

**AGENDA**  
**CITY COUNCIL - CITY OF ONTARIO, OREGON**  
Monday, February 6, 2012, 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, February 1, 2012, and a study session was held on Thursday, February 2, 2012. Copies of the Agenda are available at the City Hall Customer Service Counter and on the city's website at [www.ontariooregon.org](http://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 01/17, 2012 ..... 1-6  
B) 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) **Oral Presentation: Judge Pat Sullivan, Circuit Court Judge**

7) **New Business:**

- A) Approval of 2012 Golf Course Restaurant Lease: City and Barb Toomey ..... 7-23  
B) Resolution #2012-102: Receive/Expend FEMA Grant for Purchase of New Pumper 103 in Ontario Fire and Rescue Department ..... 24-25  
C) Ordinance #2666-2012: Consenting to the Assignment of the Malheur Home Telephone Company Franchise to CenturyLink QC (First Reading) ..... 26-29  
D) Appointments/Reappointments to City Boards, Committees and Commissions ..... 30-42

8) **Discussion Item(s)**

- A) Project Update - Bob Walker  
B) Council Goals

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

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

- A) ORS 192.660(2)(b) and ORS 192.660(2)(d)  
B) ORS 192.660(2)(h)

11) **Introduction of Upcoming Agenda Items**

- A) Solar Project Update  
B) Snake River Transit Quarterly Report  
C) Bus Shelter Design  
D) Request for Proposals for Electrical Inspection Services

12) **Adjourn**

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

**COUNCIL MEETING MINUTES**

**January 17, 2012**

The regular meeting of the Ontario City Council was called to order by Mayor Joe Dominick at 7:00 p.m. on Tuesday, January 17, 2012, 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, Chuck Mickelson, and Lynsey Hansen. The meeting was recorded on tape, and the tapes are available at City Hall.

Charlotte Fugate led everyone in the Pledge of Allegiance.

**AGENDA**

Ron Verini moved, seconded by Charlotte Fugate, to adopt the Agenda as presented. Roll call vote: Crume-yes; Fox-yes; Fugate-yes; Jones-yes; Sullivan-yes; Verini-yes; Dominick-yes. Motion carried 7/0/0.

**CONSENT AGENDA**

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

Charlotte Fugate moved, seconded by Ron Verini, to approve Consent Agenda Item A: Approval of the Regular Minutes of 12/19/2011; Item B: Approval of the Telephonic/Electronic Minutes of 01/05/2012; Item C: Proclamation: Fire Services Appreciation Day 2012; Item D: Water Line Easement Request: Anchor Mini-Storage (SE 5<sup>th</sup> Avenue); and Item E: 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.

Mayor Dominick read the Proclamation into the record:

***WHEREAS**, the fire service members of Ontario have dedicated themselves to the protection of life and property of their fellow 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 deserves 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.*

The Mayor asked those firefighters in attendance to introduce themselves, and to state how long they had been serving the City of Ontario. Brule Lehman-15 years; Lonnie Justus-10 years; Justen Allison-5 years; Jared Gamage-16 years; Cameron Saito-2 years; Ron Park-30 years; Paul Rangel-3 years; Jonathan Rico-4 years; Matt Smith-2 years; Gabe Gomez-5 years; Tony Klein-29 years; Frank Grimaldo, Jr.-13 years; Clint Benson-1 year; Brett Leavitt-6 years; Tyler Swanson-3 years; Yorick de Tassigny-7 years; Tom Davis-16 years; James Wick-16 years; Mark Saito-12 years; Todd Higinbotham-30 years; Mike McLean-1.5 years; and Casey Wilber-12 years.

Mayor Dominick stated Ontario was very fortunate to have this type of experience and this large a group of staff and volunteers. Everything they did was very much appreciated. With that, the Mayor was pleased to read a letter from FEMA. *"On behalf of the Federal Emergency Management Agency and the Department of Homeland Security, I am pleased to inform the City of Ontario their grant application submitted under fiscal year 2011 Assistance to Fire Fighter's Grant, has been approved."* The approved project now totaled \$340,000, for replacement of Pumper #103. The taxpayers share was 5%, in match, for \$17,000. The Council appreciated the Chief's three-year effort to get the grant approved.

#### **PUBLIC COMMENTS**

Councilor Jones asked if it was possible to step away from his chair to make a comment to the Council, the City Manager, and if the Fire Department wanted to come back in, that would be great, as a citizen and a business owner in this town. Was that possible?

Mayor Dominick stated that was possible, but reminded Councilor Jones that at all times, as they were elected officials, they wore the Council hat at all times.

Councilor Jones asked how the Mayor would like him to speak. He had an issue as a citizen of Ontario. Would they like him to speak from the podium or from his chair?

Mayor Dominick stated the podium would be fine.

Councilor Jones asked if they wanted to wait for the return of the Fire Department? It would be fair to them, because that was what he was talking about.

*(Lynsey Hansen stepped out and asked the Fire Department personnel to return to the Council Chambers.)*

Dan Jones, 1021 Triand Drive, Ontario, stated he was speaking that night as a citizen and as a business owner. A year and half ago, he was in the process of making the decision on whether he should run for City Council. During that process, and during that thought process of putting everything together and talking with his peers, one question kept coming back to him time and time again, and that question was would it hinder or would it affect his business. He thought about it, and discussed it with his family, and discussed it with his peers, and he decided, after going through the budget process, and learning a little bit about the city, and being intrigued with the city, he thought he'd go ahead and run for City Council. A year had gone by, of him sitting in that chair as a City Councilor, and ironically, just last week, an issue had come up that proved to him that being on the City Council had affected his business, and as a citizen, and he stood before the Council, the Mayor, the City Manager, and the Fire Department, they were going to resolve this issue.

Last week, his wife was in her office, and was on Facebook. A post came across on her wall from a Facebook friend, that from another post from a city fireman. That fireman was Mark Saito. Before they went any further, he wanted to make a statement that to him, and he was sure to the City Council, that it was running through their minds, was he working, or was he on staff? And to him as a citizen, and to him as a business owner, it didn't matter whether he was or not. They'd get into those details tomorrow. Mark Saito was posting a comment on a wall on another fireman's Facebook. Unfortunately, Mr. Jones's wife was a Facebook friend with the fireman that Mark posted to. And he'd read, he'd start with the comment that was posted on Facebook.

Mayor Dominick asked if he might interrupt with a question?

Mr. Jones asked if the Mayor interrupted other citizens?

Mayor Dominick stated he did.

Mr. Jones state alright, fair enough.

Mayor Dominick asked the City Attorney, Larry Sullivan, if they were getting close to a personnel issue?

Mr. Sullivan stated if the Mayor was asking if this was something that could be handled in Executive Session, at this point, he didn't know. He would have to find out. He was not aware of anything that would allow the Council anything other than to hear this in open session.

Mr. Jones continued with starting with the comments that were posted on Facebook. Mark Saito asked an anonymous fireman, there was no reason to bring his name up, but his picture was on the face of this wall with Mr. Jones's business behind him. Mark Saito to the anonymous fireman *"Are you doing business at Chevron?"* An hour later, Mark Saito posted another comment on this fireman's wall, that was in turn posted on Mr. Jones's wife's Facebook wall. And this was where the line was crossed. Mark Saito *"Dan Jones does not support the Fire Department. In fact, he wants to cut us back. We quit going there last year."* There's one other comment, but before he went on to that next comment, this was what was wrong with government. Threw re people in this town, and he was not standing there, he was standing there in a broader picture of supporting the businesses in this town, supporting the citizens in this town, and speaking out that the line has been crossed. There were people, and through this conversations coming back to whether he would run for City Council, there were peers of his that said to him that they would like to run, but were afraid it would cost them their business. That's wrong. There were good leaders wanting to lead, and there were good people that would be a great benefit to this town, but were afraid of the detriment that would happen to their businesses, and/or their livelihoods. He was standing there before all of them, the Fire Department, the City Council, and the City Manager, that something must be done. The next comment, there were three comments that were posted that evening on Facebook. It comes from another city employee within the Police [sic] Department. That employee was Julia Ramirez Rodriguez. She posted a comment, on, unfortunately, this fireman's that was caught in the middle, wall site, Facebook wall, which in turn posted on Mr. Jones's wife's Facebook wall. *"Us too, Mark; however, I had to go there today. I was running on fumes and it was the closest. Only did \$10. Will fill up elsewhere."* He would end with this. That's a cancer. That's a cancer that's right inside this department and the city, and it would grow. This was just one instance. He would hate to think, he wondered how many postings were about him from within that department and how people responded on Facebook. But, more importantly, what else was being posted with the Council, against the Council. There was no set agenda; there was no secret agenda here. All they were trying to do was work together and proceed with helping the city move down the road. When this cancer continued to grow, it decays, and it was terminal, and it must be removed. So he stood before them as a citizen and a business owner, and asked that the City Council, the Mayor, and the Police [sic] Department clean this up. Take care of it so he didn't have to. Thank you for your time.

