BEFORE THE BOARD OF COUNTY COMMISSIONERS

FOR COLUMBIA COUNTY, OREGON

In the Matter of Acquiring Permanent and)	
Temporary Easements from Lynn and Teresa)	ORDER NO. 54-2012
Smith for the Replacement of Fishhawk Road Bridge)	

WHEREAS, Columbia County plans to replace the existing Fishhawk Road Bridge, which does not meet current seismic and road width standards; and

WHEREAS, the County must acquire property from Lynn and Teresa Smith under the authority of ORS 35.605 for a temporary construction easement and for a permanent easement for slopes, drainage, and guardrail to successfully complete and maintain the replacement bridge; and

WHEREAS, pursuant to ORS 35.610, before the right to acquire such property under ORS 35.605 is exercised, the Board of County Commissioners shall describe the land to be purchased, acquired, entered upon or appropriated, and shall determine that the appropriation of such land is reasonably necessary to protect the full use and enjoyment by the public of the road, street or highway; and

WHEREAS, a copy of the proposed Permanent Slope Easement is attached hereto as Exhibit 1, and a copy of the proposed Temporary Construction Easement is attached hereto as Exhibit 2; and

WHEREAS, by Letter of Agreement, a copy of which is attached hereto as Exhibit 3, Lynn and Teresa Smith have agreed to convey the needed permanent and temporary easements to the County in consideration of the payment of Eight Thousand, Two-Hundred Fiftydollars (\$8,250.00).

NOW, THEREFORE, it is hereby ordered as follows:

- 1) Columbia County accepts the Permanent Easement for Slopes, Drainage, and Guardrail from Lynn and Teresa Smith as described in Exhibit 1, which is attached hereto and incorporated herein by this reference.
- 2) Columbia County accepts the Temporary Construction Easement from Lynn and Teresa Smith as described in Exhibit 2, which is attached hereto and incorporated herein by this reference.
- 3) The acquisition of the above easements is necessary to protect the public's full use and enjoyment of the road and shall increase the public's safety when using the road.

- 4) In consideration for the permanent and temporary easements, the Board of County Commissioners directs the County Public Works Director to coordinate the payment of Eight Thousand, Two-Hundred Fifty dollars (\$8,250.00) to Lynn and Teresa Smith. The Finance Department is directed to issue a check to Lynn and Teresa Smith upon the request of the Public Works Director.
- 5) Payment is to be made in accordance with all reporting requirements, rules and regulations of the Internal Revenue Service.
- 6) The Chair of the Board of County Commissioners is authorized to sign the Letter of Agreement with Lynn and Teresa Smith, attached hereto as Exhibit 3 and incorporated herein by this reference, on behalf of the County.
- 7) The easements described in Exhibits 1 and 2 shall be recorded in the deed records of the Columbia County Clerk without costs.

DATED this 19th day of December, 2012.

By: Anthony Hyde, Chair

Earl Fisher, Commissioner

BOARD OF COUNTY COMMISSIONERS FOR COLUMBIA COUNTY OREGON

By:

Henry Heimuller, Commissioner

Approved as to Form:

Office of County Counge

GRANTOR: Lynn T. Smith and Teresa S. Smith 13890 Keasey Rd. Vernonia, OR 97064

GRANTEE: Columbia County c/o Office of County Counsel 230 Strand, Room 318 St. Helens, OR 97051

PERMANENT EASEMENT FOR SLOPES, DRAINAGE, AND GUARDRAIL (Individual Grantor)

KNOW ALL PERSONS BY THESE PRESENTS, THAT Lynn T. Smith and Teresa S. Smith, husband and wife, (Grantor), hereby grants, bargains, sells and conveys to Columbia County, a political subdivision of the State of Oregon, its heirs, successors and assigns, (Grantee), a permanent easement for the construction, reconstruction, upgrade, replacement, repair, maintenance, and inspection of slopes, drainage, and guardrail and related appurtenances, in, under, upon, and across Grantor's real property located in Columbia County, State of Oregon, and more particularly described as follows:

A parcel of land described as Parcel 2 in **Exhibits "A" and "B"** attached hereto and by this reference made a part of this document.

