

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

In the Matter of Acquiring a Temporary)
Construction Easement for the Bridge) ORDER NO. 22- 2013
Improvements at JP West Road)

WHEREAS, to construct bicycle and pedestrian improvements on JP West Road Bridge, which is a County Road, Columbia County Road Department must acquire a temporary construction easement on property owned by the City of Scappoose under the authority of ORS 35.605; 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 acquired and shall determine that the acquisition of such land is reasonably necessary to protect the full use and enjoyment of the road by the public, street or highway; and

WHEREAS, acquiring the temporary construction easement, described and depicted in Attachment 1 of Exhibit 1, which is attached hereto and incorporated herein by this reference, is necessary for the full use and enjoyment of the road by the public because the addition of a bicycle and pedestrian path on JP West Road Bridge will enhance public use and safety; and

WHEREAS, the City of Scappoose has agreed to grant a temporary construction easement to the County for the construction of the bridge improvements and in lieu of monetary compensation, the City has agreed to accept labor and materials in the form of road striping services from the County equal to and in full compensation for the value of the easement; and

WHEREAS, a full description of the services that the County will provide is set forth in the Intergovernmental Agreement, attached hereto as Exhibit 1 and incorporated herein by this reference.

NOW, THEREFORE, THE BOARD OF COUNTY COMMISSIONERS HEREBY ORDERS, as follows:

1. Columbia County shall acquire a temporary construction easement in land described in Exhibit 1, which is attached hereto and incorporated herein by this reference from the City of Scappoose; and

2. To compensate the City of Scappoose for the temporary construction easement, Columbia County will enter into an Intergovernmental Agreement with City to provide road striping services in lieu of monetary compensation; and

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ORDER NO. 22- 2013

3. The Board finds that the easement is reasonably necessary to protect the full use and enjoyment of the JP West Road Bridge by the public because the bridge improvements will enhance public use and safety.

4. The temporary construction easement shall be recorded in the deed records of the Columbia County Clerk without costs.

Dated this 2nd day of October, 2013.

BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

By: [Signature]
Henry Helmuller, Chair

By: [Signature]
Anthony Hyde, Commissioner

By: [Signature]
Earl Fisher, Commissioner

Approved as to form

By: [Signature]
County Counsel

**INTERGOVERNMENTAL AGREEMENT BETWEEN
COLUMBIA COUNTY AND THE CITY OF SCAPPOOSE**

This Agreement is made by and between Columbia County, a political subdivision of the State of Oregon (hereinafter the "County"), and the City of Scappoose, a municipality (hereinafter the "City").

WHEREAS, the County and the City are authorized under ORS 190.003 to 190.030 and ORS 221.410 to enter into intergovernmental agreements for the performance of any and all functions that the County or City has authority to perform; and

WHEREAS, JP West Road is a County Road, part of which is within the city limits of the City of Scappoose; and

WHEREAS, to construct bridge improvements at JP West Road and the south fork of Scappoose Creek, the County requires a temporary construction easement from the City of Scappoose; and

WHEREAS, the County and the City have determined that it is in the public interest for the County to compensate the City for the temporary easement by providing certain road striping services of equal value as the easement.

NOW THEREFORE, in consideration of the benefits that will accrue to the County and City, and the covenants set forth herein, the parties agree to the following:

1. **Recitals True.** The recitals set forth above are true and correct and are incorporated herein by this reference.

2. **Term.** This Agreement shall become effective on the date last signed, below, and shall terminate on December 31, 2014.

3. **No Funds Exchanged.** There is no exchange of funds for this Agreement. Each party shall be responsible for its own costs.

4. **City's Obligation.** The City shall grant the County a temporary construction easement, as described and depicted in Attachment 1, attached hereto and incorporated herein by this reference. The easement shall not be recorded without the prior written approval of the City. The City acknowledges that the value of County's road striping services, described in Section 5 below, are equal to and full compensation for the easement to be granted to the County above.

5. **County's Obligation.** As compensation for the temporary construction easement, the County shall perform road striping, in accordance with the County's road striping standards, twice during the term of this Agreement on the following City streets:

- a. SE High School Way between SE 6th Street and Highway 30
- b. SE 4th Street between SE Elm Street and E. Columbia Avenue
- c. NE Crown Zellerbach Road between Highway 30 and NE West Lane
- d. SW 4th Street between SW Maple Street and SW E.M. Watts Road
- e. SW Old Portland Road between Highway 30 and SW Callahan Road
- f. SW Havlik Drive between Highway 30 and SW Old Portland Road

- g. SW Sequoia Street between SW 4th Street and SW Old Portland Road (currently has no striping)
- h. SW 4th Street between SE E.M. Watts Road and SW Sequoia Street (currently has no striping)

6. **Independent Contractor.** County is hereby engaged as an independent contractor, and will be so deemed for purposes of this Agreement and any applicable laws, regulations or policies relating to contracting or employment.

