

AGENDA
CITY COUNCIL - CITY OF ONTARIO, OREGON
TUESDAY, February 19, 2013, 7:00 p.m., M.T.

- 1) **Call to order**
Roll Call: Norm Crume _____ Jackson Fox _____ Charlotte Fugate _____ Dan Jones _____
Larry Tuttle _____ Ron Verini _____ Mayor Joe Dominick _____

2) **Pledge of Allegiance**

This Agenda was posted on Wednesday, February 13, 2013, and a study session was held on Thursday, February 14, 2013. 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) **Local Contract Review Board**

- A) Ontario Golf Course Management Agreement 1-14

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

- A) Approval of Minutes of Regular Meeting of 02/04/2013 15-25
B) Resolution #2013-103: Receive/Expend Donation Funds-OPD (\$13,812) 26-28
C) Resolution #2013-104: Receive/Expend ODOT Safety Funds-OPD (\$2,650) 29-31
D) Ordinance #2673-2013: An Ordinance Amending the City of Ontario Comprehensive Plan by Adopting the Treasure Valley Community College 2012 Facility Master Plan as Part of the TVCC Master Plan, on Second and Final Reading by Title Only 32-34
E) Approval of the Bills

- 6) **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.

7) **Department Head Updates**

8) **New Business**

- A) Contract Award: Kimley Horn for Preliminary Engineering Services for FAA Airport Improvement Project AIP 3-41-0044-011-FY13 35-43
B) Committee Appointments 44-59

9) **Public Hearing:**

- A) Ordinance #2676-2013: Annex and Rezone Approximately 257 Acres of Land Northeast of the Intersection of Highway 201 and SW 18th Avenue; IBP and RS-50 - First and Second Reading, Declaring an Emergency Passage 60-64

10) **Discussion Items**

- A) Update on Waste Disposal Site: Bob Walker
B) Update on Alley Vacation behind Project Dove: Bob Walker

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

12) **Adjourn**

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

AGENDA REPORT-LOCAL CONTRACT REVIEW BOARD

February 19, 2013

TO: Mayor and City Council

FROM: Larry Sullivan, City Attorney

THROUGH: Jay Henry, City Manager

SUBJECT: ONTARIO GOLF COURSE MANAGEMENT AGREEMENT

DATE: February 12, 2013

SUMMARY:

Attached is the following document:

- Proposed Golf Course Management Agreement with Scott McKinney

BACKGROUND:

At the Council work session on Thursday, January 31, 2013, Scott McKinney and Albert Phillips made a presentation to the Council to enter into a contract with the City to assume management of the Ontario Golf Course for the 2013 season and perhaps for future years. Councilors Dan Jones, Jackson Fox and staff met with these individuals to discuss the terms of a management agreement. Staff was later informed that the latest proposal is for Scott McKinney to manage the golf course as a sole proprietor, with no partners.

The proposed agreement is for 2013 only, with Scott McKinney acting as an independent contractor to manage the entire Club, including the restaurant and pro shop. All Club employees would be employees of Mr. McKinney. Mr. McKinney would be responsible for most Club expenses. The City would pay \$75,000 to Mr. McKinney in four installments as compensation, and Mr. McKinney would be entitled to all Club revenues to help defray Club expenses. If Club expenses exceed Club revenues, it would be Mr. McKinney's responsibility to pay the difference.

The City will continue to be responsible for making repairs at the Club in excess of \$300 per repair, and for replacing equipment. The Agreement provides that the City Manager shall be given a budget of \$25,000 to pay for the City's share of repair and equipment replacement costs without obtaining Council approval. If those costs exceed the \$25,000 allocated, no further sums will be expended without Council approval.

RECOMMENDATION:

Staff recommends that the Council Golf Course Management Agreement with Scott McKinney.

MOTION:

1) I move that the Mayor and City Council, sitting as a local contract review board, declare that a contract between the City and Scott McKinney to act as manager of the Ontario Golf Course is a personal services contract under Section 7.1 of the Ontario Financial Policies Manual.

2) I move that the Mayor and City Council, sitting as a local contract review board, approve a personal services contract with Scott McKinney to act as Manager of the Ontario Golf Course for the year 2013, and authorize the City Manager to sign said contract.

**ONTARIO GOLF COURSE
MANAGEMENT AGREEMENT**

THIS AGREEMENT is made as of this ____ day of _____, 2013 ("Effective Date") by and between **SCOTT MCKINNEY**, a sole proprietor doing business as Western Artificial Turf ("Scott McKinney"), having an address at 928 Morgan Avenue, Ontario, Oregon, and **CITY OF ONTARIO, OREGON** ("The City"), having an address at 444 SW 4th Avenue, Ontario, OR 97914.

WHEREAS, The City owns the Ontario Golf Course (formerly known as the "Shadow Butte Golf Course"), currently an 18-hole golf course, restaurant, pro shop, clubhouse, driving range and other amenities located in Ontario, Oregon (the "Club");

WHEREAS, The City recognizes the benefit of engaging a third party with golf course management experience to manage the affairs of the Club;

WHEREAS, The City desires to utilize the services and experience of Scott McKinney in connection with the management and operation of the Club, and Scott McKinney desires to render such services, upon the terms and conditions set forth in this Agreement; and

NOW, THEREFORE, in consideration of the covenants and agreements of the parties contained herein and it is mutually agreed as follows:

1. **TERM OF AGREEMENT.** The term of this Agreement shall commence upon the Effective Date, and unless terminated as provided for herein, shall expire on December 31, 2013.
2. **APPOINTMENT OF SCOTT MCKINNEY AS MANAGER:** From and after the Effective Date, The City hereby grants to Scott McKinney the right, subject to The City's input, to supervise and direct the management and operation of the Club for and on the account of The City, and Scott McKinney hereby accepts said grant and agrees that he shall supervise and direct the management and operation of the Club, all pursuant to the terms of this Agreement, and The City shall reasonably cooperate so as to permit Scott McKinney to carry out his duties hereunder.
3. **SCOTT MCKINNEY SERVICES:** Services rendered by Scott McKinney to The City shall be as follows: subject to the terms of this Agreement, Scott McKinney, as an independent contractor, shall have the sole and exclusive right to operate and manage the Club. The City and Scott McKinney agree that they shall cooperate reasonably with each other to permit Scott McKinney to carry out his duties under this Agreement. Scott McKinney shall have the responsibility of providing, and the authority to provide, general operational management services for the Club, including, without limitation, the following services:
 - a. Employees. All personnel employed at the Club shall at all times be employees of Scott McKinney. Scott McKinney shall provide The City with the names of prospective employees and shall reasonably consult with The City before hiring those employees. Scott McKinney shall provide The City with criminal background checks for all employees and shall not employ anyone with non-motor-vehicle related felony convictions within the last ten years or with criminal convictions for sex offenses. Scott McKinney shall not hire as an employee

anyone who has previously been terminated by The City for cause. All other final hiring decisions shall be made exclusively by Scott McKinney. Scott McKinney shall hire, promote, supervise, direct and train all Scott McKinney employees at the Club, fix their compensation and fringe benefits, and, generally, establish and maintain all policies relating to employment and employment benefits. All costs of every kind and nature pertaining to all employees at the Club arising out of the employer-employee relationship, including, without limitation, salaries, fringe benefits, bonuses, relocation costs, employment-related legal costs, and costs incurred in connection with governmental laws and regulations and insurance rules, shall be an operating expense paid by Scott McKinney.

- b. Merchandise and Items for Resale. Scott McKinney shall, at his expense, obtain merchandise for the pro shop at the Club and food and beverage items.
- c. Supervision. Scott McKinney shall supervise and operate the golf operations, restaurant, golf pro shop, membership sales, practice facilities, other food and beverage services and other ancillary services at the Club.
- d. Operation of Club. Scott McKinney will make the Club available for customers during normal daylight hours on a daily basis during the 2013 golf season, which generally extends from March 15 through October 31, weather permitting. Scott McKinney retains the option of opening the Club prior that opening date and extending the Club operations after that date, weather permitting.
- e. Maintenance of Physical Plant, Golf Course and Equipment. Scott McKinney shall maintain in good working condition and order the physical plant and equipment at the Club, including the golf course and all physical structures which are part of the Club, and all vehicles and other maintenance equipment necessary to the maintenance and operation of the Club in the normal course of business.
- f. Purchasing and Procurement. Scott McKinney, at his sole expense, shall procure all operating supplies, operating equipment, inventories and services as are deemed necessary to the normal and ordinary course of operation of the Club.
- g. Consultation. Scott McKinney shall, as part of his services hereunder and without additional compensation, make his staff available to The City upon request for consultation regarding the Club, including, but not limited to, operating procedures, agronomy, pro shop, food and beverage service, management and operation, capital improvements, driving range operation, golf cart maintenance and management, and prices and rate structure. Scott McKinney will use his best efforts to answer inquiries from The City within 72 hours.
- h. Marketing Plan. Scott McKinney shall create, direct, and implement an annual marketing plan for the Club with a goal of at least retaining the customer base for the Club at 2012 levels. Scott McKinney shall coordinate and oversee all third party contractors' work in connection with the production and implementation of his marketing plan. All advertising fees and promotional fees paid by third parties to the Club shall belong to Scott McKinney.

