CITY OF GRANTS PASS
COUNCIL AGENDA - Revised
February 22, 2021
11:45 a.m. City Council Workshop and
Special Meeting in Executive Session
Council Chambers - 101 N.W. 'A' Street

MAYOR: Sara Bristol

CITY COUNCIL MEMBERS:

Ward 1	***Ward 2***	***Ward 3***	***Ward 4***
Brian DeLaGrange	Valerie Lovelace	Dwight Faszer, II	Joel King
Rob Pell	Rick Riker	Vacant	Vanessa Ogier

1. COUNCIL WORKSHOP

   a. Ward 3 candidate interviews
   b. Agenda review

2. ADJOURN WORKSHOP AND CONVENE THE SPECIAL COUNCIL MEETING

3. COUNCIL ACTION

   a. Ordinance amending Municipal Code Chapter 4.05 relating to Lodging Tax (second reading).
   b. Resolution approving Settlement Agreement and Stipulated Judgment with Ausland Copeland Sand & Gravel.

4. CONVENE THE SPECIAL COUNCIL MEETING IN EXECUTIVE SESSION

   Executive Session is held to discuss the following subjects:
   (e) Real property transactions-negotiations

ACCOMMODATION OF PHYSICAL IMPAIRMENTS: In order to accommodate persons with physical impairments, please notify the City Recorder's Office of any special physical or language accommodations at least 48 business hours prior to the meeting. To request these arrangements, please contact Karen Frerk, City Recorder at (541) 450.6000.

Item: Ordinance Amending Municipal Code Chapter 4.05 relating to Lodging Tax. Date: February 22, 2021

SUBJECT AND SUMMARY:

This ordinance amends the City Municipal Code to increase the lodging tax rate by an additional 3% for a total of 12%

RELATIONSHIP TO COUNCIL GOALS:

This supports Council's goal to **ENCOURAGE ECONOMIC OPPORTUNTIES** and **ENHANCE COMMUNITY SAFETY** by collecting additional resources and allocating them to Tourism Promotion and Public Safety.

CALL TO ACTION SCHEDULE:

Call to action schedule: Council's Discretion

- Option 1
  - 1st and 2nd Reading 2/17/2021
  - Full fiscal year of additional revenue
- Option 2
  - 1st Reading 2/17/2021
  - 2nd Reading 3/1/2021 (Special meeting)
  - Full fiscal year of additional revenue
- Option 3 – Date to be determined
  - Less than a full year of additional revenue for FY22

BACKGROUND:

The current Lodging Tax rate is 9%. If the City increases this rate by 3% to 12%, it will bring in additional revenue that can be allocated to Tourism and other City services.

ORS 320.350 requires that 70% of the new tax must be allocated toward Tourism promotion or tourism-related facilities and no more than 30% may be allocated to other City services. In addition to this requirement, the city may not decrease the percentage of total local transient lodging tax revenues allocated to tourism promotion or tourism-related facilities.

This statute creates some level of ambiguity on a municipality's ability to alter the allocation of lodging taxes implemented prior to 2003. Interpretation of the word "total" could affect the determination of what would be an allowable reallocation of existing lodging taxes. Consider the example on the following page.

Staff Report (continued):

Current								
	7.0%	2.0%	0.0%	7.0%	2.0%	0.0%	9.0%	% of Total
Tourism Promotion	30%	30%		395,150	112,900	-	508,050	30.00%
Tourism-related Facilities		70%		-	263,433	-	263,433	15.56%
Total Tourism	30%	100%	0%	395,150	376,333	-	771,483	45.56%
Public Safety	25%			329,292	-	-	329,292	19.44%
Parks	25%			329,292	-	-	329,292	19.44%
Economic Development	10%			131,717	-	-	131,717	7.78%
Downtown Development	10%			131,717	-	-	131,717	7.78%
Total Discretionary	70%	0%	0%	922,017	-	-	922,017	54.44%
	100%	100%	0%	1,317,167	376,333	-	1,693,500	100.00%

Additional 3% - Reduce Tourism Facilities									
	7.0%	2.0%	3.0%	7.0%	2.0%	3.0%	12.0%	% of Total	Changes
Tourism Promotion	30%	30%	70%	395,150	112,900	395,150	903,200	40.00%	395,150
Tourism-related Facilities		45%		-	169,350	-	169,350	7.50%	(94,083)
Total Tourism	30%	75%	70%	395,150	282,250	395,150	1,072,550	47.50%	301,067
Public Safety	25%	25%	30%	329,292	94,083	169,350	592,725	26.25%	263,433
Parks	25%			329,292	-	-	329,292	14.58%	-
Economic Development	10%			131,717	-	-	131,717	5.83%	-
Downtown Development	10%			131,717	-	-	131,717	5.83%	-
Total Discretionary	70%	25%	30%	922,017	94,083	169,350	1,185,450	52.50%	263,433
	100%	100%	100%	1,317,167	376,333	564,500	2,258,000	100.00%	564,500

This example reduces the allocation of the existing 2% to tourism-related facilities from 70% to 45% and increases the allocation to Public Safety by 25% and allocates the new 3% lodging tax with the 70%/30% split as required.

If "total" is interpreted to mean the total of existing or current lodging taxes, no reductions to current allocations are allowable. This interpretation cannot be contested as there is no negative effect toward tourism promotion.

If "total" is interpreted to mean the total of all lodging taxes, this reallocation would be allowable because the total percentage of all lodging taxes increases from 45.56% to 47.50%. Because this interpretation has a negative effect on the allocation for tourism, it may be contested.

COST IMPLICATION:

None.

ALTERNATIVES:

1. Council can choose to enact the ordinance as proposed; or
2. Council can amend the ordinance; or
3. Council can choose to not enact the ordinance.

Staff Report (continued):

RECOMMENDED ACTION:

It is recommended that Council adopt the ordinance amendment as presented.

Current								
	7.0%	2.0%	0.0%	7.0%	2.0%	0.0%	9.0%	% of Total
Tourism Promotion	30%	30%		395,150	112,900	-	508,050	30.00%
Tourism-related Facilities		70%		-	263,433	-	263,433	15.56%
Total Tourism	30%	100%	0%	395,150	376,333	-	771,483	45.56%
Public Safety	25%			329,292	-	-	329,292	19.44%
Parks	25%			329,292	-	-	329,292	19.44%
Economic Development	10%			131,717	-	-	131,717	7.78%
Downtown Development	10%			131,717	-	-	131,717	7.78%
Total Discretionary	70%	0%	0%	922,017	-	-	922,017	54.44%
	100%	100%	0%	1,317,167	376,333	-	1,693,500	100.00%

Additional 3% - 70% to Tourism Promotion - No Reallocation									
	7.0%	2.0%	3.0%	7.0%	2.0%	3.0%	12.0%	% of Total	Changes
Tourism Promotion	30%	30%	70%	395,150	112,900	395,150	903,200	40.00%	395,150
Tourism-related Facilities		70%		-	263,433	-	263,433	11.67%	-
Total Tourism	30%	100%	70%	395,150	376,333	395,150	1,166,633	51.67%	395,150
Public Safety	25%		30%	329,292	-	169,350	498,642	22.08%	169,350
Parks	25%			329,292	-	-	329,292	14.58%	-
Economic Development	10%			131,717	-	-	131,717	5.83%	-
Downtown Development	10%			131,717	-	-	131,717	5.83%	-
Total Discretionary	70%	0%	30%	922,017	-	169,350	1,091,367	48.33%	169,350
	100%	100%	100%	1,317,167	376,333	564,500	2,258,000	100.00%	564,500

POTENTIAL MOTION:

I move to adopt the ordinance implementing an additional 3% Lodging Tax and establishing the distribution of net proceeds and have it read by title only, first reading.

