

6:30 pm    Work Session – 7<sup>th</sup> Street Parking Issues

**AGENDA FOR COUNCIL MEETING  
KLAMATH FALLS CITY COUNCIL  
DECEMBER 5, 2016  
7:00 P.M.**

*Matters for Council consideration not scheduled on the Agenda can be addressed by the general public under the "Public Comment" section on the agenda. Testimony must be presented according to Council procedure. Items of a non-emergency nature may be scheduled for future Council determination in order to provide sufficient time to analyze the issue.*

**CALL TO ORDER AND ROLL CALL**

**PLEDGE OF ALLEGIANCE**

**MEDAL OF VALOR PRESENTATIONS BY THE CHIEF OF POLICE**

- *BILL WARNER*
- *LABEADS YAHWHEE*

**PUBLIC COMMENT**

**1.    CONSENT AGENDA**

- a.    Approve December 5, 2016 meeting agenda and November 7, 2016 regular meeting minutes
- b.    Authorize Change Order Request #3 for Pelican City Booster Station Phase I Water Main Project
- c.    Authorize Award of the Downtown Facade and Building Improvement Grant Requests
- d.    Acknowledge Canvass of Votes from the November 8, 2016 General Elections for the Positions of Mayor and Council Members for Wards 1 and 2

**LAND USE PUBLIC HEARING - QUASI JUDICIAL**

**LAND USE PUBLIC HEARING – LEGISLATIVE**

**GENERAL PUBLIC HEARING**

## **LEGISLATIVE ACTION**

- 2. FIRST QUARTER ANALYSIS OF THE 2016-2017 FY BUDGET**
  - a. Report of Senior Accountant
  
- 3. RESOLUTION ADOPTING A SUPPLEMENTAL BUDGET FOR FISCAL YEAR 2016-2017 WITHIN THE AIRPORT FUND**
  - a. Report of Support Services Director
  - b. Move to introduce the Resolution by title
  - c. Move to approve the Resolution
  
- 4. AUTHORIZATION TO ENTER INTO AGREEMENT NO. 31349 WITH THE OREGON DEPARTMENT OF TRANSPORTATION FOR THE WASHBURN WAY SIDEWALK CONSTRUCTION PROJECT – PHASE II**
  - a. Report of City Engineer
  - b. Authorize the Mayor to Execute Agreement No. 31349 With the Oregon Department of Transportation for the Washburn Way Sidewalk Construction Project - Phase II
  - c. Direct Staff to Not Pursue the Project
  
- 5. RESOLUTION AUTHORIZING THE USE OF EMINENT DOMAIN FOR THE WASHBURN WAY SIDEWALK CONSTRUCTION PROJECT – PHASE II**
  - a. Report of Public Works Director
  - b. Move to introduce the Resolution by title
  - c. Move to approve the Resolution
  
- 6. ORDINANCE AMENDING KLAMATH FALLS CODE SECTIONS 2.800 AND 2.850 TO 2.854 REGARDING MUNICIPAL COURT AUTHORITY AND COURT APPEARANCE REQUIREMENTS – FIRST READING**
  - a. Report of City Attorney
  - b. Hold a Public Hearing
  - c. Move to introduce the Ordinance by title for first reading

## OTHER MATTERS

## ADJOURNMENT

The City Council may recess/adjourn to Executive Session under ORS 192.660 as follows: ORS 192.660(2):

- (a) - Employment of Public Officers, Employees
- (b) - Discipline of Public Officers and Employees and Agents
- (d) - Labor Negotiations
- (e) - Real Property Transactions
- (f) - Exempt Public Records
- (g) - Trade Negotiations
- (h) - Consultation with Legal Counsel
- (i) - Performance Evaluations of Public Officers and Employees
- (j) - Public Investments

### **\*\*\*AMERICANS WITH DISABILITIES ACT NOTICE\*\*\***

Please contact the City Recorder's office, Klamath Falls City Hall, 500 Klamath Avenue, Klamath Falls, OR 97601, or call 541.883.5316 at least 48 hours prior to the scheduled meeting time if you need an accommodation to participate in the meeting. The City's TTY/TDD number is 541.883.5324

MINUTES  
KLAMATH FALLS CITY COUNCIL  
November 7, 2016

A regular meeting of the Klamath Falls City Council was held in the Council Chambers on the above date at 7:00 p.m. Mayor Todd Kellstrom called the meeting to order.

Council members present:                    Councilman Dan Tofell  
   Councilman Matt Dodson  
   Councilman Bud Hart  
   Councilman Bill Adams  
   Councilwoman Trish Seiler

City staff members present:                Nathan Cherpeski, City Manager  
   Joanna Lyons-Antley, City Attorney  
   Sue Kirby, Support Services Director  
   John Barsalou, Airport Director  
   Joe Goetz, Airport Operations Manager  
   Dave Henslee, Chief of Police  
   Scott Souders, City Engineer  
   Joe Wall, Management Assistant to the  
   City Manager  
   Geoff LeGault, Senior Accountant  
   Kristina Buckley, Public Information  
   Admin. Asst.  
   John Bellon, Parks Manager  
   Terry Sellers, Parks Supervisor  
   Dave Andrews, Parks Maintenance Worker  
   Nickole Barrington, City Recorder

CALL TO ORDER AND ROLL CALL  
All Council Members were present.

PLEDGE OF ALLEGIANCE  
The Pledge of Allegiance was recited.

SERVICE AWARD PRESENTATION. Mayor Kellstrom presented a service award to Dave Andrews for 30 years of service with the Support Services Parks Division.

PRESENTATION OF \$50,000 DONATION CHECK FROM ADVANTAGE DENTAL AND DR. THOMAS TUCKER'S FAMILY TO THE PARKS DIVISION FOR THE KIT CARSON TRAIL PROJECT

John Bellon brought forth Friends and Family Members that were present and read a written script (attached as Exhibit A). Mr. Bellon expressed his and the community's heartfelt loss with Mr. Tucker's passing. Mike Shercliff of Advantage Dental spoke regarding his working relationship and friendship with Mr. Tucker, as Dr. Tucker had a lot of faucets to his life, and he was a big part of the positivity that exists in Klamath Falls. Dr. Tucker really cared about the community.

Councilwoman Seiler spoke about working with Dr. Tucker, what a wonderful man he was, and how he always wanted to be involved and help the kids in the community.

Councilman Tofell expressed his special thanks and appreciation from him and his Ward Constituents, as Kit Carson Park is located in his ward.

PUBLIC COMMENT

Public comment was opened by Mayor Kellstrom.

Regional Business Manager Steve Vincent from Avista Utilities spoke and presented to Council on the donation of a Commemorative Park Bench for Veterans Park in recognition of 25 years of service in the State of Oregon. He noted how the historical path was very interesting and how it had changed hands many times. Mayor and Council expressed their appreciation.

Public comment was closed by the Mayor, after hearing and seeing no one else who wished to speak.

1. CONSENT AGENDA.

**Councilman Tofell Moved to Approve the Consent Agenda as follows: Approval of November 7, 2016 Agenda and October 17, 2016 Regular Meeting Minutes; Re-execute a 10 Year Intergovernmental Traffic Signal Maintenance Agreement (No. 31165) with the Oregon Department of Transportation (ODOT); and a Sewer Service Request for Private Residential Service Outside City Limits (Parcel 3 of LP 51-07/R-3909-00700-00606).** Councilman Adams seconded. The motion carried unanimously with all Council members present voting aye.

LAND USE PUBLIC HEARING - QUASI JUDICIAL

There were no land use public hearing quasi-judicial matters.

LAND USE PUBLIC HEARING – LEGISLATIVE

There were no land use public hearing legislative matters.

GENERAL PUBLIC HEARING

There were no general public hearing matters.

LEGISLATIVE ACTION

2. FOURTH QUARTER ANALYSIS OF THE FISCAL YEAR 2015-2016 BUDGET (CONTINUED FROM 10/17/16 MEETING, WITH ADDED POWERPOINT PRESENTATION)

Support Services Director Sue Kirby reviewed her written report. She also noted the numbers were unaudited, and would be approved in December. She said there were no major concerns within the report. Mrs. Kirby mentioned the investment yield accounts and that she felt they had been overall successful, so they planned to continue with a similar path going forward. Mrs. Kirby presented a PowerPoint inclusive with the data from her written report. She presented a Budget Funds summary.

Mrs. Kirby said spending was down because of delayed projects in the Parks and at the Pool, and that caused some required changes. She noted a few Streets' projects had been delayed also, and that was why expenses had not occurred. Those projects will be rolled forward, along with some equipment purchases.

Mrs. Kirby stated that Maintenance Manager Kelly Brennan was able to keep costs down based on reduced expenses, keeping the Street Lighting's projects' costs down. She also said all other departments were doing a good job keeping their costs down as well, showing they were all slightly under budget.

Mrs. Kirby said the Airport Division's expenses were down because of Federal Grants and projects. A supplemental budget was anticipated in the near future to account for a project.

Mrs. Kirby noted the re-financing of the Bonds impacted the Wastewater Fund, and overall there was a lot going on in the Fund with regards to financing and moving money around.

Mrs. Kirby explained why Water Fund revenues were about 103% of the Budget, and why the expenses were down because of projects that had not been completed, yet they would be started in the near future.

Mrs. Kirby expressed that the Department Managers were doing a good job of controlling expenses, yet providing the services that were needed. She said the increase in money is mostly due to the change in interest. She further commented in the Agenda Packet was additional detailed information.

Councilman Adams stated the Investment Portfolio's average interest was rated at 1.72% and the majority of funds are in the State Treasury Pool at less than 1.00%, so he was not sure how the weighted average was higher than the pool invested amount. He said it did not make sense to him.

Mrs. Kirby stated a possible reason for that, yet they would look at it. Mr. LeGault stated he would re-run the average and get the information back to Council. Councilman Adams expressed his appreciation for the presentation.

### 3. ORDINANCE AMENDING KLAMATH FALLS CODE SECTIONS 7.250 AND 7.255 AND ADDING SECTIONS 7.252 AND 7.253 REGARDING MEDICAL MARIJUANA FACILITIES – SECOND AND FINAL READING

Ms. Lyons-Antley said she typically did not speak on a second ordinance reading, but clarification was needed with regards to whether the 1,000 feet away from another marijuana plant included dispensaries. At the last meeting she answered yes to that question. With further review she wanted to clarify, and that clarification was in the proposed Amended Ordinance in front of Council.

Ms. Lyons-Antley noted specifically two changes: a medical marijuana dispensary shall be at least 1,000 feet away from another dispensary (this was already State law); and a medical marijuana processor shall be 1,000 feet away from another processor. Ms. Lyons-Antley also presented a map overlay, showing the allowable areas.

Councilman Adams said he did not support the sale of marijuana allowed in the area at all, but Council voted and allowed it anyway. He stated in saying that he found it odd that other Council members had done their best to keep from allowing the businesses to operate. Councilman Adams noted from the standpoint of allowing the sale, Council had done their best to not allow it in any areas. He further said for him it was a fairness issue.

Councilwoman Seiler stated she agreed with Councilman Adams, as she took a second, third, and fourth look at this item, and didn't think it was fair to treat medical marijuana dispensaries as anything other than a legal business. She said it had been approved at the State level and should be accepted. Councilwoman Seiler noted typically when a business comes to our town the City usually falls over backwards to help, and we had not done that with these types of business. She further noted she didn't think it was fair, and she would be voting no.

Councilman Hart said he believed Mr. Adams addressed the sale of marijuana, and the ordinance before Council was in relation to manufacturing and processing marijuana.

Councilman Dodson inquired if the 1,000 feet was from a structure or the property.

Mr. Cherpeski stated it was from the property lines and these regulations were based on industrial and light industrial properties in conjunction the City CDO. He further explained he had a map that showed every 1,000 foot buffer. Mr. Cherpeski said staff was very specific and double checked the properties in preparation of the map for processing areas.

Councilman Dodson inquired if the measurement of feet was from the parcel lines, and not the structure.

Ms. Lyons-Antley said with the distance requirement, yes it was from the property line and that was a State law.

Councilman Hart said he felt processing and manufacturing should be located in an industrial zone, but if an applicant reviewed the map and still felt there were parcels on this map not suitable, they should consider requesting a waiver, if it was applicable to the application process.

Councilman Tofell said he agreed. The Community Development Ordinance set the stipulations for processing areas, and shy of changing the CDO he saw no other option. He said he was ready to move ahead with the item.

Councilman Tofell **moved to pass the Ordinance.** Councilman Dodson seconded. The motion carried with Councilman Tofell, Councilman Dodson, and Councilman Hart voting aye. Councilman Adams and Councilwoman Seiler voted no. City Manager Nathan Cherpeski read the Ordinance by title.

Councilman Tofell **moved to adopt the Ordinance.** Councilman Dodson seconded. **On Roll Call, Ordinance No. 16-09 was adopted** with Councilman Tofell, Councilman Dodson, and Councilman Hart voting aye. Councilman Adams and Councilwoman Seiler both voted no.

4. ORDINANCE AMENDING KLAMATH FALLS CODE SECTION 5.446 REGARDING MEDICAL AND RECREATIONAL MARIJUANA IN THE PUBLIC VIEW AND DECLARING A LEGISLATIVE EMERGENCY—SECOND AND FINAL READING

Councilman Adams **moved to pass the Ordinance by title for second and final reading.** Councilman Dodson seconded. The motion carried with Councilman Tofell, Councilman Dodson, Councilman Hart, and Councilman Adams voting aye. Councilwoman Seiler voted no. City Manager Nathan Cherpeski read the Ordinance by title.

Councilman Adams **moved to adopt the Ordinance.** Councilman Dodson seconded. **On Roll Call, Ordinance No. 16-10 was adopted** with Councilman Tofell, Councilman Dodson, Councilman Hart, and Councilman Adams voting aye. Councilwoman Seiler voted no.

OTHER MATTERS

There were no other matters to discuss.

## ADJOURNMENT

Councilman Tofell **moved to adjourn the meeting.** Councilman Dodson seconded. The motion carried unanimously with all Council members present voting aye. The meeting adjourned at 7:32 p.m.

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Nickole Barrington  
City Recorder

## Exhibit A

City Parks is most honored to be considered worthy of support for a community Park project, in remembrance of Dr. Thomas Tucker, by Advantage Dental and the Tucker Family.

We hope to further Dr. Tucker's community legacy through building and naming a walking trail in Kit Carson Park, for residents and visitors alike, which promotes health and wellness for many generations to come.

The Kit Carson remodel project includes a trail system, landscaping, nature play area, conventional playgrounds, exercise stations and other facilities yet to be decided.

We will work closely with the Tucker Family on entrance signs that proudly invite visitors to come and enjoy the Dr. Thomas Tucker Trail.

**KLAMATH FALLS CITY COUNCIL  
AGENDA REPORT**



Agenda Item No. 1b

Date: December 5, 2016

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Department: Public Works	Contact/Title: Scott Souders/City Engineer
Staff Presenter: Scott Souders	Telephone No.: 541-883-5290
City Manager Review: 	Email: ssouders@klamathfalls.city

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**TOPIC:** Authorize Change Order Request #3 for Pelican City Booster Station Phase I Water Main Project

**SUMMARY AND BACKGROUND:**

In June of 2016, City Council authorized a contract with Jesse Rodriguez Construction for the City's Pelican City Booster Station Phase I Water Main Project. Construction work commenced on July 1, 2016 and the project was completed on October 20, 2016. The information presented below relates to Change Order #3. Change Orders #1 and #2 were identified earlier in construction and processed administratively.

