

IN THE BOARD OF COUNTY COMMISSIONERS OF LANE COUNTY, OREGON

ORDER NO.
05-11-9- 12

IN THE MATTER OF AUTHORIZING
EXPENDITURE OF ROAD FUNDS ON NEWMAN
STREET, A LOCAL ACCESS ROAD, AND FOR
CONSTRUCTION AND MAINTENANCE
PURSUANT TO OREGON TRANSPORTATION
DEPARTMENT ORDER ENTERED IN RX 1264

WHEREAS, Newman Street is a local access road pursuant to ORS 368.001(3), and is located outside of the City of Springfield, but within the Springfield Urban Growth Boundary, and

WHEREAS, United States (Williams) Bakery has leased property from Wildish Industrial Development Corporation (Wildish) on Newman Street, and is in need of a railway spur and railroad crossing to access the bakery facility being located there, and

WHEREAS, The Board of Commissioners, by Board Order 05-8-24-1 granted Williams Bakery a property tax exemption for locating this facility within an enterprise zone per ORS 285C. 175, in part "to encourage investment in new high technology facilities, increase family wage jobs and wages paid in new economic sectors, and assist in the diversification of the County's economy," and

WHEREAS, pursuant to ORS Chapter 824, only a railroad or a public authority may obtain authority to construct, relocate or alter a railroad-highway crossing, and

WHEREAS, the Oregon Department of Transportation (hereinafter ODOT), in its proposed Order in RX 1264, at Attachment "A," will require as a condition of the permit that Lane County agree to be responsible for construction and maintenance of portions of the crossing, and

WHEREAS, ORS 368.031 prohibits the expenditure of County moneys on local access roads unless, 1) the county road official recommends the expenditure, 2) the public use of the road justifies the expenditure proposed, and 3) the Board enacts an Order or Resolution authorizing the work and designates the work to be either a single project or a continuing program, and

WHEREAS, Wildish has offered to pay for the construction and maintenance of the County's obligations in the proposed ODOT Order in RX 1264 on a reimbursement basis in substantial conformance with those terms contained in Exhibit "B," and

WHEREAS, the Board hereby finds that the road official recommends, and the public use of Newman Street does justify, an expenditure of county road funds on a continuing basis, now, therefore, it is hereby

ORDERED, that the Director of the Department of Public Works be authorized to apply for an ODOT railroad-highway crossing permit with conditions in substantial conformance with those contained in Exhibit "A," and it is further

ORDERED, that the Director of the Department of Public Works be authorized to expend road funds as necessary to meet the requirements of the ODOT in RX 1264 which sub-

stantially conform to Exhibit "A" and subject to the condition of the execution by Wildish of the reimbursement agreement (Exhibit "C"), and it is further

ORDERED, that said Director be authorized to enter into a reimbursement agreement with Wildish in substantial conformity with those terms contained in Exhibit "C," and it is further

ORDERED, that the Director be authorized to perform work on the Newman Street crossing on a continuing basis to maintain the crossing pursuant to conditions contained in the ODOT permit.

Adopted this 9th day of November 2005.


Chair, Lane County Board of Commissioners

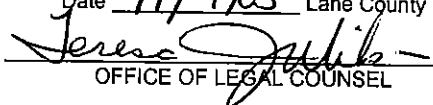
APPROVED AS TO FORM
Date 11/9/05 Lane County

OFFICE OF LEGAL COUNSEL

EXHIBIT "A"

Placeholder.

FINAL ORDER to be
Approved by ODOT Rail.

ORDER NO.

ENTERED

ODOT CROSSING NO. C-643.89-C
U. S. DOT No. 925 054 M
New Crossing (Newman St-South)

ODOT CROSSING NO. C-643.90-C
U. S. DOT No. 756 553 L
Existing Crossing (Newman St-North)

**BEFORE THE OREGON DEPARTMENT
OF TRANSPORTATION**

RX 1264

In the Matter of the Construction of a New)
Railroad-Highway Grade Crossing and Alteration)
of an Existing Railroad-Highway Grade Crossing)
at Newman Street and CENTRAL OREGON &)
PACIFIC RAILROAD (CORP), Industrial Spur)
Tracks off the Roseburg Subdivision, at)
Springfield Junction, Lane County, Oregon.)

**PROPOSED FINAL
ORDER**

On August 24, 2004, Central Oregon & Pacific Railroad (CORP) made application under ORS 824.204 seeking authority to construct the Newman Street-South grade crossing. Applicant amended its application on September 19, 2005, to request authority to alter the Newman Street-North grade crossing under ORS 824.206. The affected railroad is CORP. The public authority in interest is Lane County. The interested agencies or persons in this matter are City of Springfield and Wildish Industry Development Corporation.

