapitalize the Special Public Works and Water/Wastewater fund with a minimum level of funding of \$80 million for local infrastructure projects.
- B. Fund the Regional Investment Board program with a minimum level of funding of \$15 million- providing an allocation of \$2 million per each of 7 regions, plus a maximum of \$1 million for administrative expenses.

Energy

- C. Initiate legislation to ensure that cities may collect franchise fees from all electricity providers that utilize city owned rights-of-way.
- D. Ensure that any carbon reporting legislation introduced be neither burdensome to cities administratively or financially and provides reliable data.
- E. Support climate change legislation that promotes the use of financially viable clean renewable resources and provides financial and technical assistance to cities for energy efficiency projects.

Finance & Taxation

- F. Support changes to the property tax system that maintains stability and predictability, while providing greater sufficiency for needed city revenue, and minimizing inequities for property owners.
- G. Support statutory changes to allow increased flexibility of the use of transient lodging taxes to offset expenditures for tourism related services.
- H. Support new, statutory authority to allow cities to create service districts within city boundaries, establish a permanent property tax levy, and fund specific urban services within the district.

General Government

- I. Work towards an ethics policy that protects the interest of the public but is clearly understood by all and does not intrude into the private lives of Oregon's city leaders.
- J. Initiate legislation to allow local government to restrict the possession of a firearm in publically owned buildings.
- K. Work with other stakeholders to pass legislation to make it more difficult for thieves to profit from metal theft.
- L. Pursue legislation that ensures city leaders are represented on the governance structure of the Oregon Wireless Interoperability Network and advocate for a funding level that will allow all public safety first responders to communicate seamlessly.

Human Resources

- M. Advocate for a funding level for the Employment Relations Board that will allow the Board to resolve cases in a timely manner.
- N. Amend ORS 243.746(4)(a) to read "Interest and welfare of the public as determined by the governing officials of the jurisdiction"
- O. Initiate legislation to require labor arbitrators to consider the total cost to the employer of salary and benefit awards instead of benefit provided to employees.
- P. Work to ensure that labor arbitrators must use the same type and size of jurisdiction as comparables when comparing compensation and benefit packages.

Telecommunications

- Q. Move to an alternative revenue system for telecommunications providers and oppose preemption of city franchising, rights-of-way and taxing authority.
- R. Support a statewide broadband policy for Oregon.

Transportation

- S. Support a city transportation package for preservation funding shortfall (as outlined in the full Transportation Committee recommendation).

Water/Wastewater

- T. Recapitalize the Agriculture and Community Water Act (SB 1069, 2008 session) - Support the Water Resources Department's Policy Option Package #118. \$5,279,000 General Fund, 2 FTE.
- U. Establishment of a Water Supply, Conservation, and Reuse Construction Fund - Support the Water Resources Department's Policy Option Package #119. \$50,000,000 Lottery Backed Bonds.
- V. Climate Change and Basin Yield Analysis - Support the Water Resources Department's Policy Option Package #108. \$470,000 General Fund, 1 FTE.
- W. Establish a Statewide Drug Takeback Program - Support the Drug Takeback Task Force Recommendations
- X. Oppose legislative attempts to require end of pipe standards by preempting mixing zones.

INSTRUCTIONS

1. Each city should submit one form that reflects the consensus opinion of its city council on the **top four** legislative priorities for 2009.
2. Simply place an X in the space to the left of the city's top four legislative proposals.
3. The top four do not need to be prioritized.
4. Return by August 15th via mail, fax or e-mail to:

League of Oregon Cities
P.O. Box 928
Salem, Oregon 97308
Fax – (503) 399-4863
info@orcities.org

Thank you for your participation.



TO: Albany City Council
FROM: Wes Hare, City Manager *WH*
DATE: July 16, 2008, for the July 23, 2008, City Council Meeting
SUBJECT: Time Extension Request from Bob Mitchell for Airport Restaurant
RELATES TO STRATEGIC PLAN THEME: • Healthy Economy

Action Requested:

Council approval of a second 90-day extension for completion of the airport restaurant being constructed by Bob Mitchell Construction. If approved, the new deadline would be January 9, 2009.

Discussion:

As I'm sure you recall, developer Bob Mitchell purchased city property adjacent to the airport two years ago and agreed to build and open a new restaurant within 18 months of the September 30, 2006, closing date. In September 2007, the Council granted a request for an extension to October 9, 2008, for Mr. Mitchell, who explained that he had encountered a number of unforeseen delays. Mr. Mitchell called me a few weeks ago and requested another 90-day extension to the October deadline.

The sales agreement with Mr. Mitchell required him to sign a promissory note for \$35,000, which the City would terminate if certain conditions were satisfied. Mr. Mitchell has met the required design standards but will apparently have difficulty meeting the completion date.

The restaurant is framed; the roof is complete; windows are installed, and the structure is fully enclosed. Plumbers and electricians appear to be working on the site. I believe Mr. Mitchell is committed to completing the project and would support this extension with the understanding that it will be the last one. If the restaurant opens around the first of the year, the total time that will have elapsed from the purchase will be a little over two years (October 1, 2006-January 2009).

Since I believe Mr. Mitchell is making a good-faith effort to honor his agreement with the City, I support granting the requested 90-day extension.

Budget Impact:

None. The City has received payment for the property, and \$35,000 bonus money was deposited into an escrow account for later disposition.

RWH:ldh
Attachments

U:\Economic Development\Airport\Restaurant Property\CCmemo.time.extension.7.08.doc



Bob G Mitchell Homes
220 6th Ave SW Suite 202
Albany, OR 97321
(541)926-6289 CCB # 6122

July 8, 2008

Mr. Wes Hare, City Manager
City of Albany
PO Box 490
Albany, OR 97321

Dear Mr. Hare:

I am requesting a 90 day extension for completion of the new restaurant, Cascade Grill, located at 110 Opal Court NE, Albany.

Due to delays in the permit process and unpredictable weather, starting the project was postponed. I feel that an additional 90 days would be appropriate to complete the project. The project is currently well underway; however, I feel that the additional time will allow for any unanticipated delays. The current project completion date is October 9, 2008; I am requesting an extension to January 9, 2009.

Thank you for your consideration of my request. I look forward to hearing from you at your earliest convenience.

Sincerely,

Bob G. Mitchell

MINUTES

CALL TO ORDER

Mayor Killin called the meeting to order at 7:15 p.m.

PLEDGE OF ALLEGIANCE TO THE FLAG

Killin led the pledge of allegiance to the flag.

ROLL CALL

Councilors present: Sharon Konopa, Ralph Reid, Jr., Dan Bedore, Dick Olsen, Bessie Johnson, and Jeff Christman

SCHEDULED BUSINESS

Communication

Presentation on the Library Renovation Design Development phase.

David Wark, architect for Hennebery Eddy Architects, provided a PowerPoint presentation (in agenda file) of the proposed designs for the new Library. He reviewed the first and second floors and the renovation of the outside of the building. He said renovations should be adequate for at least 20 years. Wark discussed color and paint for the interior, garden room (the percent for art obligation could be integrated in this area), and the exterior. They expect opening in late fall 2008.

Councilor Konopa asked if there was a teen area. Wark said yes. He will send a packet of drawings to the Council.

Councilor Reid said that Transit is currently using space in the building. He asked, has a plan been put in place to relocate them? Library Director Ed Gallagher said as soon as construction begins, Transit will need to move. Economic Development Director Dick Ebbert said that there have been discussions about Transit moving to an Albany Airport building. There is nothing permanent yet.

Reid asked if financing had been secured for the renovation of the new Library building. City Manager Wes Hare said the City currently has about \$2 million and there will be monies from the sale of the current Library building. Beyond that, they will need around \$500,000 to \$1,000,000 through foundation grants and other donations. Gallagher said total costs will be around \$4,000,000. Hare added that libraries attract resources. Reid was concerned that total financing was not in place.

Councilor Johnson asked, what was the original donation? Hare said the original donation was \$5,000,000; \$3,000,000 purchased the building and there is \$2,000,000 left.

Time extension request from Bob Mitchell for the airport restaurant property.

Killin said developer Bob Mitchell didn't get title to the land until January. He is asking for an extension to October 2008. Ebbert said he, like the Council, is concerned about the slow progress. Mitchell continues to make plans to move ahead with the project. He wants a 90-day extension.

MOTION: Johnson moved to approve the request for a 90-day extension for completion of a new restaurant to be constructed by Bob Mitchell Construction on property sold to Mitchell by the City near the Albany Municipal Airport in January 2007. Reid seconded the motion and it passed 6-0.

Business from the Public

No one wished to speak.

First Reading of Ordinance

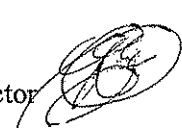
Adopting ordinance updating Albany Municipal Code Chapter 2.28, Emergency Management.

City Attorney Jim Delapoer read for the first time in title only "AN ORDINANCE AMENDING THE ALBANY MUNICIPAL CODE (AMC), CHAPTER 2.28, EMERGENCY MANAGEMENT."

MOTION: Reid moved to have the ordinance read a second time in title only. Konopa seconded the motion and it passed 6-0.

Delapoer read the ordinance for a second time in title only.



TO: Albany City Council
VIA: Wes Hare, City Manager
FROM: Dick Ebbert, Economic Development Director 
DATE: September 20, 2007, for the September 26, 2007 City Council Meeting
SUBJECT: Time Extension for Airport Restaurant

RELATES TO STRATEGIC PLAN THEME: • Healthy Economy

Action Requested:

Council approval of requested 90-day extension for completion of a new restaurant to be constructed by Bob Mitchell Construction on property sold to Mitchell by City near the Albany Municipal Airport in January 2007.

Discussion:

Due to delays not necessarily within the control of Bob Mitchell Construction, contractor was not able to begin the restaurant project as projected this summer to meet in-service date established by contract with the City of July 9, 2008. Staff recommends granting a 90-day extension to Mitchell Construction to October 9, 2008, to assure that all conditions can be met and restaurant completed per previous Council directive.

An extension in completion date should ensure that all permitting and construction timelines can be met as well as any unanticipated delays overcome allowing an opening date of mid-October 2008 for this long awaited project.

Budget Impact:

None. City has received payment for the property and \$35,000 bonus money is deposited in an escrow account for later disposition.

RRE:ldh

U:\Economic Development\Airport\Restaurant Property\CCmemo.time.extension.9.07.doc

Bob G. Mitchell Homes

220 6th Ave SW Suite 202
Albany, OR 97321
541-926-6289
ccb 6122

September 20, 2007

To: Albany City Council
Re: Time extension for Knox Butte Restaurant

*9-26-07
approved
by City Council
extension: 10-9-2008*


Dear City Council,

I am requesting a 90 day extension for completion of the restaurant on the property at 110 Opal Court NE. Due to unforeseen circumstances the project has been delayed. An extension to October 9, 2008 will allow for any unanticipated delays in the permit process as well as any construction setbacks. Thank you for your consideration and I look forward to the grand opening in October.

Sincerely,

Bob G. Mitchell



TO: Albany City Council
VIA: Wes Hare, City Manager
Greg Byrne, Community Development Director
FROM: Mike Leopard, Infrastructure Analyst 
DATE: July 17, 2008, for the July 23, 2008 City Council Meeting
SUBJECT: File VC-01-08
Second Reading of Ordinance for Vacation of Jackson Street north of Water Avenue

Action Requested:

Second reading of the ordinance that would vacate the public street right-of-way for Jackson Street north of Water Avenue. The second reading is the final approval of the street vacation by the City Council.

Discussion:

At the May 14, 2008, City Council meeting, the City Council held a public hearing on an application to vacate the sections of Jackson Street and Jefferson Street north of Water Avenue. At that meeting, the City Council voted to read for the first time the ordinance that would vacate the streets. The ordinance references a condition of approval that the applicants provide a signed joint access and maintenance agreement before the ordinance is read a second time and the street vacations are approved.

The ordinance read at the May 14 meeting included the vacation of both Jackson Street and Jefferson Street. The owners of the property adjacent to Jackson Street (David Johnson and Scott Lepman) have signed an agreement. An agreement for Jefferson Street has not been submitted.

The owner of the property west of Jackson Street is ready to proceed with a project that will include private development on the vacated Jackson Street right-of-way, so the owner has requested that the Council read for a second time the ordinance that will vacate Jackson Street. The property owner is David Johnson (Ohanamula LLC). The project is the Wheelhouse.

The agreement for Jackson Street is attached to this memo. The agreement is signed by the owners of both of the properties adjacent to Jackson Street as required by the condition of approval for the street vacation. In a letter dated June 30, 2008, Scott Lepman (Glorietta Bay LLC) expressed concern regarding the agreement. The letter is attached to this memo. Since then, we believe Mr. Lepman has reconsidered and supports the street vacation. Staff hopes to bring a letter from Mr. Lepman that confirms this to the July 17 City Council meeting.

The attached ordinance includes only the vacation of Jackson Street. Staff will bring back a new ordinance for the vacation of Jefferson Street when and if the required agreement is submitted by the property owners.

If the Council decides to approve the vacation of Jackson Street separately, the motion should reference the revised ordinance.

Budget Impact:

The vacated section of Jackson Street will become private property that will pay taxes.

Attachments: Joint Access and Maintenance Agreement, Letter from Scott Lepman,
OrdinanceU:\Community Development\Planning\Current\2008\08vc01 cc memo 2nd reading.doc

RECIPROCAL AND IRREVOCABLE ACCESS RIGHTS AGREEMENT
For Property
Located on the North Side of Water Avenue, West and East of the Vacated
Jackson Street Right-of-Way

The purpose of this Agreement ("Agreement") is to outline the terms and conditions of a Joint-use Accessway and Maintenance agreement between Ohanamula LLC (OHANAMULA), who is the owner of certain real property described as Tax Lot 11500, Linn County Assessor's Map 11-3W-06CD (see attached Exhibit 'A-1') (Party 1) and Glorietta Bay LLC (GLORIETTA) who is the owner of certain real property described as Tax Lot 100, Linn County Assessor's Map 11-3W-06DC (see Exhibit 'A-2') (Party 2).

I. RECITALS

- A. The Parties owners of certain real property situated in the City of Albany, Linn County, Oregon, more particularly described as the following:
- Party 1:** That real property as shown on Exhibit 'A-1' and described and recorded in DM 2006-31259 in the Linn County Deed Records.
- Party 2:** That real property as shown on Exhibit A-2' and described and recorded in MF 1529, Page 468, in the Linn County Deed Records.
- B. Each of the Parties has frontage on Water Avenue, an existing paved public street and both above described properties will be provided access to said street via this Joint Use Access Agreement.
- C. The Parties desire by this Reciprocal Maintenance and Accessway Agreement ("RMA") to provide for the access, maintenance, upkeep and repair of said Accessway, Joint-Use Parking Areas and pedestrian/bikepath as shown on the attached Exhibit 'B', to provide a means by which others who claim a right of access over said Roadway and benefit from the maintenance and repair thereof may become Parties to the RMA, and to provide for the mutual and reciprocal enforcement of the RMA.

II. AGREEMENT

- A. **Incorporation of Recitals.** The Parties reassert and acknowledge the recitals that are incorporated herein by reference as part of this Agreement.
- B. **Grant of Easement.** Each of the Parties hereby grants to each of the Parties, a perpetual, non-exclusive cross-reciprocal easement over, under, along and across the Roadway Easement for ingress and egress, joint-use parking, and power, gas, cable, telephone facilities and other forms of utilization.
- C. **Benefits.** The easement rights granted herein shall be for the benefit of all Parties, and without limitation, their employees, independent contractors, guests, invitees and assigns.
- D. **Perpetual.** The easement rights granted herein shall be perpetual and irrevocable and binding upon the undersigned, heirs, successors, and assigns and shall become a covenant running forever with the land described in Exhibits 'A-1' and 'A-2' regardless of whether said parties are signatories to this agreement. It is further agreed that this Agreement shall be recorded in the deed record of Linn County, Oregon.

E. **Severability.** Invalidation of any one of these covenants or restrictions by judgment, decree or order shall in no way affect any other provision thereof; each of which shall remain in full force and effect.

F. **Construction.** The OHANAMULA and GLORIETTA Parties agree to pay equally for the Design and Construction in accordance with Exhibit 'B' of a joint vehicle access and parking area and pedestrian accessway located within the vacated Jackson Street right-of-way. Said joint vehicle accessway shall be constructed to City of Albany public street section Specifications with regard to rock and pavement sections. The joint pedestrian accessway located along the eastern side of the joint accessway shall be constructed to City of Albany sidewalk Specifications.

G. **Use of Joint Use Accessway and Joint-Use Parking Area.** All parking spaces within the vacated Jackson Street right-of-way shall be available for use by both Parties. Use of the Accessway or Joint-Use Parking Area by a Party for truck or passenger cars in the normal course of ingress and egress from the Party's property shall constitute normal use. Use of the Roadway or Joint-Use Parking Area by heavy trucks, and construction vehicles or machinery, for commercial purposes of any kind or for any purpose requiring frequent, repeated trips not constituting normal ingress and egress from the properties shall constitute abnormal use and the cost of repair and maintenance caused by abnormal use shall be paid solely by the Party creating the abnormal use. Each Party shall also be responsible for the use of the Accessway and Joint-Use Parking Area by the Party's family members, invitees, customers, employees, contractors, business associates, agents and other users of said Party's property. At no time, may vehicles be parked in the access lanes, which precludes access to any other Party's property.

H. **Maintenance and Repair.**

a. **Regular Maintenance and Repair**

- i. The Parties intend to maintain the Accessway and Joint-Use Parking area in a smooth, paved condition, without potholes, ruts or corrugation and so as to provide a smooth surface for normal passenger and vehicle use. Such maintenance includes regular periodic maintenance such as sweeping and washing, addition of pavement (patching, cleaning and repair of curbs) and the removal of snow, ice, and storm debris as required to maintain safe use of the accessway and parking area.
- ii. Repair and maintenance of the Accessway and Joint-Use Parking Area shall be done on an as needed basis. All future expenses or costs incurred in connection with the use of the joint-use accessways or joint-use parking spaces by the easements described above, including all costs or expenses of restoring to its former condition of any of the area disturbed by reason of the exercise of such easement right, shall be deemed to be costs incurred by the Parties and shall be fully paid in a proportion related to trip generation by both developments unless the damage has been done solely by one of the Parties in which case the repair costs shall be borne by the damaging party.
- iii. After 10 days prior written notice to the other Parties, any Party shall have the right to institute repairs and conduct maintenance on the Accessway and/or Joint-Use Parking area, provided, however, unless all Parties to the Agreement concur in advance or the Party doing the repairs or maintenance is solely responsible for the cost thereof, said repairs and maintenance shall be done by an independent contractor and not by a Party. The Party initiating the work of repair or

maintenance shall be entitled to recover all sums necessarily and properly expended to accomplish the work, not to include personal time.

iv. Notwithstanding the provisions in this paragraph a.i., repair and maintenance should be deemed to be necessary only after a majority of the Parties agree.

b. **Modification and Upgrades.** No modifications or upgrades to the existing Accessway or Joint-Use Parking area shall occur without the express written permission of all Parties to the RMA except that a Party may make such modifications or improvements at that Party's sole expense. Any Party who objects to such modifications or improvements shall not be required to share in any improvement costs or increased repair or maintenance costs caused by the upgrade, but shall remain obligated for said Party's share of the cost of maintenance described in Paragraph H.a..i. and ii.

c. **Power, Gas, Cable, Telephone Utility Maintenance.** The costs relating to the installation, maintenance, repair, restoration or reconstruction of power, gas, cable, telephone, or other utilization which may in the future be installed for the sole benefit of any party shall be paid by that party, and the responsible party shall promptly repair any damage it may cause to the Accessway, Joint-Use Parking Area, or Landscaped area or any improvements within the Easement area so that the Easement Area is restored to its original pre-existing conditions prior to the work.

I. Payment of Expense and Cost

a. **Costs.** The costs incurred for the maintenance and repair of the Roadway and Joint-Use Parking area of the type described in Paragraph H.a.i. and ii caused by normal use, natural disaster, or other events for which all Parties are blameless shall be shared by the Parties in proportion to paid in a proportion related to trip generation as determined by the Institute of Transportation Engineers (ITE) Trip Generation Manual by both developments unless the damage has been done solely by one of the Parties in which case the repair costs shall be borne by the damaging party. In the event other persons become Parties to the RMA or otherwise share in the responsibility of maintenance and repair of the roadway or joint-use parking area by virtue of ORS 105.170 to 105.185, each party's share of said cost shall be proportionally reduced.

b. **Costs in Event of Negligence.** Regular maintenance shall not include damage or disrepair caused by the negligence or abnormal use of a Party. In that event, the total cost to repair the Roadway or Joint-Use Parking area will be at the sole expense of that Party, who shall be responsible to return the Roadway or Joint-Use Parking area to at least the condition prior to the damage as soon as reasonably possible after being made aware of the damage or disrepair.

c. **Notice.** A Party who has incurred expenses hereunder to which another Party is required to contribute, shall notify said Party of the amount of the contribution based on said Party's share in proportion to all Parties to the RMA and others who have voluntarily agreed to participate. The contributing Party shall then reimburse the Party who has incurred expenses within 30 days of said notice. Any Party who does not reimburse the amount request within 30 days and who subsequently makes or is required to make reimbursement of said amount or an amount not less than 75% of the amount requested, either voluntarily or pursuant to enforcement action taken hereunder, shall, in addition to all other remedies allowed hereunder or by statute, pay interest at the rate of nine percent (9%) per annum on the original amount requested from the date the reimbursement was due, until paid, together with reasonable attorney fees and collection costs even though no suit or action is filed. And if any arbitration, or other

proceeding is brought to collect such payment, the Party not prevailing (as defined in the previous sentence) shall pay the prevailing Party's costs and disbursements incurred in such proceedings, including the fees and expenses of expert witnesses in determining reasonable attorney fees, the fees of the arbitrator and such sums as the arbitrator may determine to be reasonable for the prevailing Party's attorney fees connected with such proceedings. If others subsequently participate in said cost of repairs and maintenance of the Roadway and Joint-Use Parking area, voluntarily or otherwise, reimbursement shall be made to each contributing person in proportion to the total of the original contributions, excluding any collection costs, attorney fees and interest.

J. Miscellaneous

- a. This RMA is not intended to impose any duty of maintenance or repair with respect to any Roadway other than the one particularly described herein.
- b. The rights and duties of the RMA are intended to inure to the benefit of the Parties hereto, those who may become Parties hereto as provided herein and the heirs, executors, successors and assigns of the same.
- c. This RMA is appurtenant to the property owned by each of the Parties and described herein and shall run with the land. In the event of any boundary adjustment or sale of any portion of said property, this RMA shall remain appurtenant to each parcel or portion of said property and the owners thereof shall be bound by and obligated to the terms and conditions of this RMA in the same manner as the Parties hereto.
- d. Time is of the essence of the performance of each of the obligations under this Agreement.

K. Resolution of Disputes

- a. If a dispute arises between the Parties to this RMA, it is hereby agreed that the dispute will be referred to the American Arbitration Association or other mutually agreed upon provider of arbitration services for arbitration in accordance with its Rules of Arbitration and ORS 36.300 et seq. The arbitrator's decision shall be final and binding, and judgement may be entered thereon. If a Party fails to proceed with arbitration, unsuccessfully challenges the arbitrator's award, or fails to comply with the arbitrator's award, the other Party is entitled to costs of suit, including reasonable attorney fees, for having to compel arbitration or defend or enforce the award. This arbitration provisions substantially affects the legal rights of the Parties. By agreeing to arbitrate, the Parties give up their legal right to bring a court action and have a jury trial. A Party having any questions regarding the use of this arbitration provision should contact an attorney.
- b. In the event any suit or action is filed to enforce any of the provisions hereof, the losing Party agrees to pay the reasonable cost and attorney fees of the prevailing Party, including appeals, as affixed by the court.

IN WITNESS WHEREOF, the undersigned, have executed this agreement as of the last date below:

PARTY 1: Ohanamula LLC:

Name: David A. Johnson Title: President

Signature: 

Subject Property: Linn County Assessor's Map: 11-3W-06CD; Tax Lot 11500

Site Address: 421 Water Avenue NE

Mailing Address: 7885 NE Todd Drive; Corvallis, OR 97330

STATE OF OREGON)
City of) ss
County of)

On this 14 day of May, 2008, personally appeared the above named David A. Johnson, acting on behalf of Ohanamula LLC, and acknowledged the foregoing instrument to be their voluntary act and deed. Subscribed and sworn to before me this 14 day of May, 2008.

Kendra M Heller
Notary Public for
My Commission Expires: Aug 15th 2009



PARTY 2: Glorietta Bay LLC:

Name: Scott D. Lepman Title: OWNER

Signature: _____

Subject Property: Linn County Assessor's Map: 11-3W-06DC; Tax Lot 100

Site Address: 521 Water Avenue NE

Mailing Address: 100 Ferry Street NE; Albany, OR 97321

STATE OF OREGON)
City of Albany) ss
County of Linn)

On this 14th day of May, 2008, personally appeared the above named Scott D. Lepman, acting on behalf of Glorietta Bay LLC, and acknowledged the foregoing instrument to be his voluntary act and deed. Subscribed and sworn to before me this 14th day of May, 2008.

Tonia McDaniel
Notary Public for Oregon
My Commission Expires: Aug 4, 2011



APPROVED AS TO FORM & CONTENT:

By: _____
Attorney For David A. Johnson

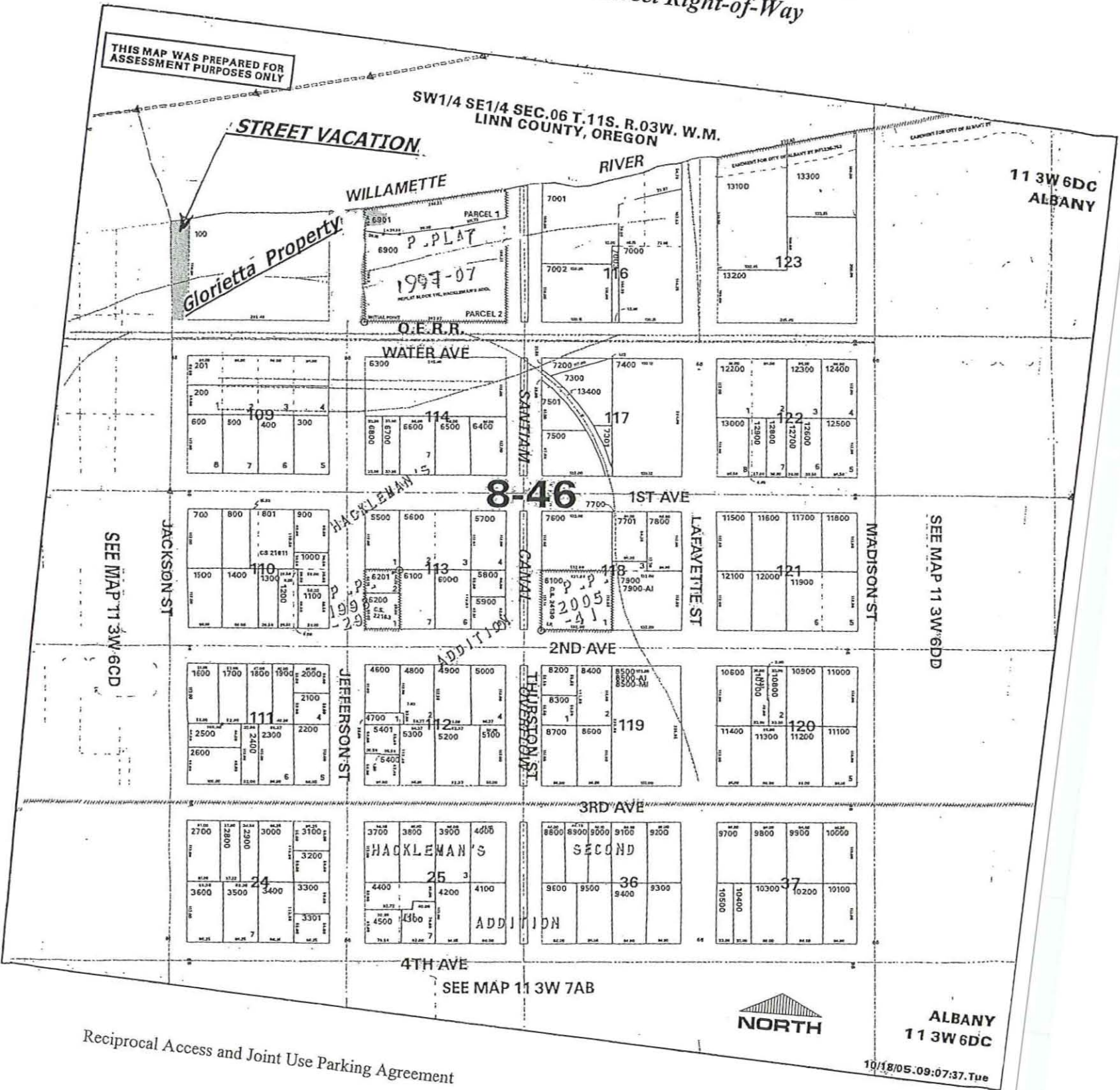
AD

APPROVED AS TO FORM & CONTENT:

By: Edward H. Schulz
Attorney for Scott D. Lepman

EXHIBIT 'A-2'
**Glorietta Bay LLC Property And Easterly 33 Feet
of Vacated Jackson Street Right-of-Way**

THIS MAP WAS PREPARED FOR
ASSESSMENT PURPOSES ONLY



Reciprocal Access and Joint Use Parking Agreement

Scott Lepman Company

**Scott Lepman, SRA, RM
Real Estate Appraisal and Consultation
100 Ferry Street NW
Albany, Oregon 97321
(541) 928-9390 Phone
(541) 928-4456 Fax**

June 30, 2008

Mike Leopard
City of Albany
PO Box 490
Albany, OR 97321

Re: Willamette Seed Property
Water and Jefferson Streets

Dear Mike,

I met with David Johnson today regarding the joint vacation of Jackson Street.


I am concerned regarding sharing of costs and the vacation of the road.

I discussed this issue with you last week and I am writing to confirm putting all development proposals related to this property on hold.

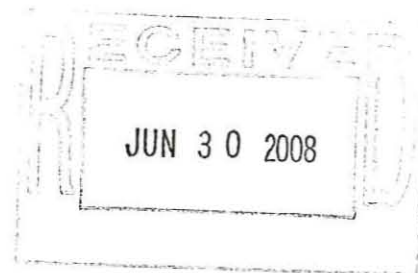
This includes any previously signed joint agreements with Mr. Johnson regarding the vacation of Jackson Street.

If you have any further questions, please feel free to contact me.

Sincerely,



Scott Lepman
SL:jcc
Cc: Wes Hare



Subject: RE: FW: Wheelhouse - No Shared Utilities with Adjacent Property
From: "Josh Wells" <jwells@westech-eng.com>
Date: Mon, 30 Jun 2008 15:24:44 -0700
To: "Scott Lepman" <scott@slcompany.com>

Chris Giggy with TD Gerding asked me to do it. I haven't done anything yet but the Contractor some how thinks this is the case.

Josh

From: Scott Lepman [mailto:scott@slcompany.com]
Sent: Monday, June 30, 2008 3:00 PM
To: Josh Wells
Subject: Re: FW: Wheelhouse - No Shared Utilities with Adjacent Property

Josh,

Did David Johnson call you and ask to remove the shared utility connection to the property?