This project was awarded as a not-to-exceed unit price contract. This form of contract bases the award upon unit price bid schedules that are submitted by the bidder. While the bidder provides the unit price, the actual estimated quantities are determined by the design team at the time of design conclusion. These quantities are often times rough estimates based on assumptions made at the time of design.

As construction reached completion, it became evident that there would be both quantity overruns and underruns. Attached for reference is a total breakdown of each bid item and the respective final units charged to the project. The final result yielded an unexpected overrun of \$54,852.55, the bulk of which is associated with asphalt patching. Subsequent review of this item reveals the increase is associated with a combined impact of the waterline realignment related to Change Order #1, unforeseen conditions, and some quantity estimate oversight on behalf of the design team.

**FINANCIAL IMPACT:**

Funds for this project are available in the City's FY 2015-16 Adopted Budget in the Water Division Capital Fund.

1b

**COUNCIL OPTIONS:**

1. Approve Change Order #3 in the amount of \$54,852.55.
2. Deny Change Order #3 and advise staff how to proceed with compensation to the Contractor.

**DOCUMENTS ATTACHED:**

- Pelican City Booster Station Phase I Contract Change Order #3
- Progress Payment Tracking Sheet
- Change Order Log

**RECOMMENDED MOTION/ACTION:**

- Approve Change Order #3 in the amount of \$54,852.55.

**NOTICE SENT TO:**

- Jesse Rodriguez Construction



**City of Klamath Falls**  
 Public Works Department - Development Services  
 PO Box 237, Klamath Falls, OR 97601  
 Capital Projects Section - 226 South 5<sup>th</sup> Street  
 TEL (541) 883-5368; FAX (541) 883-5390

## CHANGE ORDER REQUEST

Project #: 267715 Change Order #: CO-03  
 Project Name: Pelican City PH-I Water Line Date: 11-16-16  
 Inspector: Dale Kessler Contractor: Jesse Rodriguez

Description and reason for proposed change:

Quantity overrun justification based on actual quantities placed in the field during the construction project. Below is a brief summary of the quantity overruns.

<u>Bid Item</u>	<u>Description</u>	<u>Bid Schedule Quantity</u>	<u>Quantity Placed</u>
6	Install 4" Pipe	8 LF	9 LF
7	Install 6" Pipe Native Backfill	14 LF	15 LF
8	Install 6" Pipe Granular Backfill	40 LF	53 LF
9	Install 8" Pipe Granular Backfill	32 LF	65 LF
13	Install 16" Pipe Granular Backfill	1526 LF	1514 LF
17	Long Side Services	5 EA	7 EA
18	Short Side Services	5 EA	4 EA
21	Shoulder Rock	150 TON	101.11 TON
22	Asphalt Patching	190 TON	396.22 TON

Does proposed change involve a change in Contract Sum?  No  Yes \$ 54,852.55  
 Does proposed change involve a change in Contract Time?  No  Yes \_\_\_\_\_ days

Contractor: *Jesse Rodriguez* Date: 11/28/16  
 Inspector: *Dale Kessler* Date: 11-28-16

Approved By: \_\_\_\_\_ Date: \_\_\_\_\_

\*\*Attach any supporting information or documentation\*\*\*\*

267715 Pelican City Phase 1 (Water Line) Project

APPLICATION # Quantity Overruns (CO-03)

APPLICATION DATE: 11/16/16

PERIOD TO: 1/16/16

ITEM NO	DESCRIPTION OF WORK	Jesse Rodríguez Const.		WORK THIS PERIOD		PREVIOUS PAYMENTS		TOTAL TO DATE		% COMPLETE TO DATE	Quantity Overruns				
		UNIT	QUANT	UNIT PRICE	BID PRICE	QUANTITY	TOTAL PRICE	QUANTITY	TOTAL PRICE						
<b>Bid Schedule A - General Requirements</b>															
1	Mobilization	LS	1	\$ 60,000.00	\$ 60,000.00		\$ -	1.00	\$ 60,000.00	1.00	\$ 60,000.00	100.00	-		
2	Temporary Protection and Direction of Traffic	LS	1	\$ 28,000.00	\$ 28,000.00		\$ -	1.00	\$ 28,000.00	1.00	\$ 28,000.00	100.00	-		
3	Erosion Control & Sweeping	LS	1	\$ 2,700.00	\$ 2,700.00		\$ -	1.00	\$ 2,700.00	1.00	\$ 2,700.00	100.00	-		
4	Construction Surveying	LS	1	\$ 10,750.00	\$ 10,750.00		\$ -	1.00	\$ 10,750.00	1.00	\$ 10,750.00	100.00	-		
5	Record Drawings (As-Builts)	LS	1	\$ 1,500.00	\$ 1,500.00		\$ -	1.00	\$ 1,500.00	1.00	\$ 1,500.00	100.00	-		
				\$ 102,950.00											
<b>Bid Schedule B - Wastewater System Improvements</b>															
6	Saw-cut, Excavate, Install, and Granular Backfill Pipe - 4"	LF	8	\$ 125.00	\$ 1,000.00		\$ -	9.00	\$ 1,125.00	9.00	\$ 1,125.00	112.50	125.00		
7	Excavate, Install, and Granular Pipe Zone Backfill with Native Above - 6"	LF	14	\$ 45.00	\$ 630.00		\$ -	15.00	\$ 675.00	15.00	\$ 675.00	107.14	45.00		
8	Saw-cut, Excavate, Install, and Granular Backfill Pipe - 6"	LF	40	\$ 55.00	\$ 2,200.00		\$ -	53.00	\$ 2,915.00	53.00	\$ 2,915.00	132.50	715.00		
9	Saw-cut, Excavate, Install, and Granular Backfill Pipe - 8"	LF	32	\$ 65.00	\$ 2,080.00		\$ -	65.00	\$ 4,225.00	65.00	\$ 4,225.00	203.13	2,145.00		
10	Saw-cut, Excavate, Install, and Granular Backfill Pipe - 12"	LF	711	\$ 105.00	\$ 74,655.00		\$ -	711.00	\$ 74,655.00	711.00	\$ 74,655.00	100.00	-		
11	Saw-cut, Excavate, Install, and Granular Pipe Zone Backfill with C.D.F., Above - 12"	LF	190	\$ 200.00	\$ 38,000.00		\$ -	190.00	\$ 38,000.00	190.00	\$ 38,000.00	100.00	-		
12	Excavate, Install, and Granular Pipe Zone Backfill with Native Above - 16"	LF	1160	\$ 102.00	\$ 120,360.00		\$ -	1,160.00	\$ 120,360.00	1,160.00	\$ 120,360.00	100.00	-		
13	Saw-cut, Excavate, Install, and Granular Backfill Pipe - 16"	LF	1526	\$ 111.00	\$ 169,386.00		\$ -	1,514.00	\$ 169,054.00	1,514.00	\$ 169,054.00	99.21	(1,332.00)		
14	Saw-cut, Excavate, Install, and Granular Pipe Zone Backfill with C.D.F., Above - 16"	LF	35	\$ 200.00	\$ 7,000.00		\$ -	35.00	\$ 7,000.00	35.00	\$ 7,000.00	100.00	-		
15	Connection to Existing Main	EA	9	\$ 2,000.00	\$ 18,000.00		\$ -	9.00	\$ 18,000.00	9.00	\$ 18,000.00	100.00	-		
19	Hydrant Assembly, Concrete Pad	EA	5	\$ 1,500.00	\$ 7,500.00		\$ -	6.00	\$ 35,400.00	6.00	\$ 35,400.00	100.00	-		
17	1" Water Service Connections (Long Side)	EA	5	\$ 1,100.00	\$ 5,500.00		\$ -	7.00	\$ 10,500.00	7.00	\$ 10,500.00	140.00	3,000.00		
18	1" Water Service Connections (Short Side)	EA	8	\$ 5,900.00	\$ 35,400.00		\$ -	4.00	\$ 4,400.00	4.00	\$ 4,400.00	80.00	(1,100.00)		
19	2" Water Service Connections (Short Side)	EA	1	\$ 1,250.00	\$ 1,250.00		\$ -	1.00	\$ 1,250.00	1.00	\$ 1,250.00	100.00	-		
20	Testing and Disinfection	LS	1	\$ 5,000.00	\$ 5,000.00		\$ -	1.00	\$ 5,000.00	1.00	\$ 5,000.00	100.00	-		
21	Shoulder Aggregate	Ten	150	\$ 25.00	\$ 3,750.00		\$ -	101.11	\$ 2,527.75	101.11	\$ 2,527.75	67.41	(1,222.25)		
22	Asphalt Patching	Ten	190	\$ 354.47	\$ 67,349.30		\$ -	396.22	\$ 100,626.10	396.22	\$ 100,626.10	208.54	92,476.80		
23	1" Water Service Connection w/ Duplex Box	EA	1	\$ 1,500.00	\$ 1,500.00		\$ -	1.00	\$ 1,500.00	1.00	\$ 1,500.00	100.00	-		
				\$ 541,560.30											
				Bid Total =	\$ 644,510.30										
<b>Change Orders</b>															
<b>CO-01 Rock Ex and Water Line Re-Alignment</b>															
	Rock Excavation	CY	111.1	\$ 237.00	\$ 26,326.33		\$ -	111.09	\$ 26,326.33	111.09	\$ 26,326.33	100.00	-		
	Additional Fittings to 45 across Montelous	LS	1	\$ 2,413.54	\$ 2,413.54		\$ -	1.00	\$ 2,413.54	1.00	\$ 2,413.54	100.00	-		
	Removal of Special Gasket Requirement	LS	1	\$ (1,997.82)	\$ (1,997.82)		\$ -	1.00	\$ (1,997.82)	1.00	\$ (1,997.82)	100.00	-		
	Reduction in Granular Backfill, Excavation and Trench Spoils Disposal	LS	1	\$ (3,416.40)	\$ (3,416.40)		\$ -	1.00	\$ (3,416.40)	1.00	\$ (3,416.40)	100.00	-		
	AC Patch Reduction	Ten	33.9	\$ (254.47)	\$ (8,524.75)		\$ -	33.50	\$ (8,524.75)	33.50	\$ (8,524.75)	100.00	-		
				\$ 61,249.56											
<b>CO-02 Additional Work and Time Extension</b>															
		LS	1	\$ 12,294.10	\$ 12,294.10		\$ -	1.00	\$ 12,294.10	1.00	\$ 12,294.10	100.00	-		
<b>CO-03 Quantity Overruns</b>															
		LS	1	\$ 54,852.55	\$ 54,852.55	1.00	\$ 54,852.55	-	\$ -	1.00	\$ 54,852.55	100.00	-		
				Change Order Total =	\$ 61,249.56										
				\$ -											
				\$ -											
<b>TOTALS =</b>				\$	<b>726,459.86</b>		\$	<b>54,852.55</b>	\$	<b>726,459.86</b>	\$	<b>726,459.86</b>	<b>100.00%</b>	\$	<b>54,852.55</b>

\* Total

1b

## PROJECT CHANGE ORDER LOG

Master File Number: 267715

Project Name: Pelican City Booster Station Phase I Water Main

Contactor: Jesse Rodriguez



Potential Change Order Log					
PCO Number	Date	Description	Cost	Days Requested	Change Order Number
PCO-01	7/21/2016	Rock Excavation Tracking	\$ 26,328.33	0	CO-01
PCO-02	8/12/2016	Water Main Re-Alignment	\$ (11,525.43)	0	CO-01
PCO-03	10/10/2016	Additional Time Extension Request	-	24	CO-02
PCO-04	10/24/2016	Additional Work Compensation Request	\$ 12,294.10	0	CO-02
PCO-05	11/15/2016	Unit Price Overruns	\$ 54,852.55	0	CO-03

Change Order Log				
Number	Date	PCO's Executed	Cost	Days Approved
CO-01	10/5/2016	PCO 01,02	\$ 14,802.90	0
CO-02	11/8/2016	PCO 03,04	\$ 12,294.10	24
CO-03	11/23/2016	PCO 05	\$ 54,852.55	0

Notice to Proceed: 6/30/2016	Change Order Subtotal = \$ 81,949.55
Original Contract Duration = 90	Original Contract Amount = \$ 644,510.30
Additional Days Approved = 24	Net Authorized Amount = \$ 726,459.85
New Contract Duration = 114	
Contract Completion Date = <span style="border: 1px solid black; padding: 2px;">10/23/2016</span>	

**KLAMATH FALLS CITY COUNCIL  
AGENDA REPORT**



Agenda Item No. 1c

Date: December 5, 2016

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Department: Administration  
Staff Presenter: Joe Wall  
City Manager Review: 

Contact/Title: Joe Wall / Management Assistant  
Telephone No.: 541-883-5272  
Email: [jwall@klamathfalls.city](mailto:jwall@klamathfalls.city)

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**TOPIC:** Authorize Award of the Downtown Facade and Building Improvement Grant Requests

**SUMMARY AND BACKGROUND:**

To improve downtown building aesthetics and facilitate building reuse and occupancy, City Council made \$50,000 in leveraged grant funding available within the Downtown Business Overlay. Two grant opportunities, to improve the outward appearance of buildings and to assist with building change of use or reuse, were made available in early September. Applications were due on October 31<sup>st</sup>.

A total of nine Facade Improvement and five Building Improvement grant applications were submitted. The requests totaled \$131,751, more than the \$50,000 available in grant funding. Submitted grant applications included work for exterior painting, awning replacement, elevator installation, and structural improvements. The applications were for a mix of retail, office, and residential uses.

On November 8th, the Citizen Design Review Panel reviewed the applications. The Citizen Design Review Panel was selected on Council recommendations. A summary listing of all grant application requests and Design Review Panel award recommendations is attached to the Agenda Report.

Per grant guidelines, all approved project work must be completed within one year of the grant agreement finalization. Grant awardees must follow agency approval processes and secure all required permits.

**FINANCIAL IMPACT:**

City Council allocated \$50,000 in funding for the Downtown Facade and Building Improvement Grant Programs within the 2016-2017 Budget General Fund. Individual grant awards were capped at the lower of 25% of project costs or \$10,000 for the Facade Improvement, and \$15,000 for the Building Improvement Grant.

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**COUNCIL OPTIONS:**

1. Authorize Downtown Facade and Building Improvement Grant awards per Citizen Design Review Panel recommendations.
2. Deny Downtown Facade and Building Improvement Grant awards per Citizen Design Review Panel recommendations, and determine an alternate award allocation.

**DOCUMENTS ATTACHED:**

- Summary Grant Award Recommendation Listing
- Facade Improvement Grant Program Guidelines
- Building Improvement Grant Program Guidelines
- Downtown Business Overlay Map

**RECOMMENDED MOTION/ACTION:**

- Approve Downtown Facade and Building Improvement Grant awards per Citizen Design Review Panel recommendations.