Grantee shall have the right to enter upon this real property for the purposes described in this document. Grantee may remove trees, shrubs, brush, paving, or other materials within the easement area whenever necessary to accomplish these purposes. Grantee shall repair any damage to the property caused by Grantee's use of the property for these purposes. Subject to the limits of the Oregon Constitution and the Oregon Tort Claims Act, ORS 30.260 to 30.300, Grantee agrees to indemnify Grantor from all claims made for injury to person or property caused by Grantee's negligent acts or omissions relating to the use of the property for any of the above-described purposes. This indemnity does not apply to any claims arising out of the sole negligence of Grantor.

Grantor, Grantor's heirs, successors, assigns or representatives, shall not construct or maintain any building or other structures upon the above described real property without prior written approval from the Columbia County Road Department; however, the Columbia County Road Department will permit building in the portion of this easement area that is beyond the toe of the slope, as shown on the attached **Exhibit "C"**. This permission is subject to all other requirements imposed upon the property as conditions of development. In addition, Grantor, Grantor's heirs, successors, assigns or representatives shall not after the configuration of the material forming the slope, including alteration by addition or removal of material, without prior written approval from the Columbia County Road Department.

This easement does not obligate the public or Grantee to replace landscaping, fencing, shrubs, or trees that may be placed within the easement area in the future, and which interfere with Grantee's use of the easement area for the purposes described in this document.

Grantor hereby covenants to and with Grantee, its successors and assigns, that Grantor is the owner of the property which is free from all encumbrances except for easements, conditions and restrictions of record and will warrant and defend the rights herein granted from all lawful claims whatsoever, except as stated in this document.

The true consideration for this conveyance is Seven Thousand Two Hundred Fifty-One and No/100 Dollars (\$7,251.00).

Statutory Land Use Disclaimer: BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010. THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN

SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010. In witness whereof, the above named Grantor has hereunto set Grantor's hand to this document on this ___, 2012. STATE OF OREGON County of Columbia Lynn T. Smith and Teresa S. Smith. My Commission Expires: <u>Oanuar</u> **IISSION NO. 46432**0 **USSION EXPIRES JANUARY 03, 2016** ACCEPTANCE: COLUMBIA COUNTY, OREGON This is to certify that the interest in real property conveyed herein to the County of Columbia, a political subdivision of the State of Oregon, is hereby accepted by the undersigned, Anthony Hyde, Earl Fisher and Henry Heimuller. Board of Commissioners of Columbia County, Oregon, and the Grantee consents to the conditions thereof. Dated this _____ day of __ BOARD OF COUNTY COMMISSIONERS FOR COLUMBIA COUNTY, OREGON Anthony Hyde, Chair Earl Fisher, Commissioner By: Henry Heimuller, Commissioner

THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY

Parcel 1 - Temporary Easement for Work Area (3 years or duration of Project, whichever is sooner)

A tract of land lying in Lot 26, Block 2, FISHHAWK LAKE ESTATES lying in the NW 1/4 of Section 6, Township 6 North, Range 5 West, W.M., Columbia County, Oregon and being a portion of that property described in that Warranty Deed to Lynn T. Smith and Teresa S. Smith recorded June 1, 2000 as Fee No. 2000-05465 of Columbia County Clerk's Office; the said parcel being that portion of said property lying between lines at right angle to the center line of Fishhawk Road at Engineer's Stations 3+30 and 4+05 and included in a strip of land 68 feet in width on the northwesterly side of the center line of said Fishhawk Road, which center line is described below:

Beginning at Engineer's center line Station 0+00, said station being South 45°48'30" West 554.60 feet from a 5/8 inch iron rod found at the southeast corner of Lot 15, Block 1 of said FISHHAWK LAKE ESTATES; thence North 71° 12' 07" East 100.00 feet; thence on a 409.26 foot radius curve left (the long chord of which bears North 52° 27' 16" East 263.07 feet) 267.82 feet; thence North 33° 42' 26" East 183.30 feet; thence on a 520.87 foot radius curve right (the long chord of which bears North 52° 53' 44" East 342.39 feet) 348.88 feet to Engineer's center line Station 9+00.

