

AGENDA
CITY COUNCIL - CITY OF ONTARIO, OREGON
Tuesday, January 18, 2011, 7:00 p.m., M.T.

- 1) **Call to order**
A) Roll Call: Norm Crume ___ Jack Fox ___ Charlotte Fugate ___ Dan Jones ___
David Sullivan ___ Ron Verini ___ Mayor Joe Dominick ___

2) **Pledge of Allegiance**

This Agenda was posted on Wednesday, January 12, 2011, and a study session was held on Thursday, January 13, 2011. 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 01/03/2011 1-3
B) Liquor License Application: New Outlet - Brewery Public House/Winery 4
C) 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) **New Business**

- A) Election of Council President 5
B) Resolution #2011-101: Adopt Public Works Director's Report for LID #47 (Nadine Drive) and Set a Public Hearing 6-8
C) Authorization for City to Provide \$15K from Sewer Fund, 615550, in Settlement of Personnel Issue (Following Executive Session ORS 192.660(2)(h)) 9

7) **Public Hearing: 7:30 p.m.**

- A) Sale of Parking Easement for Oregon Real Estate Co., LLC 10-20

8) **Topics for Discussion: Thursday**

- A) Kit Kamo - Director, SREDA
B) Yturri Beltline Traffic Speed Issues

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

10) **Executive Session(s): Thursday and/or Monday**

- A) ORS 192.660(2)(e) - Real Property
B) ORS 192.660(2)(h) - Pending/Potential Litigation

11) **Adjourn**

MISSION STATEMENT: TO PROVIDE A SAFE, HEALTHFUL AND SOUND ECONOMIC ENVIRONMENT, PROGRESSIVELY ENHANCING OUR QUALITY OF LIFE

COUNCIL MEETING MINUTES

January 3, 2011

The regular meeting of the Ontario City Council was called to order by Mayor Joe Dominick at 7:00 p.m. on Monday, January 3, 2011, in the Council Chambers of City Hall. Council members present were Norm Crume, Joe Dominick, Charlotte Fugate, John Gaskill, Susann Mills, David Sullivan, and Ronald Verini. Also present were incoming Councilors Dan Jones and Jack Fox.

Members of staff present were Henry Lawrence, Tori Barnett, Rachel Hopper, Kathy Daly, Al Higinbotham, Mark Alexander, Jared Gammage, Larry Sullivan, and camera operator Delaney Kee.

Susann Mills led everyone in the Pledge of Allegiance.

AGENDA

John Gaskill moved, seconded by Susann Mills, to adopt the Agenda as presented. Roll call vote: Crume-yes; Fugate-yes; Gaskill-yes; Mills-yes; Sullivan-yes; Verini-yes; Dominick-yes. Motion carried 7/0/0.

CONSENT AGENDA

Ron Verini moved, seconded by Charlotte Fugate, to approve Consent Agenda Item A: Approval of Minutes of regular meeting of 12/20/2010; and Item B: Approval of the Bills. Roll call vote: Crume-yes; Fugate-yes; Gaskill-yes; Mills-yes; Sullivan-yes; Verini-yes; Dominick-yes. Motion carried 7/0/0.

PUBLIC COMMENT

Charlene Pellan, Ontario, stated she would attend more meetings if there were after-hours access to the elevator.

Ms. Pellan was informed that anyone wishing to attend a meeting, and needed the elevator, could use the dispatch phone in the lobby to request entrance to the front lobby for access to the elevator. Staff would place a sign near the phone providing that information.

Doug Dean, Ontario, thanked staff for the snow clearing by public works crews. Also, he had missed the lighting ceremony for the Christmas tree, but in driving past it on numerous occasions, it looked great. He appreciated, and thanked, the crews for putting the lights up.

John Breidenbach, Ontario Chamber of Commerce, thanked Councilors Gaskill and Mills for their years of service. Mr. Gaskill had always been an inspiration to him, and he was grateful for all his support for the tourism industry. To Councilor Mills, he thanked her for always being willing to listen and to offer suggestions.

NEW BUSINESS

Outgoing Councilors: Susann Mills and John Gaskill

Tori Barnett, City Recorder, stated Susann Mills and John Gaskill would be stepping down from their seats as Ontario City Councilors. Each Councilor received a plaque of appreciation, outlining which committees they had served as Liaison to, and pointing out any significant contributions or accolades received while in office.