**NOTICE SENT TO:**

- N/A

<b>Façade Grant, \$20,000 available</b>			
<b>Project Address &amp; Identifier</b>	<b>Project Amount</b>	<b>Amount Requested</b>	<b>Amount Awarded</b>
129 S 6th, (Kern Building)	\$ 41,914	\$ 10,000	\$ -
403 Main, (Fisher Nicholson)	\$ 35,500	\$ 8,875	\$ 8,875
415 Main, (Fisher Nicholson)	\$ 6,675	\$ 1,669	\$ 1,669
436 Main, (Black Dog Billiards)	\$ 33,000	\$ 8,250	\$ 4,000
500 Main, (Zooka Dental)	\$ 30,000	\$ 7,500	\$ 550
630 Main, (BMB, Young at Heart, Rootz)	\$ 720,000	\$ 10,000	\$ -
811 Main, (Periwinkle Consignment)	\$ 5,650	\$ 1,412	\$ 1,412
1219 Main, (RAD Used Bikes)	\$ 13,880	\$ 3,470	\$ 3,470
1330 Main, (KB Brewing)	\$ 400,000	\$ 10,000	\$ -
		\$ 61,176	\$ 19,976
<b>Building Improvement Grant, \$30,000 available</b>			
<b>Project Address &amp; Identifier</b>	<b>Project Amount</b>	<b>Amount Requested</b>	<b>Amount Awarded</b>
129 S 6th, (Kern Building)	\$ 582,661	\$ 15,000	\$ 10,000
121 S 6th, (Klamath Insurance Center )	\$ 105,000	\$ 15,000	\$ -
125 Broad, (E Construction )	\$ 42,300	\$ 10,575	\$ -
630 Main, (BMB, Young at Heart, Rootz)	\$ 750,000	\$ 15,000	\$ 10,000
1330 Main, (KB Brewing)	\$ 400,000	\$ 15,000	\$ 10,000
		\$ 70,575	\$ 30,000

**Totals** \$ \$ 131,751 \$ 49,976

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## FAÇADE IMPROVEMENT GRANT PROGRAM GUIDELINES

The City of Klamath Falls intends to assist building owners in improving the outward appearance of their buildings within the Downtown Business Overlay District, through the creation of a Façade Improvement Program. The City will provide financial assistance to building owners and qualified tenants willing to make significant private investment in their own buildings. Funds will be distributed via a competitive application process and will be limited to those made available by City Council during the budget process.

### **Financial Incentive:**

Approved applicants will be granted up to \$10,000 or 25% of their total project improvement costs (whichever is less). Grant disbursements shall only be made to reimburse incurred expenses as demonstrated through verified receipts.

### **Eligibility:**

- Building must be located in the Downtown Business Overlay District
- Building must be structurally sound
- If a lessee submits a grant application, an accompanying Owner Consent Form is required
- All work must be done on the exterior of the building and result in a publicly visible improvement. Work on the rear or roof of the building is not eligible for a façade grant.
- Property must be up-to-date on all property taxes
- Tax exempt properties are ineligible
- Project costs must exceed \$2,000 to be considered
- Project work must comply with City of Klamath Falls development standards (CDO chapters 10-14)
- Project work cannot begin prior to Grant Agreement finalization

### **Eligible Exterior Façade Improvements:**

*All improvements shall also adhere to Downtown Business Zone Design Review Standards (CDO 12.750-12.796)*

- Exterior painting, re-siding, and refinishing
- Restoration of exterior finishes and materials
- Masonry repairs and tuck pointing
- Removal of architecturally inappropriate or incompatible exterior finishes and materials

- Restoration of architectural details or removal of materials that cover architectural details
- Repair or replacement of windows and doors (if replacement, windows and doors must be architecturally appropriate)
- Window and cornice flashing and repair
- Canopy or awning installation or repair
- Addition of or restoration of murals
- Removal of barriers to access the building from outside for people with disabilities
- Exterior lighting installation
- Other repairs that may improve the aesthetic quality of the building

**Ineligible Work:**

*Items include, but are not limited to the following:*

- Interior improvements
- Roofing
- Inappropriate repairs, replacements, or alterations
- Sidewalk construction

**Process:**

- Applications will be accepted by City staff until **October 31, 2016 at 5 p.m.**
- Completed applications will be reviewed by City staff and an appointed Design Review Committee. Applicants will be made aware of Committee recommendations, while final approval will be made on City Council review.
- Upon finalizing the Grant Agreement, applicants will have one calendar year to complete proposed grant improvements
- No project work can be completed prior to Grant Agreement finalization

**Conditions for Reimbursement**

- Color photographs of completed project work must be submitted. Completed project work must closely resemble the Grant Agreement's approved improvements.
- Copies of all paid invoices, canceled checks (bank statements), and lien waivers for all approved grant improvements must be submitted to the City for reimbursement upon project completion. Submitted reimbursement documentation must equal at least the requested grant amount and all invoices must be paid, signed, and dated by contractors.
- Lien waivers cannot be substituted for canceled checks or bank statements.
- Properties that receive grants in excess of \$5,000 will have a lien placed on the property. The lien will remain in effect for three years. If the property is sold or transferred within that time period, a portion of the award will be deducted from the proceeds of the sale. A property sold or transferred within one year will require a repayment of the full amount, within two years 66% and within three years 33%.



## **BUILDING IMPROVEMENT GRANT PROGRAM GUIDELINES**

The City of Klamath Falls intends to assist building owners in their efforts to establish new or changed building uses within the Downtown Business Overlay District, through the creation of a Building Improvement Program.

Repurposing or changing uses in a building can trigger building code requirements, accessibility issues, and seismic updates. Often these costs derail projects before they even start. The City will provide financial assistance to building owners willing to make significant private investment in their own buildings. Funds will be distributed via a competitive application process and will be limited to those made available by City Council during the budget process.

### **Financial Incentive:**

Approved applicants will be granted up to \$15,000 or 25% of their total project improvement costs (whichever is less). Grant disbursements shall only be made to reimburse incurred expenses as demonstrated through verified receipts.

### **Eligibility:**

- Building must be located in the Downtown Business Overlay District
- Building must be structurally sound
- Property owner must apply – no awards to lessees
- Property must be up-to-date on all property taxes
- Tax exempt properties are ineligible
- Project costs must exceed \$2,000 to be considered
- Project work must comply with City of Klamath Falls development standards (CDO chapters 10-14)
- Project work cannot begin prior to Grant Agreement finalization

### **Eligible Improvements:**

- Fire sprinkler systems
- Elevators
- Seismic improvements
- ADA accessibility improvements required by reuse or change of use
- HVAC improvements required by reuse or change of use
- Electrical Upgrades required by reuse or change of use
- Other improvements reasonably related to assisting building reuse or change of use. A determination will be made at the time of application if the improvements will qualify.

**Ineligible Work:**

*Items include, but are not limited to the following:*

- General Maintenance or repair items such as roofing, flooring, etc., are ineligible
- Façade work, painting etc., are also ineligible

**Process:**

- Applications will be accepted by City staff until **October 31, 2016 at 5 p.m.**
- Completed applications will be reviewed by City staff and an appointed Design Review Committee. Applicants will be made aware of Committee recommendations, while final approval will be made on City Council review.
- Upon finalizing the Grant Agreement, applicants will have one calendar year to complete proposed grant improvements
- No project work can be completed prior to Grant Agreement finalization

**Conditions for Reimbursement**

- Color photographs of completed project work must be submitted. Completed project work must closely resemble the Grant Agreement's approved improvements.
- Copies of all paid invoices, canceled checks (bank statements), and lien waivers for all approved grant improvements must be submitted to the City for reimbursement upon project completion. Submitted reimbursement documentation must equal at least the requested grant amount and all invoices must be paid, signed, and dated by contractors.
- Lien waivers cannot be substituted for canceled checks or bank statements.
- Properties that receive grants in excess of \$7,500 will have a lien placed on the property. This lien will remain in effect for three years. If the property is sold or transferred within that time period a portion of the award will be deducted from the proceeds of the sale. A property sold or transferred within one year will require repayment of the full amount, within two years 66% and within three years 33%.



CANVASS OF ELECTION VOTES FOR MAYOR AND  
COUNCIL WARDS 1 AND 2 POSITIONS OF THE  
CITY OF KLAMATH FALLS, OREGON  
HELD ON NOVEMBER 8, 2016

An election was held on November 8, 2016, for the purpose of voting for Mayor and Council positions in Wards 1 and 2. The tabulation of the votes cast at said election having been filed with the Office of the City's Chief Elections Officer on November 29, 2016 and the undersigned, being the proper official to do so, having canvassed the votes for said election, finds that they were as follows:

**For the Position of Mayor (4 year term, expiring December 31, 2020)**

Carol Westfall	3,823
Todd Kellstrom	3,396
Write In	44

**For the Position of Council – Ward 1 (4 year term, expiring December 31, 2020)**

Donna Walker	470
Kevin Brown	272
Donald Crawford	236
Phil Studenberg	502
Write In	11

**For the Position of Council – Ward 2 (4 year term, expiring December 31, 2020)**

Bud Hart	537
Kendall Bell	711
Write In	8

The abstracts of the votes from the Klamath County Clerk are attached as Exhibit "A."

Dated this 29<sup>th</sup>, day of November 2016.

  
\_\_\_\_\_  
Nickole Barrington, City Recorder  
Chief Elections Officer of the  
City of Klamath Falls



# Klamath County, OR

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Statement of Votes Cast  
General Election -- November 8, 2016  
Official Results

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## City of Klamath Falls, Mayor

<u>Precinct</u>	<u>Carol F Westfall</u>	<u>Todd Kellstrom</u>	<u>Write-In</u>	<u>Overvotes</u>	<u>Undervotes</u>
29	469	401	5	0	84
30	385	385	3	0	101
31	444	464	5	0	115
32	169	136	1	0	45
33	64	61	1	0	15
34	280	221	4	0	57
35	121	97	0	0	33
36	297	273	7	0	75
37	352	320	2	0	100
38	187	151	4	0	57
39	34	35	0	0	15
40	231	182	1	0	53
41	383	346	5	0	117
42	191	157	2	0	34
43	216	167	4	0	66

**TOTAL      3823      3396      44      0      967**



# Klamath County, OR

Statement of Votes Cast  
General Election -- November 8, 2016  
Official Results

## City of Klamath Falls, City Council, Ward 1

<u>Precinct</u>	<u>Donna Walker</u>	<u>Kevin Brown</u>	<u>Donald Crawford</u>	<u>Phil Studenberg</u>	<u>Write-In</u>	<u>Overvotes</u>	<u>Undervotes</u>
29	300	134	129	227	5	0	164
42	99	53	75	91	3	0	63
43	71	85	32	184	3	0	78

<b>TOTAL</b>	<b>470</b>	<b>272</b>	<b>236</b>	<b>502</b>	<b>11</b>	<b>0</b>	<b>305</b>
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# Klamath County, OR

Statement of Votes Cast  
General Election -- November 8, 2016  
Official Results

## City of Klamath Falls, City Council, Ward 2

<u>Precinct</u>	<u>Bud Hart</u>	<u>Kendall Bell</u>	<u>Write-In</u>	<u>Overvotes</u>	<u>Undervotes</u>
36	283	249	5	2	113
37	219	430	3	2	120
39	35	32	0	0	17

TOTAL

537

711

8

4

250

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**KLAMATH FALLS CITY COUNCIL  
AGENDA REPORT**



Agenda Item No. 2

Date: December 5, 2016

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Division: Finance

Staff Presenter: Geoff LeGault

City Manager Review: \_\_\_\_\_

Contact/Title: Geoff LeGault, Senior Accountant

Telephone No.: 541-883-5327

Email: [glegault@klamathfalls.city](mailto:glegault@klamathfalls.city)

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**TOPIC:** First Quarter Analysis of the 2016-2017 Budget

**SUMMARY AND BACKGROUND:**

Attached to this report are an Investment Summary and an Unaudited Summary of the Revenue and Expenditures for all City funds for the quarter ended September 30, 2016. This represents approximately 25% of transactions for the fiscal year. Revenue will change slightly as final adjustments are made to estimated receivables when they are received. Explanations are provided for revenue and expenditures that have a 10% variance greater or lesser than the 25% estimated for the fiscal year to date, or for qualitative purposes.

**FINANCIAL IMPACT:**

There is no financial impact associated with this Agenda Item.

**DOCUMENTS ATTACHED:**

- Investment Report and Disclosure as of September 30, 2016
- Narrative Summary of Comments and Observations
- Spreadsheet of Revenue and Expenditures for the quarter ended September 30, 2016

**REQUESTED MOTION/ACTION:**

Informational only, no action required.

**NOTICE SENT TO:**

Citizen Budget Committee Members



City of Klamath Falls  
Investment Report & Disclosure  
September 30, 2016

Cost	Market Value	Market Value to Cost	Type	Issuer / Broker / Dealer	Credit Rating	Yield	Days to Maturity	Date of		
								Purchase	Maturity	
<b>Maturities within one year</b>										
\$ 32,216,018	\$ 32,216,018	\$ -	Mixed	State Treasurers LGIP	NR	0.94%	161			
256,720	256,720	-	CD	Lewis & Clark Bank	*****	1.00%	355	09/21/2016	09/20/2017	
246,646	246,171	(475)	MM	Lewis & Clark Bank	*****	0.55%	365	09/24/2015	09/30/2017	
491,875	474,239	(17,636)	US AGENCY	US Government US Bank	AA+	4.04%	77	05/21/2008	12/16/2016	
251,124	251,124	-	CD	First Community FCU	*****	0.90%	135	02/12/2015	02/12/2017	
<b>Maturities after one year</b>										
130,258	132,043	1,785	CD	Discover Bank CD	****	2.10%	1,075	09/10/2014	09/10/2019	
260,276	260,276	-	CD	Rogue Credit Union	*****	1.51%	1,248	03/03/2014	03/01/2020	
600,000	600,835	835	US AGENCY	Vining Sparks/Piper Jaffray	AA+	1.38%	1,512	Average maturity is 4.14 Yrs.		
418,615	415,559	(3,056)	MUNICIPAL	Vining Sparks	AA	1.94%	1,450	Average maturity is 3.97 Yrs.		
2,658,325	2,669,043	10,718	CORPORATE	Vining Sparks	AA+	1.87%	1,519	Average maturity is 4.16 Yrs.		
1,513,796	1,530,098	16,302	US AGENCY	Davidson Investment Advisors	AA+	1.20%	1,112	Average maturity is 3.05 Yrs.		
342,676	339,668	(3,008)	MUNICIPAL	Davidson Investment Advisors	AA	1.30%	2,621	Average maturity is 7.18 Yrs.		
742,386	756,697	14,311	US TREASURY	Davidson Investment Advisors	NR	1.20%	2,367	Average maturity is 6.48 Yrs.		
3,319,134	3,352,853	33,719	CORPORATE	Davidson Investment Advisors	A(-)	1.77%	1,510	Average maturity is 4.14 Yrs.		
<b>\$ 43,447,849</b>	<b>\$ 43,501,344</b>	<b>\$ 53,495</b>	<b>Total Investments</b>							