This parcel of land contains 1315 square feet, more or less.

Parcel 2 – Permanent Easement for Slopes, Drainage and Guardrail A tract of land lying in Lot 26, Block 2, FISHHAWK LAKE ESTATES lying in the NW 1/4 of Section 6, Township 6 North, Range 5 West, W.M., Columbia County, Oregon and being a portion of that property described in that Warranty Deed to Lynn T. Smith and Teresa S. Smith recorded June 1, 2000 as Fee No. 2000-05465 of Columbia County Clerk's Office; the said parcel being that portion of said property included in a strip of land variable in width, lying on the northwesterly side of the center line of said Fishhawk Road, which center line is described below:

Beginning at Engineer's center line Station 0+00, said station being South 45°48'30" West 554.60 feet from a 5/8 inch iron rod found at the southeast corner of Lot 15, Block 1 of said FISHHAWK LAKE ESTATES; thence North 71° 12' 07" East 100.00 feet; thence on a 409.26 foot radius curve left (the long chord of which bears North 52° 27' 16" East 263.07 feet) 267.82 feet; thence North 33° 42' 26" East 183.30 feet; thence on a 520.87 foot radius curve right (the long chord of which bears North 52° 53' 44" East 342.39 feet) 348.88 feet to Engineer's center line Station 9+00.

Station	to	Station	Width on Northwesterly Side of Center Line
1+90		3+50	60.00 in a straight line to 45.00
3+50		4+05	45.00

This parcel of land contains 4066 square feet, more or less

Bearings are based upon the Oregon Coordinate System of 1983(Cors96), north zone.

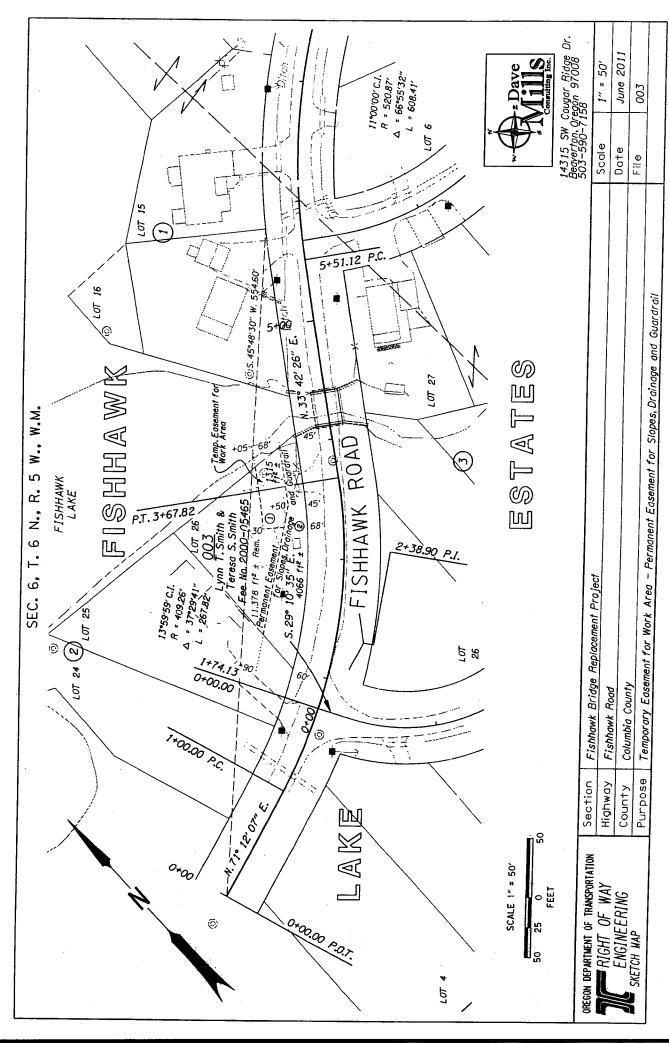
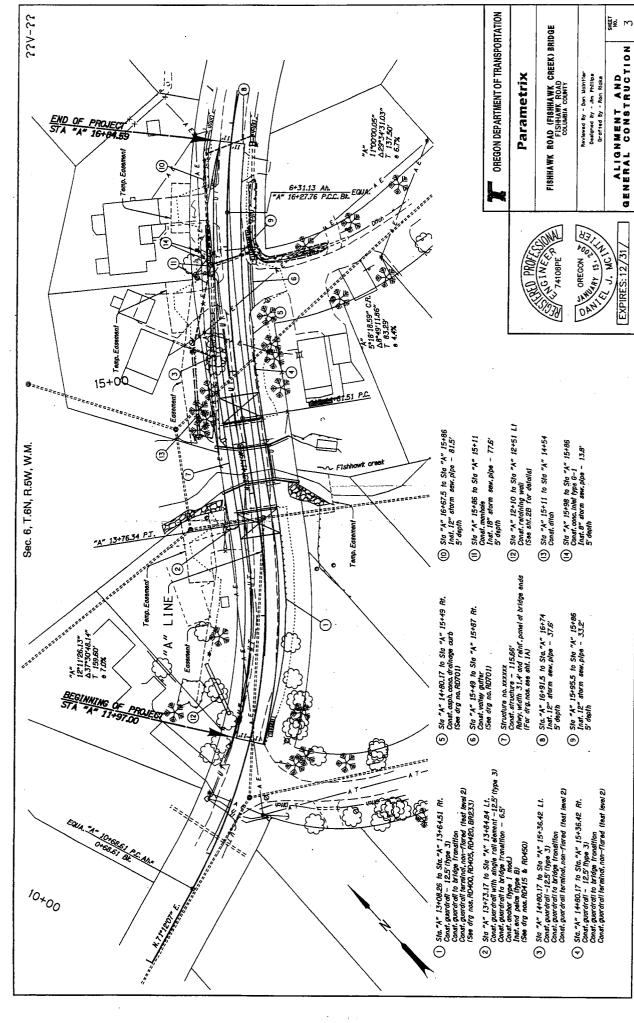