Rail Division staff has investigated the amended application. By letter dated September 22, 2005, staff served the amended application and a Proposed Final Order (PFO) for all parties to review and acknowledge their agreement with its terms. No objections to the amended application or PFO were received from any party.

All parties in this matter have agreed that the proposed grade crossing construction and crossing alterations are required by the public safety, necessity, convenience and general welfare. Therefore, under ORS 824.214, the Department may enter this Order without hearing.

The Appendix to this Order includes a vicinity map of the proposed railway construction project and a copy of Signing and Striping Plan prepared by David Evans & Associates for the Newman Street Spur No. 2. The average daily traffic (ADT) volume at the new grade crossing is

ORDER NO.

anticipated to be less than 50 vehicles. There is a daily average of two switch train movements through the area of the proposed crossing at the maximum authorized speed of 10 miles per hour.

Applicant proposes to construct an industrial spur track across Newman Street to provide rail service to a new bakery. The new spur track will intersect Newman Street-South at an angle of ≈ 42 degrees. The new grade crossing will be equipped with YIELD signs attached to the crossbucks, railroad STOP signs, advance warning signs, advance warning pavement markings, and stop clearance lines.

The existing Newman Street-North grade crossing is ≈ 275 feet north of the new crossing. Applicant further proposes to replace the crossbucks and install YIELD signs on the same post at the existing crossing.

From the foregoing, the Department finds that the proposed grade crossing and grade crossing alterations are required by the public safety, necessity, convenience and general welfare. It is neither practical nor necessary to construct a separated crossing at the Newman Street-South location. The application should be granted upon the following terms.

IT IS THEREFORE ORDERED that:

1. The authority to construct and alter the subject grade crossings is granted. Construction of the new grade crossing shall be completed within three years from the entered date of this Order. Otherwise, the authority expires on that date. No authority to establish a Quiet Zone is granted by this Order.
2. Applicant (CORP) shall:
 - a. At the New Grade Crossing:
 - (1) Construct and maintain that portion of the crossing lying between lines drawn perpendicular to the end of ties to accommodate the roadway configuration depicted in the Appendix to this Order, and bear all the costs.
 - (2) Furnish, install and maintain two Standard No. 1 crossbucks at the crossing, and bear all costs. The crossbucks shall be made of high-intensity reflective materials and the crossbuck posts shall have reflective tape to enhance their nighttime visibility.
 - (3) Furnish, install and maintain two Standard No. 1T railroad STOP signs, located according to OAR 741-110-0040(3), and bear all the costs.
 - (4) Subject to reimbursement as set forth below, install the YIELD (R1-2) signs provided by Lane County. Attach one sign below each crossbuck (R15-1) sign on the same post at the crossing.
 - (5) Maintain the ordered YIELD signs, and bear all the costs.

ORDER NO.

b. At the Existing Crossing:

- (1) Replace and maintain the existing Standard No. 1 crossbucks at the crossing, and bear all the costs. The crossbucks shall be made of high-intensity reflective materials, and the crossbuck posts shall have reflective tape to enhance their nighttime visibility.
- (2) Subject to reimbursement as set forth below, install the YIELD (R1-2) signs provided by Lane County. Attach one sign below each crossbuck (R15-1) sign on the same post at the crossing.
- (3) Maintain the ordered YIELD signs, and bear all the costs.

3. Lane County shall:

a. At the New Crossing:

- (1) Construct and maintain that portion of the crossing lying outside lines drawn perpendicular to the end of ties to accommodate the roadway configuration depicted in the Appendix to the Order, and bear all the costs. The roadway approaches shall comply with OAR 741-120-0020.
- (2) Furnish, install and maintain two stop clearance lines at the crossing, located according to OAR 741-110-0040 (10), and bear all the costs.
- (3) Furnish, install and maintain two advance warning signs and advance warning pavement markings on the roadway approaches to the crossing, and bear all the costs. The signs and markings shall be installed according to OAR 741-110-0040 (11).

- b. Provide four YIELD (R1-2) signs to CORP for installation as set forth in paragraphs 2.a.(4) and 2.b.(2), above, and bear all costs.