Thanks,

Scott

Josh Wells wrote:

Scott,

I'm in an awkward position here. It appears that David Johnson's project wishes to remove the shared utility connections for your property. If this is true, I would strongly suggest that you at least get the storm drainage stubbed to your property. Everything else we can make work for a small cost, but the storm drainage stub will save substantial money at a later day. Please let me know.

Thanks,

Josh Wells

From: Chris Giggy [mailto:cgiggy@tgerding.com]
Sent: Monday, June 30, 2008 1:06 PM
To: Josh Wells
Cc: Don Johnson; Ryan McAlister; David Johnson; Rob Bloom
Subject: Wheelhouse - No Shared Utilities with Adjacent Property

Hi Josh.
As we discussed this am, the adjacent property owner isn't going to take advantage of the option to share common utility supply. Here's the changes we discussed:
Water
* W31 and the line to it are deleted
* The main pipe size may be reduced after the fire sprinkler design is completed; to be coordinated with you
Storm Drain

- * The extension from the SE storm drain manhole is deleted
- * The storm drain line depth needs to be revisited; please advise on new depth

Sanitary Line

- * Line S11 is deleted
- * Line S2 can be reduced to 6-inch

Power

- * The 5-inch conduit east from the transformer is deleted
- * We'd like to consider moving the transformer to another location that is closer for power runs; possibly in the island at the power pole. Any issues?

Surfacing Plan

- * We won't construct a drive connection to the adjacent property; the existing walkway along the east side of the property will be left in place. I understand this doesn't present any issues for drainage.

Chris Giggy, PE

T. Gerding Construction Co.

PO Box 1082

Corvallis, OR 97339

(541)753-2012

(541)754-6654 FAX

AN ORDINANCE VACATING A PORTION OF JACKSON STREET NE, NORTH OF WATER AVENUE, IN ALBANY, OREGON; AND ADOPTING FINDINGS.

WHEREAS, on February 13, 2008, the City of Albany City Council directed staff to initiate the vacation of this portion of right-of-way (File VC-01-08); and

WHEREAS, notices of public hearings were mailed, posted, and published as required by state and local law; and

WHEREAS, the Albany Planning Commission held a public hearing on May 5, 2008; and

WHEREAS, the Albany Planning Commission recommended that the City Council conduct a first reading only until the condition of approval is met (joint access and maintenance agreement); and

WHEREAS, the Albany City Council held a public hearing on May 14, 2008, and took a first reading on the vacation ordinance, and;

WHEREAS, the applicant has satisfied all conditions of approval that needed to be met before this ordinance is adopted.

NOW, THEREFORE, THE PEOPLE OF THE CITY OF ALBANY DO ORDAIN AS FOLLOWS:

Section 1: Subject Property. The portion of Jackson Street NE north of the Water Avenue right-of-way (see legal description on attached Exhibit A and map labeled Exhibit B) is hereby vacated.

Section 2: Findings. The Findings, Conclusions, and Conditions in the Staff Report attached as Exhibit C are hereby adopted in support of this decision.

Section 3: Public Utility Easement Retained. The City retains a public utility easement over the entire vacated area. The easement will benefit the City, their successors, assigns, authorized agents, and/or contractors.

Section 4: Public Access Easement Retained. The City retains a public access easement over the entire area being vacated. This access easement is for public pedestrian and bicycle access to the Dave Clark Riverfront Path, and to maintain a "view corridor" to the river from the south. The easement also provides legal access rights over the vacated area for emergency response vehicles.

Passed by Council: _____

Approved by Mayor: _____

Effective Date: _____

Mayor

ATTEST:

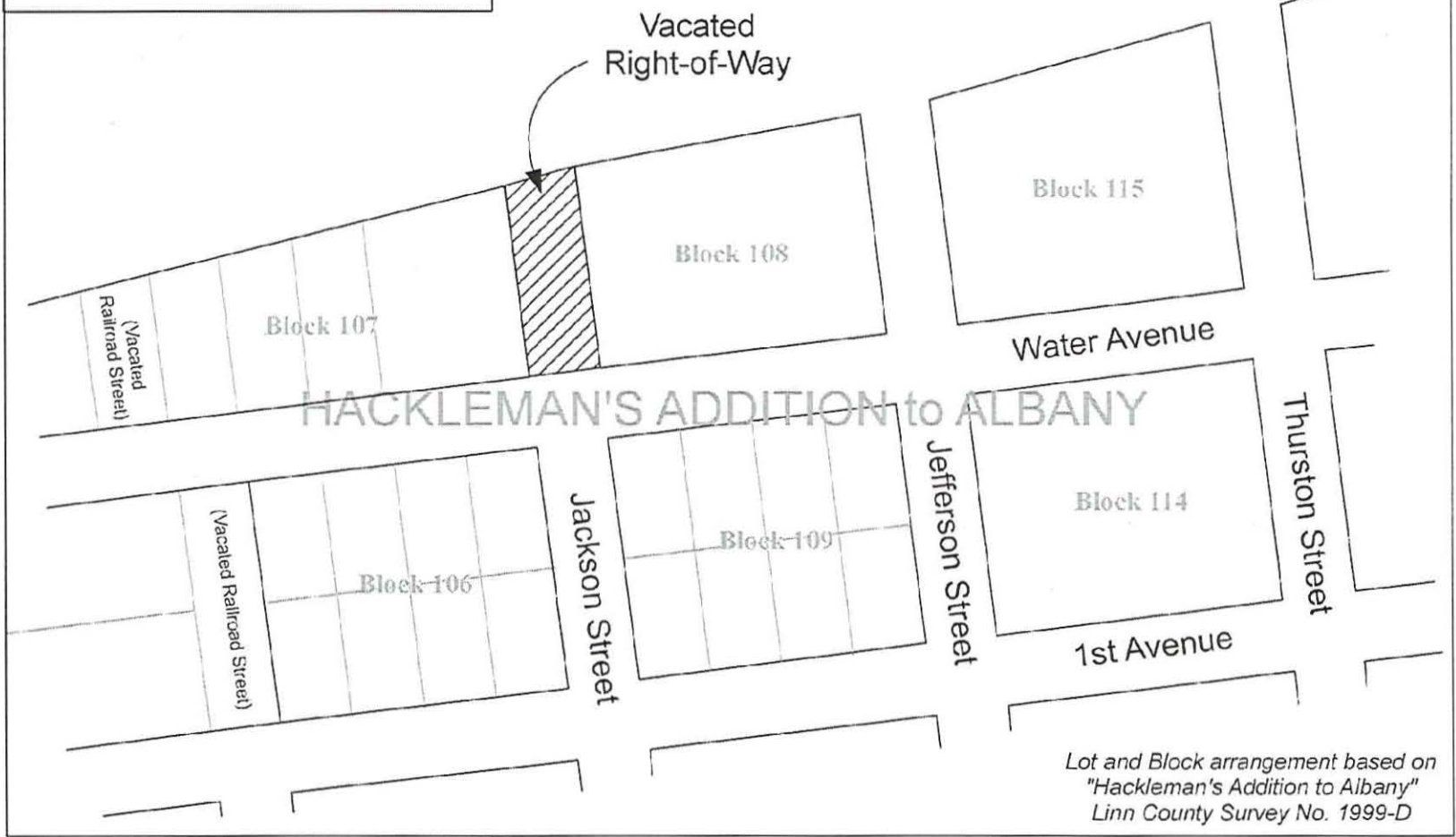
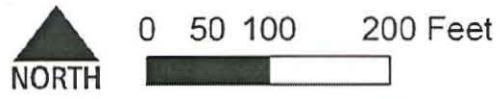
City Clerk

EXHIBIT A
Legal Description
Right-of-Way Vacation
VC-01-08

A tract of land located in the southwest one-quarter of Section 6, Township 11 South, Range 3 West, Willamette Meridian, City of Albany, Linn County, Oregon, that consists of:

ALL of that right-of-way of Jackson Street immediately north of Water Avenue located between Blocks 107 and 108 of Hackleman's Addition to Albany, said right-of-way being 66-feet in width and extending to the Willamette River.

EXHIBIT B
Legal Description Map
VC-01-08





Community Development Department

333 Broadalbin Street SW, P.O. Box 490, Albany, OR 97321

Phone: (541) 917-7550 Facsimile: (541) 917-7598

STAFF REPORT

Vacation (Public Street Rights-of-Way)

HEARING BODY	CITY COUNCIL
HEARING DATE	Wednesday, May 14, 2008
HEARING TIME	7:15 p.m.
HEARING LOCATION	Council Chambers, Albany City Hall, 333 Broadalbin Street SW

GENERAL INFORMATION

DATE OF REPORT:	May 7, 2008
FILE:	VC-01-08
TYPE OF APPLICATION:	Vacation of those portions of the Jackson Street NE and Jefferson Street NE rights-of-way north of Water Avenue NE.
REVIEW BODIES:	Planning Commission and City Council (The Planning Commission held a public hearing on May 5, 2008)
APPLICANTS:	Ohanamula LLC; 7885 NE Todd Drive; Corvallis, OR 97330 Glorietta Bay LLC; 100 Ferry Street NE; Albany, OR 97321 John Boock Jr.; 422 1st Avenue SW; Albany OR 97321
APPLICANTS' REP:	Candace Ribera; 545 Vista Avenue SE; Salem, OR 97302
ADDRESS/LOCATION:	Rights-of-way adjacent to 521 Water Avenue NE. (See Staff Report Attachment A.)
MAPS/TAX LOT:	Street rights-of-way and adjacent properties are shown on Linn County Assessor's Map Nos. 11S-03W-06CD and 11S-03W-06DC
TOTAL LAND AREA:	Approximately 25,200 square feet (0.58 acres)
PURPOSE OF REQUEST:	Vacation of public rights-of-way to allow for new development on adjacent properties.
EXISTING LAND USE:	Unimproved public rights-of-way; currently used as access to parcels adjacent to the rights-of-way.
NEIGHBORHOOD:	Central Albany
SURROUNDING ZONING:	North: Willamette River (no zoning designation) East: WF (Waterfront) West: CB (Central Business) South: WF and CB (See Staff Report Attachment B.)

SURROUNDING USES: North: Willamette River
 South: Light industrial use
 Southwest: Lumber/home supply store
 Southeast: Multiple family residential
 West: Vacant restaurant
 East: Warehouse/Storage

NOTICE INFORMATION

A notice of public hearing was mailed to surrounding property owners on April 23, 2008. The site was posted on April 24, 2008, in accordance with Section 1.410 of the Albany Development Code. Two legal notices have been or will be published in the *Albany Democrat-Herald* on April 21, and 28, 2008, in accordance with Oregon Revised Statute (ORS) 271.110. At the time this staff report was prepared (May 7, 2008), the Albany Planning Department had received no written comments.

PLANNING COMMISSION RECOMMENDATION

The Albany Planning Commission recommended APPROVAL WITH CONDITIONS of this Vacation application for portions of the Jackson Street NE and Jefferson Street NE rights-of-way, north of Water Avenue NE (File VC-01-08). The proposed conditions are found in this staff report.

CITY COUNCIL DECISION

MOTION TO APPROVE

If the findings in the staff report adequately address testimony presented at the public hearing, the City Council may approve the application based on the findings and conclusions of the staff report.

I MOVE that the City Council APPROVE WITH CONDITIONS the application that would result in the vacation of portions of the Jackson Street NE and Jefferson Street NE rights-of-way, north of Water Avenue NE (File VC-01-08). This motion is based on the findings and conclusions of the staff report and testimony presented at the public hearing.

MOTION TO DENY

If the City Council determines that there is insufficient evidence to demonstrate that the review criteria have been met, the City Council may deny the application.

I MOVE that the City Council DENY the application for the vacation of portions of the Jackson Street NE and Jefferson Street NE rights-of-way, north of Water Avenue NE (File VC-01-08).

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STAFF ANALYSIS
Vacation File VC-01-08

The Albany Development Code (ADC) contains the following review criteria which must be met for this application to be approved. Code criteria are written in *bold italics* and are followed by findings, conclusions, and conditions where conditions are necessary to meet the review criteria.

OVERVIEW

The areas in question include approximately 200-foot-long sections of unimproved public rights-of-way (Jackson Street NE and Jefferson Street NE) north of Water Avenue NE. The Jackson Street NE right-of-way has historically been used for access to what was once the Buzz Saw Restaurant to the west, and also included some of the parking spaces for the restaurant. The Dave Clark Riverfront path runs through this right-of-way. This section of Jackson Street right-of-way is 66 feet wide. The Jefferson Street NE right-of-way has been used for access to parcels on both sides of the right-of-way (the former Willamette Seed property and the former Borden Building site). This right-of-way is also 66 feet wide.

The owner of the property to the west of Jackson Street NE (Ohanamula LLC) is proposing to construct a development of primarily offices with a small restaurant on the first floor. The property between Jackson Street and Jefferson Street NE is intended to be developed by Glorietta Bay LLC as a residential development; either condominiums or apartments. (See Staff Report Attachment C.) There is no development proposal currently on file for the property east of Jefferson Street NE.

At the +February 13, 2008, City Council meeting, the Council agreed to initiate the vacation application. The affected property owners received notice of the proposed vacation and associated public hearings, and were given an opportunity to comment.

Criterion (1): The requested vacation is consistent with relevant Comprehensive Plan policies and with any street plan, city transportation or public facility plan.

FINDINGS OF FACT

1.1 The following Comprehensive Plan policies have been identified as relevant to this review criterion:

GOAL 11: Public Facilities and Services

- a. Prohibit the construction of structures over public water lines and easements.
- b. Prohibit the construction of structures over drainage improvements and easements.
- c. Prohibit the construction of structures over public wastewater lines and easements.

GOAL 15: Willamette River Greenway

- a. Protect, conserve, enhance and maintain the natural, scenic, historic, economic, and recreational qualities of the Willamette River, its banks, and adjacent land.

1.2 Sanitary Sewer. Sanitary sewer utility maps indicate that a deep 30-inch public sanitary sewer main runs along the south boundaries of the Ohanamula LLC and Glorietta Bay LLC properties, parallel to Water Avenue NE, and approximately 10 feet north of the north boundary of the Water Avenue NE right-of-way. This sewer main then changes direction and runs northeasterly from the southwest corner of the Jefferson Street NE right-of-way toward the northeast corner of the Jefferson Street NE right-of-way, where it once again runs parallel to Water Avenue NE through the Boock property. Public utility easements exist over the portion of this main that run through the Glorietta Bay LLC and Boock properties. This public sewer main is an important interceptor main that carries wastewater to the treatment plant from all of North Albany and much of west Albany.

- 1.3 Water. Water utility maps indicate that there are no public water facilities within the rights-of-way proposed for vacation. The public water main that serves the properties north of Water Avenue NE in this area is a 12-inch main on the south side of Water Avenue NE.
- 1.4 Storm Drainage. Storm drainage utility maps indicate that the only public storm drainage facility that exists within either of these rights-of-way is a catch basin and associated outfall pipe (to the river) at the north end of Jackson Street. It appears that this catch basin only collects a portion of the runoff from this section of Jackson Street. If the right-of-way is vacated, then this facility would no longer need to be public and would likely be removed or replaced in conjunction with future development on the adjacent parcels.
- 1.5 Other Utilities. City staff has contacted the various franchise utility providers about the proposed rights-of-way vacation. The only utility company to respond to our notification was Northwest Natural Gas, which stated that they have no facilities within these rights-of-way. Based on the lack of response from other franchise utilities, it is assumed that the location of franchise utilities in this area is limited to the Water Avenue NE right-of-way.
- 1.6 Transportation. The rights-of-way proposed for vacation are dead-end sections of Jackson Street NE and Jefferson Street NE located north of Water Avenue NE. The lengths of these sections of rights-of-way are about 200 feet. The streets are classified as local streets and are not improved to City standards. The streets currently provide vehicle access only to the adjacent parcels. A portion of the Jackson Street NE right-of-way has historically been incorporated into the off-street parking area used by the former restaurant west of the right-of-way. The Jefferson Street NE right-of-way had been used by the former Willamette Seed plant for a loading dock and access to the dock, as well as for access to the parcel to the east. The rights-of-way also provide pedestrian and bicycle access to the riverfront path. In fact, a portion of the path currently runs along the east side of the Jackson Street NE right-of-way. The owner of the property west of Jackson Street NE is proposing to relocate this portion of the path to the north boundary of the parcel when development occurs on the property.
- 1.7 Transportation. Albany's Transportation System Plan TSP does not identify these portions of Jackson Street NE and Jefferson Street NE as being a part of the City's arterial/collector street system, nor does it anticipate linking or connecting these streets with other streets.
- 1.8 Transportation. On March 26, 2008, the City Council adopted a streetscape plan for Water Avenue NE that includes the Water Avenue/Jackson Street and Water Avenue/Jefferson Street intersections. That plan envisions that Jackson Street NE would remain open in the future to provide access to adjoining parcels and the Dave Clark Riverfront Path, and that Jefferson Street NE would be closed to traffic north of Water Avenue NE.
- 1.9 The City's Comprehensive Plan (Goal 15) discusses issues relating to the Willamette River Greenway. The Goal presented in the Comprehensive Plan is to "[p]rotect, conserve, enhance and maintain the natural, scenic, historic, economic, and recreational qualities of the Willamette River, its banks, and adjacent land." One of the policies listed under Goal 15 states: "Protect and preserve the natural and scenic qualities of the publicly-owned properties along both banks of the Willamette to provide for future recreation opportunities and other uses compatible with Greenway values."
- 1.10 Part of the Goal for the Willamette Greenway is to preserve and protect the scenic/visual connection to the river. Maintaining a "view corridor" to the river from Water Avenue is one way to preserve this visual connection. A public access easement over the areas to be vacated will prohibit the construction of any permanent structures within those areas and will maintain a separation between buildings so that the view to the river is open to the public at various locations.

CONCLUSIONS

- 1.1 There is a major 30-inch public sanitary sewer interceptor main along the southern edge of the Jackson Street NE right-of-way, and diagonally along the full length of the Jefferson Street NE right-of-way proposed for vacation. A catch basin and short length of 6-inch storm drainage piping lie within the northern portion of the Jackson Street NE right-of-way. No public water facilities currently exist in either of the rights-of-way proposed for vacation. (See Staff Report Attachment D.) Because of the location of the existing public sanitary sewer facilities, staff recommends that a 40-foot public utility easement (centered on the main) be maintained over the main within the areas proposed for vacation. This easement would provide access rights to the City and would prohibit the construction of any permanent structures within this easement.
- 1.2 In order to preserve a "view corridor" to the river, public access easements will be retained over the entire width of the rights-of-way to be vacated.
- 1.3 The proposed vacation does not conflict with Albany's Transportation System Plan (TSP) or the Water Avenue NE streetscape plan.

CONDITIONS

- 1.1 The City will retain a public utility easement over the existing public sanitary sewer main that runs through the areas to be vacated. This easement will allow legal access to the area for maintenance of the sewer main and will prohibit the construction of any permanent structures within this easement.
- 1.2 The City will retain public access easements over the entire width of the Jackson Street NE and Jefferson Street NE rights-of-way proposed for vacation. These easements will provide legal access for pedestrians and bicyclists to the river, and will maintain "view corridors" to the river at these locations.

Criterion (2): The requested vacation will not have a negative effect on access between public rights-of-way or to existing properties, potential lots, public facilities or utilities.

FINDINGS OF FACT

- 2.1 The areas proposed for vacation are sections of Jackson Street NE and Jefferson Street NE rights-of-way north of Water Avenue NE. These portions of public rights-of-way are approximately 200 feet long and lie between Water Avenue NE and the Willamette River. The rights-of-way currently provide access only to adjacent properties, the owners of which are the applicants for this vacation request. These rights-of-way are not improved to City standards. The portions of Jackson Street NE and Jefferson Street NE proposed for vacation do not form connections between any other public streets or rights-of-way, but do provide access to the adjoining parcels and public pedestrian/bicycle access to the Dave Clark Riverfront Path.
- 2.2 The parcels adjacent to these sections of rights-of-way are zoned Central Business (CB) west of Jackson Street NE, and Waterfront (WF) east of Jackson Street NE. The parcel west of Jackson Street NE includes a vacant restaurant. The buildings on the parcel between Jackson Street NE and Jefferson Street NE have recently been removed. The parcel east of Jefferson Street NE is being used mainly for warehousing and storage.
- 2.3 There is a public sanitary sewer main that runs through these portions of rights-of-way. (See Findings under Criterion 1.) In order to maintain access to this main a public utility easement must be retained over the sewer main.
- 2.4 The applicants' findings state that the vacated Jackson Street NE right-of-way will serve as a joint-use accessway and parking area for the future Ohanamula LLC and Glorietta Bay LLC developments. (See Attachment C.) The vacated Jefferson Street NE right-of-way will be utilized by the Glorietta Bay LLC

development for an emergency vehicle accessway only and as access to the Boock property until such time that the railroad crossing is closed. At that time, the joint accessway will be closed to all vehicles except emergency vehicles. The Boock property also has access to Thurston Street SE to the east.

- 2.5 The Dave Clark Riverfront Path currently runs along the south boundary of the Ohanamula LLC property, along the east side of the Jackson Street NE right-of-way, and along the top of the riverbank east of Jackson Street NE. The applicants state that the portion of the riverfront path that runs along the south and east sides of the Ohanamula parcel will be relocated to the Willamette River side (north) of that property as part of the redevelopment of the site, matching the location of the rest of the path along the river. In addition to relocating the path, the applicant is proposing to construct a pedestrian sidewalk (or maintain the existing path) along the east boundary of the vacated Jackson Street NE area to provide continued access to the riverfront path from Water Avenue NE. A similar sidewalk is being proposed within the vacated Jefferson Street NE area with development of the Glorietta Bay LLC property. In order to allow legal use of these sidewalks to the general public, public access easements must be provided/retained over these areas.

CONCLUSIONS

- 2.1 The areas proposed for vacation are not needed for connectivity for vehicular traffic between public rights-of-way.
- 2.2 Public utility easements will be maintained over the existing public sanitary sewer mains to allow legal access to the sewer mains within these areas.
- 2.3 Public access easements will be retained over the entire Jackson Street NE and Jefferson Street NE areas proposed for vacation to provide pedestrian and bicycle access between Water Avenue NE and the riverfront path, as well as for maintaining a "view corridor" to the river for the public.
- 2.4 The applicants must provide private joint-use access and maintenance easements/agreements for the vacated areas for the benefit of the adjacent parcels.

CONDITIONS

- 2.1 The City will retain a public utility easement over the existing public sanitary sewer main that runs through the areas to be vacated. The easement will be 20 feet on both sides of the centerline of the sewer main.
- 2.2 The City will retain public access easements over the entire width of the Jackson Street NE and Jefferson Street NE rights-of-way proposed for vacation. These easements will provide legal access for pedestrians and bicyclists to the river, and will maintain "view corridors" to the river at these locations.
- 2.3 The applicants must prepare joint-use access and maintenance agreements for the shared accesses proposed in the vacated Jackson and Jefferson Streets NE. These agreements must be signed by all affected parties before the second reading of the vacation ordinance.
- (3) *The requested vacation will not have a negative effect on traffic circulation or emergency service protection.*

FINDINGS OF FACT

- 3.1 The areas proposed for vacation are unimproved streets terminating in dead-ends at the river. These streets only serve as vehicular accesses to the adjacent parcels and pedestrian/bicycle access to the riverfront path from Water Avenue NE.

- 3.2 Emergency services vehicles must have legal access to all of the adjacent parcels. The required private joint-use access easements must include clauses that allow legal access for emergency service vehicles.
- 3.3 When vacated, private access easements must be provided over both Jackson Street NE and Jefferson Street NE. Both areas will initially remain open to vehicle, pedestrian, and emergency vehicle access. At some point in the future, when Water Avenue NE is improved, Oregon Department of Transportation (ODOT) Rail may require the closure of the rail crossing at Jefferson Street NE. That possibility exists regardless of whether or not the right-of-way is vacated.

CONCLUSIONS

- 3.1 The requested vacation will not have a negative effect on traffic circulation as the streets in question only provide access to the adjacent parcels.
- 3.2 Emergency vehicle access will be maintained through language in private access agreements between the owners of properties adjacent to the vacated rights-of-way.

CONDITION

- 3.1 The required joint-use access agreements that the affected property owners must enter into must include language that provides legal access to the vacated areas for emergency services vehicles.
- (4) *The portion of the right-of-way that is to be vacated will be brought into compliance with Code requirements, such as landscaping, driveway access, and reconstruction of access for fire safety.*

FINDINGS OF FACT

- 4.1 The rights-of-way to be vacated will be incorporated into the parcels directly abutting it, or revert back to the owners of the properties from which the rights-of-way were dedicated. The areas to be vacated were initially dedicated as public rights-of-way with the Hackleman's Addition subdivision plat. Half (33 feet) of each right-of-way will revert back to the parcels adjacent to those sections along the property frontages. This property distribution is shown on Staff Report Attachment E.
- 4.2 The areas to be vacated are currently being used by adjacent property owners for access to their parcels. The vacated areas will continue to be used for access to the adjacent parcels, and the affected property owners will be required to enter into joint-use access and maintenance agreements. These agreements must assure legal access through the areas for emergency services vehicles. (See Condition 3.1.)
- 4.3 The areas proposed for vacation would not become part of the adjacent properties "front yard" setback, and therefore will not require additional landscaping, etc.
- 4.4 The preliminary site plan drawings for the proposed developments on the parcel west of Jackson Street NE and the parcel between Jackson Street NE and Jefferson Street NE show parking lot improvements, landscaping, and public pedestrian/bicycle paths between Water Avenue NE and the riverfront path. Details of the actual improvements within these areas will be further reviewed in conjunction with the land use applications for each development.

CONCLUSIONS

- 4.1 No additional landscaping will be necessary if the areas are vacated because the property adjacent to the vacated areas will no longer be considered "front yards" for the adjacent parcels.

- 4.2 Preliminary site plan drawings show that proposed improvements within the vacated areas are to include parking lots, landscaping, and public pedestrian/bicycle paths between Water Avenue NE and the riverfront path. These preliminary plans have not yet been approved by the City.

CONDITION

- 4.1 See Conditions 2.3 and 3.1.

(5) The public interest, present and future, will be best served by approval of the proposed vacation.

FINDINGS OF FACT

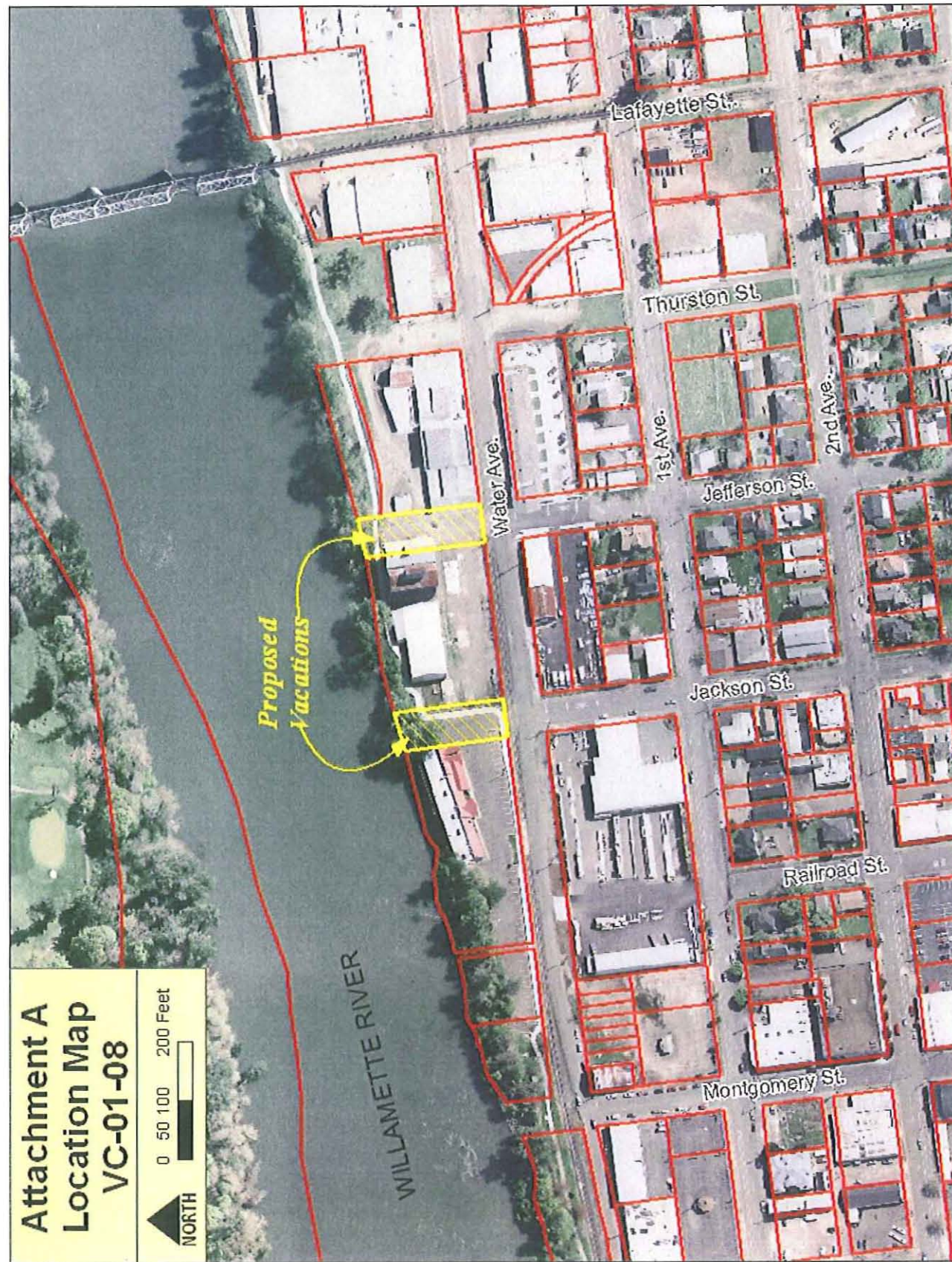
- 5.1 The areas proposed for vacation are unimproved rights-of-way. The areas to be vacated are currently being used by adjacent property owners for access to their properties.
- 5.2 Retaining public utility easements over the existing sewer will provide the City the right to access these utilities within the areas to be vacated.
- 5.3 Upon final approval of the vacation, the City will no longer have any street maintenance responsibility over the vacated areas.
- 5.4 It is in the City's interest to maintain legal access for pedestrians and bicyclists between Water Avenue NE and the riverfront path through the areas proposed for vacation.
- 5.5 It is in the City's interest to maintain a "view corridor" to the river at a variety of locations. Maintaining an easement over the width of the rights-of-way to be vacated, the City assures that no permanent structures will be constructed that may obstruct the view to the river at these locations.

CONCLUSION

- 5.1 Vacating these portions of the Jackson Street and Jefferson Street rights-of-way will not adversely impact the public interest, if the conditions of approval are satisfied.

