



SPRINGFIELD UTILITY BOARD

MAIN OFFICE 250 A Street, PO Box 300 Springfield, OR 97477-0077 Tel 541.746.8451 Fax 541.746.0230 TDD 541.744.3659 [www.subutil.com](http://www.subutil.com)

August 21, 2006

Judge Thomas G. Barkin  
Administrative Hearings Division  
Oregon Public Utility Commission  
550 Capital Street NE, Suite 215  
Salem, OR 97301-2551

RE: Amended Application of Springfield Utility Board for Territorial Allocation (UA94)

Dear Judge Barkin:

Springfield Utility Board ("SUB") is amending its application under Oregon Public Utility Commission's ("OPUC") Docket item UA94 (Docket Name: Springfield Utility Board). This amended application is submitted in accordance with OAR 860-025-0025, Applications for Allocation of Exclusively Served Territory and Adjacent Unserved Territory and under ORS 758.435(1) and ORS 758-440(2).

SUB and Emerald People's Utility District ("EPUD") had originally filed competing applications for the area in question. EPUD's application is OPUC's Docket item UA92. SUB and EPUD have reached an agreement regarding service to the area in question. This amended application follows the terms of that agreement.

Exhibit A (Attached) is the amended boundary description of the area that SUB is seeking an allocation for.

Also attached is the agreement between SUB and EPUD. This agreement contains boundary descriptions and a map of the area in question.

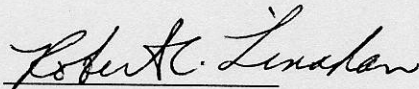
I hope that this amended application meets your approval and that upon consideration the OPUC will grant SUB the exclusive right to serve the area.

Judge Thomas G. Barkin  
Re: Amended Territorial Allocation (OPUC Docket UA94)  
August 21, 2006  
Page 2

Five (5) copies of this letter and attachments are included in this submittal. Should you have any questions, you may contact either Jeff Nelson (541 744-3779) or me (541 744-3600).

Respectfully submitted,

SPRINGFIELD UTILITY BOARD

A handwritten signature in cursive script that reads "Robert C. Linahan". The signature is written in dark ink and is positioned above the printed name and title.

Robert C. Linahan  
General Manager

Attachments

cc: SUB - Jeff Nelson, Ray Meduna  
EPUD - Frank Lambe, General Manager

## Exhibit A (Page 1 of 2)

### DESCRIPTION OF REVISED TERRITORIAL ALLOCATION REQUEST BY SPRINGFIELD UTILITY BOARD

All of Jasper Meadows Fourth Addition in the SE 1/4 of Section 4, T. 18 S. R. 2 W. of the Willamette Meridian a replat of a portion of parcel 1, LPPN 99-P1279 in Springfield, Lane County, Oregon. The said approximate metes and bounds of the Jasper Meadows Fourth Addition are as follows:

Beginning at the SW 1/4 of Section 4 T. 18 S. R. 2 W. of the Willamette Meridian; thence North along the West side of the section line to the intersection of the center line of Jasper Road (County Road 49) Oregon State Highway 222; thence easterly and southeasterly along the centerline of Jasper Road (County Road 49) Oregon State Highway 222 to the intersection of the Jasper Road and Mt. Vernon Road (County Road 315); thence northeasterly and easterly along the centerline of Mt. Vernon Road (County Road 315) to the East Southeast corner of Richard G. Hixon D.L.C. No. 47 T 18S, R2W. Willamette Meridian said point also being known as the Southwest corner of D.L.C. No. 61 T 18S, R2W Willamette Meridian; thence North 89°44'28" East 568.77 feet to a point on the South right-of-way of Mt. Vernon Road; thence leaving the South right-of-way of Mt. Vernon Road South 30.00 feet said point being marked by a 5/8 inch by 36 inch rebar with yellow plastic cap marked "D.W. Baker PLS 1978" said point being South 89°44'28" West 795.46 feet of the northwest corner of Jasper Meadows, as platted and recorded on Document No. 2002-012568, Lane County Oregon Plat Records, marked by a 5/8 inch rebar with yellow plastic cap marked "BRANCH ENG INC." on the southerly margin of Mt. Vernon Road at its intersection with the easterly margin of the future Jasper Road extension; said point being also being the **TRUE POINT OF BEGINNING** all in Springfield, Lane County, Oregon; Run thence along the westerly boundary of the Jasper Meadows Third Addition the following courses: South 47.30 feet; thence South 21°08'43" East 48.92 feet; thence South 62.78 feet; thence along the arc of a 20 foot radius non-tangential curve to the right (Chord bears South 26°06'49" West 17.61 feet) a distance of 18.23 feet; thence South 89°52'01" West 75.82 feet; thence leaving said westerly boundary of Jasper Meadows third addition South 89°55'45" West 386.52 feet; thence North 00°01'47" West 150.65 feet to the southerly right-of-way of Mt.

## **Exhibit A (Page 2 of 2)**

### **DESCRIPTION OF REVISED TERRITORIAL ALLOCATION REQUEST BY SPRINGFIELD UTILITY BOARD**

Vernon Road as dedicated on 2286R, INSTRUMENT NO. 9727039, Lane County, Oregon Official Records; thence along said southerly right-of-way the following 4 courses: South 84°31'13" East 38.23 feet; thence North 75°28'44" East 63.86 feet; thence North 69°25'44" East 68.80 feet; thence North 00°15'01" West 13.66 feet to the south right-of-way of Mt. Vernon Road as shown on land partition No. 99-P1279, Lane County, Oregon Official Records; thence along said south right-of-way, North 89°44'28" East 288.14 feet; thence leaving said south right-of-way, South 30.00 feet to the **TRUE POINT OF BEGINNING**, also known as Jasper Meadows 4<sup>th</sup> addition, all in Springfield, Lane County, Oregon.