- i. Accounting. Scott McKinney shall timely pay all vendors of the Club. Scott McKinney shall provide separate budgeting, bookkeeping and reporting services to The City for the Club (it being understood that copies of all books and records shall be kept at the Club and that all books, records, software, data, programs, manuals and the like shall remain the property of The City). Scott McKinney shall prepare and deliver to The City, in accordance with procedures and formats reasonably acceptable to The City, on an accrual basis and generally accepted accounting principles, regular monthly and quarterly operating statements.
- j. Payroll. Scott McKinney shall establish, administer, and maintain the payroll procedure and systems for the Scott McKinney employees at the Club and shall be responsible for overseeing the benefits to, and handling the appropriate payroll deductions for, individual employees. All employees of the Club shall be employees of Scott McKinney, and Scott McKinney shall comply with Federal and State employment laws.
- k. Inspection of Books. Upon reasonable notice (which may be verbal) representatives of The City shall have the right to any time during normal business hours to review all of Scott McKinney's books and records including the general ledger, accounts payable, income statement, balance sheet, and budget variance reports relating to the Club including, without limitation, Scott McKinney's work papers related to Scott McKinney's preparation of operating statements. The City's exercise of his right of review or to dispute any fee or expense reimbursement claimed by Scott McKinney shall not delay payment of the undisputed portion thereof by The City. However, payment by The City of a fee or other amount hereunder shall not constitute a waiver of The City's right to subsequently dispute the amount thereof. If The City and Scott McKinney determine that amount was improperly paid to Scott McKinney, Scott McKinney shall refund such improperly paid fee together with interest thereon from the time when such fee was paid to Scott McKinney within five (5) business days after receipt of notice from The City to Scott McKinney. If there is any dispute between the parties regarding whether or not any payments of the Base Fee or any other amount were proper, such disputes shall be resolved by a court of competent jurisdiction.
- l. Cleanliness. Scott McKinney shall, at his own expense, at all times keep the Club in a neat, clean, safe and sanitary condition, and furnish all cleaning supplies and materials needed to operate the Club.
- m. Maintenance. Scott McKinney shall maintain all City owned equipment utilized on or in connection with the operation of the Club 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 shall belong to the City.
- n. Professional Standards. Scott McKinney will operate in a professional, businesslike manner and will not permit any acts or conduct on the part of Scott McKinney's employees which would be detrimental to the operation of the golf course.

- o. Golf Cart Storage Units. Scott McKinney is authorized to enforce all rental agreements for golf cart storage units and to provide such notices as are legally required for the vacation of those units and the lawful disposition of their contents.

4. **COMPENSATION AND FEES.**

- a. Base Management Fee. For his services hereunder, Scott McKinney shall be entitled to a fee (the "Base Fee") of \$75,000 for the lease term, payable in four installments of \$18,750 each, payable as follows: first installment on the Effective Date of the Agreement; second installment on May 1; third installment on August 1; and final installment on November 1.
- b. Net Revenues. Scott McKinney shall be entitled to retain the net revenues of the Club, if any, after paying all of the Club's operational expenses, other than those expenses specifically allocated to the City by this Agreement.
 - i. Scott McKinney may use the gross revenues of the Club to pay the Club's operational expenses. The term "gross revenues" as used herein shall include all revenues and income of any nature derived directly or indirectly from the Club or from the use or operation thereof, including greens fees, gross sales proceeds from the sale of green fees, memberships or annual passes to the Club for the 2013 golf season, monthly dues from members of the Club, rental fees for golf carts, golf clubs and other rental items, lesson fees, range balls, food and beverage revenues including mandatory service charges, revenue generated from space rentals and from meetings, banquets, parties, receptions, tournaments and other group gatherings, merchandise sales, and the proceeds of business interruption, use, occupancy or similar insurance.
 - ii. Scott McKinney has made his own determination that the Club may be operated profitably under his management. If the operational expenses of the Club exceed the gross revenues of the Club, that shall not relieve Scott McKinney from the obligation to pay all operational expenses of the Club.
 - iii. The accountings provided to The City under Paragraph 3.i above shall fully delineate the source and amount of all gross revenues retained by Scott McKinney from the Club; all operational expenses incurred for the Club; and the net revenues, if any, retained by Scott McKinney.

- 5. **LIABILITY INSURANCE.** Scott McKinney, at his own expense, shall obtain liability insurance and file with The City, a certified copy of Scott McKinney's liability insurance policy. The policy must fully protect The City from any and all claims and risks in connection with Scott McKinney's activity upon or use of the Club, as well as any and all claims and risks in connection with any activity performed by Scott McKinney by virtue of the rights granted pursuant to this Agreement, including Dram Shop coverage.

- a. Such policy must specifically name The City, its employees, agents, and officer as insured parties and provide the following minimum coverage:
 - i. Minimum Limits:
 - ii. \$100,000 per claimant for property damage;
 - iii. \$500,000 per claimant for personal injury per occurrence; and
 - iv. \$1,000,000 annual aggregate.
 - b. The said insurance must be maintained in full force and effect at Scott McKinney'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 coverages provided by this policy of insurance."
 - c. 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.
 - d. At no time shall Scott McKinney'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.
6. **INDEMNIFICATION:** Scott McKinney shall 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 Scott McKinney, his agents, or servants in the use of the Club for negligence or other cause.
7. **FIRE INSURANCE; OTHER INSURANCE.**
- a. Scott McKinney, at his own expense, shall be responsible to maintain an approved policy of fire and extended coverage insurance on all inventory, materials and supplies owned by Scott McKinney. Scott McKinney shall indemnify and hold harmless The City from any loss to Scott McKinney's inventory, material and supplies.
 - b. 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.
8. **RESPONSIBILITY FOR ALL MAINTENANCE AND REPAIR EXPENSES.**
- a. Scott McKinney shall be responsible for all maintenance expenses for the Club, including the costs for maintaining the golf course and for routine maintenance of equipment, with the exception of the HVAC equipment, the maintenance of which is contracted to a third party by The City. Scott McKinney shall not undertake any HVAC repairs but shall notify the City whenever such repairs are necessary.

- b. Scott McKinney shall not undertake repairs to correct structural defects in the clubhouse buildings, but shall promptly notify The City of the need for such repairs. The City at its expense shall correct and repair any structural defects which undermine the structural integrity of the clubhouse building or which substantially interfere with the day-to-day operations of the Club.
 - c. Other than golf carts, the City shall replace any major equipment which fails and cannot be repaired, such as irrigation pumps, the air conditioning compressor, furnace, hot water heater, etc.
 - d. If Scott McKinney notifies the City Manager that any golf cart cannot be repaired cost-effectively and should be replaced, the ultimate decision to replace any golf cart shall be a joint decision of Scott McKinney and the City Manager, taking into account the amount remaining in the City's budget for Club equipment replacement as set forth in Paragraph 8.g below; upcoming events at the Club; the amount of time remaining in the 2013 golf season; and whether it would be more cost-effective to temporarily rent golf carts from third parties rather than replacing broken carts. If the ultimate decision is to rent golf carts rather than replacing them, the rental cost shall be the City's responsibility.
 - e. Scott McKinney shall be responsible for any repair, the cost of which is \$300 or less per repair.
 - f. Scott McKinney shall promptly notify the City Manager of any anticipated repair expense in excess of \$300. Invoices for those repairs shall be presented to the City Manager for payment, and the reimbursement shall be made within _____ days of presentment. The City shall not reimburse Scott McKinney for labor performed by Scott McKinney employees.
 - g. The City Council has set aside \$25,000 to cover The City's costs for all Club repairs and for replacing Club equipment for the remainder of 2013. The City Manager is authorized to spend up to that amount without City Council approval. If at any time it appears to the City Manager that The City's total repair and equipment replacement costs will exceed that amount, the repairs or equipment replacement shall be delayed while the City Council determines whether funds are reasonably available to do so.
9. **UTILITIES:** The payment of all utilities at the Club shall be allocated as follows:
- a. The City shall be responsible for the cost of providing water to the clubhouse; for pumping the septic tank at the clubhouse; and for the monthly operational costs for the security monitoring system.
 - b. The City will make available water from its wells to pump water for the golf course, with the electrical costs for operating the pumps to be paid by Scott McKinney as set forth below in Paragraph 9.c.