I move to adopt the ordinance implementing an additional 3% Lodging Tax and establishing the distribution of net proceeds and have it read by title only, second reading.

ORDINANCE NO.

AN ORDINANCE FOR THE CITY OF GRANTS PASS REVISING CHAPTER 4.05 OF THE MUNICIPAL CODE RELATING TO LODGING TAX.

WHEREAS:

1. The City Council has taken action to increase the Lodging Tax rate by 3%, for a total of 12%, commencing April 1, 2021; and

2. The City Council desires to distribute the new increment of revenues to be received from the additional 3% Lodging Tax.

NOW, THEREFORE, THE CITY OF GRANTS PASS ORDAINS AS FOLLOWS:

Section 1. The Language in Chapter 4.05 is hereby deleted in its entirety and replaced with the language as set forth in Exhibit "A", which is attached to and incorporated herein.

ADOPTED by the Council of the City of Grants Pass, Oregon, in special session this 22nd day of February 2021, with the following specific roll call vote:

AYES:

NAYS: **ABSTAIN:** **ABSENT:**

SUBMITTED to and _____ by the Mayor of the City of Grants Pass, Oregon, this ____ day of February 2021.

_____
Sara Bristol, Mayor

ATTEST:

_____
Julie Hall, City Recorder designee

Date submitted to Mayor: _____

Approved as to Form, Mark Bartholomew, City Attorney _____

City of Grants Pass Municipal Code

EXHIBIT 'A'

NOTE: CHANGES APPEAR IN BOLD

Chapter 4.05

LODGING TAX

Sections:

4.05.010 Definitions
4.05.020 Lodging Tax Imposed
4.05.030 Rules for Collection of Lodging Tax by Lodging Tax Collector
4.05.040 Lodging Tax Collector's Duties
4.05.050 Exemptions
4.05.060 Lodging Facility's Registration Form
4.05.070 Certificate of Authority
4.05.080 Collections, Returns and Payments
4.05.090 Delinquency Penalties
4.05.100 Deficiency Determinations
4.05.110 Redemption Petition
4.05.120 Fraud--Refusal to Collect--Evasion
4.05.130 Notice of Determinations
4.05.140 Lodging Tax Collector Delay
4.05.150 Re-determinations
4.05.160 Security for Collection of Lodging Tax
4.05.170 Liens
4.05.180 Refunds by City to Lodging Tax Collector
4.05.190 Refunds by City to Occupant
4.05.200 Refunds by Lodging Tax Collector to Tenant
4.05.210 Records Required from Lodging Tax Collectors
4.05.220 Examination of Records
4.05.230 Confidentiality
4.05.240 Disposition and Use of Lodging Tax Funds
4.05.250 Appeals to Council
4.05.260 Violations

4.05.010 Definitions

(Ord. 17-5722, 2017; Ord. 19-5763, 2019)

For purposes of this chapter, the following mean:

A. "Accrual accounting" means a system of accounting in which the Lodging Tax Collector enters the rent due from an occupant on his records when the rent is earned, whether or not it is paid.

B. "Cash accounting" means a system of accounting in which the Lodging Tax Collector does not enter the rent due from an occupant on the records until rent is paid.

C. "City" means the City of Grants Pass, Oregon.

D. "Tax Administrator" means the City Manager or the City Manager's delegate in charge of the enforcement of the Lodging Tax.

E. "Lodging facility" means any structure, or any portion of any structure, which is occupied or intended or designed for short-term occupancy for dwelling, lodging or sleeping purposes and includes any hotel, motel, inn, condominium, house, cabin, apartment, public or private dormitory, fraternity, sorority, public or private club, space in a mobile home or trailer park, tent camping locations, or similar structures or spaces or portions thereof so occupied; provided such occupancy is for 27 consecutive days or less.

F. "Occupancy" means the use or possession, or the right to use or possess, a lodging facility.

G. "Lodging Tax Collector" means the person who is engaged in the activity of providing or facilitating lodging and includes:

1. Lodging provider- a person that furnishes lodging and
2. Lodging intermediary- a person other than a lodging provider that facilitates the retail sale of lodging and charges for occupancy of the lodging and:
   (a) charges for occupancy of the lodging; or
   (b) collects the consideration charged for occupancy of the lodging; or
   (c) receives a fee or commission and requires the lodging provider to use a specified third-party entity to collect the consideration charged for occupancy of the lodging.

H. "Person" means an individual, firm, partnership, joint venture, association,

social club, fraternal organization, fraternity, sorority, public or private dormitory, joint stock company, corporation, estate, trust, business trust, receiver, trustee, syndicate, or any other group or combination acting as a unit.

I. "Rent" means the consideration charged, whether or not received by the tax collector, for the occupancy of space in a lodging valued in money, goods, labor, credits, property, or other consideration valued in money, without any deduction.

J. "Lodging Tax" means the tax assessed by the City of Grants Pass on occupants in lodging facilities whether the tax is payable by the occupant or referring to the aggregate amount of taxes due from an Lodging Tax Collector during the period for which required to report collections.

K. "Tenant" means an individual who occupies or is entitled to occupy space in a lodging facility for a period of twenty-eight consecutive days or more, counting portions of days as full days.

L. "Occupant" means an individual who occupies or is entitled to occupy space in a lodging facility for a period of twenty-seven consecutive days or less, counting portions of days as full days. The day an occupant checks out of the lodging facility shall not be included in determining the twenty-seven-day period if the occupant is not charged rent for that day by the Lodging Tax Collector. An individual occupying space in a lodging facility shall be considered an occupant until the period of twenty-seven days has expired unless there is an agreement in writing between the Lodging Tax Collector and the occupant providing for a longer period of occupancy or the occupant actually extends occupancy more than twenty-seven consecutive days triggering tenant status. A person who pays for lodging on a monthly basis, irrespective of the number of days in the month, shall not be considered an occupant. (Ord. 4412 §1, 1981)

4.05.020 Tax Imposed

For the privilege of occupancy in a lodging facility in the City each occupant shall pay a lodging tax in the amount of **twelve percent** of the retail rent charged by the lodging tax collector. The lodging tax constitutes a debt owed by the occupant to the City, which is extinguished only by payment to the Lodging Tax Collector of the lodging facility at the time the rent is paid. The Lodging Tax Collector shall enter the lodging tax on its records when rent is collected (if the Lodging Tax Collector keeps his records on the accrual accounting basis). If rent is paid in installments, a proportionate share of the lodging tax shall be paid by the occupant to the Lodging Tax Collector with each installment. In all cases, the rent paid or charged for occupancy shall exclude the sale of any goods, services or commodities. (Ord. 4412 §2, 1981; Ord. 4548 §1, 1985; Ord. 4798 §1, 1994; Ord. 5033 §1, 2000, 17-5722, 2017)

4.05.030 Rules for Collection of Tax by Operator
(Ord. 17-5722, 2017)

A. Every Lodging Tax Collector renting rooms or space for lodging or sleeping purposes, whether publicly or privately owned, the occupancy of which is not exempted under the terms of this Chapter, shall collect a lodging tax from the occupant. The lodging tax collected or accrued by the Lodging Tax Collector constitutes a debt owed by the Lodging Tax Collector to the City.