Weighted Average Yield to Maturity: The weighted average of the yield of all the investments in the portfolio if held to maturity.....	1.90%
Weighted Average Maturity (WAM) - in days: The average time it takes for securities in a portfolio to mature, weighted in - proportion to the dollar amount that is invested in the portfolio. WAM can not exceed 540 days (or 18 months).....	161
WAM for investments not subject to the 18 month average (reserve, capital project, and escrow funds).....	1391
Distribution by Type of Investment: .....	
Certificate of Deposit (CD) .....	2.07%
US Government Agency .....	6.00%
Money Market (MM) .....	0.57%
Municipal .....	1.75%
Corporate Bonds .....	13.76%
US Treasury Notes .....	1.71%
State Treasurer's Investment Pool (Mixed) .....	74.15%
Transactions since June 30, 2016: Increase Vining Sparks .....	240,000      46.74%
Transactions since June 30, 2016: Decrease Davidson Investment Advisors .....	(5,171)      -1.01%
Transactions since June 30, 2016: Increase Lewis & Clark Bank .....	1,433      0.28%
Transactions since June 30, 2016: Increase Rogue Credit Union .....	988      0.19%
Transactions since June 30, 2016: Decrease Piper Jaffray .....	(250,000)      -48.69%
Transactions since June 30, 2016: Increase in State Treasurers Investment Pool .....	526,189      102.48%
Distribution of Transactions among financial counterparties (brokers/dealers) .....	100.00%
Violations of portfolio guidelines or non-compliance issues that occurred during the prior period or that are outstanding: .....	None
Actions taken or planned to bring portfolio back into compliance if applicable: .....	N / A

**Notes:**

Credit rating source for Banks & Credit Unions from BauerFinancial.com star rating system: 3 - Adequate; 4 - Excellent; 5 - Superior  
 Credit rating source for Corporate & Municipal: Standard & Poors  
 NR: Not rated - U.S. Treasury securities carry an implicit guarantee of the US Government; LGIP OSTF weighted average rating target is AA  
 Yield: Annual Percentage Rate (APR) yield to maturity (yield to worst if callable)  
 Local Government Investment Pool (LGIP) [Oregon Short Term Fund (OSTF) Compliance Summary 9/30/16 WAM is 161 days]  
 The Investment Pool limitation in ORS 294.810 (3) was increased August 31, 2016 to 47,390,998  
 All investments are held in U.S. Bank Escrow, Institutional Trust & Custody, or Safekeeping Accounts  
 Discover Bank CD was purchased from CUSO Financial Services, L.P. - an affiliate of Pacific Crest Federal Credit Union (FCU)  
 Lewis and Clark Bank CD was issued through CDARS (Certificate of Deposit Account Registry Service) by one or more FDIC-insured depository institutions



**City of Klamath Falls  
Budget & Actual  
July 1, 2016 through September 30, 2016**

**GENERAL COMMENTS:**

- This is a brief summary of the City's fund's revenue and expenditures and their comparative budgets for the first quarter of fiscal year 2016/2017. (Note)
- The budgeted and actual amounts are for three months (25% of the year), July 1 through September 30, 2016.
- Explanations are provided for revenue and expenditures that have a 10% variance greater or lesser than the 25% estimated for the quarter, or for qualitative purposes.
- Revenues are estimated for franchise fees and state revenue sharing. Amounts will be adjusted to actual upon receipt.

**GENERAL FUND – REVENUE:**

- Receipt of current fiscal year property tax revenues did not begin until November.

**GENERAL FUND – PARKS OPERATIONS:**

- Only \$12,093 of \$1,697,000 in budgeted capital outlay has been spent to date. The majority of these funds \$1.4M are budgeted for the Lake Ewauna Trail project which is being managed by ODOT. ODOT informed us there was a mix-up with the Army Corps of Engineers and the required permit has been delayed. The City is waiting for a revised Intergovernmental Agreement and Project Amendment with adjusted timelines.

**GENERAL FUND – STREET LIGHTING:**

- Only \$9,670 of \$250,000 in budgeted capital outlay has been spent to date.

**GENERAL FUND – OTHER GENERAL FUND PROGRAMS:**

- Only \$29,344 of \$228,600 in budgeted materials & services has been spent to date.

**GENERAL FUND – DEBT SERVICE:**

- The first interest payment for the 2008 Series Full Faith and Credit Bond is not due until December.

**AIRPORT FUND:**

- Only .58% of property taxes have been collected to date (\$2,113 actual vs. \$364,200 budgeted).
- Only \$153,792 of \$8,108,500 in budgeted capital outlay has been spent to date. \$4M of funding was awarded on August 19<sup>th</sup> for the Hanger project. The Airport Director is working with potential users and a prime tenant. PenAir is interested in being a subtenant, but not the prime. We anticipate going to City Council to request \$1.2M for funding match in January

2017. Due to timing for the construction season the Taxiway J project was delayed until spring.

- The inter-fund loan payment to the Escrow Reserve Fund will take place in June 2017.

**DOWNTOWN URBAN RENEWAL FUND:**

- This fund has had all of its resources expended and has been closed out.

**LAKEFRONT URBAN RENEWAL FUND:**

- Only .59% of property taxes have been collected to date (\$459 actual vs. \$77,725 budgeted).
- The debt service payment to the Escrow Reserve Fund in the amount of \$78,650 will be paid in June 2017.

**TOWN CENTER URBAN RENEWAL FUND:**

- Only .47% of property taxes have been collected to date (\$844 actual vs. \$177,875 budgeted).
- A loan payment of \$138,912 is due in January 2016.

**FOOTPATHS/BICYCLE TRAILS FUND:**

- Only \$2,353 of \$16,650 budgeted capital outlay has been spent to date.

**ECONOMIC DEVELOPMENT/PROPERTY FUND:**

- Only \$19,688 of the \$200,000 budgeted for federal grant revenue has been received to date. This is for the EPA brownfield assessment study.

**TECHNOLOGY RESERVE FUND:**

- This fund will be closed out and will transfer out its' fund balance for use in the technology services division of the general fund.

**ESCROW RESERVE FUND:**

- The revenue budget includes interest and a transfer in from the Cogeneration Fund (distribution from the sale of the plant) and interfund loan payments from the airport fund, lakefront urban renewal fund and general fund. Only interest has been received to date.

**DEBT SERVICE FUND:**

- Only .63% of property taxes have been collected to date (\$1,119 actual vs. \$178,275 budgeted).
- An interest payment on the 2008 G.O. Bond will be made in December 2016.

**WASTEWATER FUND:**

- An interest payment on the refunded Wastewater bond is due December 2016.

**WATER FUND:**

- Charges for services are at 41%; revenue is generally higher in the summer months due to irrigation of lawns.
- An SPWF loan interest and principal payment is due December 2016.
- Current year transfers out are to Parks, Airport and General Fund for the Street Division.

**COGENERATION FUND:**

- Revenue includes distributions from the sale of the Cogeneration plant and interest. To date, the fund has only received interest.
- The expenditure is an annual escrow agent fee that is paid in December.
- The transfer out to Escrow Reserve Fund cannot happen until the distribution from the escrow agent is made to the City from the sale proceeds in December.

**BASIN INTERAGENCY NARCOTICS ENFORCEMENT TEAM (BINET) FUND:**

- 50% of the budgeted resources have been received and 37% of expenditures have been made.

**VETERAN'S MEMORIAL AGENCY FUND:**

- Capital outlay projects include completion of the expansion that began four years ago. To date, 0% of the capital outlay budget has been spent.

Note – The following tables are summaries by fund of the estimates of revenue and expenditures. The left hand column represents the estimates and should be compared to the budget on the right-hand side. In addition, at the bottom of each fund, we show the approximate current fund balance. Our policy is to protect the reserves while maintaining services to the public as much as possible and achieving the goals of the City Council.



**CITY OF KLAMATH FALLS**  
**UNAUDITED BUDGET & ACTUAL**  
**THREE MONTHS ENDED SEPTEMBER 30, 2016**

	<b>GENERAL FUND</b>		
	<b>YEAR TO DATE ACTUAL</b>	<b>BUDGET</b>	<b>% OF BUDGET</b>
<b>RESOURCES</b>			
BEGINNING FUND BALANCE	\$ 11,204,546	\$ 10,671,500	105%
REVENUE	2,039,278	18,486,225	11%
<b>TOTAL RESOURCES</b>	<b>13,243,824</b>	<b>29,157,725</b>	<b>45%</b>
<b>EXPENDITURES</b>			
PUBLIC SAFETY			
POLICE	1,321,609	5,616,100	24%
CODE ENFORCEMENT	40,433	226,150	18%
ADMINISTRATIVE			
LEGISLATIVE	33,580	106,175	32%
LEGAL	54,669	234,975	23%
CITY MANAGER	140,114	531,875	26%
SUPPORT SERVICES			
MUNICIPAL COURT	46,936	215,900	22%
FINANCE	152,581	766,375	20%
HUMAN RESOURCES	63,609	286,675	22%
TECHNOLOGY SERVICES	97,739	505,025	19%
PARKS & RECREATION	235,146	2,604,375	9%
ELLA REDKEY POOL	116,595	462,375	25%
PUBLIC WORKS			
PUBLIC WORKS ADMINISTRATION	68,901	300,775	23%
MAINTENANCE SERVICES	241,143	929,125	26%
DEVELOPMENT SERVICES	206,228	933,050	22%
STREET MAINTENANCE	749,466	3,809,225	20%
VEHICLE MAINTENANCE	44,725	279,900	16%
STREET LIGHTING	40,281	383,950	10%
OTHER GENERAL FUND	25,403	228,600	11%
DEBT SERVICE	-	674,400	0%
TRANSFERS OUT	10,000	22,000	45%
RESERVED FOR FUTURE	-	10,040,700	0%
<b>TOTAL EXPENDITURES</b>	<b>3,689,158</b>	<b>29,157,725</b>	<b>13%</b>
<b>NET REVENUES OVER EXPENDITURES</b>	<b>\$ 9,554,666</b>		

<b>AIRPORT FUND</b>				
		<b>YEAR TO DATE</b>		<b>% OF</b>
		<b>ACTUAL</b>	<b>BUDGET</b>	<b>BUDGET</b>
<b>RESOURCES</b>	BEGINNING FUND BALANCE	\$ 1,435,529	\$ 1,433,150	100%
	REVENUE	473,776	9,367,850	5%
	<b>TOTAL RESOURCES</b>	<u>1,909,305</u>	<u>10,801,000</u>	<u>18%</u>
<b>EXPENDITURES</b>		538,175	9,651,300	6%
	DEBT SERVICE	-	133,775	0%
	RESERVED FOR FUTURE	-	1,015,925	0%
	<b>TOTAL EXPENDITURES</b>	<u>538,175</u>	<u>10,801,000</u>	<u>5%</u>
<b>NET REVENUES OVER EXPENDITURES</b>		<u>\$ 1,371,130</u>		

<b>DOWNTOWN URBAN RENEWAL</b>				
		<b>YEAR TO DATE</b>		<b>% OF</b>
		<b>ACTUAL</b>	<b>BUDGET</b>	<b>BUDGET</b>
<b>RESOURCES</b>	BEGINNING FUND BALANCE	\$ 59,179	\$ 123,950	48%
	REVENUE	2,932	3,500	84%
	<b>TOTAL RESOURCES</b>	<u>62,111</u>	<u>127,450</u>	<u>49%</u>
<b>EXPENDITURES</b>		60,465	127,450	47%
	TRANSFERS OUT	-	-	0%
	<b>TOTAL EXPENDITURES</b>	<u>60,465</u>	<u>127,450</u>	<u>47%</u>
<b>NET REVENUES OVER EXPENDITURES</b>		<u>\$ 1,646</u>		

<b>LAKEFRONT URBAN RENEWAL</b>				
		<b>YEAR TO DATE</b>		<b>% OF</b>
		<b>ACTUAL</b>	<b>BUDGET</b>	<b>BUDGET</b>
<b>RESOURCES</b>	BEGINNING FUND BALANCE	\$ 2,818	\$ -	
	REVENUE	528	78,775	1%
	<b>TOTAL RESOURCES</b>	<u>3,346</u>	<u>78,775</u>	<u>4%</u>
<b>EXPENDITURES</b>		30	125	24%
	DEBT SERVICE	-	78,650	0%
	<b>TOTAL EXPENDITURES</b>	<u>30</u>	<u>78,775</u>	<u>0%</u>
<b>NET REVENUES OVER EXPENDITURES</b>		<u>\$ 3,316</u>		

		<b>TOWN CENTER URBAN RENEWAL</b>		
		<b>YEAR TO DATE</b>		<b>% OF</b>
		<b>ACTUAL</b>	<b>BUDGET</b>	<b>BUDGET</b>
<b>RESOURCES</b>	BEGINNING FUND BALANCE	\$ 63,103	\$ 47,975	132%
	REVENUE	1,088	179,400	1%
	<b>TOTAL RESOURCES</b>	<b>64,191</b>	<b>227,375</b>	<b>28%</b>
<b>EXPENDITURES</b>		2,143	68,575	3%
	DEBT SERVICE	-	158,800	0%
	<b>TOTAL EXPENDITURES</b>	<b>2,143</b>	<b>227,375</b>	<b>1%</b>
<b>NET REVENUES OVER EXPENDITURES</b>		<b>\$ 62,048</b>		

		<b>PARKING FUND</b>		
		<b>YEAR TO DATE</b>		<b>% OF</b>
		<b>ACTUAL</b>	<b>BUDGET</b>	<b>BUDGET</b>
<b>RESOURCES</b>	BEGINNING FUND BALANCE	\$ 58,437	\$ 66,350	88%
	REVENUE	26,403	109,350	24%
	<b>TOTAL RESOURCES</b>	<b>84,840</b>	<b>175,700</b>	<b>48%</b>
<b>EXPENDITURES</b>		23,276	125,775	19%
	RESERVED FOR FUTURE	-	49,925	0%
	<b>TOTAL EXPENDITURES</b>	<b>23,276</b>	<b>175,700</b>	<b>13%</b>
<b>NET REVENUES OVER EXPENDITURES</b>		<b>\$ 61,564</b>		

		<b>FOOTPATHS / BICYCLE TRAILS FUND</b>		
		<b>YEAR TO DATE</b>		<b>% OF</b>
		<b>ACTUAL</b>	<b>BUDGET</b>	<b>BUDGET</b>
<b>RESOURCES</b>	BEGINNING FUND BALANCE	\$ 73,994	\$ 53,100	139%
	REVENUE	3,505	13,225	27%
	<b>TOTAL RESOURCES</b>	<b>77,499</b>	<b>66,325</b>	<b>117%</b>
<b>EXPENDITURES</b>		2,803	28,500	10%
	RESERVED FOR FUTURE	-	37,825	0%
	<b>TOTAL EXPENDITURES</b>	<b>2,803</b>	<b>66,325</b>	<b>4%</b>
<b>NET REVENUES OVER EXPENDITURES</b>		<b>\$ 74,696</b>		