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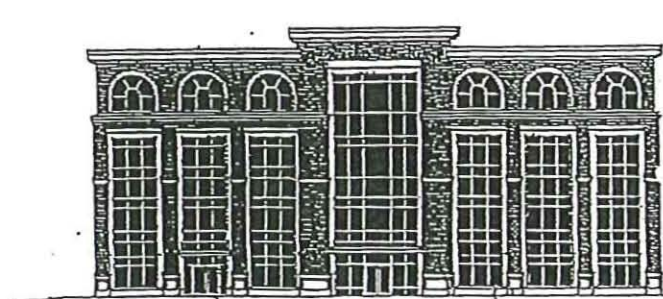
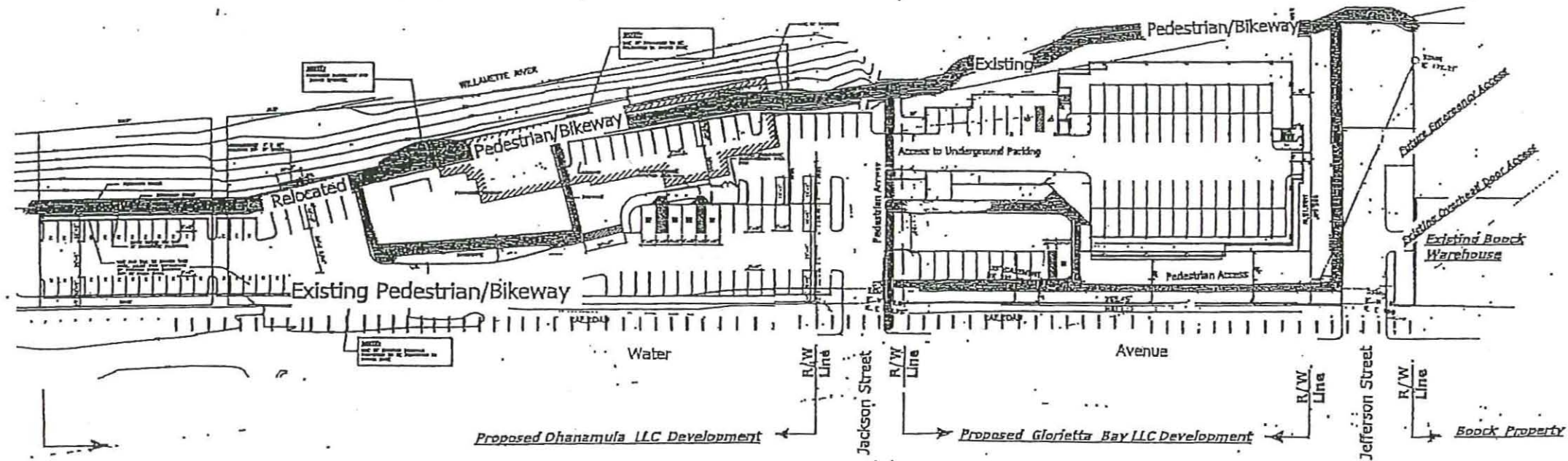
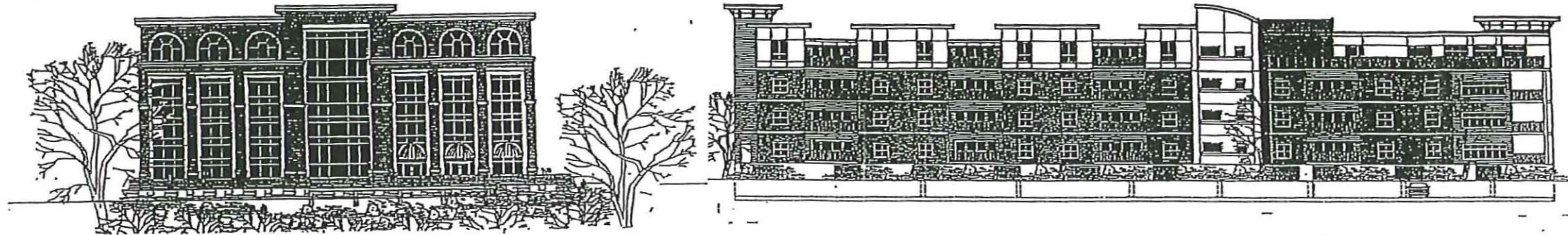
Attachment A – Location Map



Attachment B – Zoning Map



ATTACHMENT C
 Preliminary Site Plan
 with Elevation Drawings



**Attachment D
Utility Map
VC-01-08**

0 25 50 100 Feet
NORTH

Areas of Proposed Vacations

40' PUE

Water Ave.

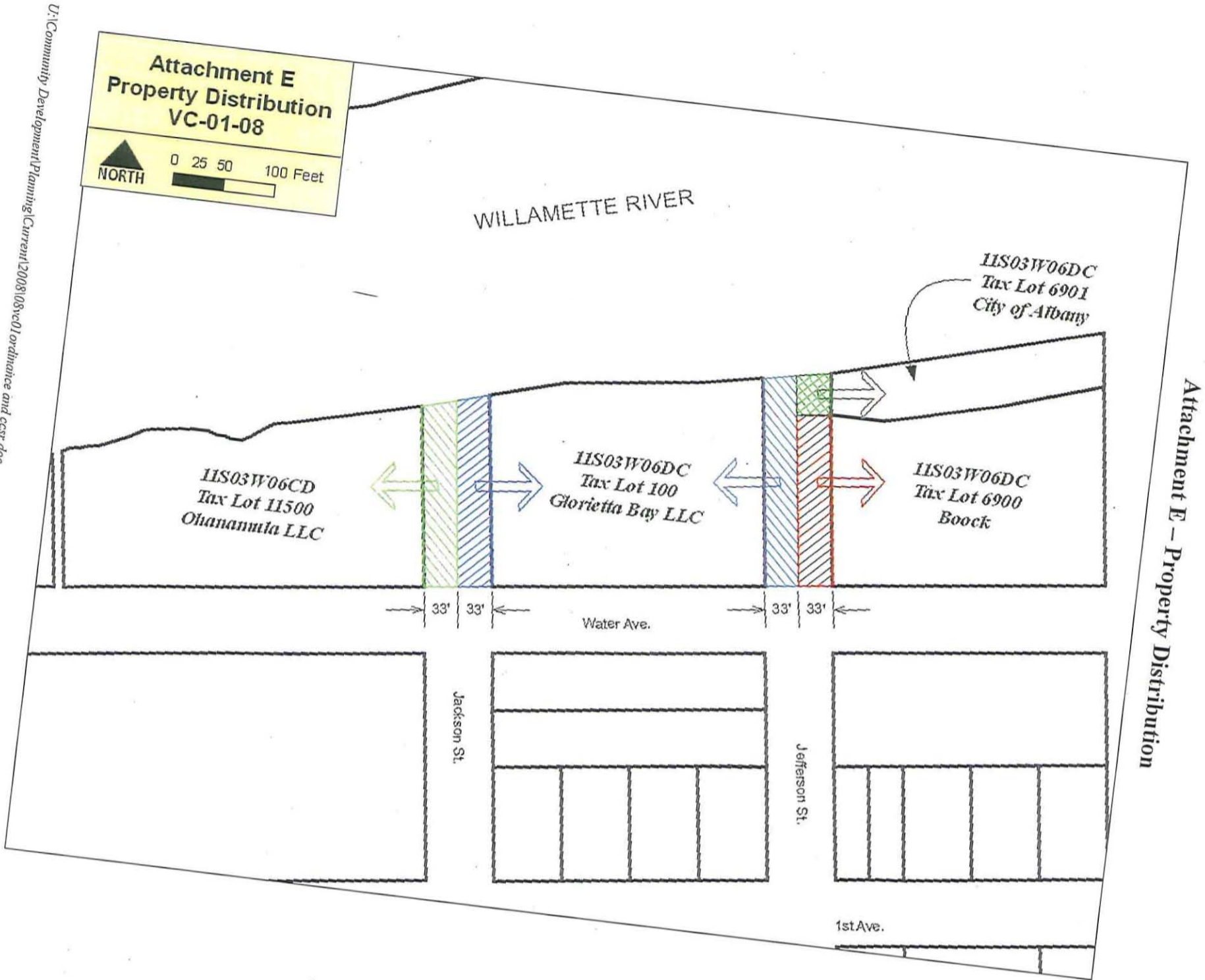
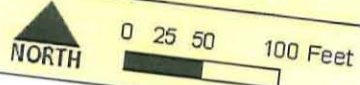
Jackson St.

Jefferson St.

Attachment D - Utility and Easement Map

SEWER	
WATER	
STORM	
PUBLIC UTIL. EASE.	

**Attachment E
Property Distribution
VC-01-08**



Attachment E - Property Distribution

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Ordinance/VC-01-08, Page 16



TO: Albany City Council

VIA: Wes Hare, City Manager
Diane Taniguchi-Dennis, P.E., Public Works Director *For MWS*

FROM: Mark Shepard, P.E., Assistant Public Works/City Engineer *MWS*

DATE: July 16, 2008, for the July 23, 2008, City Council Meeting

SUBJECT: ST-07-03, 53rd Avenue Bridge and Roadway Improvements
Resolution Authorizing Eminent Domain Proceedings

RELATES TO COUNCIL GOAL:

- Great neighborhoods
- An Effective Government
- A Healthy Economy

Action Requested:

Staff requests that the Council adopt the accompanying resolution authoring the City to initiate eminent domain proceedings including condemnation of land and a motion for immediate possession to address the immediate needs for infrastructure improvements way for the 53rd Avenue bridge and roadway project.

Discussion:

Background

The City's Transportation System Plan (TSP) adopted in 1997 identified the need for a east-west arterial street between the intersection of 53rd Avenue and HWY 99E, and the intersection of Ellingson Road and Lochner Road. The TSP was developed to address specific goals and policies that are discussed at Section 1.3 of the plan. The stated goal was to provide a safe, diversified, economical, and efficient transportation system that protects and enhances Albany's economy, environment, neighborhood quality, cultural, and scenic values.

A copy of the applicable portion of the TSP map identifying the anticipated roadway extension is attached hereto as Exhibit "A." This road was identified as Project 155 at Section 5.7 of the TSP as one of the projects necessary to meet growth-driven needs. The roadway is identified as a principal arterial in South Albany, which will be constructed from Pacific Blvd./SR 99E to Lochner Road. The project description in the TSP identifies the roadway as a new principal arterial with bike lanes and sidewalks and was estimated in the TSP to cost approximately \$10.5 million in 1997 dollars. The TSP identified the project as a short-term priority need and recommended that construction occur during the period between 1998 and 2005.

Chapter 3 of the TSP describes future conditions and deficiencies. Deficiencies are identified based on the impacts of future growth in population and employment within the greater Albany urban area. In projecting population growth between 1994 and 2015, population was expected to increase by 43 percent and employment was expected to grow by nearly 55 percent. Based upon these projections, the TSP identified transportation deficiencies that, if not corrected, would create serious traffic congestion problems. The 53rd Avenue bridge and roadway improvement, which is the subject of the accompanying resolution, was specifically identified as necessary to address this anticipated growth in employment and population. At the time the TSP was adopted, approximately 290 acres of industrially zoned land was located within the City, ready for anticipated industrial development and located immediately to the South of, and adjacent to, the roadway extension called for in the TSP and envisioned by the accompanying resolution. Almost all of this industrial land was purchased by SVC Manufacturing, Inc. in 2006 for the express purpose of constructing major industrial manufacturing facilities, which are expected to employ between 300 and 500 workers. This industrial development is of the type forecasted in 1997 when the TSP was adopted and the roadway extension in question was identified as being necessary to meet the future employment and job growth anticipated in the area.

In addition to the anticipated industrial development immediately to the South of the roadway extension in question, an approximately 36 acre regional commercial site ("RC"), located within the City of Albany at the northwest terminus of the new road, needs the four way intersection envisioned as a part of transportation improvement in order to provide ingress and egress to the site. This traffic signal controlled intersection of 53rd Avenue and Highway 99E is also identified in the TSP as Project Number 180. When the portion of 53rd Avenue west of Highway 99E was constructed in 2003 and 2004, the intersection was configured with the consent of the owner of the RC site to accommodate the future extension of 53rd Avenue to the East of SR 99 at the location, and in the manner identified, in the TSP. The property owner of the RC site dedicated sufficient right-of-way to enable the City to construct traffic signal bases and poles on property previously included within the RC site in order to accommodate the anticipated extension of 53rd Avenue to the East.

Without this roadway extension, access to the RC site will be limited in a manner that is inconsistent with the traffic volumes anticipated to be generated by a large regional commercial use. City staff has met with Region 2 ODOT staff and has been advised that direct highway access to the site will be limited to a single access point having right in/right out access together with a southbound left-turn entrance. Without the addition of a full access traffic signal controlled driveway to the site from 53rd Avenue, the single highway access point would not safely and efficiently accommodate the volume of traffic that a large regional commercial use would be expected to generate on the RC-zoned site. Restricting the site to a single limited access point on the highway would force vehicles seeking to exit the RC site to exit only in the north-bound direction on Highway 99E. Vehicles wanting to proceed to the South or East would have to travel North on SR 99, make an unlawful U-turn or find a place to turn around north of the RC site and travel South on SR 99.

The TSP also recognized at Section 3.2.5 the presence of a major high speed North/South Union Pacific/Southern Pacific rail line parallel to SR 99E. Presently east/west traffic in the area is forced to cross this high-speed, multi-track line at an at-grade rail crossing that has been identified by ODOT as posing significant safety risks. One of the principal dangers presented by the current crossing configuration is the lack of queue distance between Highway 99E and the north/south rail track. This lack of queuing distance creates a significant risk that westbound traffic may enter onto the rail line, but not have sufficient room to fully cross the track if other westbound traffic is stopped at the traffic signal on Highway 99E (similar to issues that are experienced at Queen Avenue). Similarly, east-bound traffic on Ellingson from Highway 99E frequently finds the opportunities to turn to the east from Highway 99E blocked during those times when rail traffic prevents vehicle crossings. The lack of queuing distance between the railroad tracks and Highway 99E will back up traffic onto Highway 99E posing a significant collision risk for high speed northbound traffic on Highway 99E. The posted speed on the highway in this area is 55 miles per hour. Industrial, commercial, and residential traffic continues to increase in this portion of southwest Albany. The construction of a grade separated rail crossing will allow the City to close the at-grade crossing at Ellingson Road and provide flow of east/west traffic in a much safer manner and without vehicle/rail conflicts.

In addition to the anticipated increase in general population, commercial development, and industrial development, undeveloped but residentially zoned property between the railroad line and Lochner Road is anticipated to create higher volumes of east/west traffic on Ellingson Road, which can only be safely accommodated by a grade separated rail crossing as will be provided in the roadway extension.

The owner of the RC land met with City staff several times in 2000 and 2006 expressing his desire that the roadway project in question, identified in the TSP, be constructed as soon as possible. The RC owner expressed a willingness to pay for the cost of constructing the roadway himself if the City would initiate a reimbursement district to provide some measure of repayment from other

property owners who would be expected to benefit from the roadway extension as well. Attached hereto as Exhibit "B," is a pre-application worksheet and correspondence from 2000, and notes from discussions and correspondence in 2006 including a summary page from a traffic study completed for the owner of the RC property wherein the owner of the RC land, Granada Land Co., proposed and identified the need for the 53rd Avenue roadway extension for which land would be acquired pursuant to the attached resolution.

Immediate Need

The construction of the industrial project located to the South of the proposed roadway is anticipated to begin as early as spring of 2009. The RC site is ready for development except for the transportation access restrictions, which would be relieved by construction of the roadway project. It is anticipated that it will take approximately 24 months to acquire all necessary construction permits, bid the project, and complete the improvements. In order to meet the needs of South Albany's growing population as well as the commercial, industrial, and residential development that is anticipated in the area, it is necessary that the right-of-way be acquired immediately and that construction begin as soon as possible.

Staff and the City Attorney believe that it may be desirable to enter into an Intergovernmental Agreement (IGA) with Linn County for the condemnation of the required property due to the fact that some of the property is currently outside the City limits. The IGA will outline a cooperative effort on the condemnation to the extent that it is necessary. The IGA will allow the City to condemn in its own name and that of Linn County as well. The agreement will require the City to hold the County harmless from all condemnation costs as well as the cost of paying the final condemnation judgment. By joining with the County, it appears likely that we can avoid any question about our combined authority to obtain an Order of Immediate Possession. Immediate Possession may be needed to construct the roadway in time to meet the development needs of the area. This is especially true if SVC notifies the City that it intends to begin construction in the spring of 2009. We won't know SVC's decision until this coming December, but prudence would dictate that we be prepared to construct the road as soon as possible.

Negotiation efforts

City staff has communicated with all of the property owners who own property within the right-of-way identified for the project. Staff has explained the need for the project and the attendant right-of-way and has secured appraisals in conformance with Oregon Condemnation Law. The largest property owner has expressed an intent to oppose eminent domain proceedings including the City's request for immediate possession. Given this opposition, combined with the need to complete the infrastructure to serve anticipated growth, the City must proceed with eminent domain proceedings and judicial requests for immediate possession without delay.

Budget Impact:

Initiation of eminent domain proceedings, including condemnation of land and a motion for immediate possession to address the immediate needs for infrastructure improvements for the 53rd Avenue bridge and roadway project, will require expenditures for legal proceedings for those properties that oppose City purchase of their property. However, not proceeding with this action could result in significant financial risk to the City should the improvements not be completed within the time requirements set out in the Development Agreement with SVC, the State, and Linn County.

JVBD:MS:kw
Attachments

1997 TSP Project Map

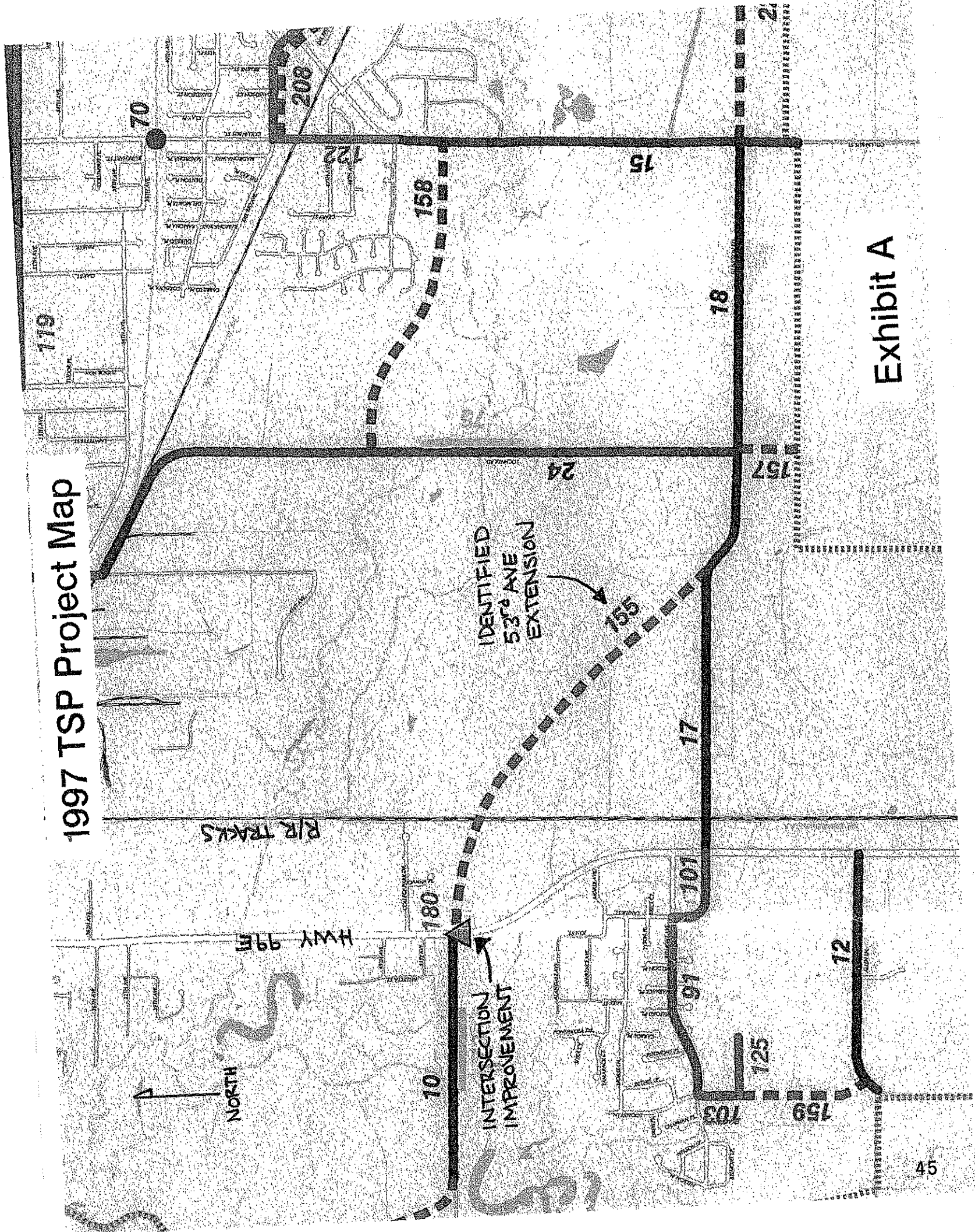


Exhibit A

PREAPPLICATION CONFERENCE WORKSHEET



Staff Contact: Don Donovan

Date of Meeting: January 12, 2000

Property Location: Land north and south of Ellingson Road, between Pacific Blvd. and Columbus Street, and who pays.

Request: General discussion about what streets, sewer, etc. are needed to serve land north and south of Ellingson Road, between Pacific Blvd. and Columbus Street, and who pays.

OWNER: LARRY EPPING.

Zoning: Not in city Floodplain Wetlands Hillside Airport Greenway

Other:

Applicable Criteria:

- ADC 2.250 criteria for conditional uses.
- ADC 8.070 criteria for site plan review.
- ADC 11.120 criteria for lot line adjustments.
- ADC 11.180 criteria for partitions.
- ADC 11.180 criteria for subdivisions.
- ADC 3.190-3.410 development standards in residential districts.
- ADC 10.190-10.430 standards for design of manufactured home parks.
- ADC 4.080-4.320 development standards in commercial districts.
- ADC 5.090-5.310 development standards in industrial district.
- ADC Art. 9 on-site development standards.
- ADC Art. 12 public improvements.

- ☆ The applicant must have a meeting with residents of the surrounding neighborhood prior to submitting an application for subdivision, multi-family, or manufactured home park development.
- ☆ A grading permit is required for fill in floodplain, wetlands, and/or steep slopes.

Who attended the preapplication meeting? City representatives: Don Donovan, Janet Morris, Gordon Steffensmeier, Mike Leopard (Planning), Ron Irish (Traffic Engineering), Jim Mackie/Mike McGilvray (Fire), Hank Stream (Building)

Others: SEE ATTACHED LIST.

The purpose of the preapplication meeting is to anticipate issues which may affect the design and/or cost of your project. The preliminary review will also identify what additional information, studies, etc., will be required for a complete application. Based on the information submitted for the preapplication meeting, your application must be accompanied by the following analyses/plans in order for the City to begin zoning and engineering review of the project:

Conceptual Plans: Landscape Parking Drainage Utilities Street Mobile Home Park Plan Urban Conversion Plan

Notes from Meeting:

- LARRY'S PROPERTY SHOWN ON MAP IN YELLOW FOR MEETING.
- WOULD LIKE TO ACQUIRE ENOUGH PROPERTY TO DO A MIXED-USE VILLAGE.
- NEEDS TO KNOW HOW COSTS CAN BE APPORTIONED TO OTHER BENEFITTING PROPERTIES, FOR MAJOR IMPROVEMENTS.
- OAK CREEK BASIN IS AN ISSUE - DRAINAGE & WETLANDS AND FLOODPLAIN. FILL IN FLOODPLAIN.
- CITY DOES NOT HAVE REQUIREMENT TO DO OUT TO COMPENSATE FOR FILL IN FLOODPLAIN NOW - BUT MAY BE ADOPTING THAT REQUIREMENT SOON (OVER NEXT YEAR).
- DENSITY TRANSFERS ?
 - PLANNING CODE ALLOWS DENSITY TRANSFER FROM WETLANDS AND FLOODPLAIN ONLY IF DEVELOPMENT IS DONE AS A PLANNED DEVELOPMENT.
 - CITY MAY RECHANING CODE IN RELATION TO THIS - LOOK FOR IDEAS FROM GREEN & LEPPING.
 - OPEN SPACE ZONING: MUCH OF THE PROPERTY AROUND OAK CREEK IS ZONED OPEN SPACE. ONLY MINIMAL DEVELOPMENT ALLOWED.
 - CITY IS IN PERIODIC REVIEW OF COMPREHENSIVE PLAN AND ZONING MAP - RIPARIAN CORRIDORS WILL BE LOOKED AT AND HOW TO PROTECT/ENHANCE.
 - STUBBS RAISED ISSUE OF NEW INTERCHANGE ON I-5, EXPANSION OF URBAN GROWTH BOUNDARY.
- TRANSPORTATION: HAS CITY LOOKED AT PLAN FOR STREETS IN THIS AREA. CITY HAS TSP. INTERCHANGE AT 7 MILE LANE - HIGHWAY 34 IMPROVEMENTS - MAY MITIGATE NEED FOR

Additional information may be requested if there is a change in your plans following the preapplication meeting. Also, in the course of reviewing the application, other issues may arise which were not anticipated for the preapplication conference. The City may request additional details, drawings, information, analyses, or plans up to 30 days following submittal of your application.

Attachments: Redlined Plan Application Engineering Review Fire Review Building Review

EPPING / STUBBS PREAPP 1/12/00

THIS INTERCHANGE. CITY WOULD HAVE TO WORK MORE WITH ODOT TO DETERMINE TIMING.

- POLITICS: DISPERSAL OF MULTI-FAMILY HOUSING, MANUFACTURED HOUSING. CITY COUNCIL AT THIS POINT MAY WANT TO SEE LESS HERE?!
- ANNEXATION: SOME IDENTIFICATION OF SPECIFIC HOUSING TYPES MAY BE NECESSARY.
 - CITY COULD ADOPT A "MIXED-USE" ZONE TO APPLY TO THIS LAND.
 - NEED ANNEXATIONAL STRATEGY.
- PARKS: INFO. TO APPLICANTS
- SCHOOLS: DON'T HAVE INFO YET. SUBMITTAL WAS GIVEN TO SCHOOL DISTRICT - HAVE NOT YET RESPONDED. CITY WILL CONTACT THEM AGAIN.
- COUNTY: SOME COUNTY ROADS IN THIS AREA (LOCKNER FOR EXAMPLE). CITY WILL COORDINATE WITH COUNTY.
- MORE POLITICS: CITY COUNCIL IS NOT REAL ENTHUSIASTIC ABOUT FORCING LOCAL IMPROVEMENT DISTRICTS. PEOPLE WHO ARE FARMING LAND MAY NOT WANT TO PARTICIPATE. REIMBURSEMENT AGREEMENTS HELP.
- COST ESTIMATES: "TURHPIKE STREETS" PROBABLY NOT OK IN CITY LIMITS. CITY WILL REVIEW ESTIMATES.
- EPPING: WILL SUBMIT LIST OF QUESTIONS, REQUESTS FOR CODE INTERPRETATIONS/CHANGES.

EPPING / STUBBS 1/12/00

- DON DOWDAN WILL BE CITY POINT OF CONTACT. WILL COORDINATE EVALUATION AND CITY RESPONSES TO MAJOR TRANSPORTATION, LONG-RANGE PLANNING ISSUES. MEETINGS WITH APPLICANTS AND INDIVIDUAL DEPARTMENTS ARE OK / ENCOURAGED.

FIRE: INDUSTRIAL, COMMERCIAL LAND REQUIRE FIRE FLOWS UP TO 3,000 - 4,000 GALLONS PER MINUTE.

- SECONDARY STREET ACCESS REQUIRED FOR MAJOR DEVELOPMENT.
- FIRE STATION MAY BE NEEDED ^{IN} THIS AREA.

- STUBBS SUGGESTS CITY LOOK AT SOME FUNDING FROM NTSB ~~NOTE~~ FOR RAILROAD OVER-CROSSING.

- CITY MAY WANT OWNERSHIP OF DAK CREEK CORRIDOR - EPPING MAY NOT WANT OWNERSHIP. PARKS SEE VALUE IN ACQUIRING. (SEE PARKS MASTER PLAN.)

EPPING/STUBBS PRE-APPLICATION MEETING 1/12/00

DON DONOVAN	CITY PLANNING
GORDON STEFFENSMEIER	"
Larry Epping	Petitioner
Rod Stubbs	Realtor
MARK GRONE	MULTI/TECH ENGR.
Steve Bryant	City Mgr
Helen Burns Sharp	City Com Dev
Sally Stutzman	Building
Glenda Radwansky	Public Works
Kou Rish	Public Works
MIKE LEOPARD	COMM. DEVEL.
Jim MacCie	FIRE DEPT.
Traci Cooper	Fire Dept.
John Bradner	Fire Dept.
Dave Curtis	Linn Co. Rd. Dept.
David Warren	Linn Co. Road Dept.
RICK CULLIN	CITY PLANNING
Kevin Kraitman	Fire Dept.
Floyd Collins	Public Works Director
Diane Taniguchi-Dennis	ASST PW Dir / City Engr.

Monday, December 27, 1999

Don Donovan
City of Albany
P.O. Box 490
Albany, OR 97321

Subject: Oak Creek Neighborhood - Granada Land Company

Dear Don,

We want to obtain information from the City of Albany with regard to every aspect concerning the development of properties in the vicinity of Oak Creek between Pacific Boulevard and Columbus Avenue. Beta Avenue on the south to the railroad spur located north of Oak Creek. I have requested a Pre-Development Conference scheduled for January 12, 2000. We are looking to present an overall budget for the installation of the basic roadway, sanitary sewer, storm sewer, and water system. These improvements will be needed to support development of the land. In the event the land is developed we want to understand how the costs will be allocated or distributed so that all landowners are treated fairly in some type of cost sharing formula that would be implemented when the land sells or is developed.

ANNEXATION AND PERMITTED LAND USE

We are looking for any special needs or preferences that the City of Albany may have with regard to land uses that would compliment the Greater Albany Comprehensive Plan. We recognize that the City of Albany requires a vote of its citizens before land can be annexed.

Our major concern is making certain Granada has the capability of building single family traditional three bedroom two car garage homes on small lots. Will the Comprehensive Plan encourage a mix of uses consistent with market demand? Is the City of Albany contemplating any changes to its development code that would require design review, zero lot line, or condominium development that have a proven record of long term problems related to market acceptance and maintenance? Will the City of Albany embrace the policy to eliminate single family homes in of greater density residential types?

OPEN SPACE, PARKS AND WETLANDS

What are the major open space and park features the City of Albany would be willing to consider along Oak Creek? If more land is added to the Open Space can there be minor adjustments to the Urban Growth Boundary to offset designation of Open Space? What is the community attitude regarding golf courses or similar outdoor activities? Is there a need for public school and park sites in this area?

STREETS & CIRCULATION

Beginning at Columbus Boulevard, Ellingston Road would be improved to an arterial standard west to Lochner Lane. From this point the roadway would be realigned to a point opposite 53rd Avenue where it would intersect with Pacific Boulevard (99E). An overpass where the road intersects with the Union Pacific Railroad would be required to handle the additional automobile traffic resulting from development plus increased rail traffic. Access to this area has restricted industrial development. We assumed the new road would terminate at Pacific Boulevard. If the City would prefer the alignment could terminate at Interstate 5. If that were the case the roadway may need to be realigned. Do you have a preference at this time?

The attached map map attempts to quantify the land that would benefit from this type of improvement. Would you agree? If not, what changes do you recommend. The purpose of identifying the area of benefit is to insure that costs are spread on some kind of equitable formula based on per square

foot or perhaps traffic generation.