B. In cases of credit or deferred payment of rent, the payment of lodging tax to the Lodging Tax Collector may be deferred until the rent is paid, and the Lodging Tax Collector shall not be liable for the lodging tax until credits are paid or deferred payments are made. When a Lodging Tax Collector utilizes the accrual basis of accounting, adjustments may be made for un-collectible accounts.

C. The Tax Administrator shall enforce this chapter and may adopt rules and regulations necessary to aid in the enforcement.
(Ord. 4412 §3, 1981)

4.05.040 Lodging Tax Collector's Duties

A Lodging Tax Collector shall collect the lodging tax when the rent is collected from the occupant. The tax shall be collected by the lodging [tax collector that receives] provider or lodging intermediary that collects the consideration charged for occupancy of the lodging, or a lodging intermediary described in 4.05.010(G)(2), as applicable. The amount of lodging tax shall be separately stated on the Lodging Tax Collector's records and on the receipt given by the Lodging Tax Collector. A Lodging Tax Collector shall not advertise that the lodging tax or any part of it will be assumed or absorbed by the Lodging Tax Collector, or that it will not be added to the rent, or that, when added, a part will be refunded, except in the manner provided by this Chapter. (Ord. 4412 §4, 1981, Ord. 17-5722, 2017; Ord. 16-5763, 2019)

4.05.050 Exemptions
(Ord. 17-5722, 2017)

This lodging tax shall not be imposed upon:

A. A tenant, or any occupant for 28 or more consecutive calendar days (a person who pays for lodging on a monthly basis, irrespective of the number of days in such month, shall not be deemed an occupant for purposes of the lodging tax) where the rent is paid by the same person throughout the consecutive period, and all dwelling units occupied are within the same facility.

B. A person who rents a portion of a private home on a monthly basis from an owner who personally resides in such private home. (Ord. 4412 §5, 1981)

C. Any occupant whose dwelling unit is in a hospital, health care facility, long-term care facility or any other residential facility that is licensed, registered, or certified by the Department of Human Services or Oregon Health Authority.

D. Any occupant in a facility providing treatment for drug or alcohol abuse or providing mental health treatment.

E. Any occupant who is a federal employee or an employee of a federal instrumentality (i.e., Red Cross) on official business and show proof of such by providing the official federal exemption certificate or an official travel authorization voucher to the lodging facility. Presentation of federal identification without one of these documents will be not sufficient to authorize an exemption. State and local government employees on official business must continue to pay the Lodging Tax.

F. Persons with diplomatic immunity.

No exemption shall be granted except upon a claim therefor made at the time rent is collected, and under penalty of perjury, upon a form presented by the tax administrator.

4.05.060 Lodging Tax Collector's Registration Form
(Ord. 17-5722, 2017)

A. A Lodging Tax Collector, for each lodging facility in the City, shall register with the Tax Administrator on a form provided by the Tax Administrator within fifteen days after beginning business, or within thirty calendar days after the passage of the ordinance codified in this chapter. The privilege of registration after the date of imposition of such tax shall not relieve any person from the obligation of payment or collection of tax, regardless of registration.

B. Registration shall set forth the name under which a lodging tax collector transacts or intends to transact business, the location of her or his place or places of business, and such other information to facilitate the collection of the tax as the tax administrator may require. The registration shall be signed by the lodging tax collector.

C. Failure to register does not relieve the Lodging Tax Collector from collecting the lodging tax nor a person from paying the lodging tax. (Ord. 4412 §6, 1981)

4.05.070 Certificate of Authority
(Ord. 17-5722, 2017)

A. Within thirty days after registering, the Tax Administrator shall issue a certificate of authority to the registrant.

B. Certificates are non-assignable and nontransferable and shall be surrendered immediately to the Tax Administrator upon the cessation of business at the location named or upon its sale or transfer.

C. Each certificate shall state the place of business to which it applies and shall be prominently displayed.

D. The certificate shall state:

1. The name of the lodging facility;

2. The address of the lodging facility;

3. The date when the certificate was issued; and

4. "This Lodging Tax Collector Registration Certificate signifies that the person named on the face hereof has fulfilled the requirements of the Lodging Tax Ordinance of the City of Grants Pass by registration with the Tax Administrator for the purpose of collecting from occupants the lodging tax imposed by the City of Grants Pass and remitting the lodging tax to the Tax Administrator. This certificate does not authorize any person to conduct any lawful business in an unlawful manner, or to operate a lodging facility without strictly complying with all local applicable laws, including but not limited to those requiring a permit from any board, commission, department or office of the City. This certificate does not constitute a permit." (Ord. 4412 §7, 1981)

4.05.080 Due Date, Collections, Returns and Payments

(Ord. 17-5722, 2017; (Ord. 16-5763, 2019)

A. The tax imposed by this Chapter shall be paid by the occupant to the lodging tax collector at the time that rent is paid. All amounts of such taxes collected by any lodging tax collector are due and payable to the tax administrator on a quarterly basis on the last day of the month following the end of the calendar quarter. The lodging provider or lodging intermediary that collects the consideration charged for occupancy of lodging is responsible for collecting any lodging tax and shall file a return of the tax with the tax administrator, reporting the amount of tax due during the reporting period to which the return relates.

B. On or before the last day of the month following each quarter, a return for

the preceding quarter's tax collections shall be filed with the tax administrator. The return shall be filed in such form as the tax administrator may prescribe by every lodging tax collector liable for payment of tax.

C. Returns shall show the amount of tax collected or otherwise due for the related period. The tax administrator may require returns to show the total rentals upon which tax was collected or otherwise due, gross receipts of lodging tax collector for such period and an explanation in detail of any discrepancy between such amounts, and the amount of rents exempt, if any.

D. The person required to file the return shall deliver the return, together with the remittance of the amount of the tax due, to the tax administrator at her or his office, either by personal delivery or by mail. If the return is mailed, the postmark shall be considered the date of delivery for determining delinquencies.

E. For good cause, the tax administrator may extend for not to exceed one month the time for making any return or payment of tax. No further extension shall be granted, except by the City Manager. Any lodging tax collector to whom an extension is granted shall pay interest at the rate of 1 percent per month on the amount of tax due without proration for a fraction of a month. If a return is not filed, and the tax and interest due is not paid by the end of the extension granted, then the interest shall become a part of the tax for computation of penalties described elsewhere in this Chapter.

F. The tax administrator, if she or he deems it necessary in order to insure payment or facilitate collection by the City of the amount of taxes in any individual case, may require returns and payment of the amount of taxes for other than quarterly periods.

Accept as provided in this Section (4.05.080-G), lodging tax collectors for camping and recreational vehicles spaces may hold the tax collected until the amount of the money held equals or exceeds $100. Once the amount held by the lodging tax collector equals or exceeds $100, or by December 31st of each year if the $100 threshold is not met, the lodging tax collector shall remit the tax collected at the next calendar quarter end. No penalty or interest will be assessed against a lodging tax collector that withholds payments pursuant to this Section (4.05.080-G).

4.05.090 Delinquency Penalties

A. The lodging tax is delinquent on the first working day of the month following each quarterly payment due date.

B. *Original delinquency*. Any Lodging Tax Collector who has not been

granted an extension of time for remittance of lodging tax due and who fails to remit the lodging tax prior to delinquency shall pay a penalty of 10% of the lodging tax due in addition to the lodging tax.

C. *Continued delinquency*. Any Lodging Tax Collector whose remittance is delinquent, and who fails to secure an extension, shall pay, commencing 1 month after the remittance became delinquent, a second delinquency penalty of 15% of the lodging tax due, the amount of the lodging tax and the 10% penalty first imposed.