7. **Termination.** Either party may terminate this Agreement for convenience upon written notice to the other party.

8. **Contract Representatives.** Contract representatives for this Agreement shall be:

For County:

Tristan Wood
Engineer Project Coord.
1054 Oregon Street
St. Helens, OR 97051
503-397-5090

For City:

Brian Varricchione
City Planner & Asst. City Engineer
33568 E. Columbia Ave.
Scappoose, OR 97056
503-543-7184

All correspondence shall be sent to the above addressees when written notification is necessary. Contract representatives can be changed by providing written notice to the other party at the address listed.

9. **Time.** Time is of the essence in this Agreement.

10. **Indemnity.** County agrees to indemnify and hold harmless City, its officers, agents and employees from and against all third party claims, suits, actions, damages, costs, losses and expenses in any manner resulting from, arising out of, or connected to County's use of City property pursuant to the temporary construction easement, and in the performance of, or failure to perform, its obligations under this Agreement, or for any other negligent or willful act or omission by County. City agrees to indemnify and hold harmless County, its officers, agents and employees from and against all third party claims, suits, actions, damages, costs, losses and expenses in any manner resulting from, arising out of, or connected to City's performance, or failure to perform, its obligations under this Agreement or any other negligent or willful act or omission by City. This provision is subject to the limits and provisions of the Oregon Tort Claims Act, ORS 30.260 to 30.300, and as to the County, Article XI, Section 10 of the Oregon Constitution.

11. **Insurance.** The County shall maintain comprehensive general liability and property damage insurance in amounts up to the limits of the Oregon Tort Claims Act as to any and all County work performed upon the City property which is the subject of (i) the temporary construction easement and (ii) the road striping referred to in Section 5 above.

12. **Severability.** If any term or provision of this Agreement shall be declared invalid or unenforceable, the remainder of this Agreement, including the application of any term or provision to persons or circumstances other than those as to which the application is declared invalid or unenforceable, shall not be affected.

13. **Attorney Fees.** If suit or action is instituted arising out of this Agreement, each party shall be responsible for its own attorney fees.

14. **Governing Law; Venue.** This Agreement and the rights and obligations of the parties hereunder shall be governed by and construed under the laws of the State of Oregon (without regard to conflicts of law principles). Venue shall lie exclusively in the Circuit Court of the State of Oregon for Columbia County in St. Helens, Oregon.

15. **Amendment.** This Agreement may only be amended by a writing signed by the County and City.

16. **No Waiver.** Waiver by either party of the strict performance of any term or covenant of this Agreement or any right under this Agreement shall not be a continuing waiver.

17. **Successors and Assigns.** This Agreement and the covenants, agreements, obligations, and restrictions herein contained shall be binding upon and shall inure to the benefit of the parties hereto and to their respective representatives, successors, and permitted assigns.

18. **Entire Agreement.** This is the entire agreement between the parties and supersedes all prior agreements, proposals or understandings, whether written or oral. All such previous agreements, proposals or understandings, whether written or oral, are rescinded.

IN WITNESS WHEREOF the parties have caused this agreement to be executed and do each hereby warrant and represent that their respective officers, whose signatures appear below, have been and are on the date of this agreement authorized by all necessary and appropriate legal action to execute this agreement.

DATED this ____ day of _____, 2013.

**COLUMBIA COUNTY BOARD OF
COUNTY COMMISSIONERS:**

Henry Heimuller, Chair

Anthony Hyde, Commissioner

Earl Fisher, Commissioner

Approved as to Form:

Office of County Counsel

CITY OF SCAPPOOSE:

Jon Hanken, City Manager

Attested:

Susan M. Reeves, City Recorder

Approved as to Form:

City Attorney

GRANTOR'S NAME AND ADDRESS:

City of Scappoose
c/o City Manager
33568 E. Columbia Ave.
Scappoose, OR 97056

AFTER RECORDING, RETURN TO GRANTEE:

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

TEMPORARY CONSTRUCTION EASEMENT

FOR GOOD AND VALUABLE CONSIDERATION, the **CITY OF SCAPPOOSE**, a municipal corporation of the State of Oregon, 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 as follows, and depicted on Exhibit A, attached hereto and by this reference incorporated herein, (hereinafter "the Easement Site"):

Parcel 1: In the SW 1/4 of Section 12, Township 3 North, Range 2 West, Parcel 3 of Partition Plat 2007-08, an area of land adjoining JP West Road starting at Road station point 10+02.83 extending 78.35 feet from the northerly boundary line of road Right-of-Way, extending 30 feet west along the northern boundary of JP West County Road at the intersection of the northern boundary of JP West County Road to the western boundary of the South Fork of Scappoose Creek, containing approximately 2,258 square feet.