- c. The City shall retain the following accounts in its name: the Idaho Power electrical account; the Cascade Natural Gas account; and the Ontario Sanitary Service garbage account. The City shall be responsible for paying those monthly bills in a timely manner. The City shall provide Scott McKinney with the portions of those bills covering Club operations, and Scott McKinney shall promptly reimburse The City for those amounts. If Scott McKinney fails to do so, The City may deduct those portions of the utility bills from any Base Fee installments due Scott McKinney.
10. **AVAILABILITY OF IRRIGATION WATER:** In the past there has been sufficient water available from the City's wells to irrigate the golf course, and, to the City's knowledge and belief, there will be sufficient water available during the 2013 golf season to continue to do so. The City will use its best efforts to provide Scott McKinney with a regular and continuous supply of well water for the golf course. If, for reasons beyond the City's reasonable control, the quantity of water is inadequate, the parties will negotiate in good faith to arrive at a fair and equitable solution for both parties, including an early termination of this Agreement if necessary.
11. **DEFAULT AND REMEDIES.**
- a. **Default By The City.** The following shall constitute an event of default ("Event of Default") by The City under this Agreement, provided that Scott McKinney has fulfilled his obligations under this Agreement:
 - i. Failure to timely pay Scott McKinney any fees, compensation, or reimbursement due Scott McKinney pursuant to this Agreement, unless said amounts are under legitimate dispute;
 - ii. Breach by The City of any material provision of this Agreement.
 - b. **Scott McKinney Default.** The following shall constitute an event of default ("Event of Default") by Scott McKinney under this Agreement, provided that The City has fulfilled its obligations hereunder.
 - i. Failure to maintain the amenities of the Club in reasonably good condition, subject to abnormal weather conditions, acts of God, or other events or conditions beyond the reasonable control of Scott McKinney;
 - ii. Breach by Scott McKinney of any material provisions of this Agreement; or
 - iii. Scott McKinney makes an assignment for the benefit of his creditors, or becomes a party for more than thirty (30) days to any voluntary or involuntary insolvency proceedings or bankruptcy proceedings or reorganization.
 - c. **Notice and Cure.** When either party to this Agreement believes that the other party (the "Defaulting Party") has committed an Event of Default, it shall give written notice thereof to the Defaulting Party, and the Defaulting Party shall have ten (10) days in the event of a payment default, or such longer period for non-monetary defaults (not to exceed an

aggregate period of thirty (30) days unless Scott McKinney or The City, as applicable, has begun to cure within the thirty (30) day period and is diligently pursuing such cure) as shall be reasonably necessary due to weather, growing conditions, or other factors beyond the reasonable control of the Defaulting Party, within which to cure the default, but in no event will the Defaulting Party have more than sixty (60) days in the aggregate to cure such default.

- d. **Rights Upon Default.** If the Defaulting Party does not cure the default within the grace period provided in Paragraph 11.c above, the other party may terminate this Agreement on thirty (30) days written notice to the other party and pursue all rights and remedies available in law or equity, including payment of accrued amounts pursuant to Paragraph 6 hereof. Notwithstanding any contrary provisions hereof, Scott McKinney's rights to recover damages from The City shall be limited to the sum of (i) accrued and unpaid Base Management Fees and (ii) reimburseable repairs made by Scott McKinney and not timely reimbursed The City. In no event will Scott McKinney or The City be subject to any consequential, special, punitive or similar damages, each party hereby waiving any right it may have to seek or claim such damages.

12. **TERMINATION AND CANCELLATION:** Except as otherwise provided in this Agreement, neither party shall voluntarily terminate this Agreement for the 2013 golf season except for breach of this Agreement.
13. **LIENS AND ENCUMBRANCES.** Scott McKinney shall keep the Club free and clear of any liens and encumbrances arising out of or growing out of his use and occupancy of the Club. Except as otherwise provided in this Agreement, Scott McKinney 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.
14. **ENTRY BY CITY AND INSPECTION.** The City or its agents may enter the Club at all reasonable times for the purposes of inspecting or repairing the same and conducting an annual inventory of City owned buildings and equipment for audit purposes, for filing annual reports with the Fire Marshall for stored chemicals, but this right shall not impose an obligation upon The City to make inspections to ascertain the condition of the Club or to conduct an annual audit.
15. **UNUSABILITY OF THE CLUB.** Either party may terminate this Agreement in the event that the Club or a substantial portion thereof is rendered unusable by fire, earthquake, act of God, or other extraordinary casualty destroying or damaging the Club, 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 Club in the event of such a disaster.
16. **NONDISCRIMINATION.** Scott McKinney 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 Club on account of race, color, religion, sex, age or national origin, physical handicap, marital status, political affiliation. Scott McKinney 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. Scott McKinney 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. Scott McKinney agrees to post in conspicuous places, available to employees, applications for employment, and notices to be provided by Scott McKinney setting forth the provisions of this non-discrimination clause. Scott McKinney will take affirmative action to ensure that all of his 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.

17. **REMOVAL OF SCOTT MCKINNEY'S PROPERTY.** No more than seven days prior to the expiration of the term of the Agreement, or any renewal thereof, Scott McKinney shall remove all of his goods, wares, and merchandise from the Club. In the event of termination for any cause, Scott McKinney shall remove all property belonging to Scott McKinney within 10 days of the termination of this Agreement. The City may, but need not, treat any property remaining on the Club premises after the expiration of this Agreement or period of removal of Scott McKinney's property, as abandoned by Scott McKinney and may make any disposition of such property as The City deems fitting.
18. **LIQUOR LICENSE:** Subject to any relevant Oregon Liquor Control Commission ("OLCC") licensing requirements, if Scott McKinney serves liquor on the Club premises or authorizes any third party to do so, Scott McKinney shall maintain at all relevant times a valid OLCC license on the Club premises, and Scott McKinney shall comply with all Oregon laws and regulations regarding the use of such license.
19. **NEGOTIATIONS FOR RENEWAL:** If either party wishes to renew or extend this Agreement for one or more additional years, the parties shall make every effort to undertake negotiations on or before September 1, 2013. Neither party has the obligation to renew this Agreement beyond December 31, 2013.
20. **GENERAL PROVISIONS.**
 - a. Entire Agreement. This Agreement represents the entire understanding and agreement between the parties with respect to the subject matter hereof, and supersedes all other negotiations, understandings, and representations (if any) made by and between such parties.
 - b. Written Amendments. The provisions of this Agreement may only be amended or supplemented in a writing signed by both parties.
 - c. Compliance with Laws. Scott McKinney shall, at all times, operate, use, and conduct the business of the Club in a lawful manner and in full compliance with all applicable governmental laws, ordinances, rules and regulations, and maintain all licenses and permits relating to the Club, with The City's full cooperation, in full force and effect and

cooperate and endeavor to obtain all licenses and permits first required after the commencement of the term of this Agreement required in connection with the management, use, and operation of the Club.

d. Environmental Laws.

- i. The City represents to Scott McKinney, to the best of The City's knowledge, that no hazardous materials have been released into the environment, or have been deposited, spilled, discharged, placed or disposed of at or within the Club in violation of any environmental law, nor except as expressly disclosed and described by The City to Scott McKinney. Nor has the Club been used at any time by any person as a landfill or a disposal site for hazardous materials or for garbage, waste or refuse of any kind. The City also represents, to the best of The City's knowledge, that there are no underground storage tanks of any nature on the Club (fuel, propane, gas etc.). The City does not have any knowledge of asbestos-containing products within the Club.
- ii. Scott McKinney shall not cause or permit any hazardous material to be brought on, or used in or about the Club by Scott McKinney, his employees, contractors or invitees without the prior written consent of The City, which shall not be unreasonably withheld as long as Scott McKinney demonstrates to The City's reasonable satisfaction that such hazardous material is necessary to the operations of the Club and will be used in a manner that complies with all laws regulating any such hazardous materials brought upon or used in the Club.

e. Binding. All of the terms and provisions of this Agreement shall be binding and inure to the benefit of the parties and their respective permitted successors and assigns. This Agreement is solely for the benefit of the parties hereto and not for the benefit of any third party.

f. Assignment. Scott McKinney may contract with third party food service vendors to provide food and beverage services at the Club upon giving the City Manager reasonable notice in advance. Scott McKinney shall not assign or transfer this Agreement, nor otherwise convey any other rights or privileges granted hereunder, 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.

g. Notices. All notices, requests, consents and other communications required or permitted to be given under this Agreement shall be in writing and shall be mailed by first class mail to:

In the case of Scott McKinney:

928 Morgan Avenue

Ontario, OR 97914

Telephone: _____

Facsimile: _____

In the case of The City:

City of Ontario
444 SW 4th Avenue, Ontario, OR 97914
Attn: Jay Henry, City Manager
Telephone: (541) 889-7684
Facsimile: 541-7121

or to such other address as either party may designate by notice complying with the terms of this subparagraph.

- h. Headings. The headings contained in this Agreement are for convenience of reference only, and shall not limit or otherwise affect in any way the meaning or interpretation of this Agreement.
- i. Invalidity. If any provision of this Agreement or any other agreement entered into pursuant hereto is contrary to, prohibited by or deemed invalid or unenforceable under applicable law or regulation, such provision shall be inapplicable and deemed omitted to the extent so contrary, prohibited, invalid or unenforceable, but the remainder of such provision, and this Agreement shall not be invalidated or rendered unenforceable thereby, and shall be given full force and effect so far as possible.
- j. No Waiver. The failure or delay of either party at any time to require performance by the other party of any provision of this Agreement shall not affect the right of such party to subsequently require performance of that provision or to exercise any right, power or remedy hereunder. Waiver by either party of a breach of any provision of this Agreement shall not be construed as a waiver of any continuing or succeeding breach of such provision, a waiver of the provision itself, or a waiver of any right, power or remedy under this Agreement. No notice to or demand on either party in any event shall, of itself, entitle such party to any other or further notice or demand in similar or other circumstances, except as otherwise herein provided.
- k. No Partnership. Nothing in this Agreement shall be construed to create a partnership or joint venture between the parties. The parties acknowledge that the relationship of Scott McKinney to The City is that of an independent contractor.
- l. No Exclusive Remedy. No remedy herein conferred upon either party is intended to be exclusive of any other remedy, and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity.
- m. Authority. Each party hereby represents to the other party that it has the right, power, authority, and financial ability to enter into this Agreement and to perform its obligations under this Agreement, and that it is not restricted by contract or otherwise from entering into and performing this Agreement.