D. *Fraud*. If the Tax Administrator determines that the non-payment of a remittance is due to fraud or intent to evade the lodging tax, a penalty of 25% of the lodging tax shall be added in addition to the penalties stated in Subsections B and *C*.

E. *Interest*. In addition to the penalties imposed by this section, Lodging Tax Collector who fails to remit the required lodging tax shall pay interest at the rate of 1% per month, without proration for portions of a month, on the lodging tax due, exclusive of penalties, from the date on which the lodging tax first became delinquent until paid.

F. *Penalty merged with tax*. Each penalty imposed and the interest accrued under the provisions of this section shall be merged with and become a part of the lodging tax required to be paid.

G. *Petition for waiver*. A Lodging Tax Collector who fails to remit the lodging tax within the required time may petition the Council for waiver and refund of the penalty or any portion of it. The Council may, if good cause is shown, direct a refund of the penalty or a portion of it. (Ord. 4412 §9, 1981)

4.05.100 Deficiency Determinations

(Ord. 17-5722, 2017)

If the tax administrator determines that the returns are incorrect, she or he may compute and determine the amount required to be paid upon the basis of the facts contained in the return or returns, or upon the basis of any information within her or his possession or that may come into her or his possession. One or more deficiency determinations may be made of the amount due for one, or more than one period; and the amount so determined shall be due and payable immediately upon service of notice, as provided in this Chapter; after which, the amount determined is delinquent. Penalties on deficiencies shall be applied as set forth in Section 4.05.090.

A. In making a determination, the Tax Administrator may offset overpayments, which may have been previously made against a deficiency for a subsequent period, or against penalties and interest on the deficiency. The interest on the deficiency shall be computed as

provided in Section 4.05.090. (Ord. 4412 §10, 1981)

B. The tax administrator shall give to the lodging tax collector a written notice of her or his determination. The notice may be served personally or by mail; if by mail, the notice shall be addressed to the lodging tax collector at her or his address as it appears in the records of the tax administrator. In case of service by mail of any notice required by this Chapter, the service is complete at the time of deposit in the United States Post Office.

C. Except in the case of fraud, intent to evade the provisions of this Chapter or authorized rules and regulations, every deficiency determination shall be made and notice thereof mailed within three years after the last day of the month following the close of the monthly period for which the amount is proposed to be determined, or within three years after the return is filed, whichever period expires the later.

4.05.110 Redemption Petition

A determination becomes payable immediately upon receipt of notice and becomes final within ten days after the Tax Administrator has given notice. However, the Lodging Tax Collector may petition for redemption and refund if the petition is filed before the determination becomes final. (Ord. 4412 §11, 1981, Ord. 17-5722, 2017)

4.05.120 Fraud-Refusal to Collect-Evasion
(Ord. 17-5722, 2017)

If any lodging tax collector shall fail or refuse to collect said tax or to make, within the time provided in this Chapter, any report and remittance of said tax or any portion of the tax required by this Chapter, or makes a fraudulent return or otherwise willfully attempts to evade the provisions of this Chapter, the tax administrator shall proceed in such manner as she or he may deem best to obtain facts and information on which to base an estimate of the tax due.

B. The determination and notice shall be made and mailed within three years after discovery by the Tax Administrator of fraud, intent to evade, or failure or refusal to collect the lodging tax, or failure to file a return. The determination becomes payable immediately upon receipt of notice and becomes final within ten days after the Tax Administrator has given notice.

C. The Lodging Tax Collector may petition for redemption and refund if the petition is filed before the determination becomes final. (Ord. 4412 §12, 1981)

4.05.130 Notice of Determinations
(Ord. 17-5722, 2017)

A. The Tax Administrator shall give the Lodging Tax Collector a written notice

of the determination. If the notice is mailed, the notice shall be addressed to the Lodging Tax Collector at the address that appears on the records of the Tax Administrator. In case of service by mail, the service is complete when it is deposited in a mail receptacle.

B. Except in the case of fraud or intent to evade the lodging tax, a deficiency determination shall be made and notice mailed within three years after the last day of the month following the close of the quarterly period for which the amount is proposed to be determined or within three years after the return is filed, whichever is later. (Ord. 4412 §13, 1981)

4.05.140 Lodging Tax Collector Delay

If the Tax Administrator believes that the collection of a lodging tax will be jeopardized by delay, or if a determination will be jeopardized by delay, he shall determine the lodging tax required to be collected, noting the fact upon the determination. The determined amount is payable immediately after service of notice. However, after the payment has been made, the Lodging Tax Collector may petition for redemption and refund of the determination, if the petition is filed within ten days from the date of service of notice by the Tax Administrator. (Ord. 4412 §14, 1981, Ord. 17-5722, 2017)

4.05.150 Redeterminations

(Ord. 17-5722, 2017)

A. A Lodging Tax Collector against whom a determination is made under Section 4.05.100, or any person directly interested, may petition for a redetermination, redemption and refund within the time required in Section 4.05.140. If a petition for redetermination and refund is not filed within the time required, the determination is final at the expiration of the allowable time.

B. If a petition for redetermination and refund is filed within the allowable period, the Tax Administrator shall reconsider the determination and, if the Lodging Tax Collector has requested in his petition, shall grant the Lodging Tax Collector an oral hearing and give him seven days' notice of the time and place of the hearing. The Tax Administrator may continue the hearing if necessary.

C. The Tax Administrator may change the amount of the determination as a result of the hearing. If an increase is determined, the increase is payable immediately after the hearing.

D. The decision of the Tax Administrator on a petition for redetermination becomes final ten days after service upon the petitioner of notice unless appeal of the decision is filed with the Council within ten days after service of the notice.

E. A petition for redetermination or an appeal is not effective unless the Lodging Tax Collector has first complied with the payment provisions. (Ord. 4412 §15, 1981)

4.05.160 Security for Collection of Lodging Tax
(Ord. 17-5722, 2017)

A. The tax administrator, whenever she or he deems it necessary to insure compliance herewith, may require any lodging tax collector subject thereto to deposit with her or him such security in the form of cash, bond, or other security as the tax administrator may determine. The amount of the security shall be fixed by the tax administrator but shall not be greater than twice the lodging tax collector's estimated average quarterly liability for the period for which she or he files returns, determined in such manner as the tax administrator deems proper, or $50,000, whichever amount is the lesser. The amount of the security may be increased or decreased by the tax administrator, subject to the limitations provided in this Chapter.

B. Within three years after the lodging tax becomes payable, or within three years after a determination becomes final, the Tax Administrator may bring an action in the courts of this state, or any other state, or of the United States, in the name of the City to collect the amount delinquent, together with penalties and interest. (Ord. 4412 §16, 1981)

4.05.170 Liens
(Ord. 17-5722, 2017)

A. The lodging tax, interest, penalty, and advertising costs which may be incurred when the lodging tax becomes delinquent shall be and until paid remain a lien from the date of its docketing with the City Manager of the City against all real property occupied by the lodging facility as well as any tangible personal property used in the lodging facility. This lien shall have priority over all other liens and encumbrances of any character. The lien may be foreclosed and the property sold as may be necessary to discharge the lien in the manner specified by ORS 223.505 through 223.595.

B. The tax imposed by this Chapter, together with the interest and penalties provided in this Chapter, shall be and until paid remain a lien from the date of its docketing with the City Manager of the City against all property of the lodging tax collector intermediary as authorized by local, state or federal law. This lien shall have priority over all other liens and encumbrances of any character. The lien may be foreclosed on as provided by local, state or federal law.