STORM DRAINAGE

Oak Creek is the major tributary that drains the land in this area. What kind of provisions would you expect in a plan to address Storm drainage? Can these facilities be incorporated into the drainage system or wetland projects located in the low land lying adjacent to Oak Creek.

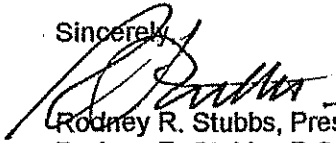
SANITARY SEWER

One of the alternatives being explored is to connect a sewer pipe to the pump station located south of Oak Creek adjacent to Pacific Boulevard. The pipe would extend east, cross the Union Pacific Railroad and extend to Lochner Road. Laterals would then be designed to flow north toward the trunk line. Are there any issues that we need to address in this regard?

WATER SYSTEM

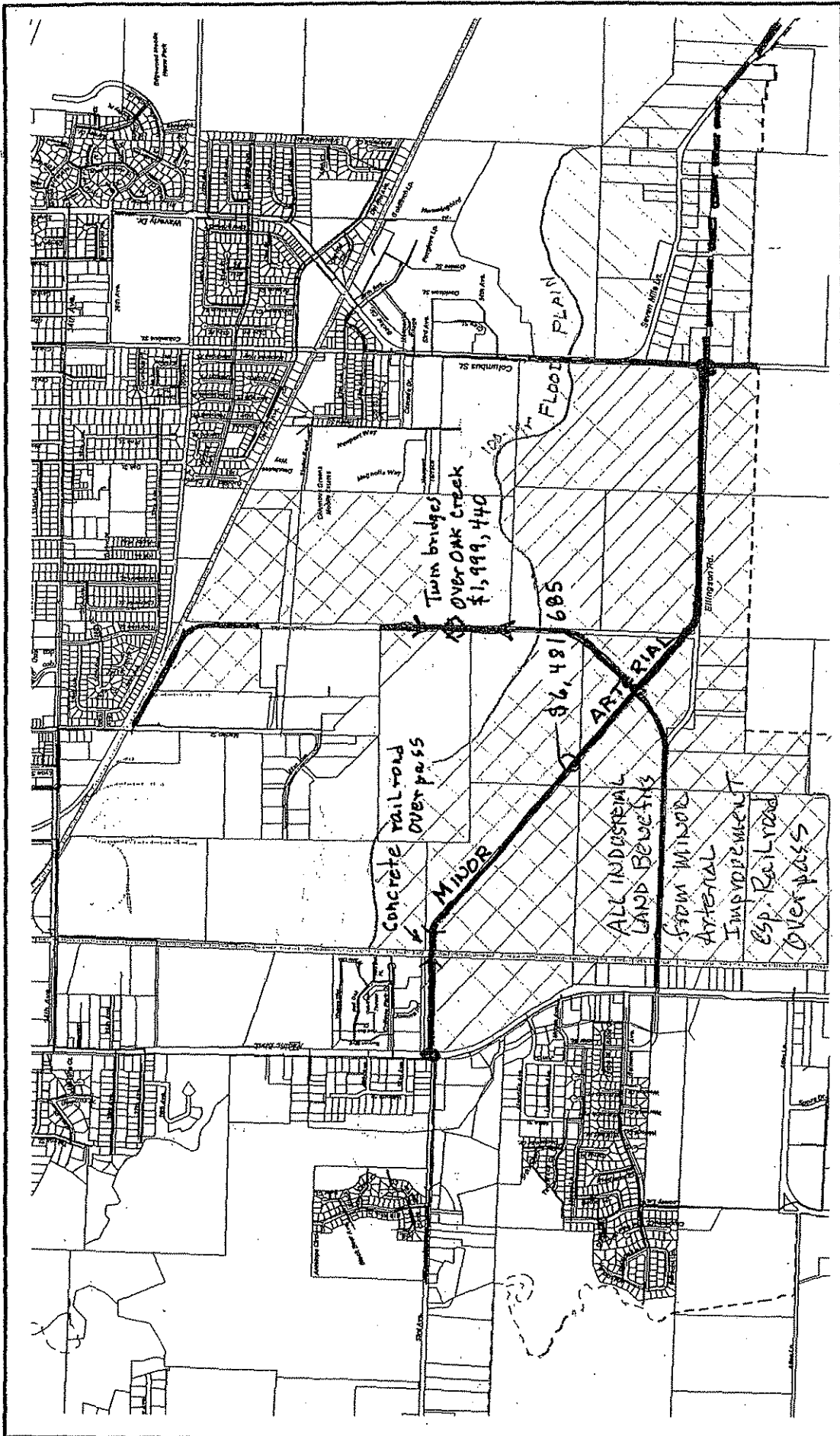
The major cost is the need to loop the water system throughout this part of the City of Albany. Will the assumptions included in this plan be adequate? If additional offsite improvements are needed please advise.

Sincerely,



Rodney R. Stubbs, President
Rodney R. Stubbs, P.C.
Eldred Realty, Inc.
PO Box 12511
Salem, OR 97309

Cc: Granada Land Company



South Albany and Vicinity MAJOR ROADWAY IMPROVEMENTS

Public Works Department

Client: Rod Stubbs

GIS Services

Sep 28, 1999

Secondary Benefit



This map was prepared by the City of South Albany, Oregon, and is not intended to be used for any other purpose. It is a preliminary map and is subject to change without notice. It is not a legal document. It is not intended to be used for any other purpose. It is not intended to be used for any other purpose. It is not intended to be used for any other purpose.

9/28/99

TO: Granada Land Company
FROM: Roger W. Baldwin
SUBJECT: Infrastructure development in South Albany between Highway 99E East to Columbus Avenue.

This cost estimate is based on the color-coded map supplied to us by your office. The map title is PARCELS – SOUTH ALBANY AREA and is dated 8/3/99.

1. Street Construction of 53rd Avenue at Pacific Boulevard to Columbus Avenue.

- a) Fully improved minor arterial, 58 feet wide on an 80 to 85 foot wide rights of way.
- b) Class "C" concrete curbs & 2 – 6lf wide sidewalks.
- c) Concrete railroad overpass.
- d) Traffic control lights at Pacific Boulevard and Columbus Avenue.
- e) Street lighting, signage & lane stripping.

Total Estimated Cost: \$ 6,481,685

2. Domestic Water Trunk Mains

- a) 24" DIA Ellingston Road to Seven Mile Lane.
- b) 24" DIA 34th Avenue via Lochner Lane to Ellingston Road.
- c) 12" DIA College Park Drive eastward to Lochner Lane.
- d) 2 each railroad bores.
- e) 2 each creek crossing
- f) All valves, hydrants, testing and chlorinating.

Total Estimated Cost \$ 1,027,259

3. Storm Sewers

- a) Allendale outlet at Pacific Boulevard 36" DIA, 15" DIA, 12" DIA & 36" railroad bore.
- b) Open channel along 53rd Avenue extended & North to Oak Creek.
- c) 30" DIA, 21" DIA, 18" DIA from Oak Creek to & along the north & west boundary of Henshaw property.

d) 42" DIA, 27" DIA from Oak Creek Northerly along the west boundary of Newport Terrace.

e) Manholes, testing & Appurtenances for the above.

Total Estimated Cost \$ 1,027,259

4. Sanitary Sewer Mains

a) 15" DIA & 8" DIA main from Pacific Boulevard Oak Creek Pump Station south easterly approximately 4,200 feet.

b) 8" DIA Ellingston Road Main & Lateral North.

c) 8" DIA Columbus Avenue Main & Ellingston Road Lateral.

d) Pump station at Oak Creek on Columbus Boulevard.

e) All manholes, flush, test system.

Total Estimated Cost \$ 2,101,178

5. Oak Creek Bridges

a) Twin bridges over Oak Creek.

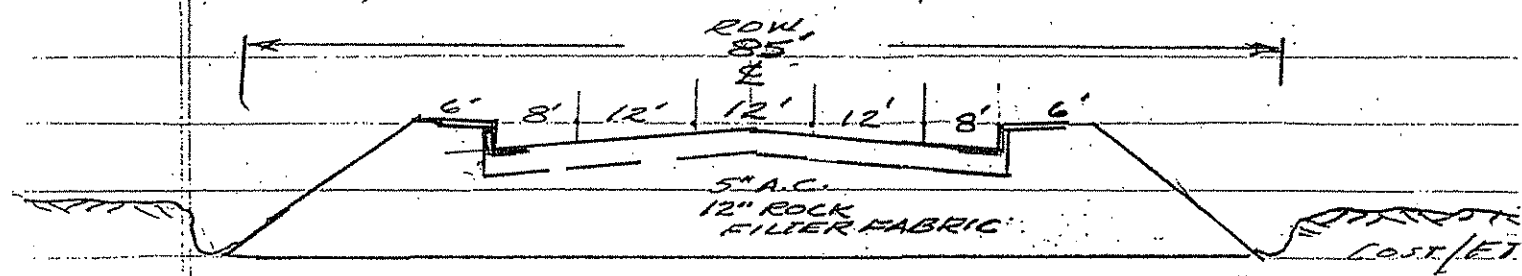
Total Estimated Cost \$ 1,999,440

TOTAL PROJECT COST \$13,973,605

Additional information regarding cost estimates are enclosed. Please review the assumptions regarding improvement specifications and note those changes that are needed for price adjustment. All prices are quoted in terms of 1999 dollars.

RWB 53 RD AVE - EXTEND EAST
4/21/99 TO COLUMBUS ST.

1 STREET IMPROVEMENTS



Exc.	8 CV/LE @ \$4.00/CV	= \$32.00/LE
FABRIC	99/50 FT, 80' WIDTH	= 7.20
ROCK	WIDTH 54', DEPTH 12" = 340 TONS/LE @ \$14.00	= 47.60
A.C.	WIDTH 47', DEPTH 5" = 147 TON/LE @ \$37.00	= 54.39
CURBS	CLASS C = 2 SIDES @ \$7.00/LE	= 14.00
SIDEWALKS	6' WIDE = 2 SIDES @ 15.00/LE	= 30.00
INLETS	34 EA @ \$1200.00 / 9700'	= 4.20
		<u>\$189.39</u>

SURVEYING, ENGINEERING CONTINGENCIES

FEE TO CITY @ 19% = 35.97

COST PER FOOT = \$225.36

9700' @ \$225.36/FT = 2,185,992.00

2. RAILROAD OVERPASS BRIDGE & ABUTMENTS

131,000 CY ABUTMENT FILLS, IMPROVEMENTS COVERED ABOVE.

LENGTH OF 34' HIGH BRIDGE = 160 LF

WIDTH OF BRIDGE = 66'. ESTIMATED COST \$3,8850

53RD AV. EXTENDED EAST

3. TRAFFIC

LIGHTING 1- 8 WAY LIGHTING @ 99E = \$135,000.00
1- 6 WAY LIGHTING @ COLUMBUS ST = 117,500.00

2. INTERSECTION

4 STREET 22 EA. @ \$3650.00 EA = 80,300.00
LIGHTING (UNCL'D BURIED WIRE IN CONDUIT & VAULTS)

5. MISC.

SIGNAGE LUMP SUM = 18,220.00
STRIPPING \$351,020.00
17% PLANS, FEES ENG. & SURV. = 59,673.00

TOTAL = \$410,693.00

TOTAL FOR 53RD EXTENDED \$
9700 LF TO EAST = 6,481,685.00

RWB
9/21/99

54 3/4

DOMESTIC WATER TRUNK MAINS

ELLINGSON RD & LOCKNER RD

& 12" COLLEGE PARK INTERTIE

1. 24" CL. 52 DUCTILE IRON
20,110 L.F @ $\$77^{10}/L.F$ = $\$1,550,481^{00}$
 2. 24" BUTTERFLY GATE VALVES
18 EA @ $\$3210^{00}$ EA = $57,780^{00}$
 3. COLLEGE PARK TO LOCKNER RD
INTERTIE
12" D.I. MAIN 4300 L.F @ $\$36^{39}/L.F$ = $174,240^{00}$
 4. 12" BUTTERFLY GATE VALVES
5 EA @ $\$1220^{00}$ EA = $6,100^{00}$
 5. FIRE HYDRANTS
47 EA @ $\$2810^{00}$ EA = $132,070^{00}$
 6. CREEK CROSSINGS W/SCOUR
PADS & BLOCKING (LOCKNER)
2 EA @ $\$16,400^{00}$ EA = $32,800^{00}$
 7. 24" BLOW-OFF ASSEMBLY
1 EA @ $\$1620^{00}$ EA = $1,620^{00}$
 8. BORE RAIL ROAD R.O.W
COLLEGE PARK. LUMP SUM = $22,400^{00}$
 9. FLUSH TEST & CHLORINATE
LUMP SUM = $9,100^{00}$
 10. ENGINEERING, INSP. SURVEYS & FEES
19% = $377,452^{00}$
- PROJECT TOTAL $2,364,043^{00}$

STORM SEWERS

OUTLET ON 99E @ ALLENDALE

- 1. 36" CONC. MAIN GRAVEL B/F
1200 LF @ \$105⁰⁰/LF = \$126,000⁰⁰
- 2. RAILROAD BDRE LUMP SUM = 32,525
- 3. 15" CONC. MAIN, GRAVEL B/F
1,600 LF @ \$485⁰⁰/LF = 77,600⁰⁰
- 4. 12" CONC. MAIN, GRAVEL B/F
620 LF @ 39⁰⁰/LF = 24,180⁰⁰
- OPEN CHANNEL TO DAKCK
- 5. EXCAVATE & SPREAD SPOILS
35 C.Y./LF @ 5600 LF @ \$1⁰⁰/C.Y. = 31,360⁰⁰
CLEAR, GRUB, 1450 LF ALONG
EAST BOUNDARY GRANADA PROP.
LUMP SUM = 7,500⁰⁰
- 6. TWIN 48" CONCRETE CULVERTS
53 AV. EXTENDED W/ HEADWALS = 35,400⁰⁰
HENSHAW PROP. STORM SEWER
- 7. 30" CONC. MAIN GRAVEL B/F
1,000 LF @ \$90⁰⁰/LF = 90,000⁰⁰
- 8. 21" CONC. MAIN GRAVEL B/F
900 LF @ \$61⁰⁰/LF = 54,900⁰⁰
- 9. 18" CONC. MAIN GRAVEL B/F
710' @ \$58⁰⁰/LF = 41,180⁰⁰

STORM SEWERS CONT'D

MAIN WEST OF NEWPORT TERRACE

- 10. 42" CONC MAIN GRAVEL B/F
2000 LF @ \$121⁰⁰/LF = \$242,000⁰⁰
- 11. 27" CONC MAIN GRAVEL B/F
200 LF @ \$82⁰⁰/LF = 16,400
- 12. MANHOLES FOR THE ABOVE
MAINS 24 EA @ \$3660⁰⁰ = 87,840

\$ 866,885⁰⁰

18 1/2% PLANS, FEES, ENG & SURVEYS 160,374⁰⁰

TOTAL = \$ 1,027,259⁰⁰

TWIN BRIDGES OVER
OAK CREEK CHANNELS

LUMP SUM:

2 EA @ \$996,220⁰⁰ EA = 1,992,440

SANITARY SEWERS

99 E PUMP STATION & SOUTH EASTERL

- 1. 15" PVC MAIN w/ROCK B/F
1600 LF @ \$60⁵⁰/FT = 96,800⁰⁰
- 2. RAILROAD BORE L. SUM = 32,500⁰⁰
- 3. 8" PVC MAIN w/ROCK B/F
2700 LF @ 38⁵⁰/LF = 103,950⁰⁰

ELLINGSON RD MAIN & LATERAL

- 4. 8" PVC MAIN w/ROCK B/F
6,550 LF @ \$63⁵⁰/LF = 415,925⁰⁰

LOCKNER RD MAINS

- 5. 8" PVC MAIN w/ROCK B/F
4,000 LF @ \$57⁰⁰/LF = 228,000⁰⁰

COLUMBUS ST & LATERAL

- 6. 8" PVC MAIN w/ROCK B/F
4,450 LF @ \$64⁵⁰/LF = 287,025⁰⁰

7. SANITARY SEWER PUMP STATION

@ OAK CK & COLUMBUS ST.

LUMP SUM = 442,800⁰⁰

8. SANITARY MANHOLES

48 EA. @ \$3420⁰⁰ = 164,160⁰⁰

9. FLUSH & TESTING SYSTEM. = 9,500⁰⁰

\$ 1,780,660⁰⁰

18% ENG, SURVEYING, FEES 320,518⁰⁰

TOTAL \$ 2,101,178⁰⁰

Traffic Impact Analysis

Piano Retail Center

**Prepared for
Tran Co
Salem Oregon**

**Prepared with
Multi/Tech Engineering, Inc.
Salem Oregon**

January 2006

**Prepared by
Associated Transportation Engineering & Planning, Inc. (ATEP)
PO Box 3047
Salem, Oregon 97302**

Associated Transportation Engineering & Planning, Inc.

Hour which is less than the 2007 v/c ratio without the Piano Retail Center of 0.861. There may be other alternatives for mitigation that could be considered.

The developer is proposing to construct a separated grade crossing at 53rd Street. This will be the second separated crossing in Albany and provide a significant improvement to the east-west street systems in Albany. The crossing is a major investment in the transportation infrastructure and there are ongoing discussions to determine the interest and contributions by various involved agencies to determine the cost participation. It seems reasonable to assume the developer will install the separated crossing, with funding from the City, the County and ODOT and will not be expected to mitigate the level of service at other intersections, or instead for the developer to transfer monies to other intersections from the funded amount for the over crossing, with the understanding the developer mitigation project costs will be offset by increased funding of the over crossing project.

Summary & Recommendations

This study examines the intersections in the vicinity of the proposed Piano Property Retail site and the impact that additional traffic would have on the site. The 32 Acre site would be developed with a variety of retail stores and include a "big-box" store. The developer is proposing to construct an overpass for 53rd Street to cross over the main line railroad track just east of Highway 99E. The overpass is a major capital investment for the developer, but is an opportunity for the City of Albany to develop a second separated grade railroad track crossing.

It is proposed that the responsibility for mitigation of traffic impacts be assumed by the appropriate jurisdiction as intersections get busier and that the developer be responsible to coordinate the construction of the over crossing. It will be essential that several of the interested parties participate in the funding of the overpass and street improvement as it will serve much more than just the Piano Property Retail site.

Larry Epping

2485 Lancaster Drive N.E.
Salem, Oregon 97305

Telephone 503-588-1900 or 503-364-3632

March 14, 2006

Mr. John Stewart
444 NW 9th ST
Corvallis, OR 97330

Dear John,

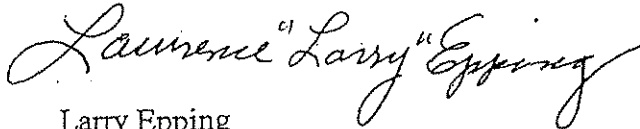
I am writing this letter in reference to a meeting we held on Saturday, 3/11/06. The following are the items we discussed concerning the South Albany Oakcreek plan.

1. The existing open space line should be amended to coincide with the flood plain line. If the flood plain line moves towards the floodway the open space line should move accordingly.
2. The future school site should be south of Ellingson road and south of Lochneord road.
3. My property next to and east of the railroad should be zoned multi family to allow apartments and duplexes. These units would be buffered from the railroad with berms, fences and types of high growing bushes and trees.
4. One of the first actions needs to determine the final location and the Right of Way width of 53rd street east of the railroad.
5. The Village Center should be north of Ellingson and East of Lochneord.
6. There needs to be a coordinated effort by all of the owners and DSL to address the wetlands.
7. I am proposing, on my property, to do some filling into the flood plain and move the open space line to create large estate lots and houses to create a variety of housing types in my property. I would create various water features north of these estate lots.
8. I have an existing lake on one of my properties. I plan on keeping this lake intact and to back up lots to this lake where each of those lots would have an undivided ownership interest in the lake. I have completed this same concept on my Pioneer Village project in Silverton and there it has been very successful.
9. It seems like the DSL has an escalation as to its definition of wetlands. We need to have a total group effort to evaluate the wet lands in this total South Albany area to make it economical to proceed with the implementation of the plan.
10. In order to present a plan that addresses all of the costs to develop these properties and still make it economically fesible we need to evaluate the costs of all of the following;
 - a. The Rail Road overpass.
 - b. The extension of 53rd street to Ellingson with a row of 96 feet.
 - c. The extensive wetlands.

- d. The fish and wildlife requirements.
- e. The location of the open space line.
- f. The possibility, to alter meeting the code requirements to do some filling in the flood plain.
- g. The costs to supply the main infrastructure to this total area.
- h. The location and costs of the water reservoir.
- i. The possibility of costs of other items such as archeological, endangered species, drainage-ways, trees etc.

11. At our meeting I supplied you with a colored map showing these and other planning recommendations. Please keep me posted as you progress with this Oak Creek plan.

Sincerely,



Larry Epping

cc:

Mark Grenz (Engineer)

Clarence Barker (Surveyor)

Kris Gorsuch (Attorney)

Michael Rotsolk (Wetlands)

Set up meeting w/ neighbors.

**Oak Creek / 53rd Property
Estimated Schedule
April, 2006**

The following estimated project schedule will be based on the outcome and information received at our meeting with the City of Albany and Albany Rail on April 27 at 2:00 p.m.

<u>Date:</u>	<u>Task:</u>
4/27/06	City of Albany Meeting / Albany Rail
5/8/06	Conceptual route for 53 rd extension laid out and reviewed with the City of Albany.
5/19/06	Foundation Engineering to get started on geotech report. <i>(estimate 6 weeks to complete this task)</i>
5/20/06	Draft Development Agreement provided to City of Albany and ODOT outlining Over Crossing as total mitigation for ALL of Epping property west and east of the Crossing.
5/26/06	Barker to have detailed topography and stake the approximate railroad to get to geotech.
6/5/06	Development Agreement Signed by both City of Albany and ODOT <i>(Must be signed prior to final route approval and engineering starting)</i>
6/6/06	Multi/Tech to review final route with City of Albany
7/7/06	Foundation Engineering to have complete geotech report Multi/Tech to provide BMGP with Preliminary Street Design to be used in the Structural Design. BMGP to begin structural design and drawings <i>(estimate 2 months for this task).</i>
9/7/06	BMGP to have drawings completed. Multi/Tech to have street design completed.

9/8/06 Submit plans to the City of Albany for approval.

9/15/06 ATEP to work with City of Albany on Application to ODOT Rail for the Over Crossing Permit.

10/31/06 ATEP to have coordinated and completed signal modification w/ ODOT and City of Albany.

12/02/06 Bid out to contractors.

3/01/07 ATEP to have approvals from ODOT Rail (*estimate 6 months to complete this task*). Governor Kulongoski anticipated to be helpful in this area.

Spring 2007 Start work on abutments and road.

Fall 2007 Work basically complete except for paving.

October 2007 Pave as weather permits.

Brian Grenz will be the Project Manager assigned from our office on this project. The following consultants have committed to be a part our project team:

Structural Consultant: **BMGP**
 Contact Person: Bill Pease, P.E.
 1045 13th Street SE
 Salem, OR 97302
 Office: (503) 399-1399

Surveyor: **BARKER SURVEYING**
 Contact Person: Clarence Barker, PLS
 2035 25th Street SE
 Salem, OR 97302
 Office: (503) 588-8800

Geotechnical Engineer: **FOUNDATION ENGINEERING**
 Contact Person:
 Jim M
 820 NW Cornell Ave., OR 97330
 (541) 757-7645

Legal Counsel: **SAALFELD GRIGGS, P.C.**
 Contact Person: Kris Gorsuch

250 Church Street SE
Suite 300
Salem, OR 97301
Office: (503) 399-1070

Traffic Engineer:

**ASSOCIATED TRANSPORTATION ENGINEERING &
PLANNING, INC. (ATEP)**
Contact Person: Karl Birky, P.E.
PO Box 3047
Salem, OR 97302
Office: (503) 364-5066

RESOLUTION NO. _____

A RESOLUTION DECLARING A NECESSITY THAT THE CITY ACQUIRE CERTAIN REAL PROPERTY LOCATED IN LINN COUNTY AND PARTIALLY IN THE CITY OF ALBANY AND PARTIALLY OUTSIDE OF THE CITY LIMITS, BUT WITHIN THE URBAN GROWTH BOUNDARY, FOR THE PURPOSE OF IMPROVING AND CREATING A PUBLIC RIGHT-OF-WAY.

WHEREAS, the 53rd Avenue roadway extension has long been recognized as an improvement which is necessary for the development of the City's transportation network. Completion of this transportation link, along with elimination of an at-grade high-speed rail crossing, will promote transportation efficiency; and

WHEREAS, the 53rd Avenue street improvement project will allow the closure of an at-grade crossing of high-speed rail tracks on Ellingson Road. This crossing has been identified by ODOT Rail as a significant safety hazard; and

WHEREAS, the 53rd Avenue street improvement project will promote police and fire safety by replacing an at-grade crossing that is periodically blocked by high-speed rail traffic with a reliable roadway overpass, which will enhance police and fire services in the vicinity of the proposed roadway improvements by shortening anticipated response times; and

WHEREAS, the road crossing is at a location where train speed is relatively fast. The crossing is not up to current ODOT Rail standards. There is little stacking distance between the traffic signal on Highway 99E and the railroad tracks. This can result in vehicles getting backed up at the signal onto the railroad tracks and/or vehicles getting backed up from the railroad crossing onto Highway 99E; and

WHEREAS, economic development in southwest Albany (including unincorporated territory within the UGB) requires the infrastructure roadway improvements proposed; and

WHEREAS, the Transportation System Plan (TSP) adopted in 1997 identified the extension of 53rd Avenue to Ellingson Road at the approximate location that has been identified during the design effort. The need for this roadway extension predated the current development plans of any of the property owners within the vicinity; and

WHEREAS, the 53rd Avenue improvements will facilitate orderly and compact development in a manner consistent with the land use designations in the Comprehensive Plan, as well as those proposed for adoption in the Oak Creek Refinement Plan, presently under development; and

WHEREAS, the 53rd Avenue improvements are within the Urban Growth Boundary (UGB); and

WHEREAS, the proposed roadway improvements will create the transportation infrastructure necessary for industrial, commercial, and residential development of the area in the vicinity of the proposed roadway improvements as called for in the Development Code and Comprehensive Plan. In those areas outside the current city limits, annexation, zoning, and land division decisions will all be made based upon specific applications in conformance with adopted land use regulations; and

WHEREAS, approximately 400 acres of land in the vicinity of the proposed roadway improvements have been zoned for commercial or industrial use for more than 25 years. Notwithstanding this property's location within city limits, it has remained underdeveloped and principally used for agricultural purposes; and

WHEREAS, the proposed 53rd Avenue street improvement is designed to accommodate, facilitate, and encourage the commercial, industrial, and residential development projected within the vicinity of the proposed roadway improvements and, through utilization of bicycle lanes and pedestrian walkways, will encourage alternative transportation; and

WHEREAS, the land zoned Regional Commercial ("Piano" property) has been zoned for commercial use for more than 20 years. It was rezoned for regional commercial use in 2002. The regional commercial zone is intended for large commercial users that are expected to draw customers from within and without the city limits. Such users typically generate high traffic volumes; and

WHEREAS, the 53rd Avenue street improvement project has been coordinated with ODOT Highways and ODOT Rail and is being designed to meet a transportation analysis scoped by ODOT to mitigate and relieve many of the transportation impacts which development within the area, in the vicinity of the proposed roadway improvements, may be anticipated to have upon State Highway 99E; and

WHEREAS, there is an immediate need to commence the 53rd Avenue street improvement to meet the development and safety needs of the area; and

NOW, THEREFORE, BE IT RESOLVED that, based upon the recitals set forth above which are fully incorporated herein, and the memorandum of City Engineer Mark Shepard, dated July 16, 2008, which is attached hereto and incorporated herein as Exhibit "1" and the information provided by staff at the City Council meeting held on July 23, 2008, the City of Albany and staff be and are hereby authorized to continue to negotiate an agreement with the owners and other persons of interest in the real property described in Exhibits "2," located in the City of Albany, Linn County, Oregon; and in the event that no satisfactory agreement can be reached, then the City of Albany be and the same hereby are directed and authorized to commence and prosecute to final determination such proceedings as may be necessary to acquire said real property and interest therein, and that upon the filing of such proceeding, possession of the real property and interest therein may be taken immediately. The subject property is necessary for improvement and creation of a public right-of-way in connection with the development of certain real property, and the proposed use is located in a manner that will be most compatible with the greatest public good and the least private injury; and

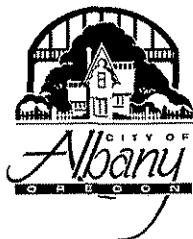
BE IT FURTHER RESOLVED that the Mayor is authorized, but not required to enter into an Intergovernmental Agreement pursuant to the provisions of ORS Chapter 190, with Linn County, whereby the City may exercise Linn County's Eminent Domain authority, in addition to the City's Eminent Domain authority, in the acquisition and immediate possession of the real property necessary for the 53rd Avenue roadway extension. The Mayor is authorized to enter into this Intergovernmental Agreement if, after consultation with the City's legal counsel, he determines that the Intergovernmental Agreement will facilitate the prompt acquisition of the property needed for the 53rd Avenue street improvement.

DATED AND EFFECTIVE THIS 23RD DAY OF JULY 2008.

Mayor

ATTEST:

City Clerk



TO: Albany City Council
VIA: Wes Hare, City Manager
FROM: Stewart Taylor, Finance Director *ST*
DATE: July 15, 2008, for the July 23, 2008, City Council Meeting
SUBJECT: OECDD Financing Contract

RELATES TO STRATEGIC PLAN THEME: ● A Healthy Economy

● Effective Government

RELATES TO:

- Increase the percentage of family-wage jobs in Albany.
- Create a financial model to support long-term goals.

Action Requested:

Adopt the resolution authorizing the Mayor to sign the financing contract with the Oregon Economic and Community Development Department to provide financing for infrastructure improvements related to the SVC Development Agreement and the Oak Creek Revitalization Area.

Discussion:

In October, 2006 the City of Albany entered into a development agreement with SVC Manufacturing, Inc., the state of Oregon Economic and Community Development Department (OECDD), and other state and local partners. The agreement requires the City to complete transportation, sewer, and water improvements to support the SVC manufacturing facility and future development of other properties in the area. The agreement further requires OECDD to provide short and long term financing for construction of the improvements.

The financing contract provides a non-revolving Special Public Works Fund loan in the maximum aggregate principal amount of \$14,200,000. The terms of the loan require the full faith and credit of the City of Albany, a pledge of tax increment financing from the Oak Creek Revitalization Area, and a pledge of LID assessments and other resources set forth in the development agreement. In consideration of the complexity of the project and the funding sources, the terms of the loan also provide flexibility for payments during the early years of the loan.

The first five annual loan payments are interest only payments. However, if the resources pledged to the loan repayment are not sufficient to pay all interest accrued to a payment date, the unpaid portion of accrued interest will be carried forward to the next payment date. The City may request a sixth year of interest only payment, if needed. Any unpaid interest following the interest only period will be added to the principal balance of the loan for the long term financing.

Because tax increment financing from the Oak Creek Revitalization Area is the principal resource for loan repayments, the financing contract describes an agreement between the Albany Revitalization Agency and the City. The agreement will include a pledge of the tax increment financing and a statement that the loan is within the maximum amount of indebtedness that may

OECD Financing Contract

Page 2

July 15, 2008

be incurred under the Oak Creek Urban Renewal Plan. The agency will consider the agreement at its meeting on July 16 and the City Council will consider the agreement on July 23.

