

**COUNCIL MEETING MINUTES**  
**September 9, 2013**

0:00 **DATE COUNCIL CHAMBERS, CITY HALL, CITY OF WOODBURN, COUNTY OF MARION, STATE OF OREGON, SEPTEMBER 9, 2013.**

**CONVENED** The meeting convened at 7:00 p.m. with Mayor Figley presiding.

**ROLL CALL**

Mayor Figley	Present
Councilor Cox	Present
Councilor Lonergan	Present
Councilor McCallum	Present
Councilor Morris	Present
Councilor Ellsworth	Present
Councilor Alonso Leon	Present

**Staff Present:** City Administrator Derickson, City Attorney Shields, Finance Director Shearer, Economic and Development Director Hendryx, Police Chief Russell, Human Resources Director Hereford, Interim Public Works Director Scott, Urban Renewal Manager Stowers, Communications Coordinator Horton, Executive Legal Assistant Veliz, City Recorder Pierson

0:03 **COMMUNITY/GOVERNMENT ORGANIZATIONS**

Woodburn School District – Chuck Ransom, Woodburn School District Superintendent, provided a copy of the districts strategic plan and stated that he would like to come back to Council and have a longer discussion about the plan.

Downtown Woodburn Unidos- Nikki DeBuse, President of Downtown Woodburn Unidos, provided an update on what the organization has been up to. She also invited Council to the Mexican Independence Day celebration on Sunday, September 14. Erubiel Valladares, Downtown Woodburn Unidos Board Member, provided Council with a list of projects they are going to be working on which include beautification of downtown and recognizing businesses who take care of the areas in front of their shops, putting lights in the trees by the train tracks, and planting tulips in landscape areas.

0:09 **PROCLAMATIONS/PRESENTATIONS**

- A. Fill-the-Boot Proclamation – Colleen with the Muscular Dystrophy Association thanked the Council for their support.
- B. Marion County Commissioners-Consolidation of Justice Courts. Marion County Commissioners Janet Carlson, Sam Brentano and Patti Milne provided a presentation on the Consolidation of the Marion County Justice Courts and provided Council with a handout of the presentation.

**COUNCIL MEETING MINUTES**  
**September 9, 2013**

0:30 **CONSENT AGENDA**

- A. Woodburn City Council minutes of August 12, 2013,
  - B. Woodburn Planning Commission minutes of July 25, 2013,
  - C. Woodburn Public Art Mural minutes of June 26, 2013,
  - D. Woodburn Public Art Mural minutes of July 10, 2013,
  - E. Woodburn Recreation and Park Board minutes of August 13, 2013,
  - F. Crime Statistics through July 2013,
  - G. Public Works Director,
  - H. Limited On-Premises Sales Fresca's Mexican Grille.
- McCallum/Lonergan...** adopt the Consent Agenda. The motion passed unanimously.

0:31 **LEGION PARK GRANT AGREEMENT**

Community Services Director Row provided an overview of the project.  
**Cox/Ellsworth...** authorize the City Administrator to enter into the enclosed Local Government Grant Agreement with the Oregon Parks and Recreation Department. The \$277,800 grant was awarded for the Legion Park Rehabilitation Project.

0:51 **PLANNING COMMISSION APPROVAL OF DESIGN REVIEW 2013-04, LOCATED WEST OF EVERGREEN ROAD AND NORTH OF NEWBERG HIGHWAY (COLUMBIA BANK)**

Council declined to call this item up for review.

0:52 **CITY ADMINISTRATOR'S REPORT**

City Administrator Derickson had nothing to report.

0:52 **MAYOR AND COUNCIL REPORTS**

Councilor Ellsworth mentioned that the Woodburn Kiwanis had a picnic at Legion Park to celebrate 50 years of service.  
Councilor McCallum stated that Councilor Ellsworth did a great job setting up the Kiwanis picnic and that the Mural Committee has done an excellent job of implementation and getting that started.  
Councilor Lonergan stated that he would like to commend the garden group that adopted Al Cowen Park. He also stated that he had asked for an inspection of the Pix Theater and that the report came back that it was a safe building and was not causing health issues. He thanked the City for looking into it. He added that the building is still a blight on the City and he would like to see the owner fix it up.  
Councilor Alonso Leon thanked those in attendance and reminded people that the City has interpreters for non -English speakers who may want to come to the Council meetings.

0:55 **ADJOURNMENT**

**McCallum/Cox....** meeting be adjourned. The motion passed unanimously.  
The meeting adjourned at 7:55 pm.

APPROVED \_\_\_\_\_

**COUNCIL MEETING MINUTES**  
**September 9, 2013**

KATHRYN FIGLEY, MAYOR

ATTEST \_\_\_\_\_

Heather Pierson, City Recorder  
City of Woodburn, Oregon

DRAFT

**WOODBURN PUBLIC ART MURAL COMMITTEE  
WORKSHOP/MEETING MINUTES  
August 7, 2013**

CONVENED: The Woodburn Public Art Mural Committee met at 3 p.m. in the City Hall Council Chambers to discuss mural policies and procedures.

**Members Present:**

<b>Chair</b>	<b>Lonergan</b>	<b>Present</b>
<b>Vice-Chair</b>	<b>Vancil</b>	<b>Present</b>
<b>Committee Member</b>	<b>Cox</b>	<b>Present</b>
<b>Committee Member</b>	<b>Berlin</b>	<b>Present</b>
<b>Committee Member</b>	<b>Ybarra</b>	<b>Present</b>

**Staff Present:** Jim Hendryx, Economic & Development Services Director  
 Vicki Musser, Economic & Development Services Recording Secretary  
 Jan Frutiger, Economic Development Services Volunteer

Chair Frank Lonergan opened the meeting. The minutes of June 26, 2013 and July 10, 2013 were unanimously approved.

The purpose of this workshop is to follow up on process and procedures. The Committee was given a copy of the Mural Ordinance and the blank mural application form.

In discussing the recent public hearing on 356 Young Street, Committee member Jim Cox stated that he was satisfied with the process and how the public meeting was handled.

Committee member Merri Berlin had concerns about the process, feeling that the Mural Committee did not have enough information about mural regulation. She was especially uncomfortable about a six-sided mural being approved as a single mural, and did not like the fact that other people besides the master muralist would be working on it. Chair Lonergan agreed that a multiple sided mural does not ordinarily fall in the category of a single mural.

Director Hendryx drew attention to the mural ordinance, which states that the “Public Art Mural Committee shall consider and apply the...appropriateness of the scale of the public art mural to the surrounding neighborhood.” He told the committee that the scale of a mural can be decided by the Mural Committee. In the case of 356 Young Street, a discussion took place early in the project, leading to a decision to treat the six-sided mural as one mural. Director Hendryx noted that the perhaps in the future, it will be decided to make further amendments to the mural ordinance.

Committee member Colleen Vancil noted that there is a concern in making the regulations too particular, and that perhaps it would be a good idea to see how this first mural turns out.

The Mural Committee indicated that the recent mural application included enough information to make a considered decision, though some felt that the mural pictures were confusing, and that a site visit was necessary for further clarification.

The mural easement period of seven years was discussed, and it was noted that the window of mural renewal or rejection was very short. Director Hendryx reminded the Committee that if the mural is no longer meeting its objective, or has not been properly maintained, the City can go back at any time and insist on maintenance or removal.

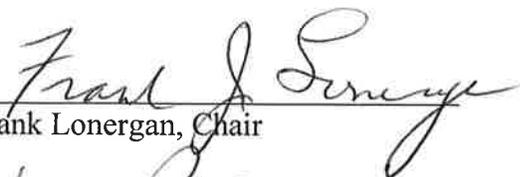
Committee member Colleen Vancil said that a variety of mural types ought to be encouraged and that Woodburn's racial diversity should be fairly represented.

Director Hendryx suggested looking at the wall corridors being built along the I-5 entrance during the Interchange project. They are being structured so that murals could be hung from those walls. The Mural Committee might suggest some creative ideas for those spaces, perhaps using one of the City's tag lines, *The City of Unity*. He told the Committee members to send him any ideas or suggestions, which will be discussed at a meeting in October.

Consensus: Committee member Jim Cox moved that they delay any language changes to the ordinance until the existing PCUN mural is finished, or Sept. 30<sup>th</sup>, whichever comes first. The Committee voted four in favor; one against. The motion passed.

The Mural Committee will meet again during September.

The meeting was adjourned at 3:41pm

APPROVED		<u>9/16/13</u>
	Frank Lonergan, Chair	Date
ATTEST		<u>9/16/13</u>
	James N.P. Hendryx Economic & Development Services Director City of Woodburn, Oregon	Date



# Agenda Item

September 23, 2013

TO: Honorable Mayor and City Council through City Administrator  
THRU: Scott Russell, Chief of Police  
FROM: Nic Wilson, Detective Sergeant  
SUBJECT: **Limited On-Premises Sales** Carniceria y Restaurant La Perla, INC

## RECOMMENDATION:

The Woodburn City Council recommends that the OLCC approve the **Limited On-Premises Sales** application for Carniceria y Restaurant La Perla, INC.

## BACKGROUND:

Applicant: Sergio Velez  
555 N Settlemier Ave  
Woodburn, OR 97071  
503.851.7653

Business: Carniceria y Restaurant La Perla  
954 N Pacific Hwy  
Woodburn, OR 97071  
503.982.0465

Owners: Same as Applicant (Above)

License Type: **Limited On-Premises Sales**

On September 3, 2013 the Woodburn Police Department received an application, requesting approval for a **Limited On-Premises Sales** for Carniceria y Restaurant La Perla at 954 N Pacific Hwy, Woodburn, Oregon 97071.

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Agenda Item Review: City Administrator  City Attorney  Finance

The **Limited On-Premises Sales license** allows for:

- Sell and serve malt beverages, wine, and cider for on-site consumption.
- Allows the sale of malt beverages in containers holding 7 or more gallons (kegs) for off-site consumption.
- Sell malt beverages for off-site consumption in securely covered containers (no more than two gallons) provided by the customer.

The business will be open Sunday from 8:00am to 9:00pm, Monday through Wednesday from 9:00am to 9:30pm, Thursday and Friday from 9:00am to 10:00pm and Saturday from 8:00am to 10:00pm. This business is a restaurant. There will not be any music, karaoke, video lottery games, or pool tables. The Police Department has received no communication from the public or surrounding businesses in support of or against the new outlet.

**DISCUSSION:**

The Police Department has completed a background investigation, in connection with the OLCC, on the applicant and found nothing of a questionable nature, which would preclude the issuance of this license.

**FINANCIAL IMPACT:**

None

# Woodburn Police Department

## MONTHLY CRIMINAL OFFENSES JANUARY THRU DECEMBER 2013

CHARGE DESCRIPTION	Total	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug
AGGRAVATED ASSAULT	28	4	2	4	3	6	3	1	5
AGGRAVATED MURDER	1	0	0	0	0	0	0	0	1
ANIMAL CRUELTY	7	0	0	0	1	2	2	0	2
ANIMAL ORDINANCES	7	0	1	3	1	0	1	1	0
ARSON	5	1	0	0	0	1	1	2	0
ASSAULT SIMPLE	88	15	11	8	9	12	14	9	10
ATTEMPTED MURDER	5	1	2	1	0	0	0	0	1
BOMB THREAT	1	1	0	0	0	0	0	0	0
BURGLARY - BUSINESS	15	4	1	0	1	3	1	3	2
BURGLARY - OTHER STRUCTURE	8	3	1	0	2	0	1	1	0
BURGLARY - RESIDENCE	45	3	8	5	1	3	8	3	14
CHILD NEGLECT	8	1	1	2	0	3	1	0	0
CRIME DAMAGE-NO VANDALISM OR ARSON	89	18	7	15	5	8	14	9	13
CURFEW	5	1	0	0	1	0	2	0	1
CUSTODIAL INTERFERENCE	1	0	0	0	0	0	0	0	1
CUSTODY - DETOX	6	0	0	0	2	0	0	1	3
CUSTODY - MENTAL	32	5	1	5	2	2	5	5	7
CUSTODY - PROTECTIVE	1	0	0	0	0	0	1	0	0
DISORDERLY CONDUCT	37	4	4	4	2	7	9	2	5
DRIVING UNDER INFLUENCE	94	9	11	23	5	13	10	10	13
DRUG LAW VIOLATIONS	87	9	8	9	13	18	19	2	9
DRUG PARAPHERNALIA	1	0	1	0	0	0	0	0	0
DWS/REVOKED - FELONY	3	0	0	0	0	1	1	1	0
DWS/REVOKED-MISDEMEANOR	18	3	2	6	0	3	1	0	3
ELUDE	15	1	4	1	0	4	2	1	2
EMBEZZLEMENT	1	0	0	0	0	1	0	0	0
ESCAPE FROM YOUR CUSTODY	1	0	0	1	0	0	0	0	0
EXTORTION/BLACKMAIL	2	0	0	1	0	0	0	1	0
FAIL TO DISPLAY OPERATORS LICENSE	10	4	2	1	0	1	0	1	1
FORCIBLE RAPE	5	0	0	1	0	2	0	1	1
FORGERY/COUNTERFEITING	44	6	5	4	7	7	5	3	7
FRAUD - ACCOUNT CLOSED CHECK	2	1	0	1	0	0	0	0	0
FRAUD - BY DECEPTION/FALSE PRETENSES	10	2	2	2	0	1	1	0	2
FRAUD - CREDIT CARD/AUTOMATIC TELLER MACHINE	21	1	0	2	5	6	2	1	4
FRAUD - IMPERSONATION	3	0	1	1	0	0	0	1	0
FRAUD - NOT SUFFICIENT FUNDS CHECK	1	0	1	0	0	0	0	0	0
FRAUD - OF SERVICES/FALSE PRETENSES	3	0	1	0	0	0	0	1	1
FRAUD - WIRE	1	0	0	0	0	0	0	0	1
FRAUD-OTHER	7	1	1	2	1	2	0	0	0
FUGITIVE ARREST FOR ANOTHER AGENCY	116	19	11	14	11	15	22	10	14
FURNISHING	2	0	0	0	0	2	0	0	0
GARBAGE LITTERING	3	0	0	1	0	1	1	0	0
HIT AND RUN FELONY	9	2	0	0	1	2	0	0	4
HIT AND RUN-MISDEMEANOR	75	14	8	6	10	7	5	13	12
IDENTITY THEFT	18	2	4	5	3	4	0	0	0
INTIMIDATION /OTHER CRIMINAL THREAT	26	4	2	4	0	8	2	2	4
KIDNAP - FOR ADDITIONAL CRIMINAL PURPOSE	2	1	0	1	0	0	0	0	0
KIDNAP - HOSTAGE/SHIELD OR REMOVAL/DELAY WITNE	1	0	0	0	0	0	0	1	0
MINOR IN POSSESSION	12	2	3	0	0	3	2	2	0
MINOR IN POSSESSION - TOBACCO	1	0	0	0	0	0	1	0	0
MISCELLANEOUS	39	3	5	3	5	2	4	10	7
MOTOR VEHICLE THEFT	37	6	3	5	1	9	6	6	1
OTHER	47	19	8	2	2	7	5	2	2
PROPERTY - FOUND LOST MISLAID	22	5	1	5	1	3	1	3	3
PROPERTY RECOVER FOR OTHER AGENCY	7	1	4	1	0	0	0	1	0
PROSTITUTION - ENGAGE IN	1	1	0	0	0	0	0	0	0
RECKLESS DRIVING	16	3	1	0	0	5	2	2	3