EXHIBIT "B"



UnPartyProjects/Clients/2395-0001/274-2395-077 Fishhawk Rd-Fishhawk Creek Bridge/99-Svos/CADD/DGN/IGO41f-pmx.pli 11 Default 8/2/2012 1:06:25 PM

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GRANTOR'S NAME AND ADDRESS:

Lynn T. Smith and Teresa S. Smith 13890 Keasey Rd. Vernonia, OR 97064

AFTER RECORDING, RETURN TO GRANTEE:

Office of County Counsel Columbia County Courthouse 230 Strand, Room 318 St. Helens, OR 97051

TEMPORARY CONSTRUCTION EASEMENT

FOR GOOD AND VALUABLE CONSIDERATION in the amount of **Nine Hundred Ninety-Nine and No/100 Dollars** (\$999.00), **Lynn T. Smith and Teresa S. Smith**, hereinafter Grantor, does hereby grant unto **COLUMBIA COUNTY**, a political subdivision of the State of Oregon, hereinafter Grantee, its officers, agents, employees, successors, assigns, contractors, and subcontractors, a temporary easement in, upon, through, over, under and across the property described and depicted as Parcel 1 on Exhibits A and B attached hereto and by this reference incorporated herein, hereinafter "the Easement Site", which is situated in said County.

This grant of temporary right to use and occupy is given for the purpose of permitting Columbia County, its officers, agents, employees, successors, assigns, contractors, and subcontractors, to use the Easement Site for constructing improvements for the **Fishhawk Road Bridge Replacement Project**. In connection therewith, Grantee may remove any trees, shrubs or other materials necessary or convenient to accomplish said purposes. The Grantor also grants to the Grantee, its officers, agents, employees, successors, assigns, contractors, and subcontractors the right to use construction equipment at the Easement Site.

IT IS UNDERSTOOD that the easement rights herein granted shall become effective on the date last signed below and shall terminate **three (3) years** from said date, or when construction on the property is completed, whichever is earlier.

IT IS ALSO UNDERSTOOD that the easement herein granted does not convey any right or interest in the Easement Site except as stated herein, nor prevent Grantor from the use of said Easement Site; provided, however that such use does not interfere with the rights herein granted.