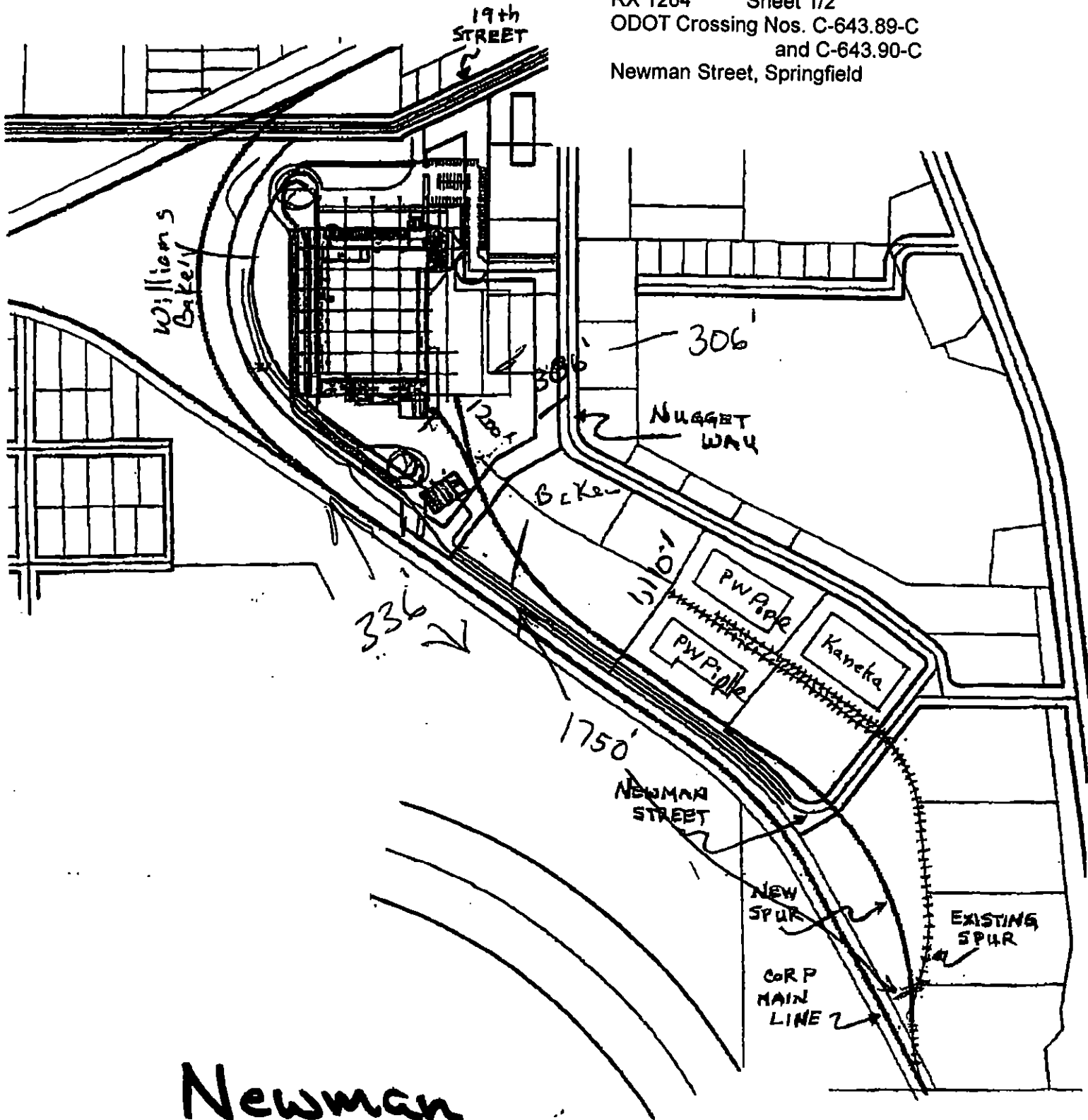
4. Each party shall notify the Rail Division of the Department in writing upon completion of its portion of the project.

All previous Orders of the Public Utility Commission or the Department pertaining to crossing No. C-643.90-C, not in conflict with this Order, remain in full effect.