Budget Impact:

The financing contract sets forth the terms and conditions of a loan of up to \$14,200,000 for infrastructure improvements. Loan proceeds and related expenditures are included in the current budget. The first loan repayment date is expected to be December 1, 2008.

ST

Attachment

c: Jim Delapoer, City Attorney
Diane Taniguchi-Dennis, Public Works Director
Kate Porsche, Urban Renewal Coordinator

G:\Mary\CCMemos\Stewarts OECD Loan Agr.doc

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE MAYOR TO SIGN THE FINANCING CONTRACT WITH THE OREGON ECONOMIC AND COMMUNITY DEVELOPMENT DEPARTMENT TO PROVIDE FINANCING FOR INFRASTRUCTURE IMPROVEMENTS RELATED TO THE SVC DEVELOPMENT AGREEMENT AND THE OAK CREEK REVITALIZATION AREA.

WHEREAS, in October, 2006 the City of Albany entered into a development agreement with SVC Manufacturing, Inc., the state of Oregon Economic and Community Development Department (OECDD), and other state and local partners; and

WHEREAS, the agreement requires the City to complete transportation, sewer, and water improvements to support the SVC manufacturing facility and future development of other properties in the area; and

WHEREAS, the agreement further requires OECDD to provide short and long term financing for construction of the improvements; and

WHEREAS, the City and OECDD have set forth the terms and conditions of a Special Public Works Fund loan in the maximum aggregate principal amount of \$14,200,000; and

WHEREAS, the financing contract has been reviewed by staff and by the Albany City Council; and

WHEREAS, the Albany City Council hereby determines that it is in the public interest to execute the financing contract.

NOW, THEREFORE, BE IT RESOLVED that the Mayor of the City of Albany is hereby authorized to execute, on behalf of the City of Albany, the financing contract with OECDD in a form substantially the same as the financing contract attached as Exhibit A, and incorporated herein, and is authorized to deliver the other financing documents required by the contract.

DATED AND EFFECTIVE THIS 23rd DAY OF JULY, 2008.

Mayor

City Clerk

OREGON
ECONOMIC & COMMUNITY
DEVELOPMENT DEPARTMENT

Main Office
775 Summer St. NE, Suite 200
Salem, OR 97301-1280
Phone 503-986-0123
TTY 1-800-735-2900
Fax 503-581-5115
<http://www.ecdm.state.or.us/>

May 14, 2008

RECEIVED

MAY 15 2008

City of Albany
City Managers Office

The Honorable Dan Bedore
Mayor of Albany
333 Broadalbin Street / PO Box 490
Albany, OR 97321

RE: Special Public Works Fund, Project Number L08001, (\$14,425,000), City of Albany, Municipally-Owned Infrastructure for SVC Manufacturing, Inc.

Dear Mayor Bedore:

Enclosed are two originals of the financing contract between the State of Oregon and the City of Albany. Please note the requirements of Section 9 "Certain Covenants of Borrower" and the special conditions in Exhibit D. Also enclosed are the following:

- The **Promissory Note** (previously sent to you)
- A **Signature Card**, which authorizes cash drawdowns for the project. The directions for filling it out are on the back. Please retain a copy of the signed signature card for your official file (previously sent to you).
- A **Deposit Option Notification** form where you indicate the method to receive funds (previously sent to you)
- A **Checklist** with sample documents that must be completed and returned with the contracts (previously sent to you)
- A sample **Disbursement Request** form for your future use, which is also available electronically by request in Microsoft Excel[®] format (previously sent to you)

Please return the following to our office by July 15, 2008:

- Two signed original **Financing Contracts**
- The signed original **Promissory Note**
- One fully executed original **Signature Card**
- One original completed and signed **Deposit Option Notification** form
- The **Checklist** and the Checklist documents

Please let us know when your project nears construction so we can send you a sign to post in a visible location, noting the participation of the Special Public Works Fund and the Oregon Lottery.

The public, the media, and governmental agencies will view your project with great interest. We are most anxious for your project to succeed and wish to extend any help you need. If you have any questions, please call Louise Birk, Regional Coordinator, at (503) 986-0130.

Sincerely,



Laird Bryan, Infrastructure Manager
Community Development Division
Enclosures

Contract Services\L08001 Albany Letter Rev 2008 05 14.doc

**STATE OF OREGON
ECONOMIC AND COMMUNITY DEVELOPMENT DEPARTMENT
SPECIAL PUBLIC WORKS FUND
FINANCING CONTRACT**

PROJECT NUMBER: L08001

PROJECT NAME: Municipally-Owned Infrastructure for SVC Manufacturing, Inc.

This Financing Contract ("Contract") is entered into between the State of Oregon acting by and through its Economic and Community Development Department ("Department") and the City of Albany ("Borrower") with respect to financing for the Project, which is described in Exhibit B. Unless the context requires otherwise, capitalized words and phrases not defined in the main body of this Contract shall have the meanings assigned to them in Exhibit A attached hereto.

The parties agree as follows:

1. Effective Date and Contract. This Contract shall become effective on the date this Contract is fully executed and approved as required by applicable law. This Contract consists of the following parts:

- The Contract without Exhibits
- Exhibit A: General Definitions
- Exhibit B: Project Description
- Exhibit C: Project Budget
- Exhibit D: Special Conditions of Award
- Exhibit E: [Reserved]
- Exhibit F: Form of Promissory Note
- Exhibit G-1: Form of Legal Opinion (Borrower)
- Exhibit G-2: Form of Legal Opinion (URA)

2. Department Financing.

a. In accordance with the terms and conditions of this Contract and in order to finance the Project, Department shall provide Borrower from the Special Public Works Fund ("Fund") created by ORS 285B.455, and Borrower shall accept from Department, (1) a grant ("Grant") in the maximum aggregate amount of \$225,000, subject to Sections 2(b) and 2(c) below, and (2) a non-revolving loan ("Loan") in the maximum aggregate principal amount of \$14,200,000. All Department Financing is subject to, and Borrower shall comply with, the terms and conditions of this Contract.

b. Grant proceeds shall only be used to pay for costs incurred by Borrower on the Project for short-term safety mitigation improvements required by ODOT that (1) relate to the continued use of the Ellingson Road railroad crossing until the 53rd Avenue road extension improvements are completed as described in the Development Agreement, (2) are required by the Traffic Impact Analysis (TIA) as described in the Development Agreement, (3) meet the statutory and administrative rule requirements for municipal ownership and (4) are required by the Development Agreement. The mitigation improvements referred to above will be short-term and not be sufficient to require an ODOT 'rail crossing order.'

c. If the 53rd Avenue road extension improvements are completed prior to the need to undertake the safety mitigation improvements described in (b) above, this Grant shall terminate, except that \$100,000 of the Grant proceeds will be credited by the Department as a prepayment of \$100,000 toward the outstanding balance of the Loan. The Borrower acknowledges and agrees that when Grant proceeds are credited to the outstanding balance of the Loan, the amount of the Loan that is repaid will not be available for borrowing by the Borrower.

3. Disbursement of Department Financing Proceeds.

a. Disbursement of the Loan and Grant. Subject to Sections 2 and 3(b), Department shall disburse the Loan and Grant proceeds to Borrower on an expense reimbursement or cost incurred basis. Borrower shall submit a disbursement request on a form provided by Department; provided, however, that the Department shall have no obligation to make, and Borrower shall not request, any disbursement after thirty-six (36) months after the date Loan proceeds are first disbursed or later than forty-two (42) months after the Loan Closing Date.

b. Conditions Precedent to Disbursement. Department's obligation to disburse Department Financing proceeds to Borrower under this Contract is subject to satisfaction of each of the following conditions precedent:

(1) Department has received from Borrower the following, in form and substance satisfactory to Department and its Counsel and recorded, when required by Department:

(a) The Note, duly executed by an Authorized Officer of Borrower.

(b) A copy of the ordinance, order or resolution of the governing body of Borrower authorizing the execution and delivery of this Contract and the other Financing Documents and Borrower's performance, observance and discharge of its duties, covenants, agreements and obligations hereunder and thereunder.

(c) An opinion of Borrower's Counsel substantially in the form set forth in Exhibit G-1.

(d) A copy of the ordinance, order or resolution of the governing body of the URA authorizing the execution and delivery of the IGA between the URA and Borrower and the URA's performance, observance and discharge of its duties, covenants, agreements and obligations thereunder, or if such ordinance, order or resolution is not required by law and not done, evidence of such authorization.

(e) An opinion of URA's Counsel, substantially in the form set forth in Exhibit G-2.

(f) A certified copy of the Urban Renewal Plan for the Oak Creek Urban Renewal Area.

(g) A certified copy of the IGA between Borrower and the URA.

(h) Evidence that Borrower has paid at least \$25,000 of the costs incurred for the short-term safety mitigation improvements described in Section 2(b) above (For initial disbursement of Grant).

(2) All other agreements, certificates, documents and information required by this Contract to be submitted by Borrower prior to the disbursement or otherwise reasonably requested by Department, all duly executed and acknowledged as reasonably requested by Department.

(3) Department and the Fund have received sufficient funding, appropriations and other expenditure authorizations to allow Department, in the exercise of its reasonable administrative discretion, to make the disbursement and there are sufficient moneys in the accounts or funds to be used to cover the disbursement, as determined by Department in the reasonable exercise of its administrative discretion, to permit Department to make the disbursement.

(4) No Default or Event of Default has occurred.

(5) Department has received from Borrower a disbursement request on the form provided by Department.

(6) All other conditions precedent to disbursement set forth elsewhere in this Contract or in the other Financing Documents have been satisfied.

4. **Interest; Loan Repayment.** Borrower shall repay the Loan in accordance with the terms and conditions thereof as set forth in this Contract and the Note and as set forth below:

a. **Interest.**

(1) **Interest Only Payments.** Up to the fifth Payment Date, interest shall accrue on the outstanding principal balance of the Loan at the rate of 4.91% per annum.

(2) **Principal and Interest Payments.** Commencing the Fifth Payment Date, interest shall accrue as follows:

(a) **If the Loan is included in a State Bonds issue.** Interest shall be calculated to be the coupon rates on the State Bonds, but in any event the True Interest Cost shall not be more than 5.50%.

(b) **If the Loan is not included in a State Bonds issue.** 5.50% per annum.

(3) **Interest Computation.** Interest shall be computed on the outstanding principal balance on the basis of a 360-day year, consisting of twelve (12) thirty-day (30-day) months.

b. **Payments.**

(1) **Interest Only Payments.** On the first five Payment Dates, Borrower shall pay all unpaid interest accrued to the Payment Date on the outstanding principal balance of the Loan. However, if the Incremental Property Tax Revenues plus LIDs Assessment Revenues pledged to Loan repayment are not sufficient to pay all interest accrued to an interest only Payment Date, the unpaid portion of accrued interest shall be payable on the next Payment Date. Any interest accrued but unpaid on the day after the fifth Payment Date (i.e., after the end of the interest-only period) shall be added to the principal balance unless there is a sixth interest only Payment Date, pursuant to Section 4.b(2), in which case any interest accrued but unpaid on the day after the sixth Payment Date shall be added to the principal balance.

(2) **Additional Interest Only Payment Date.** Borrower may request to extend the interest only payment period for one additional year, provided that the additional interest only Payment Date is no more than six (6) years from the date of the first Loan disbursement hereunder and provided that Borrower submits a written request for the extension to Department at least thirty (30) days prior to the Payment Date that is the subject of the extension request.

(3) **Payment of Principal and Interest.** Commencing the Payment Date following the final interest only Payment Date and on each Payment Date thereafter, Borrower shall make level installment payments of principal and interest, each such installment shall be in an amount sufficient to pay the interest accrued to the date of payment and so much of the principal as will fully amortize the Loan (including the capitalized interest referred to in Section 4.b(1)) by the Maturity Date at which time the entire outstanding principal balance and all accrued unpaid interest of the loan shall be due and payable in full.

(4) **Inclusion in State Bonds issue:** At the Department's sole discretion, the Loan may be included in a State Bonds issue, but only if the result will be a lower all-in True Interest Cost to the Borrower, and any modification of this Contract required for the Loan to be included in the State Bonds issue does not change the underlying terms and conditions of the Loan other than as set forth herein. The Department may require revision or restatement of this Contract to permit inclusion of the Loan in a State Bonds issue.

c. **Note with Schedule.** In the event the Department requires that the principal and interest payment amounts and dates to be shown in a schedule attached to the Note and a "Schedule 1 - Payment Schedule" is attached to the Note pursuant to this Section 4.c, the third paragraph of the Note shall read as follows:

"Commencing on the First Payment Date and thereafter on December 1 of each year, the Borrower shall pay all unpaid interest accrued to the date of payment and make the payments of principal as set forth in "Schedule 1 - Payment Schedule" (which is attached to this Note) until the Maturity Date, at which time the entire outstanding principal balance and all accrued unpaid interest shall be due and payable in full."

d. **Mandatory Prepayment.** Borrower shall prepay the Loan upon the occurrence of any of the following:

(1) Borrower's receipt and to the extent of the proceeds of any lease, exchange, transfer or other disposition of any portion of or interest in the Project permitted under Section 9(d), that are not used to replace property that is part of the Project.

(2) Borrower's receipt and to the extent of the proceeds arising from any condemnation of the Project or any portion thereof;

(3) Borrower's receipt and to the extent of any insurance proceeds arising from the destruction of or damage to the Project or any portion thereof;

(4) Borrower's receipt and to the extent of the proceeds arising from any suit or negotiated settlement against SVC due to its breach of the Development Agreement or any portion thereof;

(5) As required by any other provisions of this Contract or any other Financing Document.

Upon the occurrence described in ii or iii above, proceeds shall be paid to Department and (a) shall be applied to prepay the principal of and interest on the Loan in accordance with Sections 4.d. and 5 of this Contract or (b), upon the request of Borrower, but only so long as the Borrower is not in default under any of the Financing Documents, may be applied to rebuilding and restoration of the Project or a portion thereof, on such terms and conditions as Department shall require in its sole discretion.

e. **Optional Prepayment.** The Borrower may prepay principal or interest upon 30 days notice to Department without penalty; provided, however, that if the Loan is included in a State Bonds issue, the Bond Indenture will govern optional prepayments.

5. **Application of Payments.** Unless otherwise restricted by applicable law, Department shall apply all payments received under this Contract or any Financing Document, and regardless of how Borrower labels or designates them, to Borrower's obligations under this Contract and the other Financing Documents in the following order:

a. First, to satisfy any obligation of Borrower to pay attorneys fees, other fees and expenses.
b. Second, to pay any interest due and payable under the Loan
c. Third, to pay any principal due and payable under the Loan.
d. Fourth, to pay any other amounts due and payable under this Contract or any of the other Financing Documents.

e. Fifth, to the extent permitted by Section 4, as a prepayment of principal on the Loan, applied in the reverse order of principal maturity.

6. **Sources of Repayment of Borrower's Obligations.** Borrower shall apply funds derived from the sources of repayment described in Exhibit D to the punctual payment of the principal of and interest on the Loan and to satisfy all other payment obligations of Borrower under this Contract and the other Financing Documents; provided, however, that nothing in this Contract shall be deemed to prevent Borrower from paying any amounts payable by Borrower under this Contract or any other Financing Document from any other legally available source.

7. [Reserved]

8. **Representations and Warranties.** In addition to all other representations and warranties of Borrower set forth in this Contract or any other Financing Document, Borrower represents and warrants to Department as follows:

a. **Organization and Authority.**

(1) Borrower is a Municipality duly and validly organized and in existence under the laws of the State of Oregon.

(2) Borrower has full legal right, power, and authority and all necessary licenses and permits required (a) if the Project involves construction or acquisition of real property, improvements or equipment, to own, operate and maintain the Project, other than licenses and permits relating to the Project that Borrower expects to receive in the ordinary course of business, (b) to carry on its activities relating thereto, (c) to execute and deliver this Contract and the other Financing Documents required to be executed and delivered by it, (d) to incur and perform its obligations under this Contract and the other Financing Documents, (e) to undertake and complete the Project, and (f) to carry out and consummate all transactions contemplated by this Contract and the other Financing Documents.

(3) Borrower is authorized under Oregon law to undertake the Project and to receive financing for the Project from Department under the terms and conditions of this Contract and the other Financing Documents.

(4) The Project, this Contract and all other Financing Documents, Borrower's execution and delivery hereof and thereof and the transactions contemplated hereby and thereby have been duly authorized by Borrower's governing body, and members or voters if necessary, and this Contract and all other Financing Documents have been executed and delivered on behalf of Borrower by an Authorized Officer of Borrower.

(5) Assuming that Department has all the requisite power and authority to authorize, execute and deliver, and has duly authorized, executed and delivered this Contract and the other Financing Documents required hereunder to be executed by Department, this Contract and the other Financing Documents executed and delivered by Borrower constitute the legal, valid and binding obligations of the Borrower enforceable in accordance with their terms, subject to the laws of bankruptcy and other similar laws affecting the enforcement of creditors' rights generally.

b. **Full Disclosure.** There is no fact that Borrower has not disclosed to Department in writing in Borrower's Application or otherwise that materially adversely affects the properties, activities, prospects or condition (financial or otherwise) of Borrower or the Project, or the ability of Borrower to observe, perform and discharge all of its duties, covenants, agreements and obligations under this Contract and the other Financing Documents. Borrower's Application and Borrower's representations and warranties in this Contract or any of the other Financing Documents do not contain any untrue statement of a material fact or omissions that could reasonably be perceived as misleading.

c. **Pending Litigation.** There are no proceedings pending or, to the knowledge of Borrower, threatened against or affecting Borrower, in any court or before any governmental authority or arbitration board or tribunal that, if adversely determined, would materially adversely affect the properties, activities, prospects or condition (financial or otherwise) of Borrower or the Project or the ability of Borrower to observe, perform and discharge its duties, covenants, agreements and obligations under this Contract and the other Financing Documents, that have not been disclosed in writing to Department in Borrower's Application or otherwise.

d. **Compliance with Existing Agreements, Etc.** Borrower's authorization and performance of all obligations and covenants under this Contract and the other Financing Documents will not (i) result in any breach of any existing ordinance, order or resolution, trust agreement, indenture, mortgage, deed of trust, contract or other instrument to which Borrower is a party or by which the Project or any of its property or assets may be bound, or (ii) result in the creation or imposition of any lien, charge or encumbrance upon any property or asset of Borrower, except as previously disclosed to Department, (iii) result in any violation of the provisions of the charter or other document pursuant to which Borrower was created or established, or (iv) violate any laws, ordinances, orders, resolutions, governmental rules, regulations or court orders that apply to Borrower, the Project, or its properties or operations.

e. **No Defaults.** No event has occurred and no condition exists that, upon authorization, execution and delivery of this Contract or any of the other Financing Documents or receipt of the Department Financing proceeds and with notice or lapse of time or both would constitute an Event of Default hereunder. Borrower is not in violation of, and has not received notice of any claimed violation of, any term of any agreement or other instrument to which it is a party or by which it, the Project, or its property may be bound, which violation would materially adversely affect the activities, prospects or condition (financial or otherwise) of Borrower or the Project or the ability of Borrower to observe, perform and discharge its duties, covenants, agreements and obligations under this Contract and the other Financing Documents.

f. **Governmental Consent.** Borrower has obtained or will obtain all permits and approvals required by any governmental body or officer for the making, observance, performance and discharge by Borrower of its duties, covenants, agreements and obligations under this Contract and the other Financing Documents and for the undertaking or completion of the Project and the financing or refinancing thereof. Borrower has complied or will comply with all applicable provisions of law requiring any notification, declaration, filing or registration with any governmental body or officer in connection with the making, observance, performance and discharge by Borrower of its duties, covenants, agreements, and obligations under this Contract and the other Financing Documents or with the undertaking or completion of the Project and the financing or refinancing thereof. No consent, approval or authorization of, or filing, registration or qualification with, any governmental body or officer that has not been obtained is required on the part of Borrower as a condition to the authorization, execution and delivery of this Contract or any other Financing Document.

g. **Compliance with Law.** Borrower is in compliance with Oregon Public Contracting Code, ORS Chapters 279A, 279B, and 279C, as applicable. Borrower is also in compliance with all other laws, ordinances, and governmental rules and regulations to which it is subject, the failure to comply with which would materially adversely affect the ability of Borrower to conduct its activities or undertake or complete the Project or the condition (financial or otherwise) of Borrower or the Project.

h. The Project.

(i) Borrower will have adequate funds to complete the Project.

(ii) Borrower will have adequate funds to repay the Loan, and the Loan does not have a final maturity date after the end of the useful life of the Project.

i. [Reserved]

j. **Continuing Representations.** The representations and warranties of the Borrower contained herein shall be true on the effective date of this Contract and at all times thereafter until the later of actual completion of the Project, final repayment of the Loan, or final performance, observance and discharge of all duties, covenants, agreements and obligations of Borrower under this Contract and the other Financing Documents.

9. **Certain Covenants of Borrower.** Borrower shall comply with the following covenants:

a. **Use of Financing Proceeds.** Borrower may use the Department Financing proceeds solely in accordance with the Project budget (Exhibit C) solely to cover Eligible Costs necessarily incurred by Borrower in completing the Project and subject to any other restrictions imposed by other provisions of this Contract, the other Financing Documents or by applicable law. Borrower may not transfer Department Financing proceeds among line items in the Project budget without the prior execution of an amendment to this Contract, in accordance with Section 28, modifying the Project budget to reflect the transfer. Borrower may not use any of the Department Financing proceeds to cover Eligible Costs that are incurred prior to November 14, 2006. Borrower may not use any of the Department Financing proceeds to cover Eligible Costs that are paid by other financing for the Project from the State of Oregon or by financing for the Project provided by a third party. Borrower shall promptly repay to Department any Department Financing proceeds disbursed to Borrower hereunder that are used in any manner other than as permitted by this Contract and the other Financing Documents or that remain unutilized upon actual completion of the Project. All payments under this Section 9(a) shall be applied to Borrower's obligations in accordance with Section 5.

b. **Provision of Moneys for Completion of the Project.** Borrower agrees to complete the Project in accordance with the requirements of this Contract no later than September 1, 2010. Borrower further covenants and agrees to provide from its own fiscal resources or other sources all moneys, in excess of the total amount of Department Financing proceeds it receives pursuant to this Contract, required to complete the Project.

c. [Reserved]

d. **Disposition of Project.** So long as the Loan is outstanding and unless worn out, obsolete, or in the reasonable business judgment of Borrower, no longer useful in the operation of any facilities constructed, improved or acquired as part of the Project, Borrower shall not sell, lease, exchange, abandon, transfer or otherwise dispose of all or substantially all or any substantial portion of or interest in any facilities constructed, improved or acquired as part of the Project, unless Department consents thereto in advance in writing. Department may not unreasonably withhold, condition or delay its consent to any such transaction.

e. [Reserved]

f. **Notice of Material Adverse Change.** So long as the Loan is outstanding, Borrower shall promptly notify Department of any material adverse change in the activities, prospects or condition (financial or otherwise) of Borrower or the Project or in the ability of Borrower to make all Loan Payments and otherwise observe and perform its duties, covenants, obligations and agreements under this Contract and the other Financing Documents.

g. Financial Statements and Reports. So long as the Loan is outstanding, Borrower, if so requested by Department and at Borrower's expense, shall deliver to Department in form and detail satisfactory to Department:

(i) Unaudited statements of revenues, expenditures, cash flows, and changes in retained earnings for the period, all in comparative form and all in reasonable detail and certified by the chief financial officer of Borrower.

(ii) Such other statement or statements or reports as to Borrower as Department may reasonably request.

h. [Reserved]

i. Access for Disabled Persons. If Borrower operates a commercial facility or public accommodations, as those terms are defined in the Americans with Disabilities Act of 1990, P.L. 101-336, Borrower shall comply with the Americans with Disabilities Act and ORS 447.210 to 447.280.

j. Further Assurances. Borrower shall, at the request of Department, authorize, execute, acknowledge and deliver such further resolutions, conveyances, transfers, assurances, financing statements and other instruments and documents as may be necessary or desirable for better assuring, conveying, granting, assigning and confirming the rights, security interests and agreements granted or intended to be granted by this Contract and the other Financing Documents.

10. Records Maintenance, Access and Confidentiality.

a. Access to Records and Facilities. The Department, the Secretary of State's Office of the State of Oregon, the federal government, and their duly authorized representatives shall have access to the books, documents, papers and records of Borrower that are directly related to this Contract, the other Financing Documents, the Project, or the Department Financing proceeds provided hereunder, for the purpose of making audits and examinations. In addition, the Department, the Secretary of State's Office of the State of Oregon, the federal government, and their duly authorized representatives may make and retain excerpts, copies and transcriptions of the foregoing books, documents, papers and records. Borrower shall permit authorized representatives of Department, the Secretary of State's Office of the State of Oregon, and the federal government to perform site reviews and inspections of the Project after reasonable prior written notice to Borrower.

b. Retention of Records. Borrower shall retain and keep accessible all books, documents, papers, and records that are directly related to this Contract, the other Financing Documents, the Project or the Department Financing proceeds, for a minimum of three (3) years, or such longer period as may be required by other provisions of this Contract or applicable law, following the later of the actual completion of the Project, final repayment of the Loan, or final completion and satisfaction of all reporting requirements of Borrower under this Contract and the other Financing Documents. If there are unresolved issues at the end of the three-year period, Borrower shall retain the books, documents, papers and records until the issues are resolved.

c. Expenditure Records. Borrower shall document the use of all Department Financing proceeds disbursed by Department under this Contract and the expenditure or utilization of all resources used in the Project. Unless applicable federal law requires Borrower to utilize a different accounting system, Borrower shall create and maintain all expenditure records in accordance with generally accepted accounting principles consistently applied and in sufficient detail to permit Department to verify how the Department Financing proceeds were expended and how the other resources were expended or utilized.

11. [Reserved]

12. [Reserved]

13. Economic Benefit Data. The Department may request that the Borrower submit specific requested data on the economic development benefits of the Project, from the date hereof until six (6) years after the Project Completion Date. Upon such request by the Department, Borrower shall, at the Borrower's expense, prepare and file the requested data within the time specified in the request. Data shall document specific requested information such as any new direct permanent or retained jobs resulting from the Project and other information to evaluate the success and economic impact of the Project.

14. Event of Default. Each of the following constitutes an Event of Default under this Contract:

a. Borrower fails to make any Loan Payment or any mandatory Loan Prepayment when due.

b. Borrower fails to perform, observe or discharge any of its duties, covenants, agreements or obligations set forth in this Contract (other than as described in any other subsection of this Section 14) and such failure is not cured within fifteen (15) business days following written notice, specifying such failure and requesting that it be remedied, is given to Borrower by Department. Any event described in subsections a, c, d, e, f or g hereof shall be referred to as an "Automatic Default." If an Automatic Default occurs, Borrower shall be in default hereunder, without any requirement for any notice or opportunity to cure. If any default other than an Automatic Default is curable and if Borrower has not been given a notice of a breach of the same provision of any of the Financing Documents within the preceding twelve (12) months, the Department shall send Borrower written notice describing such default. Borrower may cure such default within fifteen (15) business days after the date on which such notice is mailed to Borrower; however, if such cure requires more than fifteen (15) business days, Borrower shall not be in default if Borrower immediately initiates steps which the Department deems in its sole discretion to be sufficient to cure the default and thereafter continues and completes all reasonable and necessary steps sufficient to produce compliance as soon as reasonably practical but in any event no later than 120 days from the delivery of the written notice referred to above.

c. Any representation, warranty or statement made by or on behalf of Borrower herein, in any other Financing Document, or in any agreement, instrument, certificate, document or report furnished in compliance with or with reference to this Contract, any other Financing Document or the Loan or in connection with or with reference to the Lottery Bonds, including but not limited to any representation, warranty or statement with respect to current or historical information relied upon by Department to monitor progress on the Project, the use of Department Financing proceeds, is false or misleading in any material respect;

d. Borrower fails to complete the Project or fails to complete the Project by the Project Completion Deadline;

e. Borrower (i) applies for or consents to the appointment of, or taking of possession by, a receiver, custodian, trustee, or liquidator of itself or all of its property, (ii) admits in writing its inability, or is generally unable, to pay its debts as they become due, (iii) makes a general assignment for the benefit of its creditors, (iv) is adjudicated as bankrupt or insolvent, (v) commences a voluntary case under the federal Bankruptcy Code (as now or hereafter in effect), (vi) files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, (vii) acquiesces in writing to, any petition filed against it in an involuntary case under the Bankruptcy Code, or (viii) takes any action for the purpose of effecting any of the foregoing;

f. A proceeding or case is commenced, without the application or consent of Borrower, in any court of competent jurisdiction, seeking (i) the liquidation, dissolution or winding-up, or the composition or readjustment of debts, of Borrower, (ii) the appointment of a trustee, receiver, custodian, liquidator, or the like of Borrower or of all or any substantial part of its assets, or (iii) similar relief in respect to Borrower under any law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, or an order for relief against Borrower is entered in an involuntary case under the federal Bankruptcy Code (as now or hereafter in effect); and

g. An event of default occurs under any other Financing Document or any financing document for any other loan made by any third party or parties to Borrower in connection with the Project.

15. Notice of Event of Default. Borrower shall give Department prompt telephonic notice of the occurrence of any Event of Default described in Section 14(e) and (f) and of the occurrence of any other event or condition that constitutes an Event of Default under Section 14 at such time as any senior administrative or financial officer of Borrower becomes aware of the existence thereof. Any telephonic notice pursuant to this section shall be confirmed in writing as soon as practicable by Borrower.

16. Remedies upon Event of Default. Upon the occurrence of an Event of Default, Department may pursue any remedies available under this Contract or any other Financing Document and may take whatever other action at law or in equity that may appear to Department to be necessary or desirable to collect the amounts then due and thereafter to become due under this Contract or any Financing Document or to enforce the performance and observance of any duty, covenant, obligation or agreement of Borrower under this Contract or any Financing Document, including but not limited to the following remedies and actions:

a. Declaring all Loan Payments and all other amounts to be paid by Borrower under this Contract or any other Financing Document to be immediately due and payable, and upon notice to Borrower the same shall become immediately due and payable without further notice or demand.

b. Terminating all further disbursements of Department Financing proceeds.

c. Declaring Borrower ineligible to receive future awards from the Department.

d. Applying amounts otherwise due to Borrower from the State of Oregon to payment of the amounts due under this Contract or any other Financing Documents, as provided by Oregon law.

e. Foreclosing liens or security interests or otherwise realizing upon any Collateral securing Borrower's performance, observance and discharge of its duties, covenants, agreements and obligations under this Contract or any other Financing Document.

17. Termination of Department Financing. Department may, by and effective upon written notice to Borrower and under the following circumstances, terminate Department's obligation under this Contract and the other Financing Documents to provide the Department Financing to Borrower:

a. Upon an Event of Default.

b. If Department or the Fund fails to receive sufficient funding, appropriations and other expenditure authorizations to allow Department, in the reasonable exercise of its administrative discretion, to continue providing the Department Financing under this Contract and the other Financing Documents.

c. If there are insufficient moneys in the Special Public Works Fund or any other account or fund to be used to provide the Department Financing, as determined by Department in the reasonable exercise of its administrative discretion.

Upon exercise of its termination right under this Section 17, Department shall have no further obligation to provide Department Financing to Borrower under this Contract or the other Financing Documents. Termination of the Department Financing under this Section 17 shall not affect Borrower's obligations under this Contract and the other Financing Documents; provided, however, that upon termination of the Department Financing under this Section 17, Borrower shall no longer be obligated to complete the Project.