Parcel 2: In the SW 1/4 of Section 12, Township 3 North, Range 2 West, Parcel 3 of Partition Plat 2007-08, an area of land adjoining JP West Road starting at Road station point 11+81.63 extending 65.05 feet from the northerly boundary line of road Right-of-Way, extending 126.08 feet west along the northern boundary of JP West County Road at the intersection of the northern boundary of JP West County Road to the western boundary of the temporary easement at station 10+55.55 containing approximately 4413 square feet.

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 work area in constructing improvements at J.P. West Road Bridge. In connection therewith, Grantee may remove any shrubs or other materials necessary or convenient to accomplish said purposes. Grantee may only remove trees if Grantee obtains a Public Land Tree Removal permit from Grantor. 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 on December 31, 2016, or when

construction on the property is completed, whichever is earlier ("Expiration Date").

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 prevents 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 the Oregon Tort Claims Act (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 above-described purposes. Grantee assumes all risk arising out of the Grantee Parties' use of the Grantor Property and the Construction Area and Grantor shall have no liability to Grantee or others using such property by or through Grantee, except for claims arising out of the sole negligence of Grantor.
- 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) USE AND MAINTENANCE. During the term of this Agreement, Grantee shall be exclusively responsible for the maintenance and care of the Easement Site at no cost to Grantor. Prior to the Expiration Date, Grantee shall, at its sole cost and expense, restore the Easement Site to its original condition, including any vegetation or other improvements located on the Easement Site which are damaged, disturbed, removed or destroyed by reason of Grantee's use of the easement Site. To the extent approvals or permits are required prior to removal of any such vegetation or improvements, Grantee shall obtain and comply with the same at its sole cost and expense.
- 5) INSURANCE. Prior to commencement of construction, Grantee shall provide Grantor with a liability insurance policy in a form and with coverage limits customary for such use, indemnifying Grantor against all loss, cost and liability arising out of Grantee's use of the Easement Site and any other activities of the Grantee authorized under this Agreement. Such insurance shall remain in effect throughout the term of this Agreement. The liability insurance policy shall name Grantor as an additional insured.
- 6) LIENS. Grantee shall keep the Easement Site free from any and all liens arising out of any work performed, materials furnished to or obligations incurred in connection with this Agreement. If a lien is filed, Grantee shall, within fourteen (14) days after the date of the imposition of any such lien, (i) have the lien released, (ii) pay the lien claim in full, or (iii) if it desires to contest any such lien claim, as a condition precedent to its right to so contest, record a bond executed by a corporation authorized to issue surety bonds in the State of Oregon to the effect that the principal on the bond shall pay the amount of the claim and all costs and attorney fees that are awarded against the land on account of the lien. The bond shall be in such

amount as may be required by Oregon law (see ORS 87.076(1)) to release the lien from the Easement Site.

7) Deliverables. Prior to commencement of construction Grantee shall deliver to Grantor (i) copies of all construction drawings related to construction of the improvements, (ii) proof that all permits required for the construction work have been issued, and (iii) copies of Grantee's contract with the general contractor or, if Grantee is the general contractor, copies of all subcontracts related to the construction.

8) Construction Items. Grantee shall give Grantor no less than ten (10) days' prior written notice before commencement of any work within the Easement Site unless in an emergency, in which case Grantee shall give reasonable notice under the circumstances. The Grantee shall use the Easement Site at reasonable times and in a reasonable manner. Grantee's notice shall include an estimated construction schedule ("Schedule"). All construction activities within the Easement Site shall abide by the Schedule. The storage, placement or stockpiling of any buoyant or hazardous material within the Easement Site shall require Grantee to obtain a Sensitive Lands Development Permit and approval of Grantor's Planning Commission pursuant to Section 17.84.210 of the Scappoose Municipal Code. All construction work shall be performed at Grantee's sole expense and in accordance with all applicable laws, construction drawings and permits.

9) CLEANUP. Upon completion of the project, Grantee shall clean the easement site of all rubbish, excess material, and equipment.

10) ACCEPTANCE. All parts of the easement site shall be left in acceptable condition.

IN WITNESS THEREOF, I have signed this document this ____ day of _____, 2013.

CITY OF SCAPPOOSE

By: _____
Jon Hanken, City Manager

Attest: _____
Susan M. Reeves, City Recorder

STATE OF OREGON)
) ss.
County of Columbia)

The foregoing instrument was acknowledged before me this ____ day of _____, 2013, by Jon Hanken as City Manager of the City of Scappoose, upon whose authority and on whose behalf this instrument is signed.

Notary Public for Oregon

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, Henry Heimuller, Anthony Hyde, and Earl Fisher, Board of Commissioners of Columbia County, Oregon, and the Grantee consents to the conditions thereof.