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<b>DOWNTOWN MAINTENANCE DISTRICT FUND</b>				
		<b>YEAR TO DATE</b>		<b>% OF</b>
		<b>ACTUAL</b>	<b>BUDGET</b>	<b>BUDGET</b>
<b>RESOURCES</b>	BEGINNING FUND BALANCE	\$ 2,280	\$ 2,000	114%
	REVENUE	30,141	106,200	28%
	<b>TOTAL RESOURCES</b>	<b>32,421</b>	<b>108,200</b>	<b>30%</b>
<b>EXPENDITURES</b>		25,759	107,625	24%
	RESERVED FOR FUTURE	-	575	
	<b>TOTAL EXPENDITURES</b>	<b>25,759</b>	<b>108,200</b>	<b>24%</b>
<b>NET REVENUES OVER EXPENDITURES</b>		<b>\$ 6,662</b>		

<b>ECONOMIC DEVELOPMENT/PROPERTY FUND</b>				
		<b>YEAR TO DATE</b>		<b>% OF</b>
		<b>ACTUAL</b>	<b>BUDGET</b>	<b>BUDGET</b>
<b>RESOURCES</b>	BEGINNING FUND BALANCE	\$ 166,295	\$ 178,400	93%
	REVENUE	25,589	228,800	11%
	<b>TOTAL RESOURCES</b>	<b>191,884</b>	<b>407,200</b>	<b>47%</b>
<b>EXPENDITURES</b>		81,105	357,525	23%
	CONTINGENCY	-	49,675	0%
		81,105	407,200	20%
<b>NET REVENUES OVER EXPENDITURES</b>		<b>\$ 110,779</b>		

<b>TECHNOLOGY RESERVE FUND</b>				
		<b>YEAR TO DATE</b>		<b>% OF</b>
		<b>ACTUAL</b>	<b>BUDGET</b>	<b>BUDGET</b>
<b>RESOURCES</b>	BEGINNING FUND BALANCE	\$ 143,725	\$ 157,825	91%
	REVENUE	353	-	
	<b>TOTAL RESOURCES</b>	<b>144,078</b>	<b>157,825</b>	<b>91%</b>
<b>EXPENDITURES</b>				
	TRANSFER OUT	-	157,825	0%
	CONTINGENCY	-	-	
		-	157,825	0%
<b>NET REVENUES OVER EXPENDITURES</b>		<b>\$ 144,078</b>		

<b>CAPITAL PROJECTS FUND</b>				
		<b>YEAR TO DATE</b>		<b>% OF</b>
		<b>ACTUAL</b>	<b>BUDGET</b>	<b>BUDGET</b>
<b>RESOURCES</b>	BEGINNING FUND BALANCE	\$ 17,772,500	\$ 17,757,325	100%
	REVENUE	40,533	142,175	29%
	<b>TOTAL RESOURCES</b>	<b>17,813,033</b>	<b>17,899,500</b>	<b>100%</b>
<b>RESERVED FOR FUTURE</b>		-	17,899,500	0%
<b>NET REVENUES OVER UNAPPROPRIATED</b>		<b>\$ 17,813,033</b>		

		<b>ESCROW RESERVE FUND</b>		
		<b>YEAR TO DATE</b>		<b>% OF</b>
		<b>ACTUAL</b>	<b>BUDGET</b>	<b>BUDGET</b>
<b>RESOURCES</b>	BEGINNING FUND BALANCE	\$ 6,193,523	\$ 6,218,775	100%
	REVENUE	14,115	1,101,600	1%
	<b>TOTAL RESOURCES</b>	6,207,638	7,320,375	85%
	RESERVED FOR FUTURE	-	7,320,375	0%
	<b>NET REVENUES OVER UNAPPROPRIATED</b>	<u>\$ 6,207,638</u>		

		<b>DEBT SERVICE FUND</b>		
		<b>YEAR TO DATE</b>		<b>% OF</b>
		<b>ACTUAL</b>	<b>BUDGET</b>	<b>BUDGET</b>
<b>RESOURCES</b>	BEGINNING FUND BALANCE	\$ 30,319	\$ 30,675	99%
	REVENUE	1,355	179,550	1%
	<b>TOTAL RESOURCES</b>	31,674	210,225	15%
	DEBT SERVICE	-	205,525	0%
	UNAPPROPRIATED ENDING FUND BALANCE	-	4,700	0%
	<b>TOTAL EXPENDITURES</b>	-	210,225	0%
	<b>NET REVENUES OVER EXPENDITURES</b>	<u>\$ 31,674</u>		

		<b>WASTEWATER FUND</b>		
		<b>YEAR TO DATE</b>		<b>% OF</b>
		<b>ACTUAL</b>	<b>BUDGET</b>	<b>BUDGET</b>
<b>RESOURCES</b>	BEGINNING FUND BALANCE	\$ 3,929,639	\$ 3,651,175	108%
	REVENUE	1,985,884	7,479,375	27%
	<b>TOTAL RESOURCES</b>	5,915,523	11,130,550	53%
<b>EXPENDITURES</b>		1,051,485	6,632,600	16%
	DEBT SERVICE	-	807,800	0%
	RESERVED FOR FUTURE	-	3,690,150	0%
	<b>TOTAL EXPENDITURES</b>	1,051,485	11,130,550	9%
	<b>NET REVENUES OVER EXPENDITURES</b>	<u>\$ 4,864,038</u>		

		<b>WATER FUND</b>		
		<b>YEAR TO DATE</b>		<b>% OF</b>
		<b>ACTUAL</b>	<b>BUDGET</b>	<b>BUDGET</b>
<b>RESOURCES</b>	BEGINNING FUND BALANCE	\$ 5,152,152	\$ 4,348,850	118%
	REVENUE	3,175,204	7,961,075	40%
	<b>TOTAL RESOURCES</b>	<b>8,327,356</b>	<b>12,309,925</b>	<b>68%</b>
<b>EXPENDITURES</b>		2,269,382	7,941,700	29%
	DEBT SERVICE	-	64,250	0%
	TRANSFERS OUT	-	935,225	0%
	RESERVED FOR FUTURE	-	3,368,750	0%
	<b>TOTAL EXPENDITURES</b>	<b>2,269,382</b>	<b>12,309,925</b>	<b>18%</b>
<b>NET REVENUES OVER EXPENDITURES</b>		<b>\$ 6,057,974</b>		

		<b>COGENERATION FUND</b>		
		<b>YEAR TO DATE</b>		<b>% OF</b>
		<b>ACTUAL</b>	<b>BUDGET</b>	<b>BUDGET</b>
<b>RESOURCES</b>	BEGINNING FUND BALANCE	\$ 504,835	\$ 516,325	98%
	REVENUE	4	14,000	0%
	<b>TOTAL RESOURCES</b>	<b>504,839</b>	<b>530,325</b>	<b>95%</b>
<b>EXPENDITURES</b>		-	1,500	0%
	TRANSFERS OUT	-	528,825	0%
	RESERVED FOR FUTURE	-	-	0%
	<b>TOTAL EXPENDITURES</b>	<b>-</b>	<b>530,325</b>	<b>0%</b>
<b>NET REVENUES OVER EXPENDITURES</b>		<b>\$ 504,839</b>		

		<b>BINET FUND</b>		
		<b>YEAR TO DATE</b>		<b>% OF</b>
		<b>ACTUAL</b>	<b>BUDGET</b>	<b>BUDGET</b>
<b>RESOURCES</b>	BEGINNING FUND BALANCE	\$ -	\$ -	
	REVENUE	10,000	20,000	50%
	<b>TOTAL RESOURCES</b>	<b>10,000</b>	<b>20,000</b>	<b>50%</b>
<b>EXPENDITURES</b>		7,339	20,000	37%
	<b>TOTAL EXPENDITURES</b>	<b>7,339</b>	<b>20,000</b>	<b>37%</b>
<b>NET REVENUES OVER EXPENDITURES</b>		<b>\$ 2,661</b>		

		<b>VETERAN'S MEMORIAL AGENCY FUND</b>		
		<b>YEAR TO DATE</b>		<b>% OF</b>
		<b>ACTUAL</b>	<b>BUDGET</b>	<b>BUDGET</b>
<b>RESOURCES</b>	BEGINNING FUND BALANCE	\$ 154,291	\$ 150,525	103%
	REVENUE	1,464	6,500	23%
	<b>TOTAL RESOURCES</b>	155,755	157,025	99%
<b>EXPENDITURES</b>		34	6,525	1%
	RESERVED FOR FUTURE	-	150,500	0%
	<b>TOTAL EXPENDITURES</b>	34	157,025	0%
<b>NET REVENUES OVER EXPENDITURES</b>		<u>\$ 155,721</u>		

**NOTE:** The tables above are summaries by fund of the estimates of revenues and expenditures. The left hand column represents the estimates and should be compared to the budget on the right-hand side. In addition, at the bottom of each fund, we show the approximate current fund balance. Our policy is to protect the reserves while maintaining services to the public as much as possible and achieving the goals of the City Council.

**KLAMATH FALLS CITY COUNCIL  
AGENDA REPORT**



Agenda Item No. 3

Date: December 5, 2016

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Division: Finance

Staff Presenter: Sue Kirby

City Manager Review: 

Contact/Title: Sue Kirby, Support Services Director

Telephone No.: 541-883-5326

Email: SGKirby@klamathfalls.city

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**TOPIC:** A Resolution Adopting a Supplemental Budget for Fiscal Year 2016-2017 within the Airport Fund

**SUMMARY AND BACKGROUND:**

On June 20, 2016, the City Council adopted the fiscal year 2016-2017 Budget. The following unforeseen item has taken place since its adoption:

*Airport Fund* – The Operations Division needs to increase personnel services by \$85,000 and decrease reserves by \$85,000 for a new Airport Operations Specialist II position. This position is requested to adequately cover the PenAir flight schedule, and inclement winter weather including snow removal and the FAA regulatory change in how the Airport reports winter weather conditions on the Airport surface.

**FINANCIAL IMPACT:**

Appropriations will be increased by \$85,000 and Reserves will be decreased by \$85,000.

**COUNCIL OPTIONS:**

- 1) Adopt the Supplemental Budget as presented.
- 2) Choose not to adopt the Supplemental Budget, and provide staff with further direction.

**DOCUMENTS ATTACHED:**

- Proposed Resolution

**RECOMMENDED MOTION/ACTION:**

- Select option number one and move to introduce the Resolution and read by title only
- Move to approve the Resolution

**NOTICE SENT TO:**

Citizen Budget Committee Members

**RESOLUTION NO. 16 - \_\_\_\_\_**

**A RESOLUTION ADOPTING A SUPPLEMENTAL BUDGET  
FOR FISCAL YEAR 2016-2017 WITHIN THE AIRPORT FUND**

**WHEREAS**, the City of Klamath Falls adopted the Fiscal Year 2016-2017 Budget on June 20, 2016;

**WHEREAS**, the following changes need to be made in the Airport Fund Operations Division: Personnel Services need to increase \$85,000 for a new Airport Operations Specialist II position to adequately cover the new PenAir flight schedule and inclement winter weather including snow removal and FAA regulatory changes concerning the reporting of the Airport surface conditions, and Reserves will be reduced by \$85,000; and

**WHEREAS**, Supplemental Budgets are permitted under the provisions of the State of Oregon Local Budget Laws, ORS 294.471; NOW, THEREFORE,

**THE CITY OF KLAMATH FALLS RESOLVES AS FOLLOWS:**

**Section 1**

The City Council of the City of Klamath Falls, Oregon hereby adopts a Supplemental Budget for the fiscal year 2016-2017, as submitted by the Budget Officer of the City of Klamath Falls, Oregon, on December 5, 2016, and now on file in the office of the City Recorder.

**Section 2**

The amounts for the Supplemental Budget for the fiscal year beginning July 1, 2016, for the purposes shown below, are hereby appropriated as follows:

	<u>Current Budget Fiscal Year 16/17</u>	<u>Proposed Change</u>	<u>Revised Budget Fiscal Year 16/17</u>
<b>Airport Fund</b>			
Operations Division	\$ 1,662,800	\$ 85,000	\$ 1,747,800
<b>Total Fund Appropriations</b>	<u>\$ 9,785,075</u>	<u>\$ 85,000</u>	<u>\$ 9,870,075</u>

**Section 3**

This Resolution shall become effective immediately upon enactment.

Passed by the Council of the City of Klamath Falls, Oregon on the \_\_\_\_\_ day of December, 2016.

Presented to the Mayor, approved and signed this \_\_\_\_\_ day of December, 2016.

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Recorder

STATE OF OREGON                    )  
COUNTY OF KLAMATH            )ss.  
CITY OF KLAMATH FALLS         )

I, \_\_\_\_\_, City Recorder for the City of Klamath Falls, Oregon, do hereby certify that the foregoing is a true and correct copy of a Resolution duly adopted by the Council of the City of Klamath Falls, Oregon, at the meeting held on the \_\_\_\_\_ day of December, 2016, and thereafter approved and signed by the Mayor and attested by the City Recorder.

\_\_\_\_\_  
City Recorder

**KLAMATH FALLS CITY COUNCIL  
AGENDA REPORT**



Agenda Item No. 4

Date: December 5, 2016

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Department: Public Works  
Staff Presenter: Mark Willrett  
City Manager Review: 

Contact/Title: Mark Willrett/Public Works Director  
Telephone No.: 541-883-5364  
Email: Willrett@klamathfalls.city

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**TITLE:** Authorization to Enter into Agreement No. 31349 with the Oregon Department of Transportation for the Washburn Way Sidewalk Construction Project – Phase II

**SUMMARY AND BACKGROUND:**

In 2013, sidewalks were installed on the east side of Washburn Way between Pershing Way and the Crater Lake Parkway. Sidewalks were also installed on the west side of Washburn Way between Radcliffe and Union, and on the south side of Eberlein between Washburn Way and the A Canal. Prior to this project starting, the original intent was to construct sidewalks on both sides of Washburn Way, but adequate funding was not available at that time.

The second phase of the project, constructing sidewalks on the west side of Washburn Way was ranked high by the Southern Oregon Area Commission on Transportation (SOACT) for funding within the Oregon Department of Transportation's (ODOT) Statewide Transportation Improvement Program (STIP). However, funding of this project would have eliminated another passing lane project on Highway 97, so it was voted to slip this project just below the passing lane project and ultimately out of funding. Last year, ODOT contacted City staff with the news that they were able to come up with \$500,000 towards the project if the City could find the rest of the funds. The total project is estimated at \$750,000. The City has \$75,000 in the Bicycle and Pedestrian Fund, but even with these funds the project was still be under-funded by \$175,000.

On March 10<sup>th</sup>, staff requested \$175,000 from the Klamath County Board of Commissioners for the project. The County authorized an Intergovernmental Agreement (IGA) for the \$175,000 that was approved by Council.

On January 4, 2016, Council authorized the City to enter into an agreement for construction of the sidewalks with the ODOT (Agreement No. 30315).