- n. 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.

IN WITNESS WHEREOF, the parties have duly executed this Agreement this _____ day of _____, 2013.

CITY OF ONTARIO

By:

Jay Henry, City Manager

SCOTT McKINNEY

ATTEST:

Tori Barnett, MMC, City Recorder

COUNCIL MEETING MINUTES

February 4, 2013

The regular meeting of the Ontario City Council was called to order by Mayor Joe Dominick at 7:00 p.m. on Monday, February 4, 2013, in the Council Chambers of City Hall. Council members present were Norm Crume, Joe Dominick, Jackson Fox, Charlotte Fugate, Dan Jones, and Ron Verini. Larry Tuttle was excused.

Members of staff present were Jay Henry, Tori Barnett, Bob Walker, Mark Alexander, and Mike Long. The meeting was recorded on tape, and the tapes are available at City Hall.

Ronald Verini led everyone in the Pledge of Allegiance.

AGENDA

Charlotte Fugate moved, seconded by Jackson Fox, to adopt the Agenda as amended. Roll call vote: Crume-yes; Fox-yes; Fugate-yes; Jones-yes; Tuttle-out; Verini-yes; Dominick-yes. Motion carried 6/0/1.

CONSENT AGENDA

Mayor Dominick recused himself from voting on the Consent Agenda, as his business had an invoice for payment on the bills.

Councilor Jones asked why the \$25 employee cards from Public Works were paid from the Office Supply line.

Bob Walker, Public Works Director, stated that was due to past practice.

Councilor Jones stated he didn't believe it should come from that line, as it wasn't really a "supply". It was misleading.

Mr. Henry stated it would be addressed in the upcoming budget.

Councilor Fugate asked where the money came from for flowers and donations, that type of thing, when sent by the city.

Tori Barnett stated the Administration Department had a specific line for that, approved through the budget process, which also included the funds provided to the high school for the Leadership Award.

Ron Verini moved, seconded by Jackson Fox, to approve Consent Agenda Item A: Approval of the Regular Minutes of 01/22/2013; and Item B: Approval of the Bills. Roll call vote: Crume-yes; Fox-yes; Fugate-yes; Jones-yes; Tuttle-out; Verini-yes; Dominick-abstain. Motion carried 5/0/1/1.

PUBLIC COMMENTS/PRESENTATIONS

(From her written statement)

Ruth Rolland, Ontario: *This city has a wonderful history and it has a lot of great assets - - in terms of its proximity to some amazing regional geography - our land resources - - we have the river and irrigation - - and being right here next to the freeway and rail system for commerce. All these things have enabled Ontario to come into existence, but it has been the City's most valuable resources - all the PEOPLE who live and work here - - and who have committed their energy and imaginations to accomplish good things for their families and this community - - which has made it possible for Ontario citizens to enjoy a continuously improving school system and our community*

college, and many great businesses – and all of these are here for all of us – for THE PEOPLE who live and work here. The people we elect and hire t keep the city’s goals in a positive direction – we give them our collective power – which amounts to a pretty strong authority to decide what they will build up and promote, and what they will tear down – perhaps to the point of causing its destruction. You know I’m talking about the pool and the golf course, and many other things like streets, or CDBG grans and City buses. - - And then there are the people of the city itself: Certain works seem to be much less valuable to come of the City’s leaders. Public Works employees have been – always have been doing their jobs well, showing up to get the work done, and going beyond what is required of them in many, many cases. Thank goodness we have them to call on for snow storms and frozen water meters, and water and sewer services. They know their jobs and do their jobs. And the leaders who were voted to exercise the power have seen fit to pursue a strategy of making sure they lost benefits and removed incentive bonuses and in other ways have shown no respect to these city employees. These are your neighbors and part of this community. They deserve better treatment. They have been outside city hall again this evening with signs, to tell the City that the City Council refuses to respect them for their dependable hard work to serve this city with honor. They deserve to have the dignity of fairness in their wages, health and welfare benefits, and working conditions.

Al Phillips, Ontario, stated he had been working with Scott McKinney, Country View, to develop a preliminary proposal for operating the Ontario golf course. They were looking to keep the money from the greens fees, and would be asking for a subsidy of \$75K annually from the city, with the intention of drawing back on that. They had a lot of good idea, such as multi passes, combining crews, one working crew to work both courses, to share the burden of the cost. They were also looking at increased hours with more man hours, and to lower management costs. There would be no city employees managing the course, and it would be run by someone who already owns a course and has run it for a profit. Other funds distributed back with profit sharing or for building new items at the course, which were needed. They wouldn’t hit up the city for money. They’d like the city to seriously consider their proposal.

Councilor Fugate asked who would manage the course.

Mr. Phillips stated both he and Mr. McKinney would share those duties.

Councilor Jones expressed some concern about the wells.

Mr. McKinney stated the wells had been examined, and he actually had the same system at his course. That system was good, and it was operational, but it was not the only way to go. There was another system out there that was cheaper to operate. He wanted to wait until June to access the system, to find out what it was going to cost to make it operational, as opposed to a hand-operated system. Each sprinkler head was \$175, and there were 1,800 heads. He had five (5) updates on his system, but Ontario had done nine (9). Combining forces would allow the use of his system, at a savings. The wells were a big issue. There was one well that was a year older than the course, and that was the main irrigation. Back up well was the Hollingsworth well, which they couldn’t access during the hot months of the year, as they were second place on water rights. Their suggestion, but not this fiscal year, was to maybe look to put in a back-up well in July. There were a lot of options open to them.

Councilor Jones stated he hadn’t realized that the city was in second place regarding the water rights.

Mr. Sullivan stated he hadn’t spent a lot of time on this issue, but he couldn’t recollect ever running short on water.

Councilor Jones stated it probably needed to be looked at, as they would have a high water demand in July and August, which could create a problem if the city was second.

Mr. Sullivan stated that would be easy enough to deal with He could call Ron Jacobs, the Water Master, to resolve the issue.

Mr. Phillips stated the water was certainly the biggest issue, but the course was sustainable. He planned to take a different approach on management. He didn't plan to stick anyone in there like a General Manager, as it would be their responsibility, and he would be willing to sign an agreement stating such. He recommended that the City Manager send someone out to review assets, than funds could be set aside for \$75K so there would be no need to reappropriate later. The city would maintain the buildings, but if a major thing, like the air conditioner, went out, they would need to discuss that. Minor repairs would be handled by his crews.

Councilor Fugate asked who would handle the accounting – the City or his group?

Mr. Phillips suggested they hire an independent accountant. Following an inspection, there would be an accounting. No a lot of money to be made, but they could manage the course. It was becoming harder and harder for all golf courses, nationwide, to operate. By combining the two courses, it would provide efficiency and double coverage.

Councilor Fox stated in the proposal, it read that the city was to provide major maintenance, repairs, wells, buildings and parking lots. What about the actual mowing?

Mr. Phillips stated they would be taking care of the equipment repair. That line item was large compared to before, but that was to do the mechanical work as well. He believed the budget from last year - \$10K – was too much. If repairs were that high, then the equipment should be replaced. Large amounts of money for maintenance should be reviewed for replacement.

Councilor Crume stated the proposal read to begin in March, 2013.

Mr. Phillips stated they would have liked to start last week. The Greens Keeper believed there were things they needed to deal with NOW, not at the end of June. There were a lot of bugs to eradicate, and there were 1,800 double-wire sprinkler heads there were being eaten by squirrels. Also, when the snow was completely gone, they needed to replant any dead areas. Plus, the Men's and Women's Associations had a meeting scheduled for February, and they wanted to get moving on tournaments. Everyone out there was stepping up to volunteer.

Councilor Crume stated if the city agreed to the proposal, would the existing mowers be used, and if they broke down tomorrow, would this new group replace those?

Mr. Phillips stated no, they would work with the City Manager on that. As he stated earlier, they had budgeted \$10K for equipment repair, which they could certainly do. They had increased that line for that, to repair and maintain.

Councilor Crume asked what would occur if a mower was beyond repairing.

Mr. Phillips stated they would determine the worth, and then sell it and then obtain a replacement machine. They would be working with the city on that type of thing. He knew a fairway puncher ran about \$8K, and they didn't currently have one of those. If one was purchased, it would be shared between the two courses. They would try tot use existing equipment, as much as possible. Currently, there were five (5) mowers, but only one person to mow. Maybe they could trade one mower for something they needed. Each mower was about \$14K, and if they sold two, they could get stuff they needed.

Councilor Jones stated with regard to this proposal, did the Council have to advertise, or could they move forward on this.

Mr. Sullivan stated the city could move forward, on the assumption of declaring a sole source option.

Councilor Jones suggested having Mr. Phillips and Mr. McKinney attend the February 14th work session with more details so the Council could approve it, if so desired.

Councilor Fugate stated they had approved \$12K to finance the course through the end of June, but Mr. Phillips was asking for \$75K, so how would that work?

Mr. Phillips stated he would work with the City Manager on that. Also, they had budgeted \$20K for electric, but the bill for last year was only \$18K. If the city kept the power in its name, that could be an option for the funding assistance.