### Certificate of Service

I hereby certify that I served the foregoing Amended Application of Springfield Utility Board for Territorial Allocation (UA94) on:

Peter R. Mersereau, Attorney  
One SW Columbia St. Suite 1600  
Portland OR 97258

and,

In addition, since UA92 is a related territorial application, I have also served the foregoing Amended Application of Springfield Utility Board for Territorial Allocation (UA94) on:

Frank Lambe, General Manager  
Emerald PUD  
33733 Seavey Loop Rd  
Eugene, OR 97405

By mailing by registered or certified mail to those persons a true and correct copy thereof, certified by me as such, placed in a sealed envelope addressed to them at the addresses set forth, and deposited in the United States Post Office at Springfield, Oregon on August 21, 2006 with postage prepaid.



Jeff Nelson  
Power Resource Manager

August 21, 2006

Judge Thomas G. Barkin  
Administrative Hearings Division  
Oregon Public Utility Commission  
550 Capital Street NE, Suite 215  
Salem, OR 97301-2551

RE: Amended Application of Springfield Utility Board for Territorial Allocation (UA94)

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I hope that this amended application meets your approval and that upon consideration the OPUC will grant SUB the exclusive right to serve the area.

Five (5) copies of this letter and attachments are included in this submittal. Should you have any questions, you may contact either Jeff Nelson (541 744-3779) or me (541 744-3600).

Respectfully submitted,

SPRINGFIELD UTILITY BOARD

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Robert C. Linahan  
General Manager

Attachments

cc: SUB - Jeff Nelson, Ray Meduna  
EPUD - Frank Lambe, General Manager

Judge Thomas G. Barkin  
Re: Amended Territorial Allocation (OPUC Docket UA94)  
August 21, 2006  
Exhibit A

## Exhibit A (Page 1 of 2)

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## Certificate of Service

I hereby certify that I served the foregoing Amended Application of Springfield Utility Board for Territorial Allocation (UA94) on:

Peter R. Mersereau, Attorney  
One SW Columbia St. Suite 1600  
Portland OR 97258

and,

In addition, since UA92 is a related territorial application, I have also served the foregoing Amended Application of Springfield Utility Board for Territorial Allocation (UA94) on:

Frank Lambe, General Manager  
Emerald PUD  
33733 Seavey Loop Rd  
Eugene, OR 97405

By mailing by registered or certified mail to those persons a true and correct copy thereof, certified by me as such, placed in a sealed envelope addressed to them at the addresses set forth, and deposited in the United States Post Office at Springfield, Oregon on August 21, 2006 with postage prepaid.

---

Jeff Nelson  
Power Resource Manager

Judge Thomas G. Barkin  
Re: Amended Territorial Allocation (OPUC Docket UA94)  
August 21, 2006  
Certificate of Service

June 12, 2006

Mr. Frank Lambe  
Mr. Craig Andrus  
Emerald People's Utility District  
33733 Seavey Loop Road  
Eugene, OR 97405-9602

Re: Agreement with Springfield Utility Board

Dear Frank and Craig:

I enclose four originals of the SUB intergovernmental agreement for signature by Frank and Bob Linahan. Once all four of these originals have been signed, please keep one for your records and SUB should keep one for theirs as well. The other two should be sent back to me and to Tom McPherson, attorney for SUB. I enclose stamped, addressed envelopes for sending an original to me and to Tom.

After this, we'll move to wind up the OPUC proceedings. Thanks for your patience in all of this.

Very truly yours,

PRESTON GATES & ELLIS LLP

By   
Timothy J. Sercombe

TJS:tjs  
Enclosures  
cc: Tom McPherson

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## INTERGOVERNMENTAL AGREEMENT

This Agreement is made between Emerald People's Utility District, an Oregon people's utility district ("Emerald" or "EPUD") and the Springfield Utility Board, by and on behalf of the City of Springfield, an Oregon municipal corporation ("SUB").

### Recitals:

- A. Emerald and SUB were parties to *Springfield Utility Board v. Emerald People's Utility District*, 191 Or App 536, 84 P3d 167 (2004), *aff'd*, 339 Or 631, 125 P3d 740 (2005). In that case, the Oregon Supreme Court held that the territorial allocation statutes limit a city's authority to exclude a utility provider from allocated territory pursuant to the authority provided in ORS 221.420(2)(a) and that ORS 221.420(2)(a) does not permit a city to exercise that power against a PUD.
- B. During the pendency of this case, Emerald and SUB entered into a June 5, 2002 Intergovernmental Agreement which is attached as Exhibit 1 and incorporated herein. The June 5, 2002 Intergovernmental Agreement was amended on March 10, 2003 and that amended Intergovernmental Agreement is attached as Exhibit 2 and incorporated herein.
- C. Emerald filed an application with the Oregon Public Utility Commission for allocation of exclusive rights for service territory in *In re Application of Emerald People's Utility District* (UA 92). SUB filed an application with the Oregon Public Utility Commission for allocation of exclusive rights for service territory in *In re Application of Springfield Utility Board* (UA 94).
- D. A consolidated hearing was held on the territorial allocation applications on August 30, 2002 before Chief Administrative Law Judge Thomas Barkin. Decisions on the applications were postponed until conclusion of the litigation between the parties.
- E. The parties have agreed to modify their respective territorial allocation applications to reduce the territories for which allocation orders are sought. In light of this agreement, each party withdraws any opposition to the other party's allocation request. This Agreement shall be submitted by Emerald and by SUB to the Oregon Public Utility Commission along with their respective requests to modify the requested allocations of territory in UA 92 and UA 94.

