

W8b

AGENDA COVER MEMORANDUM

AGENDA DATE: April 30, 2003

TO: LANE COUNTY BOARD OF COMMISSIONERS

FROM: Lane County Community and Economic Development Program

PRESENTED BY: Peter Thurston, Community and Economic Development Coordinator

AGENDA ITEM TITLE: ORDER/IN THE MATTER OF AUTHORIZING AN APPLICATION FOR A LOAN FROM OREGON ECONOMIC AND COMMUNITY DEVELOPMENT DEPARTMENT FOR SOUTH 79TH STREET WATER SYSTEM IMPROVEMENTS AND ENTERING INTO AN INTERGOVERNMENTAL AGREEMENT WITH SPRINGFIELD UTILITY BOARD AND SOUTH 79TH STREET IMPROVEMENT DISTRICT

I. MOTION

IT IS MOVED THAT THE ORDER BE ADOPTED IN THE MATTER OF AUTHORIZING AN APPLICATION FOR A LOAN FROM OREGON ECONOMIC AND COMMUNITY DEVELOPMENT DEPARTMENT FOR SOUTH 79TH STREET WATER SYSTEM IMPROVEMENTS AND ENTERING INTO AN INTERGOVERNMENTAL AGREEMENT WITH SPRINGFIELD UTILITY BOARD AND SOUTH 79TH STREET IMPROVEMENT DISTRICT

II. ISSUE OR PROBLEM

Shall Lane County be the applicant for Oregon Economic and Community Development Department loan funds, to design and construct water system facilities in the South 79th Street Improvement District (District), east of the City of Springfield, and enter into an intergovernmental agreement (IGA) with Springfield Utility Board (SUB) and the District.

III. DISCUSSION

A. Background.

The South 79th Street Improvement District (aka: South 79th Street Water Association) was formed to solve a water quantity and quality problem that worsens each year. Please see the attached letter from the District (Attachment A) requesting Lane County approval of the draft IGA to facilitate financing of water system improvements. The District has made great strides over the past two years toward its goal of constructing improvements that connect with the (SUB) system in 2004, summarized in the provisions of the intergovernmental agreement (IGA) attached as Attachment C, including three phase of

development: 1) pre-construction, construction, and post construction. The Boundary Commission Order (Attachment B) that allows for extraterritorial extension of water service is the basis of the IGA.

This memorandum is directed to applying for the funding from the Oregon Economic and Community Development Department (OECDD) to finance improvements and related costs estimated at approximately \$700,000. Other options were considered, including the federal Rural Development agency. Due to additional fees, design costs, loan security, and the unknown final construction cost, the total loan/grant may exceed \$750,000. OECDD is the most direct source of a loan at about 5 percent interest.

In July 2001, based on advice from County Counsel, Commissioner Dwyer sent a letter to the Springfield city manager requesting the city sponsor the South 79th Street water project. The city manager responded in August, deferring this utility function to SUB, and expressing support for the project. Springfield staff has been very helpful in gathering information and facilitating necessary actions by the city council to allow an extraterritorial extension of water service to South 79th. The city council took action in April 2002 supporting the extraterritorial extension of water, with the condition that members of the District sign and record a document restricting subdividing of properties until storm water and sanitary sewer service are available. The Boundary Commission ratified and approved all of these actions in their Order on June 6, 2002 (Attachment B).

On November 14, 2001 the District took their case to the Springfield Utility Board and requested that SUB be the applicant for the loan from the Oregon Special Public Works Fund of about \$650,000 to design and build the system improvements. This estimated cost was determined through pre-engineering by SUB and a preliminary engineering report by Poage Engineering, paid for by the District in March 2002. About \$50,000 is needed to establish the reserve account, for a total loan request of \$700,000. The SUB board declined to be the applicant. The SUB board did take action needed to recommend the extraterritorial extension and expressed willingness to work with Lane County through an intergovernmental agreement. For the past year County Counsel has developed an IGA format, reviewed it with SUB and District legal counsels and involved bond counsel in issues that concluded in finalizing the draft intergovernmental agreement attached hereto. This IGA was approved by the SUB board on April 9, 2003. The District board forwarded their request (Attachment A) to Lane County to finalize the IGA and seek loan funding for the project.

B. Analysis.

The District's project schedule is aimed toward design in late 2003 and construction in 2004. This is desirable not only to solve the water problem, but to take advantage of low interest rates, making the project more affordable. The next step in securing loan funds is to sign the IGA and apply to Oregon Economic and Community Development Department (OECDD). The basis of the application will be the Intergovernmental Agreement, prepared by Lane County Counsel, outlining the responsibilities of each party. SUB's board, at the

recommendation of their staff and counsel, approved the IGA and authorized SUB's general manager to sign it.

The attached ORDER authorizes an application for loan funds to design and construct public water facilities, establish the reserve account, and to enter into agreements with the District and SUB, as necessary, to complete design, construction, transfer ownership, and assure collection of funds to pay back the loan. The IGA is organized in three phases: pre-construction, construction and post-construction, with responsibilities for each party to the agreement described in each phase. The Lane County Board of Commissioners is asked to assume the following key areas of responsibility for Lane County in the initiation of this process: 1) be the applicant for the loan and provide the loan backing from the general fund of Lane County. The risks associated with this action include guaranteeing payments that are secured by liens from District members. County Counsel has outlined those risks in the attached Exhibit D, and will be available to answer questions. These surety responsibilities carry through the term of the project to pay off a 20-year bond. 2) The second area of responsibility Lane County assumes is to be the owner of the design and construction process until it is substantially complete and ownership is turned over to SUB. Being responsible for hiring the engineer and constructing the facilities in accordance with state law provides Lane County assurance that the loan funds are properly managed. This process will be overseen by Lane County Community and Economic Development staff. Upon achievement of substantial completion, the IGA provides for on-going, shared financial management by SUB and the District. Lane County would become involved only in the case of major financial default, after procedures had been followed to solve disputes.

Risks to Lane County from this action include; paying back the loan, ownership of the project during construction, the staffing time needed to solve legal and logistic issues related to funding, and contracting for design and construction. The IGA provides for the District to sign with SUB and Lane County to undertake these activities in the public interest. The proposal to OECDD is that the pledged revenues from the District will be security for the loan. County Counsel's memorandum outlines more details about the risks Lane County assumes under the proposed action.

