AGENDA

CITY COUNCIL - CITY OF ONTARIO, OREGON

Tuesday, January 17, 2012, 2011, 7:00 p.m., M.T.

1) **Call to order**

Roll Call: Norm Crume _____ Jackson Fox _____ Charlotte Fugate _____ Dan Jones_____
David Sullivan _____ Ron Verini _____ Mayor Joe Dominick _____

2) **Pledge of Allegiance**

This Agenda was posted on Wednesday, January 11, 2012, and a study session was held on Thursday, January 12, 2012. Copies of the Agenda are available at the City Hall Customer Service Counter and on the city's website at www.ontariooregon.org.

3) **Motion to adopt the entire agenda**

4) **Consent Agenda: Motion Action Approving Consent Agenda Items**

A) Approval of Minutes of Regular Meeting of 12/19/2011 1-15
B) Approval of Minutes of Telephonic/Electronic Meeting of 01/05/2012 16-17
C) Proclamation: Fire Services Appreciation Day 2012 18
D) Water Line Easement Request: Anchor Mini Storage (SE 5th Avenue) 19-23
E) Approval of the Bills

5) **Public Comments:** Citizens may address the Council on items not on the Agenda. Council may not be able to provide an immediate answer or response, but will direct staff to follow up within three days on any question raised. Out of respect to the Council and others in attendance, please limit your comment to three (3) minutes. Please state your name and city of residence for the record.

6) **Old Business**

A) Ordinance #2664-2011: LID #47 Assessments (*Second and Final Reading by Title Only*) 24-29

7) **New Business:**

A) Resolution #2012-101: A Resolution Approving Fund Exchange Agreement #28277 with Ontario and ODOT for Chip Sealing on Various City Streets and Purchase Certain Equipment for Road Maintenance Purposes 30-38

8) **Discussion Item(s)**

A) Goals and Objectives

9) **Correspondence, Comments and Ex-Officio Reports**

10) **Executive Session(s):**

A) ORS 192.660(2)(d): Labor Negotiations
B) ORS 192.660(2)(h): Litigation, Potential or Pending

11) **Adjourn**

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COUNCIL MEETING MINUTES
December 19, 2011

The regular meeting of the Ontario City Council was called to order by Mayor Joe Dominick at 7:00 p.m. on Monday, December 19, 2011, in the Council Chambers of City Hall. Council members present were Norm Crume, Joe Dominick, Jackson Fox, Charlotte Fugate, Dan Jones, David Sullivan and Ronald Verini.

Members of staff present were Henry Lawrence, Tori Barnett, Larry Sullivan, Mark Alexander, Kathy Daly, Chuck Mickelson, Yorick de Tassigny, and Lisa Hansen. The meeting was recorded on tape, and the tapes are available at City Hall.

Ron Verini led everyone in the Pledge of Allegiance.

AGENDA

Mayor Dominick asked if any Councilor wanted to bring the Nyssa Police Services Contract issue back for action?

Councilor Fugate asked why the Nyssa City Manager asked to cancel the request.

Mayor Dominick stated she had contacted him and informed him that the Nyssa Police Department would be pursing their own Chief.

Councilor Fugate stated she thought the Ontario Council shot themselves in the foot by not agreeing to execute the contract, and she was disappointed in the whole body.

Councilor Verini asked to bring the Contract back for reconsideration.

David Sullivan moved, seconded by Norm Crume, to adopt the Agenda as presented. Roll call vote: Crume-yes; Fox-yes; Fugate-yes; Jones-yes; Sullivan-yes; Verini-yes; Dominick-no. Motion carried 6/1/0.

CONSENT AGENDA

Councilor Crume abstained from the vote as his company had an invoice for payment on the bills.

Charlotte Fugate moved, seconded by Ronald Verini, to approve Consent Agenda Item A: Approval of the Regular Minutes of 12/05/2011; Item B: Meetings Calendar: Jan-Jun, 2012; Item C: Resolution #2011-129: Accept/Expend ODOT Grant; and Item D: Approval of the Bills. Roll call vote: Crume-abstain; Fox-yes; Fugate-yes; Jones-yes; Sullivan-yes; Verini-yes; Dominick-yes. Motion carried 6/0/0/1.

NEW BUSINESS

City of Nyssa Interim Police Chief Contract

Mayor Dominick stated City Manager Roberta Vanderwall asked that the item to be removed, as Nyssa would pursue their own chief search. This issue was discussed at the previous meeting, and it resulted in a tie vote.

Henry Lawrence, City Manager, stated the issue was back on the Agenda because the Council Rules dictated issues which ended in a tie vote were to automatically be brought back before Council.

Councilor Verini stated bringing it before a full Council would result in a better picture as to how they stood on the issue.

Mayor Dominick stated in his conversation with Ms. Vanderwall, he mentioned that at the Thursday Study Session, they had discussed splitting the cost, but between then and Monday night, there was further discussion of making sure the taxpayers of Ontario were not burdened, and if the City of Nyssa had an offer of paying the full amount, then there might be more support from the Ontario Council. Ms. Vanderwall took that information to the Nyssa Council, than phoned him back, asking for the action to be removed from the Ontario Agenda.

Councilor Sullivan stated they talked about a price of $8,500; then the Mayor told her Nyssa would have to pay the full amount?

Mayor Dominick stated Ms. Vanderwall had asked him if there would be any further Council support, and he indicated that she might get it if Nyssa paid the full amount.

Councilor Sullivan stated that wasn't appropriate. That was not what the Council put forward. A figure was put forward, and any negotiation outside of that should have been discussed with the Council before it was put in front of Nyssa.

Councilor Verini stated he would like to see another vote on the issue.

Councilor Fox asked why? Were they going to force Nyssa to take it, after they said no?

Councilor Sullivan stated what the Mayor represented to the Nyssa City Manager was not what the Ontario Council discussed. And how did he know that if they had put it in a form that was discussed, there might still be a deal on the table. He wasn't aware of what the Mayor had done.

Councilor Jones asked the Mayor's opinion on the issue. Where did he stand?

Mayor Dominick stated the Nyssa City Manager asked the action be removed from the Agenda, so he would vote no on it, out of respect to that request.

Councilor Sullivan stated he understood that procedurally, but the Council didn't have benefit of his discussion with Ms. Vanderwall.

Mayor Dominick stated the City of Ontario had a Mutual Aid Contract with Nyssa, and they would give help if needed. There had been a lot of Council discussion about not wanting to burden the Ontario taxpayers, but did want to help Nyssa. With that active Mutual Aid Agreement, help would be given.

Councilor Sullivan stated in the future, in negotiations or discussions, he would appreciate it if those were brought before the Council before voting, instead of having someone not even at the meeting make an offer. The Council already showed how bad they could be by going back on the original agreement. That wasn't the City's finest hour. He shared Councilor Fugate's sentiments. It made the whole body look bad.

Councilor Verini moved to go along with the original contract and at least extend a hand to the City of Nyssa with the split of approximately $600+/-. He wasn't sure how to make that into a motion, based on the discussion. The initial pay was around $7960, plus the split of the $1262 between Nyssa and Ontario. He wanted to see them at least vote on it.

Tori Barnett, City Recorder, stated she believed what Councilor Verini was looking for was the suggested motion from the previous meeting. If that was the case, it was in the body of the minutes that the Council had just adopted, bottom of page six.

Councilor Jones asked for how long, what if it took Nyssa a year to find a Chief? It was going to take two months, maybe three, for a background check. Nyssa had to go through the interview process, pick a candidate, or candidates, go through a full-blown background check, and a minimum background check in that type of situation was two months. Was Ontario willing to provide an officer from the Ontario force, for twelve months?

Councilor Verini stated no, and that was not how it was presented.

Councilor Jones stated it was not presented correctly. It took two months, and if it was rushed, if they knew the individual, the minimum would be a month and half, just for the background check.

Councilor Verini stated the City of Nyssa appeared before them, and indicated it would be about a four month process.

Councilor Jones reminded them that it took Ontario a year to fill their Chief position. He had done some work on it, and there was no way Nyssa could fill the position in two to four months, and do it right.

Councilor Verini stated his job wasn't to second-guess Nyssa.

Councilor Jones stated it was, because Ontario was providing an officer.

Councilor Verini agreed Ontario was providing an officer up to four months.

Larry Sullivan, City Attorney, stated the draft of the contract that had been presented had a 90-day term, and it could only be extended beyond that time by mutual agreement.

Councilor Jones stated then that Ontario would extend a Sergeant to Nyssa, and in 90 days just pull him out?

Councilor Sullivan stated they could renegotiate the terms, based on where Nyssa was in the process at the end of those 90 days. He didn't think the Ontario Council was in any way saying Nyssa had a deadline. They were simply saying that Ontario would provide that service to them.

Councilor Jones asked if they were willing to do it for six months?

Councilor Sullivan stated from where he viewed it, it was certainly a benefit to Nyssa, but the way Chief Alexander looked at it, it would help work more cohesively with that department, and provide necessary training for Sgt. Esplin. To him, he also looked at the financial side, and with the money that would be recouped, around $22-25K, he wanted to see them invest in technology so they could do something about the graffiti problem. That wasn't in the city's budget anywhere. These types of opportunities gave Ontario a chance to move forward. He had stated all along that he thought the Ontario Police Department was overstaffed. This would allow them to reallocate some funds, help with graffiti, and help with training. It was a win-win all around.

Councilor Verini stated especially because it was only for a short period of time. It was only set for four months.

Councilor Jones asked what they would do when Nyssa didn't fill the position.

Councilor Verini stated they would make another decision

Councilor Sullivan seconded the motion made by Councilor Verini.

Mayor Dominick asked for a restatement of the motion.

Ms. Barnett stated, if she understood correctly what the wishes of Councilor Verini were, the motion would read: "Ron Verini moved, seconded by David Sullivan, that the Council sign the Intergovernmental Agreement between

the City of Ontario and the City of Nyssa, Interim Police Chief Services, as written, except for one typographical error, Page One, last Whereas, where it read "...Esplin's services should read "as" an Interim Police Chief. The word currently was "and". NO ROLL CALL.

Councilor Fox asked what staff's recommendation was, knowing all the new information?

Chief Alexander stated the wind was out of the sails. As mentioned, he thought it was a great opportunity. OPD would see a benefit, and Ontario would get some money. He believed the issue was dead. He had tried to reach Ms. Vanderwall, but was unable to do so. If both sides wanted to open it back up, then he still supported it. His number one priority was the department, and the development of staff. Helping Nyssa was a good thing, but down on his list of priorities. He could contact Ms. Vanderwall to see if there was still interest from Nyssa.

Councilor Fox asked Chief Alexander for his recommendation on the action.

Chief Alexander still supported the idea. He wanted to pursue it, to give staff the chance to pursue it.

Councilor Fox stated Nyssa might not accept. No one seemed to know why Nyssa asked to remove it from the Agenda. He wasn't going to assume that is was because the Ontario Mayor talked to the Nyssa City Manager.