Mr. Jones stated he had copies of the Facebook page if anyone wanted one.

Councilor Fox asked if it was known if the firefighter was on duty when the comments were posted.

Mr. Jones stated he had not requested the schedule yet. (He returned to the Council dais).

Mayor Dominick stated he would meet with the City Manager and would have a discussion, and would make sure to include Mr. Jones in those discussions. The issue would be worked on.

Mr. Lawrence stated they did not know any answers yet. He only learned of it on Friday.

Councilor Fox stated his agreement with Mr. Jones's comments, and brought up a very good question. What else was happening? It must be time to start looking at emails. How did he do that?

Mayor Dominick asked that the Council let him meet with the City Manager and Councilor Jones, to see what they could discover about this issue. He would report back to the Council. This was a serious issue, and it id did require looking into staff emails, then that might be one of the recommendations.

Councilor Fox verified emails were a matter of public record. Could he look at them if he wanted to?

Mr. Lawrence stated absolutely.

Councilor Fox stated he wasn't talking about personal ones.

Mr. Lawrence stated Facebook was actually blocked off the city's server. It could not be accessed with a city computer. It could be accessed with a personal cell phone.

Councilor Fox asked if there was a policy against personal cell phone use.

Mr. Lawrence stated he didn't have the facts as to where the emails came from, and there wasn't a policy against personal cell phone use.

Mayor Dominick stated he would get with the City Manager to do a review of the staff manual and the issue at hand. That would be reported back to the Council. He wanted to end the issue for now, and would give input to Council as soon as possible. He asked Councilor Jones to stay after the completion of the Council meeting so he could speak with him.

#### OLD BUSINESS

##### Ordinance #2664-2011: LID #47 Assessments (2<sup>nd</sup> and Final Reading by Title Only)

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. The property within the LID has been annexed. The construction was complete, all of the property owners connected to the sewer, and all but three were connected to the city water system. The assessments were calculated and are 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.

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

All 15 had connected to sewer; 13 out of 15 had connected to water. One homeowner had paid his account in full, and one was put \$12K down as part of sales transaction. The others would be given the opportunity to pay it off, or pay it off over 15 years with 1.5% interest.

David Sullivan moved, seconded by Norm Crume, to 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 16<sup>TH</sup> AVENUE TO 150 FEET FROM SW 18<sup>TH</sup> 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. Roll call vote: Crume-yes; Fox-yes; Fugate-yes; Jones-yes; Sullivan-yes; Verini-yes; Dominick-yes. Motion passed 7/0/0.

**NEW BUSINESS**

**Resolution #2012-101: Approving Fund Exchange Agreement #28277 with Ontario and OSDOT for Chip-Sealing on Various City Streets and Purchasing Certain Equipment for Road Maintenance Purposes**

Chuck Mickelson, Public Works Director, stated on the State of Oregon offered Fund Exchange programs acting by and through its Department of Transportation, in which Federal funds were exchanged for state funds at a ratio of \$94 state dollars for \$100 federal dollars. This gave 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.

On April 4, 2005, the Council authorized the Mayor to sign Fund Exchange Agreement #22388, which allowed staff to construct and complete the southwest 4<sup>th</sup> Avenue and southwest 4<sup>th</sup> street signal project. On March 16, 2009, the Council adopted Resolution #2009-108 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 1<sup>st</sup> Street; and on August 16, 2010, Council adopted Resolution #2010-131, approving Fund Exchange #27023, which authorized the Mayor to sign the agreement for chip sealing and landscaping

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

**Goals and Objectives**

Mayor Dominick had distributed a packet which touched on what they had discussed at the previous Thursday's study session. This information came off the League of Oregon Cities website, so it was available there at no charge to the city. There were also samples of what other city's goals were, to give an idea of what they had done. In the back of the packet were some worksheets that he was asking the Council to work on and consider. If there were any questions, please give him a call. He'd like to have the ready to go for the next study session of February 2<sup>nd</sup>. At the study session on Thursday, it was mentioned that no short term goals had been set in the past several years, nor any long term goals. Some goals needed to be set for what the Council wanted to see worked on, staff to work on, and how to move the city forward.

**CORRESPONDENCE, COMMENTS, AND EX-OFFICIO REPORTS**

- Ronald Verini stated there had been a banquet on Friday to honor distinguished citizens in the community. Bob Komoto, Dr. Weber, Sandy Jensen, and Andy Bentz were all recognized. There was a special recognition for the Sonny Hansen family, and the Veteran's Advocates of Ore-Ida received the Business of the Year award. It was a sell-out crowd, with tremendous support from the community. He thanked all those who attended and for participating in the program.
- Jackson Fox read a statement into the record: *After listening to Mayor Dominick's speech at the last meeting, a presentation that, in my opinion, showed leadership, it occurred to me that we, as an elected body, and individual Councilors, are here to protect and keep the public informed. We are here to make good and informed decisions for the good of the citizens, in the same manner the head of the household would make good decisions for his family. These decisions must be made on good information. We rely on city staff or accurate and complete information. The City Manager has asked for Council direction recently. Mr. Lawrence, please give the true, accurate and complete information in the timely manner the Mayor asked for. I know that my demeanor and language seems terse at times, for which I apologize. This comes from frustration in not being able to keep the public informed in a clear and transparent manner. The audit reports clearly indicate we have been remiss in our duties. I did not take this position to be self-serving, as there is no reward except to know that I have done my best. The public's right to know trumps*

*all agendas, Council and staff. I want to join with the Mayor and the Council in fulfilling our obligations in asking the tough questions and our oath of office demand we keep the public informed of the complete truth of all city finances and actions. Thank you Mr. Mayor.*

Mayor Dominick stated regarding the audit, he truly hoped that was one of the number one goals for this Council, the audit work and the finances.

- David Sullivan asked for an update on what was going on over at the Goodman Oil property.

Mr. Lawrence stated they pulled the tank and did some soil assessments. That was done by the state, Katie Robertson, with some federal money as well. They were also trying to determine if there was any contamination of the soil off-site.

- Mayor Dominick offered his congratulations to Joe Saito for his receiving of the Congressional Gold Medal last week in Seattle.
- Councilor Fugate stated there would be a movie at Four Rivers Cultural Center on Sunday, about Japanese internment. Information could be obtained by calling the Cultural Center. Also, there was an opening of the photographs taken by Clink Shock and his wife, taken all over the county. That was scheduled to run Friday, from 5-7pm, in the Art Gallery.

#### **EXECUTIVE SESSION**

##### **Executive Session: ORS 192.660(2)(h)**

An executive session was called at 7:38 p.m. under provisions of ORS 192.660(1)(h) to discuss pending or potential litigation. The Council reconvened into regular session at 7:55 p.m.

#### **ADJOURN**

David Sullivan moved, seconded by Ronald 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.

**APPROVED:**

**ATTEST:**

\_\_\_\_\_  
Joe Dominick, Mayor

\_\_\_\_\_  
Tori Barnett, MMC, City Recorder

**AGENDA REPORT**  
February 6, 2012

TO: Mayor and City Council

FROM: Henry Lawrence, City Manager

**SUBJECT: APPROVAL OF 2012 GOLF RESTAURANT LEASE BETWEEN THE CITY OF ONTARIO AND BARBARA TOOMEY**

DATE: January 30, 2012

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**SUMMARY:**

Attached is the following document:

- Proposed lease agreement

**BACKGROUND:**

Barbara Toomey, under lease agreement with the City, operated the restaurant at the Ontario Golf Course during the 2011 regular golf season. She has indicated a willingness to renew the lease for the 2012 season, with the following minor changes written into the proposed document:

- Section 4: The agreement is shorten to seven months of the golf season (April 1-October 31), instead of eight months per the 2011 agreement. She notes that a March 1 start is not justified due to the lack of business that early in the season. She will open on April 1. She also requests that the City give her first consideration to negotiate a new lease for 2013 before the City negotiates with any other parties.
- Section 5: Monthly rental is still \$250, plus \$125 per month for the off-season months of November and December. Total rent is \$2,000 in advance by April 1, 2012.
- Section 7: Utilities. Since she has a satellite television, the reference to "Clubhouse Cable" is not applicable. Due to the amount of golf course debris depositing in the garbage dumpster, the City requires twice a week dumping service by Ontario Sanitary Service. As she does not generate 50% of the debris, and only needs service once a week, her share of the garbage is reduced from 50% to 25%.
- She requested adjustments on electric/natural gas sharing, but the City Manager does not recommend it at this time. Her share of electric (25%) and natural gas (50%) remains as in the 2011 agreement, provided the Council approves.