18. Notice. Except as otherwise expressly provided in this Contract, any notices to be given hereunder or under any other Financing Document shall be given in writing by personal delivery, facsimile, or mailing the same, postage prepaid to Borrower or Department at the address or number set forth below, or to such other addresses or numbers as either party may indicate pursuant to this section. Any notice so addressed and mailed shall be effective five (5) days after mailing. Any notice delivered by facsimile shall be effective on the day the transmitting machine generates a receipt of the successful transmission, if transmission was during normal business hours of the party receiving the communication, or on the next Business Day, if transmission was outside normal business hours of the party receiving the communication. To be effective against Department, any notice transmitted by facsimile must be confirmed by telephone notice to Department's Community Development Division, Operations Manager at (503) 986-0138. Any notice given by personal delivery shall be effective when actually delivered.

Notices to Department:

Oregon Economic and Community Development Department
Community Development Division, Operations Manager
RE: Project Number L08001
775 Summer Street N.E., Suite 200
Salem, Oregon 97301-1280
Facsimile Number: (503) 581-5115

Notices to Borrower:

City Manager
City of Albany
333 Broadalbin Street / PO Box 490
Albany, OR 97321
Facsimile Number: (541) 917-7511

19. Severability. The parties agree that if any term or provision of this Contract is declared by a court of competent jurisdiction to be 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 Contract did not contain the particular term or provision held to be invalid.

20. Counterparts. This Contract may be executed in several counterparts, 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 Contract so executed shall constitute an original.

21. Governing Law, Consent to Jurisdiction. This Contract and all other Financing Documents shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively, "Claim") between Department (and any other agency or department of the State of Oregon) and Borrower that arises from or relates to this Contract or the other Financing Documents shall be brought and conducted solely and exclusively within the Circuit Court of Marion County in the State of Oregon, other than Claims which must be brought and conducted in another Circuit Court of the State of Oregon; provided, however, if a Claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this section be

construed as a waiver by the State of Oregon of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the eleventh amendment to the Constitution of the United States or otherwise, from any Claim or from the jurisdiction of any court. BORROWER, BY EXECUTION OF THIS CONTRACT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.

22. Compliance with Law. Borrower shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the Contract, the other Financing Documents, or to the Project. Without limiting the generality of the foregoing, Borrower expressly agrees to comply with the following laws, regulations and executive orders to the extent they are applicable to the Contract, the other Financing Documents, or the Project: (a) all applicable requirements of state civil rights and rehabilitation statutes, rules and regulations and (b) ORS 659A.145, 659A.400, 659A.403, and 659A.406 and all regulations and administrative rules established pursuant to those laws in the construction, remodeling, maintenance and operation of any structures and facilities, and in the conduct of all programs, services and training associated with the Project. These laws, regulations and executive orders are incorporated by reference herein to the extent that they are applicable to the Contract, the other Financing Documents or the Project and required by law to be so incorporated. Borrower shall, to the maximum extent economically feasible in implementation of the Project, use recycled paper (as defined in ORS 279A.010(ee)), recycled PETE products (as defined in ORS 279A.010(ff)), and other recycled products (as "recycled product" is defined in ORS 279A.010(gg)). All employers, including Borrower, that employ subject workers who provide services 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.

23. Minority, Women & Emerging Small Business. ORS 200.090 requires all public agencies to "aggressively pursue a policy of providing opportunities for available contracts to emerging small businesses..." The Oregon Economic and Community Development Department encourages Borrower, in any contracting activities, to follow good faith efforts in ORS 200.045, available at <http://www.leg.state.or.us/ors/200.html>. Additional resources are provided by the Governor's Advocate for Minority, Women & Emerging Small Business at <http://egov.oregon.gov/Gov/MWESB/index.shtml>. Also, the Office of Minority, Women, and Emerging Small Business at the Department of Consumer and Business Services maintains a list of certified firms and can answer questions. Search for certified MWESB firms on the web at: <http://imd10.cbs.state.or.us/ex/dir/omwesb/>.

24. Assignment of Contract, Successors in Interest.

a. Borrower shall not assign or transfer any interest in this Contract or in any other Financing Document without the prior written approval of Department. Any such assignment or transfer, if approved, is subject to such conditions and provisions as the Department may deem necessary. No approval by the Department of any assignment or transfer shall be deemed to create any obligation of the Department in addition to those set forth in the Contract or the other Financing Documents nor will Department's approval of an assignment or transfer relieve Borrower of any of its duties or obligations under this Contract or any of the other Financing Documents.

b. The provisions of this Contract and the other Financing Documents shall be binding upon and shall inure to the benefit of the parties hereto, and their respective successors and permitted assigns.

25. No Third Party Beneficiaries. Department and Borrower are the only parties to this Contract and are the only parties entitled to enforce its terms. The parties agree that Borrower's performance under this Contract is solely for the benefit of Department. Nothing in this Contract gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons any greater than the rights and benefits enjoyed by the general public unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Contract.

26. Integration. This Contract, including all Exhibits (which are by this reference incorporated herein), and the other Financing Documents constitute the entire agreement between the parties on the subject matter hereof. All Exhibits are incorporated in this Contract by this reference. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Contract.

27. No Remedy Exclusive, Waiver. No remedy herein conferred upon or reserved to the Department is intended to be exclusive, and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Contract or any of the Financing Documents or now or hereafter existing at law or in equity. No delay or omission to exercise any right, remedy or power accruing upon any Event of Default shall impair any such right, remedy or power or shall be construed to be a waiver thereof, but any such right, remedy or power may be exercised from time to time and as often as may be deemed expedient. No single or partial exercise of any right, power or privilege under this Contract or any of the Financing Documents shall preclude any other or further exercise thereof or the exercise of any other such right, power or privilege. To entitle the Department to exercise any remedy reserved to it in this Contract or any other Financing Document, it shall not be necessary to give any notice, other than such notice as is specifically and expressly required by this Contract or such Financing Document.

28. Amendment. No modification or change of terms of this Contract shall bind either party unless in writing and signed by both parties and, when required, the Oregon Department of Justice. No waiver or consent shall be effective unless in writing and signed by the party against whom enforcement is sought. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given.

29. Headings. The headings and captions to sections of this Contract have been inserted for identification and reference purposes only and shall not be used to construe the meaning or to interpret this Contract.

30. No Construction against Drafter. The terms of this Contract shall not be construed against either party as the drafter hereof.

31. Time is of the Essence. Borrower agrees that time is of the essence under this Contract and the other Financing Documents.

32. Independent Contractors. The parties agree and acknowledge that their relationship is that of independent contracting parties and that Borrower is not an officer, employee, or agent of the State of Oregon as those terms are used in ORS 30.265 or otherwise.

33. Insurance. So long as the Loan is outstanding, Borrower shall maintain fire and hazard insurance, liability insurance, and such other insurance against loss or damage to the Project or the Collateral of the kinds customarily insured against by persons or entities similarly situated, with an insurer acceptable to Department, in such amounts and by such methods as shall be adequate. Each insurance policy must contain a provision that there shall be no cancellation, material change, or refusal to renew such insurance policies without 30 days prior written notice to the Department. As evidence of the insurance coverages required by this Contract, and prior to the execution of this Contract, Borrower shall furnish certificate(s) of insurance to Department at the address set forth above. The liability insurance coverage

required by this section must name the State of Oregon, Economic and Community Development Department, including its officers and employees, as additional insureds but only with respect to acts or omissions of the Borrower, its officers, employees or agents or contractors under this Contract or with respect to the Project. Each policy shall contain a severability of interest clause. If Borrower is a Municipality, in lieu of obtaining insurance from a third party carrier, Borrower may, with the prior written approval of Department, satisfy the insurance requirements of this section through a program of self-insurance whose terms and conditions are acceptable to Department.

34. Contract to Survive Lottery Bonds. Borrower acknowledges that its duties, covenants, agreements, and obligations under this Contract and the other Financing Documents shall survive the discharge of any bond indenture applicable to the Lottery Bonds and payment of the principal of, redemption premium, if any, and interest on the Lottery Bonds.

35. Disclaimer of Warranties. Borrower acknowledges and agrees that Department makes no warranty or representation, either express or implied, as to the value, design, condition, merchantability or fitness for particular purpose or fitness for any use of the Project or any portions thereof or any other warranty or representation with respect thereto.

36. Indemnity. To the extent authorized by law, Borrower shall (subject to ORS chapter 180) defend, save, hold harmless, and indemnify the State of Oregon and Department and their officers, employees and agents from and against all claims, suits, actions, proceedings, losses, damages, liability, and court awards including costs, expenses, and attorney fees incurred as a result of, arising out of, or relating to any act or omission (or alleged act or omission) by Borrower or its officers, employees, contractors, or agents under this Contract or any other Financing Document or with respect to the Project; provided, however, that the provisions of this section are not intended to and shall not be construed as a waiver of any defense or limitation on damages provided for under and pursuant to Chapter 30 of the Oregon Revised Statutes or other laws of the State of Oregon or under the laws of the United States.

37. Attorney's Fees and Other Expenses. To the extent permitted by the Oregon Constitution and the Oregon Tort Claims Act, the prevailing party in any dispute arising from this Contract shall be entitled to recover from the other its reasonable attorney's fees, costs and expenses at trial and on appeal. Reasonable attorney fees shall not exceed the rate charged to the Department by its attorneys. The Borrower shall, on demand, pay to the Department reasonable expenses incurred by the Department in the collection of Loan payments.

38. Unconditional Obligations. The provisions of this Contract shall constitute a contract between Department and Borrower and shall be enforced by Department. The obligation of Borrower to perform, observe and discharge its duties, covenants, agreements and obligations contained herein and in the Financing Documents shall be absolute and unconditional, and shall not be subject to any of the following:

a. Any offset, counterclaim, recoupment, defense or other right that Borrower may have against Department or any contractor or anyone else for any reason whatsoever;

b. Abatement through damage, destruction or non-availability of the Project or System, including through eviction or constructive eviction or taking by eminent domain;

c. Any failure of Department to perform, observe or discharge any covenant, agreement, or obligation whether expressed or implied, or any duty, liability, or obligation arising out of or connected with the Project; or

d. Any other event, act of God, or circumstance whatsoever, whether or not similar to any of the foregoing.

39. **Limitation of Liability.** In no event shall Department or its agents be liable or responsible for any direct, indirect, incidental, special or consequential damages in connection with or arising out of this Contract, any other Financing Document or the Project or the existence, furnishing, functioning or use of the Project or any item or products or services provided in connection therewith.

40. **Limitation of Borrower Remedies.** In the event of any failure by Department to perform, observe or discharge any of its covenants, agreements or obligation under this Contract, Borrower's remedy shall be limited to injunction, special action, action for specific performance, or any other available equitable remedy designed to enforce the performance or observance of any duty, covenant, obligation or agreement of Department hereunder as may be necessary or appropriate.

The parties hereto have executed this Contract as of the dates set forth below their respective signatures. Borrower, by signature of its Authorized Officer, hereby acknowledges that it has read this Contract, understands it, and agrees to be bound by its terms and conditions.



STATE OF OREGON

acting by and through its Economic and
Community Development Department



CITY OF ALBANY

By: _____
Laird Bryan, Operations Manager
Community Development Division

By: _____
The Honorable Dan Bedore
Mayor of Albany

Date: _____

Date: _____

APPROVED AS TO LEGAL SUFFICIENCY IN ACCORDANCE WITH ORS 291.047:

/s/ Lynn T. Nagasako, Sr. AAG (as per email dated 03/27/2008)
Lynn T. Nagasako, Sr. Assistant Attorney General

Date: March 27, 2008

**EXHIBIT A
GENERAL DEFINITIONS**

Capitalized words and phrases not otherwise defined in this Contract shall have the meanings assigned to them in this Exhibit, unless the context clearly requires otherwise:

Actual Project Costs means all expenses incurred by Borrower to complete the Project.

Application means Borrower's application to the Department for financing for the Project signed by an Authorized Officer of Borrower on August 24, 2006, as supplemented from time to time, which is on file with the Department.

Area means the Oak Creek Urban Renewal Area.

The term "**Assessment Revenues**" has the meaning ascribed thereto by Section IV.A. of Exhibit D.

Authorized Officer means, in the case of Borrower, a person authorized pursuant to a resolution, order or ordinance of Borrower's governing body to act as an authorized officer of Borrower to perform any act or execute any document relating to this Contract or a Financing Document on behalf of Borrower.

Bond Indenture means the Restated Indenture of Trust dated as of January 1, 2002, between the State of Oregon acting by and through the State Treasurer of the State of Oregon ("Issuer"), the Department and the Trustee under the Bond Indenture, pursuant to which the State Bonds are issued, and all amendments and supplement thereto adopted in accordance with the provisions thereof.

Business Day means any day other than a Saturday, Sunday or federal holiday or a day on which banking institutions in Salem, Oregon are closed.

Code means the Internal Revenue Code of 1986, as amended, and the rules and regulations promulgated pursuant thereto.

Contract means this Financing Contract, including any exhibits, schedules or attachments hereto, as it may be supplemented, modified or amended from time to time.

Costs of the Project means those eligible costs that are (a) reasonable, necessary and directly related to the Project, including any financing costs properly allocable to the Project, and preliminary costs such as engineering and architectural reports, studies, surveys, permits, soil tests, designs, plans, working drawings and specifications that are necessary for the construction of the Project.

Counsel means an attorney at law (who may be, without limitation, of counsel to, or an employee of, Department or Borrower) duly admitted to practice law in Oregon, or firm of attorneys at law.

Default means an event, which, with notice or lapse of time or both, would become an Event of Default.

Department Financing means the Grant and the Loan collectively.

Development Agreement means that certain development agreement between SVC, Borrower, Department, ODOT, Linn County, and Albany Millersburg Economic Development Corporation ("AMEDC"), dated as of October 26, 2006, as amended.

Eligible Costs means those Project costs that, in accordance with this Contract, applicable state and federal law, administrative rule or regulation, and applicable policy, are permitted uses of moneys comprising Department Financing.

Financing Documents means this Contract and all agreements, instruments, documents and certificates, including but not limited to all promissory notes, executed and delivered pursuant hereto or in connection herewith.

First Payment Date means the December 1 following the earlier of (1) the Project Completion Date, (2) the first (1st) anniversary of the first Loan disbursement.

The term "**Grant**" has the meaning ascribed thereto by Section 2.a.

Guaranty Fee means the fee described in Section 2.04 of the Development Agreement that SVC agrees to pay to Borrower, subject to the terms and conditions of the Development Agreement.

The term "**Incremental Property Tax Revenues**" has the meaning assigned that term in Section II.A. of Exhibit D.

Intergovernmental Agreement or IGA means that certain intergovernmental agreement between Borrower and the URA, pursuant to which the URA, among other things, pledges the Incremental Property Tax Revenues from the Oak Creek Urban Renewal Area to repay the Loan.

The term "**LIDs**" has the meaning ascribed thereto by Section IV.A. of Exhibit D.

The term "**Loan**" has the meaning ascribed thereto by Section 2.a.

Loan Closing Date means the date on which all Financing Documents have been fully executed, and all conditions precedent to disbursement are met.

Loan Payment means a payment required to be made by Borrower pursuant to this Contract, or any other Financing Document.

Loan Prepayment means any payment by Borrower that is applied to the unpaid principal of the Loan and is in excess of the amount then required to be paid as a Loan Payment.

Lottery Bonds means bonds, if any, issued by the State of Oregon that are special obligations of the State of Oregon payable solely from unobligated net lottery proceeds, together with any refunding bonds, used to finance or refinance the Project through the initial funding or refinancing.

Maturity Date means the December 1 occurring after the nineteenth (19th) anniversary of the first Loan disbursement date, on which date the outstanding balance of the Loan must be paid in full.

Municipality means an entity described in ORS 285B.410(7).

Non-Department Funds means those funds needed to cover the Estimated Project Cost that are from sources other than the Department.

Note means that certain promissory note (substantially in the form of Exhibit F) executed by Borrower in favor of Department and evidencing the Loan.

ODOT means the State of Oregon acting by and through the Department of Transportation.

Payment Date means each December 1 on which a Loan Payment is due.

Project means the project described in Exhibit B.

Project Completion Date means the date the Project is deemed substantially complete by the Department.

SVC means SVC Manufacturing, Inc.

State Bonds means the series of Oregon Bond Bank Revenue Bonds authorized by the Bond Indenture and the Act, together with any refunding bonds, authenticated and delivered pursuant to the Bond Indenture, in each case used to finance or refinance the Project through the initial funding or refinancing of all or a portion of the Loan.

True Interest Cost means the annual discount rate that, when used to discount all debt service payments on the Loan to the date of the Loan, using a compounding interval equal to the interest payment periods for the Loan, results in the aggregate present value of such debt service payments being equal to the original Loan amount.

URA means Oak Creek Urban Renewal Agency.

EXHIBIT B
PROJECT DESCRIPTION

Borrower will construct the municipally-owned infrastructure necessary to serve the Ellingson Road Industrial Site. The Project will include the extension of 53rd Avenue, between Highway 99E and Lochner Road; water, sewer and storm system improvements; industrial site access road and infrastructure; Oak Creek lift station upgrade; right-of-way acquisition; and engineering.

**Oregon Economic & Community Development Department
Project Budget**

Exhibit C
Page 1 of 2

Project Number: L08001 and 05-07-451
Project Name: Municipally-Owned Infrastructure for SVC Manufacturing, Inc.

Recipient: City of Albany
Funding Pgm(s): Special Public Works Fund
Strategic Reserve Fund

(A) Activity	Department Funds				Other/Matching Funds			All Funds
	(B) Approved Budget	(C) Prior Disbursements	(D) Current Request	(E) = [B-C-D] Balance	(F) Approved Budget	(G) Expended To Date	(H) = [F-G] Balance	(I) = [C+D+G] Disbursed & Expended To Date
Water System Improvements	\$1,463,000			\$1,463,000				
Sewer System Improvements	800,000			800,000				
Street Improvements	7,765,000			7,765,000				
Storm System Improvements	200,000			200,000				
Other Municipal Infrastructure	2,500,000			2,500,000				
Engineering	1,118,000			1,118,000				
Contingency	854,000			854,000	376,000		376,000	
Traffic Mitigation (conditional grant)	225,000			225,000				
Total	\$14,925,000			\$14,925,000	\$376,000		\$376,000	

Total Project Budget		
Funding Sources	Approved Budget	Expenditures To Date
Special Public Works Fund	\$14,425,000	
Strategic Reserve Fund	\$500,000	
Other/Matching Funds	376,000	
Total Project Costs	\$15,301,000	

Non-Department Funds (Other/Matching) Sources Used for all Expenditures		
Funding Sources	Approved Budget	Expenditures To Date
City of Albany	\$376,000	
Total Non-Dept. Funds	\$376,000	

Non-Department Funds (Other/Matching) IN-KIND		
Source of In-Kind Contribution	Goods/Services Donated	Value of Contribution To Date
In-Kind Contributions To Date		

Oregon Economic & Community Development Department
Project Budget

Project Number: L08001 and 05-07-451
Project Name: Municipally-Owned Infrastructure for SVC Manufacturing, Inc.

Project Goals (report for every cash request)		
Proposed Work Plan	Estimated Completion Date	Results Achieved
1 Hire Consultant	Dec 15, 2006	
2 Complete Design Work on 53rd Street	Jan 15, 2008	
3 Complete Water / Sewer Design	Jul 30, 2007	
4 Bid 53rd Street	Jan 18, 2009	
5 Bid Water / Sewer	Aug 15, 2008	
6 Award 53rd Street Contract	Mar 12, 2009	
7 Award Water / Sewer Contracts	Sep 8, 2008	
8 Start 53rd Construction	Mar 20, 2009	
9 Start Water/Sewer Construction	Sep 15, 2008	
10 Complete 53rd Street Construction	Sep 1, 2010	
11 Complete Water / Sewer Construction	Apr 1, 2009	
12 Project Completed	Sep 30, 2010	
13		
14		
15		
16		
17		
18		
19		
20		

EXHIBIT D
SPECIAL CONDITIONS OF AWARD

I. FULL FAITH AND CREDIT OBLIGATION

The Borrower hereby pledges its full faith and credit and taxing power within the limitations of Article XI, Sections 11 and 11 b, of the Oregon Constitution to pay the amounts due under the Loan Agreement and the Note. The Borrower hereby pledges its full faith and credit and taxing power within the limitations of Article XI of the Oregon Constitution to pay the amounts due under the Loan Agreement and the Note. The Loan Agreement and the Note shall be payable from all legally available funds of the Borrower.

II. SECURITY - INCREMENTAL PROPERTY TAX REVENUES OF OAK CREEK URBAN RENEWAL AGENCY

- A. The Loan shall be repaid from the ad valorem tax revenues from property within the Area which are attributable to the increase in assessed value of property within the Area as described in Section 1c, Article IX of the Oregon Constitution and ORS Chapter 457 (the "Incremental Property Tax Revenues") and all earnings thereon while the Incremental Property Tax Revenues are held in the Incremental Property Tax Revenues Fund for the Area. The Incremental Property Tax Revenues have been pledged to the Borrower by the URA as described in the IGA between the Borrower and the URA. The Borrower hereby grants to the Department a security interest in and irrevocably pledges the Incremental Property Tax Revenues of the URA to pay all of the obligations owed by the Borrower to the Department under the Loan Agreement, and this security interest shall be senior and superior to any other security interest or lien on the Incremental Property Tax Revenues of the URA.
- B. The Borrower shall not incur any obligations payable from or secured by a lien on and pledge of the Incremental Property Tax Revenues that is superior to or on a parity with the Loan without Department's written consent.
- C. Notwithstanding the requirement of paragraph II.B above, loans previously made and loans made in the future by Department to the Borrower that are secured by the Incremental Property Tax Revenues shall have a lien on such Incremental Property Tax Revenues on a parity with the Loan; provided however that nothing in this paragraph II.B shall affect the priority of the Department's lien as against the lien of any third party(ies).
- D. The Incremental Property Tax Revenues pledged pursuant to paragraph II.A above and hereafter received by the Borrower shall immediately be subject to the lien of such pledge without physical delivery or further act, and the lien of the pledge shall be superior to all other claims and liens whatsoever, except as provided in paragraphs II.B and II.C above, to the fullest extent permitted by ORS 287A.310. The Borrower hereby represents and warrants that the pledge of Incremental Property Tax Revenues hereby made by the Borrower complies with, and shall be valid and binding from the date hereof as described in ORS 287A.310.
- E. The Borrower hereby represents and warrants that:
 - (a) under the terms of the IGA the URA has pledged the Incremental Property Tax Revenues to the Borrower for payment of the Loan Payments and other obligations of this Financing Contract and the IGA is a valid and binding obligation of the URA and the Borrower, enforceable in accordance with its terms;

(b) the URA has covenanted in the IGA that: (1) it will not incur any obligations payable from or secured by a lien on or pledge of the Incremental Property Tax Revenues that is superior to or on a parity with the IGA without the written consent of the Borrower and the Department; (2) it will not remove any property from the Area if such removal will cause the anticipated Incremental Property Tax Revenues to be inadequate to pay the annual debt service on the Loan and any parity obligations; and (3) it shall not amend the IGA without the prior written consent of Department, which consent shall not be unreasonably withheld or delayed.

(c) the URA represented and warranted in the IGA that the Loan is within the maximum amount of indebtedness that may be incurred under the Oak Creek Urban Renewal Plan.

- F. Borrower agrees that it shall not amend the IGA without the prior written consent of Department, which consent shall not be unreasonably withheld or delayed.
- G. Borrower's obligations pursuant to the terms of this Section II (Security - Incremental Property Tax Revenues of Oak Creek Urban Renewal Agency) are expressly conditioned upon the Borrower's lawful adoption of the Oak Creek Urban Renewal Area and accompanying Plan. Should Borrower's actions to adopt the Oak Creek Urban Renewal Area and Plan be invalidated or overturned by a final, non-appealable decision in any court of competent jurisdiction, or should Borrower choose, in the exercise of political discretion, not to create the Oak Creek Urban Renewal Area and Plan, Borrower's obligations pursuant to this Agreement shall remain a full faith and credit obligation of the Borrower pursuant to Section I hereof.

III. PROJECT FEE AND GUARANTY FEE

- A. The principal of and interest on the Loan shall be payable from the Guaranty Fee and the Project Fee (both as defined in the Development Agreement; the Project Fee and Guaranty Fee collectively the "Fees") paid by SVC or the owner of the Bottle Manufacturing Plant (as defined in the Development Agreement) to Borrower or URA. The Borrower hereby grants to the Department a security interest in and irrevocably pledges the Fees to pay all of the obligations owed by the Borrower to the Department under the Contract. Further, the Borrower shall cause URA to grant to the Department a security interest in and irrevocably pledge of the Fees (or the portion of the Fees that are payable to the URA to pay all of the obligations owed by the Borrower to the Department under the Contract.
- B. The Fees pledged pursuant to Section III.A above and hereafter received by the Borrower or URA shall immediately be subject to the lien of such pledge without physical delivery or further act, and the lien of the pledge shall be superior to all other claims and liens whatsoever, to the fullest extent permitted by ORS 287A.310. The Borrower hereby represents and warrants that the pledge of the Fees hereby made by the Borrower complies with, and shall be valid and binding from the date of this Contract pursuant to, ORS 287A.310. The Borrower shall cause any pledge of the Fees made by the URA to comply with, and be valid and binding from the date of this Contract pursuant to, ORS 287A.310.

IV. ASSESSMENT REVENUES OF LOCAL IMPROVEMENT DISTRICTS

- A. The Loan shall be payable from the revenues ("Assessment Revenues") generated from assessments levied against benefited properties located within the following Local Improvement Districts ("LIDs"): (i) Oak Creek; (ii) 53rd Avenue Roadway and Bridge Improvements; (iii) Ellingson Road Water Line Improvements; and (iv) Ellingson Road Sewer Improvements. The Borrower will provide the State with a breakdown of assessments per parcel based solely upon Costs of the Project (which shall not include the cost of establishing or administration of the LIDs). The Borrower hereby grants to the State a security interest in and irrevocably pledges the Assessment Revenues of the LIDs to pay all of the obligations owed by the Borrower to the State

under the Contract. As described in ORS 287A.310, the pledge of the Assessment Revenues of the LIDs hereby made by the Borrower shall be valid and binding from the later of the establishment of the LIDs or the date of this Contract.

- B. The Borrower will make up any deficiencies in the Assessment Revenue of the LIDs from any and all other pledged revenues.
- C. The Borrower must show that all benefited properties are participating.
- D. The Borrower shall not incur any obligations payable from or secured by a lien on and pledge of the Assessment Revenues that is superior to or on a parity with the Loan without State's written consent.
- E. Notwithstanding the requirement of paragraph IV.D. above, loans previously made and loans made in the future by State to the Borrower that are secured by the Assessment Revenues shall have a lien on such Assessment Revenues on a parity with the Loan; provided however that nothing in this paragraph IV.E. shall affect the priority of the Department's lien as against the lien of any third party(ies).
- F. The Assessment Revenues pledged pursuant to paragraph IV.A. above and hereafter received by the Borrower shall immediately be subject to the lien of such pledge without physical delivery or further act, and the lien of the pledge shall be superior to all other claims and liens whatsoever, except as provided in paragraphs IV.D. and IV.E. above, to the fullest extent permitted by ORS 287A.310. The Borrower hereby represents and warrants that the pledge of Assessment Revenues hereby made by the Borrower complies with, and shall be valid and binding from the date hereof as described in ORS 287A.310.

**EXHIBIT F
PROMISSORY NOTE**

XXXXXXXXXXXXXXXXXX, XXXX

Albany, Oregon

FOR VALUE RECEIVED, City of Albany, 333 Broadalbin Street / PO Box 490, Albany, OR 97321 (hereinafter "Borrower"), unconditionally promises to pay in lawful money of the United States of America to the order of the STATE OF OREGON, ACTING BY AND THROUGH ITS ECONOMIC AND COMMUNITY DEVELOPMENT DEPARTMENT, at its principal office at 775 Summer Street NE, Suite 200, Salem, OR 97301-1280 (hereinafter "Department"), the principal sum of Fourteen Million Two Hundred Thousand Dollars (\$14,200,000) or so much thereof as is disbursed pursuant to the Contract (as defined below), plus accrued interest on the outstanding principal balance at the applicable rate set forth Section 4.a. of the Contract. The initial interest rate is four and 91/100 percent (4.91%) per annum. Interest shall be computed on the basis of a 360-day year, consisting of twelve (12) thirty-day (30) months. All outstanding principal and accrued unpaid interest on this Note are due and payable in full on the Maturity Date (as defined in the Contract).

This Note is subject to the terms and conditions of, and secured in accordance with the terms of, that certain contract dated as of XXXXXXXXXXXXXXXXXX, XXXX, between the Department and the Borrower (as amended from time to time the "Contract"). Capitalized terms not otherwise defined in this Note shall have the meanings assigned to them by the Contract.

The interest on and principal of this Note is payable in accordance with the terms set forth in Section 4.b. of the Contract. This Note is subject to mandatory prepayment, and is payable prior to its maturity, as provided for in Sections 4.d. and 4.e. of the Contract. Each payment made by the Borrower hereunder shall be applied as provided in Section 5 of the Contract.

This Note is given to avoid the execution by Borrower of an individual note for each disbursement of Loan proceeds by Department to Borrower in accordance with Section 3 of the Contract. In consideration thereof, Borrower authorizes Department to record in Department's files the date and amount of each such disbursement, the date and amount of each payment and prepayment by Borrower hereunder and the amount of interest accrued and paid. Borrower further agrees that absent manifest error, such notations shall be conclusive evidence of borrowing, payments and interest under this Note; provided, however, that failure to make any such notations shall not affect the obligations of Borrower hereunder or under any of the Loan Documents.

If any Event of Default occurs, the outstanding balance of the Note, including principal, interest and other charges, if any, shall, at the option of the Department, become immediately due and payable in accordance with Section 16 of the Contract. Failure or delay of the holder of this Note to exercise any option available to the Department under the terms of this Note or the Contract shall not constitute a waiver of the right to exercise the option in the event of any continuing or subsequent default and shall not constitute a waiver of any subsequent breach of the same or of any other provision of this Note or the Contract.

All parties to this Note hereby waive presentment, dishonor, notice of dishonor, and protest. All parties hereto hereby consent to, and the holder hereof is hereby expressly authorized to make, without notice, any and all renewals, extensions, modifications or waivers of the time for or the terms of payment of any sum of sums due hereunder, or under any documents or instruments relating to or securing this Note, or of the performance of any covenants, conditions or agreements hereof or thereof, or the taking or release of collateral securing this Note. No liability of any party of this Note shall be discharged by any action consented to above taken by any holder of this Note.

To the extent permitted by the Oregon Constitution and the Oregon Tort Claims Act, the prevailing party in any dispute arising from this Contract shall be entitled to recover from the other its reasonable attorney's fees, costs and expenses at trial and on appeal. Reasonable attorney fees shall not exceed the rate charged to the Department by its attorneys. The Borrower shall, on demand, pay to the Department reasonable expenses incurred by the Department in the collection of Loan payments.

This Note is made with reference to, and is to be construed in accordance with, the laws of the State of Oregon.

CITY OF ALBANY
(BORROWER)

By: XXXXXXXXXXXXXXXXXXXXXXXXXX

Title: XXXXXXXXXXXXXXXXXXXXXXXXXX

Notice to Borrower: Do not sign this Note before you read it.