Mayor Dominick presented outgoing Councilor John Gaskill with a plaque of appreciation, reading it into the record: *John Gaskill, Ontario City Councilor, December 1999 - December 2010, Council President, January 2001 - December 2004, Budget Committee, Hospital Facility Authority, Local Contract Review Board, Four Rivers Cultural Center Representative, League of Oregon Cities Resolution Committee, Airport Board Ex-Officio, Library Board Ex-Officio, Revenue Committee Ex-Officio, Youth Advisory Council Ex-Officio, Public Works Committee Ex-Officio, Compensation Committee Ex-Officio, Library Liaison, Education Liaison, 2002 Recipient: LOC Civic Education Award - In recognition and with deep appreciation for the hard work, dedication, and for many contributions rendered in service to the people and the community of Ontario, Oregon. A special thank you for your commitment as a champion for the youth in our community, and for your loyal contribution of time and effort on behalf of the employees of the City. We extend to you our deepest gratitude. The Ontario City Council 2010.*

Councilor Gaskill thanked the citizens of Ontario for allowing him to serve on the Council, and thanked the staff and especially his wife for all her support during his tenure on the Council. He had thoroughly enjoyed himself, and intended to stay involved with issues facing the city.

Mayor Dominick presented outgoing Councilor Susann Mills with a plaque of appreciation, reading it into the record: *Susann Mills - Ontario City Councilor, January 2007 - December 2010, Council President, January 2009 - December 2010, Budget Committee, Hospital Facility Authority, Local Contract Review Board, Recreation Board Ex-Officio, Fire Department Liaison - In recognition and with deep appreciation for the hard work, dedication, and for many contributions rendered in service to people and the community of Ontario, Oregon. A special thank you for your commitment to the Fire and Rescue Department of the City of Ontario, and for your loyal contribution of time in keeping open lines between the Department and City Council. We extend to you our deepest gratitude. The Ontario City Council 2010.*

Councilor Mills also thanked the citizens, the staff, the Council, and her husband for supporting her during her service on the Council. She had many great experiences while in her position.

Swear in Mayor Joe Dominick and Councilors Ron Verini, Dan Jones, and Jack Fox

Tori Barnett, City Recorder, stated as a result of the November 2, 2010 general election, the Ontario City Council welcomed newly elected Councilors Dan Jones and Jackson Fox, and returning Councilor Ronald Verini. Also, reelected for second term was Mayor Joe Dominick. Ms. Barnett swore into office Ron Verini, Dan Jones, Jack Fox and Mayor Dominick.

Mayor Dominick bid a fond farewell to Councilors Gaskill and Mills, and welcomed Councilors Jones and Fox, as well as returning Councilor Verini. He was looking forward to working with them, as well as staff, in moving the City of Ontario forward. There was an excellent staff working for the city, from the City Manager on down the line. He also thanked his wife, Lindy, for all her support in keeping him going.

CORRESPONDENCE, COMMENTS, AND EX-OFFICIO REPORTS

- Joe Dominick thanked everyone involved in bring Station 2 to fruition, from the beginning paperwork to the grand opening last week. The entire project had been completed without raising tax dollars at all – it was used with existing funding, and it was a wonderful addition to the City.
- Staff and Council welcomed the new Councilors on board, and bid a fond farewell to those going off the Council.
- Councilor Verini reminded the community of the need for more participation, not only on the committees, but also for attendance at the Council meetings. It would make the Council's jobs easier, and more productive, if the Council received input from the community.

- Councilor Verini read a letter into the record on behalf of the troops that were in Afghanistan, who this area supported: *On behalf of the 85 soldiers, sailors, airmen, and national guardsmen here in host, thank you for making a tremendous difference in our lives with your generosity and underserved kindness. Your gifts were received with great joy by our team, and each member joins me in thanking you for making our holiday season a little brighter as we serve thousands of miles away from home. Though we are proud to serve, you made us all stand a little bit taller this day. The signals of support you send across the oceans and over the mountains to us here in Afghanistan, mean everything to us. To know that our fellow citizens think of our daily routines and needs so far away, is to say the least, uplifting. You inspire us. Please pass our gratitude and best wishes to you and your families. Steve Dahl, Commanding Officer, Department of Army, Provincial Reconstruction Team in Coast FOB, Chapman, Afghanistan.*
- Councilor Fox thanked the two departing Councilors, with emphasis to Councilor Mills, who had always been his Councilor.
- Councilor Jones thanked both Councilor Mills and Councilor Gaskill for their service, wished them good luck, and hoped that his 4-years of upcoming service would have a positive impact on the city.
- Mayor Dominick stated he would be contacting the Council about the upcoming appointments to the various City boards and committees, as well as the appointments to internal liaison positions. If anyone had a preference about where they wanted to be appointed – either externally or internally – get in contact with him.
- Mayor Dominick stated there would be a public meeting at Ontario High School, beginning at 6:00 p.m., on Thursday, January 6th, to discuss the Ontario Middle School site plan.