The Agreement before Council tonight authorizes ODOT to secure rights-of-way for the project. Originally it was anticipated that rights-of-way would be needed from every parcel between Orchard Ave. and Pershing. Staff consulted with Kittelson and Associates to see if it was possible to shift the sidewalk further into Washburn Way, thus reducing the need for rights-of-way acquisition. Kittelson confirmed that this would indeed work with current and projected traffic flows. This will extend the three lane roadway section on Washburn down to Radcliffe

and will allow bike lanes on each side. Lane widths will be 10 feet wide north of Eberlein and 12 feet wide from Eberlein to Radcliffe. No change in lane widths will occur south of Radcliffe. This concept was presented to the Traffic Control Board and received unanimous approval. Rights-of-way acquisition will only be required between Shasta Way and Pershing. Since funding is largely being supplied by ODOT, they require their agency to perform the necessary acquisitions.

**FINANCIAL IMPACT:**

The City will be using \$75,000 from the Bike and Pedestrian Funds for this project. Any funding needs over the \$750,000 total estimated project cost will be the responsibility of the City.

**COUNCIL OPTIONS:**

1. Authorize the Mayor to Execute Agreement No. 31349 With the Oregon Department of Transportation.
2. Direct Staff to Not Pursue the Project.

**DOCUMENTS ATTACHED:**

Agreement No. 31349

**REQUESTED MOTION/ACTION:**

Authorize the Mayor to Execute Agreement No. 31349 with the Oregon Department of Transportation for the Washburn Way Sidewalk Construction Project - Phase II

**NOTICE SENT TO:**

N/A

**INTERGOVERNMENTAL AGREEMENT  
FOR RIGHT OF WAY SERVICES**  
Washburn Way Sidewalk Project - Phase II

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

**RECITALS**

1. By the authority granted in Oregon Revised Statute (ORS) 190.110, 283.110, 366.572 and 366.576, state agencies may enter into agreements with units of local government or other state agencies for the performance of any or all functions and activities that a Party to the agreement, its officers, or agents have the authority to perform.
2. By the authority granted in ORS 366.425, State may accept deposits of money or an irrevocable letter of credit from any county, city, road district, person, firm, or corporation for the performance of work on any public highway within the State. When said money or a letter of credit is deposited, State shall proceed with the Project. Money so deposited shall be disbursed for the purpose for which it was deposited.
3. That certain Washburn Way is a city street under the jurisdiction and control of Agency and Agency may enter into an agreement for the acquisition of real property.
4. N/A, is a part of the state highway system under the jurisdiction and control of the Oregon Transportation Commission (OTC).
5. This Agreement shall define roles and responsibilities of the Parties regarding the real property to be used as part of right of way for road, street or construction of public improvement. The scope and funding is further described in IGA Agreement number 30315. Hereinafter, all acts necessary to accomplish services in this Agreement shall be referred to as "Project."
6. As of this time there are no local public agencies (LPAs) certified to independently administer federal-aid projects for right of way services. Therefore, State is ultimately responsible for the certification and oversight of all right of way activities under this Agreement (except as provided under "Agency Obligations" for LPAs in State's certification program for consultant selection).
7. Any paragraphs that start with "N/A" have no force or effect under this Agreement.

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

## **TERMS OF AGREEMENT**

1. Under such authority, to accomplish the objectives in Agreement No. 30315, State and Agency agree to perform certain right of way activities shown in Special Provisions - Exhibit A, attached hereto and by this reference made a part hereof. State shall perform project right of way functions as outlined in the Special Provisions Exhibit A of this Agreement and is responsible for the associated costs, not to exceed \$250,000 in state funds. Agency shall be responsible for associated project right of way costs exceeding the \$250,000.
2. The work shall begin on the date all required signatures are obtained and shall be completed no later than ten (10) years, on which date this Agreement automatically terminates unless extended by a fully executed amendment.
3. The process to be followed by the Parties in carrying out this Agreement is set out in Exhibit A.
4. It is further agreed both Parties will strictly follow the rules, policies and procedures of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, ORS Chapter 35 and the "State Right of Way Manual."

## **STATE OBLIGATIONS**

1. State shall perform the work described in Special Provisions - Exhibit A.
2. With the exception of work related to appraisals, State shall not enter into any subcontracts for any of the work scheduled under this Agreement without obtaining prior written approval from Agency.
3. State shall perform the service under this Agreement as an independent contractor and shall be exclusively responsible for all costs and expenses related to its employment of individuals to perform the work under this Agreement including, but not limited to, retirement contributions, workers compensation, unemployment taxes, and state and federal income tax withholdings.
4. State's right of way contact person for this Project is Jenny Kneece, Region 4 Senior Right of Way Agent, 63055 N. Highway 97 Bldg. M, Bend, OR 97703, 541-388-6198, jenny.kneece@odot.state.or.us, or assigned designee upon individual's absence. State shall notify the other Party in writing of any contact changes during the term of this Agreement.

## **AGENCY OBLIGATIONS**

1. Agency shall perform the work described in Special Provisions - Exhibit A.
2. Agency certifies, at the time this Agreement is executed, that sufficient funds are available and authorized for expenditure to finance costs of this Agreement within Agency's current

appropriation or limitation of current budget. Agency is willing and able to finance all, or its pro-rata share of all, costs and expenses incurred in the Project up to its maximum.

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

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

4. If Agency intends to use Agency staff, staff of another local public agency, consultants (except for consultants on State's Qualified Appraiser List), or contractors to perform right of way services scheduled under this Agreement, Agency must receive prior written approval from State's Region Right of Way Office.
5. The LPA A&E Requirements Guide and A&E Contract Template referenced above under paragraph 3 are available on the following Internet page: [http://www.oregon.gov/ODOT/CS/OPO/Pages/ae.aspx#Local Public Agency \(LPA\) Consultant Templates and Guidance Docs](http://www.oregon.gov/ODOT/CS/OPO/Pages/ae.aspx#Local Public Agency (LPA) Consultant Templates and Guidance Docs).
6. Agency or its subcontractor will strictly follow the rules, policies and procedures of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, ORS Chapter 35 and the "State Right of Way Manual."
7. Agency represents that this Agreement is signed by personnel authorized to do so on behalf of Agency.

8. Agency's right of way contact person for this Project is Mark Willrett, Director of Public Works, 226 S. 5th Street, Klamath Falls, OR 97601, 541-883-5364, willrett@ci.klamath-falls.or.us, or assigned designee upon individual's absence. Agency shall notify the other Party in writing of any contact information changes during the term of this Agreement.

## **PAYMENT FOR SERVICES AND EXPENDITURES:**

1. State shall perform project right of way functions as outlined in the Special Provisions Exhibit A of this Agreement and is responsible for the associated costs, not to exceed \$250,000 in state funds. Agency shall be responsible for associated project right of way costs exceeding the \$250,000.

## **GENERAL PROVISIONS:**

1. This Agreement may be terminated by either Party upon thirty (30) days' notice, in writing and delivered by certified mail or in person, under any of the following conditions:
  - a. If either Party fails to provide services called for by this Agreement within the time specified herein or any extension thereof.
  - b. If either Party fails to perform any of the other provisions of this Agreement or so fails to pursue the work as to endanger performance of this Agreement in accordance with its terms, and after receipt of written notice fails to correct such failures within ten (10) days or such longer period as may be authorized.
  - c. If Agency fails to provide payment of its share of the cost of the Project.
  - d. If State fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow State, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement.
  - e. If federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the work under this Agreement is prohibited or State is prohibited from paying for such work from the planned funding source.
2. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
3. Agency acknowledges and agrees that State, the Oregon Secretary of State's Office, the federal government, and their duly authorized representatives shall have access to the books, documents, papers, and records of Agency which are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of six (6) years after final payment. Copies of applicable records shall be made available upon request. Payment for costs of copies is reimbursable by State.
4. Agency shall comply with all federal, state, and local laws, regulations, executive orders and ordinances applicable to the work under this Agreement, including, without limitation, the provisions of ORS 279B.220, 279B.225, 279B.230, 279B.235 and 279B.270 incorporated herein by reference and made a part hereof. Without limiting the generality of the foregoing, Agency expressly agrees to comply with (i) Title VI of Civil Rights Act of 1964; (ii) Title V and Section 504 of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659A.142; (iv) all regulations and administrative rules

established pursuant to the foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.

5. All employers that employ subject workers who work under this Agreement in the State of Oregon shall comply with ORS 656.017 and provide the required workers' compensation coverage unless such employers are exempt under ORS 656.126. Employers Liability insurance with coverage limits of not less than \$500,000 must be included. Both Parties shall ensure that each of its subcontractors complies with these requirements.
6. If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third Party Claim") against State or Agency with respect to which the other Party may have liability, the notified Party must promptly notify the other Party in writing of the Third Party Claim and deliver to the other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Each Party is entitled to participate in the defense of a Third Party Claim and to defend a Third Party Claim with counsel of its own choosing. Receipt by a Party of the notice and copies required in this paragraph and meaningful opportunity for the Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to that Party's liability with respect to the Third Party Claim.
7. With respect to a Third Party Claim for which State is jointly liable with Agency (or would be if joined in the Third Party Claim), State shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by Agency in such proportion as is appropriate to reflect the relative fault of State on the one hand and of Agency on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of State on the one hand and of Agency on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. State's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if State had sole liability in the proceeding.
8. With respect to a Third Party Claim for which Agency is jointly liable with State (or would be if joined in the Third Party Claim), Agency shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by State in such proportion as is appropriate to reflect the relative fault of Agency on the one hand and of State on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of Agency on the one hand and of State on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such

4

expenses, judgments, fines or settlement amounts. Agency's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if it had sole liability in the proceeding.

9. The Parties shall attempt in good faith to resolve any dispute arising out of this Agreement. In addition, the Parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation.
10. When federal funds are involved in this Agreement, Exhibits B and C are attached hereto and by this reference made a part of this Agreement, and are hereby certified to by Agency.
11. When federal funds are involved in this Agreement, Agency, as a recipient of federal funds, pursuant to this Agreement with the State, shall assume sole liability for Agency's breach of any federal statutes, rules, program requirements and grant provisions applicable to the federal funds, and shall, upon Agency's breach of any such conditions that requires the State to return funds to the Federal Highway Administration, hold harmless and indemnify the State for an amount equal to the funds received under this Agreement; or if legal limitations apply to the indemnification ability of Agency, the indemnification amount shall be the maximum amount of funds available for expenditure, including any available contingency funds or other available non-appropriated funds, up to the amount received under this Agreement.
12. The Parties hereto agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be invalid, unenforceable, illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.
13. This Agreement may be executed in several counterparts (facsimile or otherwise) all of which when taken together shall constitute one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of this Agreement so executed shall constitute an original.
14. This Agreement and attached exhibits and Agreement No. 30315 constitute the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either Party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of State to enforce any provision of this Agreement shall not constitute a waiver by State of that or any other provision.

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

**Signature Page to Follow**

**CITY OF KLAMATH FALLS, by and through its elected officials**

By \_\_\_\_\_

Date \_\_\_\_\_

By \_\_\_\_\_

Date \_\_\_\_\_

**APPROVED AS TO LEGAL SUFFICIENCY**

By Mark Schumock on 09/06/16

**Agency Contact:**

Mark Willrett, Director of Public Works  
226 S 5<sup>th</sup> Street  
Klamath Falls, OR 97601  
(541)883-5364  
willrett@ci.klamath-falls.or.us

**State Contact:**

Jenny Kneece, Senior Right of Way Agent  
63055 N Highway 97 Bldg M  
Bend, Oregon 97703  
(541)388-6198  
jenny.kneece@odot.state.or.us

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

By \_\_\_\_\_  
State Right of Way Manager

Date \_\_\_\_\_

**APPROVAL RECOMMENDED**

By \_\_\_\_\_  
Region 4 Right of Way Manager

Date \_\_\_\_\_

By \_\_\_\_\_

Date \_\_\_\_\_

**APPROVED AS TO LEGAL SUFFICIENCY**

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

Date \_\_\_\_\_

**APPROVED**

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

By \_\_\_\_\_  
Chief Trial Counsel

Date \_\_\_\_\_

**SPECIAL PROVISIONS EXHIBIT A**  
**Right of Way Services**

THINGS TO BE DONE BY STATE OR AGENCY

1. Pursuant to this Agreement, the work performed on behalf of the Agency can be performed by the Agency, the Agency's consultant, the State or a State Flex Services consultant, as listed under Agency Obligations, paragraph 3 of this Agreement. The work may be performed by Agency staff or any of these representatives on behalf of Agency individually or collectively provided they are qualified to perform such functions and after receipt of approval from the State's Region 4 Right of Way Manager.
2. With the exception of work related to appraisals, State shall not enter into any subcontracts for any of the work scheduled under this Agreement without obtaining prior written approval from Agency.
3. Any paragraphs that start with "N/A" have no force or effect under this Agreement.

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

**A. Preliminary Phase**

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

**B. Acquisition Phase**

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

shall be included in the resolution adopted by the Agency. Prior approval by Oregon Department of Justice is required.

2. Legal Descriptions:

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

3. Real Property and Title Insurance:

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

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

- c. State shall facilitate the relocation appeal process.

### **C. Closing Phase**

1. State shall close all transactions. This includes drawing of deeds, releases and satisfactions necessary to clear title, obtaining signatures on release documents, and making all payments
2. State shall record conveyance documents, only upon acceptance by appropriate agency.

### **D. Property Management**

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

### **E. Condemnation**

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

### **F. Transfer of Right of Way to State**

When right of way is being acquired in Agency's name, Agency agrees to transfer and State agrees to accept all right of way acquired on the State highway. The specific method of

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

#### **G. Transfer of Right of Way to Agency**

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

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

WHEREAS City of Klamath Falls may exercise the power of eminent domain pursuant to Agency's Charter and the Law of the State of Oregon generally, when the exercise of such power is deemed necessary by the City of Klamath Falls governing body to accomplish public purposes for which City of Klamath Falls has responsibility;

WHEREAS City of Klamath Falls has the responsibility of providing safe transportation routes for commerce, convenience and to adequately serve the traveling public;

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

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

BE IT HEREBY RESOLVED by Agency's Council

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

DATED this \_\_\_\_ day of \_\_\_\_\_, 20\_\_

**KLAMATH FALLS CITY COUNCIL  
AGENDA REPORT**



Agenda Item No. 5

Date: December 5, 2016

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Department: Public Works  
Staff Presenter: Mark Willrett  
City Manager Review: 

Contact/Title: Mark Willrett/Public Works Director  
Telephone No.: 541-883-5364  
Email: Willrett@klamathfalls.city

---

**TITLE:** Resolution Authorizing the Use of Eminent Domain for the Washburn Way Sidewalk Construction Project – Phase II

**SUMMARY AND BACKGROUND:**

Due to the State funding associated with the Washburn Way Sidewalk Project Phase II, the Oregon Department of Transportation (ODOT) will conduct any rights-of-way acquisitions. With ODOT's funding, ODOT requires that the City adopt a resolution authorizing the potential use of eminent domain. Any actual use of eminent domain would require further Council action.

Current designs, while removing the right-of-way need on most of the project, show that it will be necessary to acquire small sections of rights-of-way from property owners adjacent to Washburn Way between Shasta Way and Pershing Way. The City minimized the amount of land needed to be acquired by adjusting the sidewalk location further north, otherwise the City would need to acquire rights-of-way from Radcliffe north to Orchard Ave.