Made, entered, and effective

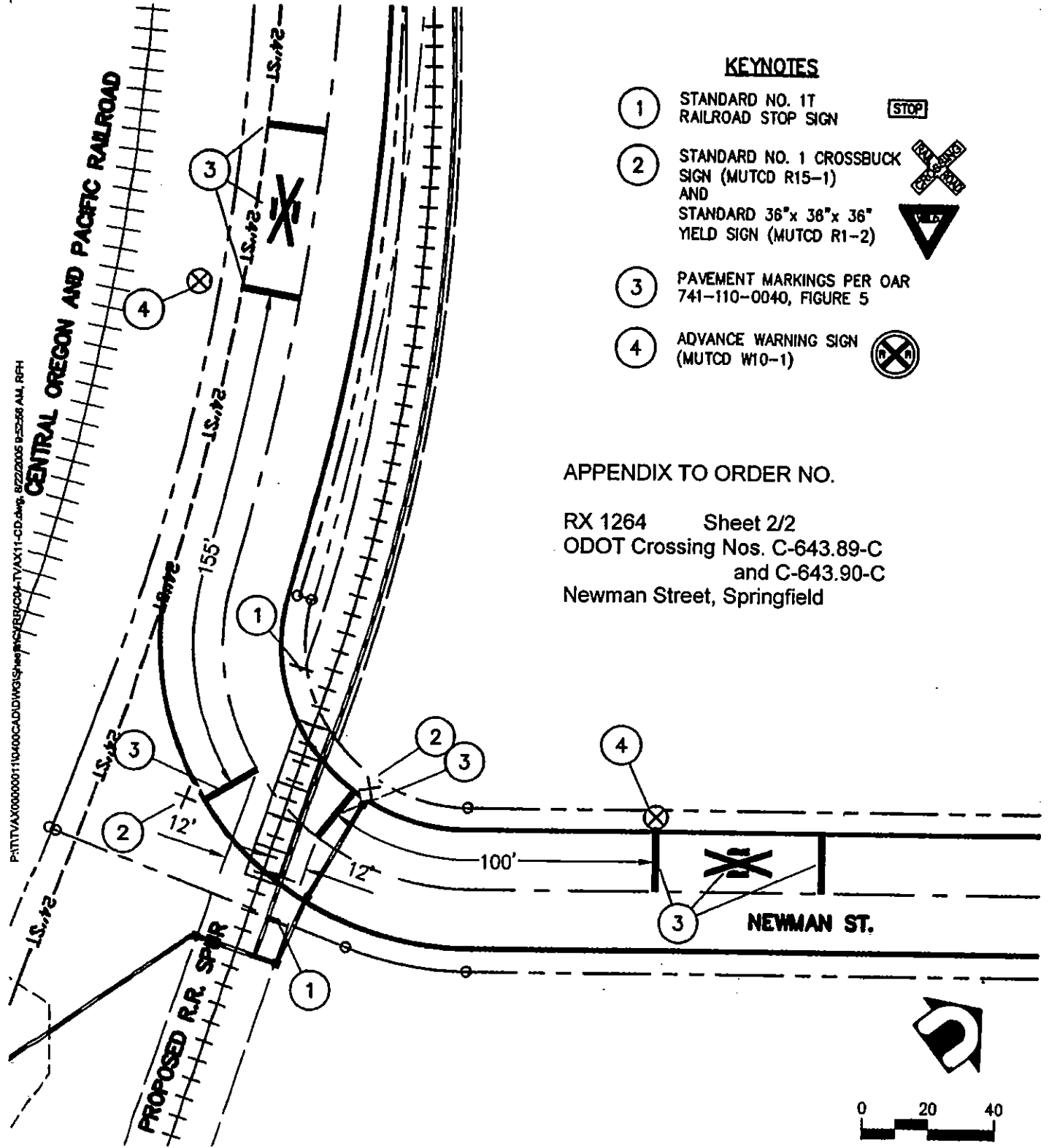
APPENDIX TO ORDER NO.

RX 1264 Sheet 1/2
ODOT Crossing Nos. C-643.89-C
and C-643.90-C
Newman Street, Springfield






Newman
Street
C-643.89-C

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KEYNOTES

- ① STANDARD NO. 1T RAILROAD STOP SIGN 
- ② STANDARD NO. 1 CROSSBUCK SIGN (MUTCD R15-1) AND STANDARD 36"x 38"x 36" YIELD SIGN (MUTCD R1-2) 
- ③ PAVEMENT MARKINGS PER OAR 741-110-0040, FIGURE 5
- ④ ADVANCE WARNING SIGN (MUTCD W10-1) 

APPENDIX TO ORDER NO.