Councilor Fugate verified that \$75K was for the full year?

Mr. Phillips stated it would be for a full season. Between now and June, 30% of the revenue would be with season passes. Their proposal was for per "season", not a fiscal year.

Mayor Dominick asked for two Council members to volunteer to get the proposal ready for the next Council works session.

Mr. Phillips stated he also had a letter of recommendation from the Men's Association, for the Council to approve the proposal. He didn't want to make any major changes to the course, but would know better after six months, how much it would cost to run the course, to see if it was even feasible to run it. After that first six months, changes might need to be made.

Councilor Fox volunteered to work on this project.

Councilor Jones stated he'd like to, also.

Mr. Sullivan stated he would draft a contract for Council review. The proposal provided for the 2013, 2014, and 2015 seasons, but it was really only a one season agreement.

Mr. Phillips agreed.

Councilor Crume stated he liked the idea of reviewing it, but he wanted to see the city tighten up on what their responsibilities would entail, expense-wise. The plan was to have the city spend \$75K, but it could be more with the wells and equipment. They needed to be prepared for what was coming down the road, not just what was there today.

Mr. Phillips agreed, they would like to have a contingency plan in place for replacement.

Mayor Dominick thanked Mr. Phillips and Mr. McKinney for their proposal.

Industrial Lands

Riley Hill stated this project was not just about industrial lands – it was much bigger. (See attached hand-out) There were five items on the list, and each had a committee. They started out wanting about 800 acres added to Ontario, but as they progressed, they were pared down to 225 acres. It was very disappointing, and they had spoken with our state representative about it. He agreed to help if Ontario wanted to push forward for more land. Also, they had gone out to Skyline and found out that Conagra now owned that through a bankruptcy. He and Dan Cummings and the City Manager visited with Conagra about acquiring 1,000 acres up there, close to the prison, and that was being worked on. Through this process, they tried to identify what else would be good for the county. Some state agencies said the poverty rate in Malheur County was 23%, but PSU had it at 39%. Regardless, Malheur County was the highest in Oregon. Malheur County alone was larger than six (6) other states in the US, with a population of 460 to 1195 per square mile. Multnomah County had 1704 per square mile, while Malheur County had 3.2 people per square mile. Where would it be better to have smoke stacks and industry? That was easily answered. This community was in favor of industrial growth.

The natural resources being talked about referred to the gold mine, and two more coming to town. Calico was leading the way. The group believed that by being behind that, they could create more jobs, taking Malheur

County out of poverty. One issue on industrial lands was water, and the goals Oregon had established were that now there was a beginning agreement to move water from one farm to another. Also, there were already zones for solar farms. They seemed to forget the businesses they already had - Ore-Ida, St. Alphonsus hospital, and several other businesses that might need help, and they should stand behind them. Ask what they needed to be more productive, or hold hearings to hear what they needed, and to see what we could do to help them.

Next, was agricultural – this was a big ag community. What could they do here to enhance that, to add value to what we already had? There were other things out there.

Next, they talked about a career and technical school. They had gone to a school in Wilder, that had combined six schools together to end up with five (5) disciplines. Most of the school boards, including TVCC, had almost 100 people taken over to that campus, and there had been no negative feedback. They were now actively working on ideas that came from the community. On the Wilder model, there was mechanics, diesel, CNA, welding, culinary arts, and construction classes. Under that model, they stayed at their school for core classes (half day), and then went over to the other facility. There was major competition to get in. The group wanted to get input from the local businesses on what was needed here. They had already talked with Ore-Ida, the mines, and Gentry Ford (mechanics) about keeping kids local, and to give them job opportunities. The Hollingsworth mechanics received their training away from here, just as one example. Currently, 14% of the college population had a BS or hire. That left 86% to fill something else. They were being trained, but they needed jobs to keep them here.

Councilor Crume asked where it would be located, and how would it would be funded?

Mr. Hill explained that the model in Wilder had several districts combine; Ontario would have three (3). Each would front money for the administration. Then they would receive half the FTE funds. There would be higher administrative costs, but they would retain more students, so there would be more money. They were looking at two possible locations - some property near Cairo Junction, and also on the college campus. The President of TVCC was excited to have it on their campus. The Board would be looking at areas this coming Thursday, in Wilder, at 1:30. He planned to let the college digest the plan, and would then return to the Council asking for a formal resolution in support of the plan.

Councilor Crume suggested having the schools Superintendent speak to the Council.

Mr. Hill stated he could try, but it might prove difficult, as they were not the entity putting this project together. It was being designed by a grass roots group. He believed there was 85-90% on board, but it all boiled down to funding.

It was the consensus of the Council to have this issue on the agenda for 14th study session.

NEW BUSINESS

Bid Award: Malheur Farm Lease

Bob Walker, Public Work Director, stated bids were opened on December 28, 2012, for the Malheur Farm Lease. Sage Farms was the apparent successful bid with the percentage crop share with a minimum payment guarantee of \$76,000 and a maximum share crop of \$133,000. Sage Farms would also address all issues with the system pressure and sprinkler package at their expense. When comparing the NEW contract minimum payment in comparison to the historical payments as it related to the current (OLD) contract, the difference in revenue was an increase of approximately \$33,000 annually. The Public Works Committee discussed this issue at their January 24, 2013, meeting, and recommended approval.

Dan Jones moved, seconded by Charlotte Fugate, that the City Council authorize the City Manager to enter into a Lease Agreement with Sage Farms for the Malheur Farm Lease. Roll call vote: Crume-yes; Fox-yes; Fugate-yes; Jones-yes; Tuttle-out; Verini-yes; Dominick-yes. Motion carried 6/0/1.

Bid Award: Snake River Intake Screen

Bob Walker, Public Works Director, stated the Water Treatment Plant Intake Screens in the Snake River had been in service for more than thirty years. Structurally, the screens were in good condition. The problem was the ability to clean the screens when they plugged due to algae. There was an air system inside the screens which was designed to clean the screens by discharging high pressure air from the inside. This system did not currently function properly and needed to be modified. Staff couldn't get inside the screens to make repairs as there was currently no access. The intention of this project was to reconstruct the ends of the screens in order to allow access by divers to clean the screens from the inside. Additionally, the air cleaning system would be reconstructed.

The project was approved in the 2009-11 budget for \$80,000. After several dives by the Extreme Dive Team, it was discovered that the air cleaning system inside the screens was not functioning properly and needed to be replaced. This required installation of access hatches on the ends of both screen sections, a modification of the high pressure air system at the river pump station, and new air discharge pipes inside the screens. The project was re-budgeted and approved in the 2011-2013 Budget for \$111,000 (11WAT-05).

Originally, staff was going to utilize divers to accomplish this work underwater, leaving the screens in place. The screen assembly consisted of two identical sections which were bolted together. After discussions with the design engineers, it was determined that it would be easier to disconnect one section of the screens, remove it from the river, and take it to a machine shop to provide an access opening. Once this was accomplished, staff would contract to have the new air discharge pipe installed inside the screen. When that work was completed, the screen section would be reinstalled and the other section removed and repaired. The bid to remove and replace was \$21,735. The remaining portion of this project was an estimated cost of \$24,000 for installing the access hatches and an estimated cost of \$35,000 to repair the air system. Combining those additional costs with an estimated \$10,000 for the remaining engineering resulted in a total cost of \$90,735; with \$103,416.59 remaining in this project account, staff should be under budget by \$12,681.59. The Public Works Committee had discussed this issue at their January 24, 2013, meeting and recommended approval of this action.

Ron Verini moved, seconded by Jackson Fox, to authorize the City Manager to sign an agreement with Richard Phillips Marine, Inc. for the Snake River Intake Screen repair. Roll call vote: Crume-yes; Fox-yes; Fugate-yes; Jones-yes; Tuttle-out; Verini-yes; Dominick-yes. Motion carried 6/0/1.

Ordinance #2675-2013: Amend TOT Ordinance (1st Reading)

Larry Sullivan, City Attorney, stated the purpose of the proposed ordinance is to remedy the misallocation of the City's transient occupancy tax after July 1, 2003, by amending City Code Section 3-1-4.

Ordinance 2450-2000, enacted in the year 2000 and codified in City Code Section 3-11-4, provided that 52.5% of the proceeds from the City's Transient Occupancy Tax (TOT) was to be distributed to the City's Street Fund for street maintenance. Beginning with the 2003-2004 budget, the City allocated that percentage of the TOT to the General Fund instead of the Street Fund.

At the end of 2012, Finance Director Michael Long discovered the error and began making the correct allocation with TOT proceeds received after January 1, 2013. Ordinance No. 2675-2013 amended Code Section 3-11-4 to remove the requirement that the City reimburse the Street Fund for any TOT misallocation before January 1, 2013. Unless City Code Section 3-11-4 was amended by the Council, it would be necessary for the City to reimburse the Street Fund in the amount of approximately \$2.4 million dollars.

Councilor Jones asked for an explanation of the ordinance process.

Mr. Sullivan stated the charter stated each ordinance would have two readings. If the Council approved first reading, changes could be made between the first and second/final reading. Also, citizens could voice concerns between the two readings. After the final reading, there would be a 30-day waiting period before becoming active, unless the Council passed it by emergency. Then it became effective immediately on final reading.