# Woodburn Police Department

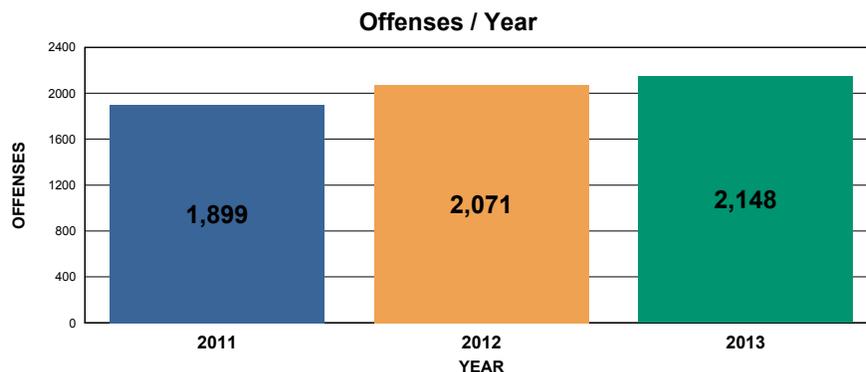
## MONTHLY CRIMINAL OFFENSES JANUARY THRU DECEMBER 2013

	Total	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug
RESTRAINING ORDER VIOLATION	8	2	1	0	1	2	0	0	2
ROBBERY - BUSINESS	12	2	0	3	1	2	1	1	2
ROBBERY - CAR JACKING	1	0	0	1	0	0	0	0	0
ROBBERY - CONV.STORE	1	0	0	0	0	1	0	0	0
ROBBERY - OTHER	11	2	1	3	2	1	1	1	0
RUNAWAY	19	3	0	0	2	4	2	2	6
SEX CRIME - CONTRIBUTE TO SEX DELINQUENCY	4	2	0	1	1	0	0	0	0
SEX CRIME - EXPOSER	1	0	0	0	0	0	1	0	0
SEX CRIME - MOLEST (PHYSICAL)	17	5	0	3	3	3	1	0	2
SEX CRIME - NON FORCE SODOMY	2	1	0	0	1	0	0	0	0
SEX CRIME - NON-FORCE RAPE	2	0	0	0	1	0	0	0	1
SEX CRIME - OBSCENE PHONE CALL	1	0	0	0	0	0	0	1	0
SEX CRIME - PORNOGRAPHY/OBSCENE MATERIAL	2	1	0	1	0	0	0	0	0
STALKER	3	0	0	0	2	0	0	0	1
STOLEN PROPERTY - RECEIVING,BUYING,POSSESSING	13	4	5	1	0	0	2	0	1
SUICIDE	3	0	0	0	0	1	1	1	0
THEFT - BICYCLE	18	1	3	3	0	3	3	4	1
THEFT - BUILDING	35	4	5	5	3	5	4	4	5
THEFT - COIN OP MACHINE	2	0	0	0	0	0	0	1	1
THEFT - FROM MOTOR VEHICLE	74	20	7	11	5	8	2	12	9
THEFT - MOTOR VEHICLE PARTS/ACCESSORIES	7	3	1	0	1	0	0	2	0
THEFT - OTHER	123	13	18	16	9	16	11	15	25
THEFT - PICKPOCKET	7	0	2	1	2	0	0	0	2
THEFT - PURSE SNATCH	6	0	2	2	1	1	0	0	0
THEFT - SHOPLIFT	125	24	20	16	22	18	9	9	7
TRAFFIC ORDINANCES	1	0	0	0	1	0	0	0	0
TRAFFIC VIOLATIONS	115	13	23	12	5	16	24	5	17
TRESPASS	40	5	7	6	4	3	3	7	5
UNAUTHORIZED ENTRY INTO MOTOR VEHICLE	39	5	2	5	2	4	2	12	7
VANDALISM	195	21	22	13	8	22	47	29	33
VEHICLE RECOVERD FOR OTHER AGENCY	10	1	3	1	0	1	3	0	1
WARRANT ARREST FOR OUR AGENCY	80	13	14	8	6	14	7	6	12
WEAPON - CARRY CONCEALED	3	0	0	0	1	1	0	0	1
WEAPON - EX FELON IN POSSESSION	2	0	0	0	0	2	0	0	0
WEAPON - OTHER	1	0	0	0	0	0	0	0	1
WEAPON - POSSESS ILLEGAL	12	2	2	3	0	0	1	1	3
WILLFUL MURDER	1	0	0	1	0	0	0	0	0

	Total	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug
<b>2013 Total</b>	<b>2,148</b>	<b>327</b>	<b>266</b>	<b>265</b>	<b>179</b>	<b>302</b>	<b>280</b>	<b>225</b>	<b>304</b>

<b>2012 Total</b>	<b>2,071</b>	<b>246</b>	<b>249</b>	<b>233</b>	<b>261</b>	<b>244</b>	<b>264</b>	<b>261</b>	<b>313</b>
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<b>2011 Total</b>	<b>1,899</b>	<b>202</b>	<b>184</b>	<b>227</b>	<b>253</b>	<b>297</b>	<b>279</b>	<b>229</b>	<b>228</b>
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# Agenda Item

September 23, 2013

To: Honorable Mayor and City Council through City Administrator  
From: Jim Hendryx, Economic and Development Services Director  
Subject: **Community Development Block Grant Housing Rehabilitation project, H12001**

## **RECOMMENDATION:**

Adopt the resolution.

## **BACKGROUND:**

In 2012, the City executed an agreement with Valley Development Initiatives (VDI), a legal entity created by the Willamette Valley Council of Governments (COG) to administer a \$400,000 Housing Rehabilitation Community Development Block Grant (CDBG).

Program rules require that the City, as the lead applicant, transfer the responsibility of managing the Housing Rehabilitation Program to an appropriate non-profit organization, such as VDI, through a sub-recipient agreement. VDI is staffed by the COG, who also manages housing rehabilitation programs for the cities of Aumsville, Aurora, Gervais, Hubbard, Jefferson, Scotts Mills, Stayton, the Santiam Canyon, Turner and Marion County.

## **DISCUSSION:**

Staff was recently advised by COG that new program rules require local governments awarded CDBG funding to adopt policies addressing specific federal laws and requirements before the first draw of grant funds. More specifically, COG has requested that the City Council pass the attached resolution adopting a Section 3 Plan and a Limited English Proficiency (LEP) Plan.

## **FINANCIAL IMPACT:**

Of the \$400,000 award, the City has approximately \$232,500 in loan funds to be used by the City of Woodburn and \$77,500 will be used by the City of Stayton.

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Agenda Item Review: City Administrator \_\_\_x\_\_\_ City Attorney \_\_\_x\_\_\_ Finance \_\_\_x\_\_\_

The City, as the lead applicant, remains responsible for the oversight of the program until the close-out of the grant (two years from award), which will require City staff support similar to that provided under the existing contract with VDI for administration of the previous CDBG Housing Rehabilitation Program.

**COUNCIL BILL NO. 2936**

**RESOLUTION NO. 2034**

**A RESOLUTION ADOPTING A SECTION 3 PLAN TO COMPLY WITH 24 CFR, PART 135 OF THE UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT SECTION 3 AND ADOPTING A LIMITED ENGLISH PROFICIENCY PLAN**

**WHEREAS**, In 2012, the City executed an agreement with Valley Development Initiatives (VDI), a legal entity created by the Willamette Valley Council of Governments (COG) to administer a \$400,000 Housing Rehabilitation Community Development Block Grant (CDBG); and

**WHEREAS**, COG recently advised the City that new CDBG rules require the adoption of a Section 3 Plan to comply with 24 CFR, Part 135 and a Limited English Proficiency Plan to comply with other federal regulations; and

**WHEREAS**, the United States Congress passed Section 3 of the Housing and Urban Development Act of 1968 (the Act) to further the goal of ensuring that federal funds benefit the residents of projects funded wholly or in part by those funds; and

**WHEREAS**, Part 135 of Section 3 establishes the standards and procedures to ensure that the objectives of Section 3 are met; and

**WHEREAS**, the City, with the assistance of COG, has developed a Section 3 Plan in adherence to 24 CFR, Part 135 that more comprehensively addresses the standards and procedures prescribed in the Act; and

**WHEREAS**, the City has also developed a Limited English Proficiency Plan in order to comply with other federal regulations, **NOW, THEREFORE**,

**THE CITY OF WOODBURN RESOLVES AS FOLLOWS:**

**Section 1.** The City Council adopts a Section 3 Plan to ensure compliance with federal law for Community Development Block Grant projects and designates the City Administrator, or designee, as the Section 3 Coordinator for the City of Woodburn. The Section 3 Plan is attached to this resolution as Exhibit "A" and is incorporated herein.

**Section 2.** The City Council adopts a Limited English Proficiency Plan to ensure compliance with federal law for Community Development Block Grant projects. The Limited English Proficiency Plan is attached to this

resolution as Exhibit "B" and is incorporated herein.

Approved as to form: \_\_\_\_\_  
City Attorney Date

Approved: \_\_\_\_\_  
Kathryn Figley, Mayor

Passed by the Council \_\_\_\_\_

Submitted to the Mayor \_\_\_\_\_

Approved by the Mayor \_\_\_\_\_

Filed in the Office of the Recorder \_\_\_\_\_

ATTEST: \_\_\_\_\_  
Heather Pierson, City Recorder  
City of Woodburn, Oregon

## **SECTION 3 PLAN**

### **General Policy Statement**

It is the policy of the City of Woodburn to require its contractors to make a good faith effort to provide equal employment opportunity to all employees and applicants for employment without regard to race, color, religion, sex, national origin, disability, veteran's or marital status, or economic status and to take affirmative action to ensure that both job applicants and existing employees are given fair and equal treatment.

The City of Woodburn (hereinafter "CITY") implements this policy through the awarding of Community Development Block Grant program contracts to contractors, vendors, professional service providers/consultants and suppliers (hereinafter "CONTRACTOR"), to create employment and business opportunities for residents of the City of Woodburn and other qualified low-and very low-income persons.

The policy will ensure that, in good faith, the CITY will have a reasonable level of success in the recruitment, employment, and utilization of Section 3 residents and other eligible persons and Section 3 business concerns working on contracts partially or wholly funded with the United States Department of Housing and Urban Development (HUD) monies. The CITY shall examine and consider a CONTRACTOR's potential for success by providing employment and business opportunities to Section 3 residents and business concerns prior to acting on any proposed contract award.

### **What is Section 3?**

Section 3 of the Housing and Urban Development Act of 1968 as amended (12 USC 1701u)(Section 3) requires that recipients of HUD-funding exceeding \$200,000 ensure that employment and other economic opportunities generated by certain HUD financial assistance shall, to the greatest extent feasible, and consistent with existing Federal, State and Local laws and regulations, be directed to low- and very-low income persons, particularly those who are recipients of government assistance for housing, and to business concerns which provide economic opportunities to such persons.

Section 3 is applicable when the normal completion of construction and rehabilitation projects creates the need for new employment, contracting or training opportunities. If the expenditure of covered funding does not result in new employment, contracting, or training opportunities, the requirements of Section 3 are not applicable.

As a recipient of HUD Community Development Block Grant (CDBG) funds through the Oregon Business Development Department (OBDD), the CITY certifies that it will make good faith efforts, including the preference to contract with businesses that employ Section 3 residents from the local community, to comply with the requirements of Section 3. These same requirements apply to all contractors or subcontractors that receive contracts in excess of \$100,000 for Section 3 eligible projects.

HUD's Section 3 regulations can be found at 24 CFR 135.

### **Eligible Projects**

All projects and activities involving housing construction, demolition, rehabilitation, or other public construction, such as roads, sewers, community centers, et cetera, that are completed with HUD Community Planning and Development funding are subject to the requirements of Section 3.

### **Section 3 Residents**

1. Are residents of public or Indian housing; or
2. Are individuals that reside in the metropolitan area in which the Section 3 applicable assistance is expended and whose income does not exceed the local HUD income limits set forth for low- or very-low income households.

### **Section 3 Business Concerns**

To be considered a Section 3 Business Concern; at least one of the following must apply:

1. Business is 51% or more owned by Section 3 residents; or
2. At least 30% of the business's permanent, full-time employees are currently Section 3 residents, or within three years of the date of first employment with the firm were Section 3 residents; or
3. Business provides evidence of a commitment to subcontract in excess of 25% of the dollar amount of all subcontracts to be awarded to businesses that meet the qualifications described above.

In accordance with the regulation, residents and business concerns seeking Section 3 preference shall certify, and/or submit evidence to the CITY, CONTRACTOR, or subcontractor, verifying that they meet the definitions provided above.