RX 1264 Sheet 2/2
 ODOT Crossing Nos. C-643.89-C
 and C-643.90-C
 Newman Street, Springfield



DAVID EVANS AND ASSOCIATES INC.
 2100 Southwest River Parkway
 Portland Oregon 97201
 Phone: 503.223.6863

PROJECT	NEWMAN STREET SPUR NO. 2			FIGURE
TITLE	ROADWAY CROSSING			1
	SIGNING AND STRIPING PLAN			
DWG. REP.	PROJECT	SCALE	AMENDMENT NO.	
C04	TVAX0000-0011	AS SHOWN		
DRAWN BY	DESIGN BY	APPROVED BY	DATE	
RFH	SBM		8-22-05	

EXHIBIT "B"

**IN THE BOARD OF COUNTY COMMISSIONERS OF LANE COUNTY
STATE OF OREGON**

**IN THE MATTER OF AUTHORIZING EXPENDITURE OF ROAD)
FUNDS ON NEWMAN STREET, A LOCAL ACCESS ROAD, AND)
FOR CONSTRUCTION AND MAINTENANCE OF A RAILROAD) FINAL
CROSSING PURSUANT TO OREGON TRANSPORTATION) DIRECTOR'S REPORT
DEPARTMENT ORDER ENTERED IN RX 1264)**

Newman Street is a local access road (LAR) located in the Glenwood area of Springfield. The surrounding area is mostly annexed into the city of Springfield, but the roads in the area have not been annexed. United States (Williams) Bakery has leased property from Wildish Industrial Development Corporation (Wildish) on Newman Street, and is in need of a railway spur and railroad crossing to access the bakery facility being located there. Williams Bakery has applied to Springfield for various land use permits, and Lane County Public Works has continually suggested that Springfield annex the roads and take over road jurisdiction. LAR's are automatically surrendered to cities if and when annexed.

The Central Oregon & Pacific Railroad (CORP) made application with the Oregon Department of Transportation (ODOT) Rail Division seeking authority to construct the Newman Street rail grade crossing. However, ODOT Rail requires pursuant to ORS Chapter 824 that a Road Authority sign the Final Order. Since the city has not annexed the road, this has left the county as the de-facto public road authority.

In its proposed Order in RX 1264, ODOT Rail will require as a condition of the permit that Lane County agree to be responsible for construction and maintenance of the crossing. However, ORS 368.031 prohibits the expenditure of County moneys on local access roads unless, 1) the county road official recommends the expenditure, 2) the public use of the road justifies the expenditure proposed, and 3) the Board enacts an Order or Resolution authorizing the work and designates the work to be either a single project or a continuing program.

An important consideration on whether the county road official recommends expenditure of County money is the fact that Wildish Industrial Development Corporation (Wildish) has offered to pay for the construction and maintenance of the crossing features on a reimbursement basis.

The agreement with Wildish is being attached to the Board Order as Exhibit "C". Wildish will fully compensate County for any and all materials and services provided by County as may be required by the ODOT Rail Division Final Order. The agreement also stipulates that the type and method of construction and maintenance, together with any decisions affecting the costs thereof, shall be in the sole discretion of the County.

This agreement will offer the assurance to the Director that the public road authority can offer a reimbursable continuing program (until Springfield takes jurisdiction of the road) to maintain the

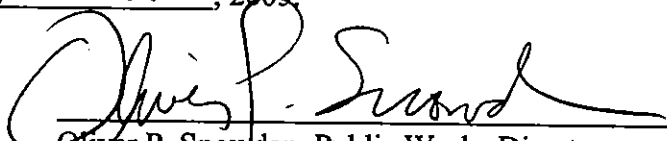
EXHIBIT "B"

Newman Street rail crossing in compliance with the ODOT permit. The recommendation is for the rail crossing only, and does not include other road maintenance for Newman Street.

There may be additional staff time being expended (such as researching and preparing these agreements for Newman Street) that will not be billed to Wildish. There will also be an expectation as the public road authority to invest staff and resources to periodically inspect the crossing, as outlined in the rail Final Order. For these reasons, the Board will be asked to find that the public use of the Newman Street rail crossing does justify an expenditure of county road funds on a continuing basis, even though the majority of the work will be reimbursed.

In conclusion, I recommend that Lane County construct the proposed rail crossing as a one time expenditure, and provide, on a continuing basis, funds for the administration, inspection and maintenance of the crossing as set forth in proposed ODOT Order RX 1264, upon condition that Wildish enter into an agreement with the County whereby Wildish will reimburse the County for all construction and maintenance expenses of this crossing until such time as the City of Springfield shall assume jurisdiction of the crossing.

DATED this 9th day of November, 2005.