Other than minor editorial changes to make the document applicable to 2012, no other substantive changes were made.

**FINANCIAL IMPLICATIONS:**

\$2,000 revenue to the City, plus a share in utility expenses from the lessee.

**RECOMMENDATION:**

Approve.

**PROPOSED MOTION:**

I move to approved the proposed 2012 Golf Restaurant lease agreement between the City of Ontario and Barbara Toomey, and authorize the City Manager to sign the agreement on behalf of the City.



## **Ontario Municipal Golf Course**

Restaurant Lease  
2012 Golf Season

## **Ontario Municipal Golf Course Restaurant Lease**

THIS Agreement, entered into by the CITY OF ONTARIO, a municipal corporation of the State of Oregon, hereinafter referred to as "City" and BARBARA TOOMEY, hereinafter referred to as "Lessee."

WITNESSETH, that in consideration of the mutual promises, covenants and agreements contained herein, the parties hereto agree as follows:

### **RECITALS**

1. The City of Ontario ("City") is the owner of the City of Ontario Municipal Golf Course ("Golf Course") with its appurtenant facilities, including the Golf Clubhouse and the Golf Course restaurant located therein.
2. The Golf Course, with its appurtenant facilities, exists on property leased from the Municipal Airport and is subject to FAA restrictions and regulations.
3. Lessee and affiliates are in the business of owning, leasing, managing, and/or operating food service facilities.

### **TERMS & CONDITIONS**

#### **Section 1. Personal Involvement Of Owner**

Except as otherwise provided herein, this Agreement is contingent upon the personal involvement in the management of the Premises by Barbara Toomey, owner.

#### **Section 2. Premises**

The Premises which are the subject of this lease agreement consist of the kitchen, indoor banquet area and dining room portion of the Ontario Golf Course Clubhouse, including all equipment, fixtures and related facilities therein as identified in Exhibit "1" attached hereto. The outdoor patio area adjacent to the Clubhouse is not part of the leased Premises. Lessee's use of the patio is at the discretion of the Golf Course Manager, considering whether such use conflicts with Golf Course or Golf Tournament activities. At the end of the lease period covered by this Agreement, any patio furniture purchased by Lessee will remain the property of Lessee.

#### **Section 3. Use and Possession**

- 3.1 **Restaurant.** The Premises shall be used solely for the operation of a restaurant, together with related activities. In consideration of the rental amounts set forth herein, Lessee shall be entitled to all of the revenues Lessee receives through operation of the restaurant.
- 3.2 **Food Franchise and Exclusive Beverage Franchise.** The City hereby grants Lessee the right to provide all food and beverage services for the Golf Course, as well as the Golf Course dining room and banquet area, patio area and golf course, and the right to limit others from bringing food and beverages onto the Course during normal Course operations, subject to the following reservation as to food service only:

Upon giving Lessee reasonable notice in advance, the City reserves the right to allow golf tournament sponsors use of the outdoor patio area for special events with food service provided by third party caterers in the event the sponsor can not reach agreement with Lessee concerning food service for the tournament. The City shall give Lessee the opportunity to negotiate catering for those events before allowing the use of third party caterers. Third party catering service shall be confined to the outdoor patio area and shall not include alcohol or other beverage service except with the Lessee's consent.

- 3.3 Lessee, for the consideration as set forth in the Rental paragraph herein and in accordance with the terms and provisions of this Agreement, shall have the exclusive use of the Premises for the purposes of operating a restaurant at the Ontario Golf Club clubhouse during the 2012 Golf Season as set forth in Section 4.
- 3.4 If Lessee desires to use the Premises on dates or for purposes other than those specified herein, it shall be Lessee's responsibility to provide City with reasonable notice in advance of the proposed use and to negotiate a fee to be paid to the City for such use.

#### **Section 4. Term**

The term of this Agreement shall be for seven months of the 2012 Golf Season, April 1 – October 31 (seven months). For the purpose of this Agreement, the Regular Golf Season commences on March 1 and ends at midnight on October 31 of each year. Off Season shall be considered November 1 – December 31. Lessee may use the facility during the 2012 Golf Season at the agreed upon price set forth in Section 5 below. Any extension or renewal of the lease beyond the 2012 Golf Season shall be subject to negotiation between the parties, following an evaluation by the City of the Lessee's performance during the 2012 term, and the City's analysis of the prospect for the Lessee's success into the future. Lessee shall be given first consideration to negotiate a new lease for 2013 before Lessor negotiates with any other parties.

#### **Section 5. Rental**

The Lessee shall pay as rent for the Premises the following:

(a) For seven months of the 2012 Golf Season, the sum of \$2,000, based upon a monthly rent of \$250, plus Off Season rent for 2012 (Nov.1 –Dec 31) at \$125 per month, payable on or before April 1, 2012, plus utility sharing as set forth in the Agreement.

(b) At the end of the 2012 season the dishwasher that Lessee installed at her cost will be considered a fixture and ownership of the dishwasher will revert to City.

(c) City and Lessee may decide to negotiate a contract for the 2013 Golf Season. City and Lessee agree that no later than Dec. 30, 2012, a decision on renewal for the 2013 will be accomplished.

(d) The facility will be closed during the months of January and February.

## Section 6. Deposit

To secure Lessee's compliance with all of the terms of this lease, City acknowledges that the sum of \$1,000 has been paid by Lessee upon execution of this original 2011 Agreement. The deposit is a debt from City to Lessee, refundable within 30 days after the expiration of the lease term or other termination not caused by Lessee's default. City may commingle the deposit and Lessee shall not be entitled to interest thereon. City shall have the right to offset against the deposit, any sums owing from Lessee to City not paid when due, any damages caused by Lessee's default, the cost of curing any default by Lessee should City elect to do so, and the cost of performing any repair or clean up that is Lessee's responsibility under this lease. Offset against the deposit is not an exclusive remedy, but maybe invoked by City in addition to any other remedy provided by law or this lease for Lessee's non-performance. City shall give Lessee notice each time an offset is claimed against the deposit and, unless the lease is terminated, Lessee shall within 10 days after such notice, deposit with City, a sum equal to the amount of the offset so that the total deposit amount shall remain constant throughout the lease term.

## Section 7. Utilities

The City shall provide all electrical, cable, water, garbage, sewer and natural gas utility services for the Clubhouse. Any other utility costs shall be the Lessee's sole responsibility. Lessee shall reimburse the City based upon the following division of utility costs:

	City Responsibilities	Lessee Responsibilities
Clubhouse electricity	75%	25%
Clubhouse Cable	N/A	N/A
Dedicated restaurant telephone line	0%	100%
Water and sewer service	100%	0%
Garbage pick-up costs	75%	25%
Natural gas charges	50%	50%
Other services deemed necessary	0%	100%

The City shall give Lessee copies of the invoices for electrical, cable, garbage and natural gas charges from third party utility providers, and Lessee shall reimburse the City for the Lessee's share of those charges within 15 days after delivery of an invoice.

## Section 8. Late Charges

In the event Lessee fails at any time to make timely payments to the City for rent or utilities as provided in this Agreement, the City may, in lieu of terminating the lease, assess a late fee of \$25.00 plus interest at the rate of 18% per annum, or the highest amount permitted by law, whichever is less, on each outstanding payment until said payment is fully paid. The City's decision to not terminate the lease in the event of late payment in one instance shall not affect the City's right to terminate in the event of any additional untimely payment(s).

## **Section 9. Maintenance of Premises**

- 9.1 Right to Remodel. The City reserves the right to redesign, remodel, or reconstruct the Clubhouse facilities on the Premises at its cost if it deems the same advantageous to the long range operation of the facilities, and further, if such remodeling can be accomplished without substantial interference with the Lessee's operations.
- 9.2 Major Maintenance. The City shall, at its own expense, make all major repairs of whatever nature are determined by the City to be necessary to maintain the structures on the Premises in as good a condition as the same are now in, reasonable wear and tear excepted. The Lessee has the total responsibility of performing interior building maintenance for the restaurant area. The City shall correct and repair any structural defects which in the sole discretion of the City, the City determines undermine the structural integrity of the Clubhouse building and/or shall replace any major equipment which fails and cannot be repaired, such as the air conditioning compressor, furnace, hot water heater, etc.

## **Section 10. Advisory Committee**

The City agrees to maintain a Golf Committee, which will continue to act in an advisory capacity to the City Council. The appointments to this Committee will be made by the Mayor and City Council. The Golf Committee may make suggestions and/or recommendations regarding restaurant facilities and/or operations and will provide regular reporting on Lessee's compliance with the terms of this agreement.