C. Notice of the lien shall be issued by the Tax Administrator when the Lodging Tax Collector has defaulted in the payment of the lodging tax,

interest, and penalty. A copy of the notice shall be sent by certified mail to the Lodging Tax Collector.

D. The personal property subject to the lien may be sold at public auction after notice of such sale is published two times in a newspaper of general circulation within the City. Such notices shall be published not less than seven days apart with the first notice being published not more than twenty-five days before the date of the auction and the last notice published not less than seven days before the auction.

E. A lien for the lodging tax, interest and penalty shall be released by the Tax Administrator when the full amount has been paid to the City. The Lodging Tax Collector or person making the payment shall receive a receipt stating that the full amount of the lodging tax, interest and penalty has been paid, that the lien is released and that the record of the lien is satisfied. (Ord. 4412 §17, 1981)

4.05.180 Refunds by City to Operator

When the lodging tax, penalty or interest has been paid more than once or has been erroneously or illegally collected or received by the Tax Administrator, it may be refunded, provided that within three years from the date of payment, a written verified claim is filed stating the specific reason upon which the claim is founded. The claim shall be written on forms provided by the Tax Administrator. If the claim is approved, the excess amount may be refunded or may be credited on an amount then payable from the Lodging Tax Collector from whom it was collected and the balance refunded to the Lodging Tax Collector, her or his administrators, executors, or assignees. (Ord. 4412 §18, 1981, Ord. 17-5722, 2017)

4.05.190 Refunds by City to Occupant

If the lodging tax has been collected by the Lodging Tax Collector and deposited with the Tax Administrator, and it is later determined that the lodging tax was erroneously or illegally collected or received by the Tax Administrator, it may be refunded to the occupant, provided that within three years from the date of payment a written verified claim stating the specific reason on which the claim is founded is filed with the Tax Administrator. (Ord. 4412 §19, 1981, Ord. 17-5722, 2017)

4.05.200 Refunds by Lodging Tax Collector to Tenant

If the lodging tax has been collected by the Lodging Tax Collector and it is later determined that the occupant occupies the lodging facility for a period exceeding twenty-seven days without interruption, and thereby becomes a tenant, the Lodging Tax Collector shall refund to the tenant the lodging tax previously collected. The Lodging Tax Collector shall account for the collection and refund to the Tax Administrator. If the Lodging Tax Collector has remitted the lodging tax prior to refund or credit to the tenant,

he shall be entitled to a corresponding refund. (Ord. 4412 §20, 1981, Ord. 17-5722, 2017)

4.05.210 Records Required from Operators

Every Lodging Tax Collector shall keep guest records, accounting books, records of the room sales and copies of federal exemption travel vouchers/certificates for a period of three years and six months after they come into being. (Ord. 4412 §21, 1981, Ord. 17-5722, 2017)

4.05.220 Examination of Records

The Tax Administrator may examine during normal business hours the books, papers and accounting records relating to room sales of a Lodging Tax Collector, after notification to the Lodging Tax Collector. The Tax Administrator may investigate the business of the Lodging Tax Collector in order to verify the accuracy of a return made or, if no return is made by the Lodging Tax Collector, to determine the amount required to be paid. The Tax Administrator may contract with an independent external auditor to examine the records required to be maintained by lodging tax collectors. (Ord. 4412 §22, 1981, Ord. 17-5722, 2017)

4.05.230 Confidentiality
(Ord. 17-5722, 2017)

The Tax Administrator or a person having an administrative or clerical duty under the provisions of this chapter shall not make known in any manner the business affairs, operations or information obtained by an investigation of records and equipment of a person required to file a return, or pay a lodging tax, or a person visited or examined in the discharge of official duty, or the amount or source of income, profits, losses, or expenditures contained in a statement or application, or to permit a statement or application, or a copy of either, or a book containing an abstract or particulars to be seen or examined by any person. However, nothing in this section shall be construed to prevent:

A. The disclosure to, or the examination of records and equipment by, a City official, employee or agent for collection of lodging taxes for the sole purpose of administering or enforcing the provisions or collecting the lodging taxes imposed by this chapter.

B. The disclosure, after filing a written request, to the taxpayer, receivers, trustees, executors, administrators, assignees and guarantors, if directly interested, of information as to any paid lodging tax, unpaid lodging tax or amount of lodging tax required to be collected, or interest and penalties. However, the City Attorney shall approve each disclosure, and the Tax Administrator may refuse to make a disclosure referred to in this subsection when in the Tax Administrator opinion the public interest would suffer.

C. The disclosure of the names and addresses of persons making returns.

D. The disclosure of general statistics regarding lodging taxes collected or business done in the City. (Ord. 4412 §23, 1981)

4.05.240 Disposition and Use of Lodging Tax Fund

All revenues received from the lodging tax shall be deposited into the Lodging Tax Fund. (Ord. 4412 §24, 1981; Ord. 4553 §1, 1985; Ord. 5033 §1, 2000; Ord. 5052 §1, 2001, Ord. 17-5722, 2017)

The Lodging Tax rate of **12**% shall be distributed as follows:

A. **Of the 7% of the 12% (58.3%) of Lodging Tax receipts,** 30% shall be subsequently transferred from the Lodging Tax Fund to the City General Fund for the Tourism program. The remaining 70% of the first 58.33% shall be transferred from the Lodging Tax Fund to the City General Fund as follows: 25% to Public Safety, 25% to Parks Maintenance, 10% to Economic Development, and 10% to Downtown Development. (Ord. 4412 §24, 1981; Ord. 4553 §1, 1985; Ord. 5033 §1, 2000; Ord. 5052 §1, 2001)

B. **Of the 2% of the 12% (16.7%) of Lodging Tax receipts,** 30% shall be subsequently transferred to the Tourism program and 70% shall be transferred to the Lands and Building fund for the acquisition and development of park property or other tourism-related facilities. (Ord. 4412 §24, 1981; Ord. 4553 §1, 1985; Ord. 5033 §1, 2000; Ord. 5052 §1, 2001; Ord 16-5669 § 2016)

C. **Of the 3% of the 12% (25%) of Lodging Tax Receipts, 70% shall be subsequently transferred to the Tourism program and 30% shall be transferred to Public Safety.**

Tax Rates	**7.0%**	**2.0%**	**3.0%**	**12.00%**
Allocations				
Tourism Promotion	30%	30%	70%	40.00%
Land & Buildings Capital Fund for Parks Acquisition and Development or other Tourism-related Facilities		70%		11.67%
Total Tourism	30%	100%	70%	51.67%
Public Safety	25%		30%	22.08%
Parks Maintenance	25%			14.58%
Economic Development	10%			5.83%
Downtown Development	10%			5.83%
Total City Services	70%	0%	30%	48.33%
Total Percentage of Allocation	100%	100%	100%	100.00%

4.05.250 Appeals to Council

Any person aggrieved by any deficiency determination of the Tax Administrator may appeal to Council of the City by filing a notice of appeal with the Tax Administrator within 10 days of receiving the notice of the deficiency from the Tax Administrator. The tax administrator shall transmit said notice of appeal, together with the file of said appealed matter, to Council, who shall fix a time and place for hearing such appeal from the determination of the Tax Administrator. Council shall give the appellant not less than 10 days' written notice of the time and place of hearing of said appealed matter. Action by Council on appeals shall be decided by a majority of the members of Council present at the meeting where such appeal is considered. (Ord. 17-5722, 2017)

4.05.260 Violations

It is unlawful for any lodging tax collector or other person so required to fail or refuse to register as required by this Chapter, or to furnish any return required to be made, or fail or refuse to furnish a supplemental return or other data required by the tax administrator, or to render a false or fraudulent return. No person required to make, render, sign or verify any report shall make any false or fraudulent report, with intent to defeat or evade the determination of any amount due required by this Chapter. (Ord. 17-5722, 2017)

Item:	Resolution of the Council of the City of Grants Pass Authorizing Execution of a Settlement Agreement in Josephine County Circuit Court Case Number 20CV13717	Date: February 22, 2021

SUBJECT AND SUMMARY:

This resolution would authorize the purchase of approximately 7.76 acres of real property known as the J Street Tax Lot 1400 and Tax Lot 1500.