**EXHIBIT G-1
FORM OF LEGAL OPINION (BORROWER)**

[Municipality's Counsel letterhead]

[date]

City of _____

Oregon Economic and Community Development Department
775 Summer Street NE, Ste. 200
Salem, OR 97301-1280

Re: Financing Contract Related to an Oregon Economic and Community Development Department
Loan and Grant to the City of _____

Ladies & Gentlemen:

This opinion is given with regard to that certain financing contract ("Contract") dated as of _____, between the Borrower (as defined below) and the State of Oregon acting by and through the Economic and Community Development Department. Capitalized terms not otherwise defined in this letter have the meanings assigned to them in the Contract.

It is the opinion of XXXXXXXXXXXXXXXXXXXXXXXXXX, counsel for the City of Albany ("Borrower"), that:

- (a) Borrower is a municipal corporation duly organized and validly existing under the laws of Oregon;
- (b) Borrower has the requisite power and authority to execute, deliver, and perform this Contract and the other Financing Documents. This Contract (including but not limited to those provisions regarding the application of the Assessment Revenues of the LIDs to repay the Loan, and the pledge of the Assessment Revenues of the LIDs to secure repayment of the Loan) and the other Financing Documents have been duly and validly authorized by Borrower and this Contract and the other Financing Documents have been executed and delivered by an Authorized Officer of Borrower and constitute the legal, valid, and binding obligations of Borrower. Subject to bankruptcy and other laws of general application affecting the rights and remedies of creditors, this Contract and the other Financing Documents are enforceable according to their terms, except that no opinion need be given as to the availability of equitable remedies other than foreclosure of the liens created by the Contract and the other Financing Documents in accordance with Oregon law.
- (c) Borrower is not in violation or default of any material agreement to which it is a party or by which it is bound. Borrower's execution, delivery, performance, and compliance with the terms of this Contract and the other Financing Documents do not violate any provision of any applicable law, rule, or regulation binding on Borrower, or of any judgment, writ, decree, or order known to such counsel to be binding on Borrower, or order of any court, regulatory commission, board, or other administrative agency or Borrower's organic documents and do not conflict with or constitute a default under the provisions of any agreement or instrument to which Borrower is a party or by which it is bound.

(d) All consents, approvals, orders, or authorizations of, and all qualifications, registrations, designations, declarations, or filings with any federal or state governmental authority on the part of Borrower required for the consummation of the transactions contemplated by this Contract and the other Financing Documents have been obtained and are effective as of the date hereof, other than licenses and permits relating to the Project that Borrower expects to receive during the Project and such counsel is not aware of any proceedings, or threat thereof, which question the validity thereof.

(e) There is no action, suit, proceeding, or investigation pending or threatened against Borrower, which would, if adversely determined, have a material adverse effect on the financial condition or business of Borrower or on the ability of Borrower to perform its obligations under this Contract or the other Financing Documents.

<u>XXXXXXXXXXXXXXXXXXXX</u>	<u>XXXXXXXXXXXXXXXX</u>
Signature	Date
Printed Name	<u>XXXXXXXXXXXXXXXXXXXX</u>
Company	<u>XXXXXXXXXXXXXXXXXXXX</u>
Address	<u>XXXXXXXXXXXXXXXXXXXX</u>
City, State, Zip	<u>XXXXXXXXXXXXXXXXXXXX</u>

**EXHIBIT G-2
FORM OF LEGAL OPINION (URA)**

[URA Counsel letterhead]

[date]

Urban Renewal Agency of the City of _____

City of _____

Oregon Economic and Community Development Department
775 Summer Street NE, Ste. 200
Salem, OR 97301-1280

Re: Intergovernmental Agreement Related to Repayment of, and Providing a Pledge of Incremental Property Tax Revenues for, an Oregon Economic and Community Development Department Loan with the City of _____

Ladies & Gentlemen:

The purpose of this letter is to provide an opinion regarding the above-captioned Intergovernmental Agreement with the City of _____ ("City"), approved by the Urban Renewal Agency of the City of _____ ("Agency") at a meeting held on _____, _____, and signed by the Agency and the City on _____, _____ ("Intergovernmental Agreement").

In acting as counsel to the Agency in this matter, I have examined the constitution and laws of the state of Oregon and the documentation from the formation of the Agency by the City in _____ of _____. I have also examined originals, or copies certified or otherwise identified to my satisfaction, of the following:

- A. Proceedings of the governing body of the Agency relating to the approval of the Intergovernmental Agreement and related documents, and the execution, issuance and delivery thereof on behalf of the Agency; and
- B. All outstanding instruments relating to bonds, notes and other indebtedness of or relating to the Agency.

Based on the foregoing, I am of the opinion that:

- 1. The Agency is a duly formed and operating Oregon urban renewal agency as described in ORS 457.035.
- 2. The Agency has full legal right and authority to execute and deliver the Intergovernmental Agreement and related documents and to observe and perform its duties, covenants, obligations, and agreements thereunder, subject, however, to the effect of, restrictions and limitations imposed by or resulting from bankruptcy, insolvency, moratorium, reorganization, debt adjustment, or other similar laws affecting creditors' rights generally, heretofore or hereafter enacted. The Agency's legal right and authority is also subject to the provisions of ORS Chapter 457 on maximum indebtedness.

3. The motion of the Agency approving the Intergovernmental Agreement and authorizing its execution, issuance, and delivery on behalf of the Agency has been duly and lawfully adopted and authorized in accordance with Oregon law, and the motion was adopted at a meeting or meetings which were duly called with not less than forty-eight (48) hours prior public notice and held in accordance with applicable Oregon law, and at which quorums were present and acting throughout.
4. The Intergovernmental Agreement has been duly authorized, executed, and delivered by the authorized officers of the Agency and constituted the legal, valid, and binding obligation of the Agency enforceable in accordance with its respective terms; subject, however, to bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium, and other similar laws affecting creditor's rights or remedies generally in the application of equitable principals.
5. To the best of my knowledge, after such investigation as I have deemed appropriate, the authorization, execution and delivery of the Intergovernmental Agreement by the Agency, the observation and performance by the Agency of its duties, covenants, obligations and agreements thereunder and the consummation of the transactions contemplated therein do not and will not contravene any existing law or any existing order, injunction, judgment, decree, rule or regulation of any court or governmental or administrative agency, authority or person having jurisdiction over the Agency or its property or assets or result in a breach or violation of any of the terms and provisions of, or constitute a default under, any existing bond ordinance, resolution, trust agreement, indenture, mortgage, deed or trust or other agreement to which the Agency is a party or by which it, or its property or assets is bound.
6. To the best of my knowledge, after such investigation as I have deemed appropriate, all approvals, consents, or authorizations of, or registration of or filings with, any governmental or public agency, authority or person required to date on the part of the Agency in connection with authorization, execution, delivery and performance of the Intergovernmental Agreement has been obtained or made.
7. To the best of my knowledge, after such investigation as I have deemed appropriate, there is no litigation or other proceeding pending or threatened in any court or other tribunal of competent jurisdiction (either state or federal) questioning the creation, organization or existence of the Agency or the validity, legality or enforceability of the Intergovernmental Agreement.

This opinion is rendered on the basis of the laws of the state of Oregon, as enacted and construed on the date hereof. I express no opinion as to any matter not set forth in the numbered paragraphs herein.

Sincerely,



TO: Albany City Council

VIA: Wes Hare, City Manager
Kate Porsche, Redevelopment Coordinator

FROM: Stewart Taylor, Finance Director

DATE: July 15, 2008, for the July 23, 2008, City Council Meeting

SUBJECT: Intergovernmental Agreement: City of Albany and Albany Revitalization Agency

RELATES TO STRATEGIC PLAN THEME: ● A Healthy Economy

RELATES TO: ● Increase the percentage of family wage jobs in Albany

Action Requested:

Adopt the resolution authorizing the Mayor to sign the intergovernmental agreement (IGA) with the Albany Revitalization Agency pledging certain revenues to repayment of the state of Oregon Economic and Community Development Department (OECDD) Special Public Works Fund loan.

Discussion:

In October, 2006 the City of Albany entered into a development agreement with SVC Manufacturing, Inc., the state of Oregon Economic and Community Development Department (OECDD), and other state and local partners. The agreement requires the City to complete transportation, sewer, and water improvements to support the SVC manufacturing facility and future development of other properties in the area. The agreement further requires OECDD to provide short and long term financing for construction of the improvements.

The OECDD financing contract provides a non-revolving Special Public Works Fund loan in the maximum aggregate principal amount of \$14,200,000. The terms of the loan require the full faith and credit of the City of Albany, a pledge of tax increment financing from the Oak Creek Revitalization Area, and a pledge of LID assessments and other resources set forth in the development agreement.

The financing contract requires evidence of the City of Albany and the Albany Revitalization Agency's authorization to fulfill the terms of the financing contract. The evidence can be provided through execution of an intergovernmental agreement between the City and the Agency.

The financing contract requires the agreement to include the following:

- The Albany Revitalization Agency must pledge the incremental property tax revenues of the Oak Creek Revitalization Area and all earnings thereon to the City for repayment of the state loan.
- The City must grant to OECDD a security interest in and irrevocable pledge of the incremental property tax revenues that is senior and superior to any other security interest or lien on the incremental property tax revenues.
- The Albany Revitalization Agency must warrant that the OECDD loan is within the maximum amount of indebtedness that may be incurred under the Oak Creek Urban Renewal Plan.

Albany Revitalization Agency
Page 2
July 15, 2008

This IGA will be considered by the Albany Revitalization Agency on July 16, 2008.

Budget Impact:

The agreement pledges specific revenues of the Oak Creek Revitalization Area to repayment of the state loan.

ST

Attachment

c: Jim Delapoer, City Attorney
Diane Taniguchi-Dennis, Public Works Director

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RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE MAYOR TO SIGN THE INTERGOVERNMENTAL AGREEMENT WITH THE ALBANY REVITALIZATION AGENCY PLEDGING CERTAIN REVENUES TO REPAYMENT OF THE OREGON ECONOMIC AND COMMUNITY DEVELOPMENT DEPARTMENT SPECIAL PUBLIC WORKS FUND LOAN.

WHEREAS, in October, 2006 the City of Albany entered into a development agreement with SVC Manufacturing, Inc., the state of Oregon Economic and Community Development Department (OECDD), and other state and local partners; and

WHEREAS, the agreement requires the City to complete transportation, sewer, and water improvements to support the SVC manufacturing facility and future development of other properties in the area; and

WHEREAS, the agreement further requires OECDD to provide short and long term financing for construction of the improvements; and

WHEREAS, the terms of the loan require the full faith and credit of the City of Albany and a pledge of tax increment financing from the Oak Creek Revitalization Area; and

WHEREAS, the financing contract requires evidence of the City of Albany and the Albany Revitalization Agency's authorization to fulfill the terms of the financing contract; and

WHEREAS, the evidence can be provided through execution of an intergovernmental agreement between the City and the Agency; and

WHEREAS, the financing contract has been reviewed by staff and by the Albany City Council; and

WHEREAS, the Albany City Council hereby determines that it is in the public interest to execute the intergovernmental agreement.

NOW, THEREFORE, BE IT RESOLVED that the Mayor of the City of Albany is hereby authorized to execute, on behalf of the City of Albany, the intergovernmental agreement with the Albany Revitalization Agency in a form substantially the same as the agreement attached as Exhibit A, and incorporated herein, and with future modifications consistent with the direction of the City Council as deemed necessary by the City Attorney and City Manager.

DATED AND EFFECTIVE THIS 23rd DAY OF JULY, 2008.

Mayor

City Clerk

INTERGOVERNMENTAL AGREEMENT

This Agreement is made and entered into this ____ day of _____ 2008 by and between the City of Albany, Oregon, (hereinafter "City") and the Albany Revitalization Agency, (hereinafter "AGENCY") pursuant to the provisions of ORS Chapter 190.

WHEREAS, City and AGENCY mutually represent to one another that each is a unit of local government as that term is defined by ORS 190.003 and is duly authorized by their governing bodies to enter into this Agreement; and

WHEREAS, in October, 2006 CITY entered into a development agreement with SVC Manufacturing, Inc., the state of Oregon Economic and Community Development Department (OECDD), and other state and local partners; and

WHEREAS, the development agreement requires the City to complete transportation, sewer, and water improvements to support the SVC manufacturing facility and future development of other properties in the area; and

WHEREAS, the City Council will consider a financing contract with OECDD to provide financing for the infrastructure improvements; and

WHEREAS, the financing contract requires the full faith and credit of the City of Albany, a pledge of tax increment financing from the Oak Creek Revitalization Area, and a pledge of LID assessments and other resources set forth in the development agreement; and

WHEREAS, the financing contract requires evidence of CITY and AGENCY's authorization to fulfill the terms of the financing contract; and

WHEREAS, the evidence can be provided through execution of an intergovernmental agreement between CITY and AGENCY.

NOW, THEREFORE, in consideration of the mutual terms and promises set forth herein, the parties agree as follows:

- (1) The above recitals are true and are incorporated herein as if fully set forth.
- (2) The AGENCY hereby pledges the incremental property tax revenues of the Oak Creek Revitalization Area and all earnings thereon to the City for repayment of the OECDD loan.
- (3) The City hereby grants to OECDD a security interest in and irrevocable pledge of the incremental property tax revenues that is senior and superior to any other security interest or lien on the incremental property tax revenues.
- (4) The AGENCY hereby warrants that the OECDD loan is within the maximum amount of indebtedness that may be incurred under the Oak Creek Urban Renewal Plan.

(5) The CITY and AGENCY shall cooperate to provide other authorization, documentation, and performance necessary to fulfill the terms of the financing contract between CITY and OECD.

Dated this _____ day of _____ 2008.

Mayor, City of Albany

Chair, Albany Revitalization Agency

ATTEST:

City Clerk

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APPROVED:

CITY OF ALBANY
CITY COUNCIL (WORK SESSION)
Municipal Court Room
Monday, June 9, 2008
4:00 p.m.

MINUTES

CALL TO ORDER

Mayor Dan Bedore called the meeting to order at 4:00 p.m.

ROLL CALL

Councilors present: Councilors Ralph Reid Jr., Floyd Collins, Jeff Christman, Bessie Johnson, Dick Olsen, and Sharon Konopa.

Councilors absent: None.

BUSINESS FROM THE PUBLIC

City Manager Wes Hare introduced the new Community Development Director, Greg Byrne.

Councilor Jeff Christman arrived at 4:02 p.m.

AMC TITLE 18 COMPLIANCE REPORT

Assistant Building Official Melanie Adams said the compliance staff has been very busy. She asked if the Council had any questions.

Councilor Floyd Collins asked, what kind of reception do you generally receive when you respond to a complaint that has been made? Adams said that for the most part, people are cooperative. Sometimes they are passive-aggressive, though the majority of people do follow through in fairly timely fashion. Collins said, it seems that the staff is gaining cooperation by education. Adams agreed and added that staff is very good to educate about what the Code says and to work with citizens in an agreeable way. Collins commended Adams and her staff.

Byrne said that Adams gave him a two-hour tour which included several sites. He is impressed that they took a measured and educational approach. The first contact is very positive, but it is also very important that staff has the ability to take the next step if the problem is not brought into compliance.

Councilor Bessie Johnson said the old skating rink sign along Salem Avenue is still standing. Adams will check into it. City Manager Wes Hare said it could be that the new tenant, the ReStore, plans to use the sign. Johnson commended them for a job well done.

Bedore asked for the status of the fence along the railroad. Adams said the City Attorney's office is handling that and has not been getting a response from the railroad. Discussion followed. Collins suggested the City build our own fence along the property line. Hare will have staff check into it.

NINTH AVENUE PARKING REMOVAL REQUEST

Transportation System Analyst Ron Irish explained that shortly after the Helping Hands shelter moved into the building on Ninth Avenue, they asked for a cross walk and the City agreed to put one in. The crosswalk is not far from the curved off ramp from 99E and has experienced many close calls for pedestrian and vehicle collisions. Police say sight distance is a key factor, which is somewhat limited by parked cars on Ninth Avenue. Removal of parking may help to reduce the risk. The current plan as described in the staff agenda was forwarded to Helping Hands for their input.

Christman asked if there is parking available to the east. Irish said yes, and there is parking across the street as well.

MOTION: Collins moved to adopt the Resolution authorizing on-street parking restrictions at 615 Ninth Avenue, and Konopa seconded it. The motion passed 5-0 and was designated Resolution No. 5611.

REQUEST FOR ALTERNATE CONTRACTING METHOD AND EXEMPTION FROM COMPETITIVE BIDDING

Civil Engineer III Peter Harr explained that the North Albany Lift Station is a companion to the plant project. The primary goal is to offload, by force main, the interceptor sewer which is overloaded and has hydraulic problems. This force main would serve the North Albany Pump Station and deliver overflow to the Wastewater Treatment Plant. It would help to reduce much of the flow from the existing interceptor sewer and is required via a stipulated order from the Department of Environmental Quality (DEQ). It must be operational by the end of 2009.

Harr said that due to the importance and complexity of the project, which includes boring under the river, staff thinks an alternate contracting method is desirable. It is still a competitive process. Staff believes this is a prudent approach.

Harr said Craig Massey from CH2M Hill is the project engineer and is in the audience to answer questions.

Harr said staff is still looking at a number of route options, which he described. Generally they are leaning towards the northerly route, but the contractor may be able to bring insight and construction expertise that may help finalize the choice. The drawings in the packet would be used to select the general contractor and during the design phase they would be involved.

Public Works Director Diane Taniguchi Dennis pointed out that in the alternatives listed, the route avoids the golf course. This is because the owner is not willing to let us go through it at this point. Discussion followed about the pros and cons of boring under the golf course. Dennis also noted that the project would try to avoid damage to walnut trees and to fir trees along North Albany School.

Councilor Sharon Konopa said that the funding source is listed as the revolving fund loan. She asked, are there any System Development Charges (SDCs) being contributed to the project? Dennis said yes, in the sense that the revolving loan money is being paid back by SDCs. We are also looking at distributions, as it is currently not in the methodology. The master plan said we would build a wet weather pump station, which is a deficiency in the plan. Rather than creating a pump station just for wet weather, we are updating this project to solve the problem in a different way. The Council will see the whole sewer SDC updates in the future.

Konopa asked, what is the total cost of the project? Massey said that boring the route will cost about \$3.7 million and the pump station upgrades are \$450,000.

Johnson asked, is there another alternative to boring under the Willamette River? Massey said no, it must go under the river. They will be using the same technology used by the gas company in their boring. Dennis explained that not going under the river would require pumping over bridges and a force main which is much more complicated than this alternative. Massey explained further that the reason this alternative can work with the North Albany Pump Station is because the new route will avoid having to pump over the Willamette River using the Lyons Street Bridge, which considerably reduces the hydraulic energy to get this flow to the Wastewater Treatment Plant. Discussion followed. Collins thinks they should put in valves, even if they are rarely or ever used.

Konopa asked, will we be able to see how much SDCs there are before we award the contract? Dennis said staff will try to get those calculations to the Council before the bid is awarded. Dennis clarified that the project is not actually growth related but it is an existing deficiency to this wet weather station, so staff has struggled with the application of SDCs. Discussion followed. Dennis said there are three reasons to expand the project: summertime capacity (growth related), wet weather (not growth related), and the DEQ requirement.

Councilor Ralph Reid arrived at 4:28 p.m.

MOTION: Johnson moved to approve the alternate contracting method for project SS-07-04, North Albany Lift Station; and to set a public hearing for June 25, 2008. Collins seconded the motion and it passed 6-0.

NEW SCHOOL ROADWAY DISCUSSION

Assistant Public Works Director/City Engineer Mark Shepard introduced Ed Fitzpatrick, Monica Anderson, and Janet Pardee from Greater Albany Public Schools (GAPS), and Attorney Ed Schultz.

Shepard said that ten months ago the City approved a conditional use for the roadway to be 32-foot wide with 11 foot travel lanes and two five-foot bike lanes. GAPS took the conditions of approval and submitted them to the state for wetlands and water quality permits.

Shepard reviewed the questions and answers that have been raised so far by the Council, as outlined in the staff report.

Shepard reviewed Options A, B, C, and D, as outlined in the staff report.

Konopa said, on page 2 of the staff report, Marion Street is reported as a minor arterial with a 32-foot road width. This happened after the 1992 Transportation System Plan (TSP) as a result of neighbors working to keep trucks from using it as a thoroughfare, so it is unique. Price Road is a major collector at 34-feet and Clover Ridge Road is a minor collector at 34-feet. She asked, if we want to keep streets widths down, why are we widening Waverly Drive? Isn't that a contradiction? What is the intent? Irish said, one is a collector and one is an arterial. We must balance access and mobility. The volume of a street is set by land use regulations, while how the street is to behave is set by the City. The wider we make a street, the more we will be emphasizing mobility.

Konopa thanked staff for comparing street widths from other schools. Almost all are 36-foot wide, so she thinks 32-feet is too narrow. The bike lane should be six feet. If we increase the width, can we make the property owners pay the difference? City Attorney Jim Delapoe said, we can assess specially benefited property through the local improvement district (LID); but when we have already gone through the land use process and decided what the infrastructure requirement developments were, including that a 32-foot wide street was appropriate, we will be hard pressed to justify why benefited property owners should pay for a 36-foot wide street instead. This discussion should have been an appeal. Konopa pointed out that if staff suggested a 32-foot wide street which is against our policy,

they should have come to the Council and asked. Delapoer said, if staff had anticipated Council concerns, certainly they would have; but now we have a land use approval with certain things already set. Konopa asked, was there a variance for 36-feet to 32-feet? Irish said that came up during the Planning Commission meeting and that by adopting it, a variance was not required. Delapoer recalled that there was no opposition to the variance at the meeting. Councilor Dick Olsen said that if he knew about it, he would have appealed.

Dala Rouse was in the audience and spoke on behalf of the Planning Commission. She said road width was discussed when the Comprehensive Plan was upgraded. When the Brandis development came to the public hearing, they did require a variance for road width and it was sprung on the Planning Commission, but there was nothing in the staff report about the variance. Rouse said she asked Irish and other Planning staff. Ultimately the Brandis development was withdrawn, but she said it is likely the Planning Commission would not have approved it with the narrower street.

Collins said, there are three pending questions: What do we do with this before us today? What do we do without design codes? And, if we eliminate school parking how does it impact capacity in neighborhoods? Some of these questions can be resolved now and others can be directed to staff for further study. He asked, for required parking, why are we cutting down seven trees at Fairmont School to make room for parking when they have enough? It is not consistent. Collins thinks a six-foot bike lane is reasonable. We are moving from the standard urban design street to a nonurban standard with bioswales, which requires more right-of-way (ROW). Our code does not give us urban and nonurban standards. The Council needs to direct staff to study the impacts and have developers get more ROW. Then the Planning Commission can take specific actions to make the developer ask for a variance, not staff. Also, staff should look at access control on arterials and collectors.

Fitzpatrick said, we have been in contact with City staff since the last City Council meeting. If we widen the street and increase storm water capacity and systems significantly, we will need another permit. The preferred method is a bioswale because cartridges are expensive and waste is concentrated so they require regular maintenance and disposal. Bioswales can be accommodated with a 32 or 34-foot street, but not a 36-foot street. Increasing the ROW for the bioswales is complicated because it will impact the wetlands. It took six months to attain all the permits prior to the Brandis development withdrawal, and then it took another four months to get the road permitted. For GAPS, any increase in ROW will mean that the school will not be able to open in the fall of 2009.

Olsen asked, is this the only arterial going north and south in this area? Shepard said it is the only collector between Scrael Hill and Century Drive. Olsen said, we would be controlling speed by congestion, which is not good. Now is the time to put in a wide street. He thinks anything less than a 40-foot wide street is way too narrow to serve the whole area.

Hare pointed out that data indicates parents in Albany will not let their kids walk to school because of traffic speed. A narrower street and a wider sidewalk will encourage kids to walk to school. He is not sure what we would gain by narrowing the sidewalk and increasing the width of the street, which would discourage student foot traffic and contradicts the goal of the Safe Routes To School program, of which the Council has been very supportive in the past.

MOTION: Johnson moved to approve construction Option A, as outlined in the staff report, and Christman seconded it. The motion failed 2-4, Konopa, Collins, Reid, and Olsen voting no.

MOTION: Konopa moved to approve construction of the street to a width of 36-feet and five-foot sidewalks and Collins seconded it. The motion passed 4-3 with Johnson, Christman, and Reid voting no.

Bedore said he voted yes because he considered the action a reasonable compromise although it may not produce the best outcome.

Collins would like staff to refer additional parking and access requests to Community Development.

Discussion followed about whether or not the Council should be receiving notices of all decisions, especially regarding street width.

3815 SPICER DRIVE PROPERTY ACQUISITION

Assistant City Engineer Jeff Blaine said 3815 Spicer Drive was previously identified as needing to dedicate ROW. The appraisal is for a greater area than was technically identified in the original street alignment because the property owner preferred the narrow triangle to be included. The appraisal also assumes the property will be on City sewer rather than septic.

Christman asked if the property owners are agreeable. Blaine said yes; in fact, they approached the City. They are pleased with the appraisals.

MOTION: Johnson moved to direct staff to proceed with the purchase of property at 3815 Spicer Drive with TSDC funds. Christman seconded the motion and it passed 6-0.

COUNCILOR COMMENTS

Christman asked when the Council will be getting an update on temporary sign regulations. Hare will find out the status of the report.

Bedore said the National Guard Welcome Home event on Sunday was very nice. Demobilization will be on Wednesday. They had been in Iraq for a year.

Bedore said he was at a bike shop in Eugene and spoke with some bikers who participated in Albany's bike race this spring. They said it was one of the best races they have been in and they are trying to move a championship race to that course. They said the Albany community outpouring of support was great. They would like to see more of our restaurants open for the event. Overall, it was very well received in the bike community.

CITY MANAGER REPORT

Hare said the Councilor laptop discussion is coming to a future work session.

Dennis reported that a contractor fell 16-feet while working on the hydroelectric plant. He fell on his back under a turbine and was difficult to reach. Albany's Fire Department did a stupendous job extricating him with specialized equipment from a precarious position. It was a smooth rescue. Dennis said our Fire Department was first rate in this difficult extrication.

ADJOURNMENT

There being no other business, the Work Session adjourned at 5:53 p.m.

Respectfully submitted,

Mary A. Dibble, CMC
Deputy City Clerk

Reviewed by,

Stewart Taylor
Finance Director

APPROVED: _____

CITY OF ALBANY
CITY COUNCIL
Council Chambers
Wednesday, June 25, 2008
7:15 p.m.

MINUTES

CALL TO ORDER

Mayor Bedore called the meeting to order at 7:15 p.m.

PLEDGE OF ALLEGIANCE TO THE FLAG

Mayor Bedore led the pledge of allegiance to the flag.

ROLL CALL

Councilors present: Sharon Konopa, Ralph Reid Jr., Floyd Collins, Dick Olsen, Bessie Johnson, and Jeff Christman

PROCLAMATION

Recognizing the 224 Engineer Company of the Oregon Army National Guard.

Bedore read the proclamation recognizing the 224 Engineer Company of the Oregon Army National Guard (in agenda file).

SCHEDULED BUSINESS

Public Hearings

SS-07-04, North Albany Lift Station and Force Main – alternate contracting method and exemption from competitive bidding.

Bedore opened the public hearing at 7:18 p.m.

No one wished to testify.

Bedore closed the public hearing at 7:19 p.m.

MOTION: Councilor Reid moved to exempt the construction of SS-07-04, North Albany Lift Station (NA-LS) project, from the competitive bidding process and approve an alternate contracting method, referred to as Construction Manager/General Contractor (CM/GC). Councilor Collins seconded the motion and it passed 6-0, and was designated Resolution No. 5632.

Adopting the 2008-2009 Annual Budget.

Bedore opened the public hearing at 7:19 p.m.

No one wished to testify.

Bedore closed the public hearing at 7:20 p.m.

MOTION: Councilor Konopa moved to adopt the Approved Fiscal Year 2008-2009 City of Albany Budget. Reid seconded the motion and it passed 6-0, and was designated Resolution No. 5623.

City Manager Wes Hare commended the Finance Department for the smooth budget process this year.

Withdrawing territory from the Albany Rural Fire Protection District located on Clover Ridge Road NE and North of Dunlap Avenue.

Bedore opened the public hearing at 7:22 p.m.

No one wished to testify.

Bedore closed the public hearing at 7:23 p.m.

City Attorney Jim Delapoer read for the first time in title only "AN ORDINANCE WITHDRAWING TERRITORY FROM THE ALBANY RURAL FIRE PROTECTION DISTRICT LOCATED ON CLOVER RIDGE ROAD NE (LINN COUNTY ASSESSOR'S MAP NO. 11S-03W-04AB, TAX LOTS 400, 500, 600, AND 900), CONTAINING APPROXIMATELY 15.9 ACRES MORE OR LESS, AND DECLARING AN EMERGENCY."

MOTION: Reid moved to have the ordinance read a second time in title only. Collins seconded the motion and it passed 6-0.

Delapoer read the ordinance for a second time in title only.

MOTION: Reid moved to adopt the ordinance. Councilor Johnson seconded the motion and it passed 6-0, and was designated Ordinance No. 5699.

City Attorney Jim Delapoer read for the first time in title only "AN ORDINANCE WITHDRAWING TERRITORY FROM THE ALBANY RURAL FIRE PROTECTION DISTRICT LOCATED NORTH OF DUNLAP AVENUE AND WEST OF CLOVER RIDGE ROAD NE (LINN COUNTY ASSESSOR'S MAP NOS. 11S-03W-04AB, TAX LOT 700, AND 11S-03W-04AC, TAX LOTS 100, 200, 203, 300, 400, 500, 501, AND 600), CONTAINING APPROXIMATELY 14.9 ACRES MORE OR LESS, AND DECLARING AN EMERGENCY."

MOTION: Reid moved to have the ordinance read a second time in title only. Collins seconded the motion and it passed 6-0.

Delapoer read the ordinance for a second time in title only.

MOTION: Reid moved to adopt the ordinance. Collins seconded the motion.

AMENDING MOTION: Collins moved to amend the main motion to include the correct legal description as an attachment for each of the two ordinances. Reid seconded the motion and it passed 6-0.

VOTE ON MAIN MOTION: The main motion was voted on and it passed 6-0, and was designated Ordinance No. 5700.

Business from the Public

Dick Owen, 810 Cox Street, reminded the Council of complaints he has regarding being falsely accused of legal violations against his dog, son, and property. He believes he has been misjudged by the courts and that the current Municipal Court process is a violation of his civil rights. He said it is a violation to arrest a person with a false summons.

City Attorney Jim Delapoer explained to Mr. Owen that in each case any act is reviewable or can be appealed. It can be tried all over again by the Circuit Court. The City Council has no role in overseeing judicial decisions. They have no power over the Court. The United States Constitution guarantees a separation of these powers. If a person feels any police officer or the courts have maligned them, they have options.

Owen feels the nuisance ordinance is incorrectly written. He feels he is being harassed.

Adoption of Resolutions

Revising fees and charges for Parks & Recreation services for Fiscal Year 2008-2009.

MOTION: Collins moved to adopt the resolution revising fees and charges for Parks & Recreation services for Fiscal Year 2008-2009. Johnson seconded the motion and it passed 6-0, and was designated Resolution No. 5624.

Adopting the proposed Fiscal Year 2007-2008 Supplemental Budget.