ADJOURN

David Sullivan moved, seconded by Ron Verini, 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.

ATTEST:

Joe Dominick, Mayor

Tori Barnett, MMC, City Recorder

CONSENT AGENDA
JANUARY 18, 2011

TO: Mayor and City Council

FROM: Mark Alexander, Interim Police Chief

THROUGH: Henry Lawrence, City Manager

**SUBJECT: LIQUOR LICENSE APPLICATION – NEW OUTLET
Brewery Public House / Winery**

DATE: January 11, 2011

SUMMARY:

NWCraftfair.com, LLC, owner/manager of Ontario Brew Supply has completed the “New Outlet” application process for “Brewery Public House” and “Winery” liquor license privileges through the Oregon Liquor Control Commission for their business located at 246 South Oregon Street, Ontario, Oregon.

All necessary paperwork has been approved through OLCC office and is awaiting approval through the Ontario City Council.

BACKGROUND:

Criminal Record process was completed on NWCraftfair.com, LLC owners/managers Mike and Tami Anderson. All records returned clear. The application forms have been filled out appropriately and required fees have been paid. All Permit requirements have been met.

This license will allow Ontario Brew Supply to hold brewing and wine making classes as well as tasting events. It will also permit them to sell product when they are ready for that process.

RECOMMENDATION:

I have completed a review of this application information in accordance with the City of Ontario’s ordinance regulating this license. I recommend that we approve the application for New Outlet / Brewery Public House and Winery liquor licenses for Ontario Brew Supply.

AGENDA REPORT
January 18, 2011

TO: Mayor and City Council

FROM: Tori Barnett, MMC, City Recorder

THROUGH: Henry Lawrence, City Manager

SUBJECT: ELECTION OF CITY COUNCIL PRESIDENT

DATE: January 11, 2011

SUMMARY:

The Council, by Charter, is required to choose a member of the Council to serve in the capacity of Council President. The Council President stands in for the Mayor in the Mayors absence, or at the request of the Mayor. Any Councilor is eligible for the position.

The City Recorder will conduct the process by asking who wishes to be considered, and who does not. If more than one Councilor seeks the position, there will be a written or verbal vote, with the Councilor receiving the highest number of votes winning the seat. If only one name is considered, then that individual will be awarded the seat. Please note, Oregon law prohibits secret ballots, so the results of a ballot vote will be read into the record.

The position is effective immediately, and continues until the Council President steps down or the next general election is held. Seating for the Council President is to the right of the Mayor.

AGENDA REPORT
January 18, 2011

TO: Mayor and City Council

FROM: Chuck Mickelson, Public Works Director

THROUGH: Henry Lawrence, City Manager

SUBJECT: RESOLUTION #2011-101; A RESOLUTION ADOPTING THE PUBLIC WORKS DIRECTOR'S REPORT FOR LOCAL IMPROVEMENT DISTRICT #47 AND SETTING A PUBLIC HEARING DATE

DATE: January 10, 2011

SUMMARY:

Attached are the following documents:

- Resolution #2010-101; Director's Report under separate cover

This is the next step in the creation of LID 47. The attached Director's identifies the location, estimated costs of construction, estimated costs of individual assessments, preliminary construction drawings and various other items required to create a local improvement district.

PREVIOUS COUNCIL ACTION:

- August 12, 2010 – City Council Work Session - Staff recommended that the city council adopt this Resolution 2010-138 with the intent to create a local improvement district and extend sewers into the area. The Council remanded the action to hold an additional meeting with the property owners.
- September 9, 2010 – Neighborhood Meeting – Council directed staff to do an additional survey to determine the interest in forming an LID for sewer only, for sewer and water and those opposed to any LID.
- October 28, 2010 – City Council work session directing staff to prepare a resolution declaring the intent to create a LID and to leave the Calvary Chapel Church property and the Michael Derrick property out of the proposed LID.
- November 22, 2010 – City Council adopted Resolution 2010-152; a resolution of intent to create LID 47 to construct water and sewer for the construction of sanitary sewer mains and water mains on Alameda Drive from SW 16th Avenue 615 feet south, and on Nadine Drive from Alameda Drive to the west terminus of Nadine Drive be approved and directed the Public Works Director to prepare a Director's Report in accordance with the Ontario City Code.