### **Implementing Procedures to Ensure Section 3 Requirements**

The following Bid Specifications and Contract clause shall be included in all CITY bid solicitations and requests for proposals for projects whose funding is derived from HUD and involves housing construction, demolition, rehabilitation, or other public construction:

#### **SECTION 3 CLAUSE**

- A. *The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low-and very low-income persons, particularly persons who are recipients of HUD assistance for housing.*
- B. *The parties to this contract agree to comply with HUD's regulations in 24 CFR part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.*
- C. *The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each;*

*and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.*

- D. The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.*
- E. The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.*
- F. Non compliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.*
- G. Contractor shall complete THE REQUIRED Section 3 Report form 60002 and submit it to the City with the final construction pay estimate for the project.*

**Compliance with Section 3:**

Section 3 businesses must meet minimum qualifications, including prequalification with the CITY, and have the ability and capacity to perform successfully under the terms and conditions of the contract. All contractors or businesses seeking Section 3 preference, before submitting bids or proposals to the CITY, will be required to complete certifications to acknowledge that Section 3 contracting and employment provisions have been met. Such certifications must be adequately supported with appropriate documentation and supplied at the time of prequalification.

The CITY will incorporate Section 3 requirements into all solicitations for project proposals that are funded in part or in whole with HUD monies. Section 3 residents must meet the minimum qualifications of the position to be filled and a Section 3 business concern must have the ability to and capacity to perform successfully under the terms and conditions of the proposed contract.

The CITY will, to the greatest extent possible, offer contracting opportunities to Section 3 business concerns. However, in the event that no Section 3 businesses bid on the contract, or bids but is not able to demonstrate to the CITY that it has the ability to perform successfully under the terms and conditions of the proposed contract, then that contract will be awarded to a non-Section 3 business concern that can meet the terms and conditions of the proposed contract through the competitive bidding process. That business concern must meet the general conditions of compliance with Section 3.

All contractors or businesses seeking Section 3 preference, before submitting bids or proposals to the CITY will be required to complete certifications, as appropriate, as acknowledgement of the Section 3 contracting and employment provisions required by this section. Such

certifications shall be adequately supported with appropriate documentation as referenced on the form.

**Compliance with Section 3 (Good Faith Effort)**

At a minimum, the following tasks will be completed to demonstrate a good faith effort with the requirements of Section 3. To ensure compliance with Section 3 requirements, the CITY will document actions taken to comply, including but not limited to:

1. Advertise contracting opportunities via newspaper, mailings, or posting notices about the work to be contracted and where to obtain additional information. Alternatively, notifying the Housing Authority of Marion County, local job training centers and WorkSource Oregon of new employment, training or contracting opportunities resulting from the expenditure of covered funding.
2. Provide written notice of contracting opportunities to all known Section 3 business concerns within the City of Woodburn. The written notice will be provided in sufficient time to enable business concerns the opportunity to respond to the bid invitation.
3. Include in all solicitations a statement to encourage eligible Section 3 businesses to apply;
4. Assisting and actively cooperating with OBDD in ensuring contractors and subcontractors comply with Section 3;
5. Refraining from entering into contracts with contractors or subcontractors that are in violation of Section 3 regulations; and
6. Documenting actions taken to comply with Section 3 and submitting necessary documentation to OBDD (HUF Form 60002).

**CONTRACTOR's Requirements**

In preparation for the award of contracts, the CONTRACTOR will supply the following to the CITY:

1. A list of all positions necessary to complete the contract, the names of employees who will fill those positions, and the names of all other employees,
2. Posting notices of any vacant positions, including training and/or apprenticeship positions, qualifications for positions, in a location(s) accessible to Section 3 person(s) where applications will be received, and starting date of employment,
3. To the greatest extent possible, making available vacant positions, including training and/or apprenticeship positions, to Section 3 residents,
4. If a position necessary to complete contractual task is vacated during the contract period, CONTRACTOR's certification that, to the greatest extent possible, that vacancies will be filled pursuant to items 2 and 3 above,
5. Submitting compliance reports as required,
6. If notified of non-compliance, correcting non-compliance issues within the allowable time period.

Businesses can use the WorkSource Oregon-First Source Hiring Agreement in complying with Section 3 requirements.

**Evidence of Section 3 Certification**

Any business seeking Section 3 preference in the awarding of contracts or purchase agreements with the CITY shall complete the Certification for Business Concerns Seeking Section 3

Preference in Contracting and Demonstration of Capability from, obtained from the CITY's Section 3 Coordinator. The business seeking Section 3 preference must provide adequate documentation as evidence of eligibility for preference under the Section 3 Program.

Certifications for Section 3 preference for business concerns must be submitted to the CITY's Section 3 Coordinator prior to the submission of bids for consideration. If the CITY has previously approved the certification for the business concern, then the certification may be submitted along with the bid.

### **Contractor's Requirements in Employing Section 3 Residents**

After a contract is awarded, the CONTRACTOR will provide the following:

1. Names of Section 3 business concerns to be utilized;
2. Estimate of the number of employees to be utilized for contract;
3. Projected number of available positions, including job descriptions and wage rates (construction wages must be consistent with Davis-Bacon Act or Oregon BOLI rates, whichever is higher); and
4. Efforts that will be utilized to seek Section 3 participants.

### **Monitoring and Enforcement**

The function of monitoring and enforcing these provisions will be carried out by the City's project manager for each HUD-funded construction project. During the pre-bid or pre-construction meetings between the CITY and CONTRACTOR, the CITY's Section 3 Policy will be provided again to the CONTRACTOR for inclusion in contract documents. The following contract requirements will be discussed in detail:

- Prevailing wage rates (Davis-Bacon or BOLI, whichever is higher)
- Minority and woman-owned businesses
- Section 3 hiring requirements

Each representative will define specific functional requirements and require the CONTRACTOR to certify its understanding of the terms and conditions of the contract as it applies to the aforementioned requirements.

### **Section 3 Complaint Procedure**

The CITY will make every effort to resolve complaints generated from alleged non-compliance through an internal process. The CITY encourages submittal of non-compliance complaints to its Section 3 Coordinator as follows:

1. Submit to:  
City of Woodburn  
Attn: Scott Derickson, City Administrator  
270 Montgomery Street  
Woodburn, OR 97013
2. Complaints of non-compliance should be filed in writing and must contain the name of the complainant and brief description of the alleged violation of 24 CFR 135.

3. Complaints must be filed within thirty calendar days after the complainant becomes aware of the alleged violation.
4. An investigation will be conducted if complaint is found to be valid. The Section 3 Coordinator will conduct an informal but thorough investigation affording all interested parties, if any, an opportunity to submit testimony and/or evidence pertinent to the complaint.
5. The Section 3 Coordinator will provide written documentation detailing the findings of the investigation to the City Attorney. The City Attorney will review the findings for accuracy and completeness before it is released to the complainants. The findings will be made available no more than thirty days after the complaint is filed with the CITY.

If complainants wish to have their concerns considered outside the CITY's internal procedure, a complaint may be filed with

Assistant Secretary for Fair Housing and Equal Opportunity  
United States Department of Housing and Urban Development  
451 Seventh Street Northwest  
Washington, District of Columbia, 20410

The complaint must be received no later than 180 days from the date of the action or omission upon which the complaint is based, unless the time for filing is extended by the Assistant Secretary for good cause shown.

**CERTIFICATION FOR BUSINESS CONCERNS SEEKING SECTION 3 PREFERENCE IN  
CONTRACTING AND DEMONSTRATION OF CAPABILITY**

Name of Business \_\_\_\_\_

Address of Business \_\_\_\_\_

Type of Business:      Corporation    Partnership  
                                   Sole Proprietorship    Joint Venture

Attached is the following documentation as evidence of status:

\_\_\_\_\_ **For Business claiming status as a Section 3 resident-owned enterprise:**

- Copy of resident lease
- Copy of receipt of public assistance
- Copy of evidence of participation in public assistance program
- Other evidence

\_\_\_\_\_ **For business entity as applicable:**

- Copy of Articles of Incorporation
- Assumed Business Name Certificate
- List of owners/stockholders and % ownership of each
- Latest Board minutes appointing officers
- Organization chart with names and titles and brief function statement
- Additional information
- Certificate of Good Standing
- Partnership Agreement
- Corporation Annual Report

\_\_\_\_\_ **For business claiming Section 3 status by subcontracting 25 percent of the dollar awarded to qualified Section 3 business:**

- List of subcontracted Section 3 business(es) and subcontract amount

\_\_\_\_\_ **For business claiming Section 3 status, claiming at least 30 percent of their workforce are currently Section 3 residents or were Section 3 eligible residents within 3 years of date of first employment with the business:**

- List of all current full-time employees
- List of employees claiming Section 3 status
- PHA/IHA Residential lease less than 3 years from day of employment
- Other evidence of Section 3 status less than 3 years from date of employment

\_\_\_\_\_ Evidence of ability to perform successfully under the terms and conditions of the proposed contract:

- Current financial statement
- Statement of ability to comply with public policy
- List of owned equipment
- List of all contracts for the past two years

(Corporate Seal)

\_\_\_\_\_  
Authorizing Name and Signature

Attested by: \_\_\_\_\_

## LIMITED ENGLISH PROFICIENCY (LEP) PLAN CITY OF WOODBURN, OREGON

\*The information below was completed with assistance from "Checklist for Developing a Limited English Proficiency (LEP) Plan" provided by the National Association of Statework Force Agencies. The checklist is included in the City's file for review if requested.

This Limited English Proficiency (LEP) Plan has been prepared to address the City of Woodburn's responsibilities as a recipient of federal financial assistance as it relates to the needs of individuals with limited English proficiency language skills. The plan has been prepared in accordance with Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, et seq, and its implementing regulations which state that no person shall be subjected to discrimination on the basis of race, color or national origin.

Executive Order 13166, titled Improving Access to Services for Persons with Limited English Proficiency, indicates that differing treatment based upon a person's inability to speak, read, write or understand English is a type of national origin discrimination. It directs each agency to publish guidance for its respective recipients clarifying their obligation to ensure such discrimination does not take place. This order applies to all state and local agencies which receive federal funds, including the City of Woodburn.

In order to prepare this plan, the City of Woodburn used the most current version of the U.S. Census American Community Survey, the Four-Factor LEP Analysis for Meaningful Access, and the Safe Harbor Test for Written Translation Services.

### **FOUR FACTOR ANALYSIS FOR MEANINGFUL ACCESS**

Recipients are required to take reasonable steps to ensure meaningful access to LEP persons through the four factor analysis. This "reasonableness" standard is intended to be flexible and fact-dependent. It is also intended to balance the need to ensure meaningful access by LEP persons to critical services while not imposing undue financial burdens on small businesses, small local governments, or small nonprofit organizations. As a starting point, a recipient may conduct an individualized assessment that balances the following four factors:

**1. The number or proportion of LEP persons served or encountered in the eligible service population ("served" or "encountered" includes those persons who would be served or encountered by the recipient if the persons received adequate education and outreach and the recipient provided sufficient language services):**

The City of Woodburn's most current population estimate is 23,665 and the City has large Spanish and Russian speaking populations. According to the 2009-2010 American Community Survey, 33.8% of the population speaks English less than "very well" with 29.2% shown as Spanish speaking, or up to 6,910 persons, and 5.0%, or up to 1,183 persons, shown as speaking Indo-European languages.

**2. The frequency with which LEP persons come into contact with the program:**

It can be expected that LEP persons will come into contact with City programs, services, or facilities on a very regular basis and staff serving as point of entry contacts to programs and services are given instructions on how to identify LEP clients using Language Identification Cards (attached), how to utilize interpretation services, and/or staff contacts to access translation services.

**3. The nature and importance of the program, activity, or service provided by the program:**

High. With a large non-English speaking population and/or populations that speak English less than "very well", access and the availability of all city services, programs and facilities to LEP persons must be provided.

**4. The resources available and costs to the recipient:**

The City of Woodburn has well established translation and interpreter services available for all public meetings, court, police, and city hall services. The City has a Community Outreach Coordinator responsible for promoting civic engagement through community outreach and public education. The Community Outreach Coordinator also provides translation services and/or

serves as the point of contact for residents and staff when translation services are requested. The Community Outreach Coordinator can be reached at 503-982-5388 or by request at City Hall. The City also provides translation services for documents/records requests. The City recently updated their website to allow for translation of city information to over 50 languages.

**LANGUAGE ACCESS PLAN (LAP) AND DETERMINATION:** The City of Woodburn has well established translation services for public meetings, court, website translations, city services, and documents/records requests. The City can tap into these resources as needed and has staff contacts assigned to be the point of contact for interested parties and/or staff.

**SAFE HARBOR TEST FOR WRITTEN TRANSLATION SERVICES:**

Size of Language Group	Recommended Provision of Written Language Assistance	CDBG Recipient	Supporting Documentation
1,000 or more in eligible population in the market area of among current beneficiaries	Translated vital documents.	X	The City provides translated vital documents to interested parties upon request. Translation services are available upon request.
More than 5% of the eligible population or beneficiaries and more than 50 in number	Translated vital documents.		
More than 5% of eligible population or beneficiaries and 50 or less in number	Translated written notice of right to receive free oral interpretation of documents.		
5% or less of the eligible population or beneficiaries and less than 1,000 in number	No written translation is required.		

**SAFE HARBOR DETERMINATION:** The City offers translated documents, if requested, for all city services provided. The City already provides offers of translation services in Spanish and Russian. These translation services/service languages are based on the most current census data for the service population. The City also has a staff point of contact to assist residents and staff in points of contact/requests for translation services or documentation. The City also posts notices in English, Spanish and Russian that LEP services are available.