Finance Director Stewart Taylor said the Supplemental Budget is basically an accounting adjustment in order to be in compliance with Oregon law. All legal noticing requirements were followed and there are minor changes in the City's 2007-2008 Budget. There needed to be more carry over appropriated for costs associated with the Periwinkle Bridge project. The second area of concern was appropriating funding for overtime in the Fire Department.

Collins said, basically it is not new revenues but rather a required accounting process. Taylor said that is correct.

MOTION: Collins moved to adopt the resolution adopting the Fiscal Year 2007-2008 Supplemental Budget. Johnson seconded the motion and it passed 6-0, and was designated Resolution No. 5625.

Adoption of Consent Calendar

- 1) Approval of Minutes
 - a) June 11, 2008, City Council Meeting
- 2) Extending City of Albany's workers' compensation coverage to volunteers for policy year 2008-2009.

RES. NO. 5626

- 3) Annual liquor license renewals.
- 4) Accepting a Federal Highway Administration State Planning and Research Grant for additional analysis for the Transportation System Plan. RES. NO. 5627
- 5) Accepting the Oregon Department of Transportation, Public Transit Division, Rural and Small Urban Areas, Section 5311, Operating Assistance Grants for Fiscal Year 2008-2009. RES. NO. 5628
- 6) Accepting the 2008-2009 Linn-Benton Community College Intergovernmental Agreement for Albany Transit System and the Linn-Benton Loop Transit System Pass Programs. RES. NO. 5629
- 7) Accepting the 2008-2009 Oregon State University Intergovernmental Agreement for funding the OSU/LBCC Dual Enrollment Pass Program and the OSU Student, Staff, and Faculty Pass Program on the Linn-Benton Loop Transit System and on Albany Transit System, and Linn-Benton Loop operating support. RES. NO. 5630
- 8) Accepting the 2008-2009 Benton County Special Transportation Program Grant Funding Agreement for the Linn-Benton Loop Transit System. RES. NO. 5631

MOTION: Johnson moved to adopt the Consent Calendar with item 1a) removed for comment. Collins seconded the motion and it passed 6-0.

Bedore said on page 4, of the June 11, 2008, City Council minutes, third paragraph from the bottom, when he referred to PSRB, he meant to identify them as offenders who have committed a crime except for a plea of mental defect. That will be corrected in the minutes.

MOTION: Johnson moved to adopt item 1a) of the Consent Calendar with the correction. Collins seconded the motion and it passed 6-0.

Contract Amendment

ST-07-03, 53rd Avenue Bridge and Roadway Improvement Project – consulting engineering contract amendment.

Public Works Director Diane Taniguchi-Dennis said the amendment is regarding the additional design work for the ridge and roadway project. When the original project was envisioned the road was shorter than the actual project ended up being. The roadway was extended to Lochner Road. There was also additional work dealing with the access to the SVC property and improvements on 99E required by ODOT.

MOTION: Collins moved to authorize a contract amendment with OBEC Consulting Engineers in the amount of \$210,000 for the design efforts for ST-07-03, the 53rd Avenue Bridge and Roadway Improvement project. Reid seconded the motion.

Konopa commented that she remembered a discussion to have concrete all the way to the entrance of the plant, but it says on page 78 of the agenda that "The remaining roadway east of the bridge will be asphalt pavement."

Dennis said the concrete will go from the top of railroad overpass down to the intersection with Highway 99E. Konopa thought it was for incline and decline. Dennis will come back with more information regarding the concrete.

Konopa asked, regarding the third paragraph from the bottom of page 78, is the City buying wetland credits? Dennis said they were banked credits that were purchased. It would be mitigated within the area.

Delapoer added that the City did not own the land nor did it have an owner willing to give it land to mitigate, so really had no alternative.

VOTE: A vote was taken on the motion and it passed 6-0.

Personnel Request

Reclassifying Wastewater Treatment Plant Laboratory Technician position.

Dennis explained that the current Wastewater Treatment Plant Laboratory Technician brought skills that expanded the duties of the position. The reclassification has been reviewed and approved by the City's Human Resources Department.

MOTION: Konopa moved to approve reclassifying the position of Wastewater Treatment Plant (WWTP) Laboratory Technician from pay grade A138 to A142, to be effective July 1, 2008. Reid seconded the motion and it passed 6-0.

Appointment

Appointment to the Parks & Recreation Commission.

Bedore said this is his appointment. He has known Russ Allen for many years and believes he brings good experience to the Parks & Recreation Commission.

MOTION: Konopa moved to appoint Russell Allen to the Parks & Recreation Commission. Collins seconded the motion and it passed 6-0.

Report

Initiating the vacation of Linn Avenue NE between Alco Street NE and Burkhart Street NE.

Parks & Recreation Director Ed Hodney said that staff has discussed the vacation of this street with adjacent property owners and they are supportive.

Reid asked, is the City going to develop a park? Hodney said yes. Reid asked, do you have to improve Alco Street? Hodney said he understood that they would not have to do that. They are creating parking on the east side. It will be paved up to the parking area.

COUNCIL DIRECTION: The Council directed staff to initiate the vacation of Linn Avenue NE between Alco Street and Burkhart Street.

Collins said he continues to have concern about people living in the park. Hodney said they work with the Police Department regarding this issue.

BUSINESS FROM THE COUNCIL

Reid said he would like the Council to consider acquiring a property management person; someone to oversee the acquisition, disposition, and leases of City property. He said he would not like to see the staff that is currently overseeing these items end up in a confrontational relationship with the users. He gave an example of a Fixed Base Operator (FBO) at the City Airport, who is behind in his rent and is abusing his good relationship with staff.

Bedore asked if the City had a contract with the FBO. Hare said yes, but collecting delinquent monies is a diverse function currently being handled by staff citywide.

Collins said he would prefer to refer this item to the City Manager and have him report back to the Council.

COUNCIL DIRECTION: After discussion, there was Council direction for the City Manager to explore the possibility of hiring a Property Manager.

Collins said that at the City picnics he heard complaints about speeding on Scenic Drive and requests to put a safety fence of some kind north of the volleyball court at Gibson Hill Park. He heard complaints about the 12th Street slurry seal project and gang tagging above the homeless shelter on 9th Street.

COUNCIL DIRECTION: The Council directed staff to consider speeding signs on Scenic Drive and removal of graffiti on the bridge near the homeless shelter.

Collins said the National Cities League is supporting a national infrastructure bank. He would like the City of Albany to support the concept as well.

COUNCIL DIRECTION: After discussion, there was Council direction for staff to prepare a resolution in support of a federal infrastructure bank.

Johnson commended the Parks & Recreation staff for the success of the four picnics.

Johnson asked if the Police Department would consider hiring a Park Ranger for surveillance of the City parks and the river walkway. She has heard that people are not feeling comfortable.

Captain Ben Atchley said originally it was the Police Department's intent to hire a Reserve Officer to take the position during the summer. Then the rules changed for Reserve Officers. They must go through the same rigorous process as full-time regular Police Officers. Since then the department has either hired our Reserve Officers as full-time employees or they have been hired by another City. Hiring someone is the issue. During the summer, the School Resource Officers are on bike patrol and the parks and river walkway are something they cover. But, Albany is a big City when you are on a bicycle. The department has allocated \$18,000 per year for a Park Ranger that would be similar to a Community Resources Officer. Atchley said that sometimes just a uniform presence would work in the parks.

There followed discussion regarding the nature of issues in the parks. Atchley suggested using citizens on patrols in the parks.

Councilor Olsen asked if there was a "drunk-tank" for the incapacitated that wander into neighborhoods. Atchley said that Linn and Benton Counties are working on a ten-year plan for homelessness and have identified a "detox facility" as a need. Both counties are interested in pursuing the issue.

Konopa reminded the Council that the renewal of the Public Safety Levy didn't include the Park Ranger position.

COUNCIL DIRECTION: After more discussion, there was Council direction for staff to prepare a report considering a Park Ranger or Citizens Park Patrol.

Councilor Christman commented on the improvement in the atmosphere at the Police Department.

Reid suggested that there be representatives from every department at the park picnics next year.

Bedore said the Council lap top discussion is postponed to July 28.

Hare reported that mediation with those who appealed the 53rd Avenue project has commenced. They all agreed to another session. He believes the problem is that the City is being asked to do things that it cannot physically do. The City cannot compel Gatorade to sign a document saying they will pay prevailing wages. He is hoping they will have a resolution short of litigation.

Hare asked for someone to take his place as a speaker at the Timber Carnival on the 4th of July. Konopa agreed to replace him.

NEXT MEETING DATE

The next Work Session of the City Council is scheduled for July 7, 2008, at 4:00 p.m., in the Municipal Court Room, at City Hall and the next Regular Session is scheduled for July 9, 2008, at 7:15 p.m., in the Council Chambers, at City Hall.

ADJOURNMENT

There being no other business, the meeting adjourned at 8:37 p.m.

Respectfully submitted by,

Reviewed by,

Betty Langwell, CMC
City Clerk

Stewart Taylor
Finance Director



TO: Albany City Council
VIA: Stewart Taylor, Finance Director
FROM: Linda Booth, Parks & Recreation Clerk III
DATE: July 16, 2008, for the July 23, 2008 City Council Meeting
SUBJECT: Annual Liquor License Renewals *ST*
RELATES TO STRATEGIC PLAN THEME: • A Safe City

Action Requested:

Council approval for these annual liquor license renewals

Discussion:

Following is a list of businesses that have submitted an application for liquor license renewal. These businesses have paid their fees.

GPS MARKET	1655 QUEEN AVE SW
RESTAURANT PANDERIA LA MIXTECA (O)	1025 PACIFIC BLVD SE
RESTAURANT PANDERIA LA MIXTECA (L)	1025 PACIFIC BLVD SE
SHAWN'S ON FIRST	121 E FIRST ST
ALBERTSON'S #555	1177 WAVERLY DR SE
MARKET & BAKERY LA PERLA DEL PACIFICO	1642 PACIFIC BLVD SE

Budget Impact:

Revenue of \$210

lb



TO: Albany City Council
VIA: Wes Hare, City Manager
FROM: Kevin L. Kreitman, Fire Chief *kk*
DATE: July 16, 2008, for the July 23, 2008, City Council Meeting
SUBJECT: 2008 Homeland Security Grant Application Request
RELATES TO STRATEGIC PLAN THEME: • A Safe City

Action Requested:

Approval by resolution for the Fire Department to apply for \$11,859 through the 2008 Homeland Security Grant Program to be submitted by Lane County on behalf of the State Urban Search and Rescue Task Force South Division for required task force member training.

Discussion:

The Albany Fire Department is a participant on the State's Urban Search and Rescue Task Force South Division. Lane County is applying for grant funding to provide training for the South Division agencies. If awarded the grant through Lane County, the City of Albany would receive direct funding for our portion of the grant.

There is no financial requirement from the City of Albany for this grant.

Budget Impact:

None.

KK:ljh
Attachment

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE FIRE DEPARTMENT TO APPLY FOR \$11,859 THROUGH THE 2008 HOMELAND SECURITY GRANT PROGRAM.

WHEREAS, the Fire Department is a participant on the State's Urban Search and Rescue Task Force South Division; and

WHEREAS, the 2008 Homeland Security Grant Program provides funding for urban search and rescue training; and

WHEREAS, Lane County will be submitting an application for a grant through the 2008 Homeland Security Grant Program on behalf of the State's Urban Search and Rescue Task Force South Division for required task force member training.

NOW, THEREFORE, BE IT RESOLVED the Albany City Council authorizes the Fire Department to apply for \$11,859 from the 2008 Homeland Security Grant to be submitted by Lane County on behalf of the State's Urban Search and Rescue Task Force South Division.

DATED AND EFFECTIVE THIS 23RD DAY OF JULY, 2008.

Mayor

ATTEST:

City Clerk

RESOLUTION NO. _____

A RESOLUTION ACCEPTING THE FOLLOWING RIGHT-OF-WAY DEDICATION:

Grantor

KCH ENTERPRISES

Purpose

A variable width street right-of-way dedication along Geary Street as required by a condition of approval for an apartment complex site plan.

NOW, THEREFORE, BE IT RESOLVED by the Albany City Council that it does hereby accept this right-of-way dedication deed.

DATED AND EFFECTIVE THIS 23RD DAY OF JULY 2008.

Mayor

ATTEST:

City Clerk

RIGHT-OF-WAY DEDICATION

KNOW ALL MEN BY THESE PRESENTS, that KCH ENTERPRISES, hereinafter referred to as Grantor, hereby dedicate to the City of Albany, a Municipal Corporation, hereinafter called "City" for right-of-way purposes, portions of that real property situated in Linn County, Oregon, conveyed to Grantors by deed recorded in DN2008-2143, LINN County deed records, and being more particularly described as follows:

A variable width strip of land in Section 8 of Township 11 South in Range 3 West of Willamette Meridian, City of Albany, Linn County, Oregon as described in the attached Exhibit A and as shown on the attached map labeled Exhibit B.

The Grantor covenants that they are lawfully seized and possessed of the real property above described and that they have a good and lawful right to convey it or any part thereof and that they will forever warrant and defend the same against all persons who may lawfully claim the same.

The right-of-way dedicated herein is in consideration of \$1.00, receipt of which is acknowledged by the Grantor, and in further consideration of the public improvements to be placed upon said property and the benefits grantors may obtain therefrom.

IN WITNESS WHEREOF, the Grantor has hereunto fixed their hand and seal the day and year written below.

GRANTOR:

Kevin Harrison
Kevin Harrison for KCH Enterprises

STATE OF OREGON)
County of ~~Linn~~ MARION) ss.
City of Albany SALEM)

The foregoing instrument was acknowledged before me this 30 day of JUNE, 2008, by Kevin Harrison for KCH Enterprises as his/her voluntary act and deed.

Susan J Ryan
Notary Public for Oregon
My Commission Expires: 9-30-09



CITY OF ALBANY:

STATE OF OREGON)
County of Linn) ss.
City of Albany)

I, Wes Hare as City Manager of the City of Albany, Oregon, pursuant to Resolution Number _____, do hereby accept on behalf of the City of Albany, the above instrument pursuant to the terms thereof this _____ day of _____ 2008.

City Manager

ATTEST:

City Clerk

EXHIBIT A
(Road Right-of-way)

A strip of land varying in width, for road right-of-way purposes over and across two tracts of land described in Document Number 2008-02143, Parcel 1 and Parcel 2, Linn County, Oregon deed records, said tracts are located in the Southwest Quarter of Section 08, Township 11 South, Range 3 West, Willamette Meridian, City of Albany, Linn County, Oregon, and more particularly described as follows:

The easterly 4.20 feet of Parcel 2, of Document Number 2008-02143, and the easterly 1.20 feet of Parcel 1, of Document Number 2008-02143, Linn County, Oregon Deed Records.

Containing 681 Square feet more or less

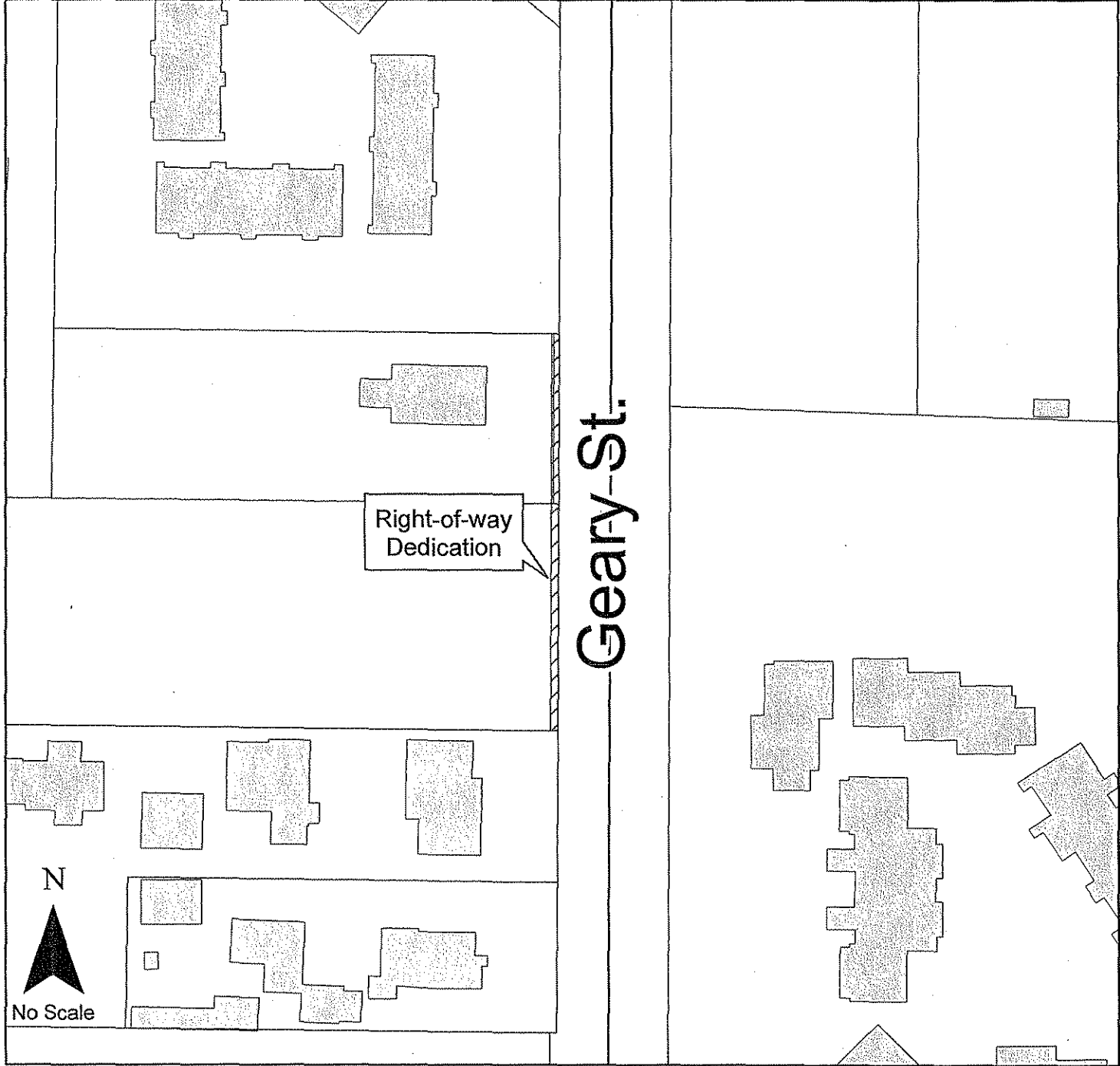
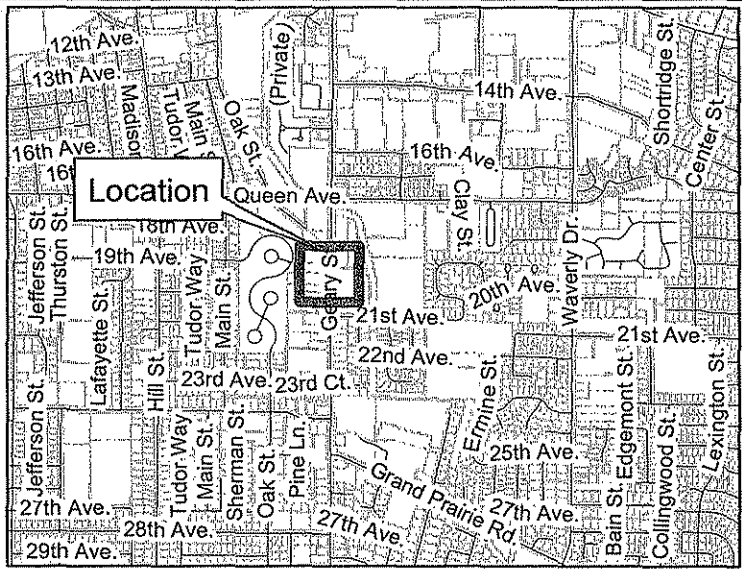
EXHIBIT B

11SO3W08CC; TL 00400 and 00500

Right-of-way dedication for
Geary Street Apartment
Project.



Geographic Information Services





TO: Albany City Council
VIA: Diane Taniguchi-Dennis, P.E., Public Works Director *Fee MWS*
FROM: Guy Mayes, Special Projects Coordinator
DATE: July 17, 2008, for the July 23, 2008, City Council Meeting
SUBJECT: Grant Acceptance for Albany Municipal Airport Improvements

RELATES TO STRATEGIC PLAN THEME: ● A Healthy Economy

Action Requested:

Staff requests Council adoption of the attached resolution for authorization to enter into an agreement with the Federal Aviation Administration (FAA) for the purpose of accepting grant monies to make facility improvements at the Albany Municipal Airport.

Discussion:

Under current federal grant programs, the City of Albany has been offered a \$223,629 grant from the FAA with a required total project match of five percent (\$11,770). A continuation of the airport capital improvement program consisting of additional security fencing and drainage improvements is planned for this funding.

All of the projects outlined are included in, and consistent with, the 2000-2020 Albany Airport Master Plan previously adopted by Council.

Budget Impact:

The required matching funds of \$11,770 are included in the Fiscal Year 2008-2009 budgets within the Economic Development Fund, Albany Municipal Airport.

GM:prj:kw
Attachment

RESOLUTION NO. _____

A RESOLUTION ACCEPTING FEDERAL AVIATION ADMINISTRATION (FAA) GRANT FUNDS AND A COMMITMENT TO PROVIDE THE REQUIRED LOCAL MATCH.

WHEREAS, a grant offer from the Federal Aviation Administration (FAA) in the amount of \$223,629 has been received; and

WHEREAS, the total project local match of five percent, or \$11,770, for the FAA grant is required; and

WHEREAS, the matching funds were budgeted as part of the Fiscal Year 2008-2009 budget process; and

WHEREAS, receipt of these funds will allow the City to continue with airport capital improvement programs.

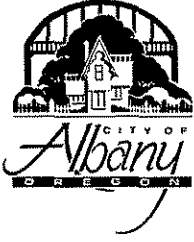
NOW, THEREFORE, BE IT RESOLVED that the City of Albany accepts this FAA Grant in the amount of \$223,629 for improvements to the Albany Municipal Airport, approves the City of Albany's local match of \$11,770, and authorizes the City Manager to execute the agreements and conditions for their acceptance; and

DATED AND EFFECTIVE THIS 23RD DAY OF JULY 2008.

ATTEST:

Mayor

City Clerk



TO: Albany City Council

VIA: Wes Hare, City Manager
Diane Taniguchi-Dennis, P.E., Public Works Director *FOR MWS*

FROM: Guy Mayes, Special Projects Coordinator *GM*

DATE: July 10, 2008, for the July 23, 2008, City Council Meeting

SUBJECT: Award of Bids for AR-08-01, Security Fence Improvements, and AR-08-02, Drainage Improvements at the Albany Municipal Airport

- RELATES TO STRATEGIC PLAN THEME:
- A Safe City
 - A Healthy Economy

Action Requested:

Staff requests that Council award a contract in the amount of \$80,075.50 to the low bidder, Gelco Construction Company, for fence improvements, and also award a contract in the amount of \$90,601.25 to the low bidder, Sloan's Enterprise of Amboy, LLC for drainage improvements at the Albany Municipal Airport.

Discussion:


On May 29, 2008, bids were opened for AR-08-01, Fencing Improvements, and AR-08-02, Drainage Improvements at the Albany Municipal Airport. There were six bidders for the fence project with an engineer's estimate of \$101,070, and nine bidders for the drainage project with an engineer's estimate of \$105,048. The projects are 95 percent funded by an FAA grant for eligible work. The FAA grant acceptance resolution is included in the July 23, 2008, Council agenda.

The projects will continue the security fencing project at the Albany Airport that started in 2003, and also improve drainage conditions in the north hangar area of the field. Additionally the taxiway on the east side of the open "T" hangars will receive a pavement overlay. The \$26,278 of paving work included in the drainage project is not eligible for FAA grant funding and will be funded by the City.

Budget Impact:

The required City matching funds of \$38,832 are included in the 2008-09 budgets, FAA Annual Capital Grant (203-16) and Albany Municipal Airport (211-16).

GM:kw
Attachment



CITY OF ALBANY, OREGON
Public Works Department
Construction Contract Bids

Project: AR-08-01, Airport Security Fence Improvements

Bid Opening: May 29, 2008

Engineer's Estimate	Gelco Construction	2G Construction	Town & Country Fence Co.	Alex Sendser Excavating	Willamette Fence Co.	C.R. Woods Trucking Inc.
101,070.00	80,075.50	99,191.00	99,875.00	110,003.00	111,307.50	119,967.50

Project: AR-08-02, Airport Drainage Improvements

Bid Opening: May 29, 2008

Engineer's Estimate	Sloans Enterprise of Amboy	Marv's Utility Specialist	Knife River	Gelco Construct.	Kuenzi Communications	North Santiam Paving	Mid-Valley Gravel Company	Prof. Underground Services	C R Woods Trucking Inc
105,047.50	90,585.95	97,350.00	100,560.00	104,887.00	105,868.00	130,500.00	147,687.00	168,880.91	170,151.00



TO: Albany City Council
VIA: Wes Hare, City Manager
FROM: Marilyn Smith, Management Assistant/Public Information Officer *MMS*
DATE: July 16, 2008, for the July 23, 2008, City Council Meeting
SUBJECT: Code Enforcement Team Year-end Report, Fiscal Year 2007-2008

RELATES TO STRATEGIC PLAN THEME:

- Great Neighborhoods
- A Safe City
- An Effective Government

The Code Enforcement Team has completed nine years of work. This year, especially, the Team can point to notable changes in the community that are the direct result of team efforts and a record number (61) of closed cases. The Team currently includes staff in the Police Department Community Resource Unit, Fire Marshal, Building Division, Environmental Services, and the City Attorney's Office.

Since the original team formed in 1999, we continue to evaluate the program and review the Albany Municipal Code to determine if amendments or other changes could make our efforts more effective. The property maintenance/dangerous buildings section of the Code, adopted in 2006, is an example of such amendments. As the community continues to change, we receive complaints about conditions or situations that are regulated differently in cities or counties where the complainants used to live. We also share the frustration of neighbors and residents who file complaints, yet see little change though many months may pass. Our ordinances and our enforcement efforts are not as strong as complainants expect, and due process can be very, very slow. We will bring this subject back to a Council Work Session later this summer for more thorough discussion and direction.

Here is the summary of activity for the fourth quarter of the year:

1. SKATE sign, 705 Montgomery Street SE (April 17) – Sign for defunct skating rink molders away above the Hackleman neighborhood and should have been removed years ago. Continuing to try to contact property owner. **Status: Open.**
2. 1095 16th Avenue SW (January 16, 2008; March 24, 2008) – Inoperable van stuffed with belongings, old refrigerator in yard. Occupant cited for keeping junk, pleaded no contest, fined \$300, which was worked off on work crew. Junk remains; further citations pending. **Status: Open.**
3. 330 Marilyn Street NE (February 29, 2008) – Decades of junk, household garbage, rats, piles of yard debris. Sent a 30-day letter to owner-occupant on March 3 ordering cleanup. Property owner unable to cleanup site without help; we will provide a dumpster and are looking for volunteers to do the work. **Status: Open.**
4. Jackson Street under the overpass (January 14, 2008) – Fence erected along railroad tracks to stop trespassing has been partially knocked down. City Attorney continues to try to contact the railroad to have it put back in place. **Status: Open.**
5. 135 Onyx Street NE (received September 14, 2007) – Report of “sky-high” piles of trash and household garbage, derelict vehicles, and people living in an RV. **Status: Open.**
6. 1555 Oak Street SE/1605 Oak Street SE (received October 18, 2007) – Report of junk left behind in abandoned homeless camp in brush on adjacent vacant parcels. Brush removed from north parcel; clean up attempted but incomplete on south parcel. Property owner has been elusive. **Status: Open.**

7. 2225 Oak Street SE (received December 22, 2006) – House damaged by fire and abandoned; unsecured. Numerous early attempts to contact owner unsuccessful. Building determined that the house is a dangerous building and posted a notice and order for it to be repaired or demolished. Deadline: March 7, 2008. Owner contacted Assistant Building Official Melanie Adams on January 11 after receiving the notice and order via certified mail. She reports he said that he hadn't been living there for the past two years, expressed considerable surprise, and had no idea that the house had burned. He thought the City or the County or a mortgage company had taken over ownership of the property long ago. Attempts to contact two mortgage holders have been fruitless. Property is now in foreclosure through Linn County. A local builder wants to purchase the property and replace the burned structure. Weeds will be abated when fire season is declared. **Status: Open.**
8. 1250 Shortridge Street SE (original complaint in 2004; reopened complaint February 28, 2007) – Property owner living in a storage building without sanitation or other utilities; accumulated junk and trash. Building Division has issued a notice and order under the property maintenance/dangerous buildings code; inspector is working closely with the property owner. Additional junk acquired recently, though no further complaints. **Status: Open.**
9. 3476 Bernard Avenue NE (received November 14, 2006) – Property owner has been cited for keeping junk and trash. **Status: Ongoing.**
10. 629 Fulton Street SE (received August 10, 2006) – Yard full of cars. Letter sent with dates for compliance. Situation has improved. **Status: Monitor.**
11. 2030 Geary Street SE (received September 12, 2006; new complaint March 26, 2008) – Chronic case of junk and trash and possibly dangerous residence in disrepair and perpetual state of remodeling. Property owner-occupant has been reluctant to grant access; nothing new to report. **Status: Open.**
12. 3083 Highway 20 NW (received January 4, 2007) – Assorted derelict vehicles, blown down fence, major appliances. The property was abandoned following a drug raid. Initial actions to seize the property through federal forfeiture laws were dropped; property went to a bank. New occupants have cleaned up the mess, though the cleanup methods have included burn piles, some of which have gotten out of hand and onto adjacent railroad right-of-way. The Fire Department reports nine emergency responses to this address this year. **Status: Monitor.**
13. 2910 Three Lakes Road SE (new complaint, January 25, 2008) – An auctioneer from Lane County conducted a heavy equipment auction on this property in August 2007 in violation of the Albany Development Code, was cited into Municipal Court, pleaded no contest, and paid a fine. The same party advertised another auction at the site for Thursday, April 17, 2008. Following correspondence with the property owner, the advertisement was pulled in mid-April. The auction apparently did not occur. **Status: CLOSED.**
14. Pussycats Private Adult Entertainment, 919 Ninth Avenue SE (January 2, 2008; March 10, 2008) – This business moved into retail space over the New Year holiday. Some remodeling done without permits. Fire and Building did inspections and issued correction notices. Other building tenants complained to their landlord, who sued Pussycats for violation of the lease. Linn County Circuit Judge found for the landlord. Business has closed. **Status: CLOSED.**
15. 315 Ermine Street SE (February 11, 2008) – Junk and trash at vacant house. Has been cleaned up and house is for sale. **Status: CLOSED.**
16. 614/618 Madison Street SE (January 14, 2008) – Report of homeless camping in brush on the property. Debris removed, and most of the tall grass and brush have been cut. **Status: CLOSED.**

17. 725 Main Street SE – Junk in the driveway. Occupant cited into Municipal Court; failed to appear, warrant issued. Pretrial conference scheduled for April 15, 2008; junk is gone. **Status: CLOSED.**
18. 505 Lyon Street S (January 14, 2008) – Dumpster stored in the right-of-way. Property is for sale. **Status: CLOSED.**

Budget Impact:

Beginning Budget	\$32,000.00
Expenditures as of 6-30-08	<u>\$13,641.00</u>
Balance	\$18,359.00

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