In addition, the Grantee, its successors, assigns, agents, contractors, and employees, agree to the following conditions of entry:

- 1) INDEMNIFICATION. Subject to the limitations and conditions of the Oregon Constitution and ORS 30.260 to 30.300, the Grantee agrees to indemnify Grantor from all claims made for injury to person or property caused by Grantee's negligence during the actual use by Grantee of the property for any of the abovedescribed purposes.
- 2) DAMAGE TO PROPERTY. Grantee shall exercise care to avoid damaging the Easement Site in any manner not consistent with the purpose for which this easement is issued.
- 3) COOPERATION WITH GRANTOR. Grantee shall at all times cooperate with Grantor and comply with reasonable requests not inconsistent with the purpose for which this easement is granted.
- 4) CLEANUP. Upon completion of the project, Grantee shall clean the easement site of all rubbish, excess material, and equipment.
- 5) ACCEPTANCE. All parts of the easement site shall be left in acceptable condition.

his <u>5</u> day of <u>1/8</u> V, 2012.
Teusa S Smith Teresa S. Smith
Sharan A- Ham Sa Yua Notary Public for OREGON
My Commission Expires: January 3, 2016
d herein to the County of Columbia, a political subdivision of ed, Anthony Hyde, Earl Fisher and Henry Heimuller, Board Grantee consents to the conditions thereof.
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TEMPORARY CONSTRUCTION EASEMENT

Page 2 of 2

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Beginning at Engineer's center line Station 0+00, said station being South 45°48'30" West 554.60 feet from a 5/8 inch iron rod found at the southeast corner of Lot 15, Block 1 of said FISHHAWK LAKE ESTATES; thence North 71° 12' 07" East 100.00 feet; thence on a 409.26 foot radius curve left (the long chord of which bears North 52° 27' 16" East 263.07 feet) 267.82 feet; thence North 33° 42' 26" East 183.30 feet; thence on a 520.87 foot radius curve right (the long chord of which bears North 52° 53' 44" East 342.39 feet) 348.88 feet to Engineer's center line Station 9+00.

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Beginning at Engineer's center line Station 0+00, said station being South 45°48'30" West 554.60 feet from a 5/8 inch iron rod found at the southeast corner of Lot 15, Block 1 of said FISHHAWK LAKE ESTATES; thence North 71° 12' 07" East 100.00 feet; thence on a 409.26 foot radius curve left (the long chord of which bears North 52° 27' 16" East 263.07 feet) 267.82 feet; thence North 33° 42' 26" East 183.30 feet; thence on a 520.87 foot radius curve right (the long chord of which bears North 52° 53' 44" East 342.39 feet) 348.88 feet to Engineer's center line Station 9+00.

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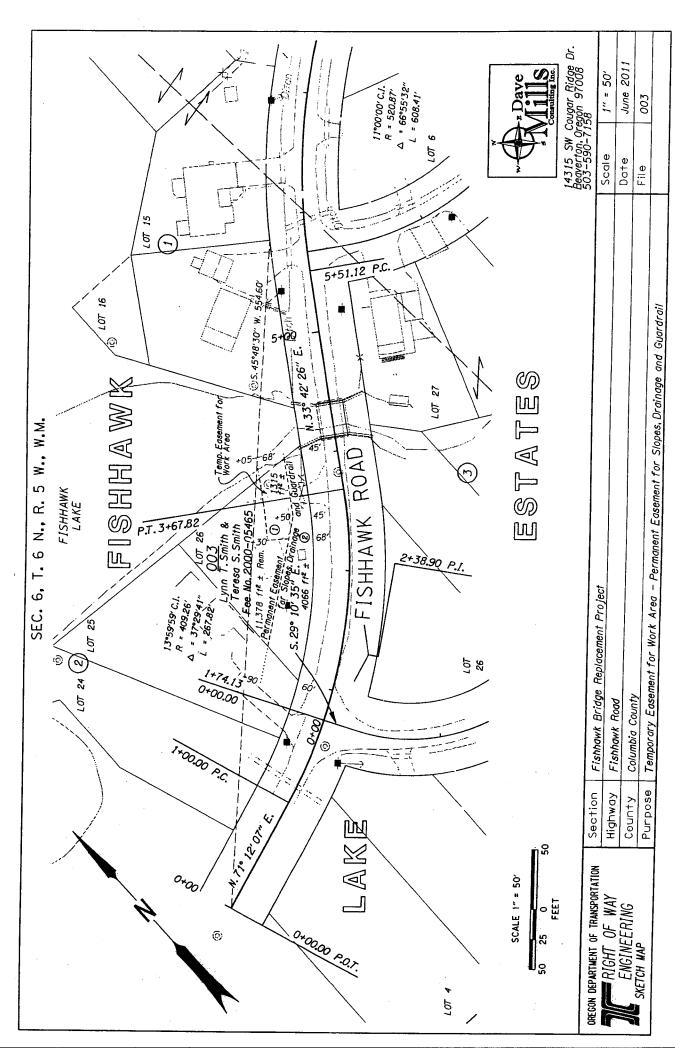