Mayor Dominick stated on the meeting of December 5th, Chief Alexander stated to the Council "...I'm not going to tell you that I'm adequately staffed, and I'm not going to tell them that it will be easy while he's gone, because some sacrifices will have to be made while he's gone. By no means will it be easy, it will be burden on our staff." So, he was concerned about placing that burden on staff. Did the Chief still view it as being a burden, running one officer short?

Chief Alexander stated yes, but the degree would be a day-to-day thing. There was always risk, but the payoff would be worth it. Sgt. Esplin would only be 10 miles away, he could still work for the Ontario department, and he would be available to work OPD shifts, if needed.

Councilor Fox stated he didn't want a response of 12 minutes away. If the officer wasn't needed for three months, then he wasn't needed at all.

Chief Alexander stated when he attended the FBI Academy in Virginia, he had been gone three months.

Councilor Sullivan stated that wasn't a fair approach. They all had businesses, and staff were out sick, or on vacation, etc., so having anyone gone for any length of time would be a challenge, but he was willing to work around it. Chief Alexander had never said he didn't need the officer. This was just a good opportunity for both the city and the department.

(Motion again for the record):
Ron Verini moved, seconded by David Sullivan, that the Council sign the Intergovernmental Agreement between the City of Ontario and the City of Nyssa, Interim Police Chief Services, as written, except for one typographical error, Page One, last Whereas, where it read "...Esplin's services should read "as" an Interim Police Chief. The word currently was "and". Roll call vote: Roll call vote: Crume-no; Fox-no; Fugate-yes; Jones-no; Sullivan-yes; Verini-yes; Dominick-no. Motion failed 3/4/0.

Resolution #2011-128: Amend Beck-Kiwanis Master Plan (Add Map)
Kathy Daly, Aquatics/Recreation/Parks/Cemetery Director, stated the proposed resolution was to request authority from the City Council to add the Beck Pond Map to the existing Parks and Recreation Master Plan recommendations. On November 3, 2003, the Council adopted the Parks and Recreation Master Plan.

The Master Plan addressed recommendations for all existing and non-existing resources such as land acquisition, planning, development, and upgrades. Beck Kiwanis Park was the largest city park with 30.96 acres and was the

most heavily used. The facilities at the site included two youth baseball fields, an open grass areas, children's playground, tennis courts, picnic shelters, a restroom facility, a maintenance/storage building, a pond, an unpaved trail around the pond, and three parking areas. The addition of the Beck Pond trail expansion would allow for the trail to continue around the perimeter of the park for approximately one mile.

Councilor Fugate asked if this was the map from years ago when the project was developed?

Ms. Daly stated the group itself was still active, however that was for a trail out by the Wastewater Treatment Plant, and that trail plan failed.

Ronald Verini moved, seconded by Norm Crume, to adopt Resolution #2011-128, A RESOLUTION ADDING A MAP TO THE ONTARIO PARKS AND RECREATION MASTER PLAN SPECIFICALLY ADDRESSING THE BECK KIWANIS PARK POND TRAIL. Roll call vote: Crume-yes; Fox-yes; Fugate-yes; Jones-yes; Sullivan-yes; Verini-yes; Dominick-yes. Motion carried 7/0/0.

Ordinance #2664-2011: LID #47 Assessments (1st Reading)

Chuck Mickelson, Public Works Director, stated Local Improvement District (LID) No. 47 was formed to install sewer and water in an area that was adjacent to the city limits but in the county. This project solved a potential public health problem due to failing drain fields. This project was initiated by the property owners in the spring of 2010. After numerous public meetings and public hearings, the City Council approved the annexation of the property and created LID 47 for the installation of water and sewer and upgrading of the street cross section. Ontario Municipal Code Title 8 gave the city authority to form an LID and identified the necessary steps to pass the cost of the improvements on to the benefited property owners.

The construction has been completed. All of the property owners connected to the sewer and all but three connected to the city water system. The proposed assessments had been calculated and were required to be levied through the adoption of an assessment ordinance by the City Council. Staff prepared Ordinance No. 2664-2011 for Council review and approval.

Pursuant to Ontario Municipal Code 8-2-8, each property owner was notified by mail of their proposed assessment and was given an opportunity to raise objections to the proposed amount by writing to the City Recorder. Letters with assessment amounts were mailed out on December 1st giving property owners until December 14th to file objections with the City Recorder.

OMC 8-2-8 reads in part as follows:

> *"...Notice of such proposed assessment shall be mailed to his last known address or personally delivered to the owner of each lot proposed to be assessed, which notice shall state the amount of assessment proposed on that property, and shall fix a date by which time objections shall be filed with the Recorder. Any such objection shall state grounds thereof.*
>
> *The Council shall consider such objections and may adopt, correct or modify or revise the proposed assessment and shall determine the amount of assessment to be charged against each lot within the district according to the special and peculiar benefits accruing thereto from the improvements, and shall by ordinance set out such assessments."*

Upon adoption of the ordinance at its final reading, assessment amounts become final and the City Recorder would send by registered or certified mail a notice of assessment to the last known address advising the property owners that they would be given thirty (30) days to pay the assessment in full with no additional interest, or enter into a repayment agreement. The city could sell General Obligation Bonds in accordance with the Bancroft Bonding Act or finance the improvements at a competitive interest rate from the city's reserves in the sewer or water fund. Funds from the bond sale or any principal and interest payments if the city self-funded the LID would be deposited into the Capital Projects fund to reimburse the fund for project costs.

In November 2010, the Council adopted Resolution #2010-152, the intent to construct sanitary sewer and water mains on Alameda and Nadine Drive; in January 2011, the Council adopted the Director's Report by Resolution #2011-101; in June 2011, the Council approved annexation Ordinance #2655-2011; in June 2011, the Council approved award of construction contract to Eastern Oregon Construction; and in July 2011, the Council approved Resolution #2011-118 setting aside money for the construction expenses in a separate account

The bid by Eastern Oregon Construction was $198,415. The total cost for construction including change orders, surveying and BOLI wage submittal, was $219,105.60. Rural Road District #3 contributed the gravel to the project which resulted in a savings of approximately $10,000 which was not being charged to the property owners. Additionally, staff included legal, administrative, engineering and annexation fees, water meter costs and construction loan interest for six months in the final assessment. The overall cost was approximately 5% less than the cost estimate that was included in the Director's Report approved by the City Council in January.

There were three properties that had not yet connected to the water system. Following a discussion about water meter costs with each of them, they all asked that the cost be removed from the final assessment as they would pay for it when and if they connected to the water system. Each of those cases had been lowered by $380.

The Council could determine that the method of assessment distribution should be modified if it heard legitimate objections from property owners; however, no objections were filed. The project costs were incurred and any decision other than passing an assessment ordinance would obligate the city for the full value of the project.

This project was funded through available funds within the Capital Projects Fund. Upon adoption of the ordinance at its final reading, assessment amounts would become final and due from property owners within thirty (30) days. Property owners would have the option of entering into a repayment agreement with the city.

Staff was recommending that the city self-fund the LID assessments from sewer and water contingency at a 4.5% annual interest rate. This was approximately ½% higher than a quote received from Intermountain Community Bank. This ½% would cover billing costs during the 15 year amortization period. This would be a senior lien on the property so any time a property was sold, the LID will likely be paid off.

David Sullivan moved, seconded by Norm Crume, to adopt Ordinance #2664-2011, AN ORDINANCE PROVIDING FOR AND ASSESSING THE COST OF IMPROVEMENTS ON NADINE DRIVE AND ALAMEDA DRIVE SOUTH OF SW 16TH AVENUE IN THE CITY OF ONTARIO, AND MALHEUR COUNTY, OREGON, BY THE CONSTRUCTION OF WATER, SEWER AND STREET IMPROVEMENTS WITHIN THE BOUNDARIES OF LOCAL IMPROVEMENT DISTRICT NO. 47; DECLARING THE PROPORTIONATE SHARE OF THE TOTAL COST OF IMPROVEMENTS TO BE CHARGED AND ASSESSED AGAINST EACH LOT, PARCEL, AND TRACT OF PROPERTY LIABLE FOR SUCH ASSESSMENT; AND DIRECTING THE CITY RECORDER TO ENTER SUCH ASSESSMENT AGAINST EACH LOT, PARCEL, AND TRACT OF PROPERTY LIABLE THEREFORE IN ITS PROPORTIONATE SHARE IN THE LIEN DOCKET OF THE COUNTY OF MALHEUR; AND DIRECTING THE SERVICE OF NOTICE OF SAID ASSESSMENT UPON THE OWNERS OF SUCH PROPERTY on First Reading by Title Only. Roll call vote: Crume-yes; Fox-yes; Fugate-yes; Jones-yes; Sullivan-yes; Verini-yes; Dominick-yes. Motion carried 7/0/0.

Site Based Energy Project – Letter of Intent

Yorick de Tassigny, Facilities Manager, stated the purpose of this agenda item was to determine whether the City of Ontario should enter into an agreement with Site Based Energy, LLC (SBE), of Hailey, Idaho, in order to participate in a solar power pilot program conducted by Idaho Power. As noted in the new hand-out, verbiage had been added to read that the Agreement was only binding if SBE was able to acquire CCB Licensing in Oregon. Tonight, they were only looking for a signature on the Letter of Intent to move forward with participation in the project.

On October 17, 2011, the Council authorized staff to take the preliminary steps necessary to participate in Idaho Power's Oregon Solar Photovoltaic Pilot Program and to negotiate with SBE to finance the city's participation in

Idaho Power's Oregon Solar Photovoltaic Pilot Program.

A 2009 Oregon Statute required power companies operating in Oregon, including Idaho Power Company, to participate in pilot programs for the generation of solar power. In simplified terms, Idaho Power paid its customers for the power generated by the solar (photovoltaic) panels installed on the property of its customers who participated in the pilot program at a rate of $0.317/kWh for the entire 15-year life of the Agreement. The customer continued to pay for electricity used as they currently did during that 15-year period. Once the Agreement expired, the customer could choose to negotiate a net metering agreement with Idaho Power that would offset electricity consumed at the location by that produced by the solar system.

Staff submitted applications for the installation of ten solar photovoltaic systems under the program, which were approved by Idaho Power that same day. The locations selected for this project were the Ontario Aquatic Center *(no longer being considered)*; Wastewater Treatment Plant (three (3) meters); City Hall; Public Works Shop; Water Treatment Plant (two (2) meters) and the Ontario Golf Club (two (2) meters).

Staff negotiated with SBE for the payment of an application fee equal to $500 per meter/installation to Idaho Power on the city's behalf. The $5,000 fee was refundable so long as the city completed installation of the solar panels within the 12-month deadline, or if Idaho Power decided not to award a Capacity Reservation to the city as discussed in the Idaho Power Overview. If the City Council decided not to proceed with the Idaho Power Pilot Program, the city would be obligated to repay SBE the $5,000 paid by SBE on the city's behalf.