Up to 100 hours of C&ED staff time each year may be available through the Technitrain funding received by the Community and Economic Program. A total of 150 hours is estimated to be needed in the coming fiscal year to facilitate the process, including securing engineering and management services for the project. The draft loan budget includes \$10,000 for grant administration by Lane County. The District has indicated a willingness to cover costs of this type. The loan may allow the costs to be incorporated in monthly payments. Lane County's Technitrain grant can provide some support in fiscal years 03-04 and 04-05 to help minimize cost to the District.

The District members have explored all options for funding the improvements and concluded OECD is the best source. Even with a low loan rate, the monthly cost for each household will likely exceed \$100. They may go as high as \$150 per month, which may be unaffordable. Minimizing costs by sharing responsibilities is the only way to keep rates

affordable. Lane County is the only eligible applicant for OECDD funds that is willing to consider filling this general government function.

C. Alternatives/Options. The Board has the following options:

- 1) Approve the ORDER authorizing application for funding of a loan and execution of the agreement with SUB and the District to complete the steps for funding design, construction, and payback of the loan, or
- 2) Determine not to authorize an application for funding at this time and place certain conditions on the District in order to make such an application, or
- 3) Determine not to be the applicant for the loan.

D. Recommendations. Number 1 is recommended, to authorize application for loan funding, signing of the IGA with SUB and the District, in substantial conformance with the attached draft, and after review by County Counsel.

E. Timing. The District is working toward construction of facilities in 2004 to eliminate the water problem. To accomplish this the application for loan/grant funding will need to be submitted and approved in mid-2003.

IV. IMPLEMENTATION/FOLLOW-UP

Upon approval of the board, an application will be submitted to the Oregon Economic and Community Development Department for approximately \$700,000, as determined by the project cost estimate and the OECDD request for an application. The IGA and loan offer from OECDD will be returned to the Board for final adoption before the loan security liens are secured and the design process is initiated.

ATTACHMENTS

ORDER

- A – 79th Street Improvement District letter
- B – Boundary Commission ORDER with list of properties to be served
- C – IGA with SUB and District
- D – County Counsel memorandum re: risks

\\BCC 79th IGA-loan app 03.doc

IN THE BOARD OF COUNTY COMMISSIONERS, LANE COUNTY, OREGON

ORDER NO.

-) IN THE MATTER OF AUTHORIZING AN APPLICATION FOR
-) A LOAN FROM OREGON ECONOMIC AND COMMUNITY
-) DEVELOPMENT DEPARTMENT FOR SOUTH 79TH STREET
-) WATER SYSTEM IMPROVEMENTS AND ENTERING INTO
-) AN INTERGOVERNMENTAL AGREEMENT WITH
-) SPRINGFIELD UTILITY BOARD AND SOUTH 79TH STREET
-) IMPROVEMENT DISTRICT

WHEREAS, the South 79th Street Improvement District (District) was created by the residents of this neighborhood east of the City of Springfield to solve water quantity and quality deficiencies, and

WHEREAS, the Lane County Boundary Commission has approved extraterritorial extension of water service to certain South 79th Street Improvement District qualified members, and

WHEREAS, Lane County is the general government jurisdiction representing the South 79th Street Improvement District neighborhood, and

WHEREAS, Springfield Utility Board (SUB) is willing to become a party to an intergovernmental agreement that will coordinate the activities of Lane County, SUB, and the District, to complete the design, construction, ownership, and operation of the planned facilities, and

WHEREAS, Oregon Economic and Community Development Department has loan funds that may be approved for the project, and

WHEREAS, the Board of County Commissioners has determined that it is in the public interest to assist in securing funding to design and construct water system facilities to solve the District's water quantity and quality problems; now, therefore,

IT IS HEREBY ORDERED that Lane County apply for loan and grant funding from the Oregon Economic and Community Development Department for design, construction, and related costs to complete the South 79th Street Water Facility Improvement Project; and it is

FURTHER ORDERED that the intergovernmental agreement with SUB and the District is hereby approved in substantial conformance with the form attached to the agenda packet, subject to final review by County Counsel and it is

FURTHER ORDERED that the County Administrator is authorized to sign the loan application and related documents necessary to complete the application process.

Signed this 30th day of April 2003.

Peter Sorenson, Chair
BOARD OF COUNTY COMMISSIONERS

APPROVED AS TO FORM
Date 4/22/03 Lane County
Peter Sorenson
OFFICE OF LEGAL COUNSEL

South 79th St. Improvement District
P. O. Box 50
Thurston, OR 97482

April 16, 2003

Lane County Commissioners
Public Service Building
125 E. 8th Avenue
Eugene, OR 97401

RE: South 79th Street water project

Dear Commissioners:

In October 2000 our neighborhood formed "The South 79th Street Improvement District". Our corporation currently has 33 members. The goal of our District is to bring potable water to our homes at an affordable price.

For as many years as anyone can remember residents of our area have had problems with the lack of potable water. The majority of property owners in our area have over time, drilled multiple wells, most of which with passing time have all gone dry. The method currently used by over 2/3 of the residents in our area to supply water to our homes is to haul it to storage tanks by trailer or pickup.

The first recorded efforts to get funding for a water supply system in the South 79th Street neighborhood dates back to 1983. Since then we have pursued numerous avenues and ideas of how to solve our problem. With much research and effort we now have a do-able solution!

The South 79th Street Improvement District is asking that the Lane County Commissioners agree to an Intergovernmental Agreement, which is a result of a cooperative effort between Lane County representatives, SUB and our membership. We also ask that you would, on our behalf, apply for a loan to finance and carry out this project, in accordance with the Intergovernmental Agreement.

Thank you for your support.