## **Section 11. Operation and Service Standards**

- 11.1 The Lessee agrees to provide food service in the restaurant in accordance with the following schedule:
- Operating Hours: 10:00am to 8 pm Monday - Saturday  
10:00am to 6 pm Sunday
- Hot food served: During all hours.
- 11.2 The Lessee agrees to operate in a professional, businesslike manner and will not permit any acts or conduct on the part of the Lessee or the Lessee's employees which would be detrimental to the operation of the golf course. The Lessee shall assign a person in authority to act on behalf of Lessee when the Lessee is unavailable. The Lessee agrees to maintain trained employees in positions adequate to fully perform the terms, conditions and requirements of this Agreement. The City reserves the right to require that employees of Lessee be prohibited from working in the restaurant if said employees are the subject of repeated complaints or if said employees conduct themselves in a manner detrimental to the best interests of the City. Lessee's employees shall be clean, neat, well-groomed, professional, courteous, and friendly to the public.
- 11.3 Cleanliness of Premises. The Lessee shall, at his own expense, at all times keep the Premises, including restrooms, in a neat, clean, safe and sanitary condition. City and Lessee will, on a 50% basis, each furnish all cleaning supplies and materials needed to operate the Premises, as well as restroom paper products. The Lessee shall ensure that the Premises pass all health inspections, and shall promptly correct any

problems identified by the health inspector, other than corrections that require building repairs not caused by the Lessee's negligence, or the repair or replacement of equipment not owned by the Lessee.

- 11.4 Permits and Licenses. Lessee shall obtain any and all approvals, permits, and/or licenses that may be required in connection with the operation of a food service facility, including a liquor license.
- 11.5 Quality of Food and Beverages. Lessee shall make efforts to ensure that only the highest quality food and beverages are sold at the restaurant. Refrigeration, handling, and preparation of all food products shall comply with Malheur County Health Department rules and regulations. The City shall have the right to suggest changes in the Lessee's menus and pricing.
- 11.6 Continuous Operation. The Lessee shall keep the various areas of the Premises open during the Golf Season and use them to transact business with the public. Subject to approval of the City, the Lessee may, upon posting a written notice to the public for at least one week prior thereto, close the restaurant for a reasonable period of time for repairs or remodeling as authorized, for the taking of inventory or to accommodate construction by the City of public improvements.
- 11.7 Non-Discrimination. The Lessee shall conduct his business in a manner which assures fair, equal and non-discriminatory treatment at all times, in all respects, to all persons, without regard to race, color, religion, sex, age, or natural origin, physical handicap, marital status, political affiliation. No person shall be refused service, be given discriminatory treatment or be denied any privilege, use of facilities or participation in activities on the Premises on account of race, color, religion, sex, age or national origin, physical handicap, marital status, political affiliation.
- 11.8 The Lessee will not discriminate against any employee or applicant for employment because of race, color, religion, sex, age or national origin, unless based upon a bona fide occupational qualification. The Lessee will take affirmative action to insure that applicants are employed, and the employees are treated during employment without regard to their color, race, religion, sex, age, national origin, physical handicap for which reasonable accommodation can be provided, marital status, or political affiliation. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, transfer, recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Lessee agrees to post in conspicuous places, available to employees, applications for employment, and notices to be provided by the Lessee setting forth the provisions of this non-discrimination clause. The Lessee will take affirmative action to ensure that all of its employees, agents and subcontractors adhere to this provision, provided nothing herein shall prevent an employer from giving preference in employment to members of his immediate family. Failure to comply with any of the terms of this provision shall be a material breach of this Contract. The foregoing provision will be inserted in all subcontracts entered into under this Agreement.

## **Section 12. Premises, Furnishings, Fixtures and Equipment**

- 12.1 Lessee may use all existing furnishings, fixtures and equipment currently existing at the restaurant. Lessee shall, at Lessee's own expense, provide any additional furnishings, fixtures, or equipment it deems necessary for the proper, professional, conduct of its business.

- 12.2 **Maintenance of City Owned Equipment.** Lessee shall maintain all City owned equipment utilized on or in connection with the operation of the Premises in good operating condition and shall return the same, or any replacement thereof, to the City at the expiration of this Agreement, or any renewal thereof, in the same condition as the same was at the commencement of the Agreement, reasonable wear and tear excepted. Any replacements of City owned equipment utilized by Lessee shall belong to City, unless the Lessee has obtained written permission from the City, prior to the equipment being replaced, to replace City equipment with equipment to be owned by Lessee. Additionally, any equipment or furnishings initially provided by Lessee shall remain the property of Lessee.
- 12.3 The City or its agents may enter the Premises at all reasonable times for the purposes of inspecting or repairing the same and conducting an inventory of City owned buildings and equipment for audit purposes, but this right shall not impose an obligation upon the City to make inspections to ascertain the condition of the Premises or to conduct an annual audit.
- 12.4 Either party may terminate this Agreement in the event that the Premises or a substantial portion thereof are rendered unusable by fire, earthquake, act of God, or other extraordinary casualty destroying or damaging the Premises, by notice given to the other party within 30 days after such a condition is discovered. Neither party shall be required to restore or reconstruct the Premises in the event of such a disaster.
- 12.5 In the event that it is necessary for the City to demolish the Premises during the term of this Agreement, or any extension thereof, the City shall notify the Lessee of such intent, in writing, six months in advance of any such demolition. Such notice in good faith shall be grounds for termination of the Agreement upon the expiration of the six month period.

### **Section 13. Compliance with Law**

The Lessee shall comply with all applicable Federal or State Laws and City ordinances and applicable rules and regulations with respect to any portion of the Premises.

### **Section 14. Removal of Lessee's Property**

No more than seven days prior to the expiration of the term of the Agreement, or any renewal thereof, the Lessee shall remove all of his goods, wares, and merchandise from the Premises. In the event of termination for any cause, the Lessee shall remove all property belonging to Lessee within 10 days of the termination of this Agreement. The City may, but need not, treat any property remaining on the Premises after the expiration of this Agreement or period of removal of the Lessee's property, as abandoned by the Lessee and may make any disposition of such property as the City deems fitting.

### **Section 15. Surrender of Premises**

Upon termination or expiration of this Agreement the Lessee shall surrender the Premises in as good a condition as at the date of the execution of this Agreement, except for the effects of reasonable wear and tear, unusual weather conditions, alterations and repairs made with the concurrence of the City, and property damages by fire, extended coverage and vandalism, except to the extent the same are covered by insurance.

### **Section 16. Liens and Encumbrances**

The Lessee shall keep the Premises free and clear of any liens and encumbrances arising out of or growing out of his use and occupancy of the Premises. At the City's request, the Lessee shall furnish the City written proof of payment of any item which would or might constitute the basis for such a lien against the Premises if not paid. In the event the Contractor fails to pay, when due, any amounts required of the Contractor to be paid to third parties under this Agreement, or in the event Contract fails to provide insurance coverage as herein required, the City may pay any or all such amounts. If the City makes any such payments, or incurs any such expense, the amounts so paid, together with interest at the rate of twelve percent (12%) per year and a \$75.00 handling fee, shall be immediately due and payable from the Lessee to the City.

Except as specifically provided herein, the Lessee has no authority, without prior written consent of the City, to act as an agent on behalf of the City or to encumber or otherwise represent that the City will be responsible for the purchase of or subscription to any item, fee, service or other obligation.

### **Section 17. Eminent Domain**

If the entire Premises shall be taken by condemnation by any governmental authority or conveyed in lieu of condemnation, this Agreement shall terminate as of the date possession shall be required by said governmental authority, and the parties shall be released from all further liability hereunder.

If only a portion of the Premises shall be so taken or conveyed, City may at its option and at its expense, restore the Premises, to such a condition and in such a manner as in its judgment, after consultation with Lessee, is required to continue operation as a restaurant and this Agreement shall continue in force otherwise unaffected. If the City elects not to restore the Premises lost through said condemnation or conveyance, this Agreement shall terminate.

### **Section 18. Default Clause**

18.1 Time and strict performance are the essence of this Agreement. The Lessee may be declared in default of this Agreement, if he shall fail to keep and perform each and every duty and/or obligation in this Contract specified to be kept and performed by the Lessee and, in addition, it shall be a default hereunder if the Lessee shall:

- a. Be convicted of a crime involving moral turpitude, theft or a violation of a fiduciary duty; or
- b. File a voluntary petition for relief under the Bankruptcy laws; or
- c. Suffer an involuntary petition in Bankruptcy to be filed against him and the same is not dismissed within 90 days; or
- d. Make a general assignment for the benefit of creditors.