FINANCIAL IMPLICATIONS:

Costs and expenses are outlined in the Director's report.

RECOMMENDATION:

Staff recommends that the City Council approve Resolution 2011-101.

PROPOSED MOTION:

I move that the City Council adopt Resolution 2011-101, A RESOLUTION ADOPTING THE PUBLIC WORKS DIRECTOR'S REPORT FOR LOCAL IMPROVEMENT DISTRICT #47 AND SETTING A PUBLIC HEARING

RESOLUTION #2011-101

A RESOLUTION ADOPTING THE PUBLIC WORKS DIRECTOR'S REPORT FOR LOCAL IMPROVEMENT DISTRICT #47 AND SETTING A PUBLIC HEARING

WHEREAS, The Public Works Director's Report for proposed Local Improvement District 47 is for the construction of sanitary sewer mains and water mains on Alameda Drive from SW 16th Avenue 615 feet south, and on Nadine Drive from Alameda Drive to the west terminus of Nadine Drive be approved.

NOW THEREFORE, BE IT HEREBY RESOLVED by the Ontario City Council, to set a Public Hearing on the formation of Local Improvement District Number 47 for 7:30 pm on the ____ day of February 2011.

EFFECTIVE DATE: Effective immediately upon passage.

PASSED AND ADOPTED by the City Council of the City of Ontario this ____ day of _____ 2011, by the following vote:

AYES:

NAYES:

ABSENT:

APPROVED by the Mayor this ____ day of _____, 2011.

Joe Dominick, Mayor

ATTEST:

Tori Barnett, MMC, City Recorder

AGENDA REPORT
January 18, 2011

TO: Mayor and City Council

FROM: Henry Lawrence, City Manager

SUBJECT: **Motion Authorizing the City to provide \$15,000 from Sewer Fund # 615550, in Settlement of a Personnel Issue**

DATE: January 11, 2011

BACKGROUND:

In 2009 a former City union employee's employment was terminated. As a result of the termination, the former employee filed a civil tort claim, administrative complaint and union grievance. The City and union have not yet gone to arbitration in the labor contract matter. Settlement negotiations have been ongoing for sometime. In an effort to bring the matter to a conclusion, it is proposed that the City provide \$15,000 to effectuate a global settlement that will dispose of all possible civil, administrative and labor contract claims. Bringing closure to the matter as a business decision now will be less expensive to the City than having to continue defending the case and arbitrating the labor issue.

FINANCIAL IMPLICATIONS:

The total cost to the City to settle a pending potential litigation claim and possible labor arbitration dispute with a past employee concerning termination of employment is \$15,000 for a full and complete settlement of all civil, administrative and union contract grievances. The alternative is to continue to defend the case and proceed to arbitration in the labor matter. Even if the City is successful with the outcome, arbitration costs and staff time will cost the City well in excess of the proposed settlement contribution.

RECOMMENDATION:

Staff recommends the Council authorize the settlement by approving the City payment of \$15,000.

PROPOSED MOTION:

"I move the City Council authorize the City to provide \$15,000 from Sewer Fund # 615550 in Settlement of a Personnel Issue and to authorize the City Manager to execute any documents necessary to complete the settlement."

AGENDA REPORT-PUBLIC HEARING
January 18, 2011

TO: Mayor and City Council

FROM: Larry Sullivan, City Attorney

THROUGH: Henry Lawrence, City Manager

SUBJECT: Public Hearing for Sale of Parking Easement to Oregon Real Estate Co., LLC

DATE: January 10, 2011

SUMMARY:

Attached is the following document:

- Memorandum Agreement

The purpose of the public hearing is to discuss the City's sale of a public parking easement to Ontario Real Estate Co., LLC, and the execution of a Memorandum Agreement with the LLC and with the Maeda-Tuttle Construction Partnership.

PREVIOUS COUNCIL ACTION:

None.