Signed by District board members, on behalf of members of the South 79th Street Improvement District

Robert Kokotan

Bob Kokotan - President

Mike Davis

Mike Davis – Vice President

Renne Hill

Renne Hill - Secretary

LANE COUNTY LOCAL GOVERNMENT BOUNDARY COMMISSION

FINAL ORDER 1193

Approved: June 6, 2002
Effective: June 6, 2002

(File X W 01 - 49
(In the Matter of a Water Line
(Extension Extraterritorially
(By the City of Springfield

- Legal Description Attached as Exhibit A -

WHEREAS, the City of Springfield submitted a request on November 6, 2001—in accordance with ORS 199.464—for an extraterritorial water line extension, and was modified at the public hearing as described in attached Exhibit A and as shown on attached map Exhibit B; and,

WHEREAS, at the December 6, 2001, and February 7, 2002, commission meetings, the matter was continued to the June 6, 2002, commission meeting; and

WHEREAS, the commission duly published notice of public hearing in accordance with ORS 199.463 and in accordance with the rules of the commission and ORS 199.452(1), conducted a public hearing on June 6, 2002; and,

WHEREAS, on the basis of the study of the proposal, which considered economic, demographic, and sociological trends and physical development of the land, and of the public hearing, the commission approved the proposal and made the findings and reasons attached as Exhibit C.

NOW THEREFORE IT IS ORDERED: The majority of the members of the commission at the public hearing approved the extraterritorial water line extension.

ORDERED BY THE LANE COUNTY LOCAL GOVERNMENT BOUNDARY COMMISSION
THIS 6th DAY OF JUNE, 2002.

Van Heeter, Vice Chair

Date

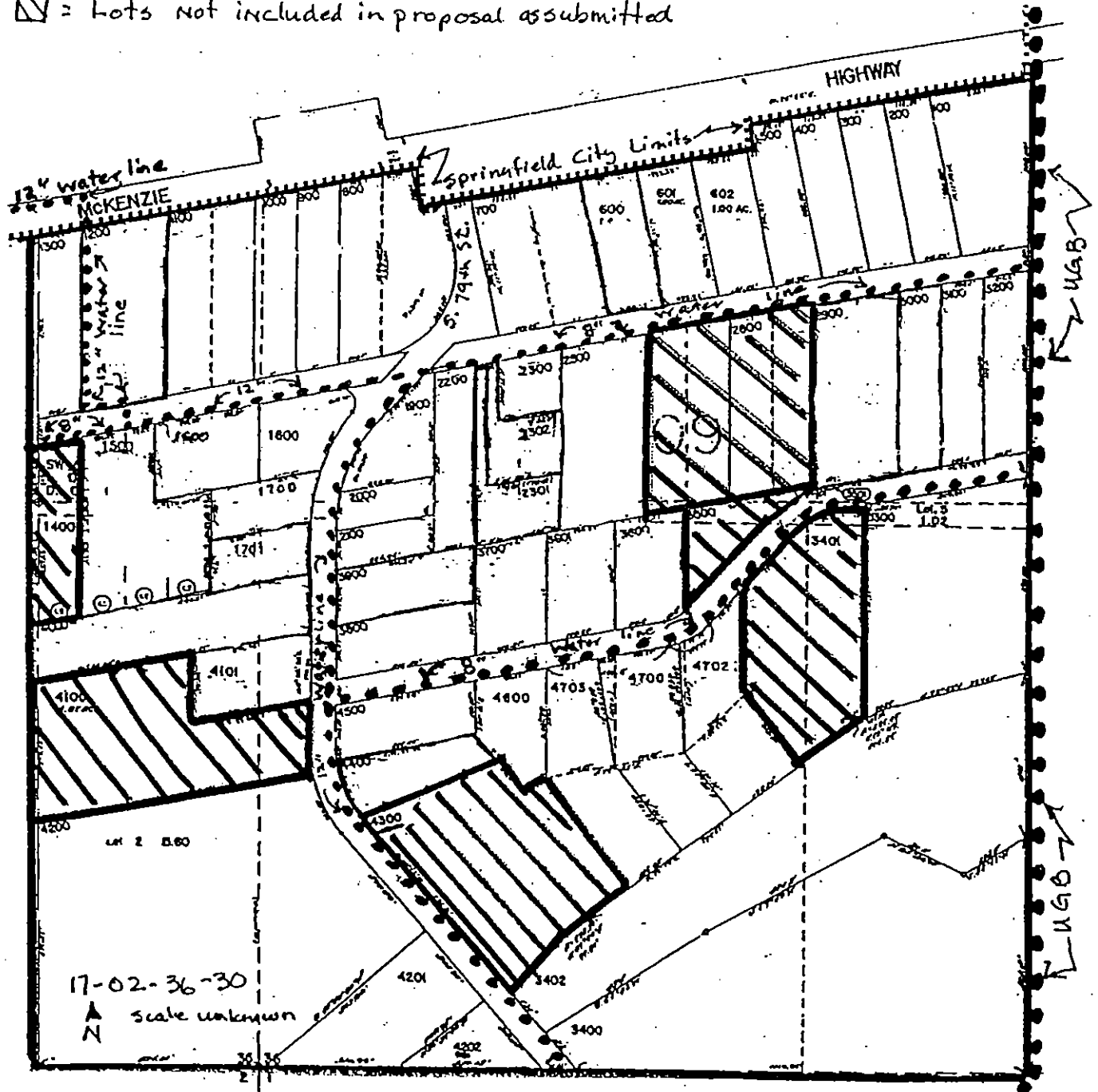
S 79th Water Extension Request (BC File X W 01 - 49)

Information from LC Assessment and Taxation (6/6/02); map updated last November 9, 2001