Oliver P. Snowden, Public Works Director
Department of Public Works

Exhibit "C"

AGREEMENT FOR

Newman Street Railroad-Highway Grade Crossing Improvements

THIS AGREEMENT is entered into by and between LANE COUNTY, OREGON, a political subdivision of the State of Oregon, hereinafter called COUNTY, and WILDISH INDUSTRIAL DEVELOPMENT CORPORATION hereinafter called WILDISH.

Whereas, Newman Street is a Local Access Road (LAR) and as such is subject to applicable State Laws, including ORS 368.031, which states the COUNTY may spend money on Local Access Road improvements only under limited circumstances, and only by order or resolution by the Board.

Whereas, WILDISH owns real property on both sides on Newman Street insofar as is relevant to the railroad-highway crossing subject to the proposed ODOT Order RX 1264, at Ex. "A," and

Whereas, WILDISH agrees to fully compensate COUNTY for construction and on-going maintenance expenditures incurred by COUNTY in the performance of any and all required conditions as may be contained in the ODOT Rail Division FINAL ORDER RX 1264.

NOW, THEREFORE, the parties agree:

1. In consideration for COUNTY'S performance of construction and maintenance activities required of COUNTY as specified in the ODOT Rail Division FINAL ORDER No. RX 1264 (the Order), WILDISH shall fully compensate COUNTY for any and all materials and services provided by COUNTY as may be required by the ODOT Rail Division FINAL ORDER Docket No. RX-1264. Wildish agrees that the type and method of construction and maintenance, together with any decisions affecting the costs thereof, shall be in the sole discretion of the County.

2. WILDISH shall fully compensate COUNTY for materials and services provided by COUNTY in any future construction and maintenance of the railroad crossing provided by County pursuant to the Order or of any revision or modification of the ODOT Order. It is understood by WILDISH that the COUNTY will not be responsible for installation or maintenance costs for other road or utility improvements on Newman Street, including any storm drainage piping or appurtenance, or storm drainage or pavement features whether or not required either by the ODOT Rail Division Final Order or by the City of Springfield.

3. Further, WILDISH shall fully compensate COUNTY for costs incurred in widening the crossing, if necessary, to meet current Lane County road design standards. WILDISH it's successors and assigns, shall not allow the construction of new driveways within 100 feet of the railroad track at the grade crossing without written approval of ODOT Rail and consent of the County.

4. Any payments by WILDISH to COUNTY will be made within thirty (30) days of receipt of an invoice from COUNTY.

5. In the event the City of Springfield does not take over ownership and maintenance responsibility for Newman Street, WILDISH will continue to provide funding deemed necessary by COUNTY to maintain the rail crossing features for 3 years following final execution of this agreement. Wildish agrees that this agreement may be extended for additional 3 year periods at the option of County, and that said option shall be deemed to be exercised by the County absent written notification

of discontinuance or termination delivered to Wildish prior to the end of any 3 year term. This agreement will be terminated upon City of Springfield taking over jurisdiction and maintenance responsibility of Newman Street, and upon concurrence of the proposed transfer by ODOT.

6. The applicable provisions of the Lane Manual setting forth standard provisions for public contracts (LM 21.130) are hereby incorporated by reference as if fully set forth herein.

7. WILDISH agrees to indemnify, defend, and hold Lane County, its Commissioners, agents, officers, and employees harmless from and against all claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature resulting from or arising out of the activities of, or failure to perform by WILDISH or its officers, employees, subcontractors, or agents under this contract. Wildish further agrees to indemnify, defend, and hold Lane County, its Commissioners, agents, officers and employees harmless from and against all claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature that may be brought by it, it's agents, assigns, or tenants of the property adjacent to Newman Street, as described in Attachment "1" to this Agreement, on account of County's performance or failure to perform under the terms of this agreement. Wildish agrees that this provision shall bind future owners and occupiers of the property, and that this agreement may be recorded as an interest in land.

8. Responsibility for payment of damages: Nothing contained in these insurance requirements is to be construed as limiting the extent of WILDISH'S responsibility for payment of damages resulting from WILDISH'S operation under this contract.

9. By execution of this contract, WILDISH certifies under penalty of perjury that:

- a. To the best of WILDISH'S knowledge, WILDISH is not in violation of any tax laws described in ORS 305.380(4); and
- b. WILDISH has not discriminated against minority, women or small business enterprises in obtaining any required subcontracts.