### Agreement:

Based upon the above recitals, which are incorporated herein, the parties agree that:

1. Modification of Emerald Allocation Request. Emerald agrees to modify the territory for which it seeks a territorial allocation order from the Oregon Public Utility Commission in *In re Application of Emerald People's Utility District* (UA 92). The modified territory is described in Exhibit 3 to this Agreement and displayed on a map attached as Exhibit 4. Both exhibits are incorporated into this Agreement. SUB agrees to not oppose Emerald's allocation request as so configured.

2. Modification of SUB Allocation Request. SUB agrees to modify the territory for which it seeks a territorial allocation order from the Oregon Public Utility Commission in *In re Application of Springfield Utility Board* (UA 94). The modified territory is described in Exhibit 5 to this Agreement and displayed on a map attached as Exhibit 4. Both exhibits are incorporated into this Agreement. Emerald agrees to not oppose SUB's allocation request as so configured.

3. Transfer of Facilities and Customers. Pursuant to paragraph 4 of the June 5, 2002 Intergovernmental Agreement, and upon approval of Emerald's territorial allocation request as described in Exhibit 3, SUB will transfer to Emerald all facilities and development charges billed or collected within the Jasper Meadows Subdivision (Phases 1 and 2), as well as the customer accounts served by those facilities. SUB will not charge Emerald for the costs of any of these facilities, except to the extent that the cost of the facilities has not been paid for by affected persons and developer fees and charges. Upon those transfers, the June 5, 2002 Intergovernmental Agreement (Exhibit 1) and the March 10, 2003 Amendment (Exhibit 2) are terminated. SUB further agrees to consider repeal of Resolution No. 0-00-1 and to implement this Agreement in the consideration of that repeal.

4. Transfer of Customers Upon Annexation. Emerald serves three customers in the area between the current city limits of the City of Springfield and the allocation territory described in Exhibits 3 and 4. These customers are located on Tax Lots 2800, 1800 and the cemetery lot and are shown on Exhibit 4. Upon approval of Emerald's territorial allocation request as described in Exhibit 3, Emerald agrees to transfer each of those customers and any other customers on the affected lot to SUB when the lot is annexed to the City of Springfield. Emerald agrees that it will not seek an allocation of territory that includes any of these lots. The Court of Appeals concluded that the City of Springfield has the authority to exclude Emerald from operating within the city unless that territory is allocated to Emerald by the OPUC. Recognizing that authority, Emerald will transfer each of these affected customers when the territory is annexed and when directed to transfer by SUB. Emerald will not charge SUB for the costs of any facilities located within these three lots. Emerald agrees to not serve any additional customers within these three lots without SUB's advance consent in writing, and in the event that SUB applies to the Oregon Public Utility Commission for territorial allocation of the three lots or any part thereof, Emerald will not oppose that application.

5. Customer Transfer Protocols. For any customer account transferred under paragraphs 3 or 4 of this Agreement:

5.1. The parties agree to work cooperatively to communicate the transition to existing customers.

5.2. When a customer is transferred, Emerald and SUB shall agree on a mutually acceptable date and time where one party's meter reads shall end and the other party's meter reads shall begin ("Transfer Date").

5.3. Neither party shall be obligated to pay the other due to the transfer of customers; provided, however that any agreements between the parties related to reimbursement associated with infrastructure improvements shall remain in full force and effect.

5.4. When a customer is transferred, the party that had served the customer ("Transferring Party") shall provide the following information to the Party acquiring the customer ("Acquiring Party"):

5.4.1. Customer Name;

5.4.2. Service Address;

5.4.3. Mailing Address; and,

5.4.4. Customer Phone Number.

5.5. Any customer deposits associated with deposits for electric service shall be credited towards a customer's final bill. Customer deposits for other utility services shall be retained by the Transferring Party. It is the responsibility of the Acquiring Party to advise the customer of the Acquiring Party's deposit policies or other applicable customer service policies.

5.6. Up until the Transfer Date, the Transferring Party will remain responsible for all collections of accounts receivable for services from customers that are being transferred. The Transferring Party will be responsible for the settlement of all billing disputes for energy use prior to the Transfer Date. To the extent necessary to facilitate the transfer and appropriate billings, both parties hereby authorize the other party to read meters in the transferred area after the Transfer Date.

6. Termination of the Agreement. This Agreement may terminate upon mutual consent of both parties. The provisions of section 7 of this Agreement survive its termination.

7. Indemnification. This Agreement is for the benefit of the parties only. Each party agrees to indemnify and hold harmless the other party and its officers, employees, and agents, from and against all claims, demands and causes of actions and suits of any kind or nature for personal injury, death or damage to property on account of or rising out of services performed, the omission of services or in any way resulting from the negligent or wrongful acts or omissions of the indemnifying party and its officers, employees, and agents in the implementation of this Agreement.