- 18.2 Nonpayment of Rent. Lessee shall be in default if she fails to pay any rent payment due within ten days of the due date, without notice from the City.
- 18.3 Notice. In the event of a claimed default other than for nonpayment of rent, the City shall give the Lessee written notice thereof, specifying the exact nature of the default. The Lessee shall have 10 days after receipt of notice of such default within which to cure the same and if not so cured, the City may elect to terminate this Agreement or to exercise any and all of its legal remedies granted by law or this Agreement.

In the event of failure or neglect, which in the reasonable opinion of City would jeopardize City's assets, the City may immediately serve notice on the Lessee of the City's intention to terminate the Agreement and in any event the City may perform necessary maintenance after notice to the Lessee as set out above. In the event the City steps in and performs necessary maintenance due to nonperformance on the part of the Lessee, the Lessee shall be liable to City for all costs City incurs in performing said maintenance.

- 18.4 Nonwaiver of defaults. No action other than a written document from the City so stating shall constitute a waiver by the City of any breach or default by the Lessee, nor shall such a document waive full compliance with the terms and conditions of this Agreement, irrespective of any knowledge the City may have of such breach, default, or non-compliance. The City's failure to insist upon full performance of any provision of this Agreement shall not be deemed to be a consent to or acceptance of such incomplete performance.

#### **Section 19. Assignment and Subletting**

The Lessee shall not assign or transfer this Agreement, nor otherwise convey any rights or privileges granted hereunder or any part of the Premises, unless the written consent of the City is first obtained, which decision to provide or deny such consent shall be in the sole and complete discretion of the City. Neither this Agreement nor any right, privilege of interest herein or hereunder shall be transferable by operation of law or by any process or proceeding of any court.

#### **Section 20. Termination**

The parties may terminate this Contract by mutual agreement at any time. The termination date shall be one (1) month after the execution of an agreement to terminate, with terms and conditions included, unless the parties agree to a shorter time. At the time this Agreement terminates, whether through a termination provision set forth herein, or through expiration, unless the parties enter into a subsequent Lease Agreement, Lessee shall be free for seven calendar days following the date of termination to remove all fixtures and equipment belonging to Lessee in accordance with the terms and provisions herein and shall restore any damages caused by the removal of said equipment or alterations made to the Premises to accommodate said equipment and shall restore the Premises to the same or similar condition as they exist at the time of execution of this Agreement, reasonable wear and tear excluded. Any of Lessee's property remaining on the Premises after seven calendar days have passed from the date of termination shall become the Property of the City. Should the parties terminate this agreement, the City shall refund any prepaid rental fees to Lessee.

## Section 21. Insurance

- 21.1 Liability Insurance. The Lessee, at its own expense, shall obtain liability insurance and file with the City, a certified copy of the Lessee's liability insurance policy. The policy must fully protect the City from any and all claims and risks in connection with the Lessee's activity upon or use of the Premises, as well as any and all claims and risks in connection with any activity performed by the Lessee by virtue of the rights granted pursuant to this Agreement, including Dram Shop coverage. Such policy must specifically name the City, its employees, agents, and officers as insured parties and provide the following minimum coverage:

Minimum Limits:

- \$100,000 per claimant for property damage;
- \$500,000 per claimant for personal injury per occurrence; and
- \$1,000,000 annual aggregate.

The said insurance must be maintained in full force and effect at the Lessee's sole expense throughout the entire term of the Agreement, or any renewal thereof, and such policies or endorsements must contain the following provisions:

*"The City is named insured for all coverage provided by this policy of insurance and shall be protected by this policy for all risks and for any and every injury, death, damage, and loss of any sort sustained by any person, organization or corporation in connection with the Lessee's activity performed by the Lessee by virtue of the rights granted pursuant to the Agreement between the City and Lessee."*

The coverage provided by the said policy to the City, its agents, employees, and officers or any other named insured, shall not be terminated, canceled, allowed to lapse, amended, reduced or otherwise changed in any respect without providing at least 30 days written notice to the City.

The Lessee further agrees to indemnify and save the City, its agents, employees and officers, harmless from all claims, liability, judgments, damages, loss and expenses which may be incurred by reason of this Agreement, including claims resulting from any act or omission of the Lessee, his agents, or servants in the use of the demised Premises for negligence or other cause.

At no time shall the Lessee's liability insurance coverage under this Paragraph be less than the maximum liability limits imposed upon municipalities by the Oregon Tort Claim Act (ORS 30.260 *et seq.*) as it exists on the date hereof or shall hereafter be amended, replaced or otherwise changed.

- 21.2 Fire Insurance; Other Insurance. The Lessee, at its own expense, shall be responsible to maintain an approved policy of fire and extended coverage insurance on all, equipment, furnishings, inventory, materials and supplies owned by Lessee. Lessee shall indemnify and hold harmless the City from any loss to Lessee's equipment, furnishings, inventory, material and supplies.

The City agrees that it shall procure fire insurance with standard extended coverage endorsements on the golf course clubhouse and its related fixtures, furnishings and equipment which belong to the City.

In the event of the total loss of the Premises from any peril insured under said policy, the City shall have the option to either rebuild the Premises, or make distribution of such settlement funds between the City and the Lessee as their respective interest shall be determined at the time of such total loss.

This coverage will be procured as a part of the City's overall insurance package procurement bid process which is performed annually on a fiscal year basis so long as the City is able to do so. The City shall provide the insurance bid specifications to Lessee as soon as they are available but not later than May 1st of each year. The Lessee shall be responsible for reviewing and approving all bid specifications in connection with said fire insurance. Lessee shall be deemed to have conclusively approved such bid specifications if he fails to file written objections to said specifications with the City Manager on or before May 25th of each year of the term of this Agreement. If Lessee files written objections to said specification in the manner specified, and the City Manager and Lessee are unable to resolve such objections within five (5) days of filing of such objections, then, in that event, the Lessee shall provide his own insurance coverage as provided in this Paragraph.

The City's insurance coverage for the structures set forth herein above shall be on the basis of a \$1,000.00 deductible provision.

- 21.3 Lessee's Responsibility to Review. Lessee acknowledges that the City, its agents, employees and officers have made no representations concerning the adequacy or scope of the insurance coverage to be procured by the City pursuant to the terms of this Agreement. Lessee represents and covenants with the City that it is his responsibility to do the following:
- a. Inspect the bid specifications of the insurance described herein and satisfy himself as to the adequacy and scope of said bid specifications; and
  - b. Review and inspect the policies of insurance and the terms and provisions thereof and satisfy himself with the adequacy and scope of coverage provided; and
  - c. Rely solely upon his own judgment and the advice of his insurance advisors concerning the insurance provided hereunder and such other insurance as may be necessary to adequately protect Lessee's interests.

## **Section 22. Property Taxes**

The parties acknowledge that the said Premises and the related equipment are now exempt from ad valorem property taxes by virtue of the governmental use being made of such Premises and equipment. The nature of the use will continue and the parties do not believe that any change will be made in the tax exempt status of the property and equipment. In the event any taxes are levied against either the Premises or the equipment during the term of this Agreement, or any renewals thereof, the Lessee agrees to pay any such taxes which may be levied.

## **Section 23. Municipal Airport**

In the event the City shall sponsor or authorize an air show which shall result in the discontinuance or interruption of the use of the golf course and related facilities, including the clubhouse, the City will work with the air show sponsors and the Lessee to minimize loss to the Lessee as a result of temporary closure of the course during the air show.