EXHIBIT "B"

HANNA, MCELDOWNEY & ASSOCIATES

8835 S.W. CANYON LANE, SUITE 405 PORTLAND, OR 97225 (503) 297-9588 Fax: (503) 297-2835

November 5, 2012

Project Property Number: 3

Lynn and Teresa Smith 13890 Keasey Rd. Vernonia, OR 97064

Subject:

Letter of Agreement for a Temporary Construction Easement and Permanent Easement for Slopes, Drainage, and Guardrail at Tax Lot 6N5W06-BC-01900 for the Fishhawk Road Bridge Replacement Project

Dear Lynn and Teresa Smith:

Columbia County is planning to replace the Fishhawk Road Bridge at Fishhawk Lake. As you are aware, your property located at 71579 Fishhawk Rd. will be affected by this project. A Temporary Construction Easement and Permanent Easement for Slopes, Drainage, and Guardrail are required in order to give Columbia County the legal right to construct the necessary improvements.

In exchange for executing the documents and granting the Temporary Construction Easement containing 1,315 s.f., more or less, and the Permanent Easement for Slopes, Drainage, and Guardrail containing 4,066 s.f., more or less, and subject to final approval by Columbia County, the County agrees to the following:

- 1. To compensate you, in full, the sum of \$999.00 for the Temporary Construction Easement.
- 2. To compensate you, in full, the sum of \$7,036.00 for the Permanent Easement for Slopes, Drainage, and Guardrail.
- 3. To compensate you, in full, the sum of \$215.00 for all improvements within the easement area.
- 4. The property owner will move their shed from the easement area before April 1st, 2012. After the shed is moved from the easement area the property owner may claim up to \$450 of relocation move benefit by completing and submitting a moving claim form to the County for payment.

In conjunction herewith, the County will pay the property owner up to \$450 for moving their shed from the easement area. Payment will be based upon the amount indicated in the moving claim form submitted by the property owner. The County will make payment within 60 days of receipt of the moving claim form.