- |  |                        |
|--|------------------------|
| <input type="checkbox"/> <p>ضع علامة في هذا المربع إذا كنت تقرأ أو تتحدث العربية.</p>                                  | 1. Arabic              |
| <input type="checkbox"/> <p>Խոսողո՞ւմ ե՞սք նշո՞ւմ կատարե՞ք այս քանակուսու՞մ, եթե խոսո՞ւմ կա՞մ կարո՞ւմ ե՞ք հայերեն:</p> | 2. Armenian            |
| <input type="checkbox"/> <p>যদি আপনি বাংলা পড়েন বা বলেন তা হলে এই বাক্সে দাগ দিন।</p>                                 | 3. Bengali             |
| <input type="checkbox"/> <p>ល្អបញ្ជាក់ក្នុងប្រអប់នេះ បើអ្នកអាន ឬនិយាយភាសា ខ្មែរ ។</p>                                  | 4. Cambodian           |
| <input type="checkbox"/> <p>Motka i kahhon ya yangin ûntûngnu' manaitai pat ûntûngnu' kumentos Chamorro.</p>           | 5. Chamorro            |
| <input type="checkbox"/> <p>如果你能读中文或讲中文，请选择此框。</p>   | 6. Simplified Chinese  |
| <input type="checkbox"/> <p>如果你能讀中文或講中文，請選擇此框。</p>   | 7. Traditional Chinese |
| <input type="checkbox"/> <p>Označite ovaj kvadratić ako čitate ili govorite hrvatski jezik.</p>                        | 8. Croatian            |
| <input type="checkbox"/> <p>Zaškrtněte tuto kolonku, pokud čtete a hovoříte česky.</p>                                 | 9. Czech               |
| <input type="checkbox"/> <p>Kruis dit vakje aan als u Nederlands kunt lezen of spreken.</p>                            | 10. Dutch              |
| <input type="checkbox"/> <p>Mark this box if you read or speak English.</p>  | 11. English            |
| <input type="checkbox"/> <p>اگر خواندن و نوشتن فارسي بلد هستيد، اين مربع را علامت بنيد.</p>                            | 12. Farsi              |

<input type="checkbox"/>	Cocher ici si vous lisez ou parlez le français.	13. French
<input type="checkbox"/>	Kreuzen Sie dieses Kästchen an, wenn Sie Deutsch lesen oder sprechen.	14. German
<input type="checkbox"/>	Σημειώστε αυτό το πλαίσιο αν διαβάζετε ή μιλάτε Ελληνικά.	15. Greek
<input type="checkbox"/>	Make kazye sa a si ou li oswa ou pale kreyòl ayisyen.	16. Haitian Creole
<input type="checkbox"/>	अगर आप हिन्दी बोलते या पढ़ सकते हैं तो इस बक्स पर चिह्न लगाएँ।	17. Hindi
<input type="checkbox"/>	Kos lub voj no yog koj paub twm thiab hais lus Hmoob.	18. Hmong
<input type="checkbox"/>	Jelölje meg ezt a kockát, ha megérta vagy beszéli a magyar nyelvet.	19. Hungarian
<input type="checkbox"/>	Markaam daytoy nga kahon no makabasa wenno makasaoka iti Ilocano.	20. Ilocano
<input type="checkbox"/>	Marchi questa casella se legge o parla italiano.	21. Italian
<input type="checkbox"/>	日本語を読んだり、話せる場合はここに印を付けてください。	22. Japanese
<input type="checkbox"/>	한국어를 읽거나 말할 수 있으면 이 칸에 표시하십시오.	23. Korean
<input type="checkbox"/>	ໃຫ້ໝາຍໃສ່ຊ່ອງນີ້ ຖ້າທ່ານອ່ານຫຼືປາກພາສາລາວ.	24. Laotian
<input type="checkbox"/>	Prosimy o zaznaczenie tego kwadratu, jeżeli posługuje się Pan/Pani językiem polskim.	25. Polish

<input type="checkbox"/>	Assinale este quadrado se você lê ou fala português.	26. Portuguese
<input type="checkbox"/>	Însemnați această căsuță dacă citiți sau vorbiți românește.	27. Romanian
<input type="checkbox"/>	Пометьте этот квадратик, если вы читаете или говорите по-русски.	28. Russian
<input type="checkbox"/>	Обележите овај квадратик уколико читате или говорите српски језик.	29. Serbian
<input type="checkbox"/>	Označte tento štvorček, ak viete čítať alebo hovoriť po slovensky.	30. Slovak
<input type="checkbox"/>	Marque esta casilla si lee o habla español.	31. Spanish
<input type="checkbox"/>	Markahan itong kuwadrado kung kayo ay marunong magbasa o magsalita ng Tagalog.	32. Tagalog
<input type="checkbox"/>	ให้กาเครื่องหมายลงในช่องถ้าท่านอ่านหรือพูดภาษาไทย.	33. Thai
<input type="checkbox"/>	Maaka 'i he puha ni kapau 'oku ke lau pe lea fakatonga.	34. Tongan
<input type="checkbox"/>	Відмітьте цю клітинку, якщо ви читаете або говорите українською мовою.	35. Ukrainian
<input type="checkbox"/>	اگر آپ اردو پڑھتے یا بولتے ہیں تو اس خانے میں نشان لگائیں۔	36. Urdu
<input type="checkbox"/>	Xin đánh dấu vào ô này nếu quý vị biết đọc và nói được Việt Ngữ.	37. Vietnamese
<input type="checkbox"/>	באצייכנט דעם קעסטל אויב איר לייענט אדער רעדט אידיש.	38. Yiddish



## Agenda Item

September 23, 2013

TO: Honorable Mayor and City Council through City Administrator  
FROM: Jim Hendryx, Director of Economic & Development Services  
SUBJECT: **Woodburn Development Ordinance (WDO) "Housekeeping" Amendments**

### **RECOMMENDATION:**

Adopt the attached ordinance amending the WDO to correct formatting omissions contained in the zoning tables and readopting the Official Zoning Map to resolve a mapping error.

### **BACKGROUND:**

Almost four years ago the Mayor and City Council appointed two focus groups to review and update the Woodburn Development Ordinance (WDO). After extended efforts by the focus groups, Planning Commission and the public this culminated with the Council's adoption of Ordinance 2509, which completed revision of the WDO. As a part of this process, the Official Zoning Map was also adopted by Ordinance 2509.

### **DISCUSSION:**

The amended WDO, adopted by Ordinance 2509, is a document containing almost 300 pages. Even though the text was carefully reviewed prior to its final adoption, it was recently discovered that, due to formatting errors, portions of three zoning tables were omitted. The "housekeeping" amendment ordinance before the Council corrects these table deficiencies.

More specifically, formatting errors were noted affecting the Commercial and Industrial land use table headers, specifically zoning district headers (Table 2.03A & 2.04A were omitted from the adopted text). Additionally, some allowed uses were also omitted from the adopted text; specifically, temporary residential sales (R1S zone) and parks (P/SP zone). Public administration & government buildings were omitted (P/SP & SWIR zones), while chemical manufacturing, recycling, and asphalt and cement batch plants were also omitted from the IP

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Agenda Item Review: City Administrator \_\_\_x\_\_\_ City Attorney \_\_\_x\_\_\_ Finance \_\_\_x\_\_\_

zone (conditionally). In reviewing the entire ordinance, it was also noted that hotels, motels as well as bed and breakfast inns were unintentionally omitted from the Mixed Use Village zoning district. For the Council's convenience, all changes to the tables are highlighted in yellow.

A second issue involves a mapping error contained in the Official Zoning Map. In recently reviewing a proposed building addition, it was discovered that the Riparian Corridor and Wetlands Overlay District (RCWOD) was incorrectly mapped. The ordinance readopts the Official Zoning Map to correct this error.

Finally, the Council should note that an emergency clause has been incorporated into the ordinance. This is because Ordinance 2509 is in effect and its deficiencies should be corrected immediately.

**FINANCIAL IMPACT:**

This decision is anticipated to have no public sector financial impact.

**COUNCIL BILL NO. 2937**

**ORDINANCE NO. 2510**

**AN ORDINANCE AMENDING THE WOODBURN DEVELOPMENT ORDINANCE TO CORRECT FORMATTING OMISSIONS CONTAINED IN THE ZONING TABLES; READOPTING THE OFFICIAL ZONING MAP; AND DECLARING AN EMERGENCY**

**WHEREAS**, the Woodburn Development Ordinance (“WDO”) was originally adopted by the City Council by Ordinance 2313 in 2002; and

**WHEREAS**, in 2009, the City Council initiated an extended process to review and amend the WDO; and

**WHEREAS**, after an almost four year process the City Council, in August 2013, adopted Ordinance 2509, which completely revised the text of the WDO; and

**WHEREAS**, due to a formatting error, there are omissions contained in the zoning tables that should be corrected; and

**WHEREAS**, due to a mapping error involving the Riparian Corridor and Wetlands Overlay District (RCWOD), it is also necessary to readopt the Official Zoning Map; and

**WHEREAS**, the City previously gave the legally required notice relevant to the WDO amendment process and the actions contained in this Ordinance; **NOW, THEREFORE**,

**THE CITY OF WOODBURN ORDAINS AS FOLLOWS:**

**Section 1.** Section 2.02 Residential Zones is hereby amended to correct the formatting errors contained in Ordinance 2509 as follows:

**2.02 Residential Zones**

- A. The City of Woodburn is divided into the following residential zones:
  - 1. The Residential Single Family (RS) zone is intended to establish standard density single-family residential developments (typically 6,000 square foot lots).
  - 2. The Nodal Single Family Residential (RSN) zone provides for row houses (attached single-family homes) and detached single-family homes on smaller lots (typically 4,000 square foot lots).

3. The Retirement Community Single Family Residential (R1S) zone provides small lot residential development for seniors, allowing single-family homes on lots as small as 3,600 square feet.
4. The Medium Density Residential (RM) zone provides for multi-family dwellings and care facilities at up to 16 dwelling units per net acre.
5. The Nodal Multi-Family Residential (RMN) zone provides for row houses, multi-family dwellings and care facilities at higher densities than non-nodal zones.

**B. Approval Types (Table 2.02A)**

1. Permitted Uses (P) are allowed outright, subject to the general development standards of this Ordinance.
2. Special Permitted Uses (S) are allowed outright, subject to the general development standards and the special development standards of Section 2.07.
3. Conditional Uses (CU) may be allowed, subject to the general development standards of this Ordinance and conditions of Conditional Use approval.
4. Specific Conditional Uses (SCU) may be allowed, subject to the general development standards of this Ordinance, the specific standards of Section 2.08, and conditions of Conditional Use approval.
5. Accessory Uses (A) are allowed outright, subject to the general standards of this Ordinance.

<b>Uses Allowed in Residential Zones</b>							
<b>Table 2.02A</b>							
Use			Zone				
Accessory Uses (A)	Conditional Uses (CU)	Permitted Uses (P)	RS	RSN	R1S	RM	RMN
Special Permitted Uses (S)	Specific Conditional Uses (SCU)						
<b>A</b>	<b>Dwellings</b>						
1	Duplex dwelling		S	S		P	P
2	Manufactured dwelling		S <sup>1</sup>	S <sup>1</sup>	S	S	S
3	Multiple-family dwelling					P	P
4	Row houses					P	P
5	Single-family detached dwellings		P	P	P	P	P
<b>B</b>	<b>Nonresidential, Care and Public Uses</b>						
1	Child care facility for 12 or fewer children		P	P	P	P	P
2	Child care facility for 13 or more children, within a non-residential building.					CU	P
3	Elementary, middle and high schools		CU	CU	CU	CU	CU
4	Government and public utility buildings and structures		CU	CU	CU	CU	CU
5	Group care facility for six or more persons					P	P

**Uses Allowed in Residential Zones  
Table 2.02A**

Use		Zone				
Accessory Uses (A) Conditional Uses (CU) Permitted Uses (P) Special Permitted Uses (S) Specific Conditional Uses (SCU)		RS	RSN	R1S	RM	RMN
6	Group home for five or fewer persons	P	P	P	P	P
7	Historically or architecturally significant site	SCU	SCU	SCU	SCU	SCU
8	House of worship	S	S	S	S	S
9	Manufactured dwelling park				S	S
10	Nursing home				P	P
11	Off-street parking to serve a non-residential use allowed in zone	CU	CU	CU	CU	CU
12	Parks, play grounds and associated activities	P	P	P	P	P
13	Rights-of-way, easements and improvements for streets, water, sanitary sewer, gas, oil, electric and communication lines, stormwater facilities and pump stations.	P	P	P	P	P
C	<b>Other Uses</b>					
1	Boat, recreational and vehicle storage pad	S	S	S	S	S
2	Common boat, recreational and vehicle storage area	S	S	S	S	S
3	Community club buildings and facilities	S	S	S	S	S
4	Deck or patio	A	A	A	A	A
5	Delivery services	S	S	S	S	S
6	Facilities during construction	S	S	S	S	S
7	Fence or freestanding wall	A	A	A	A	A
8	Garage (or carport in the case of a manufactured home)	A	A	A	A	A
9	Golf courses without a driving range	S	S	S	S	S
10	Golf driving range in conjunction with a golf course	CU	CU	CU	CU	CU
11	Greenhouse, storage building, hobby shop	A	A	A	A	A
12	Home occupation	S	S	S	S	S
13	Private recreational facilities, including swimming pool, hot tub, sauna, and game courts	A	A	A	A	A
14	Residential sales office	S	S	S	S	S
15	Temporary residential sales: a. Produce and plant materials grown on the property b. Estate, garage and yard sales c. Crafts and other hobby items	S	S	S	S	S
1. Manufactured dwellings are not allowed in the Neighborhood Conservation Overlay District (NCOD).						

**Section 2.** Section 2.03 Commercial Zones is hereby amended to correct the formatting errors contained in Ordinance 2509 as follows:

## 2.03 Commercial Zones

A. The City of Woodburn is divided into the following commercial zones:

1. The Downtown Development and Conservation (DDC) zone is the community’s retail core, providing for unique retail and convenient shopping
2. The Commercial General (CG) zone is the community’s primary commercial area, providing for businesses requiring extensive land intensive outdoor storage and display of merchandise, equipment, or inventory.
3. The Commercial Office (CO) zone is intended primarily for office type development, with limited retail activity.
4. The Mixed Use Village (MUV) is intended to promote efficient use of land that promotes employment and housing through pedestrian-oriented development.
5. The Neighborhood Nodal Commercial (NNC) zone is intended to meet the shopping needs of nearby residents in a compact commercial setting

B. Approval Types (Table 2.03A)

1. Accessory Uses (A) are allowed outright, subject to the general standards of this Ordinance.
2. Conditional Uses (CU) may be allowed, subject to the general development standards of this Ordinance and conditions of Conditional Use approval.
3. Permitted Uses (P) are allowed outright, subject to the general development standards of this Ordinance.
4. Special Permitted Uses (S) are allowed outright, subject to the general development standards and the special development standards of Section 2.07.
5. Specific Conditional Uses (SCU) may be allowed, subject to the general development standards of this Ordinance, the specific standards of Section 2.08, and conditions of Conditional Use approval.