SBE sent staff a proposal packet with draft documents outlining the terms, conditions and cash flow models for a public/private partnership geared towards taking advantage of Idaho Power's Oregon Solar Photovoltaic Pilot Program. If a lease/financing contract between SBE and the city was approved by the Council, SBE would purchase the panels at SBE's expense, as well as install and maintain the panels in accordance with Idaho Power's specifications and timelines. SBE would lease the space required for the project from the city at the cost of $1 per year until full ownership of the project was transferred to the city. SBE's proposed financing arrangement would allow the city to own the solar panels at no additional cost after a period not exceeding eight years, by the end of which time SBE would have recouped their investment costs through Idaho Power's Volumetric Incentive Payments due to the city under the pilot program.

SBE's intent was to build the solar photovoltaic installations at no cost to the city, and projected that this project would bring approximately $204,000 in revenues to the city over the first 15 years. Staff recognized that this projection was based on assumptions that might prove to be inaccurate. A net metering agreement that would help offset electricity costs at each installation location could be negotiated with Idaho Power at the end of the 15-year Energy Sales Agreement. The overall life expectancy of the equipment to be installed was 25 years.

Staff was looking for a sign off by the Council for the Letter of Intent, if all the elements of the documents could be agreed upon.

Mayor Dominick stated on Thursday, Council had barely received the Letter of Intent, and really hadn't had a chance to review it, to ask questions of Leif [Elgethun] from SBE. His understanding of an LOI, was that it was a fairly loose document, stating you were ready to move forward. The proposed LOI was extremely binding in the city more than on SBE. On page 1, paragraph 3, it had been changed to read that the developer, nearing completion, would obtain the necessary licensing. But, lower down, it read that the parties intended for this Agreement to be binding and enforceable, and acknowledged that further Agreements would be necessary. An LOI should not be binding and enforceable. Again, on page 2, section 7.2.4, it read that the parties agreed that section was biding and enforceable on the parties, and shall survive the termination of the Agreement. An assignment of payments on page 3, he needed help understanding the wording. Page 4, 21.2, again the binding verbiage; then, 21.3, developer may transfer or assign some or all of its interest in this Agreement.

Mr. Sullivan stated with 7.2.4, that was a subsection of 7.2, and the city had essentially committed to SBE that if SBE paid the $5K fee, the city would pay it back if the city backed out of the project. Section 7.2.4 read that if

everything else fell apart, the $5K would still be paid. Signing the document would obligate the $5K reimbursement if Ontario walked away. It was true that signing the document would obligate the city to repay that $5K if the city chose to walk away. That provision would survive the remainder of the contract. Section 3 language, from the December 19th draft, LOIs could create obligations. The obligations the city would have would go into effect once SBE received their CCB license. The city would have certain obligations at that point. They would have an obligation to move forward in good faith, and to proceed with entering in to final agreements. That did not mean that there wouldn't be issues that might arise that could cause the Agreement to fall apart, if the Council approved the LOI, it would impose some obligations on the city to act in good faith to pursue Agreements with SBE within the terms laid out in the LOI. It was not enforceable against the city until the CCB license was obtained. Once the CCB license was obtained, the city would have the obligation to move forward and enter into final contracts or at the very lease risk having to pay back the $5K to SBE. There wasn't really any other enforcement provision in the Agreement, if the city chose to walk away from the LOI without fulfilling any other Agreements.

Councilor Fox stated if he understood Mr. Sullivan, it was binding.

Mr. Sullivan stated when they looked at the obligations the city was undertaking, all the risks were on SBE. The Agreement obligated the city NOT to do certain things. The city could not go out and negotiate with someone else, and the city was going to agree to sign the documents that were necessary to move the city forward as part of the agreement. There really wasn't much else the city was obligating itself to do, under this Agreement. There really weren't any other obligations that the city was undertaking.

Councilor Fox asked Mr. de Tassigny if he had done a background check on SBE? There were policies within the City of Ontario that if a contractor came into Ontario, and wanted to bid a project, he believed Mr. de Tassigny was the person who would put together the pre-qualification list and pre-qualified the contractor. Was that done on this project?

Mr. de Tassigny stated they were not bidding the project at this point. They were looking at taking advantage of an Idaho Power program, and working with a developer. At this point, no work was being bid, and no work had been designed. In terms of the project, Councilor Fox was correct in that anything that was facility related, he would be the one to put it together, that the contractor was pre-qualified.

Councilor Fox stated they were asking something different. SBE solicited the city, correct, or did the city approach SBE?

Mr. de Tassigny replied that SBE had approached the city.

Councilor Fox stated then a business contacted the city, an unlicensed contractor from another state, and they had $6K net worth in their little company. They were not licensed to do business in the State of Oregon; it was illegal for them to do business in the State of Oregon.

Mr. Sullivan stated they were NOT doing business as a contractor.

Mr. de Tassigny stated they were actually the developer.

Councilor Fox stated that was illegal also. And he had a copy of that law with him.

Mr. Sullivan stated he looked at the law, too. This was an unusual situation. Councilor Fox had made good point at the Study Session, and he agreed that to the extent that they were committing themselves to getting their CCB license, the city should hold them to that.

Councilor Fox stated it as may more important than that, because it appeared to him that this was a company that wanted to step onto our buildings and hook into our electrical grid for the city. Why hadn't the city talked to Idaho Power, why wasn't Idaho Power there telling them if this was even safe? Had Idaho Power been talked to?

Mr. de Tassigny stated yes, he had actually attending some presentations that were specific to this program. This was really an Idaho Power program, so he didn't believe they would be putting it out there if it would put the building or the building owners at risk.

Councilor Fox asked why there wasn't anything like that in their packet?

Mr. de Tassigny stated he believed they did have some documentation on the program itself.

Councilor Fox stated it wasn't on the safety. Idaho Power was being made to do this.

Mr. de Tassigny stated the equipment that would be put in was UL listed, and was built and passed inspections for these applications. That was true for any electricity using equipment.

Councilor Fox stated he understood that, but he was talking about Ontario's grid. Did they even know if this thing would work? These guys had never done one of these projects.

Mr. de Tassigny stated he believed they provided a reference for a project they put together.

Councilor Fox stated no. He had asked on Thursday, and was told they had not done a project. They gave a lot of pictures of projects, and he asked if he did that one, or that one, or that one, and they hadn't done any of them. He was told to go to the Armory, and he asked if they had done that project, but they hadn't.

Mayor Dominick stated Councilor Fox shifted gears before getting the question answered on the licensing. Mr. Sullivan?

Mr. Sullivan stated that typically, when a city was confronted with issues about a CCB license with a contractor that was proposing to do business with the city, it was as a result of the city putting out a Request for Bids. Following the responses, the city would do an evaluation to determine whether or not the lowest responsible bidder met all the legal requirements. One of those legal requirements was for that person to be licensed by the CCB. In this situation, an unusual, probably unprecedented, contractual arrangement that was being proposed due to the fact that Idaho Power Company extended to the City of Ontario the opportunity to enter into a contract with it to be a participant in this solar energy project. What SBE was proposing to do, essentially, was to step into the city's shoes, take on that responsibility as a participant, construct solar panels that it will own, it won't belong to the City of Ontario, at least not for eight years under their proposal, SBE will actually own the property, it would be constructed on property that SBE proposed would be the tenant of. The arrangement being proposed wasn't one with which the city was asking contractors to construct solar panels for the city, which would be a more typical type of arrangement. There were Oregon cases that said under those circumstances, where the majority of the work being done was on personal property, and the real value was in the panels themselves, they didn't need a CCB license unless making improvements to real property. That's what the requirement was. Most of the value wasn't in the connection of those solar panels to the ground; it was in the solar panels themselves. That might be a distinction only a lawyer would appreciate, but there were cases in Oregon that said when most of the value in a contract that a city was entering into with a contractor, the contractor itself didn't even need a CCB license, as long as it could present a license to the city by the sub-contractor or by the entity that was actually going to be physically installing the solar panels or the other equipment on the ground. That's where they would need the CCB license. He was not saying any of that was the case here. He did suggest that this was a far different situation, than the usual situation the city was confronted with, where it had to make a decision on whether to go further with a contract at a time when the contractor didn't have a CCB license. This was not that situation, in his opinion.

Councilor Fox read the Oregon law he brought: *A person or joint venturer that undertakes, offers to undertake, submits a bid to do work as a contractor, must have a current license issued by the Construction Contractor's Board, and possess appropriate endorsements.* There were endorsements for a commercial developer. They couldn't even advertise in this state.

Mr. Sullivan stated it was people that made improvements to real property.

Councilor Fox verified they didn't need an electrical license, either?

Mr. Sullivan stated they would, if that was part of the improvements to the real property. He was not disputing that they should have a license in this case. He was suggesting to the Council, and he was not encouraging the Council to do this, he was saying from a legal standpoint, he didn't view the city as putting itself at legal risk if they proceeded with the LOI, simply because today the SBE didn't have a CCB license because this letter, with the language that was underlined, made the Agreement non-binding on the city until that license was obtained.

Councilor Fox asked why they would act on it that evening? Why not slow down and do it right. He had many friends that were contractors, and he could tell the Council, they were going to get bloody noses for proceeding with this without them being licensed.

Councilor Sullivan stated the company was trying to meet the end of year deadline.

Mr. de Tassigny stated the intent of the letter was to gauge how serious the city was before the investors put out any money. They were going to purchase the equipment by the end of the year. The bottom line was that money was to be made with little risk to city. The equipment they were going to install had to be per code. Also, SBE had everything to lose if it wasn't done correctly.

Councilor Fox stated his agreement with the Mayor. The LOI read more like a contract. It tied the city into having to do the project. He didn't believe all the research had been done. Certainly Yorick hadn't done much research if he didn't know until Thursday, and he had asked the question on whether they had a contractor's license in Oregon, and no one knew. He was appalled by that.

Mr. de Tassigny stated again, it was because no work had been bid. They were looking at developing the project.

Councilor Jones stated it was being done with an unlicensed contractor.

Mr. de Tassigny stated all the work, at this point, could still be bid out. The project hadn't even been designed yet.

Councilor Crume stated this project from the inception had been rushed. He was concerned that the Council wasn't told about it in the ten or so days that staff had to work with it, although other people were let in to look it over. He believed the Council should have had the opportunity before the Council was exposed to the $5K expense. On that issue, he struggled with one figure – that was the $5K expense that the city was presented with if the city backed out. In his math, they also needed to add in Mr. Sullivan's fees for his legal work, making it more than just the $5K.

Mr. Sullivan stated he was pretty sure it was under $1500.