Dated this ____ day of _____, 2013.

**BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON**

By: _____
Henry Heimuller, Chair

By: _____
Anthony Hyde, Commissioner

By: _____
Earl Fisher, Commissioner

EXHIBIT MAP

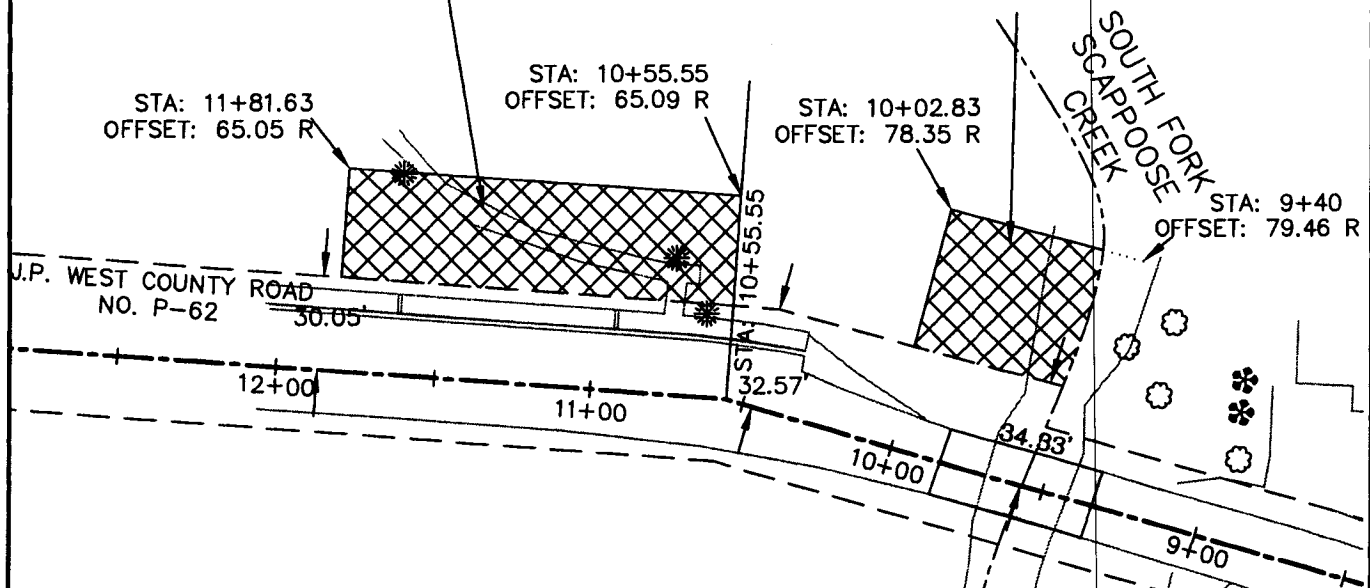
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SW 1/4 SEC. 12
T.3N, R.2W., W.M. COLUMBIA
COUNTY, OREGON

T3N R2W SEC 12 BC TL 100
CITY OF SCAPPOOSE
COLUMBIA COUNTY RECORDS
PARCEL 3, PARTITION PLAT 2007-08

PARCEL 2
TEMPORARY EASEMENTS FOR WORK AREA
(3 YEAR OF DURATION OF PROJECT,
WHICHEVER IS SOONER)
4,413 SQ. FT.

PARCEL 1
TEMPORARY EASEMENTS FOR WORK AREA
(3 YEAR OF DURATION OF PROJECT,
WHICHEVER IS SOONER)
2,258 SQ. FT.

**LEGEND:**

- = JP WEST EXISTING CENTERLINE
- = EXISTING RIGHT OF WAY
-  = TEMPORARY EASEMENT FOR WORK AREA
(3 YEAR OF DURATION OF PROJECT,
WHICHEVER IS SOONER)

REGISTERED
PROFESSIONAL
LAND SURVEYOR

Donald D Wallace Jr

OREGON
JANUARY 19, 1993
DONALD D WALLACE JR
2601

RENEWAL DATE 6/30/14



K.L.S. SURVEYING INC.
1224 ALDER STREET
VERNONIA, OR 97064
(503)429-6115

S. FORK SCAPPOOSE CREEK (JP WEST RD) BR #013751

CITY OF SCAPPOOSE

SEC 12, TOWNSHIP 3 NORTH, RANGE 2 WEST, COLUMBIA COUNTY

TEMPORARY EASEMENTS FOR WORK AREA (3 YEAR OF
DURATION OF PROJECT WHICHEVER IS SOONER)

FILE NO.	DRAWN BY	DESIGN BY	SCALE	DATE
7585-001	SND	DEA	1" = 60'	1/21/2013