RELATIONSHIP TO COUNCIL GOALS:

This supports Council's goals of **Leadership, Ensure Community Safety and Maintain, Operate and Expand our Infrastructure to Meet Community Needs.**

CALL TO ACTION SCHEDULE:

Call to action schedule: February 22, 2021.

BACKGROUND:

The City of Grants Pass (the "City") completed a Water Treatment Plan Facility Plan. The Plan evaluated alternative improvements to address existing and potential future WTP deficiencies and feasibility evaluation for siting and construction of a new WTP.

City Council during this process also created a Citizens Advisory Task Force to evaluate treatment plant options. The Task Force Met 4 times in 2013 to evaluate all options and provide recommendation to the City Council

The members of the Task Force independently considered a number of plant options including reuse of existing facilities to constructing a new plant. The Task Force recommended building a new WTP at a site to be determined. The alternatives were selected by the Task Force because they provide the City with a seismically secure, reliable WTP, with a treatment process able to provide improved water quality for existing and future generations, all at a cost to the community that is comparable to continuing to invest in the existing WTP.

In 2014/2015 Public Works Water and Wastewater Divisions were the subject of the PAVE process. The Primary Recommendations of that report included building the new water treatment plant and upgrading the water restoration plant should proceed immediately.

Staff Report (continued):

Over the next two years the City explored a number of suitable sites for the new Water Treatment Plant. The City focused on property owned by Steve Ausland located on J Street. The two parties could not settle on a contact to purchase the property.

The City initiated a condemnation action against Steven L. Ausland, Nancy J. Ausland, Copeland Sand & Gravel, Inc., (collectively, "Ausland/Copeland"), Lamar Obie Corporation, and Copeland Endgame, Inc. fka Copeland Paving, Inc. in the Circuit Court of Josephine County, State of Oregon.
During the condemnation process the City continued an open dialog with Steve Ausland to further negotiations to purchase TL 1400 and TL 1500.

The City and Steve Ausland successfully negotiated a Settlement and Purchase Sale Agreement. The settlement is aligned with Council parameters provided to Staff for the negotiations.

The City agrees that Ausland/Copeland will completely vacate, remove any and all of its personal property therefrom, and relinquish all possessory and any other property rights to Tax Lot 1400 and Tax Lot 1500 no later than March 1, 2021.

Since the parties will reach an agreement the condemnation will be dismissed.

COST IMPLICATION:

$4,784,620 for the acquisition of the Property TL 1400 and TL 1500. Funds will come from the Water Fund and are budgeted.

ALTERNATIVES:

1. Council could authorize the sale of the property; or
2. Council could choose to deny the sale of the property.

RECOMMENDED ACTION:

It is recommended the Council authorize the purchase of the 7.76 acres of real property known as the J Street property TL 1400 and TL 1500.

POTENTIAL MOTION:

I move to adopt the Resolution of the Council of the City of Grants Pass Authorizing Execution of a Settlement Agreement in Josephine County Circuit Court Case Number 20CV13717.

RESOLUTION NO.

A RESOLUTION OF THE COUNCIL OF THE CITY OF GRANTS PASS AUTHORIZING EXECUTION OF A SETTLEMENT AGREEMENT IN JOSEPHINE COUNTY CIRCUIT COURT CASE NUMBER 20CV13717.

WHEREAS:

1. The City initiated condemnation proceedings on a portion of the property known as the J Street Property for purposes of constructing a new water treatment plant; and

2. The parties have reached a settlement agreement, attached hereto as Exhibit 'A', subject to Council approval; and

3. The settlement agreement provides for the payment of $4,784,620.00 for tax lots 1400 and 1500. The amount includes attorney fees, relocation costs for the defendants, interest, costs, compensation for real property, and all other items asserted by the defendants.

4. The settlement agreement provides for possession on March 1, 2021.

5. The settlement agreement also provides for a stipulated judgment to be entered in court, dismissing the case.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Grants Pass that the City Manager is authorized to execute the settlement agreement attached to and incorporated herein as Exhibit 'A'.

EFFECTIVE DATE of this Resolution shall be immediate upon its passage by the City Council and approval by the Mayor.

ADOPTED by the Council of the City of Grants Pass, Oregon, this 22nd day of February 2021.

SUBMITTED to and _____ by the Mayor of the City of Grants Pass, Oregon, this _____ day of February 2020.

_____
Sara Bristol, Mayor

ATTEST:

_____
Julie Hall, City Recorder designee

Date submitted to Mayor: _____

Approved as to Form, Mark Bartholomew, City Attorney _____

Exhibit A

SETTLEMENT AGREEMENT

City of Grants Pass, a municipality of the State of Oregon v. Steven L. Ausland and Nancy J. Ausland, as tenants by entirety, as to an undivided 1/2 interest; Copeland Sand & Gravel, Inc., an Oregon corporation, as to an undivided 1/2 interest; Lamar Obie Corporation, an Oregon corporation; Copeland Endgame, Inc. fka Copeland Paving, Inc., an Oregon corporation; Josephine County Circuit Court Case No. 20CV13717

I. RECITALS

Whereas, plaintiff City of Grants Pass (the "City") initiated a condemnation action ("litigation") against defendants Steven L. Ausland, Nancy J. Ausland, Copeland Sand & Gravel, Inc., (collectively, "Ausland/Copeland"), Lamar Obie Corporation, and Copeland Endgame, Inc. fka Copeland Paving, Inc. in the Circuit Court of Josephine County, State of Oregon.

Whereas, Ausland/Copeland for purposes of this Agreement, includes any other closely held or related person or entity that has any presence on or interest in the Property that is the subject to the litigation including, but not limited to AFI Properties, LLC dba Copeland Landscape Supply.

Whereas, an Order of Default was entered against defendant Copeland Endgame, Inc. fka Copeland Paving, Inc. on June 22, 2020.

Whereas, an Order of Default was entered against defendant Lamar Obie Corporation on October 27, 2020.

At times, the City and Ausland/Copeland are referred to collectively herein as the "Parties."

Whereas, the City sought condemnation of certain property in Grants Pass, Oregon, including the following two tax lots:

a. Tax Lot 1400, Josephine County Assessor's Map No. 36-05-17-D0, 5.43 acres; and

b. Tax Lot 1500, Josephine County Assessor's Map 36-05-17-D0, 2.33 acres.

Whereas, the City deposited $2,606,000 into court which was equal to the City's appraisal of the fair market value of the realty sought to be condemned for public use.

II. AGREEMENT

Whereas, the Parties have settled the above-entitled litigation and to finalize the settlement agree to the following:

1. The City will only acquire Tax Lot 1400 and Tax Lot 1500 (the "Property") and no other Ausland/Copeland property sought to be appropriated for public use by the City in the Complaint.