Councilor Crume stated it was his fee, plus the $5K, so they were over the $5K. He was concerned about this company having only $6K I their bank account. He struggled with some of the wording in the contract. But, his main concern was about what the project was and what it did. The State of Oregon, and to some degree the federal government, was forcing this down everyone's throat, and our expense. If everyone would look at their power bill, they were all being assessed 1.5% extra for this program. Without the grant being offered to this company, which was out of Idaho, at $200K+, and Idaho Power buying it back at 5x the going rate, this type of business venture would never make it in today's world. He was a believer in free enterprise and of green energy; he had no problem with that, but it had to meet the same standards that everyone had to go by. With that standard, instead of SBE coming in and saying they wanted this to be a picture program for them to show across the state for what they could do, he would have rather seen the City of Ontario stand up to the Governor of Oregon and say no, we're not going to stand for having this shoved down our throats, at our expense, just so he

could feel fuzzy and warm about making green energy. They could have made a much better statement to the state, but he wasn't dumb enough to think that just Ontario could change what the Governor thinks, but it could have set a precedent to tell the government what they were doing wrong. By entering into this Agreement, they were literally going to bed with the Devil. That might sound stupid, be he believed it. It looked like the city had the potential to make money, if nothing catastrophic happened. He agreed, and could see that, but that was not the stand he was taking. He thought they should have told them no. Every ratepayer and taxpayer in the city was paying extra because of this type of thing happening. A company came from out of state to make a profit and to buy the product out of China.

Mayor Dominick asked if any of the language could be changed to Ontario's favor?

Mr. Sullivan stated it would have to be approved by SBE. If the city signed the Agreement and didn't, it obligated the city to move forward, but didn't particularly obligate the city to do anything more than continue to cooperate with SBE as they proceeded to meet the Idaho Power requirements. The city had paid $5K to have the chance to participate. SBE, with the LOI, was ensuring the city was going to continue to fulfill the obligations of the Agreement.

Councilor Verini stated it gave them a chance to approach the investors.

Mr. Sullivan stated yes, among other things. Eventually they would need to hire contractors, and enter into contracts with parties to supply solar panels, and the city would need to enter into a lease to formally allow SBE to install those panels on city property. The LOI gave the green light to SBE to undertake those obligations. It gave SBE an Agreement to talk to their investors, showing Ontario was serious about being involved.

Mayor Dominick asked about wording in the contact that were disused at the Study Session, about the changes, and they were not in the new handout. Could changes be made following the signing?

Mr. Sullivan stated there was no obligation to sign the draft least agreement. They were obligating themselves to undertake, in good faith, to negotiate with SBE to finalize the Agreement.

Mayor Dominick stated on page 3, item 13, there had been a lot of discussion about SBE fully funding the converter replacement, and this provided for only half the funding. Could that be renegotiated, if signed?

Councilor Sullivan stated yes, as part of the application process. It read that the parties agreed to negotiate the terms of such lease agreement in good faith, and to execute such lease agreement prior to the completion of the application stage. SBE had to complete the application process before the city was tied into agreeing to execute Idaho Power's standard 15-year energy sales agreement. It seemed to him that the city would have the ability to negotiate the terms before any of this process moved forward.

Mr. Sullivan agreed, items such as 8 and 9 would have to be taken care of before item 13 would take affect; however, with item 8, the city was the participant.

Councilor Sullivan stated the lease needed to be negotiated before the application was completed. That would give the Council the opportunity to address before moving on.

Mr. Sullivan stated Leif [Elgethun] told the Council if the Council wanted converter replacement fully funded sooner than 15 years, SBE would negotiate that with the city.

Councilor Fox asked again if this would affect the grid?

Mr. de Tassigny stated, again, no. Idaho Power made the physical connection to the grid. In doing so, they had to ensure the safety features and the equipment were to standard. Once satisfied, they would make the connection. Idaho Power wouldn't promote a program that would jeopardize the grid.

Councilor Fox verified that Mr. de Tassigny was sure it wouldn't affect the city's grid?

Mr. de Tassigny stated he was sure the appropriate steps were in place.

Councilor Fox stated Idaho Power should have been in attendance to answer questions.

Mr. de Tassigny stated he understood Councilor Fox's concerns, but he wasn't aware that Idaho Power should have been in attendance, as that hadn't been addressed prior.

Mr. Lawrence stated the Armory has solar panels in the grid, and the new rodeo area would be solar, along with some others areas.

Councilor Fox asked if those were licensed contractors that did those projects? He believed the Armory was on a redundant system.

Mr. Lawrence stated he didn't know the details of the Armory's construction project.

Councilor Sullivan asked if there would be any further damages if the city moved forward, other than the $5K that had already been discussed.

Mr. Sullivan stated there were no other remedy provisions that SBE was claiming entitlement to.

Councilor Verini reminded them they were obligated for $5K and to negotiate in good faith.

Councilor Fox stated not just to negotiate, but to follow through in good faith.

Mr. Sullivan stated in paragraph 13, he believed that language could be changed. There was a specific formula that was tied to the 15-years. If the Council would feel more comfortable, that language could be changed to read that the developer would create a restrictive fund for the converter replacement in an amount to be agreed to between the parties.

Councilor Jones stated in his opinion, at this point, he didn't see how they could move forward, even with the intent. First, he disagreed with the City Manager's actions, and how it was started. Second, the developer wasn't licensed in Oregon, which created a situation with local developers who were licensed, that he was not willing to move forward with. That item alone was an issue. Third, Councilor Sullivan's numbers that he continued to question, and he appreciated his eye for the line items, and he never had his questions answered on the financial statements and projects. He continued to ask the questions, and he never really received an answer. That concerned him. Fourth, they were connecting to Idaho Power, and this was Idaho Power's project with the State of Oregon, and this was a whirlwind, and there should have been an Idaho Power representative to explain the system and how it worked. They had a brand new company coming in to Oregon, trying to do a project, and he appreciated the frontierism on this, but he was really torn. With everything coming together, the Council had to make a decision because of the year end. He couldn't move forward – it was just too loose.

Councilor Fox stated he had an ethical question. If the Council voted yes, knowing this was an unlicensed company in violation of the law when they approached the city and currently still were, how did that support the law of the State of Oregon?

Mayor Dominick stated he was not versed in Oregon law; that's what they hired Mr. Sullivan to handle. Mr. Sullivan had given his opinion, that this was not a developer.

Councilor Fox asked if they, as a body, were supporting Oregon's law in voting yes to do business with an unlicensed contractor, knowing they were still in violation? Did that support Oregon's law?

Mayor Dominick stated a provision had been added to the contract that read "upon developer's license".

Councilor Fox stated he knew that, but he would be very specific and ask the City Attorney. Did that support Oregon's law?

Mr. Sullivan stated that Councilor Fox's supposition was, as he listened to his question, was if they were in violation of the law and the city agreed to do business with them, did that support Oregon law. The question was, were they in violation of the law. He questioned, whether at this stage, based upon the relationship with their proposal with Ontario, that they were in violation. He didn't think that question was entirely clear. Maybe if this project were further down the road, there would be a more significant argument that they would be in violation of the law. At this stage, they were in the process of getting their license, as he understood it. They were waiting for one of the SBE partners to take the exam. The reason the exam hadn't been taken was because they hadn't scheduled it yet. Once they got the license examination schedule, he would participate in it. If he failed the exam, which would prevent SBE from getting a license, the city would have no contractual obligation with SBE. At this stage, he didn't think there was an ethical issue involved. The city was not putting itself where it was entering into a binding contract with them until such time that they were licensed.

Councilor Fox stated he was saying they were currently operating illegally in the State of Oregon. Did Mr. Sullivan want to dispute the wording?

Mr. Sullivan stated he would dispute that SBE were operating illegally in the State of Oregon today, based upon the information he had available to him. Yes, he would dispute that.

Councilor Fox stated hypothetically, if they were operating illegally, as he believed they were, was the city supporting the laws of the State of Oregon by signing the LOI?

Mr. Sullivan stated he didn't know what to say. It was obviously a rhetorical question. If the city did business with someone on the assumption that they were violating the laws of Oregon, the city wasn't supporting the laws of Oregon, nor were they necessarily violating it.

Councilor Fox stated they would not be supporting the laws of Oregon if they did that.

Mr. Sullivan stated they wouldn't necessarily be violating it. There used to be a law in Oregon that said a public body could not enter into a construction contract with a business that wasn't properly licensed by the CCB. That law was repealed in 2003. Therefore, there was no law currently on the books that read that a public body couldn't negotiate or even contract with an unlicensed contractor. The risk was on the contractor, if that happened.

Councilor Fox stated he understood, and that was all he was saying.

Mayor Dominick stated that was a debate that could go on and on, but what they had was legal counsel telling them that with wording added to the contract about the developer receiving his license, that if that person failed to get that license, there would not be a binding contract. He knew it was a tough question about whether the company needed to have the license that day, but as Counsel mentioned, the city did have the authority to be in negotiations for this type of Agreement.

Ron Verini moved, seconded by Charlotte Fugate, that the City council authorize the City Manager to sign the Letter of Intent with SBE, stating that the city would participate in Idaho Power's Oregon Solar Photovoltaic Pilot Program if SBE is able to generate an agreement that satisfies the City's terms and conditions, with the change in #13 to reflect that the developer would create a restricted fund for converter replacement in an amount to be agreed upon between the parties. (No vote)

Mayor Dominick asked if they need to add anything in the motion about upon completion of the CCB, or was that okay because it was already in there?

Mr. Sullivan stated it was already in the draft Agreement.

Councilor Sullivan stated one other item in the contract, under 21.3, Assignment, where the *developer may transfer or assign some or all of the interests in this Agreement in the future*, he wanted to add in "upon approval of program participate", which would be Ontario.

Mr. Sullivan stated what often happened in contracts, when they put in language like that which allowed one side to essentially veto or sign, the other side oftentimes wanted to add additional language stating "which would not be unreasonably withheld", so that if they wanted to have it signed, they had to appear back before the Council, and get the Council's consent. If the city arbitrarily refused to consent, the company could argue that was an unreasonable for the city to do that. He suggested having that language added in.

Councilor Sullivan stated as a point of clarification, there wasn't anything further in the Agreement that would expose the city beyond the $5K already put out; was that correct? There was no provision in there for damages above that.

Mr. Sullivan stated that was correct.

Councilor Jones asked if the action failed that evening, and he still believed there was an issue with the contractor situation, but was the city liable for the $5K, with an unlicensed developer/contractor coming before the Council. Was the city still liable if the action failed? He wanted the City Attorney to provide a clear answer.

Mr. Sullivan stated that would have to be the defense the city took if they wanted to fight it. Except for that ground, the city had made the commitment to repay the $5K. The city could make that as a possible defense. He did not know what a judge would do with that defense, but it was possible it could be one. There was a provision in the law that read that if a contractor took on a project in Oregon when they should be licensed, and they weren't, they were not allowed to sue for the money owed in connection with that project. He didn't know if that would prevail in front of a judge or not.