## Section 24. General Provisions

- 24.1 Compliance with Laws. Lessee agrees to comply with the worker compensation laws of the State of Oregon and to comply with the State and Federal Income Tax law and Unemployment Insurance laws.
- 24.2 No Representations. Lessee accepts the Premises, including the land, buildings, improvements, and equipment and all other aspects of the Premises in their present conditions, AS IS, including latent defects, without any representation or warranties, expressed or implied, unless they are expressly set forth in the Agreement. Lessee represents and warrants to City that Lessee has made an independent inspection and investigation of the Premises and the improvements thereon. Lessee agrees that no representations have been made by the City regarding profitability from the Premises or operation thereof and that Lessee is entering into this Agreement based solely upon his inspection of the Premises, and upon his own judgment regarding the potential profitability of the Premises. There are no agreements and promises to alter, repair or improve the Premises made by City or the City's agent.
- 24.3 Entire Agreement. This Agreement constitutes the entire Agreement between the parties. No agent or representative of City has any authority to vary the terms of this Agreement, or to extend the rights and privileges, as herein set forth, or to make any statements or representations concerning this Agreement, or the rights and privileges herein set forth, except as may be evidenced in writing by the City Manager.
- 24.4 Waiver of Subrogation. The City and the Lessee hereby release and relieve the other and their respective agents and waive their entire claim for recovery against each other from any loss, damage or injury arising out of or incident to any of the perils included in Lessee's or City's policies of fire, extended coverage and vandalism insurance in current practice owned by the parties to the extent said loss is covered by such policies whether due to negligence of either of the parties, their agents, or employees or otherwise.
- 24.5 Successor Interest. The covenants and agreements herein contained shall be binding upon the City and any succeeding City government and its personnel. The parties agree that in the event of the death, or total disability of Barbara Toomey, the obligation of the City under this Agreement will cease, and the performance or duties provided for in this Agreement, being dependant upon the personal oversight and active involvement of Barbara Toomey shall not, except to the extent of the performance bond or letter of credit, be deemed to be binding upon the estate of the deceased.
- 24.6 Time. Time is of the essence of this Agreement and of each and every term, covenant and condition herein contained.
- 24.7 Headings. The paragraph headings in this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of this Agreement or any provision thereof or in any way affect this Agreement.
- 24.8 Lessee as Independent Contractor. For all the purposes hereunder, Lessee is and shall be deemed to be an independent contractor. City has made no representation to Lessee regarding business projections at the restaurant or the perceived success of a restaurant endeavor. All decisions to enter into this Lease Agreement are based on Lessee's due diligence and independent determination and verification as to the projected success of a restaurant enterprise at the golf course have been the sole duty of Lessee.

24.9 General Indemnity. Lessee agrees to defend (using legal counsel acceptable to City), indemnify and hold harmless City, its officers, agents and employees, boards, and Councils from and against all losses, damages, claims, liabilities, and causes of action of every kind of character and nature, as well as costs and fees including reasonable attorney's fees connected therewith, and expenses of the investigations thereof, based upon or arising out of damages or injuries to third persons or their property caused wholly or in part by Lessee's operations or activities under this Agreement. City shall give Lessee prompt and reasonable notice of any such claims or action, and Lessee shall have the right to investigate, compromise, and defend the same to the extent of its own interest.

24.10 Attorney Fees. In the event any suit, action or proceeding is instituted by either of the parties to enforce any of the terms or conditions of this Agreement, the prevailing party in such suit, action or proceeding, including any appeals therefrom, shall be entitled to recover from the other party reasonable attorney fees to be determined by the Court or tribunal in which suit, action, or proceeding is commenced.

24.11 Notice. Notices to either party shall be addressed to:

City: City Manager  
City of Ontario  
444 SW 4<sup>th</sup> Street  
Ontario, OR 97914  
(541) 881-3223  
henry.lawrence@ontariooregon.org

Lessee: Barbara Toomey  
102 Wild Rose Circle  
Fruitland, ID. 83619  
(208) 550-1401  
madiabbey@yahoo.com

IN WITNESS WHEREOF, the parties have duly executed this Agreement this \_\_\_\_ day of \_\_\_\_\_, 2012.

CITY OF ONTARIO

LESSEE

\_\_\_\_\_  
Henry Lawrence, City Manager

\_\_\_\_\_  
Barbara Toomey

State of Oregon        )  
                                  )        ss.  
County of Malheur     )

This instrument was acknowledged before me on \_\_\_\_\_, 2012, by Barbara Toomey.

\_\_\_\_\_  
Notary Public – State of Oregon  
My Commission Expires: \_\_\_\_\_

State of Oregon        )  
                                  )        ss.  
County of Malheur     )

This instrument was acknowledged before me on \_\_\_\_\_, 2012, by Henry Lawrence, as City Manager for the City of Ontario.

\_\_\_\_\_  
Notary Public – State of Oregon  
My Commission Expires: \_\_\_\_\_

Exhibit "1"  
Premises and Equipment Subject to Lease

1. Location: Golf Course Club House, 1345 Golf Course Road, Ontario, OR.
2. Size: Approximately 1,800 gross square feet. The Dining room is approximately 1,025ft<sup>2</sup>, the Banquet Area is approximately 300 ft<sup>2</sup>, and the kitchen/pantry area is 470 ft<sup>2</sup>.
3. Seating: Seating tables and chairs for approximately 50. Additional seating provided by Lessee.
4. Storage: Most storage must be accommodated in the kitchen area. Additional storage area may be provided, if feasible.
5. Equipment: Equipment provided by the City: restaurant gas range, floor model fryer, bottle cooler, back bar cooler, condiment table, prep table, reach-in freezer, and two section reach-in refrigerator. Equipment and supplies not provided by the City that the Lessee shall provide include a microwave, cash register, dishes, flatware, paper products, cleaning supplies and all other consumables or disposables required for the kitchen, restaurant and restroom operation.

**AGENDA REPORT**  
February 6, 2012

TO: Mayor and City Council

FROM: Al Higinbotham, Fire Chief

THROUGH: Henry Lawrence, City Manager

**SUBJECT: RESOLUTION NO. 2012-102: A RESOLUTION ACKNOWLEDGING RECEIPT OF FEMA ASSISTANCE TO FIREFIGHTERS GRANT FUNDS AND APPROPRIATING EXPENDITURES FOR A NEW REPLACEMENT PUMPER WITHIN THE GRANT FUND**

DATE: January 30, 2012

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**SUMMARY:**

Attached is the following document:

- Resolution 2012-102

**BACKGROUND:**

The new pumper will be a replacement for pumper 103, which is now 30 years old. Parts for 103 are expensive and difficult to find. It is not cost effective to continually make repairs to such an old model. The maximum expected service life for a pumper is 20 years.

**FINANCIAL IMPLICATIONS:**

The approved project costs total \$340,000.00. The Federal share is 95% or \$323,000.00 and the City's responsibility for this grant will be 5% or \$17,000.00. This amount will come from the General Fund Equipment Replenishing Contingency line item.

**RECOMMENDATION:**

Staff recommends the Council adopt Resolution 2012-102.

**PROPOSED MOTION:**

I move the City Council adopt Resolution 2012-102, A RESOLUTION ACKNOWLEDGING RECEIPT OF FEMA ASSISTANCE TO FIREFIGHTERS GRANT FUNDS AND APPROPRIATING EXPENDITURES FOR A NEW REPLACEMENT PUMPER WITHIN THE GRANT FUND.

**RESOLUTION NO. 2012- 102**  
**A RESOLUTION ACKNOWLEDGING RECEIPT OF FEMA ASSISTANCE TO FIREFIGHTERS**  
**GRANT FUNDS AND APPROPRIATING EXPENDITURES FOR A NEW REPLACEMENT**  
**PUMPER WITHIN THE GRANT FUND**

**WHEREAS,** the 2011-2012 Biennial Budget was adopted without the knowledge of funding for replacement of pumper 103; and

**WHEREAS,** the City was awarded a FEMA Assistance to Firefighters Grant through its Fire Department to purchase a new replacement pumper; and

**WHEREAS,** the City desires to modify the 2011-2012 Budget, acknowledging new grant revenue of \$340,000.00 of which the Federal share is 95% or \$323,000.00 and the City's share is 5% or \$17,000.00 and appropriating expenditures within the Grant Fund to complete the project.

**NOW THEREFORE, BE IT RESOLVED** by the Ontario City Council to approve the following adjustments to the 2011-2012 Biennial Budget:

Line Item	Item Description	FY 11-12 Budget	Amount of Change	Adjusted Budget
<b>GRANT FUND</b>				
Revenue				
010-000-456192	FEMA Assistance to Firefighters Grant	\$57,855.00	\$323,000.00	\$380,855.00
Revenue				
001-004-871100	General Fund Equipment Replenishing Contingency	\$150,000.00	(\$17,000.00)	\$133,000.00
Expenses				
010-038-714192	Fire FEMA Equipment Grant	\$57,855	\$340,000.00	\$397,855.00

Effective Date: Upon adoption

Passed and adopted by the Ontario City Council this \_\_\_\_\_ day of \_\_\_\_\_ 2012.

Ayes:

Nays:

Absent:

Approved by the Mayor this \_\_\_\_\_ day of \_\_\_\_\_ 2012.

ATTEST

\_\_\_\_\_  
 Joe Dominick, Mayor

\_\_\_\_\_  
 Tori Barnett, MMC, City Recorder

**AGENDA REPORT**  
February 6, 2012

TO: Mayor and City Council

FROM: Larry Sullivan, City Attorney

THROUGH: Henry Lawrence, City Manager

**SUBJECT: ORDINANCE NO. 2666-2012: AN ORDINANCE CONSENTING TO THE ASSIGNMENT OF THE MALHEUR HOME TELEPHONE COMPANY FRANCHISE TO CENTURYLINK QC (FIRST READING)**

DATE: January 26, 2012

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**SUMMARY:**

Attached is the following document:

- Ordinance No. 2666-2012

Malheur Home Telephone Company has a telecommunications franchise agreement with the City that was approved in 2009. That company has consolidated with Qwest, and proposed Ordinance No. 2666-2012 consents to the transfer of the telecommunications franchise to Qwest, which is now doing business as CenturyLink QC.