17-02-36-30	Property Owner	Mailing Address	Site Address	Imp. Value	Annexation Agreement	Declaration
100	Jerry & Phyllis Buessow	8170 S A St Springfield, OR 97478	8170 S A St	Yes 1.80 ac	Yes	Yes
300	D A & Betty Eldridge	90229 Greenwood Dr Leaburg, OR 97489	8085 McKenzie Hwy	Yes 1 ac	Yes	Yes
400	Frank Smith	8055 McKenzie Hwy Springfield, OR 97478	8055 McKenzie Hwy	Yes 1 ac	Yes	Yes
500	Elizabeth Ann Kelly	8033 McKenzie Hwy Springfield, OR 97478	8033 McKenzie Hwy	Yes 1 ac	Yes	Yes
601	Anthony Morse Jennifer Stoneburg	557 S 49th Pl Springfield, OR 97478	7976 S A St	No 4.08 ac	Yes	Yes
602	Michael & Lucille Davis	7990 S A St Springfield, OR 97478		Yes 1 ac	Yes	Yes
700	David Biancalana	7915 McKenzie Hwy Springfield, OR 97478	7915 McKenzie Hwy	No 1 ac	Yes	Yes
701	David Biancalana	7215 McKenzie Hwy Springfield, OR 97478		Yes 1 ac	Yes	Yes
800	Randall & Betty Reilly	180 S 79th St Springfield, OR 97478	180 S 79th St	Yes 2.34 ac	Yes	Yes
900	Michael & Ana Marie Hagen	7850 S A St Springfield, OR 97478		MH 1 ac	Yes	Yes
1000	Norman & Elsie Dolby	7797 1/2 McKenzie Hwy Springfield, OR 97478		No 1 ac	Yes	Yes
1300	Brian Peck	7740 S A St Springfield, OR 97478	7740 S A St	Yes 1 ac	Yes	Yes
1500	David & Hydee Oehler	7795 S A St Springfield, OR 97478		Yes 1.43 ac	Yes	Yes
1501	Mark McMann	P.O. Box 41901 Eugene, OR 97404		No 1.01 ac	Yes	Yes
1600	David & Hydee Oehler	7795 S A St Springfield, OR 97478	7795 S A St	Yes 1 ac	Yes	Yes
1700	David & Hydee Oehler	7795 S A St Springfield, OR 97478	256 S 79th St	No 2.13 ac	Yes	Yes
1701	David & Hydee Oehler	7795 S A St Springfield, OR 97478	278 S 79th St	No ? ac	Yes	Yes
1800	Michael Moff	7875 S A St Springfield, OR 97478		Yes .83 ac	Yes	Yes
2000	Robert & Billie Davis (Billie deceased)	279 S 79th St Springfield, OR 97477	265 S 79th St	MH .50 ac	Yes	Yes
2100	Robert & Billie Davis (Billie deceased)	279 S 79th St Springfield, OR 97477	279 S 79th St	Yes .49 ac	Yes	Yes
2300	Timothy & Catharine Perkins	7935 S A St Springfield, OR 97478	7935 S A St 7935 1/2 S A St	Yes .49 ac	Yes	Yes
2301	Shirle Pluid	1575 Horn Ln Eugene, OR 97404	7925 S A St	Yes .84 ac	Yes	Yes
2302	Shirle Pluid	P.O. Box 42250-0591 Eugene, OR 97404-0591		No .67 ac	Yes	Yes
2500	Francis Hamer	7955 S A St Springfield, OR 97478	7955 S A St	Yes 2 ac	Yes	Yes
2900	Eric Mahaffy & Holley Woods-Mahaffy	8089 S A St Springfield, OR 97478	8089 S A St	Yes 2 ac	Yes	Yes

17-02-36-30	Property Owner	Mailing Address	Site Address	Imp. Value	Annexation Agreement	Declaration
3000	Noel & Carol Van Dyke	90729 Fish Hatchery Rd Leaburg, OR 97489		No 1 ac	Yes	Yes
3100	Noel & Carol Van Dyke	90729 Fish Hatchery Rd Leaburg, OR 97489		No 1 ac	Yes	Yes
3200	Robi Murray	8157 S A St Springfield, OR 97478	8157 S A St	Yes 1.10 ac	Yes	Yes
3300	Floyd & Renee Hill	8155 S C St Springfield, OR 97478	8155 S C St	Yes 4.41 ac	Yes	Yes
3400	John Paul Bailey Trust Wendy Nina Bailey Trust John Bailey, Trustee Wendy Bailey, Trustee	PO Box 545 Eugene, OR 97440	679 S 79th St	Yes 10.16 ac	Yes	Yes
3402	John Paul Bailey Trust Wendy Nina Bailey Trust John Bailey, Trustee Wendy Bailey, Trustee	PO Box 545 Eugene, OR 97440		No 7.81 ac	Yes	Yes
3601	Merl & H P Pickering	7995 S C St Springfield, OR 97477	7995 S C St	Yes 1 ac	Yes	Yes
3700	Michael & Cheryl Wilson	7940 S C St Springfield, OR 97478	7940 S C St	Yes 1 ac	Yes	Yes
3800	Richard & Ann Olsen	7905 S C St Springfield, OR 97478	7905 S C St	Yes 1 ac	Yes	Yes
3900	Vickie Davis Jeanette Nadeau	279 S 79th St Springfield, OR 97477		No 1 ac	Yes	Yes
4101	Diane & Jack Lund	366 S 79th St Springfield, OR 97478	366 S 79th St	Yes 1.06 ac	Yes	Yes
4200	Darin Gorham	4092 Hampshire Ln Eugene, OR 97404		No 10.84 ac	Yes	Yes
4201	Robert Kokotan	490 S 79th St Springfield, OR 97477	490 S 79th St	Yes 1.83 ac	Yes	Yes
4202	Robert Kokotan	490 S 79th St Springfield, OR 97477		No .67 ac	Yes	Yes
4300	George & Carmen Stinson	495 S 79th St Springfield, OR 97478	495 S 79th St	Yes 4.05 ac	Yes	Yes
4400	FBO Billie Welsh Meredith Parson, Custodian	32 Sunset Dr Summit, New Jersey	427 S 79th St	Yes .99 ac	Yes	Yes
4500	Robin Welsh	427 S 70th Ave Springfield, OR 97478		No 1 ac	Yes	Yes
4600	Gordon & Kathleen Bushman	7925 S C St Springfield, OR 97478	7925 S C St	Yes .87 ac	Yes	Yes
4700	Donald & Antionette Kloch	8020 S C St Springfield, OR 97478	8020 S C St	Yes 1.88 ac	Yes	Yes
4702	Mauvra & Richard Roebuck	8030 S C St Springfield, OR 97478	8030 S C St	Yes 1.73 ac	Yes	Yes
4703	James & Sharon Bundrant	7945 S C St Springfield, OR 97478	7945 S C St 8060 S C St	Yes 1.88 ac	Yes	Yes

☐ = Lots not included in proposal as submitted



Water Line Extension/Connection – City of Springfield/SUB (S. 79th Street) – X W 01 - 49
Located in south Springfield, south of Main Street, east and west of South 79th Street; to serve all properties in T17S R02W S36 Map 30 except tax lots 1400, 2800, 3401, 3500, 4100, 4300.