Councilor Crume asked if it would start over if changes were made between readings.

Mr. Sullivan stated it would not.

Councilor Crume stated, to ensure the audience understood what they were doing, if they moved forward on the ordinance – as currently written – the General Fund would not have the TOT money they had been collecting and spending for the past nine (9) years, at an average collection of \$250K. Without having that amount of money coming in, there would now be the challenge of developing a budget with less money. That hadn't been done yet, but it was coming up. If they were to pay the \$2.4M back to Streets, that would add another \$250K out of the General Fund, meaning a total loss of \$550K General Fund every year. It was troubling, and he believed it was impossible to go that direction. At the Thursday Work Session, he had been in support of moving the 52% in the Streets, and moving forward with paying it back. After further discussion, he had arrived at a possible solution to do both. His idea was not set in stone, and it might not even work, but it did have some merit. In an effort to try and reimburse Streets, which desperately needed funds, what about when the data center was built, and the franchise fees from the power increase, and depending on the size of the structure and the power usage, how about taking 25% of the fees collected and putting it towards the Streets, until the \$2.4M was repaid. He welcomed any thoughts on his idea. He was just trying to move forward without encumbering the General Fund, but to also get Streets reimbursed.

Councilor Fox stated he found value with Councilor Crume's argument, that the Council should find a way to pay the funds back, and he wanted to look into that idea. He disagreed, however, with passing an ordinance and just forgiving that type of behavior. Just six years ago, another \$2M was misspent from Public Works, and the Council forgave that. To him, that breached the public trust. For that reason, he wanted accountability, and he couldn't support the ordinance as written, to forgive that \$2.4M. The Council needed to rebuild trust, and needed to manage money properly.

Councilor Verini asked what other \$2M Councilor Fox was referring to? When and what?

Councilor Fox stated it happened six years ago, for public infrastructure, and that violated Oregon law.

Councilor Fugate stated that Bob Quinn was in attendance, and he owned hotels in the area. Perhaps some comments from him would help in their discussions.

Bob Quinn, Ontario, stated he saw a need to improve the streets, but also saw the outcome of taking that money from the General Fund. He had been in operation since the beginning of the TOT, and had originally been against at 6%, but he came to live with it. It had been drafted with the idea of 70% going to Streets, and 30% to the Chamber to promote tourism. That ordinance had seen a lot of changes since the initial implementation. It was news to him about the change of funds going from Streets into the General Fund, but he truly didn't see a problem with that. Streets were funded out of Public Works, but didn't that money come from the General Fund anyway? Where did those funds come from?

Mr. Quinn stated if the Council moved the funds from General Fund and back into Streets, were they just adding to the General Fund burden?

Mike Long, Finance Director, stated there was no money. Streets did not receive any money from the General Fund. The Streets fund came from the gas tax, which was dedicated to streets, from the state, and from the sewer system. Water paid from their proceeds when they had to dig up the streets, etc., and streets could get money from grants, or ODOT, but no General Fund money was in the streets.

Mr. Quinn stated he could only speak for himself, not all hotel owners in the area, but they saw all the services Ontario supplied, not just street maintenance. There were things that the General Fund actually did pay for, and were critical – for example, his businesses averaged four or five calls to 911 over the course of the month by guests, along with several calls to the Fire Department, and some false alarms. They needed great streets, but great services, also.

Mayor Dominick verified that Mr. Quinn was also on the city's Budget Board, as well as being a motel owner. Had Mr. Quinn read the proposed ordinance? Was he in favor of not paying back the street fund, and moving forward? The money was now going back to the Streets, but was he in support of not paying back the funds.

Mr. Quinn stated he was somewhat biased, but he would hate to figure out how to pay that money back from 2003 to current. He agreed with just moving forward and starting fresh.

Councilor Jones asked if that would be legal.

Mr. Sullivan stated it was, and he had also had it reviewed by the auditors, who stated it would good.

Councilor Crume asked if anyone could share any thoughts on the past history as to when this change occurred. There had been an obvious desire by staff to make the change, and at one time there had been an ordinance attempted to raise the TOT from 8% to 10%, and a provision to change the percentages by resolution. That did not pass? Did Mr. Quinn recall that, and why it was voted down?

Mr. Quinn stated the TOT started at 6% for a 70/30 split, but he didn't recall the circumstances for the increase from 8% to 10%. He had the impression the ordinance had been passed to redirect the funds.

Councilor Crume stated it had been discussed, and a lot of paperwork had been generated, but no ordinance was ever passed.

Mr. Quinn assumed it had been done, and knew the TOT was going to the General Fund, not knowing it wasn't supposed to be done that way.

Mr. Hill stated that speaking as the Public Works Committee Chairman, he knew the issue was coming to them at their meeting this coming Thursday, and it was hard to balance the budget, but when they did the library district, additional moneys came to the city then, and he knew the rate payer got short-changed every time that came up. When were they going to be fair and honest with the rate payers? The Street Fund was inadequate, and the funds from the gas tax were inadequate. Ten years ago, they identified \$28M of repairs needed. Also, they had been under-billing the prison, with a loss of \$1.8M for sewer. It seemed like they should bite down and pay it back. They were also going to be seeing some additional money from the prison. It seemed the money was misspent, and because of the actions of some employees, the money never came back. It would be addressed on Thursday.

Mr. Sullivan stated he didn't disagree with Mr. Hill, but in the case of rate payers, the clarification, the money that came into the city from the TOT was all money paid to the city by people staying in hotels. It was not funded by city residents. It was actually all non-residents, and that money was misdirected into the General Fund. That \$2.4M was received from non-residents. If the Council decided to take the money into the Public Works fund, that would be the rate-payers paying it back. If the money had been taken and put into the streets, the streets would be better, but it's not like projects were not completed because the money wasn't there.

Councilor Fox stated in the future, when the streets were repaired, didn't the rate-payers suffer in making up the deficit.

Mr. Sullivan stated it would be only if it was paid back. From here on, it's the hotel people who paid for the streets.

Mr. Hill stated Mr. Sullivan's answer wasn't clear. The money should be spent on streets. Who should make that up? They might have looked at SDC's differently, then. It was unfair to the rate-payers. They also hadn't adequately documented where Public Works' employees were working, and there had been no accounting of that. That was now being fixed. They were now looking at over \$4M having been misspent. The tax payers and rate payers were taking it on the chin if this just slid by.

Mr. Sullivan stated it wasn't as if the money wasn't spent for the general good. It had been used to fund 10 years' worth of activities. The General Fund did benefit.

Councilor Jones stated this seemed to be a budget issue. There was not an urgency to make a decision on paying this back, but there was in following the ordinance. There was a new budget coming up.

Councilor Fox wanted to wait to hear from the Public Works Committee on their recommendation. He also wanted to let the public know, to see what they wanted to do.

Mayor Dominick confirmed the city was now following the ordinance.

Mr. Henry stated they were.

Mayor Dominick suggested tabling this issue.

Councilor Fox asked if this was at the direction of the auditors, as a way to fix this.

Mr. Sullivan stated yes. It was possible a claim could be placed on the city. If that came before the amendment was done, the court could be looking at a circumstance where the only option was to grant the request to pay it back. Did the Council want someone to make the decision, or did they want to make it themselves. If the Council passed the proposed ordinance, and decided later to pay the money back, they could do that. This ordinance would only correct the error made by misdirecting the money.

Dan Jones moved, seconded by Jackson Fox, to table the proposed ordinance.

Councilor Crume verified if this motion was to be voted on tonight, they could table it any time before the second reading. Also, if it passed tonight, the second review would take place before the second reading. If they voted to move forward, they could stop it at any time. If the Council agreed with whatever the Public Works Committee recommended.

Ms. Sullivan stated that was correct.

Restated Motion:

Dan Jones moved, seconded by Jackson Fox, to table the proposed ordinance. Roll call vote: Crume-no; Fox-yes; Fugate-yes; Jones-yes; Tuttle-out; Verini-no; Dominick-no. Motion carried 3/3/1. Motion failed.

Ron Verini moved, seconded by Norm Crume, to receive the findings from the Public Works Committee and to contemplate Councilor Crume's idea. Roll call vote: Crume-yes; Fox-no; Fugate-no; Jones-no; Tuttle-out; Verini-yes; Dominick-yes. Motion carried 3/3/1. Motion failed.

Mr. Hill asked if this ordinance would stop the 52% from coming to the streets?

Mr. Sullivan stated no, it recognized that it had to start on January 1, 2013.

Dan Jones moved, seconded by Jackson Fox, to table this amendment for 30 days allowing the Public Works Committee to discuss the issue and to allow the receipt of the audit from Oster. Roll call vote: Crume-yes; Fox-yes; Fugate-yes; Jones-yes; Tuttle-out; Verini-yes; Dominick-yes. Motion carried 6/0/1.

Moore Park Lease Renewal

Larry Sullivan, City Attorney, stated the existing lease agreement between the City of Ontario and Riley Hill for the property commonly referred to as Moore Park would expire on May 18, 2013. Mr. Hill was requesting a renewal of the agreement for another five (5) years on the same terms and conditions. The City leased this property from Mr. Hill for \$1.00 a year.