8. Force Majeure. No party shall be considered in default in performance of any obligation hereunder (other than for payment of monies due) if failure of or threat of performance shall be due to Uncontrollable Force. The term "Uncontrollable Force" means any cause beyond the control of the party affected, including, but not limited to, failure of facilities, flood, earthquake, storm, fire, lightning, epidemic, war, riot, civil disobedience, labor dispute, labor or material shortage, sabotage and action or non-action by court order or public authority or failure to obtain the necessary authorizations or approvals from governmental agency or authority which by exercise of due foresight such party could not reasonably have been expected to avoid, and to the extent that by exercise of due diligence or such failure is due to causes arising out of its own negligence or to removable or remediable causes which it fails to remove or remedy with reasonable dispatch. Any party rendered unable to fulfill any obligation by reason of Uncontrollable Force shall exercise due diligence to remove such liability with all reasonable dispatch. Nothing contained herein, however, shall be construed to require a party to prevent or

to settle a labor dispute against its will. Written notice shall be provided to either Party within ten (10) days of the Uncontrollable Force event.

9. Dispute Resolution. The parties shall attempt to informally resolve any dispute concerning any party's performance or decisions under this Agreement, or regarding the terms, conditions or meaning of this Agreement. A neutral third party may be used if the parties agree this would facilitate the negotiations. Each party will pay one-half the costs of any mediation. In the event of an impasse in the resolution of any dispute, the issue shall be submitted to the governing bodies of both parties for a recommendation or resolution.

10. Remedies. Subject to the provisions in paragraph 9, any party may institute legal action to cure, correct or remedy any default, to enforce any covenant or agreement herein, or to enjoin any threatened or attempted violation of this Agreement. All legal actions shall be initiated in Lane County Circuit Court. The parties, by signature below of their authorized representatives, consent to the *in personam* jurisdiction of that court.

11. No Impact On Third Party Applications. This Agreement is not intended to conflict with applications that may be submitted by third parties to the OPUC in the future related to the Natron Area. In the event that a third party files for an application to the OPUC to request a transfer of electric territory consistent with state law, the Parties agree that this Agreement shall not be used by either Party to support or deny such an application.

12. Costs. Except as otherwise expressly provided in this Agreement, each party shall bear all of its own attorney's fees and other expenses related to this Agreement.

13. No Third Party Beneficiaries. None of the terms or conditions in this Agreement shall give to or allow any claim, benefit, or right of action by any third person not a party hereto. Any person or entity other than SUB or EPUD receiving services or benefits under this Agreement shall be only an incidental beneficiary.

14. No Partnership. The Parties acknowledge and agree that this Agreement does not create a partnership between, or a joint venture of, SUB and EPUD.

15. Binding Effect. This Agreement shall be binding upon, and shall inure to the benefit of, the Parties hereto and their respective successors and assigns.

16. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without giving effect to the principles of conflicts of laws.

17. Severability. In the event any term, covenant or condition of this Agreement, or the application of such term covenant or condition, shall be held invalid as to any person or circumstance by any court having jurisdiction, all other terms, covenants and conditions of this Agreement and their application shall be invalid unless the Parties mutually agree otherwise in writing.

18. Waiver. No delay or omission by either Party to exercise any right or power occurring upon non-compliance or failure of performance by the other Party shall impair that right or power or be construed to be a waiver thereof. A waiver by either Party of any of the covenants, conditions or agreements to be performed by the other Party shall not be construed to be a

general waiver of any such covenants, conditions or agreements, but the same shall be and remain at all times in full force and effect.

19. Headings. The Article headings herein are for convenience and reference only, and in no way define or limit the scope and content of this Agreement or in any way affect its provisions.

20. Integrated Agreements and Amendments. This Agreement is an integration of the entire understanding of the Parties with respect to the matter set forth herein. The parties shall only amend this Agreement in writing and with the proper official signatures.

21. Counterparts. This Agreement may be signed in counterparts.

DATED this \_\_\_ day of June, 2006.

EMERALD PEOPLE'S UTILITY DISTRICT

SPRINGFIELD UTILITY BOARD

By: \_\_\_\_\_  
Frank Lambe  
General Manager

By: \_\_\_\_\_  
Robert C. Linahan  
General Manager



## INTERGOVERNMENTAL AGREEMENT

This Agreement is made between Emerald People's Utility District, an Oregon people's utility district ("Emerald" or "EPUD") and the Springfield Utility Board, by and on behalf of the City of Springfield, an Oregon municipal corporation ("SUB").

### Recitals:

- A. Emerald and SUB are parties in the case entitled, *Springfield Utility Board v. Emerald People's Utility District*, Lane County Circuit Court Case No. 16-01-19121. At issue in that case is the respective authority of each entity to provide electrical services to all or part of a 12.7 acre parcel, currently being developed as the first phase of a residential subdivision.
- B. Following summary judgment motions by both parties, Judge Lyle C. Velure issued his May 6, 2002 opinion and order, determining that "SUB has the power to exclude EPUD from providing services within the City's boundaries and exercised this power when it passed Ordinance 0-00-1."
- C. Emerald plans to appeal the judgment entered upon this order. Emerald currently has electrical service facilities within the 12.7 acre parcel.
- D. The parties wish to memorialize understandings about the provision of electrical service to the 12.7 acre parcel during the pendency of the appeal, as well as provision of service to the second phase of the subdivision should SUB adopt an exclusion ordinance for that area as well.