INTERGOVERNMENTAL AGREEMENT

THIS AGREEMENT is entered into by and between LANE COUNTY, a political subdivision of the State of Oregon, hereinafter referred to as "County," the City of Springfield acting by and through SPRINGFIELD UTILITY BOARD, hereinafter referred to as "SUB", and the SOUTH 79TH STREET IMPROVEMENT DISTRICT, a public nonprofit corporation organized pursuant to ORS Ch. 554, hereafter referred to as "District."

RECITALS

WHEREAS, ORS 190.010 and the Lane County Home Rule Charter provide that units of local governments may enter into agreements for the performance of any or all functions and activities that a party to the agreements, its officers or agents, have authority to perform, and

WHEREAS, the South 79th Street area has experienced domestic potable water quantity problems for more than 30 years, which resulted in the citizens forming the District as a funding mechanism to provide a solution, and

WHEREAS, the District covers an area generally described as located in south Springfield, south of Main Street, and east and west of South 79th Street, and

WHEREAS, the County can apply to the State for grants and loans to address water quantity problems, and can construct or cause to be constructed the applicable public improvement project (hereafter "the waterworks"), and

WHEREAS, SUB is in the business of the provision of water, the operation and maintenance of waterworks and the setting and collections of fees therefore, and

WHEREAS, the District is located within the Springfield Urban Growth Boundary and SUB is the logical service provider of water for the District, and

WHEREAS, the City of Springfield is not in a position at this time to provide the full range of public services to the District such that annexation is a logical choice, and

WHEREAS, ORS 554.260 authorizes the District to enter into agreements with governmental agencies for financial assistance, and further, ORS Ch. 554 authorizes the District to levy and assess lands within the District or to bill and collect fees and other charges necessary to pay for the construction of waterworks and the provision of water, and to foreclose on properties within the District in the event of delinquencies, and

WHEREAS, the District desires to enter into this Intergovernmental Agreement in order to act on behalf of the County for the billing and collection of fees and other charges necessary to pay for the construction of the waterworks; and

WHEREAS, it is in the County's interest to have its residents be able to procure potable water and to be financially responsible for the improvements necessary to provide such, and

WHEREAS, the County is willing to seek grant and/or loan funds for the benefit of the District and to build waterworks necessary to solve the water quantity problems for the District and SUB is willing to operate such waterworks and perform necessary administrative and financial functions for the District but only in its role as fiscal agent for and consultant to the District and only if the District is willing to assume full financial responsibility to bill and collect fees and other charges as necessary to reimburse the County for the construction of the waterworks and SUB for these services, and

WHEREAS, if the County receives a loan for the benefit of the District, the District will be indebted to repay the loan on behalf of the County, and in such case the County (but not SUB) is acknowledged to be a creditor of the District pursuant to ORS 554.140, and

WHEREAS, the District is willing to assume full financial responsibility to reimburse County and SUB for all services described herein and to repay the loan that may be received by the County on behalf of the District, and

WHEREAS, on June 6, 2002, the Lane County Boundary Commission approved the extraterritorial extension of water lines to the District, based on a preliminary design of 2900' of 12" line, 3000' of 8" line, 7 fire hydrants and 1 1500 gpm pump station, which approval is limited to the specific identified members of the District at the time of Boundary Commission approval, and

WHEREAS, the District and SUB agree on the importance of long-range planning and are committed to providing the best reasonably possible long and short-term service, including investment in facilities, to all customers in the urban growth boundary area, and

WHEREAS, annexation ordinances have been duly and regularly passed by the Lane County Boundary Commission, and future annexation ordinances are anticipated to be passed in the future; and

WHEREAS, the District and SUB acknowledge that, with time, District will cease to exist as a water supply and distribution utility and SUB will eventually provide all water service within the Springfield Urban Growth Boundary (UGB),

NOW THEREFORE, THE PARTIES AGREE AS FOLLOWS:

PRE-CONSTRUCTION PHASE

1. County shall:

a. Apply for state grants and/or loans to fund construction of waterworks for the District.

b. Subject to SUB and District agreement to the conditions, accept and administer any state grants or loans that are awarded.

c. Select an engineer to design the waterworks through an appropriate competitive selection process.

d. Subject to SUB approval and District approval and agreement to be ultimately responsible for the costs, contract with an engineer to design the waterworks in accordance with SUB's standards. Payment of the engineer shall be from the grant/loan funds, or other funds supplied by the District, and from funds supplied by SUB for excess capacity per paragraph 2(e) below. County shall be ultimately responsible for management of the engineering contract.

e. Let a bid and administer the bidding process for a public improvement contract for the waterworks.

f. Subject to SUB approval and District approval and District agreement to be ultimately responsible for the costs, award a construction contract for the waterworks to the lowest responsible bidder. All construction bonds, performance bonds, insurance, and indemnities provided by lowest responsible bidder shall name County, SUB, and District as additional beneficiaries and insureds. County shall be ultimately responsible for management of the construction contract; however, it shall not agree to any amendment which increases costs without District approval.

2. SUB shall:

a. Bill the District for all direct SUB costs incurred by SUB during this phase of the project. SUB costs will include but not be limited to wages and benefits, copy services, vehicle usage, postage, and attorney fees.

b. Notify County and District of agreement with or objection to the conditions of any state grant or loan that may be offered for the construction of the waterworks.

c. Notify County and District of agreement with or objection to or concerns about the engineering contract for the design and construction administration for the waterworks.

d. Cooperate with the engineer and District in the development of a design for the waterworks. Review and notify County and District of approval of the final design.

e. Pay for any design costs related to the provision of excess capacity of the waterworks beyond what is necessary to provide water to members of the District. Excess capacity is defined as materials, products or installations that are larger than necessary to meet the domestic and fire flows needed to serve the District. Design standards to be used in the design of the District system are as follows: The minimum fire flow required in the District is 1500 gpm with a minimum residual pressure of 35 psi at all service locations and ends of waterlines, and a maximum velocity in the mains of 6 ft/sec under peak day and fire flow conditions. These standards are subject to City of Springfield fire department review and approval, including location and number of fire hydrants and maximum number of lots that can be served.

f. Cooperate with the engineer and the District in the submittal of and compliance with all necessary land use or other permit requirements. It is acknowledged that SUB has no responsibility for the permitting process, other than this contractual agreement to act cooperatively with the engineer and the District.

g. Notify the County and District of agreement with, objection to or concerns about the award of the construction contract.

h. Acting solely at the direction of the District, manage on behalf of the District the Loan Reserve funds described in Paragraph 3(g) below. It is understood that SUB shall be responsible only for the safekeeping and appropriate accounting of the Loan Reserve funds, and shall not be responsible for any decisions with regard to their use or investment, so long as it follows the directions of the District. SUB shall not be liable to the District for any action taken or omitted to be taken by it in good faith, unless such action constitutes willful default or misconduct.