DISCUSSION

On February 7, 1977, the City entered into an agreement with a partnership known as PFC Company in which the City acquired vacant lots on the corner of South Oregon Street and East Idaho Avenue. On April 13, 1999, the City entered into another agreement, a "Property Interest Exchange Agreement", concerning the same lots, in which the City traded those lots to Maeda-Tuttle Construction, a partnership consisting of Larry Tuttle and Richard Maeda, to allow the construction of ICB Bank. Under the 1999 Agreement, the partnership agreed to build a 9,000 square foot parking lot on the East ½ of Block 3, which is the eastern half of the same block on which ICB Bank is now located. As part of the 1999 Agreement, the partnership also agreed that it would give the City a public parking easement to the portion of Block 3 on which the parking lot was to be constructed, and would perpetually maintain the parking lot and its landscaping.

The partnership constructed the parking lot, which is located immediately north and east of the Brewsky's Broiler restaurant building located at 23 SE 1st Avenue. It has also maintained the parking lot since its construction.

The Maeda-Tuttle Construction partnership no longer wants to incur the expense of maintaining the parking lot that it constructed. Staff understands that the partnership has contacted Arthur and Cynthia Lynch, the owners of Brewsky's Broiler restaurant, to take over the maintenance of the lot, but has not been able to work out an arrangement with those owners.

For several months Maeda-Tuttle Construction and Ontario Real Estate Co., LLC, have been in negotiations with the City to terminate the 1999 Agreement. Staff has met with the City Council in executive session several times to discuss the negotiations.

The LLC and the partnership have offered to pay the City \$10,000 to release the partnership from the 1999 Agreement. As part of the proposal, the City would deed the public parking easement to the LLC, which owns the underlying land. This would do away the easement, and the parking lot would no longer be available for public parking.

The City is not receiving any substantial benefits from having a public parking easement at that location. Brewsky's Broiler appears to be the only business that is benefitting from the parking lot.

The terms of the proposal are set forth in the attached Memorandum Agreement. Under the Memorandum Agreement, the City would also be granted a five year temporary construction easement to the portion of Block 3 adjoining the underpass on East Idaho Avenue to make future repairs to the underpass. The City would also be able to negotiate for additional construction easements after that five year period, so long as the easements do not interfere with the LLC's development of Block 3.

Because the Memorandum Agreement proposes a transfer of the City's interest in real property, namely, the City's public parking easement, ORS 221.725 requires that the City hold a public hearing to provide information to the public about the proposed transaction. The notice of the public hearing was published in the Argus Observer on January 12, 2011, as required by statute.

Financial Implications:

In addition to receiving \$10,000 from the transaction, the City would also receive the benefit of having the full value of the parking lot returned to the County tax rolls. The County assessor has discounted the value of the real property on which the parking lot is located because of the nontaxable parking easement held by the City.

STAFF RECOMMENDATION:

Based upon the information available to staff prior to the public hearing, staff recommends that the City Council approve the Memorandum Agreement. The Council should consider any information presented at the public hearing before deciding whether to approve the Memorandum Agreement.

PROPOSED MOTION:

I move that the Mayor and City Council approve the Memorandum Agreement with Ontario Real Estate Co., LLC, and the Maeda-Tuttle Construction partnership, and authorize the City Manager and Mayor to execute all necessary documents on the City's behalf.

MEMORANDUM AGREEMENT

DATED: As of the ___ day of _____, 2010

BETWEEN: THE CITY OF ONTARIO, OREGON, a Municipal Corporation,
444 SW 4th Avenue
Ontario OR 97914

(hereinafter referred to as "the City")

AND: ONTARIO REAL ESTATE CO., LLC, an Oregon Limited
Liability Company,
2430 Southwest 4th Avenue, Suite 1
Ontario OR 97914

(hereinafter referred to as "LLC")

AND: MAEDA-TUTTLE CONSTRUCTION, an Oregon Partnership,
2430 Southwest 4th Avenue, Suite 1
Ontario OR 97914

(hereinafter referred to as "the Partnership")

Recitals:

A. LLC is the owner of that certain real property located in the City of Ontario, Malheur County, Oregon more particularly described on Exhibit A attached hereto and incorporated by this reference (the "Property").

B. Pursuant to a Property Interest Exchange Agreement dated April 13, 1999, recorded as Instrument No. 99-2883 in the real property records for Malheur County, Oregon ("1999 Agreement"), the City relinquished its interest in certain portions of Block 3 of the Original Townsite of the City of Ontario, Malheur County, Oregon in exchange for Partnership's agreement to construct and perpetually maintain a parking lot on the East half of said Block 3.