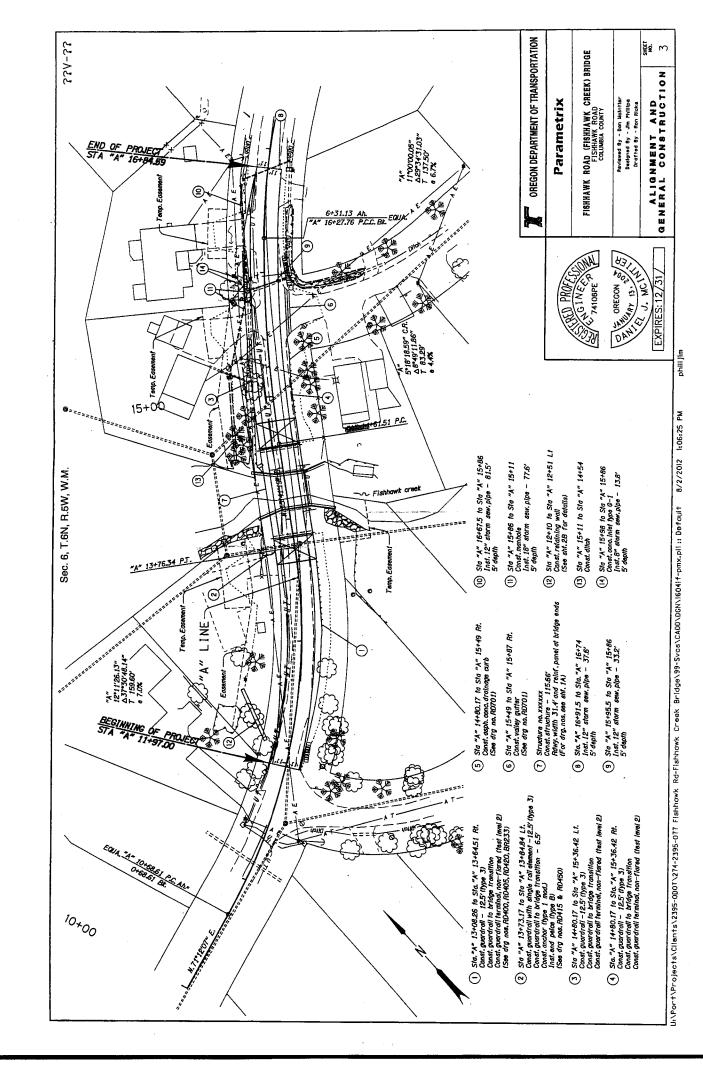
- 5. To protect the metal gate posts, in-ground faucet, and utility pole in the easement areas and repair or replace in like kind if damaged by the project.
- 6. To maintain reasonable access to the property at all times during the term of the easement. Access is to be adequate to accommodate the Smith's camper trailer.
- 7. To allow building in the portion of the permanent easement that is beyond the toe of the slope as shown on the attached construction plan sheet. This permission is subject to all other requirements imposed upon the property as conditions of development.
- 8. There will be no staging or parking of construction equipment in the easement areas.
- 9. To adjust the planting plan to plant alternating rows of native dogwoods and wild roses in the area along the roadway as indicated on the planting plan sheet; and to plant 5 vine maples in place of the firs in the area between the driveway and the creek bank as indicated on the planting plan sheet.
- 10. To clean up all construction debris at the conclusion of the project.
- 11. To close the transaction in escrow by the escrow agent if required by Columbia County. Prior to closing, each party will deposit with the escrow agent the funds, documents and instructions necessary for closing. The cost of escrow and expenses incidental to transfer of the real property interests shall be paid by the County. The Owner is responsible to perfect the title to the property, where required. If Columbia County chooses to close this transaction outside of escrow, the property owner will supply the necessary documents to complete the transaction.
- 12. To comply with the terms and conditions of this Letter of Agreement, which is the entire, final, and complete agreement between the Owner and the County pertaining to the acquisition of the easement, and supersedes and replaces all written and verbal agreements heretofore made.

No other compensation shall be sought or offered.

The total compensation for the above property rights is Eight Thousand Two Hundred Fifty and No/100 Dollars (\$8,250.00).

Payment will be made 60 to 90 days from the date of approval and acceptance by Columbia County.

Thank you, Gharan Hams-SaDuca Sharan Hams-LaDuca, Acquisition/Negotiation Agent Hanna, McEldowney, & Associates Date Teresa S. Smith Approved By: Columbia County Representative Date



Un/Port/Projects/Clients/2395-000T/274-2395-077 Fishhawk Rd-Fishhawk Creek Bridge/99-Svcs/CADD/DGN/1604|pi-pmx.pll :: Default 6/6/2012 4:48:04 PM

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SHRUB PLANTING

Remove Burlap – Or Container.

– Firmly Pack Sail Araund Seedling. Do Nat Bend Or Break Roots. No "J" Or "L" Roots

SEEDLING PLANTING

ertilizer tablets Std. Spec 01040.18(b)) Native Sail Backfill

Existing Subgrade

Planting Mix.
27 appsol 8
1/3 soil conditione.
—Plant Tables
(Std. Spec 0 1040 18(b))
—Planting Pits To Be 12"
Greden Than The Rearball.

Finish Grade

SHEET FO.

PLANTING PLAN

Reviewed By -Randy Reeve Designed By - Michael Zenthoefer Droffed By - James Koopmann