3. District shall:

a. Notify County and SUB of agreement or objection to the conditions of any state grant or loan that may be offered for the construction of the waterworks.

b. By the time of execution of a contract for engineering services, record covenants executed by all of its members which run with the land which provide pursuant to ORS 544.170-544.190 that the landowners agree for the purpose of binding their respective lands, that their lands shall be subject to any indebtedness incurred by the District or shall be subject to the lien of any assessments thereon by the District for the waterworks and improvements. The covenant shall also provide that it may not be altered, amended, modified or rescinded during the life of the District without the consent of the landowners of 2/3 of the District and without consent of the County so long as there is any outstanding debt for state loans or grants procured by the County for the benefit of the District. The covenant shall specifically provide that Lane County is applying on behalf of the District to the State of Oregon for a loan for the design and construction of the waterworks, and that if such loan is approved, the District will be indebted to both the State and Lane County to repay that loan incurred on its behalf.

c. Notify County and SUB of agreement with, objection to or concerns about engineering contract for the design and construction administration for the waterworks, and agree to

be responsible for design engineering costs incurred by the County and other costs incurred by SUB as set forth in Paragraph 2a in the event that a construction contract is not awarded.

d. Cooperate with the engineer and SUB in the development of a design for the waterworks. Review and notify County and SUB of approval of the final design.

e. Cooperate with the engineer and SUB in the submittal of and compliance with all necessary land use or other permit requirements. District shall be identified as the applicant of all necessary applications, with SUB or County concurrence or consent as necessary. District shall be responsible for the submittal of all necessary applications.

f. Notify the County and SUB of agreement with, objection to or concerns about the award of the construction contract.

g. Develop and fund a Loan Reserve equal to one year's debt service payment (principal plus interest). The Loan Reserve is to be fully funded by the time of award of a construction contract for the waterworks. Thereafter, the Loan Reserve will be maintained at a level equal to one year's debt service plus the remaining balance of prepayment that may exist under the provisions of Paragraph 15(b) below.

h. Provide direction to SUB and management of the loan reserve funds described in Paragraph 2(h) and 3(g) above.

4. All parties shall work cooperatively throughout the construction phase to seek resolution of any objections to the satisfaction of the parties to this agreement who are affected by the objection.

CONSTRUCTION PHASE

5. County shall:

a. Manage the construction contract for the waterworks, either itself or through an engineering contract. SUB and the District shall be entitled to observe the construction on a regular basis and participate in discussions with the contractor; however, ultimate decisions regarding the contract shall be made by the County after consultation with SUB and the District on any issues that may arise. The waterworks are to be constructed to SUB's standards.

b. Own the waterworks through the period of construction, defined as complete construction of the waterworks and acceptance of the work by SUB as meeting all City and SUB construction standards.

c. Make payment to the construction contractor and the engineer from the grant/loan funds and from SUB funds, if any, provided for the costs of excess capacity pursuant to paragraph 6d below.

6. SUB shall:

a. Bill the District for all direct SUB costs incurred by SUB during this phase of the project. SUB costs will include but not be limited to wages and benefits, copy services, vehicle usage, postage, and attorney fees.

b. Cooperate with the County, District and the construction contractor through the period of construction of the waterworks, including providing for timely inspection of the construction and reporting of any problems or difficulties in meeting SUB's standards, and the development of appropriate solutions. While it is acknowledged that SUB is not responsible for the development of appropriate solutions to problems, SUB agrees to work cooperatively by proposing possible solutions.

c. SUB shall provide a single connection to the existing SUB water system and construction inspection services to the District and County. SUB shall bill the District for all these

costs. SUB reserves the right to reject the construction of the waterworks or any part thereof for failure to meet SUB installation specifications, and to decline to provide water to the District until all such failures are corrected to SUB satisfaction.

d. On a regular basis, make payment to the County for the benefit of the contractor for the construction costs related to the provision of excess capacity of the waterworks beyond what is necessary to provide water to the members of the District, as defined in 2(e) above.

e. Acting solely at the direction of the District, manage on behalf of the District the Loan Reserve funds described in Paragraph 3(g) above. It is understood that SUB shall be responsible only for the safekeeping and appropriate accounting of the funds, and shall not be responsible for any decisions with regard to their use or investment, so long as it follows the directions of the District. SUB shall not be liable to the District for any action taken or omitted to be taken by it in good faith, unless such action constitutes willful default or misconduct.

7. District shall:

a. Cooperate with the County, SUB and the construction contractor through the period of construction of the waterworks, including the development of appropriate solutions to any problems that may arise.

b. District shall provide direction to SUB on the management of the Loan Reserve funds described in Paragraph 2(h) and 3(g) above.

c. District agrees to bill and collect fees and other charges as necessary to reimburse SUB for all SUB costs incurred by SUB during this phase of the project. SUB costs will include but not be limited to wages and benefits, copy services, vehicle usage, postage, and attorney fees.

8. All parties shall work cooperatively throughout the construction phase to seek resolution of any objections to the satisfaction of the parties to this agreement who are affected by the objection.

POST-CONSTRUCTION PHASE

9. County shall:

a. Upon acceptance of the waterworks by SUB and complete payment by the District of all SUB accounts receivable owed by the District for services performed by SUB during the pre-construction or construction phases, transfer ownership of the waterworks to SUB.