Uses Allowed in Commercial Zones Table 2.03A							
Use			Zone				
Accessory Uses (A)	Conditional Uses (CU)	Permitted Uses (P)	DDC	CG	CO	MUV	NNC
Special Permitted Uses (S)	Specific Conditional Uses (SCU)						
A	Civic Uses						
1	Public administration, aquatic facilities, fire protection, government and public utility buildings and storage yards		P	P	P	P	P

**Uses Allowed in Commercial Zones  
Table 2.03A**

Use		Zone				
Accessory Uses (A) Conditional Uses (CU) Permitted Uses (P) Special Permitted Uses (S) Specific Conditional Uses (SCU)		DDC	CG	CO	MUV	NNC
2	Public and private schools, house of worship, civic and social organizations	P	P	P	P	P
3	Rights-of-way, easements and improvements for streets, water, sanitary sewer, gas, oil, electric and communication lines, stormwater facilities and pump stations.	P	P	P	P	P
<b>B</b>	<b>Commercial Retail and Services</b>					
1	Ambulance service	CU <sup>3</sup>	CU <sup>3</sup>	CU	CU <sup>3</sup>	
2	Automotive maintenance and gasoline stations, including repair services	CU	CU <sup>3</sup>		P <sup>6</sup>	
3	Bakeries, delicatessens, grocery and convenience stores	P <sup>7</sup>	P		P	P
4	Bowling, skating, movie and performing arts theaters	P	P		P	
5	Building material and garden equipment	P <sup>5</sup>	P <sup>5</sup>		P <sup>5</sup>	P <sup>5</sup>
6	Business services	P	P	P	P	
7	Computer, commercial, electric motor, precision equipment, industrial and home goods repair.	P <sup>4</sup>	P <sup>1</sup>	P <sup>4</sup>	P <sup>4</sup>	
8	Contractors: a. Flooring and roofing b. Equipment and machinery c. Glass and glazing d. Masonry, drywall, insulation and tile contractors e. Other types of contractors		P <sup>4</sup>	P <sup>4</sup>	P <sup>6</sup>	
9	Craft industries: a. Apparel manufacturing b. Leather manufacturing, furniture and related product manufacturing, including cabinets c. Sporting goods manufacturing d. Doll, toy and game manufacturing	S	S	S	S	S
10	Delivery services	S	S	S	S	S
11	Dry cleaning, laundry and self-service laundry service	P <sup>7</sup>	P		S	P
12	Fitness and recreational sports	P	P	P	P	P
13	Funeral home	P	P	P	P	P
14	Hospitals and ancillary uses		CU <sup>3</sup>			
15	Hotels, motels and bed and breakfast inns	P	P	P	P	P
16	Office and office services and supplies	P	P	P	P	P

**Uses Allowed in Commercial Zones  
Table 2.03A**

Use		Zone				
Accessory Uses (A) Special Permitted Uses (S)	Conditional Uses (CU) Specific Conditional Uses (SCU)	DDC	CG	CO	MUV	NNC
17	Other amusements, including ballrooms		P <sup>1</sup>			
18	Pawn, check cashing, payday loan and cash transfer	CU <sup>7</sup>	P		P	
19	Printing, publishing, copying, bonding, finance, insurance, medical, data processing, social assistance, legal services, management, and corporate offices	P <sup>7</sup>	P	P	P	P
20	Professional services	P	P		P	
21	Restaurants and drinking places	P <sup>7</sup>	P	P	P	P
22	Retail trade offering goods and services directly to customers	P <sup>7</sup>	P		P	P
23	Spectator sports		P <sup>1</sup>			
24	Taxidermist		CU <sup>3</sup>			
25	Veterinary service		CU <sup>3</sup>			
26	Wine and liquor	CU <sup>7</sup>	P		P	
<b>C</b>	<b>Industrial</b>					
1	Charter bus, special needs transportation, transit system, school transportation, limousine service and taxi service		CU <sup>3</sup>			
2	Heavy equipment and motor vehicle sales: a. Manufactured (mobile) home dealers b. Motor vehicle and parts dealers, including new car, used car, recreational vehicle, motorcycle, boat, parts and tire dealers c. Truck dealers, including new truck, used truck, parts and tire dealers d. Tractor, farm machinery and equipment dealers e. Farm, garden and landscaping supplies		CU <sup>3</sup>			
3	Manufacturing of metal products, furniture and cabinets		P <sup>4</sup>	P <sup>6</sup>		
4	Motor freight transportation and warehousing, including local or long-distance trucking or transfer services, storage of farm products, furniture, other household goods, or commercial goods		CU <sup>1</sup>			
5	Motor vehicle towing		CU <sup>3</sup>			
6	Parking lots and garages	P	P	P		P
7	Recreational vehicle park		CU <sup>1</sup>			
<b>D</b>	<b>Miscellaneous</b>					
1	Facilities during construction	S	S	S	S	S

Uses Allowed in Commercial Zones Table 2.03A						
Use		Zone				
Accessory Uses (A) Conditional Uses (CU) Permitted Uses (P) Special Permitted Uses (S) Specific Conditional Uses (SCU)		DDC	CG	CO	MUV	NNC
2	Fence or free-standing wall	A	A	A	A	A
3	Temporary outdoor marketing and special event: a. Arts and crafts b. Food and beverages, including mobile food services c. Seasonal sales of fireworks, Christmas trees, produce or plant materials d. Amusement rides and games e. Entertainment f. Any other merchandise or service which is neither accessory to a primary, permanent use of the property nor marketed by employees of that permanent use	S	S	S	S	S
E	Residential					
1	Attached single-family (row houses) dwellings	P	P <sup>2</sup>		P	P
2	Child care facility, group home, and nursing home	P <sup>8</sup>				
3	One dwelling unit, in conjunction with a commercial use	P	P	P	P	P
4	Multiple-family dwellings	P	P	CU	P	P
<ol style="list-style-type: none"> <li>1. Not allowed in the Gateway Overlay District</li> <li>2. Only allowed in the Gateway Overlay District</li> <li>3. Allowed outright if not within 200 feet of residentially zoned properties</li> <li>4. Within a building, no outdoor storage or repair</li> <li>5. All outdoor storage and display shall be enclosed by a seven foot masonry wall.</li> <li>6. Existing uses are allowed as a permitted use, new uses are not allowed in the MUV</li> <li>7. Drive-throughs are not allowed</li> <li>8. Child care facility for 13 or more children, group home for six or more persons</li> </ol>						

**Section 3.** Section 2.04 Industrial and Public Zones is hereby amended to correct the formatting errors contained in Ordinance 2509 as follows:

## 2.04 Industrial and Public Zones

C. The City of Woodburn is divided into the following industrial and public zones:

1. The Light Industrial (IL) zone, which is intended for industrial activities that include

land-intensive activities;

2. The Industrial Park (IP) zone, which is intended for light industrial activities in a park-like setting;
3. The Public and Semi-Public (P/SP) zone, which is intended for public uses, parks, schools and cemeteries.
4. The Southwest Industrial Reserve (SWIR), which is intended for high technology and research development activities;

D. Approval Types (Table 2.04A)

1. Accessory Uses (A) are allowed outright, subject to the general standards of this Ordinance.
2. Conditional Uses (CU) may be allowed, subject to the general development standards of this Ordinance and conditions of Conditional Use approval.
3. Permitted Uses (P) are allowed outright, subject to the general development standards of this Ordinance.
4. Special Permitted Uses (S) are allowed outright, subject to the general development standards and the special development standards of Section 2.07.
5. Specific Conditional Uses (SCU) may be allowed, subject to the general development standards of this Ordinance, the specific standards of Section 2.08, and conditions of Conditional Use approval.

<b>Uses Allowed in Industrial Zones</b>						
<b>Table 2.04A</b>						
Use			Zone			
Accessory Uses (A)    Conditional Uses (CU)    Permitted Uses (P) Special Permitted Uses (S)    Specific Conditional Uses (SCU)			<b>IL</b>	<b>IP</b>	<b>P/SP</b>	<b>SWIR</b>
<b>A</b>	<b>Civic Uses</b>					
1	Golf driving range	P	P	CU		
2	Parks, play grounds and associated activities, golf courses without a driving range			<b>P</b>		
3	Public administration, aquatic facilities, fire protection, government and public utility buildings and storage yards	P	P	<b>CU</b>	<b>P</b>	
4	Rights-of-way, easements and improvements for streets, water, sanitary sewer, gas, oil, electric and communication lines, stormwater facilities and pump stations.	P	P	P	P	
5	Trade schools	P	P	CU	P	
<b>B</b>	<b>Commercial Retail and Services</b>					

**Uses Allowed in Industrial Zones  
Table 2.04A**

Use		Zone			
Accessory Uses (A) Conditional Uses (CU) Permitted Uses (P) Special Permitted Uses (S) Specific Conditional Uses (SCU)		IL	IP	P/SP	SWIR
1	Ambulance service	P	P		
2	Automotive maintenance and gasoline stations, including repair services	P	P		
3	Business services		P		P
4	Contractors: f. Flooring and roofing g. Equipment and machinery h. Glass and glazing i. Masonry, drywall, insulation and tile contractors j. Other types of contractors	P	P		
5	Delivery services	S	S	S	S
6	Fitness and recreational sports	P	P		P
7	Hospitals and ancillary uses		P	CU	P
8	Restaurants and drinking places	P	P		P
<b>C</b>	<b>Industrial</b>				
1	Auction houses, except livestock and poultry sales	CU			
2	Automotive wrecking yards	CU			
3	Charter buses, special needs transportation, transit system, school transportation, limousine service and taxi service	P	P		
4	Chemical manufacturing	CU	CU		
5	Recycling center	CU	CU		
6	Asphalt or Portland cement concrete batch plant	CU	CU		
7	Commercial and industrial equipment repair, transit and ground transportation	P	CU		
8	Electronic and other electrical equipment and components, including manufacturing machinery, apparatus, and supplies for the generation, storage, transmission, transformation, and utilization of electrical energy; electricity distribution equipment; electrical industrial apparatus; household appliances; electrical lighting and wiring equipment; radio and television receiving equipment; communications equipment; electronic components and accessories; and other electrical equipment and supplies	P	P		P

**Uses Allowed in Industrial Zones  
Table 2.04A**

Use		Zone			
Accessory Uses (A) Conditional Uses (CU) Permitted Uses (P) Special Permitted Uses (S) Specific Conditional Uses (SCU)		IL	IP	P/SP	SWIR
9	Fabricated metal products, including fabricating ferrous and non-ferrous metal products such as metal cans, tin ware, hand tools, cutlery, general hardware, non-electric heating apparatus, fabricated structural metal products, metal forgings, metal stampings, and metal and wire products	CU			P
10	Industrial and commercial machinery and computer equipment, including engines and turbines; farm and garden machinery; construction, mining, and oil field machinery; elevators and conveying equipment; hoists, cranes, monorails, trucks and tractors; metalworking machinery; special industry machinery; general industrial machinery; computer and peripheral equipment and office machinery; and refrigeration and service industry machinery	P	P		P
11	Heavy equipment and motor vehicle sales: e. Manufactured home dealers f. Motor vehicle and parts dealers, including new cars, used cars, recreational vehicles, motorcycles, boats, parts and tire dealers g. Truck dealers, including new trucks, used trucks, parts and tire dealers h. Tractor and farm machinery and equipment dealers i. Farm, garden and landscaping supplies	S	S		
12	Manufacturing: a. Beverage, food and tobacco b. Furniture and related products c. Leather and allied products d. Paper, limited to assembly e. Miscellaneous manufacturing f. Plastics and rubber g. Textile products	P	P		
13	Motor freight transportation and warehousing, including local or long-distance trucking or transfer services, storage of farm products, furniture and other household goods, and commercial goods	P	CU		P
14	Non-depository credit institutions engaged in extending credit in the form of loans, but not engaged in deposit banking		P		P
15	Paper manufacturing	CU			

Uses Allowed in Industrial Zones Table 2.04A					
Use		Zone			
Accessory Uses (A) Conditional Uses (CU) Permitted Uses (P) Special Permitted Uses (S) Specific Conditional Uses (SCU)		IL	IP	P/SP	SWIR
16	Parking lots and garages	P	P		
17	Petroleum and coal products manufacturing with all storage underground	CU			
18	Printing, publishing, and allied industries	P	P		P
19	Professional services		P		P
20	Stone, clay, glass, and concrete products including manufacturing flat glass, other glass products, cement, structural clay products, pottery, concrete and gypsum products, cut stone, abrasive and asbestos products, and other products from materials taken principally from the earth in the form of stone, clay, and sand	P			P
21	Telecommunication facilities subject to Section 2.08.03	SCU	SCU		SCU
22	Wholesale trade in durable and non-durable goods	P	P		P
23	Wood product manufacturing	P	CU		
D	Miscellaneous				
1	Facilities during construction	S	S	S	S
2	Fence or free-standing wall	A	A	A	A
3	Temporary outdoor marketing and special event: a. Arts and crafts b. Food and beverages, including mobile food services c. Seasonal sales of fireworks, Christmas trees, produce or plant materials d. Amusement rides and games e. Entertainment f. Any other merchandise or service which is neither accessory to a primary, permanent use of the property, nor marketed by employees of that permanent use	S	S	S	S
E	Residential				
1	One dwelling unit in conjunction with an industrial use	P	P	P	P

**Section 4.** The Official Zoning Map of the City of Woodburn is readopted and is attached hereto and incorporated as Exhibit "A".