Councilor Sullivan stated it would cost a lot more than $5K to fight that. He knew there were a lot of other elements coming into this. The technology that they were looking to purchase was dirt cheap right now. He knew that was one of the reasons SBE wanted to move forward on it. It's about 50¢ on the dollar. He wanted to negotiate better terms on the lease contract, but he thought it was a good opportunity for the city. The program was there, and the city was out the $5K, and he didn't think it would be smart to try and defend themselves to get out of paying that $5K. Where it wasn't exposing the city any further, he encouraged the Council to look at it and move forward.

Councilor Jones stated, with that said, and knowing that time was of the essence; at this time he could not support it. Could there be an emergency meeting, on Tuesday or Wednesday, to allow more research to be done on the contractor situation? Also, an Idaho Power representative should have been there. Was that possible?

Mayor Dominick stated the Council had the ability to hold emergency meetings, and could also conduct a telephonic meeting, with 24-hours' notice.

Mr. Sullivan stated they could also have one or two people sit down with a staff person and just ask questions from someone from Idaho Power, to see if there any issues there.

Ron Verini moved, seconded by Charlotte Fugate, that the City council authorize the City Manager to sign the Letter of Intent with SBE, stating that the city would participate in Idaho Power's Oregon Solar Photovoltaic Pilot Program if SBE is able to generate an agreement that satisfies the City's terms and conditions, with the change in

#13 to reflect that the developer would create a restricted fund for converter replacement in an amount to be agreed upon between the parties, with the addition of language in Section 21.3 – Assignment – to read where the *developer may transfer or assign some or all of the interests in this Agreement in the future*, add in "upon approval of program participate, which would not be unreasonably withheld". Roll call vote: Crume-yes; Fox-no; Fugate-yes; Jones-no; Sullivan-yes; Verini-yes; Dominick-yes. Motion carried 4/3/0.

CORRESPONDENCE, COMMENTS, AND EX-OFFICIO REPORTS

- Kathy Daly stated the Ontario Aquatic Center would be hosting the annual swim meet on January 6-7, with approximately 120 swimmer, and 1000 people overall. Also, last August, the Oregon Mortuary Board did an inspection of both Ontario cemeteries, requested some documentation be sent back to state, which was done. Said both cemeteries looked beautiful, and the records were great. Also, if anyone needed any extra Christmas presents, pool punch passes were good stocking stuffers at only $20 for 10 visits!

- Ron Verini stated Mitchel John, who was set to perform, had taken ill, and was unable to perform. He might be in town tomorrow for Help Them to Hope and veterans.

- David Sullivan stated at the Golf Board meeting, they had set the new rates, and was set to be published in the paper. They were running the First Timers Special again, at $350.

- Charlotte Fugate stated she read in in the Idaho Press Tribute that Caldwell had a swimming project where ALL 3rd graders were taught to swim. She spoke with Ms. Daly, who said she would look into it. It was a good program for the kids.

- Mayor Dominick stated he had attended the Public Works Committee meeting last Thursday, and the committee was busily working on various projects with the Public Works Department. Also, Delhie Block was putting together an aggressive maintenance program for the Water and Wastewater Plants for much needed repairs. There was an extensive list with both high and low priority projects.

ADJOURN

Ron Verini moved, seconded by David Sullivan, that the meeting be adjourned. Roll call vote: Crume-yes; Fox-yes; Fugate-yes; Jones-yes; Sullivan-yes; Verini-yes; Dominick-yes. Motion carried 7/0/0.

APPROVED:

Joe Dominick, Mayor

ATTEST:

Tori Barnett, MMC, City Recorder

TELEPHONIC COUNCIL MEETING MINUTES
January 5, 5012

A special telephonic meeting of the Ontario City Council was called for Thursday, January 5, 2012, in the office of the City Recorder, Ontario City Hall beginning at 3:00 p.m. Council members who participated were Joe Dominick, Charlotte Fugate, Ronald Verini, David Sullivan, Dan Jones, and Jackson Fox. Norm Crume was unavailable.

Staff present was City Recorder Tori Barnett. No questions regarding the bills had been received from Council.

Notice of the meeting was provided to the Argus Observer on January 3, 2012.

ADOPTION OF THE BILLS

The regularly scheduled meeting of Tuesday, January 3, 2012 was cancelled. To enable the City to pay vendors in a timely fashion, the Council needed to approve the submitted bills. The Ontario Finance Department mailed/emailed the bills to Council for review on Tuesday, January 3, 2012. Ronald Verini moved, seconded by David Sullivan, to adopt the bills as presented. Vote results listed below:

Mayor Dominick replied via email, casting a YES vote on the bills.

Councilor Fugate replied via email, casting a YES vote on the bills.

Councilor Verini replied in person, casting a YES vote on the bills.

Councilor Sullivan replied via telephone, casting a YES vote on the bills.

Councilor Jones replied via telephone, casting a NO vote on the bills. He indicated some questions on a few bills, those being on American Staffing, Priest Electric, Ontario Sanitation, and Aaron & Renee Wilkins. After speaking with Finance, and the departments who submitted the invoices, the following are the responses the City Recorder received on the four bills commented on.

American Staffing ($4,781.77): Invoice this billing cycle for 14 part-time employees; 13 from Aquatics/Recreation and one was a three-way percentage split between Utility Maintenance, Streets, and Water. Pay varies by employee and position. (Matt Mejia, Accounting Assistant, Finance Department)

Ontario Sanitary Service ($2,929.65): Invoice was for the City's annual Fall Leaf Pick-Up. This service has been going on for 20+ years. Large dumpsters are placed at Cooper Country Trailer Park and Treasure Valley Trailer Park, and the city crews pick up all the other debris. The contents are picked up by city crews and taken by city vehicle to the OSS transfer station. The city incurs the cost of the two large dumpsters, the pick-up of those dumpsters, the cost to dump everything at the OSS transfer station, and the cost for OSS to take all the refuse to the Payette site. There is a charge per ton. Staff also believes that picking up the yard debris keeps it out of the city's catch basins and storm lines running to the Snake River. Further information on this annual event can be found on the city's website under the Street Department link, Fall Cleanup. (John Bishop, Manager, Operations, Public Works Department)

Priest Electric ($4,097.28): Invoice for emergency repair of pump #4 at the Water Treatment Plant. Only four pumps in operation, two going to each reservoir. Pump was just old and worn out. Not a budgeted item, as it was an emergency repair, but funds were available, and taken from, the maintenance budget. (Bob Walker, Deputy Public Works Director, Public Works Department)

Wilkins, Aaron & Renee ($1,051.00): Invoice for lodging at a guesthouse for three nights for four employees: Chief Alexander, Sgt. Kee, Sgt. Esplin, and Sgt. Mallea, to attend the Chiefs and Sheriffs Meetings and Leadership Training classes. Chief Alexander believed renting a small house would be less expensive then hotel accommodations and eating meals at restaurants for the four individuals for those four days. (Mark Alexander, Chief, Ontario Police Department)

Councilor Jones also commented that in the event a Council meeting was canceled, he would rather the bills be carried over until the Council met again, to provide an arena for discussion on the bills, should be there be questions or concerned.

Councilor Crume was unavailable.

Councilor Fox replied via telephone, casting a NO vote on the bills. He did not like taking action through a telephonic meeting.

Motion carried 4/2/1.

APPROVED:

_____

Joe Dominick, Mayor

ATTEST:

_____

Tori Barnett, MMC, City Recorder

PROCLAMATION
Fire Service Appreciation Day

WHEREAS, the fire service members of Ontario have dedicated themselves to the protection of life and property of their follow citizens, often at great risk to their own safety and well-being; and

WHEREAS, the fire service members of Ontario have continuously supported efforts to elevate the standards and training of firefighters and have been instrumental in increasing the public awareness of methods of fire protection and suppression; and

WHEREAS, firefighting is one of the most hazardous professions and requires extensive training, strength, endurance, courage and a selfless concern for the safety of the citizens of Ontario; and

WHEREAS, the contributions and sacrifices of valiant fire service members are often inadequately recognized by the public, and

WHEREAS, the work of fire service members deserved the attention and gratitude of all individuals in Ontario.

NOW, THEREFORE, BE IT RESOLVED, that I, Joe Dominick, Mayor of the City of Ontario, do hereby proclaim January 27th to be recognized as

FIRE SERVICE APPRECIATION DAY

as it is recognized every year on that date, and be it further resolved that the legislative assembly encourages all citizens in Ontario to recognize and honor our fire service members for their efforts to keep our citizens safe from the ravages of fire.

_____

Joe Dominick, Mayor

CONSENT AGENDA
January 17, 2012

TO: Mayor and City Council

FROM: Dan Shepard, Engineering Technician III

THROUGH: Chuck Mickelson, Public Works Director
Henry Lawrence, City Manager

SUBJECT: ANCHOR MINI-STORAGE L.L.C. – Water Line Easement

DATE: January 12, 2012

SUMMARY:
Attached are the following documents:

- Location Map
- Anchor Mini-Storage L.L.C. - Water Line Easement

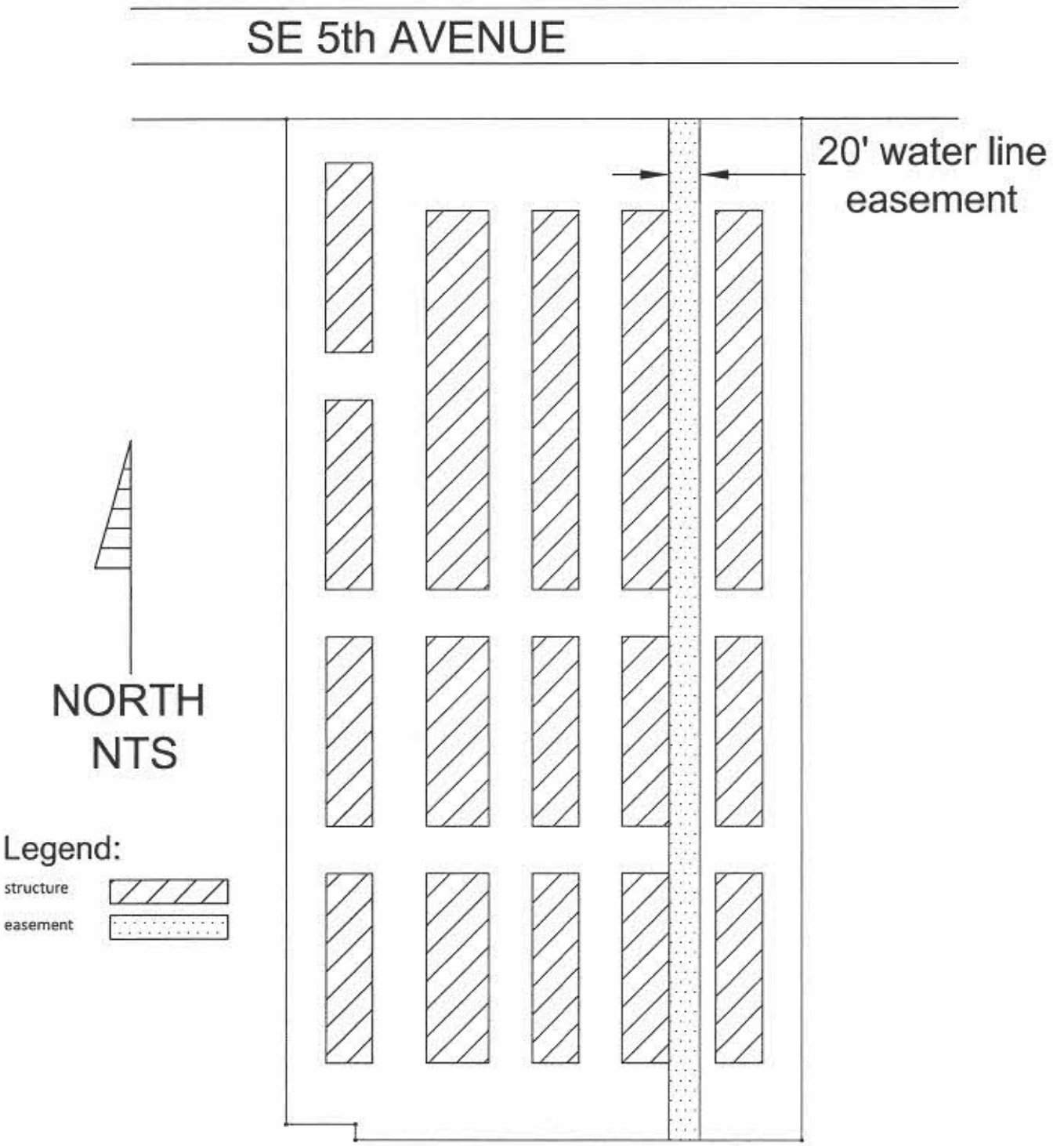
Anchor Mini-Storage L.L.C. is constructing a storage facility on SE 5th Avenue. A water main was constructed by the developer to provide fire service to the development. The new water main connects to an existing water main in SE 5th Avenue and extends south across the entire length of the development, providing service to three fire hydrants, one in the right of way of SE 5th Avenue and two on the development site. Water mains and the fire hydrants are to remain under control and jurisdiction of the city. Staff is requesting that the Mayor be authorized to sign an easement for a water main extension for the Anchor Mini-Storage. The easement gives the City of Ontario the authority to maintain and repair this water main and hydrants as necessary.

The City of Ontario is requesting a 20-foot wide utility easement for the water main and Anchor Mini-Storage L.L.C. accepts conveyance of the described easement for a water main and agrees to the terms of the City.

BACKGROUND:
Utility easements are very common for larger businesses. Having these easements in place also provides the business with adequate fire service.

FINANCIAL IMPLICATIONS:
None.

RECOMMENDED MOTION:
Staff has reviewed this easement and recommends the Council authorize the Mayor to be signatory to the attached Permanent Utility Easement for a Water Main and the City Recorder attest the Mayor's signature.



Anchor Mini Storage
SE 5th Ave

Location Map

After Recording Return to:
City of Ontario
444 SW 4th Street
Ontario, OR 97914

PUBLIC UTILITY EASEMENT

FOR VALUE RECEIVED, **ANCHOR MINI STORAGE, LLC,** ("Grantor"), in consideration of the sum of zero dollars, the receipt of which is hereby acknowledged, does hereby grant a Water line utility easement to the **CITY OF ONTARIO,** ("Grantee"), whose address is 444 SW 4TH Street, Ontario, Oregon, 97914, together with the right to erect, construct, install, and lay and thereafter use, operate, inspect, repair, maintain, replace, and remove public a waterline over, across, and through the following described real property located in the City of Ontario, Malheur County, Oregon (the "Property"), to wit:

See attached Exhibit "A" and made a part hereof.

Further, it is agreed, and made a condition herein, that the above described easement is for public utilities and in the event the Grantee fails to use or ceases to use the Property exclusively for said use, this easement shall be terminated.

GRANTEE, by signing this Instrument, accepts the conveyance of the easement described herein for public utilities and agrees to the terms of Grantor's Reversion and all other covenants, terms and conditions of this instrument.

IN WITNESS WHEREOF, the Grantor has executed this instrument on this 15th day of December, 2011.

GRANTOR: **ANCHOR MINI STORAGE, LLC**

By: Jeffery D. Petry
(Signature)

Name: Jeffery D. Petry
(Print)

Its: Managing Member
(Title, (Print)

STATE OF OREGON)
SS.
County of MALHEUR)

On this 15TH day of December, 2011, before me, the undersigned Notary Public in and for said State, personally appeared Jeffery D. Petry, known or identified to me to be Managing Member of **ANCHOR MINI STORAGE, LLC**, and the Company that executed the within instrument, or the person who executed the instrument in behalf of said Company, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

OFFICIAL SEAL
PAMELA L MALMBERG
NOTARY PUBLIC - OREGON
COMMISSION NO. 457525
MY COMMISSION EXPIRES APRIL 11, 2015

Notary Public for Oregon
My Commission expires: April 11, 2015

IN WITNESS WHEREOF, the Grantee has executed this instrument on this 15th day of December, 2011.

GRANTEE:

CITY OF ONTARIO

By:_____
(Signature)

Name:_____
(Print)

Attested:_____
City Clerk: Tori Barnett

Its:_____
(Title)

CK3, LLC

CIVIL-STRUCTURAL-ELECTRICAL
ENGINEERING-SURVEYING & PLANNING
368 SW 5TH AVENUE, ONTARIO, OR 97914

EXHIBIT "A"

December 12, 2011

WATERLINE EASEMENT DESCRIPTION

(J. PETRY GENERAL CONTRACTOR)

Land situated in the SW1/4NE1/4, of Section 10, Township 18 South, Range 47 East, W.M., Ontario, Oregon, described as follows;

Easement: A twenty-foot wide waterline easement, described as follows;
Commencing at the northeast corner of the SW1/4NE1/4 Section 10, Township 18 South, Range 47 East marked with a 5/8" rebar as shown on Record of Survey No.18-47-0884 ; thence, S 89°59'48" W, coincident with the north line of the SW1/4NE1/4 a distance of 404.48 feet;
to the **Point of Beginning**, of the twenty-foot wide waterline easement, whose centerline is as follows;
thence, S 00°11'56" E, a distance of 668.01 feet more or less to the **Point of Terminus.**

END OF DESCRIPTION

REGISTERED PROFESSIONAL LAND SURVEYOR
OREGON
JAN. 21, 1988
DANNY K. CUMMINGS
2316

RENEWAL DATE: DEC. 31, 2013

Phone (541) 889-5411 Fax (541) 889-2074 E-Mail Address:

OLD BUSINESS – AGENDA REPORT
January 17, 2012

TO: Mayor and City Council

FROM: Chuck Mickelson, Public Works Director

THROUGH: Henry Lawrence, City Manager

SUBJECT: ORDINANCE #2664-2011 – LID #47 FINAL ASSESSMENTS NADINE DRIVE AND ALAMEDA DRIVE SOUTH OF SW 16TH AVENUE (Second and Final Reading)

DATE: December 29, 2011

SUMMARY:
Attached are the following documents:

- Ordinance #2664-2011
- Property Owner Assessment Spreadsheet

Local Improvement District (LID) No. 47 was formed to install sewer and water in an area that was adjacent to the city limits, but in the county. The property within the LID has been annexed. The construction is complete, all of the property owners have connected to the sewer, and all but three have connected to the city water system. The assessments have been calculated and are required to be levied through the adoption of an assessment ordinance by the City Council. Staff has prepared Ordinance No. 2664-2011 for Council review and approval.

PREVIOUS COUNCIL ACTION:

November 2010	Council adopted Resolution 2010-152, a resolution of intent to construct sanitary sewer and water mains on Alameda and Nadine Drive.
January 2011	Council adopted the Director's Report by Resolution 2011-101
June 2011	Council approved annexation Ordinance 2655-2011
June 2011	Council approved award of construction contract to Eastern Oregon Construction
July 2011	Council approved resolution 2011-118 setting aside money for the construction expenses in a separate account
December 19, 2011	Council passed Ordinance #2664-2011 on 1st reading.

RECOMMENDATION:
Staff recommends the Council adopt Ordinance #2664-2011, on Second and Final Reading by Title Only.

PROPOSED MOTION:

I move that the Council adopt Ordinance #2664-2011, AN ORDINANCE PROVIDING FOR AND ASSESSING THE COST OF IMPROVING NADINE DRIVE FROM ALAMEDA DRIVE WEST TO THE END OF THE CULDESAC; AND ALAMEDA DRIVE FROM SW 16TH AVENUE TO 150 FEET FROM SW 18TH AVENUE, IN THE CITY OF ONTARIO, AND MALHEUR COUNTY, OREGON, BY THE CONSTRUCTION OF WATER, SEWER AND STREET IMPROVEMENTS WITHIN THE BOUNDARIES OF LOCAL IMPROVEMENT DISTRICT NO. 47; DECLARING THE PROPORTIONATE SHARE OF THE TOTAL COST OF IMPROVING SAID WATER, SEWER AND STREETS TO BE CHARGED AND ASSESSED AGAINST EACH LOT, PARCEL, AND TRACT OF PROPERTY LIABLE FOR SUCH ASSESSMENT; AND DIRECTING THE CITY RECORDER TO ENTER SUCH ASSESSMENT AGAINST EACH LOT, PARCEL, AND TRACT OF PROPERTY LIABLE THEREFORE IN ITS PROPORTIONATE SHARE IN THE LIEN DOCKET OF THE COUNTY OF MALHEUR; AND DIRECTING THE SERVICE OF NOTICE OF SAID ASSESSMENT UPON THE OWNERS OF SUCH PROPERTY, on Second and Final Reading by Title Only.

ORDINANCE # 2664-2011

AN ORDINANCE PROVIDING FOR AND ASSESSING THE COST OF IMPROVING NADINE DRIVE FROM ALAMEDA DRIVE WEST TO THE END OF THE CULDESAC; AND ALAMEDA DRIVE FROM SW 16TH AVENUE TO 150 FEET FROM SW 18TH AVENUE, IN THE CITY OF ONTARIO, AND MALHEUR COUNTY, OREGON, BY THE CONSTRUCTION OF WATER, SEWER AND STREET IMPROVEMENTS WITHIN THE BOUNDARIES OF LOCAL IMPROVEMENT DISTRICT NO. 47; DECLARING THE PROPORTIONATE SHARE OF THE TOTAL COST OF IMPROVING SAID WATER, SEWER AND STREETS TO BE CHARGED AND ASSESSED AGAINST EACH LOT, PARCEL, AND TRACT OF PROPERTY LIABLE FOR SUCH ASSESSMENT; AND DIRECTING THE CITY RECORDER TO ENTER SUCH ASSESSMENT AGAINST EACH LOT, PARCEL, AND TRACT OF PROPERTY LIABLE THEREFORE IN ITS PROPORTIONATE SHARE IN THE LIEN DOCKET OF THE COUNTY OF MALHEUR; AND DIRECTING THE SERVICE OF NOTICE OF SAID ASSESSMENT UPON THE OWNERS OF SUCH PROPERTY

WHEREAS A notice of proposed assessments was prepared and mailed to the owners of each lot proposed to be assessed, which designated a time and place for City Council action, which was fixed on the 19th day of December, 2011, at the City Council meeting in City Hall, in Ontario, Oregon, as the place for hearing and considering objections to the proposed assessments; and

WHEREAS, Council at said time and place heard all interested parties present and provided all persons present an opportunity to make protests and objections and to comment on the proposed assessments.