### Agreement:

Based upon the above recitals, which are incorporated herein, the parties agree that:

1. Provision of Services to Jasper Meadows Subdivision (Phase 1). Emerald will convey its existing distribution facilities within the first phase of the Jasper Meadows subdivision to its owner, Hayden Homes, by June 10. Hayden Homes will then convey or make these facilities available to SUB. SUB will energize the facilities and provide electricity to property owners in the subdivision during the pendency of the appeal of *Springfield Utility Board v. Emerald PUD, supra* (hereafter, the "appeal").
2. Provision of Services to Jasper Meadows Subdivision (Phase 2). Should Hayden Homes elect to subdivide and develop a second phase of Jasper Meadows Subdivision during the pendency of any appeal, and if SUB excludes Emerald from the streets and rights of way within the second phase of the subdivision under ORS 221.420, SUB will construct an electrical distribution system within this second phase and provide electrical services to this area. The facilities shall be built to accommodate 20.8 voltage.
3. Operation of Territorial Allocation Law. To whatever extent necessary and permissible, Emerald delegates to SUB any authority to provide electrical services to the Jasper Meadows Subdivision (Phases 1 and 2) obtained under Oregon Public Utility Commission Order No. 83-664 (UP 8/UA 7, 1982), during the pendency of the appeal. The delegation as to Phase 2 is contingent upon SUB adopting an exclusion order for this area. By execution of this Agreement, SUB does not admit that Emerald has anything to delegate in this regard.
4. Effect of a Reversal of the Circuit Court Judgment. Should Emerald prevail in its contentions on appeal, so that the Court determines that Emerald is entitled to its requested declaratory relief in the litigation, SUB will transfer to EPUD all facilities and development charges billed or collected within the Jasper Meadows Subdivision (Phases 1 and 2) at the point that all legal appeals are concluded and the final court decision is that EPUD is entitled to provide electrical services to the area. SUB will not charge Emerald for the costs of any of these facilities, except to the extent that the cost of the facilities has not been paid for by affected persons and developer fees and charges.
5. Effect of Agreement Upon Legal Rights of the Parties. Neither party intends to waive any legal right it has or position it holds by virtue of this Agreement. Except as provided in section 3, this Agreement

is not intended and should not be construed to affect the territorial allocation rights of Emerald under ORS chapter 758 or to effect a change in allocated territory under ORS 758.470. This Agreement does not resolve the legal controversy between the parties or moot any of the issues pending in the litigation between the parties.

6. Termination of the Agreement. This Agreement may terminate upon mutual consent of both parties. The Agreement shall terminate upon conclusion of all appeals (should SUB prevail in its contentions on appeal) or upon implementation of section 4 of this Agreement (should EPUD prevail in its contentions on appeal). The provisions of sections 5 and 7 of this Agreement survive its termination.

7. Indemnification. This Agreement is for the benefit of the parties only. Each party agrees to indemnify and hold harmless the other party and its officers, employees, and agents, from and against all claims, demands and causes of actions and suits of any kind or nature for personal injury, death or damage to property on account of or rising out of services performed, the omission of services or in any way resulting from the negligent or wrongful acts or omissions of the indemnifying party and its officers, employees, and agents in the implementation of this Agreement.

8. Dispute Resolution. The parties shall attempt to informally resolve any dispute concerning any party's performance or decisions under this Agreement, or regarding the terms, conditions or meaning of this Agreement. A neutral third party may be used if the parties agree to facilitate these negotiations. In the event of an impasse in the resolution of any dispute, the issue shall be submitted to the governing bodies of both parties for a recommendation or resolution.

9. Remedies. Subject to the provisions in section 8, any party may institute legal action to cure, correct or remedy any default, to enforce any covenant or agreement herein, or to enjoin any threatened or attempted violation of this Agreement. All legal actions shall be initiated in Lane County Circuit Court. The parties, by signature below of their authorized representatives, consent to the *in personam* jurisdiction of that court.

10. Counterparts. This Agreement may be signed in counterparts.

DATED this 5<sup>th</sup> day of June, 2002.

EMERALD PEOPLE'S UTILITY DISTRICT

SPRINGFIELD UTILITY BOARD

By: Frank Lambe  
Frank Lambe  
General Manager

By: Steve Loveland  
Steve Loveland  
General Manager

K:\27223\00014\TJS\TJS\_A2178

**INTERGOVERNMENTAL AGREEMENT  
AMENDED**

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- B. Following summary judgement motions by both parties, Judge Lyle C. Velure issued his May 6, 2002 opinion and order, determining that "SUB has the power to exclude EPUD from providing services within the City's boundaries and exercised this power when it passed Ordinance 0-00-1."
- C. Emerald plans to appeal the judgement entered upon this order. Emerald currently has electrical service facilities within the 12.7-acre parcel.
- D. The parties wish to memorialize understandings about the provision of electrical service to the 12.7 acre parcel during the pendency of the appeal, as well as provisions of service to additional phases of the subdivision should SUB adopt an exclusion ordinance for that area as well.