**Section 5.** This Ordinance being necessary for the immediate preservation of the public peace, health and safety because Ordinance 2509 is

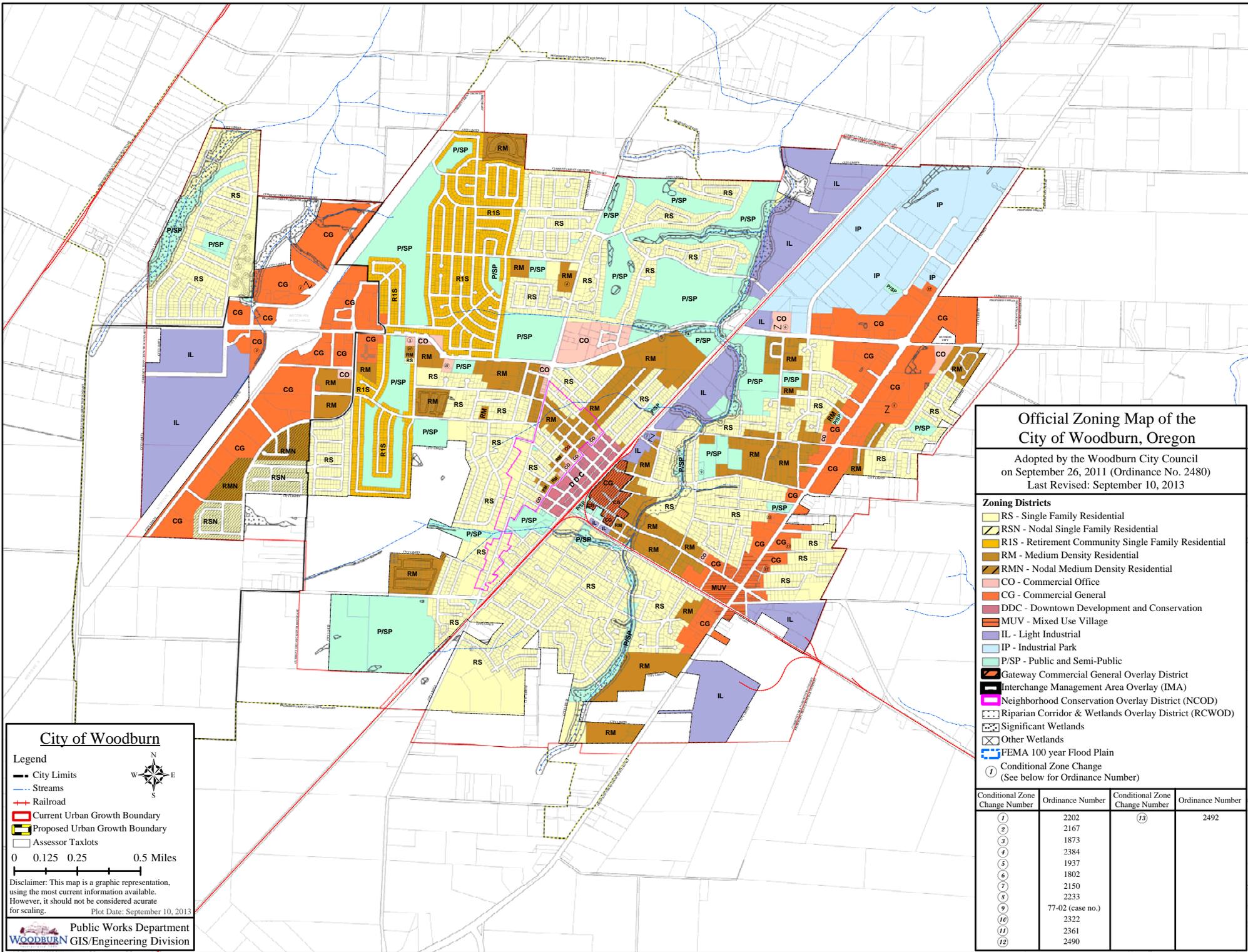
presently in effect and has missing information, an emergency is declared to take effect immediately upon passage by the Council and approval by the Mayor.

Approved as to form: \_\_\_\_\_  
City Attorney Date

Approved: \_\_\_\_\_  
Kathryn Figley, Mayor

Passed by the Council \_\_\_\_\_  
Submitted to the Mayor \_\_\_\_\_  
Approved by the Mayor \_\_\_\_\_  
Filed in the Office of the Recorder \_\_\_\_\_

ATTEST: \_\_\_\_\_  
Heather Pierson, City Recorder  
City of Woodburn, Oregon



### Official Zoning Map of the City of Woodburn, Oregon

Adopted by the Woodburn City Council on September 26, 2011 (Ordinance No. 2480)  
Last Revised: September 10, 2013

- Zoning Districts**
- RS - Single Family Residential
  - RSN - Nodal Single Family Residential
  - R1S - Retirement Community Single Family Residential
  - RM - Medium Density Residential
  - RMN - Nodal Medium Density Residential
  - CO - Commercial Office
  - CG - Commercial General
  - DDC - Downtown Development and Conservation
  - MUV - Mixed Use Village
  - IL - Light Industrial
  - IP - Industrial Park
  - P/SP - Public and Semi-Public
  - Gateway Commercial General Overlay District
  - Interchange Management Area Overlay (IMA)
  - Neighborhood Conservation Overlay District (NCOD)
  - Riparian Corridor & Wetlands Overlay District (RCWOD)
  - Significant Wetlands
  - Other Wetlands
  - FEMA 100 year Flood Plain
  - Conditional Zone Change (See below for Ordinance Number)

Conditional Zone Change Number	Ordinance Number	Conditional Zone Change Number	Ordinance Number
(1)	2202	(12)	2492
(2)	2167		
(3)	1873		
(4)	2384		
(5)	1937		
(6)	1802		
(7)	2150		
(8)	2233		
(9)	77-02 (case no.)		
(10)	2322		
(11)	2361		
(12)	2490		

#### City of Woodburn

- Legend**
- City Limits
  - Streams
  - Railroad
  - Current Urban Growth Boundary
  - Proposed Urban Growth Boundary
  - Assessor Taxlots
- 0 0.125 0.25 0.5 Miles



Disclaimer: This map is a graphic representation, using the most current information available. However, it should not be considered accurate for scaling.  
Plot Date: September 10, 2013



# Agenda Item

September 23, 2013

TO: Honorable Mayor and City Council through City Administrator

FROM: Randy Scott, Interim Public Works Director

SUBJECT: **SUPPLEMENTAL AGREEMENT, USE OF UNION PACIFIC PROPERTY  
LOCATED AT 121 BROADWAY STREET**

**RECOMMENDATION:**

The City Council, by motion, provide authorization for the City Administrator to enter into a Supplemental Agreement to the existing Union Pacific Lease Agreement, Audit No. 201022, for use of additional Union Pacific Railroad property located at 121 Broadway Street.

**BACKGROUND:**

The initial lease, Lease Audit No. 201022 dated December 13<sup>th</sup>, 2000 provides City use of approximately 4,165 square feet of area located at 121 Broadway Street. This area is at the west end of the City's equipment storage building located at 121 Broadway Street and a portion of the building is located on leased property. The subject Supplemental Agreement will cover an additional 2,137 square feet, adjacent to and contiguous to "A" Street Right-of-Way. The area is currently fenced and used for material storage and was not addressed under the initial lease. This will provide a total leased area of 6,302 square feet. Both areas are identified on Exhibit "A" attached.

**DISCUSSION:**

The Supplemental Agreement is being requested by Union Pacific, Real Estate Division, Omaha, Nebraska. The current use of the subject property will not change and has not changed since the initial lease was entered into. The cost of rent will remain the same as per the initial lease agreement and no charge will be applied for the additional square footage. The Supplemental Agreement also requires the City to provide updated documentation of insurance that meets Union Pacific current indemnity requirements. The City's insurance agent

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Agenda Item Review: City Administrator  City Attorney  Finance

of record has reviewed the documents and has approved issuing a new certificate with the referenced updates with no additional cost to the City.

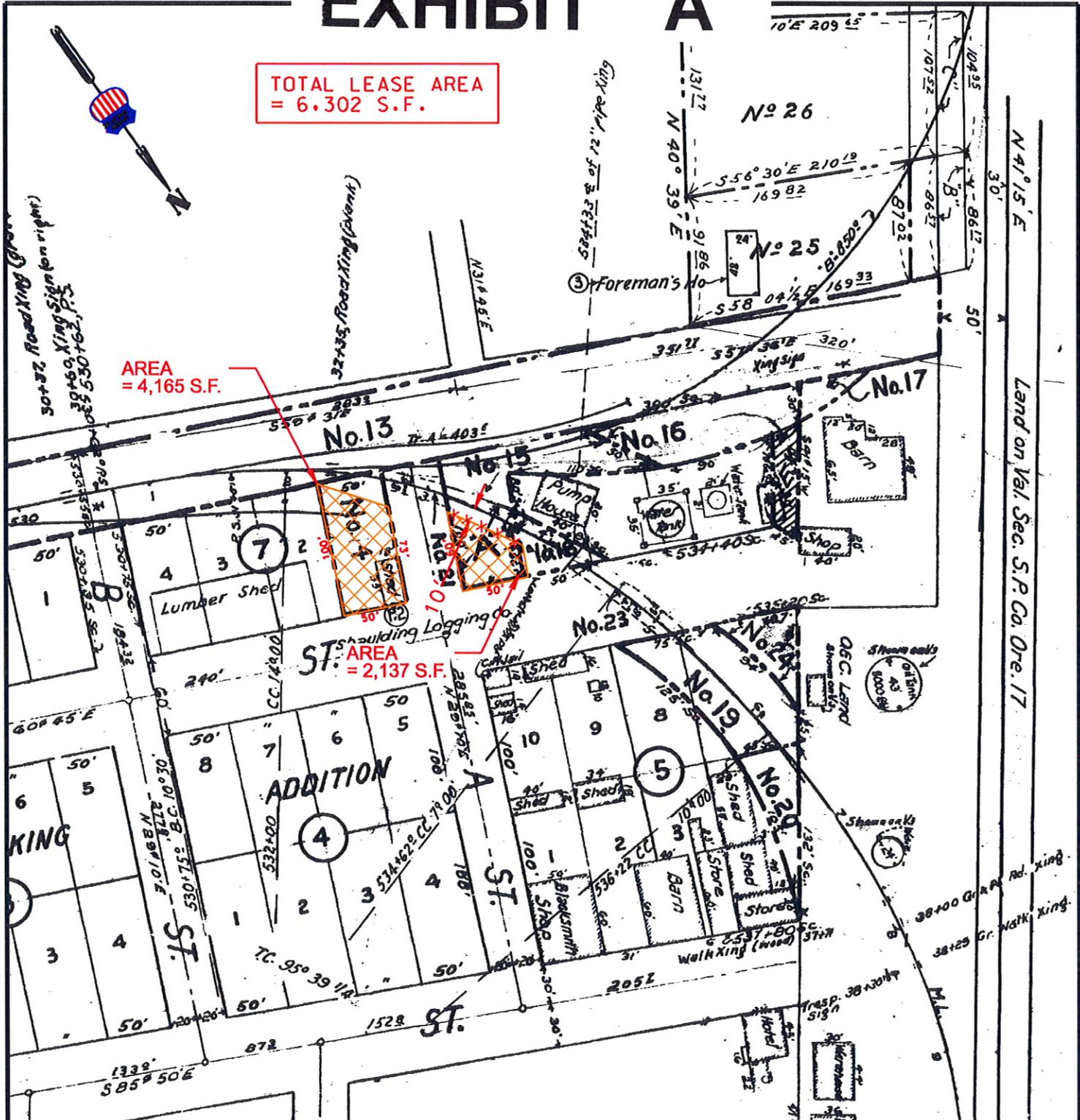
Attached: Exhibit "A", Lease Area  
Exhibit "B", Lease Agreement, Audit No. 201022  
Exhibit "C", Supplemental Agreement

**FINANCIAL IMPACT:**

The current lease rent fees to Union Pacific are not being modified by this action. The rental cost for 2013 is **\$4,405.60**.

# EXHIBIT "A"

**TOTAL LEASE AREA = 6,302 S.F.**



**LEGEND:**

- LEASE AREA..... 
- FENCE..... 
- UPPRCO. R/W OUTLINED..... 

NOTE: BEFORE YOU BEGIN ANY WORK, SEE AGREEMENT FOR FIBER OPTIC PROVISIONS.

**EXHIBIT "A"**

**UNION PACIFIC RAILROAD COMPANY**

WOODBURN, MARION COUNTY, OR

M.P. 737.38 - WEST STAYTON BRANCH

TO ACCOMPANY AGREEMENT WITH CITY OF WOODBURN

SP OR V-25 / 24

SCALE: 1" = 100'

OFFICE OF REAL ESTATE

OMAHA, NEBRASKA DATE: 5-28-2013

NLP FILE: 1570-61

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# EXHIBIT "B"

Folder No. 01570-61  
Audit No. 201022

## LEASE OF PROPERTY

THIS LEASE ("Lease") is entered into on the 13<sup>th</sup> day of December, 2000, between UNION PACIFIC RAILROAD COMPANY ("Lessor") and WOODBURN, CITY OF, an Oregon municipal corporation, whose address is 270 Montgomery Street, Woodburn, Oregon 97071 ("Lessee").

IT IS AGREED BETWEEN THE PARTIES AS FOLLOWS:

### Article I. PREMISES; USE.

Lessor leases to Lessee and Lessee leases from Lessor the premises ("Premises") at Woodburn, Oregon, as shown on the print dated August 4, 1998, marked Exhibit A, hereto attached and made a part hereof, subject to the provisions of this Lease and of Exhibit B attached hereto and made a part hereof. The Premises may be used for maintenance and use of lessee owned improvements for a municipal public works shop and for purposes incidental thereto, only, and for no other purpose.

### Article II. TERM.

The term of this Lease shall commence on October 10, 2000, and unless sooner terminated as provided in this Lease, shall extend for one year; and thereafter, shall automatically be extended from year to year.

### Article III. RENT

A. Lessee shall pay to Lessor, in advance, rent of Three Thousand Dollars (\$3,000.00) annually. The rent shall be increased by Three Percent (3%) annually, cumulative and compounded.

B. Not more than once every three (3) years, Lessor may redetermine the rent. In the event that Lessor does redetermine the rent, Lessor shall notify Lessee of such change.

### Article IV. SPECIAL PROVISION -- CANCELLATION

Effective upon commencement of the term of this Lease, the Lease dated October 10, 1996, identified as Audit No. 201022 (the "Prior Lease"), together with any and all supplements and amendments, is canceled and superseded by this Lease, except for any rights, obligations or liabilities arising under the Prior Lease before cancellation, including any consent to conditional assignment, chattel agreement, or consent to sublease. The security deposit provision, if any, contained in the Prior Lease, will survive the cancellation of the Prior Lease and be made a part of this Lease.

CODED

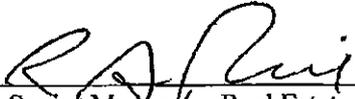
By: M.C.W.

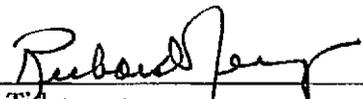
Date: DEC 14 2000

IN WITNESS WHEREOF, the parties have executed this Lease as of the day and year first herein written.