NOW THEREFORE, THE CITY OF ONTARIO ORDAINS AS FOLLOWS:

Section 1: That the Common Council of the City of Ontario, Oregon, hereby declares that it has been found necessary and expedient to improve by the construction of water, sewer and street improvements within the boundaries of Local Improvement District No. 47, the following described area(s):

Tax Map 18-47-09CC, Tax Lots 4400, 4300, 4500, 4600, 4700, 4900, 3800, 3900, 4000, 4100, 4200, 3100, 3200, 3400, 3500, 3701 and 3702.

Said construction having been in accordance with the plans and specifications of the Public Works Director's Report duly and regularly adopted by the Common Council on January 18, 2011, which said plans and specifications now are on file in the office of Public Works.

Section 2: That the improvements herein above described are based on the Public Works Director's estimate in the sum of $266,122.31; that the said improvements have been made.

That the proposed assessment based on actual cost is $258,570.82 which is hereby assessed against the lots, parcels and tracts of property adjacent to or abutting upon said streets and/or Local Improvement District No. 47 established and created by Resolution #2010-152, adopted and approved by the Common Council of the City of Ontario, Oregon, on the 22nd day of November, 2010.

Section 3: That the proportionate share of the total assessed cost of said improvements on said streets within said Local Improvement District No. 47 have been ascertained and determined and apportioned to each lot, parcel and tract of property adjacent to or abutting upon said streets and/or Local Improvement District No. 47 and specially benefited thereby. That said proportionate shares, together with the names of the owners thereof and descriptions of the property assessed hereby, are set out in Section 4 of this ordinance and the said City Council hereby adjudges and declares that each lot, parcel and tract of land in said Section 4 described will be benefited by the making of said improvements in the full sum of money set opposite the description of each of said lots, parcels and tract of property and the same as in Section 4 described are hereby declared to be benefited in aggregate in the full sum of money specified to be assessed in Section 2 hereof.

Section 4: Each lot, parcel and tract of property in the tabulated statement set forth is hereunto attached and by reference incorporated herein, the same as though fully and at length set forth herein in this Section, in the amounts set forth opposite the description of each lot, parcel and tract of property in accordance with the statement of names, descriptions and amounts of property set forth as each property will be individually liened with the County of Malheur. That the same is the designated amount of assessment that each lot, parcel or tract of property has herein before been found liable for the proportionate cost of making said improvements, and in the proportions that each such lot, parcel or tract of property is liable for making the said improvement of said streets is more particularly set forth hereunto attached.

Section 5: That the City Recorder is hereby directed to enter on the lien docket of the County of Malheur, a statement of all assessments made by this ordinance, the same to be entered in due and regular form as provided in Section 8-2-11 of the City of Ontario municipal code.

Section 6: That the ownership of the several lots, parcels and tracts of property liable for said assessment is found to be in the person, persons, firm or corporation whose name appears in the appropriate column of descriptions of said property, and the City Recorder hereby is directed to prepare and send within ten (10) days after adoption of the ordinance, by registered mail or certified mail, to his or her last known address, a notice of assessment and lien to said owners, all in accordance with the provisions of Section 8-2-12 of the City of Ontario municipal code.

Section 7: The provision of the Assessment Bonding portion of the laws of the State of Oregon, as amended, and the provisions of the City of Ontario municipal code, permitting said owners to make application to bond such assessments insofar as the same may be applicable, are hereby adopted and reference incorporated herein.

PASSED AND ADOPTED by the Common Council of the City of Ontario this ____ day of _____, 2012 by the following vote:

AYES:

NAYS:

ABSENT:

ABSTAINED:

APPROVED by the Mayor this ___ day of _____, 2012.

ATTEST:

_____

Joe Dominick, Mayor

_____

Tori Barnett, MMC, City Recorder

CITY OF ONTARIO
LID # 47
PROPERTY OWNER ASSESSMENT

WATER & SEWER -- NADINE DRIVE / ALAMEDA DRIVE ..... (Residential Properties)

ITEM		1	2	3	4	5	6
		Tax Lot 4400	Tax Lot 4300	Tax Lot 4500	Tax Lot 4600	Tax Lot 4700	Tax Lot 4900
		Larry & Leanna Hoffman	George & June Krasznavolgyi	Larry & Lois Hoffman	Craig & Stephanie Geddes	Housing Authority of Malheur Co.	Roberty & Regina Ormsby
		1671 Alameda Dr	1689 Alameda Dr	1345 Nadine Dr	1349 Nadine Dr	1377 Nadine Dr	1399 Nadine Dr
Square Footage of Property -->>		12,632.40	9,147.60	20,473.20	25,700.40	25,264.80	26,571.60
Water & Sewer	Equal Cost / Lot	12,271.38	12,271.38	12,271.38	12,271.38	12,271.38	12,271.38
Engineering, Legal, & Administration Fees	$20,000 / 17	1,176.47	1,176.47	1,176.47	1,176.47	1,176.47	1,176.47
Annexation Fee	$330 / 17	19.41	19.41	19.41	19.41	19.41	19.41
Annexation Fee / Lot	$0.02 / Sq.Ft.	252.65	182.95	409.46	514.01	505.30	531.43
Water Meter	Each	380.00	380.00	380.00	380.00	380.00	0.00
Construction Loan Interest	1% (6 months)	122.71	122.71	122.71	122.71	122.71	122.71
	Total	14,222.62	14,152.93	14,379.44	14,483.98	14,475.27	14,121.41

ITEM		7	8	9	10	11	14
		Tax Lot 3800	Tax Lot 3900	Tax Lot 4000	Tax Lot 4100	Tax Lot 4200	Tax Lot 3100
		Ellen B. King	Marlene Reel	Marlene Reel	Melina Pucket	Bobby & Paula Puckett	Francis & Janet Kittelman
		1392 Nadine Dr	Vacant Lot	1348 Nadine Dr	1340 Nadine Dr	1725 Alameda Dr	1674 Alameda Dr
Square Footage of Property -->>		13,503.60	15,246.00	10,980.00	10,018.80	10,018.80	13,503.60
Water & Sewer	Equal Cost / Lot	12,271.38	12,271.38	12,271.38	12,271.38	12,271.38	12,271.38
Engineering, Legal, & Administration Fees	$20,000 / 17	1,176.47	1,176.47	1,176.47	1,176.47	1,176.47	1,176.47
Annexation Fee	$330 / 17	19.41	19.41	19.41	19.41	19.41	19.41
Annexation Fee / Lot	$0.02 / Sq.Ft.	270.07	304.92	219.60	200.38	200.38	270.07
Water Meter	Each	380.00	0.00	380.00	380.00	0.00	380.00
Construction Loan Interest	1% (6 months)	122.71	122.71	122.71	122.71	122.71	122.71
	Total	14,240.05	13,894.89	14,189.57	14,170.35	13,790.35	14,240.05

CITY OF ONTARIO
LID # 47
PROPERTY OWNER ASSESSMENT

WATER & SEWER -- NADINE DRIVE / ALAMEDA DRIVE ..... (Residential Properties) continued.

ITEM		15 Tax Lot 3200 Clyde & Glenna Underwood 1694 Alameda Dr	16 Tax Lot 3400 Wayland & Dana Duncan 1726 Alameda Dr	17 Tax Lot 3500 Daleesa Hlavinka 1712 Alameda Dr	Total for Residential Properties
Square Footage of Property -->>		160,300.80	11,761.20	23,598.00	
Water & Sewer	Equal Cost / Lot	12,271.38	12,271.38	12,271.38	184,070.70
Engineering, Legal, & Administration Fees	$20,000 / 17	1,176.47	1,176.47	1,176.47	17,647.06
Annexation Fee	$330 / 17	19.41	19.41	19.41	291.15
Annexation Fee / Lot	$0.02 / Sq.Ft.	3,206.02	235.22	471.96	7,774.42
Water Meter	Each	0.00	380.00	380.00	4,180.00
Construction Loan Interest	1% (6 months)	122.71	122.71	122.71	1,840.71
	Total	16,795.99	14,205.20	14,441.93	
				Total for Residential Properties -->>	215,804.03

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WATER & SEWER -- Calvary Chapel

ITEM		12 Tax Lot 3702	13 Tax Lot 3701	GRAND TOTAL LID 47 Assessment
		Calvary Chapel 1775 Alameda Dr		
Square Footage of Property -->>		52,272.00	105,415.20	
Water & Sewer	Lump Sum		35,034.90	219,105.60
Engineering, Legal, & Administration Fees	$20,000 / 17		2,352.94	20,000.00
Annexation Fee	$330 / 17		38.85	330.00
Annexation Fee / Lot	$0.02 / Sq.Ft.		3,153.74	10,928.16
Water Meter	Each		380.00	4,560.00
SDC Water & Sewer			1,456.00	
Construction Loan Interest	1% (6 months)		350.35	2,191.06
	Total		42,766.78	
			GRAND TOTAL -- LID #47 ASSESSMENT COSTS -->>	258,570.82

AGENDA REPORT
January 17, 2012

TO: Mayor and City Council

FROM: Chuck Mickelson, Public Works Director

THROUGH: Henry Lawrence, City Manager

SUBJECT: **RESOLUTION #2012-101: A RESOLUTION APPROVING FUND EXCHANGE AGREEMENT #28277 BETWEEN THE CITY OF ONTARIO AND THE STATE OF OREGON, ACTING BY AND THROUGH ITS DEPARTMENT OF TRANSPORTATION FOR FUND DISTRIBUTION FOR CHIP SEALING ON VARIOUS CITY STREETS AND PURCHASE OF CERTAIN EQUIPMENT FOR ROAD MAINTENANCE PURPOSES**

DATE: December 30, 2011

SUMMARY:
Attached are the following documents:

- Resolution #2012-101
- 2011 Fund Exchange Agreement #28277

PREVIOUS COUNCIL ACTION:

April 4, 2005	City Council authorized the Mayor to sign Fund Exchange Agreement #22388, which allowed staff to construct and complete the southwest 4th Avenue and southwest 4th street signal project.
March 16, 2009	City Council adopted Resolution #2009-108: a Resolution approving Fund Exchange #25415, which authorized the Mayor to sign the agreement for the design and construction of North Oregon Street and rehabilitation between Idaho Street and Northwest 1st Street.
August 16, 2010	City Council adopted Resolution #2010-131: a Resolution approving Fund Exchange #27023, which authorized the Mayor to sign the agreement for chip sealing and landscaping

BACKGROUND:
The State of Oregon offers Fund Exchange programs acting by and through its Department of Transportation, in which Federal funds are exchanged for State funds at a ratio of $94 State dollars for $100 Federal dollars. This gives the City the ability to build projects under local control instead of federal control. The process will grant the City $124,934.46 for $132,909 federal funds.