10. WILDISH shall have all licenses and permits necessary to perform the contract.

11. The COUNTY shall not be obligated to perform services any greater in scope than that stated in Provision #1.

12. County will sustain damages if Wildish does not perform its obligations to compensate County as set forth herein. In any such event, should Wildish not tender payment within 30 days of written notice of non-receipt of invoice payment, Wildish agrees to pay not as a penalty but as liquidated damages, and in lieu of any future payment under this agreement, the sum of \$10,000.00. Such payment will not release Wildish of any other obligation herein, nor does acceptance of the liquidated damages amount by the County waive the County's right to collect any additional damages it may sustain by reason of any additional breach of this agreement.

13. Modifications or amendments to this contract shall be effective only if in writing and executed by both parties.

14. Dispute Resolution. The parties shall exert every effort to cooperatively resolve any disagreements they may have under this Agreement. In the event that the parties alone are unable to resolve any conflict under this Agreement, they agree to present their disagreements to a mutually selected mediator. Each party shall bear its own costs for mediation and the parties shall share the cost of the mediator. This procedure shall be followed to its conclusion prior to either party seeking relief from a court, except in the case of an emergency.

If the dispute remains unresolved through mediation, the parties may agree in writing to submit the dispute to arbitration, using such arbitration process as they may choose at the time and which includes the following conditions:

- a. The location of the arbitration shall be in Eugene, Oregon;
- b. Each party shall bear its own costs (except arbitration filing costs), witness fees, and attorney fees;
- c. Arbitration filing costs and any arbitrator's fees will be divided equally between the parties; and
- d. Judgment upon award rendered by the Arbitrator may be entered in a court in Lane County, Oregon.

15. The parties may jointly agree to terminate this agreement and upon the terms of such termination. The County may terminate this contract at any time for any reason or for no reason with no liability on its part, by giving WILDISH 30 day's written notice.

16. Waiver. Failure of the County to enforce any provision of the contract shall not constitute a waiver or relinquishment by the County of the right to such performance in the future nor of the right to enforce that or any other provision of this contract.

17. Severability. If any provision of this contract is declared by a court to illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected; and the rights and obligations of the parties shall be construed and enforced as if the contract did not contain the particular provision held to be invalid.

LANE COUNTY, OREGON

DATE: _____

BY: _____
William A. Van Vactor
County Administrator

WILDISH INDUSTRIAL DEVELOPMENT
CORPORATION

DATE: _____

BY: _____

Title: _____

Address: _____

Business ID No.: _____

Exhibit "C"

REIMBURSEMENT AGREEMENT FOR

Newman Street Railroad-Highway Grade Crossing Improvements

THIS AGREEMENT is entered into by and between LANE COUNTY, OREGON, a political subdivision of the State of Oregon, hereinafter called COUNTY, and WILDISH INDUSTRIAL DEVELOPMENT CORPORATION hereinafter called WILDISH.

Whereas, Newman Street is a Local Access Road (LAR) and as such is subject to applicable State Laws, including ORS 368.031, which states the COUNTY may spend money on Local Access Road improvements only under limited circumstances, and only by order or resolution by the Board.

Whereas, WILDISH owns real property on both sides on Newman Street insofar as is relevant to the railroad-highway crossing subject to the proposed Oregon Department of Transportation (hereinafter, "ODOT") Order in RX 1264, at Exhibit "A," and

Whereas, WILDISH agrees to fully compensate COUNTY for construction and on-going maintenance expenditures incurred by COUNTY in the performance of any and all required conditions as may be contained in the ODOT FINAL ORDER in RX 1264.

NOW, THEREFORE, the parties agree:

1. In consideration for COUNTY'S performance of construction and maintenance activities required of COUNTY as specified in the ODOT Rail Division FINAL ORDER in RX 1264 (the Order), WILDISH shall fully compensate COUNTY for any and all materials and services provided by COUNTY as may be required by the ODOT Rail Division FINAL ORDER in RX 1264. Wildish agrees that the type and method of construction and maintenance, together with any decisions affecting the costs thereof, shall be in the sole discretion of the County.

2. WILDISH shall fully compensate COUNTY for materials and services provided by COUNTY in any future construction and maintenance of the railroad crossing provided by County pursuant to the Order or of any revision or modification of the ODOT Order. It is understood by WILDISH that the COUNTY will not be responsible for installation or maintenance costs for other road or utility improvements on Newman Street, including any storm drainage piping or appurtenance, or storm drainage or pavement features whether or not required either by the ODOT Rail Division Final Order or by the City of Springfield.

3. Further, WILDISH shall fully compensate COUNTY for costs incurred in widening the crossing, if necessary, to meet current Lane County road design standards. WILDISH, its successors and assigns, shall only allow the construction of new driveways near the railroad track at the grade crossing in compliance with ODOT requirements.