Ron Verini moved, seconded by Jackson Fox, that the Council authorize the Mayor to sign the five-year Lease Extension Agreement with Riley Hill for the lease of Moore Park by the City. Roll call vote: Crume-yes; Fox-yes; Fugate-yes; Jones-yes; Tuttle-out; Verini-yes; Dominick-yes. Motion carried 6/0/1.

EXECUTIVE SESSION

Executive Session: ORS 192.660(2)(h)

An executive session was called at 8:54 p.m. under provisions of ORS 192.660(1)(h) to discuss pending or potential litigation. The Council reconvened into regular session at 9: 25 p.m.

BACK TO NEW BUSINESS

Declaratory Judgment

Larry Sullivan, City Attorney, stated the City Council received a letter from Max S. Taggart II requesting that the City undertake a proceeding under Charter Section 6.5(1)(f) to declare a seat vacant for violation of the City Charter. There were no cases reported in Oregon in which a member of a city council had been removed for violating the City Charter. There might be some question whether Charter Section 6.5(1)(f) complied with Amended Article II, Section 6, of the Oregon Constitution and what procedure the Council should follow to declare such a vacancy.

The City Attorney recommended that before the City Council initiated the kind of proceeding referred to in Mr. Taggart's letter, it should authorize the City Attorney to file a complaint with the Malheur County Circuit Court to declare: 1) that Charter Section 6.5(1)(f) was constitutional; and 2) that the Council had the authority to conduct a proceeding to remove a councilor for violating the City Charter.

Jackson Fox moved, seconded by Ron Verini, that the Council authorize the City Attorney to file a declaratory judgment action in Circuit Court regarding the constitutionality of 6.5(1)(f) and the procedure required to enforce that Charter provision. Roll call vote: Crume-yes; Fox-yes; Fugate-no; Jones-yes; Tuttle-out; Verini-yes; Dominick-no. Motion carried 4/2/1.

Investigation of Baker Complaint

Mayor Dominick removed himself from the dais as this was action was a conflict of interest.

Jackson Fox moved, seconded by Norm Crume, to table the Baker Complaint pending the results of the Declaratory Judgment from the Circuit Court. Roll call vote: Crume-yes; Fox-yes; Fugate-yes; Jones-yes; Tuttle-out; Verini-yes; Dominick-abstain. Motion carried 5/0/1/1.

PUBLIC HEARING

Ordinance #2673-2013: Amend TVCC Master Plan and Associated Amendments to the City of Ontario Comprehensive Plan re: the 2012 TVCC Facility Master Plan (1st Reading)

It being the date advertised for public hearing on the matter of Ordinance #2673-2012, the Mayor declared the hearing open. There were no objections to the city's jurisdiction to hear the action, no abstentions, ex-parte contact, and no declarations of conflict of interest.

Bob Walker, Public Works Director, stated Treasure Valley Community College developed a Master Plan for the College with assistance from the Oregon Department of Land Conservation and Development (DLCD) and the Oregon Department of Transportation (ODOT) through a Community Outreach Grant. The Master Plan was created to guide development. A change in the comprehensive plan or zoning code that affected an entire zone, and therefore multiple parcels, was a legislative action. The proposed amendment of the Comprehensive Plan to include the TVCC Master Plan as a supporting Document was applicable to any property that the Master Plan was applicable to; obviously, only the TVCC Campus. Therefore, this action was a quasi-judicial action that must go through both the Planning Commission and the City Council. The Plan Amendment was a land use decision and was

appealable to the Land Use Board of Appeals (LUBA). Notice had been provided to adjacent property. On Monday, January 14, 2013, the Planning Commission moved to recommend the request to the City Council. This was approved and recommended by the Public Works Committee at their January 14, 2013 meeting.

Bernie Babcock, TVCC Representative, stated the document was more focused with regard to a 15-year build-out of the campus, with a reduction in the scope of buildings on the campus. On page 23, one thing identified was the amount of square footage per full time student. TVCC was at 65, even with all the acreage. One future item was to modify the spaces to reduce the compression. This also included new outdoor recreation areas. The other thing on page 48, was academic zoning. They opted for the current configuration, with the building of an academic corridor, but would maintain the current green spaces. Under this scenario, they would not build onto Park Boulevard. Option B, on pages 49-50-51, would preserve the buildings, and they would remodel and develop the existing buildings. This master plan was less aggressive than previously adopted in 2007. On page 54, it encapsulated their options. The traffic study done for 2001, was good through 2018, and assumed several things – full time capacity higher, and a 3-6% growth in the city, which had not been experienced.

Page 54 was the preferred alternative for their build out. They wanted a tighter, more walkable campus – park and walk - and they clarified their circulation routes through-out the campus, with a second entrance on 9th, with a drive connected to the Weese Building. They would landscape the existing road. The plan covered parking, bikes, landscaping, etc. Since 2005, they had completed \$26M worth of developing and improvements. The college zoned district had benefited both the college and the city.

The Mayor opened the hearing for public testimony.

Opponents: None.

Proponents: None.

There being no Proponent and no Opponent testimony, the Mayor declared the hearing closed.

Jackson Fox moved, seconded by Ron Verini, that the City Council adopt Ordinance #2673-2013, based on the information, findings and facts as set forth in Action 2012-11-13CPAMD and the Planning Commission staff report, to **APPROVE** the request to adopt the Treasure Valley Community College 2012 Facility Master Plan as part of the TVCC Master Plan into the City of Ontario Comprehensive Plan. Roll call vote: Crume-yes; Fox-yes; Fugate-yes; Jones-yes; Tuttle-out; Verini-yes; Dominick-yes. Motion carried 6/0/1.

CORRESPONDENCE, COMMENTS, AND EX-OFFICIO REPORTS

- Jay Henry stated they had selected Mike Long as the permanent Finance Director, and they were seeking consensus from the Council to appoint Mr. Long to the position.
- Councilor Jones asked that two items be added to the next agenda for discussion and update: the waste disposal station, and the Project Dove alley project.

ADJOURN

Ron Verini moved, seconded by Jackson Fox, that the meeting be adjourned. Roll call vote: Crume-yes; Fox-yes; Fugate-yes; Jones-yes; Tuttle-out; Verini-yes; Dominick-yes. Motion carried 6/0/1.

APPROVED:

Joe Dominick, Mayor

ATTEST:

Tori Barnett, MMC, City Recorder

CONSENT AGENDA REPORT

February 19, 2013

TO: Mayor and City Council

FROM: Mark Alexander, Police Chief

THROUGH: Jay Henry, City Manager

SUBJECT: RESOLUTION NO. 2013-103: GENERAL FUND BUDGET CHANGE

DATE: February 8, 2013

SUMMARY:

Attached is the following document:

- Resolution 2013-103

The Police Department has received unexpected revenue from donations, property sales and insurance payments. The Police Department would like to expend those funds. A budget change will be required to do so.

PREVIOUS COUNCIL ACTION:

None.

BACKGROUND:

The Police Department has recently received donations for police projects and graffiti abatement. The Police Department has also generated revenue from the sale of surplus vehicles and from our insurance company after a police vehicle was totaled in a crash. \$13,812 has been deposited into the Police Department's Miscellaneous Revenue line item within the General Fund budget. The following is a breakdown of revenue received:

- \$280 in donations from community members for graffiti abatement
- \$250 donation from VFW
- \$100 donation from American Legion
- \$42 donation from Malheur Co Soil and Water District
- \$4000 for the sale of police motorcycle
- \$1500 for sale of surplus vehicles held for evidence
- \$7640 from insurance for the loss of wrecked police vehicle.

The donors would like their funds to be used for projects that help the police department or community. The Police Department would like to use funds from the sale of property to go to technology projects and the funds from insurance to replace the police vehicle.

The police department did not budget to expend these funds and would like to make an adjustment in order to do so. It is proposed that the budget change for expenditures be recognized within the Police Department's Abatement, Data Processing and Automotive Capital line items.

ALTERNATIVE:

The Council could decline the change and keep the funding as revenue received.

FINANCIAL IMPLICATIONS:

It is proposed that the revenues be recognized and expenditures be budgeted as an increase within the City's General Fund.

RECOMMENDATION:

Staff recommends the Council adopt Resolution 2013-103, A RESOLUTION ACKNOWLEDGING RECEIPT OF REVENUE FUNDS AND APPROPRIATING EXPENDITURES WITHIN THE GENERAL FUND.

RESOLUTION # 2013-103

**A RESOLUTION ADOPTING A SUPPLEMENTAL BUDGET FOR THE
GENERAL FUND POLICE DEPARTMENT TO RECOGNIZE RECEIVED
FUNDS AND AUTHORIZING EXPENDTURE OF THOSE FUNDS**

WHEREAS, The Ontario Police Department occasionally receives unexpected revenue from donations, sales of property, and insurance payments; and

WHEREAS, the General Fund Police Department budget for FY 2011-2013 was adopted without the knowledge of such funds; and

WHEREAS, the Ontario Police Department has received \$13,812.00 in such funds; and

WHEREAS, the City desires to modify the 2011-2013 budget to receive and expend the funds.