2. The City has agreed to pay the total sum of $4,784,620 for the acquisition of the Property, inclusive of any and all claims for costs, attorney fees, interest, relocation benefits of Ausland/Copeland and any related party thereto, and any other claims of any kind asserted or assertable by Ausland/Copeland in the litigation ("Condemnation Proceeds").

3. Ausland/Copeland agrees to pay, indemnify, and hold the City harmless of and from any claims to all or any portion of the Condemnation Proceeds to be paid for the Property appropriated by the City herein of any other defendant in the litigation or any occupants including any lessee related to the Property. The City has resolved all relocation reimbursements and obligations to Ausland/Copeland related to the Property and to Copeland Landscape Supply under this settlement agreement. Ausland/Copeland and Copeland Landscape Supply and each of them waive and disclaim any other or further relocation rights or benefits or entitlement thereto. Any other unrelated relocation obligations the City owes to other tenants is outside of this agreement.

4. The Order for Advanced Occupancy and Immediate Possession entered in the litigation on October 23, 2020 shall remain in full force and effect, however, the City agrees that Ausland/Copeland will completely vacate, remove any and all of its personal property therefrom, and relinquish all possessory and any other property rights to Tax Lot 1400 and Tax Lot 1500 no later than March 1, 2021. The City may pursue any remedy available at law or in equity including the right to the issuance of an immediate writ of assistance should Ausland/Copeland or any other occupant fail or refuse to immediately surrender possession on or before March 1, 2021. Ausland/Copeland warrants that from February 12, 2020 to the present, they have not released and hereafter will not release any hazardous substances on the Property. Ausland/Copeland further warrants and agrees that they shall not hereafter commit any waste on the Property and shall deliver possession of the Property to the City in a condition free of their personal property and free of any debris no later than March 1, 2021. Should Ausland/Copeland fail to remove any and all of its personal property and/or otherwise fail or refuse to relinquish possession by March 1, 2021, then any and all such personal property may be deemed abandoned and the City may dispose of such personal property as the City determines in its sole and exclusive discretion. The City shall be entitled to recover from Ausland/Copeland A) the costs of removal of any such personal property and B) damages the City sustains that is attributable to any delay in securing possession from Ausland/Copeland.

5. The parties shall enter into stipulated general judgment in the form attached hereto as Exhibit 1 contemporaneously herewith and hereby irrevocably authorize and direct their counsel to cause the same to be entered in the Josephine County Circuit Court.

6. The City is acquiring the Property pursuant to its condemnation authority and condemned the interests of Ausland/Copeland in Tax Lot 1400 and Tax Lot 1500. In consideration of the sum total settlement agreed upon herein, Ausland/Copeland releases any and all interest in the Property upon payment of the Condemnation Proceeds and execution of the

stipulated judgment and further waives, releases, and forever discharges the City and all of their agents, employees, successors, and assigns and any agent of the City from any and all claims, demands, causes of action, and liabilities of any kind, known or unknown, contingent or vested, liquidated or unliquidated, now existing or hereafter accruing, of any kind or nature, including, but not limited to any and all claims arising out of or in any way related to Josephine County Circuit Court Case No. 20CV13717.

7. Ausland/Copeland is entitled to the funds now held in deposit with the Court for their benefit and will move the Court to withdraw the funds in the amount of $2,606,000. This is part of the Condemnation Proceeds which will be applied to the sum total settlement. The City will raise no objections or conditions to the withdrawal of the funds from court.

8. After finalizing the terms of this settlement agreement by execution, Ausland/Copeland is entitled to the remaining Condemnation Proceeds, which the City shall deliver to Ausland/Copeland contemporaneous with the City's receipt of stipulated judgment provide for herein.

9. The City shall issue a check in the amount of $2,178,620 payable to Copeland Sand and Gravel, Inc.

10. This document may be executed in separate counterparts by the Parties.

DATED this __ day of February, 2021.

CITY OF GRANTS PASS

By _____
Aaron Cubic, City Manager

DATED this __ day of February, 2021.

AUSLAND/COPELAND

By _____
Steven L. Ausland, individually and as authorized representative of any and all Ausland/Copeland parties

DATED this __ day of February, 2021.

By _____
Nancy J. Ausland, individually and as authorized representative of any and all Ausland/Copeland parties

DATED this __ day of February, 2021.

COPELAND SAND & GRAVEL, INC.

By _____
Steven L. Ausland, President

Exhibit 1

IN THE CIRCUIT COURT OF THE STATE OF OREGON

IN AND FOR THE COUNTY OF JOSEPHINE

CITY OF GRANTS PASS, a municipality of the State of Oregon, Plaintiff, vs. STEVEN L. AUSLAND AND NANCY J. AUSLAND, as tenants by the entirety, as to an undivided 1/2 interest; COPELAND SAND & GRAVEL, INC., an Oregon corporation, as to an undivided 1/2 interest; LAMAR OBIE CORPORATION, an Oregon corporation and COPELAND ENDGAME, INC. fka COPELAND PAVING, INC., an Oregon corporation, Defendants.	Case No. 20CV13717 STIPULATED MOTION FOR ENTRY OF GENERAL JUDGMENT

Come now the parties, by and through their respective counsel and hereby stipulate and jointly move the Court for entry of general judgment in the form tendered contemporaneously herewith as all matters at issue between the parties have been fully settled, adjusted, and compromised.

IT IS SO STIPULATED:

_____ Dated: _____

JOSEPH E. KELLERMAN, OSB No. 921997
Of Attorneys for Plaintiff

_____ Dated: _____

CYNTHIA M. FRASER, OSB No. 872243
Of Attorneys for Defendants
Steven L. Ausland, Nancy J. Ausland,
and Copeland Sand and Gravel, Inc.

HORNECKER COWLING LLP
14 N. Central Ave., Ste. 104
Medford, OR 97501
541-779-8900

IN THE CIRCUIT COURT OF THE STATE OF OREGON

IN AND FOR THE COUNTY OF JOSEPHINE

CITY OF GRANTS PASS, a municipality of the State of Oregon, Plaintiff, vs. STEVEN L. AUSLAND AND NANCY J. AUSLAND, as tenants by the entirety, as to an undivided 1/2 interest; COPELAND SAND & GRAVEL, INC., an Oregon corporation, as to an undivided 1/2 interest; LAMAR OBIE CORPORATION, an Oregon corporation and COPELAND ENDGAME, INC. fka COPELAND PAVING, INC., an Oregon corporation, Defendants.	Case No. 20CV13717 STIPULATED GENERAL JUDGMENT

THIS MATTER comes to the Court upon stipulation of the parties, plaintiff City of Grants Pass, appearing by and through attorneys Mark S. Bartholomew and Joseph E. Kellerman, and defendants Steven L. Ausland, Nancy J. Ausland, and Copeland Sand & Gravel, Inc., appearing by and through attorneys Cynthia M. Fraser, Paul H. Trinchero, and Matthew J. Yium; and

The parties stipulate and agree and advise the Court that:

A. The parties have reached an agreement settling this action;

B. No good cause exists for setting aside the settlement agreement or setting this case for trial;

///

HORNECKER COWLING LLP
14 N. Central Ave., Ste. 104
Medford, OR 97501

C. This judgment reflects the settlement of all issues asserted or assertable in this action;

D. The real property described in Exhibit A also identified as Tax Lot 1400, Josephine County Assessor's Map No. 36-05-17-D0, 5.43 acres; and Tax Lot 1500, Josephine County Assessor's Map 36-05-17-D0, 2.33 acres, is necessary for public use;