**UNION PACIFIC RAILROAD COMPANY**

**CITY OF WOODBURN**

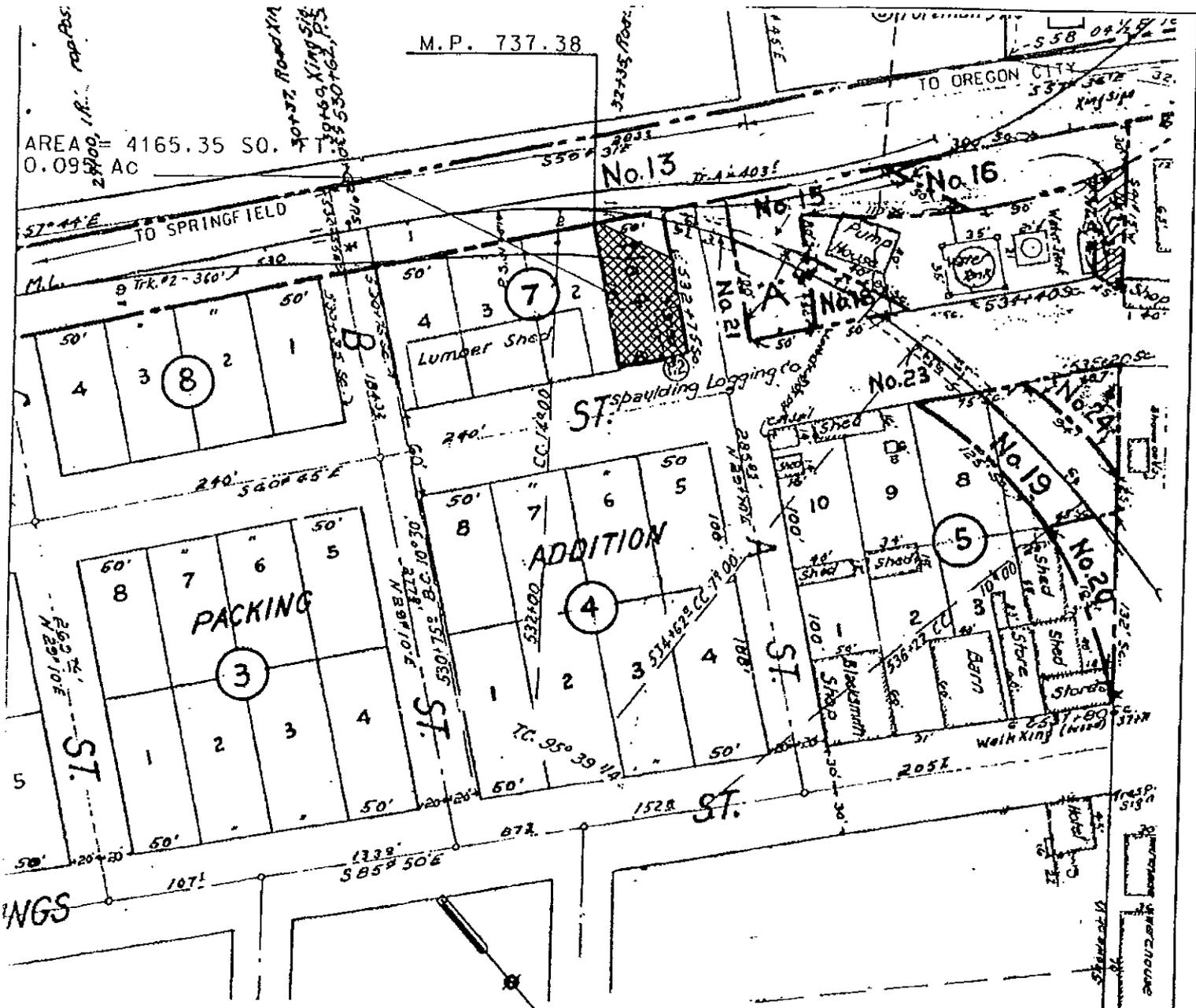
By:   
Senior Manager - Real Estate

By:   
Title: Mayor

NOTE: Cancels and supersedes Lease Audit No. 201022 dated October 10, 1996

M.P. 737.38

AREA = 4165.35 SQ. FT.  
0.095 AC



V-25  
24

AREA =  
4165.35 SQ. FT.  
0.095 AC

SOUTHERN PACIFIC TRANSPORTATION COMPANY		
VALUATION SECTION	MAP NUMBER	PARCEL NUMBER(S)
25	24	4

LEGEND:

SALE AREA SHOWN ..... [Hatched Box]

UPPRCO. R/W OUTLINED ..... [Dashed Line]

NOTE: BEFORE YOU BEGIN ANY WORK, SEE AGREEMENT FOR FIBER OPTIC PROVISIONS.  
EXHIBIT "A"

**UNION PACIFIC RAILROAD COMPANY**  
WOODBURN, MARION COUNTY, OREGON  
M.P. 737.38 - WEST STAYTON BRANCH  
TO ACCOMPANY AGREEMENT WITH  
CITY OF WOODBURN

SCALE: 1" = 100'  
OFFICE OF REAL ESTATE  
OMAHA, NEBRASKA DATE: 8/4/1998  
CAA FILE: 1570-61

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EXHIBIT B

Section 1. IMPROVEMENTS.

No improvements placed upon the Premises by Lessee shall become a part of the realty.

Section 2. RESERVATIONS AND PRIOR RIGHTS.

A. Lessor reserves to itself, its agents and contractors, the right to enter the Premises at such times as will not unreasonably interfere with Lessee's use of the Premises.

B. Lessor reserves (i) the exclusive right to permit third party placement of advertising signs on the Premises, and (ii) the right to construct, maintain and operate new and existing facilities (including, without limitation, trackage, fences, communication facilities, roadways and utilities) upon, over, across or under the Premises, and to grant to others such rights, provided that Lessee's use of the Premises is not interfered with unreasonably.

C. This Lease is made subject to all outstanding rights, whether or not of record. Lessor reserves the right to renew such outstanding rights.

Section 3. PAYMENT OF RENT.

Rent (which includes the annual rent and all other amounts to be paid by Lessee under this Lease) shall be paid in lawful money of the United States of America, at such place as shall be designated by the Lessor, and without offset or deduction.

Section 4. TAXES AND ASSESSMENTS.

A. Lessee shall pay, prior to delinquency, all taxes levied during the life of this Lease on all personal property and improvements on the Premises not belonging to Lessor. If such taxes are paid by Lessor, either separately or as a part of the levy on Lessor's real property, Lessee shall reimburse Lessor in full within thirty (30) days after rendition of Lessor's bill.

B. If the Premises are specially assessed for public improvements, the annual rent will be automatically increased by 12% of the full assessment amount.

Section 5. WATER RIGHTS.

This Lease does not include any right to the use of water under any water right of Lessor, or to establish any water rights except in the name of Lessor.

Section 6. CARE AND USE OF PREMISES.

A. Lessee shall use reasonable care and caution against damage or destruction to the Premises. Lessee shall not use or permit the use of the Premises for any unlawful purpose, maintain any nuisance, permit any waste, or use the Premises in any way that creates a hazard to persons or property. Lessee shall keep the Premises in a safe, neat, clean and presentable condition, and in good condition and repair. Lessee shall keep the sidewalks and public ways on the Premises, and the walkways appurtenant to any railroad spur track(s) on or serving the Premises, free and clear from any substance which might create a hazard and all water flow shall be directed away from the tracks of the Lessor.

B. Lessee shall not permit any sign on the Premises, except signs relating to Lessee's business.

C. If any improvement on the Premises not belonging to Lessor is damaged or destroyed by fire or other casualty, Lessee shall, within thirty (30) days after such casualty, remove all debris resulting therefrom. If Lessee fails to do so, Lessor may remove such debris, and Lessee agrees to reimburse Lessor for all expenses incurred within thirty (30) days after rendition of Lessor's bill.

D. Lessee shall comply with all governmental laws, ordinances, rules, regulations and orders relating to Lessee's use of the Premises.

Section 7. HAZARDOUS MATERIALS, SUBSTANCES AND WASTES.

A. Without the prior written consent of Lessor, Lessee shall not use or permit the use of the Premises for the generation, use, treatment, manufacture, production, storage or recycling of any Hazardous Substances, except that Lessee may use (i) small quantities of common chemicals such as adhesives, lubricants and cleaning fluids in order to conduct business at the Premises and (ii) other Hazardous Substances, other than hazardous wastes as defined in the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901, et seq., as amended ("RCRA"), that are necessary for the conduct of Lessee's business at the Premises as specified in Article I. The consent of Lessor may be withheld by Lessor for any reason whatsoever, and may be subject to conditions in addition to those set forth below. It shall be the sole responsibility of Lessee to determine whether or not a contemplated use of the Premises is a Hazardous Substance use.

B. In no event shall Lessee (i) release, discharge or dispose of any Hazardous Substances, (ii) bring any hazardous wastes as defined in RCRA onto the Premises, (iii) install or use on the Premises any underground storage tanks, or (iv) store any Hazardous Substances within one hundred feet (100') of the center line of any main track.

C. If Lessee uses or permits the use of the Premises for a Hazardous Substance use, with or without Lessor's consent, Lessee shall furnish to Lessor copies of all permits, identification numbers and notices issued by governmental agencies in connection with such Hazardous Substance use, together with such other information on the Hazardous Substance use as may be requested by Lessor. If requested by Lessor, Lessee shall cause to be performed an environmental assessment of the Premises upon termination of the Lease and shall furnish Lessor a copy of such report, at Lessee's sole cost and expense.

D. Without limitation of the provisions of Section 12 of this Exhibit B, Lessee shall be responsible for all damages, losses, costs, expenses, claims, fines and penalties related in any manner to any Hazardous Substance use of the Premises (or any property in proximity to the Premises) during the term of this Lease or, if longer, during Lessee's occupancy of the Premises, regardless of Lessor's consent to such use, or any negligence, misconduct or strict liability of any Indemnified Party (as defined in Section 12), and including, without limitation, (i) any diminution in the value of the Premises and/or any adjacent property of any of the Indemnified Parties, and (ii) the cost and expense of clean-up, restoration, containment, remediation, decontamination, removal, investigation, monitoring, closure or post-closure. Notwithstanding the foregoing, Lessee shall not be responsible for Hazardous Substances (i) existing on, in or under the Premises prior to the earlier to occur of the commencement of the term of the Lease or Lessee's taking occupancy of the Premises, or (ii) migrating from adjacent property not controlled by Lessee, or (iii) placed on, in or under the Premises by any of the Indemnified Parties; except where the Hazardous Substance is discovered by, or the contamination is exacerbated by, any excavation or investigation undertaken by or at the behest of Lessee. Lessee shall have the burden of proving by a preponderance of the evidence that any exceptions of the foregoing to Lessee's responsibility for Hazardous Substances applies.

E. In addition to the other rights and remedies of Lessor under this Lease or as may be provided by law, if Lessor reasonably determines that the Premises may have been used during the term of this Lease or any prior lease with Lessee for all or any portion of the Premises, or are being used for any Hazardous Substance use, with or without Lessor's consent thereto, and that a release or other contamination may have occurred, Lessor may, at its election and at any time during the life of this Lease or thereafter (i) cause the

Premises and/or any adjacent premises of Lessor to be tested, investigated, or monitored for the presence of any Hazardous Substance, (ii) cause any Hazardous Substance to be removed from the Premises and any adjacent lands of Lessor, (iii) cause to be performed any restoration of the Premises and any adjacent lands of Lessor, and (iv) cause to be performed any remediation of, or response to, the environmental condition of the Premises and the adjacent lands of Lessor, as Landlord reasonably may deem necessary or desirable, and the cost and expense thereof shall be reimbursed by Lessee to Lessor within thirty (30) days after rendition of Lessor's bill. In addition, Lessor may, at its election, require Lessee, at Lessee's sole cost and expense, to perform such work, in which event, Lessee shall promptly commence to perform and thereafter diligently prosecute to completion such work, using one or more contractors and a supervising consulting engineer approved in advance by Lessor.

F. For purposes of this Section 7, the term "Hazardous Substance" shall mean (i) those substances included within the definitions of "hazardous substance", "pollutant", "contaminant", or "hazardous waste", in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §§ 9601, et seq., as amended or in RCRA, the regulations promulgated pursuant to either such Act, or state laws and regulations similar to or promulgated pursuant to either such Act, (ii) any material, waste or substance which is (A) petroleum, (B) asbestos, (C) flammable or explosive, or (D) radioactive; and (iii) such other substances, materials and wastes which are or become regulated or classified as hazardous or toxic under federal, state or local law.

Section 8. UTILITIES.

A. Lessee will arrange and pay for all utilities and services supplied to the Premises or to Lessee.

B. All utilities and services will be separately metered to Lessee. If not separately metered, Lessee shall pay its proportionate share as reasonably determined by Lessor.

Section 9. LIENS.

Lessee shall not allow any liens to attach to the Premises for any services, labor or materials furnished to the Premises or otherwise arising from Lessee's use of the Premises. Lessor shall have the right to discharge any such liens at Lessee's expense.

Section 10. ALTERATIONS AND IMPROVEMENTS; CLEARANCES.

A. No alterations, improvements or installations may be made on the Premises without the prior consent of Lessor. Such consent, if given, shall be subject to the needs and requirements of the Lessor in the operation of its Railroad and to such other conditions as Lessor determines to impose. In all events such consent shall be conditioned upon strict conformance with all applicable governmental requirements and Lessor's then-current clearance standards.

B. All alterations, improvements or installations shall be at Lessee's sole cost and expense.

C. Lessee shall comply with Lessor's then-current clearance standards, except (i) where to do so would cause Lessee to violate an applicable governmental requirement, or (ii) for any improvement or device in place prior to Lessee taking possession of the Premises if such improvement or device complied with Lessor's clearance standards at the time of its installation.

D. Any actual or implied knowledge of Lessor of a violation of the clearance requirements of this Lease or of any governmental requirements shall not relieve Lessee of the obligation to comply with such requirements, nor shall any consent of Lessor be deemed to be a representation of such compliance.

Section 11. AS-IS.

Lessee accepts the Premises in its present condition with all faults, whether patent or latent, and without warranties or covenants, express or implied. Lessee acknowledges that Lessor shall have no duty to maintain, repair or improve the Premises.