**PRIOR COUNCIL ACTION:**

March 3, 2009	Council enacted Ordinance 2626-2009, a telecommunications franchise agreement with Malheur Home Telephone Company.
May 17, 2010	Council tabled consideration of Ordinance 2642-2010 consenting to the assignment of the Malheur Home Telephone franchise to Qwest, pending a revision of the Telecommunications chapter of the City Code.

**BACKGROUND:**

In 2009, the City granted Malheur Home Telephone Company a ten-year telephone franchise agreement in Ordinance 2626-2009. It includes a 7% franchise fee on gross revenues earned within the City limits. Later that year, the decision was made by Qwest, its parent company, to shut down Malheur Home Telephone Company's independent operations and consolidate them into Qwest. The State of Oregon PUC approved the consolidation, effective December 14, 2009. The consolidation resulted in the transfer of Malheur Home Telephone Company's operations to Qwest Corporation, including the use of the City's rights of way for Qwest's telecommunications business.

Paragraph 10.8 of Ordinance 2626-2009 provides:

**Transfer of Franchise.** PROVIDER shall not, directly or indirectly, transfer, assign, or dispose of by sale, lease, merger, consolidation or other act of PROVIDER, ownership or control of a majority interest in the telecommunications system, without the prior consent of CITY, which consent shall not be unreasonably withheld or delayed, and then only on such reasonable conditions as may be prescribed in such consent.

In proposed Ordinance No. 2666-2012, the City Council consents to the transfer of the telecommunications franchise agreement to Qwest. Staff is not recommending that the City impose any conditions on Qwest to obtain the City's consent to that transfer. However, the ordinance does make the assignment subject to the existing provisions of Chapter 2 of Title 3 of the City Code, the Telecommunications Chapter. This chapter now includes Section 3-2-47A, requiring the maintenance of telecommunications facilities in a nuisance-free condition. This provision was added to the City Code after the Malheur Home Telephone Company franchise was granted in 2009.

Qwest representatives have reviewed and approved the franchise assignment in Ordinance 2666-2012.

**RECOMMENDATION:**

Staff recommends that the Council approve a first reading of Ordinance #2666-2012.

**PROPOSED MOTION:**

"I move that the Mayor and City Council approve Ordinance No. 2666-2012, **AN ORDINANCE CONSENTING TO THE ASSIGNMENT OF THE MALHEUR HOME TELEPHONE COMPANY FRANCHISE TO CENTURYLINK QC** on First Reading by Title Only."

**ORDINANCE NO. 2666-2012**

**AN ORDINANCE CONSENTING TO THE ASSIGNMENT OF  
THE MALHEUR HOME TELEPHONE COMPANY FRANCHISE  
TO CENTURYLINK QC**

**WHEREAS**, In Ordinance 2626-2009 the City of Ontario entered into a franchise agreement with Malheur Home Telephone Company to use City rights of way for a telecommunications network; and

**WHEREAS**, Ordinance 2626-2009 refers to Malheur Home Telephone Company as “PROVIDER” and to the City of Ontario as “CITY”; and

**WHEREAS**, Malheur Home Telephone Company was a wholly owned subsidiary of Qwest Corporation (“Qwest”), and Malheur Bell’s operations have been consolidated into the operations of Qwest; and

**WHEREAS**, On December 10, 2009, the Oregon Public Utility Commission approved the consolidation in Order No. 09-483, with an effective date of December 14, 2009; and

**WHEREAS**, as a result of the consolidation, Qwest requested an assignment of the franchise granted by Ordinance No. 2626-2009; and

**WHEREAS**, Section 10.8 of Ordinance 2626-2009 prevents a transfer of ownership or control of a majority interest in the telecommunications system without the consent of the City; and

**WHEREAS**, Qwest is now doing business under the name of CenturyLink QC as an assumed business name; and

**WHEREAS**, subsequent to the CITY’s grant of the franchise to Malheur Bell, CITY amended Chapter 2 of Title 3, the Telecommunications Chapter of the Ontario City Code, by adding Section 3-2-47A, requiring the maintenance of telecommunications facilities in a nuisance-free condition; and

**WHEREAS**, all telecommunications franchises with City are granted subject to the provisions of Chapter 2 of Title 3 of the City Code.

**NOW THEREFORE**, The Common Council for the City Of Ontario ordains as follows:

**SECTION 1.** CITY consents to the consolidation of Malheur Home Telephone Company into CenturyLink and the substitution of CenturyLink QC for Malheur Home Telephone Company as PROVIDER, subject to acceptance by CenturyLink QC of the terms and provisions of Chapter 2 of Title 3 of the Ontario City Code, which is attached hereto as Exhibit "1" and incorporated herein by reference.

**SECTION 2.** Ordinance 2626-2009 is amended by substituting Qwest Corporation, doing business as CenturyLink QC, for Malheur Home Telephone Company as PROVIDER.

**SECTION 3.** Within 30 days of the effective date of this ordinance, CenturyLink QC as PROVIDER shall file with the City Recorder an unconditional acceptance of the franchise agreement in Ordinance 2626-2009 and all of its terms and conditions, and if CenturyLink QC fails to do so, this ordinance shall be void and of no effect.

APPROVED by the Mayor this \_\_\_\_ day of \_\_\_\_\_, 2012.

ATTEST:

\_\_\_\_\_  
Joe Dominick, Mayor

\_\_\_\_\_  
Tori Barnett MMC, City Recorder

**ACCEPTANCE BY PROVIDER:**

Ordinance No. \_\_\_\_\_ accepted this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

QWEST CORPORATION,  
doing business as CENTURYLINK QC

By: \_\_\_\_\_  
Carrick Inabnett  
Assistant Secretary and Associate General Counsel

**AGENDA REPORT**  
**February 6, 2012**

**TO:** Ontario City Council  
**FROM:** Joe Dominick, Mayor  
**SUBJECT:** **APPOINTMENTS TO BOARDS, COMMITTEES, AND COMMISSIONS**  
**DATE:** January 30, 21012

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**SUMMARY:**

Attached are the following documents:

- Letters of interest for appointment/reappointment from various citizens.

It is time for the annual appointment of City committee, commission and board members. Following are the vacancies and expressions of interest in serving. The Ontario Municipal Code states that any board, committee or commission having an expiring membership but insufficient requests for appointment shall direct the current members to remain on the committee until replacements are obtained. The Visitors & Conventions Board is position specific.

**AIRPORT BOARD (4-YEAR APPOINTMENT):**  
**2 VACANCIES, PLUS ALTERNATE**

Two letters received: Pete Morgan and Amanda Vansickle both requested appointment.

**BUDGET BOARD (3-YEAR APPOINTMENT):**  
**3 VACANCIES**

One letter received: John Hall requested appointment.

**PLANNING COMMISSION (4-YEAR APPOINTMENTS)**  
**3 VACANCIES**

Three letters received: Mike Allen and Rita Kanrich requested reappointment; Barbara Wilson requested appointment.

**PUBLIC WORKS COMMITTEE (3-YEAR APPOINTMENTS):**  
**3 VACANCIES**

Three letters received: Scott Wilson and Dan Cummings requested reappointment; Ken Hart requested appointment.

**RECREATION BOARD (3-YEAR APPOINTMENTS):**  
**3 VACANCIES**

One letter received: Sheila Hart requested appointment.

**V&C BUREAU BOARD (3-YEAR APPOINTMENTS):**

**2 VACANCIES**

Two letters received: Debbie Blackaby and John Hall requested reappointment.

**RECOMMENDATION:**

The Mayor recommends the appointment of Pete Morgan, Amanda Vansickle, Mike Allen, Rita Kanrich, Scott Wilson, Dan Cummings, Ken Hart, Sheila Hart, Debbie Blackaby and John Hall to various City Boards.

**PROPOSED MOTION:**

I move to appoint Pete Morgan and Amanda Vansickle to the Airport Board; to appoint John Hall to the Budget Board; to reappoint Mike Allen and Rita Kanrich to the Planning Commission; to reappoint Scott Wilson and Dan Cummings, and appoint Ken Hart to the Public Works Committee; to appoint Sheila Hart to the Recreation Board; and to reappoint Debbie Blackaby and John Hall to the Visitors and Conventions Bureau Board. Expiration of terms will coincide with those established by ordinance for each Board.