C. Pursuant to the terms of the 1999 Agreement, the City was also granted an easement across the entire East half of said Block 3 pending completion of the contemplated parking lot. Upon completion of the construction of said parking lot, the City was to modify its easement across the entire East half of said Block 3. As of the date of this Agreement, nothing has been done to modify said easement.

D. In exchange for the consideration and mutual promises set forth herein, the parties have reached an agreement wherein the City shall release the LLC and Partnership from its obligations imposed under the 1999 Agreement as well as convey to the LLC and Partnership any and all interest the City has in said Block 3 of the Original Townsite of the City of Ontario, Malheur County, Oregon, according to the Official Plat thereof granted under said 1999 Agreement.

E. The parties wish to reduce their Agreement to writing.

Agreement:

1. **Truth of Premises.** The parties agree the above Premises are true and hereby incorporate them into their agreement.

2. **Payment by LLC.** In exchange for the City's conveyance of its easement in the Property as set forth in the 1999 Agreement and in greater detail below, and the City's release of their obligations under the 1999 Agreement, LLC and Partnership agree that the LLC shall pay to City a one time cash payment in the sum of TEN THOUSAND DOLLARS (\$10,000).

3. **Cancellation of 1999 Agreement.** In exchange for the LLC's payment set forth in paragraph 2 above, the City agrees to the following:

3.1 To convey to the LLC its easement rights in the Property created by the 1999 Agreement. The City shall execute a conveyance of its easement in the form attached as Exhibit C attached hereto and incorporated herein by this reference. Said conveyance of the easement shall be recorded in the Malheur County Real Property Records. The parties intend by this conveyance that the easement shall merge with the LLC's fee ownership of the Property, which will remove any encumbrance currently affecting title to the Property as a result of the 1999 Agreement.

3.2 The City releases LLC and Partnership from any and all parking lot maintenance obligations created by said 1999 Agreement and any other obligations imposed by the 1999 Agreement and consents to the cancellation and termination of the 1999 Agreement.

4. **Construction Access.** The Property is adjacent to East Idaho Avenue, which has a retaining wall and underpass abutting the Property. The LLC agrees to grant temporary access to the City through a temporary construction easement in the form and on the terms attached hereto as Exhibit B. At the City's request, the LLC agrees to negotiate in good faith future temporary construction easements on the same terms. In no event shall LLC or its successors be required to grant any future easements when such future temporary construction easements would substantially interfere with the use or development of the Property by the LLC and its successors and assigns.

5. **Indemnification.** The LLC and Partnership shall indemnify and hold the City harmless from any third party claims arising from the cancellation of the 1999 Agreement and the conveyance to the LLC of the City's easement on the Property. A third party claim includes, but is not limited to, any claim for damages against the City and any action to set aside the City's conveyance of the easement to the LLC.

6. **Successor in Interests.** This Agreement shall be binding on and shall inure to the benefit of the parties' successors and assigns.

7. **Representations.** The City represents that the City Manager has full authority to sign this Agreement and his signature as set forth below shall bind the City to this Agreement.

8. **Entire Agreement.** This Agreement sets forth the entire understanding of the parties with respect to the subject matter of this Agreement. This Agreement supercedes any and all prior negotiations, discussions, agreements and understandings between the parties. This Agreement may not be modified or amended except by a written agreement executed by both parties.

9. **Invalidity of Provision.** If any provision of this agreement is deemed to be invalid, then the remaining terms and provisions of this Agreement shall remain in full force and effect.

10. **Attorney Fees.** In the event action is instituted to enforce any term of this Agreement, the prevailing party shall recover from the losing party reasonable attorney fees incurred in such action as set by the trial court and, in the event of appeal, as set by the appellate courts.

11. **Interpretation.** This agreement shall be governed by and construed in accordance with the laws of the State of Oregon.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date and year first above written.

The City of Ontario, Oregon, a Municipal Corporation

By: _____
Henry Lawrence, City Manager

Ontario Real Estate Co., LLC

By: _____
Its: _____

Maeda-Tuttle Construction

By: _____
Its: _____

Exhibit A

Land in the PETERSON COMMERCIAL SUBDIVISION, a Replat of Block 3 of the original Townsite of Ontario, Oregon, in the SW¼SW¼ of Section 3, Township 18 South, Range 47 East, Willamette Meridian, City of Ontario, Malheur County, Oregon, as follows:

Lots 7, 8 and 9.