Agreement:

Based upon the above recitals, which are incorporated herein, the parties agree that:

1. Provision of Services to Jasper Meadows Subdivision (Phase 1). Emerald will convey its existing distribution facilities within the first phase of the Jasper Meadows Subdivision to its owner, Hayden Homes, by June 10. Hayden Homes will then convey or make these facilities available to SUB. SUB will energize the facilities and provide electricity to property owners in the subdivision during the pendency of the appeal of *Springfield Utility Board v. Emerald PUD*, supra (hereafter, the "appeal").
2. Provision of Services to Jasper Meadows Future Phases. Should Hayden Homes elect to subdivide and develop additional phases of Jasper Meadows Subdivision during the pendency of any appeal, and if SUB excludes Emerald from the streets and rights of way within the additional phases of the subdivision under ORS 221.420, SUB will construct an electrical distribution system within these phases and provide electrical services to this area. The facilities shall be built to accommodate 20.8 voltage.

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3. Operation of Territorial Allocation Law. To whatever extent necessary and permissible, Emerald delegates to SUB any authority to provide electrical services to the Jasper Meadows Subdivision (Phase 1 and additional phases) obtained under Oregon Public Utility Commission Order No. 83-664 (UP 8/UA 7, 1982), during the pendency of the appeal. The delegation as these additional phases are contingent upon SUB adopting an exclusion order for this area. By execution of this Agreement, SUB does not admit that Emerald has anything to delegate in this regard.
4. Effect of a Reversal of the Circuit Court Judgment. Should Emerald prevail in its contentions on appeal, so that the Court determines that Emerald is entitled to its requested declaratory relief in the litigation, SUB will transfer to EPUD all facilities and development charges billed or collected within the Jasper Meadows Subdivision (Phase 1 and additions) at the point that all legal appeals are concluded and the final court decision is that EPUD is entitled to provide electrical services to the area. SUB will not charge Emerald for the costs of any of these facilities, except to the extent that the cost of the facilities has not been paid for by affected persons and developer fees and charges.
5. Effect of Agreement upon Legal Rights of the Parties. Neither party intends to waive any legal right it has or position it holds by virtue of this Agreement. Except as provided in Section 3, this Agreement is not intended and should not be construed to affect the territorial allocation rights of Emerald under ORS Chapter 758 or to effect a change in allocated territory under ORS 758.470. This Agreement does not resolve the legal controversy between the parties or moot any of the issues pending in the litigation between the parties.
6. Termination of the Agreement. This Agreement may terminate upon mutual consent of both parties. The Agreement shall terminate upon conclusion of all appeals (should SUB prevail in its contentions on appeal) or upon implementation of Section 4 of this Agreement (should EPUD prevail in its contentions on appeal). The provisions of Sections 5 and 7 of this Agreement survive its termination.
7. Indemnification. This Agreement is for the benefit of the parties only. Each party agrees to indemnify and hold harmless the other party and its officers, employees, and agents from and against all claims, demands and causes of actions and suits of any kind or nature for personal injury, death or damage to property on account of or rising out of services performed, the omissions of services or in any way resulting from the negligent or wrongful acts or omissions of the indemnifying party and its officers, employees, and agents in the implementation of this Agreement.
8. Dispute Resolution. The parties shall attempt to informally resolve any dispute concerning any party's performance or decisions under this Agreement, or regarding the terms, conditions or meaning of this Agreement. A neutral third party may be used if the parties agree to facilitate these negotiations. In the event

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*Intergovernmental Agreement*  
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of an impasse in the resolution of any dispute, the issues shall be submitted to the governing bodies of both parties for a recommendation or resolution.

9. Remedies. Subject to the provisions in Section 8, any party may institute legal action to cure, correct or remedy any default, to enforce any covenant or agreement herein, or to enjoin any threatened or attempted violation of this Agreement. All legal actions shall be initiated in Lane County Circuit Court. The parties, by signature below of their authorized representative, consent to the *in personam* jurisdiction of that court.

10. Counterparts. This Agreement may be signed by counterparts.

DATED this 10<sup>th</sup> day of March 2003.