E. Plaintiff, prior to the commencement of this action and pursuant to its resolution, attempted to acquire said real property by agreement and purchase, but was unable to do so;

F. The defaults have previously been entered of defendants Copeland Endgame, Inc. fka Copeland Paving, Inc. and Lamar Obie Corporation, leaving Steven L. Ausland, Nancy J. Ausland, and Copeland Sand and Gravel, Inc. as the only remaining defendants in this action;

G. The sum to be paid for the remaining defendants in the within action is the sum of $4,784,620 which is inclusive of any and all claims for the realty appropriated and condemned and includes all claims for interest, costs, relocation benefits, and attorney fees;

H. Defendants Steven L. Ausland, Nancy J. Ausland, and Copeland Sand and Gravel, Inc. are entitled to the funds previously deposited with the Court by Plaintiff in the amount of $2,606,000, and plaintiff will pay directly to defendants Steven L. Ausland, Nancy J. Ausland, and Copeland Sand and Gravel, Inc. the balance due in the amount of $2,178,620;

I. Defendants agree that any and all claims for attorney fees, costs, expenses, relocation benefits, and interest, if any are included in the consideration paid to the defendants, and that defendants waive and disclaim any other rights or claimed entitlement thereto;

J. Plaintiff is now entitled to judgment, appropriating the real property described in Exhibit A hereto to the City of Grants Pass, a municipal corporation of the State of Oregon, free and clear of all liens and encumbrances and claims of any kind or nature of Defendants and each of them and any party claiming by or through any of them.

///

///

HORNECKER COWLING LLP
14 N. Central Ave., Ste. 104
Medford, OR 97501

NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED and DECREED:

1. The real property legally described in Exhibit A hereto is hereby appropriated for public purposes in favor of Plaintiff and title to said acquisition, together with all rights, easements and appurtenances thereto is hereby vested in plaintiff, the City of Grants Pass, free and clear of all right, title, claim, lien, and encumbrance and any other claims of any kind or nature of Defendants and each of them and any party claiming by or through any of them.

2. A writ of assistance in favor of plaintiff shall immediately issue in favor of plaintiff should any defendant, occupant, or any other person, party, or entity fail or refuse to surrender immediate possession of all or any portion of the Exhibit A real property at any time on or after March 1, 2021.

3. Except as specifically set forth above and as set forth in any settlement agreement between the parties, all other claims asserted by plaintiff and defendants in the within action are hereby dismissed with prejudice.

HORNECKER COWLING LLP
14 N. Central Ave., Ste. 104
Medford, OR 97501

IT IS SO STIPULATED:

DATED February __, 2021.

HOERNECKER COWLING LLP

By _____

Mark S. Bartholomew, OSB #035662
E-mail: msb@roguelaw.com
Joseph E. Kellerman, OSB #921997
E-mail: jek@roguelaw.com
14 N. Central Avenue, Suite 104
Medford, OR 97501
Telephone: (541) 779-8900
Fax: (541) 779-2982

Of Attorneys for Plaintiff City of Grants Pass

DATED February __, 2021.

FOSTER GARVEY PC

By _____

Cynthia M. Fraser, OSB #872243
E-mail: cynthia.fraser@foster.com
Paul H. Trinchero, OSB #014397
E-mail: paul.trinchero@foster.com
Matthew J. Yium, OSB #054377
E-mail: matthew.yium@foster.com
121 SW Morrison Street, 11th Floor
Portland, OR 97204
Telephone: (503) 228-3939
Fax: (503) 226-0259

Of Attorneys for Defendants Steven L. Ausland, Nancy J. Ausland, and Copeland Sand & Gravel, Inc.

Submitted By:

Joseph E. Kellerman, OSB No. 921997
Of Attorneys for Plaintiff

Exhibit A
(Legal Description of Grants Pass Water Treatment Plant Property)

Tax Lots: 360517D0001400, 360517D0001500

Parcel 1:

Beginning at a point on the southerly line of the Southern Pacific Railroad right of way, 1598 feet West and 614 feet North from the Southeast corner of Section 17, Township 36 South, Range 5 West of the Willamette Meridian, Josephine County, Oregon; thence South 347 feet; thence West 465 feet; thence North 1°12' East, 556 feet to an angle point on the southerly line of said Southern Pacific Railroad right of way; thence southeasterly parallel to the southerly right of way line of said Southern Pacific Railroad to the place of beginning. EXCEPTING THEREFROM the northerly 50 feet, parallel to the Southern Pacific Railroad right of way.

ALSO: A parcel of land lying in the John K. Jones Donation Land Claim No. 38 and the J. Scholes Donation Land Claim No. 37, Township 36 South, Range 5 West of the Willamette Meridian, Josephine County, Oregon, and being that property designated as Parcel 2 as described in that deed to the State of Oregon, by and through its Department of Transportation, Highway Division, recorded as Document No. 89-11704, in Volume 112, Page 893 of Josephine County Book of Records and recorded December 20, 1990 as Document No. 90-21595, Official Records of Josephine County.

Parcel 2:

Beginning at a point 1598 feet West and 267 feet North from the Southeast corner of Section 17, Township 36 South, Range 5 West of the Willamette Meridian, Josephine County, Oregon, said point of beginning being also 347 feet South of the southerly line of the Southern Pacific Railroad right of way; thence South 267 feet to the South line of said Section 17; thence East 16 feet to the Southwest corner of the J. Scholes Donation Land Claim No. 37 in said Section; thence South 179 feet to the Northeast corner of that tract of land conveyed to Mary Tommack, described in Volume 11, Page 446, Josephine County Deed Records; thence West 482 feet to the Southeast corner of that tract of land conveyed to the Grants Pass Box Factory, described in deed recorded in Volume 30, Page 594, Josephine County Deed Records; thence North 1°12' East, 446 feet; thence East 465 feet to the point of beginning.

EXCEPTING THEREFROM that portion of said land conveyed to the State of Oregon, by and through its Department of Transportation Highway Division, by Document No. 89-06066, Official Records of Josephine County, Oregon. **ALSO EXCEPTING THEREFROM** any portion of land described herein lying within the right of way of the Grants Pass Parkway.

Containing 7.72 acres, more or less.

UTCR 5.100 CERTIFICATE

This proposed order or judgment is ready for judicial signature because:

1. [ ] Each opposing party affected by this order or judgment has stipulated to the order or judgment, as shown by each opposing party's signature on the document being submitted.

2. [ ] Each opposing party affected by this order or judgment has approved the order or judgment, as shown by each party's signature on the document being submitted or by written confirmation of approval sent to me.

3. [ ] I have served a copy of this order or judgment on all parties entitled to service and:

a. [ ] No objection has been served on me.

b. [ ] I received objections that I could not resolve with a party despite reasonable efforts to do so. I have filed a copy of the objections I received and indicated which objections remain unresolved.

c. [ ] After conferring about objections [*role and name of objecting party*] agreed to independently file any remaining objection.

4. [ ] Service is not required pursuant to subsection (3) of this rule, or by statute, rule, or otherwise.

5. [ ] This is a proposed judgment that includes an award of punitive damages and notice has been served on the Director of the Crime Victims' Assistance Section as required by subsection (4) of this rule.

6. [ ] Other:

DATED this _____ day of February, 2021.

HORNECKER COWLING LLP

_____

JOSEPH E. KELLERMAN, OSB No. 921997
Of Attorneys for Plaintiff

Fax 541-779-2982 | jek@roguelaw.com