Per the proposed ODOT Agreement (separate action), ODOT will be conducting the negotiations on behalf of the City. While it is always the intent to successfully negotiate with the property owners for the necessary rights-of-way, there are sometimes instances where an agreement cannot be made, and the use of eminent domain becomes necessary. Even if eminent domain is used, the property owner must be fairly compensated for the property based on an appraisal process. It is important to note that eminent domain will only be considered as a last resort to acquire the necessary property.

If necessary, the attached Resolution gives the City the right to initiate eminent domain on said property. As stated earlier, since State funds are involved, ODOT needs to be the entity that acquires the rights-of-way using their process.

**FINANCIAL IMPACT:**

ODOT is contributing the funding for acquisition up to \$250,000.

**COUNCIL OPTIONS:**

1. Approve the resolution
2. Reject the proposed resolution. Rejecting the resolution would eliminate the construction of sidewalks between Shasta and Pershing Way.

**DOCUMENTS ATTACHED:**

- Proposed Resolution

**REQUESTED MOTION/ACTION:**

- Select option one and move to introduce the Resolution by title
- Move to approve the Resolution

**NOTICE SENT TO:**

N/A

**RESOLUTION NO. 16-\_\_\_\_\_**

**RESOLUTION EXERCISING THE POWER OF EMINENT DOMAIN FOR RIGHT-OF-WAY SERVICES ON THE WASHBURN WAY SIDEWALK PROJECT PHASE II**

WHEREAS, the City of Klamath Falls may exercise the power of eminent domain pursuant to the City's Charter and the laws of the State of Oregon generally, when the exercise of such power is deemed necessary by the City's governing body to accomplish public purposes for which the City has responsibility; and

WHEREAS, the City has the responsibility of providing safe transportation routes for commerce, convenience, and to adequately serve the traveling public; and

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

WHEREAS, to accomplish the project or projects set forth above it is necessary to acquire the interests in the property described in Exhibit A; and NOW, THEREFORE,

**THE CITY OF KLAMATH FALLS RESOLVES AS FOLLOWS:**

**Section 1.**

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

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

**Section 2.**

This Resolution shall become effective immediately upon enactment.

Passed by the Council of the City of Klamath Falls, Oregon, the \_\_\_\_ day of December, 2016.

Presented to the Mayor, approved and signed this \_\_\_\_ day of December, 2016.

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Recorder

STATE OF OREGON                    )  
COUNTY OF KLAMATH            )ss.  
CITY OF KLAMATH FALLS         )

I, \_\_\_\_\_, Recorder for the City of Klamath Falls, Oregon, do hereby certify that the foregoing is a true and correct copy of a Resolution duly adopted by the Council of the City of Klamath Falls, Oregon, at the meeting held on the \_\_\_\_ day of December 2016, and thereafter approved and signed by the Mayor and attested by the City Recorder.

\_\_\_\_\_  
City Recorder



EXHIBIT A

Permanent Easement for Sidewalks

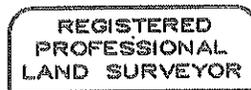
An easement over the Easterly portion of Lot 23, Block 1, of that certain map entitled "Plat of Sixth Street Addition", in the County of Klamath, State of Oregon, the said easement being more particularly described as follows:

BEGINNING at the Southeast corner of said Lot 23, being hereinabove described; thence Westerly 2.00 feet along the South line of said Lot; thence Northerly 68.00 feet along a line parallel to the East line of said Lot; thence Westerly 2.50 feet along a line parallel to the said South line; thence Northerly 32.00 feet along a line parallel to the said East line, to a point on the North line of said Lot; thence Easterly along said North line, 4.50 feet to the Northeast corner of said Lot; thence Southerly along said East line 100 feet, to the true point of beginning of this description.

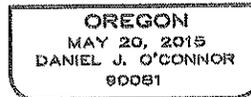
Excepting Therefrom:

That portion of said Lot 23, being hereinabove described, deeded to the City of Klamath Falls by Warranty Deed recorded June 14, 1978 in Book M78, Page 12610.

Containing 245 square feet, more or less.



DRAFT



RENEWAL DATE 01/01/17

Situs Address: 2546 Shasta Way  
Klamath Falls, Oregon  
Taxlot #: R-3909-004AA-00100  
Owner: Adventures West, LLC

Date: August 2, 2016

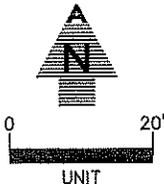
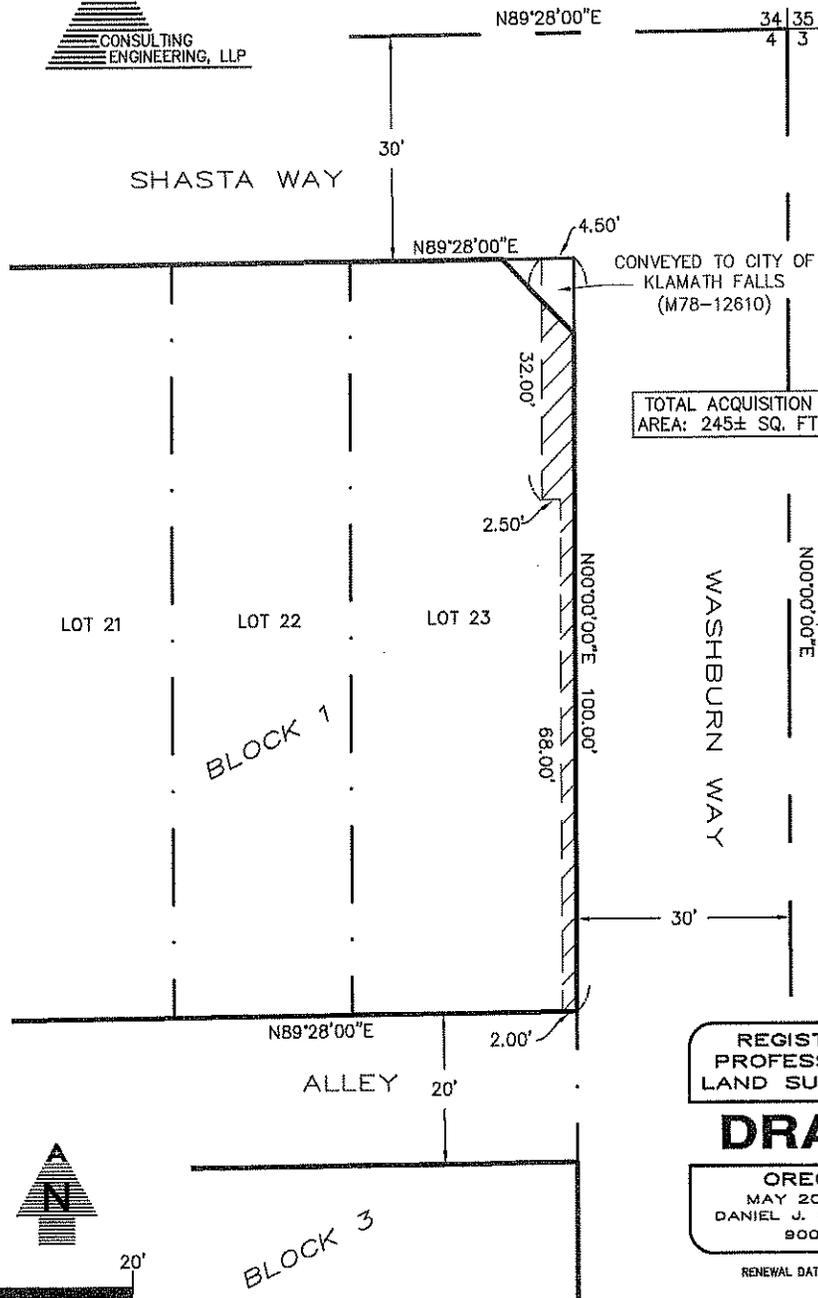
ODOT File #: 9188-001  
Adkins Project #: 1000-1302

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**EXHIBIT B**



**2546 SHASTA WAY, KLAMATH FALLS, OR  
TL: R-3909-004AA-00100  
ADVENTURES WEST, LLC**

ODOT FILE #:  
9188-001  
ADKINS PROJECT #:  
1000-1302

DATE: 8/2/16  
BY: MSM  
**2 OF 2**

5



Engineers ▲ Planners ▲ Surveyors ▲ Testing

EXHIBIT A

Permanent Easement for Sidewalks

An easement over the Easterly portion of Lot 11, 12, 13 and 14, Block 3, of that certain map entitled "Plat of Sixth Street Addition", in the County of Klamath, State of Oregon, the said easement being more particularly described as follows:

BEGINNING at the Southeast corner of said Lot 14, being hereinabove described; thence Westerly 5.50 feet along the South line of said Lot; thence Northerly 11.75 feet along a line being parallel to the East lines of said Lot 11, 12, 13 & 14, being hereinabove described; thence Easterly 3.50 feet along a line parallel to the said South line; thence Northerly 83.00 feet along a line parallel to the said East lines; thence Westerly 2.50 feet along a line parallel to the said South line; thence Northerly 5.25 feet along a line parallel to the said East lines, to a point on the North line of said Lot 11; thence Easterly along said North line, 4.50 feet to the Northeast corner of said Lot 11; thence Southerly along the said East lines, 100 feet to the true point of beginning of this description.

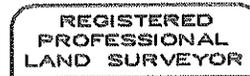
Containing 254 square feet, more or less.

Situs Address: 1730 Washburn Way  
Klamath Falls, Oregon  
Taxlot #: R-3909-004AA-01900  
Owner: Hector P. Abarca

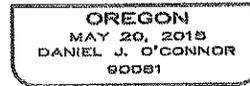
Date: August 2, 2016

ODOT File #: 9188-002  
Adkins Project #: 1000-1302

Page 1 of 2



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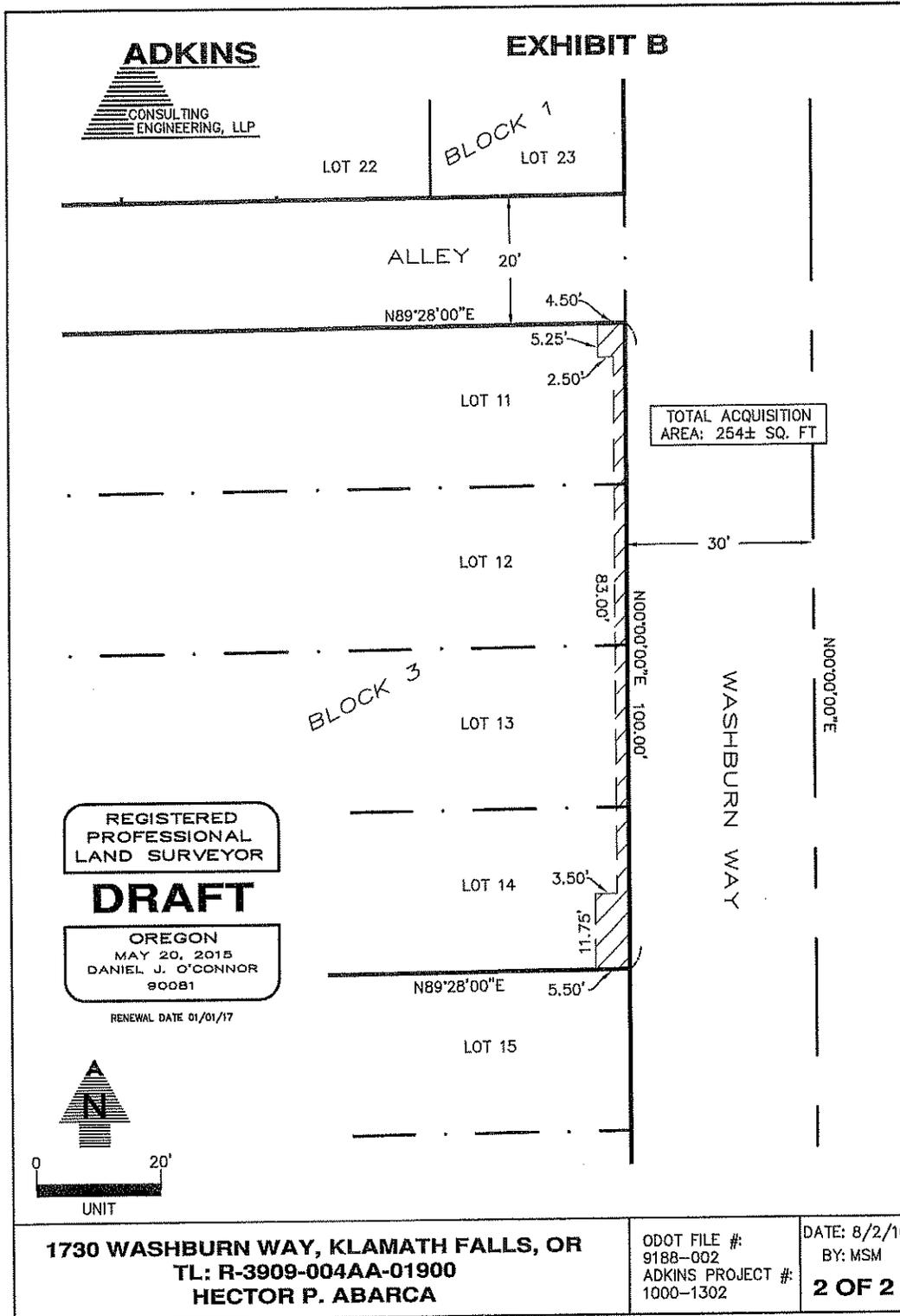
RENEWAL DATE 01/01/17

2950 Shasia Way • Klamath Falls, Oregon 97603 • (541) 884-4666 • Fax (541) 884-5335

Serving Oregon & California since 1983



**EXHIBIT B**

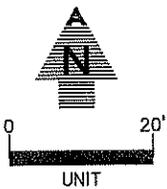


REGISTERED  
PROFESSIONAL  
LAND SURVEYOR

**DRAFT**

OREGON  
MAY 20, 2015  
DANIEL J. O'CONNOR  
90081

RENEWAL DATE 01/01/17



**1730 WASHBURN WAY, KLAMATH FALLS, OR**  
**TL: R-3909-004AA-01900**  
**HECTOR P. ABARCA**

ODOT FILE #:  
9188-002  
ADKINS PROJECT #:  
1000-1302

DATE: 8/2/16  
BY: MSM  
**2 OF 2**



EXHIBIT A

Permanent Easement for Sidewalks

An easement over a portion of Lot 15 and 18, Block 3, of that certain map entitled "Plat of Sixth Street Addition", in the County of Klamath, State of Oregon, the said easement being more particularly described as follows:

Parcel 1:

A strip of land being the East 5.50 feet of the North 11.00 feet of said Lot 15, being hereinabove described.

Containing 60 square feet, more or less.

Parcel 2:

A strip of land being the East 3.00 feet of the South 8.50 feet of said Lot 18, being hereinabove described.

Containing 26 square feet, more or less.