10. SUB shall:

a. SUB may connect new non-District customers to waterlines financed by the District upon the occurrence of the following:

i. Lane County Boundary Commission approval;

ii. The new non-District customer benefits from the water facilities constructed by the District and the facilities are part of the advance funding agreement between SUB and the District;

iii. Development funds are collected by SUB and are paid to the District in the manner and amount as defined in the attached advanced funding agreement.

b. SUB may connect new District customers to waterlines financed by the District upon the occurrence of the following:

i. Lane County Boundary Commission approval;

ii. Development funds are collected by SUB and are paid to the District in the manner and amount as defined in the attached advanced funding agreement.

c. Upon acceptance by SUB of the waterworks and complete payment by the District of all SUB accounts receivable owed by the District for services performed by SUB during the pre-construction and/or construction phases, accept the ownership of the waterworks from the County. Waterworks is defined as the water facilities to be constructed shown on the SUB-approved construction plans, including the service line connection to the waterline. Waterworks does not include the water meter, any facility on the customer side of the water meter, back flow prevention installations or any development charges.

d. Operate and maintain the waterworks in accordance with standard SUB practices, including outside City limit water fees, back flow prevention requirements and system development charges for connection to the waterworks.

e. Provide counsel to the District on a prudent rate structure or assessments necessary for the payment of debt service and the maintenance of Loan Reserves as defined by District.

f. Acting solely as fiscal agent for the District, routinely bill and collect debt payment charges on behalf of the District in accordance with the duly adopted District loan repayment schedule and policies. Acting solely as fiscal agent for the District, transmit from the funds collected on behalf of the District the annual debt service payment for any state loan received by the County for the waterworks for District. SUB is not responsible or liable for any delinquency for County or State loans due to lack of funds collected by District.

g. Provide monthly financial reports of District accounts to the District and County. Additional reports and data/information will be provided at cost.

h. Notify District monthly of any delinquent accounts and notify County of any delinquency and bonded indebtedness that exceeds 90 days.

i. Acting solely at the direction of the District, manage on behalf of the District the Loan Reserve funds described in Paragraph 2(h) and 3(g) above. It is understood that SUB shall be responsible only for the safekeeping and appropriate accounting of the funds, and shall not be responsible for any decisions with regard to their use or investment, so long as it follows the directions of the District. SUB shall not be liable to the District for any action taken or omitted to be taken by it in good faith, unless such action constitutes willful default or misconduct.

i. SUB is acting as fiscal agent for the District in the limited capacity as directed by the District and defined in this agreement and is not acting as a general agent for the District.

11. District shall:

a. Annually adopt fees sufficient to provide for the payment of debt service and maintenance of any necessary or prudent reserves and costs associated therewith.

b. Annually authorize, as necessary, the transmittal by SUB from the funds collected on behalf of the District sufficient funds to meet the annual debt service payment for any state loan received by the County on behalf of the District for the waterworks for District.

c. Take all reasonable and necessary steps to address any delinquent accounts promptly, including but not limited to the exercise of lien and foreclosure powers of the District.

d. File any and all annual reports as may be required to maintain corporate existence, including but not limited to the report due the Secretary of State pursuant to ORS 554.315.

e. District shall cease its function whenever the District is completely debt free or when the entire District is annexed into the City of Springfield, whichever shall first occur, provided, however, there shall be no termination or dissolution of the District until full repayment of any loan obligation incurred by the County on behalf of the District for design and construction of waterworks for the District.

f. Pay SUB monthly for the products and services provided to the District as set forth in this agreement.

g. Provide direction to SUB on the management of the Loan Reserve funds described in Paragraph 2(h) and 3(g) above.

12. In the event that it is proposed that the entire District or any part thereof be annexed into the City of Springfield, the three parties shall meet and negotiate an amendment to this agreement to ensure that any loan obligation incurred by the County on behalf of the District shall be appropriately repaid.

13. All parties shall work cooperatively throughout the post-construction phase to resolve any objections to the satisfaction of the parties to this agreement who are affected by the objection.

GENERAL

14. a. There shall be no additions to the membership of the District absent Lane County Boundary Commission approval, execution and recording of a covenant that runs with the land in which the landowner commits the land to a proportionate share of the existing obligations of the District for the loan payments similar to the covenant described in Paragraph 3(b) above, amendment of the District articles of incorporation pursuant to ORS 554.300 and compliance with ORS 544.510-544.590, and payment of all connection and hookup fees as determined by the District and SUB. Fees paid would be a combination of fees paid to the District and separate fees paid to SUB.

b. All water service connections to the water system shall be made by SUB after collection of applicable water system development charges in place at the time water service is requested. All charges will be collected before water service is provided by SUB. The development charges are in addition to any loan or construction payments required by the District, City or the County.

15. a. If any District member owns real property subject to a recorded lien or other encumbrance as a result of their membership in the District, and such property owner is current with all payments due and payable, the District and/or the County agree to review a Release of Lien for the purpose of allowing refinancing or other transactions that relate to the property, as long as the substitution of other lenders would not impair the security of the District or the County. The granting of a release or subordination is discretionary with the governing body of the District or the County.

b. If any individual is required to or does prepay their property's pro-rata share of the debt service for any state loan received by the County on behalf of the District for the waterworks that are the subject of this agreement, the parcel for that hookup shall be released from further assessment for the payment of the underlying debt. Any such funds shall be held in the Loan Reserve account as described in Paragraph 3(g) above to make payments as they are due, or to prepay the loan to the extent that prepayment is allowed. Upon such payment, County and District agree to execute such documents as necessary to reflect the individual property's release from any obligation as it relates to security for the loan for the waterworks that are the subject of this agreement.

16. Notwithstanding any other provision of this Agreement, SUB agrees not to enter into any arrangement with a user of the waterworks that in any manner might jeopardize the tax-exempt status of the loan, the proceeds of which financed the waterworks. Examples of arrangements that might jeopardize the tax-exempt status of the loan include but are not limited to, arrangements providing for use that is available to a user at no charge or at fees that are not generally applicable and uniformly applied to other users of the waterworks. If SUB is considering entering into any non-standard arrangement with a user of the waterworks, it shall do so only after receiving an opinion of bond counsel that the arrangement does not jeopardize the tax-exempt status of the loan, which opinion shall be paid for by the District.

17. Any approval required by this agreement shall be given within a reasonable time, and shall not be unreasonably withheld. All District approvals shall be evidenced by signed resolution.

18. All parties agree to comply with all applicable laws, rules and regulations, including land use plans and regulations. The District shall be responsible for meeting the applicable land use requirements, and the obtaining of all permits necessary to accomplish the objectives of this agreement.