**EMERALD PEOPLE'S UTILITY DISTRICT**

By: Frank Lambe  
Frank Lambe,  
General Manager

**SPRINGFIELD UTILITY BOARD**

By: Steve Loveland  
Steve Loveland  
General Manager

**DESCRIPTION OF REVISED TERRITORIAL ALLOCATION REQUEST  
BY EMERALD PEOPLE'S UTILITY DISTRICT**

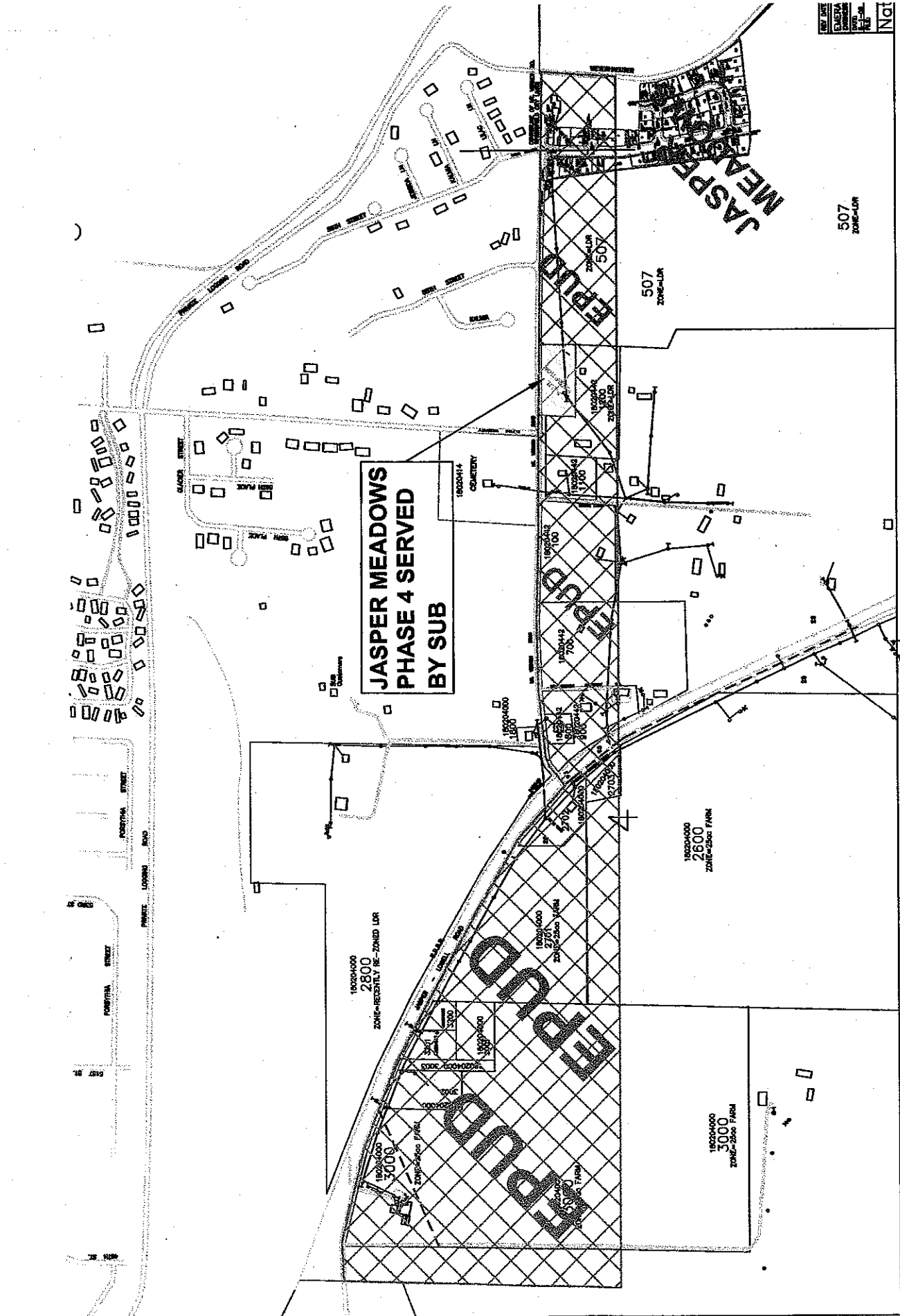
Beginning at a point on the North line of Section 11, Township 18 South, Range 3 West of the Willamette Meridian 50 feet Easterly from the Northwest corner thereof; thence, Easterly along the North line of said Section 11 to the middle of the Willamette River thence, Southeasterly upstream along the middle of said river to the confluence of the Coast and Middle forks of the Willamette River thence, continuing Easterly upstream along the middle of the Middle Fork of the Willamette River to its intersection with the West line of Section 9, Township 18 South, Range 2 West; thence North along the West lines of Sections 9 and 4, Township 18 South, Range 2 West, to the West one quarter corner of Section 4 and the TRUE POINT OF BEGINNING: thence North along the West line of said Section 4 to the intersection with the centerline of existing Jasper Road (County Road 49) thence Southeasterly along said centerline approximately 2,965 feet to the intersection of Jasper Road and Mt. Vernon Road (County Road 315); thence along the centerline of Mt. Vernon Road (County Road 315) Northeasterly and then Easterly to the SW corner of the Stephen D. Gager D.L.C. No. 61 a Brass Cap said point also known as the East SE corner of the R. Hixon D.L.C. No. 47; thence continuing easterly along the centerline of Mt. Vernon Road to the intersection of Mt. Vernon Road and the Booth Kelly-Weyerhaeuser Truck Road; thence Southerly along the centerline of Booth Kelly-Weyerhaeuser Truck Road to the intersection with the East – West one quarter Section line of Section 3 T. 18 S., R. 2 W., of the Willamette Meridian, thence West along the East-West one quarter Section line of Sections 3 and 4 of Township 18 South, Range 2 West, Willamette Meridian back to the TRUE POINT OF BEGINNING.

**Exception:** The Jasper Meadows Fourth Addition is not included in the requested territory. That excluded territory is described as follows:

Beginning at the SW 1/4 of Section 4 T. 18 S. R. 2 W. of the Willamette Meridian; thence North along the West side of the section line to the intersection of the center line of Jasper Road (County Road 49) Oregon State Highway 222; thence easterly and southeasterly along the centerline of Jasper Road (County Road 49) Oregon State Highway 222 to the intersection of the Jasper Road and Mt. Vernon Road (County Road 315); thence northeasterly and easterly along the centerline of Mt. Vernon Road (County Road 315) to the East Southeast corner of Richard G. Hixon D.L.C. No. 47 T 18S, R2W. Willamette Meridian said point also being known as the Southwest corner of D.L.C. No. 61 T 18S, R2W Willamette Meridian; thence North 89°44'28" East 568.77 feet to a point on the South right-of-way of Mt. Vernon Road; thence leaving the South right-of-way of Mt. Vernon Road South 30.00 feet said point being marked by a 5/8 inch by 36 inch rebar with yellow plastic cap marked "D.W. Baker PLS 1978," said point being South 89°44'28" West 795.46 feet of the northwest corner of Jasper Meadows, as platted and recorded on Document No. 2002-012568, Lane County Oregon Plat Records, marked by a 5/8 inch rebar with yellow plastic cap marked "BRANCH ENG INC." on the southerly margin of Mt. Vernon Road at its intersection with the easterly margin of the future Jasper Road extension; said point also being the **TRUE POINT OF BEGINNING** all in Springfield, Lane County, Oregon; Run thence along the westerly boundary of the Jasper Meadows Third Addition the following courses: South 47.30 feet; thence South 21°08'43" East 48.92 feet; thence South 62.78 feet; thence along the arc of a 20 foot radius non-tangential curve to the right (Chord bears South

26°06'49" West 17.61 feet) a distance of 18.23 feet; thence South 89°52'01" West 75.82 feet; thence leaving said westerly boundary of Jasper Meadows third addition South 89°55'45" West 386.52 feet; thence North 00°01'47" West 150.65 feet to the southerly right-of-way of Mt. Vernon Road as dedicated on 2286R, INSTRUMENT NO. 9727039, Lane County, Oregon Official Records; thence along said southerly right-of-way the following 4 courses: South 84°31'13" East 38.23 feet; thence North 75°28'44" East 63.86 feet; thence North 69°25'44" East 68.80 feet; thence North 00°15'01" West 13.66 feet to the south right-of-way of Mt. Vernon Road as shown on land partition No. 99-P1279, Lane County, Oregon Official Records; thence along said south right-of-way, North 89°44'28" East 288.14 feet; thence leaving said south right-of-way, South 30.00 feet to the **TRUE POINT OF BEGINNING**, also known as Jasper Meadows 4<sup>th</sup> addition, all in Springfield, Lane County, Oregon.

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Proposed EPUD Allocation

Proposed SUB Allocations



**DESCRIPTION OF REVISED TERRITORIAL ALLOCATION REQUEST  
BY SPRINGFIELD UTILITY BOARD**

All of Jasper Meadows Fourth Addition in the SE 1/4 of Section 4, T. 18 S. R. 2 W. of the Willamette Meridian a replat of a portion of parcel 1, LPPN 99-P1279 in Springfield, Lane County, Oregon. The said approximate metes and bounds of the Jasper Meadows Fourth Addition are as follows:

Beginning at the SW 1/4 of Section 4 T. 18 S. R. 2 W. of the Willamette Meridian; thence North along the West side of the section line to the intersection of the center line of Jasper Road (County Road 49) Oregon State Highway 222; thence easterly and southeasterly along the centerline of Jasper Road (County Road 49) Oregon State Highway 222 to the intersection of the Jasper Road and Mt. Vernon Road (County Road 315); thence northeasterly and easterly along the centerline of Mt. Vernon Road (County Road 315) to the East Southeast corner of Richard G. Hixon D.L.C. No. 47 T 18S, R2W. Willamette Meridian said point also being known as the Southwest corner of D.L.C. No. 61 T 18S, R2W Willamette Meridian; thence North 89°44'28" East 568.77 feet to a point on the South right-of-way of Mt. Vernon Road; thence leaving the South right-of-way of Mt. Vernon Road South 30.00 feet said point being marked by a 5/8 inch by 3/8 inch rebar with yellow plastic cap marked "D.W. Baker PLS 1978," said point being South 89°44'28" West 795.46 feet of the northwest corner of Jasper Meadows, as platted and recorded on Document No. 2002-012568, Lane County Oregon Plat Records, marked by a 5/8 inch rebar with yellow plastic cap marked "BRANCH ENG INC." on the southerly margin of Mt. Vernon Road at its intersection with the easterly margin of the future Jasper Road extension; said point also being the **TRUE POINT OF BEGINNING** all in Springfield, Lane County, Oregon; Run thence along the westerly boundary of the Jasper Meadows Third Addition the following courses: South 47.30 feet; thence South 21°08'43" East 48.92 feet; thence South 62.78 feet; thence along the arc of a 20 foot radius non-tangential curve to the right (Chord bears South 26°06'49" West 17.61 feet) a distance of 18.23 feet; thence South 89°52'01" West 75.82 feet; thence leaving said westerly boundary of Jasper Meadows third addition South 89°55'45" West 386.52 feet; thence North 00°01'47" West 150.65 feet to the southerly right-of-way of Mt. Vernon Road as dedicated on 2286R, INSTRUMENT NO. 9727039, Lane County, Oregon Official Records; thence along said southerly right-of-way the following 4 courses: South

84°31'13" East 38.23 feet; thence North 75°28'44" East 63.86 feet; thence North 69°25'44" East 68.80 feet; thence North 00°15'01" West 13.66 feet to the south right-of-way of Mt. Vernon Road as shown on land partition No. 99-P1279, Lane County, Oregon Official Records; thence along said south right-of-way, North 89°44'28" East 288.14 feet; thence leaving said south right-of-way, South 30.00 feet to the **TRUE POINT OF BEGINNING**, also known as Jasper Meadows 4<sup>th</sup> addition, all in Springfield, Lane County, Oregon.

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