4. Any payments by WILDISH to COUNTY will be made within thirty (30) days of receipt of an invoice from COUNTY.

5. In the event the City of Springfield does not take over ownership and maintenance responsibility for Newman Street, WILDISH will continue to provide funding deemed necessary by COUNTY to maintain the rail crossing features following final execution of this agreement. This agreement will be terminated upon City of Springfield taking over jurisdiction and maintenance responsibility of Newman Street, and upon concurrence of the proposed transfer by ODOT.

6. The applicable provisions of the Lane Manual setting forth standard provisions for public contracts (LM 21.130) are hereby incorporated by reference as if fully set forth herein.

7. WILDISH, on behalf of itself and its successors and assigns, agrees to indemnify, defend, and hold Lane County, its Commissioners, agents, officers, and employees harmless from and against all claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature resulting from or arising out of the activities of, or failure to perform by WILDISH or its officers, employees, subcontractors, or agents under this contract. WILDISH further agrees to indemnify, defend, and hold Lane County, its Commissioners, agents, officers and employees harmless from and against all claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature that may be brought by it, its agents, assigns, or tenants of the property adjacent to Newman Street, as described in Attachment "1" to this Agreement, on account of County's performance or failure to perform under the terms of this agreement. However, WILDISH shall not be required to indemnify any indemnitee to the extent the damage, loss or expense is caused by the indemnitee's negligence.

8. Responsibility for payment of damages: Nothing contained in these insurance requirements is to be construed as limiting the extent of WILDISH'S responsibility for payment of damages resulting from WILDISH'S operation under this contract.

9. By execution of this contract, WILDISH certifies under penalty of perjury that:

- a. To the best of WILDISH'S knowledge, WILDISH is not in violation of any tax laws described in ORS 305.380(4); and
- b. WILDISH has not discriminated against minority, women or small business enterprises in obtaining any required subcontracts.

10. WILDISH shall have all licenses and permits necessary to perform the contract.

11. The COUNTY shall not be obligated to perform services any greater in scope than that stated in Provision #1.

12. County will sustain damages if WILDISH does not perform its obligations to compensate County as set forth herein. In any such event, should WILDISH not tender payment within 30 days of written notice of non-receipt of invoice payment, WILDISH agrees to pay not as a penalty but as liquidated damages, and in lieu of any future payment under this agreement, the sum of \$3,500.00. Such payment will not release WILDISH of any other obligation herein, nor does acceptance of the liquidated damages amount by the County waive the County's right to collect any additional damages it may sustain by reason of any additional breach of this agreement.

13. Modifications or amendments to this contract shall be effective only if in writing and executed by both parties.

14. Dispute Resolution. The parties shall exert every effort to cooperatively resolve any disagreements they may have under this Agreement. In the event that the parties alone are unable to resolve any conflict under this Agreement, they agree to present their disagreements to a mutually selected mediator. Each party shall bear its own costs for mediation and the parties shall share the cost of the mediator. This procedure shall be followed to its conclusion prior to either party seeking relief from a court, except in the case of an emergency.

If the dispute remains unresolved through mediation, the parties may agree in writing to submit the dispute to arbitration, using such arbitration process as they may choose at the time and which

includes the following conditions:

- a. The location of the arbitration shall be in Eugene, Oregon;
- b. Each party shall bear its own costs (except arbitration filing costs), witness fees, and attorney fees;
- c. Arbitration filing costs and any arbitrator's fees will be divided equally between the parties; and
- d. Judgment upon award rendered by the Arbitrator may be entered in a court in Lane County, Oregon.

15. The parties may jointly agree to terminate this agreement and upon the terms of such termination. The County may terminate this contract at any time for any reason or for no reason with no liability on its part, by giving WILDISH 30 day's written notice.

16. Waiver. Failure of the County to enforce any provision of the contract shall not constitute a waiver or relinquishment by the County of the right to such performance in the future nor of the right to enforce that or any other provision of this contract.

17. Severability. If any provision of this contract is declared by a court to illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected; and the rights and obligations of the parties shall be construed and enforced as if the contract did not contain the particular provision held to be invalid.

LANE COUNTY, OREGON

DATE: _____

BY: _____
William A. Van Vactor
County Administrator

WILDISH INDUSTRIAL DEVELOPMENT CORPORATION

DATE: _____

BY: _____

Title: _____

Address: _____

Business ID No.: _____

APPROVED AS TO FORM

Date _____ Lane County