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

20. Each of the parties hereto agrees to indemnify and save the others harmless from any claim, liability or damage resulting from any error, omission or act of negligence on the part of the indemnifying party, its officers, agents or employees in the performance of its responsibilities under this agreement, to the extent permitted by law.

21. District shall maintain for the life of this agreement sufficient liability insurance with a minimum coverage of at least \$1 million, and shall provide annual copies of a certificate of such insurance to the County and SUB.

22. The parties are committed to working cooperatively throughout the term of this agreement. It is recognized that the County will be entering into engineering and construction contracts and will have ultimate authority with respect to those contracts; however the County shall not agree to any such contract or any amendment thereto (other than termination) without the approval of SUB and District. Despite best efforts, it is acknowledged that disputes may arise. If so, the first step of dispute resolution after declaration of a dispute by one party shall be a meeting of the involved staff. If that does not result in resolution, the parties agree that the chief executive officers, or their designees who shall be individuals other than those who met in the first step of the resolution process, shall meet and attempt to reach resolution. If no resolution is reached at that point, the parties may employ a facilitator sharing costs of such facilitation, and if facilitation is unsuccessful, the parties may exercise any and all legal rights.

23. This agreement shall be effective upon execution. However, no financial obligation of the District shall take effect until after the recording of the covenants described in paragraph 3(b) above.

24. This agreement shall terminate upon full repayment of any loan that was accepted by the County pursuant to paragraph 1(b) above.

25. No amendment to this agreement shall be effective unless made in writing and signed by all parties.

SPRINGFIELD UTILITY BOARD

LANE COUNTY

By: _____

By: _____

William A. Van Vactor

Title: _____

Title: County Administrator

Date: _____

Date: _____

DISTRICT

By: _____

Title: _____

Date: _____

MEMORANDUM – Attachment D

Date: April 22, 2003

To: Board of County Commissioners

From: Teresa J. Wilson, County Counsel



Subject: Risk Analysis regarding IGA with 79th Street Improvement District and Springfield Utility Board

There are numerous risks involved in this project, which we have attempted to mitigate in the proposed intergovernmental agreement (IGA). However, even with the mitigation steps, they still exist and the Board should be apprised of them before authorizing the agreement.

1. Payment/General Fund Risk – Lane County is borrowing funds from the State and is obliged to repay them, with a single annual debt payment. The IGA requires the District to impose and collect sufficient monthly fees on their members (through Springfield Utility Board-SUB) to repay that debt on behalf of the County. This IGA provides certain measures of security for repayment: the promise of the District to make the debt payments, and covenants on the District members' properties binding them to the District's debts.

The significance of this risk is based on the fact that the District is comprised of a limited number of households (30-35), of which roughly 1/3 were identified a couple of years ago as low to moderate income. The small number of households, coupled with their relative economic ability to pay, and in particular during a weak local economy, are all elements of the risk. The District cannot increase its membership without Boundary Commission approval, the payment of hook-up fees yet to be developed, and the recording of a covenant binding the new property to the District debts.

This risk is mitigated as follows:

a. The IGA requires the maintenance of a loan reserve equal to one year's debt service payment. This provides a source of funds should the District not collect adequate funds in a particular year to meet its IGA obligation of making the County's debt payment, and gives it time to take the necessary steps to foreclose on a delinquent homeowner and sell the property, or other steps as it deems necessary.

b. The homeowners will be making monthly payments, so there will be prompt notice if someone is having difficulty financially.

c. The ultimate power of the District is to foreclose on a delinquent property owner and/or assess other owners for the delinquency. This means it has the legal ability to take the necessary steps meet its obligation to the County to pay the debt.

Ultimately, however, as part of the loan agreement with the State, the County will be required to pledge the assets of the General Fund as security for repayment.

2. Receipt of bid that is over the budget – The loan obligation will be incurred before the actual system is designed or bid. If the bid comes in over-budget, then the County and the District will have incurred the debt, and the homeowners will not yet have received a drop of water. If the project is dropped at that point, there is still the outstanding debt to be repaid, to the extent that funds have been drawn down for engineering and/or administrative costs. The District's willingness to pay, when there is still no water, may be an issue at that point.

3. Construction risks – There are always risks that the construction will run into problems that cause increased costs. If the bid for this project is right at the limit of what the District members can afford, this may be a problem. The County, District and SUB are committing in the IGA to work cooperatively throughout the project to resolve issues, but it nonetheless remains.

4. County in stepping into the water supply business – This is not a business the County has been in traditionally, but rather has looked to residents outside incorporated areas to solve their water problems themselves. This benefits a relatively small number of County residents. Is this a direction the County wishes to take? It is not clearly within any of the strategies or goals described in the County's Strategic Plan.

5. Unique arrangement – The IGA provides an unusual type of arrangement among the three parties, which has been created to minimize the costs for the District members and to have the entities which routinely perform certain functions bring that expertise to the table and provide that as a service to the District. The uniqueness of this arrangement alone involves risks that there is something we simply haven't thought of, or the risk of a challenge to the whole arrangement by someone outside of the District who attempts to join and is not successful for some reason. There is also the risk that the individuals involved in creating this arrangement will not be the same people who will be involved halfway through the 20-year loan, and won't have the same commitment to problem-solving that exists at the initiation when the lack of water provides a significant impetus.

6. Administrative costs – the loan application contains a factor for minimal administrative costs. If the project has problems, that will be quickly used up. Also, note that the administrative costs will pay for the Community and Economic Development Coordinator's time to manage the project, but counsel time has been and would continue to be a cost borne by the County without reimbursement as part of the general duties of Counsel. Is this where the Board wants to spend some of its legal resource time?

7. SUB's role is not necessarily a mitigating factor – SUB has been very clear that they do not want to assume any additional liability or responsibility with respect to this project, and that they view their role under the IGA as looking out for their own interests, or only acting as a billing agent for the District. SUB will take ownership of the waterworks at the time of substantial completion of the construction. While SUB staff has, in fact, been very helpful in exploring how to make this work, the presence of SUB at the entity level should not necessarily be viewed as a risk reduction factor.

Conclusion: Having outlined the risks, it is for the Board to decide whether it is willing to assume these and move forward with the project. Staff has taken whatever steps we could think of to reduce the risks without substantially increasing the costs for the District, and if the Board approves the Order, will continue to do so.