RECOMMENDATION:
Staff recommends the Council authorize the Mayor to sign the 2011 Fund Exchange Agreement #28277.

PROPOSED MOTION:

I move the City Council adopt Resolution #2012-101: A RESOLUTION APPROVING FUND EXCHANGE AGREEMENT #28277 BETWEEN THE CITY OF ONTARIO AND THE STATE OF OREGON, ACTING BY AND THROUGH ITS DEPARTMENT OF TRANSPORTATION FOR FUND DISTRIBUTION FOR CHIP SEALING AND PURCHASE OF CERTAIN EQUIPMENT FOR ROAD MAINTENANCE PURPOSES.

RESOLUTION #2012-101

A RESOLUTION APPROVING FUND EXCHANGE AGREEMENT #28277 BETWEEN THE CITY OF ONTARIO AND THE STATE OF OREGON, ACTING BY AND THROUGH ITS DEPARTMENT OF TRANSPORTATION FOR FUND DISTRIBUTION FOR CHIP SEALING AND PURCHASE OF EQUIPMENT FOR ROAD MAINTENANCE PURPOSES

WHEREAS, the State of Oregon offers Fund Exchange programs acting by and through its Department of Transportation; and

WHEREAS, Federal funds are exchanged for State funds at a ratio of $94 State dollars for $100 Federal dollars; and

WHEREAS, the City of Ontario has been given the opportunity to receive $124,934.46 State dollars for $132,909 Federal dollars.

NOW THEREFORE, BE IT HEREBY RESOLVED by the Ontario City Council, to approve Fund Exchange Agreement #28277 between the City of Ontario and the State of Oregon, acting by and through its Department of Transportation for fund distribution for chip sealing and purchase of equipment for road maintenance purposes

EFFECTIVE DATE: Effective immediately upon passage.

PASSED AND ADOPTED by the City Council of the City of Ontario this _____ day of _____ 2012, by the following vote:

AYES:

NAYES:

ABSENT:

APPROVED by the Mayor this ____day of _____, 2012.

_____
Joe Dominick, Mayor

ATTEST:

_____
Tori Barnett, MMC, City Recorder

2011 FUND EXCHANGE AGREEMENT
Various City Streets
CITY OF ONTARIO

THIS AGREEMENT is made and entered into by and between the STATE OF OREGON, acting by and through its Department of Transportation, hereinafter referred to as "State"; and CITY OF ONTARIO, acting by and through its elected officials, hereinafter referred to as "Agency," both herein referred to individually or collectively as "Party" or "Parties."

RECITALS

1. By the authority granted in Oregon Revised Statute (ORS) 190.110, 366.572 and 366.576, ODOT may enter into cooperative agreements with counties, cities and units of local governments for the performance of work on certain types of improvement projects with the allocation of costs on terms and conditions mutually agreeable to the contracting parties.

NOW THEREFORE, the premises being in general as stated in the foregoing Recitals, it is agreed by and between the Parties hereto as follows:

TERMS OF AGREEMENT

1. Agency has submitted a completed and signed Part 1 of the Project Prospectus, or a similar document agreed to by State, outlining the schedule and costs associated with all phases of the chip sealing of various city streets, and the purchase of miscellaneous pieces of equipment to be used for street repairs, hereinafter referred to as "Project."

2. State has reviewed Agency's prospectus and considered Agency's request for the Fund Exchange. State has determined that Agency's Project is eligible for the exchange of funds.

3. To assist in funding the Project, Agency has requested State to exchange 2011 federal funds, which have been allocated to Agency, for state funds based on the following ratio:

   $94 state for $100 federal

4. Based on this ratio, Agency wishes to trade $132,909.00 federal funds for $124,934.46 state funds.

5. The term of this Agreement will begin upon execution and will terminate two (2) calendar years later on the same month and day unless extended by an executed amendment.

6. The Parties agree that the exchange is subject to the following conditions:

   a. The federal funds transferred to State may be used by State at its discretion.

   b. State funds transferred to Agency must be used for the Project. This Fund Exchange will provide funding for specific roadway projects and may also be used for the following maintenance purposes:

      i. Purchase or Production of Aggregate. Agency shall ensure the purchase or production of aggregate will be highway related and used exclusively for highway work.

      ii. Purchase of Equipment. Agency shall clearly describe how it plans to use said equipment on highways. Agency shall demonstrate that the equipment will only be used for highway purposes.

   c. State funds may be used for all phases of the Project, including preliminary engineering, right of way, utility relocations and construction. Said use shall be consistent with the Oregon Constitution and statutes (Section 3a of Article IX Oregon Constitution). Agency shall be responsible to account for expenditure of state funds.

   d. This Fund Exchange shall be on a reimbursement basis, with state funds limited to a maximum amount of $124,934.46. All costs incurred in excess of the Fund Exchange amount will be the sole responsibility of Agency.

   e. State certifies, at the time this Agreement is executed, that sufficient funds are available and authorized for expenditure to finance costs of this Agreement within State's current appropriation or limitation of the current biennial budget.

   f. Agency and any contractors, shall perform the work as an independent contractor and will be exclusively responsible for all costs and expenses related to its employment of individuals to perform the work including, but not limited to, retirement contributions, workers compensation, unemployment taxes, and state and federal income tax withholdings.

   g. Agency shall comply with all federal, state, and local laws, regulations, executive orders and ordinances applicable to the work under this Agreement, including, without limitation, the provisions of ORS 279C.505, 279C.515, 279C.520, 279C.530 and 279B.270 incorporated herein by reference and made a part hereof. Without limiting the generality of the foregoing, Agency expressly agrees

to comply with (i) Title VI of Civil Rights Act of 1964; (ii) Title V and Section 504 of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659A.142; (iv) all regulations and administrative rules established pursuant to the foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.

h. Agency, or its consultant, shall conduct the necessary preliminary engineering and design work required to produce final plans, specifications and cost estimates; purchase all necessary right of way in accordance with current state and federal laws and regulations; obtain all required permits; be responsible for all utility relocations; advertise for bid proposals; award all contracts; perform all construction engineering; and make all contractor payments required to complete the Project.

i. Agency shall submit invoices to State on a monthly basis, for actual costs incurred by Agency on behalf of the Project directly to State's Project Manager for review and approval. Such invoices will be in a form identifying the Project, the agreement number, the invoice number or account number or both, and will itemize all expenses for which reimbursement is claimed. Under no conditions shall State's obligations exceed $124,934.46, including all expenses. Travel expenses will not be reimbursed.

j. Agency shall, at its own expense, maintain and operate the Project upon completion at a minimum level that is consistent with normal depreciation and service demand.

k. All employers, including Agency, that employ subject workers in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage unless such employers are exempt under ORS 656.126. Employers Liability insurance with coverage limits of not less than $500,000 must be included. Agency shall ensure that each of its subcontractors complies with these requirements.

l. This Agreement may be terminated by either Party upon thirty (30) days' notice, in writing and delivered by certified mail or in person.

   i. State may terminate this Agreement effective upon delivery of written notice to Agency, or at such later date as may be established by State, under any of the following conditions:

      A. If Agency fails to provide services called for by this Agreement within the time specified herein or any extension thereof.

      B. If Agency fails to perform any of the other provisions of this Agreement, or so fails to pursue the work as to endanger performance of this Agreement

in accordance with its terms, and after receipt of written notice from State fails to correct such failures within ten (10) days or such longer period as State may authorize.

ii. Either Party may terminate this Agreement effective upon delivery of written notice to the other Party, or at such later date as may be established by the terminating Party, under any of the following conditions:

A. If either Party fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow either Party, in the exercise of their reasonable administrative discretion, to continue to make payments for performance of this Agreement.

B. If federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the work under this Agreement is prohibited or either Party is prohibited from paying for such work from the planned funding source.

iii. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.

m. State and Agency agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be invalid, unenforceable, illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.

7. Agency acknowledges and agrees that State, the Oregon Secretary of State's Office, the federal government, and their duly authorized representatives shall have access to the books, documents, papers, and records of Agency which are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of six (6) years after final payment. Copies of applicable records shall be made available upon request. Payment for costs of copies is reimbursable by State.

8. Agency certifies and represents that the individual(s) signing this Agreement has been authorized to enter into and execute this Agreement on behalf of Agency, under the direction or approval of its governing body, commission, board, officers, members or representatives, and to legally bind Agency.

9. This Agreement may be executed in several counterparts (facsimile or otherwise) all of which when taken together shall constitute one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of this Agreement so executed shall constitute an original.

10. This Agreement and attached exhibits constitute the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either Party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of State to enforce any provision of this Agreement shall not constitute a waiver by State of that or any other provision.

THE PARTIES, by execution of this Agreement, hereby acknowledge that their signing representatives have read this Agreement, understand it, and agree to be bound by its terms and conditions.

The funding for this Fund Exchange program was approved by the Oregon Transportation Commission on December 16, 2010, as a part of the 2010-2013 Statewide Transportation Improvement Program (STIP).

The Program and Funding Services Manager approved the Fund Exchange on December 15, 2011.

The Oregon Transportation Commission on December 29, 2008, approved Delegation Order No. 2, which authorizes the Director to approve and execute agreements for day-to-day operations. Day-to-day operations include those activities required to implement the biennial budget approved by the Legislature, including activities to execute a project in the Statewide Transportation Improvement Program.

CITY OF ONTARIO, by and through

By _____
Mayor

Date _____

By _____
City Recorder

Date _____

APPROVED AS TO LEGAL SUFFICIENCY

By _____
Counsel

Date _____

Agency Contact:
Chuck Mickelson, Public Works Director
City of Ontario
444 SW 4th Street
Ontario, Oregon 97914
(541) 881-3231
Chuck.mickelson@ontariooregon.org

State Contact:
Doug Wright, Federal Aid Specialist
3012 Island Avenue
La Grande, Oregon 97850
(541) 963-1362
Douglas.l.wright@odot.state.or.us

STATE OF OREGON, by and through
its Department of Transportation

By _____
Highway Division Administrator

Date _____

APPROVAL RECOMMENDED

By _____
Local Government Section

Date _____

By _____
Region 5 Manager

Date_____

APPROVED AS TO LEGAL SUFFICIENCY

By_____
Assistant Attorney General

Date_____