Situs Address: 1750 Washburn Way  
Klamath Falls, Oregon  
Taxlot #: R-3909-004AA-02200  
Owner: Martin C. and Isabel Dalia Toro

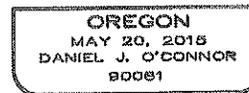
Date: August 2, 2016

ODOT File #: 9188-003  
Adkins Project #: 1000-1302

Page 1 of 2



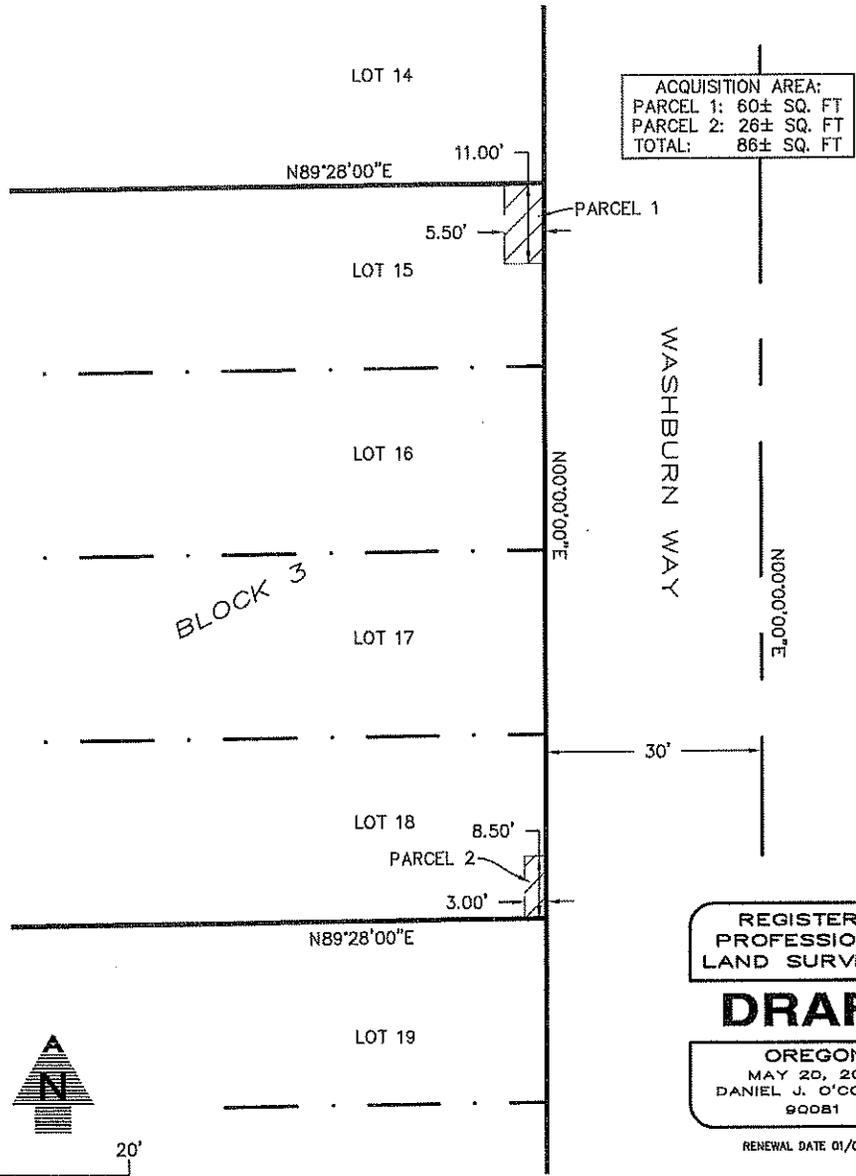
DRAFT



RENEWAL DATE 01/01/17



**EXHIBIT B**



<p>1750 WASHBURN WAY, KLAMATH FALLS, OR          TL: R-3909-004AA-02200          MARTIN C. AND ISABEL DALIA TORO</p>	<p>ODOT FILE #:          9188-003          ADKINS PROJECT #:          1000-1302</p>	<p>DATE: 8/2/16          BY: MSM  <b>2 OF 2</b></p>
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**EXHIBIT A**

**Permanent Easement for Sidewalks**

An easement over a portion of Lot 19 and 23, Block 3, of that certain map entitled "Plat of Sixth Street Addition", in the County of Klamath, State of Oregon, the said easement being more particularly described as follows:

Parcel 1:

A strip of land being the East 3.00 feet of the North 8.50 feet of said Lot 19, being hereinabove described.

Containing 25 square feet, more or less.

Parcel 2:

A strip of land being the East 2.50 feet of said Lot 23, being hereinabove described.

Excepting Therefrom:

The North 161.00 feet of said Lot 23, being hereinabove described.

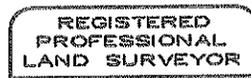
Containing 28 square feet, more or less.

Situs Address: 1776 Washburn Way  
Klamath Falls, Oregon  
Taxlot #: R-3909-004AA-02400  
Owner: James F. and Jeannette L. Gansberg,  
Trustees of Aliquando Trust Revocable  
Living Trust Agreement

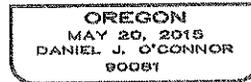
Date: August 2, 2016

ODOT File #: 9188-004  
Adkins Project #: 1000-1302

Page 1 of 2



**DRAFT**



RENEWAL DATE 01/01/17

**EXHIBIT B**



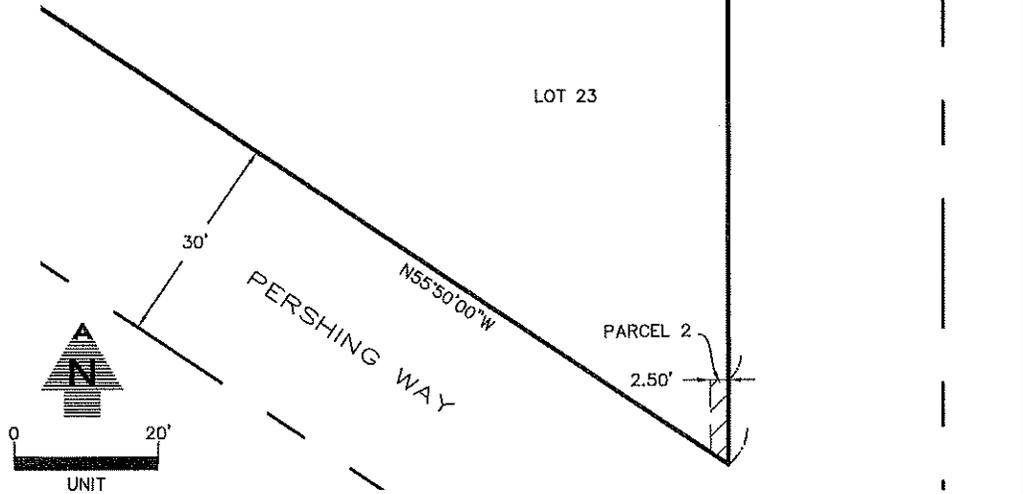
ACQUISITION AREA:  
PARCEL 1: 25± SQ. FT  
PARCEL 2: 28± SQ. FT  
TOTAL: 53± SQ. FT

REGISTERED  
PROFESSIONAL  
LAND SURVEYOR

**DRAFT**

OREGON  
MAY 20, 2015  
DANIEL J. O'CONNOR  
90081

RENEWAL DATE 01/01/17



<b>1776 WASHBURN WAY, KLAMATH FALLS, OR</b> <b>TL: R-3909-004AA-02400</b> <b>JAMES F. AND JEANNETTE L. GANSBERG,</b> TRUSTEES OF ALIQUANDO TRUST REVOCABLE LIVING TRUST AGREEMENT	ODOT FILE #: 9188-004 ADKINS PROJECT #: 1000-1302	DATE: 8/2/16 BY: MSM <b>2 OF 2</b>
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**KLAMATH FALLS CITY COUNCIL  
AGENDA REPORT**



Agenda Item No. 6

Date: December 5, 2016

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Department: Legal	Contact/Title: Joanna Lyons-Antley/City Attorney
Staff Presenter: Joanna Lyons-Antley	Telephone No.: 541-883-5323
City Manager Review:	Email: jlyons@klamathfalls.city

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**TOPIC:** Ordinance Amending Klamath Falls Code Sections 2.800 and 2.850 to 2.854 Regarding Municipal Court Authority and Court Appearance Requirements – First Reading

**SUMMARY AND BACKGROUND:**

Municipal Court Judge Nathan Ratliff requests an amendment to City Code Sections 2.800 and 2.854 to expressly state that the Municipal Court Judge has all of the inherent statutory powers of a justice of the peace. These powers include the service of subpoenas and summons, issuance of contempt and imposition of a fine or community service.

The second requested amendment to the City Code is to ease the burden to the defendant by lessening the appearance in person requirements. For traffic and code enforcement offense, pleas would be allowed in writing. If the defendant pleads not guilty and the defendant lives more than 50 miles from Klamath Falls, the defendant may request a decision based on a written statement. For parking offenses, all pleas and trials are conducted in writing. These changes will reduce the number of times that a defendant must appear in municipal court and will accommodate those defendants who are unlikely to appear because they reside out of state or out of town.

**FINANCIAL IMPACT:**

None

**COUNCIL OPTIONS:**

1. Approve the proposed Ordinance.
2. Reject the proposed Ordinance.

**DOCUMENTS ATTACHED:**

- Proposed Ordinance with strikeout

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**RECOMMENDED MOTION/ACTION:**

- Hold a public hearing
- Move to introduce the Ordinance by title for first reading

**NOTICE SENT TO:**

N/A

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## MUNICIPAL COURT AND COURT PROCEDURE

### MUNICIPAL COURT

#### 2.800 MUNICIPAL JUDGE

The Municipal Judge shall be the judicial officer of the City. The Judge shall hold court for the transaction of judicial business at times specified by the Council. Pro-tem judges shall be appointed by the Council when necessary. The municipal judge shall have all inherent statutory powers and duties of a justice of the peace within the jurisdictional limits of the city. The municipal judge may accomplish by any lawful means the serving of subpoenas, notices of jury duty, summonses, and all other orders of the court necessary for the proper conduct thereof and, within the limit set by the penalty and state law, may prescribe the bail, security deposit, fine or forfeiture for violation of any provision of this code.

#### 2.850 APPEARANCE OF DEFENDANT; RETURN OF SUMMONS

(1) For traffic or code enforcement offenses, pleas may be oral or may be in writing. Upon entry of a plea of not guilty, the case shall be placed upon the trial docket for trial in the normal course. If the defendant resides more than 50 miles from Klamath Falls, the defendant may request a decision based on a written statement.

(2) For parking offenses, pleas must be in writing. Upon entry of a plea of not guilty, the defendant shall submit a written statement which will be presented to the Court. The defendant shall either appear in Court at the time indicated in the summons or, prior to such time, shall deliver to the Court the summons, together with the amount of the fine set forth in the summons, enclosing a request for a hearing or a statement of matters in explanation or mitigation of the offense, or the executed appearance, waiver of hearing, and plea of guilty or no contest appearing on the summons.

#### 2.852 EFFECT OF DEFENDANT'S WRITTEN STATEMENT

If a defendant has submitted to the Court a written statement, as provided in Section 2,850, it constitutes a waiver of hearing and consent to judgment by the Court and any testimony or written statement of the arresting officer or other witnesses which may be presented to the Court. ~~If the defendant requests a hearing, or if, pursuant to Section 2,854, the Court directs that a hearing be held, the Court shall fix the date and time for hearing and unless notice is waived, shall, at least 5 days in advance of the hearing, mail to the defendant notice of the date and time so fixed.~~

#### 2.854 JUDGMENT ON FAILURE TO APPEAR

~~In any case, the Court may direct that a hearing be held. Otherwise,~~ When the Defendant fails to appear, the Court may enter the appropriate judgment and impose a fine or community service. No sentence to jail may be imposed unless a hearing is held and contempt of court is ordered.

**ORDINANCE NO. 16-\_\_\_\_\_**

**ORDINANCE AMENDING KLAMATH FALLS CODE SECTIONS 2.800 AND 2.850  
TO 2.854 REGARDING MUNICIPAL COURT AUTHORITY AND  
COURT APPEARANCE REQUIREMENTS**

**WHEREAS**, the Municipal Court Judge requests that the statutory powers and duties of the municipal court judge be codified into the City Code; and

**WHEREAS**, to provide flexibility to defendants and the public, the City desires to allow pleas in writing and if the plea is not guilty and the defendant lives more than 50 miles from Klamath Falls, the defendant may have a trial by affidavit; and

**WHEREAS**, to provide flexibility to parking citation defendants, the City desires to require that pleas be made in writing and all decisions will be based on the written materials submitted; and

**WHEREAS**, the City desires to add the ability for the Judge to impose community service in lieu of a fine; and **NOW THEREFORE**,

**THE CITY OF KLAMATH FALLS HEREBY ORDAINS AS FOLLOWS:**

**Section 1**

Section 2.800 and Sections 2.850 and 2.854 of the Klamath Falls City Code shall be amended to read:

**2.800 MUNICIPAL JUDGE**

The Municipal Judge shall be the judicial officer of the City. The Judge shall hold court for the transaction of judicial business at times specified by the Council. Pro-tem judges shall be appointed by the Council when necessary. The municipal judge shall have all inherent statutory powers and duties of a justice of the peace within the jurisdictional limits of the city. The municipal judge may accomplish by any lawful means the serving of subpoenas, notices of jury duty, summonses, and all other orders of the court necessary for the proper conduct thereof and, within the limit set by the penalty and state law, may prescribe the bail, security deposit, fine or forfeiture for violation of any provision of this code.

**2.850 APPEARANCE OF DEFENDANT; RETURN OF SUMMONS**

(1) For traffic or code enforcement offenses, pleas may be oral or may be in writing. Upon entry of a plea of not guilty, the case shall be placed upon the trial docket for trial in the normal course. If the defendant resides more than 50 miles from Klamath Falls, the defendant may request a decision based on a written statement.

(2) For parking offenses, pleas must be in writing. Upon entry of a plea of not guilty, the defendant shall submit a written statement which will be presented to the Court.

**2.852 EFFECT OF DEFENDANT'S WRITTEN STATEMENT**

If a defendant has submitted to the Court a written statement, as provided in Section 2,850, it constitutes a waiver of hearing and consent to judgment by the Court and any testimony or written statement of the arresting officer or other witnesses which may be presented to the Court.

**2.854 JUDGMENT ON FAILURE TO APPEAR**

When the Defendant fails to appear, the Court may enter the appropriate judgment and impose a fine or community service. No sentence to jail may be imposed unless a hearing is held and contempt of court is ordered.

Passed by the Council of the City of Klamath Falls this \_\_\_\_\_ day of December, 2016.

Presented to the Mayor, approved and signed this \_\_\_\_\_ day of December, 2016.

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Recorder

STATE OF OREGON                    }  
COUNTY OF KLAMATH            }ss.  
CITY OF KLAMATH FALLS         }

I, \_\_\_\_\_, Recorder for the City of Klamath Falls, Oregon, do hereby verify that the foregoing is a true and correct copy of an Ordinance duly adopted by the Council of the City of Klamath Falls, Oregon at the meeting on the \_\_\_\_\_ day of December, 2016 and therefore approved and signed by the Mayor and attested by the City Recorder.

\_\_\_\_\_  
City Recorder