**Tori Barnett - AIRPORT COMMITTEE**

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**From:** Pete Morgan <pmorgan@fmtc.com>  
**To:** <tori.barnett@ontariooregon.org>  
**Date:** 12/6/2011 9:38 PM  
**Subject:** AIRPORT COMMITTEE

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I would like to be considered for the airport committee.  
I have owned and hangared my airplane at the Ontario airport for over 20 years.  
Pete Morgan  
3720 Highway 95  
Parma, Idaho 83660  
208-674-2051  
208-707-2381 cell  
[pmorgan@fmtc.com](mailto:pmorgan@fmtc.com)  
Thank you for your consideration.  
Pete Morgan

11-21-2011

## AMANDA VANSICKLE

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784 Butler Blvd  
Ontario OR 97914  
Phone (541) 450-4075  
Ladyav8tor@gmail.com

November 18, 2011

City of Ontario  
Airport Committee  
Ontario OR 97914

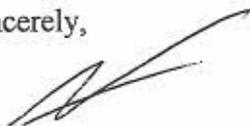
I am respectfully requesting a seat on the Ontario Airport Committee.

I believe that my contribution to the local Aviation community would be great, as I am new, and fresh to this area. I am currently working on getting my Private Pilot Certificate, so I am very involved in studying FAA regulations.

Working in many industries has helped me become diversified and flexible. Owning and operating my own business I have extensive experience dealing with staff and patrons, tactfully and effectively. Have wide-ranging experiences working with the general public.

Your consideration in this matter is greatly appreciated.

Sincerely,



Amanda Vansickle

## Tori Barnett - Budget Board

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**From:** "Hall, John" <John.Hall@farm-credit.com>  
**To:** "tori.barnett@ontariooregon.org" <tori.barnett@ontariooregon.org>  
**Date:** 1/27/2012 2:25 PM  
**Subject:** Budget Board  
**CC:** Mayor Joe <printing@fmtc.com>, "John Hall (hallhome@cableone.net)" <hall...

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Tori,

I would like to submit my name to serve on the city's budget board.

I live in Ontario (91 Lauren Dr.). I have worked in the banking industry for over 30 years. Due to the requirements of my employment, I am very familiar with budgets.

I am a past president of the Lions Club and the Chamber of Commerce. I am currently chairman of the Chamber Ag committee, serve on the city's V&C board, serve on the regional workforce board for the state, and am active member of the ambassadors group.

Thank you for considering me for this appointment.



**John R Hall**

Vp - Agribusiness

**Northwest Farm Credit Services**

P. O. Box 279

378 West Idaho Avenue,

Ontario, OR 97914

Ph 541-823-2660

Fax 541-823-2665

Cell 208-739-5603

**Northwest Farm Credit Services:**

*"Where knowledge of premier rural properties and expertise in lending come together."*

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**Tori Barnett - Fwd:**

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**From:** Marcy Skinner  
**To:** Tori Barnett  
**Date:** 11/9/2011 1:10 PM  
**Subject:** Fwd:

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>>> "Rita Kanrich" <bkanrich@gmail.com> 11/9/2011 1:07 PM >>>  
11-9-11

Marcy...

Since my term on the Ontario Planning Commission expires in December, I would like to apply for another term.

Rita Kanrich

## Tori Barnett - Fwd: planning commission

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**From:** Marcy Skinner  
**To:** Tori Barnett  
**Date:** 11/10/2011 9:27 AM  
**Subject:** Fwd: planning commission  
**CC:** David Richey

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>>> "Michael Allen" <mallen@beobank.com> 11/10/2011 9:20 AM >>>  
Good Morning!

I would like to be considered for reappointment to the Ontario planning commission.

Thanks!  
Mike

**Tori Barnett - Public Works Committee Appointment**

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**From:** "Scott Wilson" <swilson@srvinet.com>  
**To:** "Tori Barnett" <Tori.Barnett@ontariooregon.org>  
**Date:** 12/7/2011 12:29 PM  
**Subject:** Public Works Committee Appointment

---

Tori,

I believe that I am up for reappointment to the Public Works Committee. Do you need a formal letter or is this email enough? I am willing and would like to serve another term. Let me know.

Thanks  
Scott Wilson  
[swilson@srvinet.com](mailto:swilson@srvinet.com)

**Tori Barnett - Reappointment**

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**From:** "Dan Cummings" <dan@ck3llc.net>  
**To:** "Tori Barnett" <tori.barnett@ontariooregon.org>  
**Date:** 12/13/2011 2:59 PM  
**Subject:** Reappointment  
**CC:** "Joe Dominick" <printing@fmtc.com>

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Dear Tori and Mayor,

It is my understanding that my term on the Ontario Public Works Committee expires at the end of December 2011.

I would like to be considered and reapply for reappointment to the public works committee.

Thank you

Dan

*Dan K. Cummings. PLS*

CK3, LLC

368 SW 5<sup>th</sup> Avenue

Ontario, Oregon 97914

541-889-5411 ~ FAX: 541-889-2074

E-MAIL: [dan@ck3llc.net](mailto:dan@ck3llc.net)

## Kenneth R. Hart, CPA

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486 SW 6<sup>th</sup> Avenue  
Ontario, OR 97914

October 3, 2011

City of Ontario  
Mayor Joe Dominick  
444 SW Fourth Street  
Ontario, OR 97914

### **RE: Public Works Committee**

Mr. Mayor:

I am requesting that my name be placed in consideration to fill the vacant committee position on the Ontario Public Works Committee.

As a seven year resident of Ontario I believe it is important that all citizens give back to their community – and I believe serving on the Ontario Public Works Committee would allow me to do that.

During the past seven years I have had a chance to work as the Comptroller for Treasure Valley Community College and currently work as the Chief Financial Officer of the Gentry Auto Group and Edge Performance Sports in Ontario. I also serve on the local Board of Saint Alphonsus Medical Center – Ontario and serve as the Finance Committee Chairman of the Saint Alphonsus Health System with oversight of all four Saint Alphonsus hospitals from Baker City to Boise. I have also had the honor of serving on the Ontario Compensation Advisory Committee which gave me some insight into the workings of the City and its departments.

As a senior manager of a mid-sized business located in Ontario I believe I bring a unique perspective that would be beneficial to the Public Works Committee. I also know my strong financial background as a licensed CPA in the State of Oregon and my years of service in financial roles in public and private endeavors will assist me in making a positive impact on the Committee.

Thank you for giving my request your consideration.

Sincerely,



Kenneth R. Hart, CPA

July 26, 2011

Tori Barnett  
Ontario Parks and Recreation Department

Dear Tori:

My name is Sheila Hart and I am a resident of Ontario Oregon. I grew up here and graduated from Ontario High School. My husband and I moved with our four children back to the area approximately seven years ago. In those years, we have taken advantage of various programs offered by the Ontario Parks and Recreation Department, especially, the rec. sports, arts and craft camps, and the swim team. As such, I have a vested interest in continuing to see the programs grow and strengthen. I am interested in serving this community on the Parks and Recreation Board. You can reach me via email at [hart@cablone.net](mailto:hart@cablone.net) or my phone number is (541)212-2301. I look forward to hearing from you.

Thank you for your time.

Sheila Hart

**Tori Barnett - V&C Board Re-appointment**

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**From:** Debbie Blackaby <debbieb01@yahoo.com>  
**To:** "tori.barnett@ontariooregon.org" <tori.barnett@ontariooregon.org>  
**Date:** 1/4/2012 11:12 AM  
**Subject:** V&C Board Re-appointment

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Good Morning Tori,

It is my understanding that my current term as Board Member on the V&C Committee is expiring.

I appreciate the opportunity to serve on this committee and would like to be considered for re-appointment as Board Member of the V&C Committee.

Best Regards,

Debbie J. Blackaby

Debbie Blackaby  
Blackaby Insurance Agency, Inc.  
PO Box 280  
Ontario, OR 97914  
541-889-8693  
Cell - 208-642-7527

**Tori Barnett - Re- appointment to V&C Board**

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**From:** "Hall, John" <John.Hall@farm-credit.com>  
**To:** "tori.ankrum@ontariooregon.org" <tori.ankrum@ontariooregon.org>  
**Date:** 12/28/2011 12:05 PM  
**Subject:** Re- appointment to V&C Board  
**CC:** "director@ontariochamber.com" <director@ontariochamber.com>

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Tori,

I would like to be re-appointed to serve on the Ontario Visitors & Conventions Board.

*John*

**John R Hall**  
**Relationship Manager / VP**  
**Investor Finance Group**

**Northwest Farm Credit Services**  
**P. O. Box 279**  
**378 West Idaho Avenue,**  
**Ontario, OR 97914**

**Ph 541-823-2660**  
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