RECORDING INFORMATION:

After recording return to: Yturri Rose, LLP, PO Box "S", Ontario OR 97914

TEMPORARY CONSTRUCTION EASEMENT

DATED: This ___ day of _____, 2010

BETWEEN: ONTARIO REAL ESTATE CO., LLC, an Oregon Limited Liability Company,

(hereinafter "Grantor")

AND: THE CITY OF ONTARIO, an Oregon Municipal Corporation,

(Hereinafter "Grantee")

Premises:

A. Grantor is the owner of a certain tract of real property located in Malheur County, Oregon and more particularly described in Exhibit A attached hereto and made a part hereof (the "Property").

B. Grantor has agreed to grant and convey to Grantee a Temporary Construction Easement for the construction, reconstruction, maintenance, and repair of Grantee's adjacent road, sidewalk, and underpass.

C. Grantee currently holds an easement across the northerly seven (7) feet of the Property for utility purposes. The purpose of this Easement shall be to extend the current Easement an additional thirteen (13) feet and to grant to Grantee the right to utilize the existing seven (7) foot easement in connection with the additional thirteen (13) feet

granted hereunder for the construction purposes identified herein.

Agreement:

In consideration of the mutual promises and benefits, receipt of which is hereby acknowledged, Grantor hereby conveys to Grantee, a temporary easement to use a strip of land thirteen (13) feet wide the northern boundary of which coincides with the southern boundary of the existing utility easement described on that certain Easement Agreement recorded as Instrument No. 2002-8486 in the Malheur County Real Property Records.

The grant of this Easement is made on the following terms:

1. **Authorized Uses by City of Ontario.** The City of Ontario's use of the Easement granted herein shall be in connection with the construction, maintenance, and improvements on the street municipally known as Idaho Avenue and the adjoining sidewalk and underpass coincident thereto, for ingress and egress for equipment and vehicles, and other similar reasonable uses that are necessary to the City of Ontario in connection with such construction, maintenance, and improvements.

2. **Use by Others under the City of Ontario.** The City of Ontario's right to so use the easement area and term of the Easement shall extend to use by the City of Ontario's employees, contractors, and agents.

3. **Term** This Easement shall be for a term commencing on the date of the Grantor's execution of this Easement and terminating the sooner of the Grantor's or Grantor's successors construction of an improvement on the easement area or on the fifth anniversary of the execution of this Easement, whichever shall occur first. On the expiration of the term of this Easement, the rights and privileges granted to the City of Ontario hereunder shall cease and terminate and this Easement shall be null and void and of no further force and effect.

4. **Extension of Construction Rights to Current Utility Easement Ground.** During the term of this Easement, the rights to utilize the ground described herein shall extend to the utility easement ground granted November 7, 2002 as recorded as Instrument No. 2002-8486 in the Malheur County Real Property Records. Upon termination of this Easement, on the terms contained herein, Grantee's rights under the 2007 Utility Easement shall revert to the previously agreed terms.

5. Grantee agrees to indemnify and defend Grantor from any loss, claims or liabilities to Grantor arising in any manner out of Grantee's use of the easement described herein.

6. **Binding Effect.** This Easement, and the covenants and agreements contained herein, shall, during the entire term hereof, be binding upon and inure to the benefit of Grantee and Grantor, respectively, and their successors and assigns.

IN WITNESS WHEREOF, the parties have caused this instrument to be executed this _____ day of _____, 2004.

Grantor:

Ontario Real Estate Co., LLC

By: _____
Its: _____

Grantee:

City of Ontario, Oregon, a municipal corporation

By: _____

State of Oregon)
)ss.
County of Malheur)

This instrument was acknowledged before me this ____ day of _____, 2010 by _____ in his capacity as _____ for Ontario Real Estate Co., LLC.

Notary Public for Oregon
My Commission Expires: _____

State of Oregon)
)ss.
County of Malheur)

This instrument was acknowledged before me this ____ day of _____, 2010 by _____, in his capacity as _____ of the City of Ontario.

Notary Public for Oregon
My Commission Expires: _____

Exhibit A

Land in the PETERSON COMMERCIAL SUBDIVISION, a Replat of Block 3 of the original Townsite of Ontario, Oregon, in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 3, Township 18 South, Range 47 East, Willamette Meridian, City of Ontario, Malheur County, Oregon, as follows:

Lots 7, 8 and 9.