Section 12. RELEASE AND INDEMNITY.

A. As a material part of the consideration for this Lease, Lessee, to the extent it may lawfully do so, waives and releases any and all claims against Lessor for, and agrees to indemnify, defend and hold harmless Lessor, its affiliates, and its and their officers, agents and employees ("Indemnified Parties") from and against, any loss, damage (including, without limitation, punitive or consequential damages), injury, liability, claim, demand, cost or expense (including, without limitation, attorneys' fees and court costs), fine or penalty (collectively, "Loss") incurred by any person (including, without limitation, Lessor, Lessee, or any employee of Lessor or Lessee) and arising from or related to (i) any use of the Premises by Lessee or any invitee or licensee of Lessee, (ii) any act or omission of Lessee, its officers, agents, employees, licensees or invitees, or (iii) any breach of this Lease by Lessee.

B. The foregoing release and indemnity shall apply regardless of any negligence, misconduct or strict liability of any Indemnified Party, except that the indemnity, only, shall not apply to any Loss caused by the sole, active and direct negligence of any Indemnified Party if the Loss (i) was not occasioned by fire or other casualty, or (ii) was not occasioned by water, including, without limitation, water damage due to the position, location, construction or condition of any structures or other improvements or facilities of any Indemnified Party.

C. Where applicable to the Loss, the liability provisions of any contract between Lessor and Lessee covering the carriage of shipments or trackage serving the Premises shall govern the Loss and shall supersede the provisions of this Section 12.

D. No provision of this Lease with respect to insurance shall limit the extent of the release and indemnity provisions of this Section 12.

Section 13. TERMINATION.

A. Lessor may terminate this Lease by giving Lessee notice of termination, if Lessee (i) fails to pay rent within fifteen (15) days after the due date, or (ii) defaults under any other obligation of Lessee under this Lease and, after written notice is given by Lessor to Lessee specifying the default, Lessee fails either to immediately commence to cure the default, or to complete the cure expeditiously but in all events within thirty (30) days after the default notice is given.

B. Notwithstanding the term of this Lease set forth in Article II, Lessor or Lessee may terminate this Lease without cause upon thirty (30) days' notice to the other party; provided, however, that at Lessor's election, no such termination by Lessee shall be effective unless and until Lessee has vacated and restored the Premises as required in Section 15A), at which time Lessor shall refund to Lessee, on a pro rata basis, any unearned rental paid in advance.

Section 14. LESSOR'S REMEDIES.

Lessor's remedies for Lessee's default are to (a) enter and take possession of the Premises, without terminating this Lease, and relet the Premises on behalf of Lessee, collect and receive the rent from reletting, and charge Lessee for the cost of reletting, and/or (b) terminate this Lease as provided in Section 13 A) above and sue Lessee for damages, and/or (c) exercise such other remedies as Lessor may have at law or in equity.

Lessor may enter and take possession of the Premises by self-help, by changing locks, if necessary, and may lock out Lessee, all without being liable for damages.

Section 15. VACATION OF PREMISES; REMOVAL OF LESSEE'S PROPERTY.

A. Upon termination howsoever of this Lease, Lessee (i) shall have peaceably and quietly vacated and surrendered possession of the Premises to Lessor, without Lessor giving any notice to quit or demand for possession, and (ii) shall have removed from the Premises all structures, property and other materials not belonging to Lessor, and restored the surface of the ground to as good a condition as the same was in before such structures were erected, including, without limitation, the removal of foundations, the filling in of excavations and pits, and the removal of debris and rubbish.

B. If Lessee has not completed such removal and restoration within thirty (30) days after termination of this Lease, Lessor may, at its election, and at any time or times, (i) perform the work and Lessee shall reimburse Lessor for the cost thereof within thirty (30) days after bill is rendered, (ii) take title to all or any portion of such structures or property by giving notice of such election to Lessee, and/or (iii) treat Lessee as a holdover tenant at will until such removal and restoration is completed.

Section 16. FIBER OPTICS.

Lessee shall telephone Lessor during normal business hours (7:00 a.m. to 9:00 p.m., Central Time, Monday through Fridays, except for holidays) at 1-800-336-9193 (also a 24-hour, 7-day number for emergency calls) to determine if fiber optic cable is buried on the Premises. If cable is buried on the Premises, Lessee will telephone the telecommunications company(ies), arrange for a cable locator, and make arrangements for relocation or other protection of the cable. Notwithstanding compliance by Lessee with this Section 16, the release and indemnity provisions of Section 12 above shall apply fully to any damage or destruction of any telecommunications system.

Section 17. NOTICES.

Any notice, consent or approval to be given under this Lease shall be in writing, and personally served, sent by reputable courier service, or sent by certified mail, postage prepaid, return receipt requested, to Lessor at: Union Pacific Railroad Company, Attn: Assistant Vice President - Real Estate, Real Estate Department, 1800 Farnam Street, Omaha, Nebraska 68102; and to Lessee at the above address, or such other address as a party may designate in notice given to the other party. Mailed notices shall be deemed served five (5) days after deposit in the U.S. Mail. Notices which are personally served or sent by courier service shall be deemed served upon receipt.

Section 18. ASSIGNMENT.

A. Lessee shall not sublease the Premises, in whole or in part, or assign, encumber or transfer (by operation of law or otherwise) this Lease, without the prior consent of Lessor, which consent may be denied at Lessor's sole and absolute discretion. Any purported transfer or assignment without Lessor's consent shall be void and shall be a default by Lessee.

B. Subject to this Section 18, this Lease shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and assigns.

Section 19. CONDEMNATION.

If, as reasonably determined by Lessor, the Premises cannot be used by Lessee because of a condemnation or sale in lieu of condemnation, then this Lease shall automatically terminate. Lessor shall be entitled to the entire award or proceeds for any total or partial condemnation or sale in lieu thereof, including, without limitation, any award or proceeds for the value of the leasehold estate created by this Lease. Notwithstanding the foregoing, Lessee shall have the right to pursue recovery from the condemning authority of such compensation as may be separately awarded to Lessee for Lessee's relocation expenses, the taking of Lessee's personal property and fixtures, and the interruption of or damage to Lessee's business.

Section 20. ATTORNEY'S FEES.

If either party retains an attorney to enforce this Lease (including, without limitation, the indemnity provisions of this Lease), the prevailing party is entitled to recover reasonable attorney's fees.

Section 21. ENTIRE AGREEMENT.

This Lease is the entire agreement between the parties, and supersedes all other oral or written agreements between the parties pertaining to this transaction. Except for the unilateral redetermination of annual rent as provided in Article III., this Lease may be amended only by a written instrument signed by Lessor and Lessee.

# EXHIBIT "C"



June 28, 2013  
Folder: 1570-61

RANDY SCOTT  
WOODBURN, CITY OF  
270 MONTGOMERY STREET  
WOODBURN, OR 97071

Dear Mr. Scott:

RE: Supplemental Agreement for Lease Audit No. 201022, Covering Use of Railroad Property at Woodburn, Oregon

Pursuant to your request, I have attached for execution two (2) originals of the above-referenced Supplemental Agreement.

In the enclosed envelope, please return the following:

1. **ALL ORIGINALS** of the Agreement signed by the appropriate party. If approved by the Railroad Company, a fully-executed original will be returned to you for your records.

If you have any questions regarding this Agreement, please contact me at (402) 544-8619.

Sincerely,

Ryan Simpson  
Asst Manager - Real Estate

## SUPPLEMENTAL AGREEMENT

**THIS SUPPLEMENTAL AGREEMENT** is entered into on the \_\_\_\_ day of \_\_\_\_\_, 2013, between **UNION PACIFIC RAILROAD COMPANY** ("Lessor") and **WOODBURN, CITY OF**, an Oregon municipal corporation, whose address is 270 Montgomery Street, Woodburn, Oregon 97071 ("Lessee").

### RECITALS:

By instrument dated December 13, 2000, Lessor and Lessee, or their predecessors in interest, entered into an agreement ("Basic Agreement"), identified as Audit No. 201022, at Woodburn, Oregon.

### AGREEMENT:

**IT IS AGREED** between Lessor and Lessee to modify the Basic Agreement as follows:

#### **Article 1.     EFFECTIVE DATE.**

This Supplemental Agreement is effective July 1, 2013.

#### **Article 2.     SUBSTITUTION OF PRINT.**

The print dated May 28, 2013, attached as Exhibit 'A', shall be substituted for the print dated August 4, 1998, attached to the Basic Agreement.

#### **Article 3.     SPECIAL PROVISION – FENCE.**

Lessee, at Lessee's sole cost and expense, shall construct and maintain, at all times during the term of this Lease, a fence of a design satisfactory to Lessor, in the location shown on the attached Exhibit A.

#### **Article 4.     INSURANCE.**

The Basic Agreement is amended to read as follows:

A. Throughout the entire term of this Lease, Lessee shall maintain the insurance coverage required under **Exhibit C** hereto attached and made a part hereof.

B. Not more frequently than once every two years, Lessor may reasonably modify the required insurance coverage to reflect then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.

C. Upon request of Lessor, Lessee shall provide to Lessor a certificate issued by its insurance carrier evidencing the insurance coverage required under **Exhibit C**.

D. All insurance correspondence shall be directed to: Real Estate Department, 1400 Douglas Street STOP 1690, Omaha, Nebraska 68179-1690, Folder No. 1570-61.

**Article 5. AGREEMENT SUPPLEMENT.**

Nothing in this Supplemental Agreement shall be construed as amending or modifying the Basic Agreement unless specifically provided herein.

IN WITNESS WHEREOF, Lessor and Lessee have duly executed this Supplemental Agreement as of the date first herein written.

**UNION PACIFIC RAILROAD COMPANY**

**WOODBURN, CITY OF**

By: \_\_\_\_\_  
Senior Manager - Real Estate

By: \_\_\_\_\_  
Title: \_\_\_\_\_

NOTE: Adding Storage Area

**EXHIBIT C**  
**Union Pacific Railroad**  
**Contract Insurance Requirements**

Lease of Land

Lessee shall, at its sole cost and expense, procure and maintain during the life of this Lease (except as otherwise provided in this Lease) the following insurance coverage:

**A. Commercial General Liability insurance.** Commercial general liability (CGL) with a limit of not less than \$2,000,000 each occurrence and an aggregate limit of not less than \$4,000,000. CGL insurance must be written on ISO occurrence form CG 00 01 12 04 (or a substitute form providing equivalent coverage). The policy must also contain the following endorsement, which must be stated on the certificate of insurance: Contractual Liability Railroads ISO form CG 24 17 10 01 (or a substitute form providing equivalent coverage) showing "Premises" as the Designated Job Site.

**B. Business Automobile Coverage insurance.** Business auto coverage written on ISO form CA 00 01 10 01 (or a substitute form providing equivalent liability coverage) with a combined single limit of not less \$2,000,000 for each accident, and coverage must include liability arising out of any auto (including owned, hired, and non-owned autos).

The policy must contain the following endorsements, which must be stated on the certificate of insurance:

- Coverage For Certain Operations In Connection With Railroads ISO form CA 20 70 10 01 (or a substitute form providing equivalent coverage) showing "Premises" as the Designated Job Site.
- Motor Carrier Act Endorsement - Hazardous materials clean up (MCS-90) if required by law.

**C. Workers Compensation and Employers Liability insurance.** Coverage must include but not be limited to:

- Contractor's statutory liability under the workers' compensation laws of the state(s) affected by this Agreement.
- Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 disease policy limit \$500,000 each employee.

If Lessee is self-insured, evidence of state approval and excess workers compensation coverage must be provided. Coverage must include liability arising out of the U. S. Longshoremen's and Harbor Workers' Act, the Jones Act, and the Outer Continental Shelf Land Act, if applicable.

In any and all Claims against Lessor by any employee of Lessee, Lessee's indemnification obligation under this section shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable under any workers compensation acts, disability benefits acts or other **employee benefits acts.**

**D. Pollution Liability insurance.** If permitted use as defined in this Lease includes any generation, handling, enrichment, storage, manufacture, or production of hazardous materials pollution liability insurance is required. Pollution liability coverage must be written on ISO form Pollution Liability Coverage Form Designated Sites CG 00 39 12 04 (or a substitute form providing equivalent liability coverage), with limits of at least \$5,000,000 per occurrence and an aggregate limit of \$10,000,000.

If hazardous materials are disposed of from the Premises, Lessee must furnish to Lessor evidence of pollution legal liability insurance maintained by the disposal site operator for losses arising from the insured facility accepting the materials, with coverage in minimum amounts of \$1,000,000 per loss, and an annual aggregate of \$2,000,000.

**E. Umbrella or Excess insurance.** If Lessee utilizes umbrella or excess policies, these policies must “follow form” and afford no less coverage than the primary policy.

### **Other Requirements**

**F.** All policy(ies) required above must include Lessor as “Additional Insured” using ISO Additional Insured Endorsement CG 20 11 (or a substitute form providing equivalent coverage). The coverage provided to Lessor as additional insured shall, to the extent provided under ISO Additional Insured Endorsement CG 20 11, provide coverage for Lessor’s negligence whether sole or partial, active or passive, and shall not be limited by Lessee’s liability under the indemnity provisions of this Lease.

**G.** Lessee waives all rights against Lessor and its agents, officers, directors and employees for recovery of damages to the extent these damages are covered by the workers compensation and employers’ liability or commercial umbrella or excess liability insurance obtained by Lessee required by this agreement.

**H.** Punitive damages exclusion, if any, must be deleted (and the deletion indicated on the certificate of insurance), unless (a) insurance coverage may not lawfully be obtained for any punitive damages that may arise under this Lease, or (b) all punitive damages are prohibited by all states in which the Premises are located.

**I.** Prior to execution of this Lease, Lessee shall furnish Lessor with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements in this Lease.

**J.** All insurance policies must be written by a reputable insurance company acceptable to Lessor or with a current Best’s Insurance Guide Rating of A- and Class VII or better, and authorized to do business in the state where the Premises are located.

**K.** The fact that insurance is obtained by Lessee, or by Lessor on behalf of Lessee, will not be deemed to release or diminish the liability of Lessee, including, without limitation, liability under the indemnity provisions of this Lease. Damages recoverable by Lessor from Lessee or any third party will not be limited by the amount of the required insurance coverage.