NOW THEREFORE, BE IT RESOLVED by the Ontario City Council to approve the following adjustments to the fiscal year 2011-2013 budget:

Line Item	Item Description	FY 11-13 Budget	Amount of Change	Adjusted Budget
GENERAL FUND				
REVENUE				
001-000-469210	Misc Police Revenue	\$10,309	\$13,140	\$23,449
001-000-469202	Donations	\$0	\$672	\$672
EXPENDITURE				
001-024-611900	Data Processing	\$5130	\$5892	\$11,022
001-024-612000	Abatement	\$1500	\$280	\$1780
001-024-711200	Capital Automotive	\$49780	\$7640	\$57420

Effective Date: Upon adoption

Passed and adopted by the Ontario City Council this 19th day of February, 2013.

Ayes:

Nays:

Absent:

Approved by the Mayor this 19th day of February, 2013.

ATTEST:

Joe Dominick, Mayor

Tori Barnett, MMC, City Recorder

CONSENT AGENDA REPORT

February 19, 2013

TO: Mayor and City Council

FROM: Mark Alexander, Police Chief

THROUGH: Jay Henry, City Manager

SUBJECT: RESOLUTION NO. 2013-104: A RESOLUTION ACKNOWLEDGING RECEIPT OF ODOT TRAFFIC SAFETY FUNDS AND APPROPRIATING EXPENDITURES FOR CHILD PROTECTION SEATING WITHIN THE GRANT FUND

DATE: February 8, 2013

SUMMARY:

Attached is the following document:

- Resolution 2013-104

PREVIOUS COUNCIL ACTION:

Council has approved similar Resolutions for the same grant for several years.

BACKGROUND:

On average, 90% of child safety seats in motor vehicles in Oregon are either improper for the age of the child, installed incorrectly or even under recall. Proper safety seat fitment reduces injuries and saves lives in the event of a motor vehicle crash.

The Oregon Department of Transportation has awarded a grant in the amount of \$2650 to fund the purchase of child protection seats and technician training.

Once a month, a fitting station is conducted under the direction of the police department in order to assure motorists have the correct child safety seat and that it is also being used correctly. The purchase of seats will be used during those fitting stations.

ALTERNATIVE:

The Council could decline the grant award.

FINANCIAL IMPLICATIONS:

It is proposed that the grant revenues and expenditures for supplies be budgeted as an increase within the City's Grant Fund.

RECOMMENDATION:

Staff recommends the Council adopt Resolution 2013-104.

PROPOSED MOTION:

I move that the Council adopt Resolution 2013-104, A RESOLUTION ACKNOWLEDGING RECEIPT OF ODOT TRAFFIC SAFETY FUNDS AND APPROPRIATING EXPENDITURES FOR CHILD PROTECTION SEATING AND TECHNICIAN TRAINING WITHIN THE GRANT FUND.

RESOLUTION NO. 2013- 104

**A RESOLUTION ACKNOWLEDGING RECEIPT OF ODOT TRAFFIC SAFETY FUNDS
AND APPROPRIATING EXPENDITURES FOR CHILD PROTECTION SEATING AND
TECHNICIAN TRAINING WITHIN THE GRANT FUND**

WHEREAS, the 2011-2013 Biennial Budget was adopted without the knowledge of funding for a traffic safety project; and

WHEREAS, the City was awarded an Oregon Department of Transportation grant thru its Police Department to purchase child safety seats and fund technician training; and

WHEREAS, the City desires to modify the 2011-2013 Budget, acknowledging new grant revenue of \$2650 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 2011-2013 Biennial Budget:

Line Item	Item Description	FY 11-13 Budget	Amount of Change	Adjusted Budget
GRANT FUND				
Revenue				
010-000-456182	Police SAFE Kids Project	\$3000	\$2650	\$5650
Expenses				
010-038-714182	Police SAFE Kids Project	\$3000	\$2650	\$5650

Effective Date: Upon adoption

Passed and adopted by the Ontario City Council this _____ day of _____ 2013.

Ayes:

Nays:

Absent:

Approved by the Mayor this _____ day of _____ 2013.

Joe Dominick, Mayor

ATTEST:

Tori Barnett, MMC, City Recorder

2013-104 Receive\Expend ODOT Grant: OPD Traffic Safety

CONSENT AGENDA REPORT

February 19, 2013

TO: Mayor and City Council

FROM: Marcy Skinner, Planning & Zoning Technician

THROUGH: Jay Henry, City Manager

SUBJECT: ORDINANCE #2673-2013: AN ORDINANCE AMENDING THE CITY OF ONTARIO COMPREHENSIVE PLAN BY ADOPTING THE TREASURE VALLEY COMMUNITY COLLEGE 2012 FACILITY MASTER PLAN AS PART OF THE TVCC MASTER PLAN, ON SECOND AND FINAL READING, BY TITLE ONLY

DATE: February 11, 2013

SUMMARY:

Attached is the following document:

- Ordinance #2673-2013

PREVIOUS COUNCIL ACTION:

2007 Ordinance 2602-2007 Amended the City of Ontario's Comprehensive Plan and established a Master Plan of development for TVCC.
02/04/2013 Council adopted Ordinance #2673-2013 on First Reading.

STAFF RECOMMENDATION:

Staff recommends the Council adopt Ordinance #2673-2013 on Second and Final Reading by Title Only.

ORDINANCE NO. 2673-2013

**AN ORDINANCE AMENDING THE CITY OF ONTARIO COMPREHENSIVE PLAN BY
ADOPTING THE TREASURE VALLEY COMMUNITY COLLEGE 2012 FACILITY MASTER PLAN
AS PART OF THE TVCC MASTER PLAN**

- WHEREAS,** Treasure Valley Community College created a Master Plan to refine the Public Facilities Zone to provide specific development guidance for the College Campus; and,
- WHEREAS,** The City of Ontario adopted a new zoning district, the College District (CD) Zone, and new regulations for that zone, by Ordinance in 2002 but failed to adopt the TVCC Master Plan into the City's Comprehensive Plan to serve as the basis for the zone and new regulations; and,
- WHEREAS,** The City of Ontario amended the Comprehensive Plan Map and Zoning Map to rezone the new property to CD, by ordinance in 2004, thereby including the property in the College Campus; and,
- WHEREAS,** The City of Ontario amended the Comprehensive Plan to establish a Master Plan of Development for Treasure Valley Community College, by ordinance in 2007; and;

NOW, THEREFORE, THE CITY OF ONTARIO ORDAINS AS FOLLOWS:

A. Findings:

The City of Ontario finds that the Public Hearing Agenda Report for Land Use Action #2012-11-13CPAMD (Exhibit "A") serves as the foundation for a determination that all applicable requirements for this Comprehensive Plan Amendment are met; all exhibits attached hereto and incorporated by this reference.

B. Amendment:

Exhibit "B" the "2012 Facility Master Plan" as part of the TVCC Master Plan, attached hereto and incorporated herein by this reference, is adopted as a supporting, technical document into the City of Ontario Comprehensive Plan.

PASSED AND ADOPTED by the Common Council of the City of Ontario this _____ day of _____, 2013 by the following vote:

AYES:

NAYS:

ABSENT:

APPROVED by the Mayor this _____ day of _____, 2013.

Joe Dominick, Mayor

ATTEST:

Tori Barnett, MMC, City Recorder

STAFF REPORT
February 19, 2013

TO: Mayor and City Council

FROM: Alan Daniels

THROUGH: Jay Henry, City Manager

SUBJECT: KIMLEY-HORN CONTRACT FOR PRELIMIARY ENGINEERING SERVICES FOR FAA AIRPORT IMPROVEMENT PROJECT AIP 3-41-0044-011-FY'13

DATE: January 25, 2013

SUMMARY:

Attached is the following document:

- Contract from Kimley-Horn

This contract is to start the engineering on a FAA funded project to Rehabilitate and Construct Taxi lanes and to Rehabilitate the Beacon. The cost of this preliminary engineering contract is \$19,900, of which 90% will be paid by the FAA.

BACKGROUND:

This project is supported by the Airport Master Plan and is on our Capital Improvement Projects list. It has been reviewed by the FAA and approved for funding. The entire project is expected to cost about \$600,000. FAA funding is 90% leaving the city a match of about \$60,000. I expect to get an additional grant to pay most of the city match, but if we can not get help with the match and the city does not want to do the project at this time we simply do not accept the construction grant and then we would only be responsible for the 10% match of this short contract which would be about \$1990.

ALTERNATIVE:

We could delay starting the project until next year, but this project is scheduled to be done this year and the FAA is somewhat inflexible.

FINANCIAL IMPLICATIONS:

This contract will be paid out of the FAA reimbursement grant at 90%.

RECOMMENDATION:

Staff recommends that the contract be approved.

PROPOSED MOTION:

I move that the City Council approve the contract with Kimley-Horn for engineering services for the preliminary engineering for AIP project 3-41-0044-008.

September 17, 2012

Mr. Alan Daniels
Ontario Municipal Airport
Airport Manager
581 SW 33rd St.
Ontario, OR 97914

■
Suite 1100
950 Bannock Street
Boise, Idaho
83702

Re: Preliminary Engineering Services Contract for AIP 3-41-0044-011- FY'13 Ontario Municipal Airport Improvement Project.

Dear Mr. Daniels:

Kimley-Horn and Associates, Inc. ("KHA" or "the Consultant") is pleased to submit this letter agreement (the "Agreement") to the City of Ontario, Oregon ("the Client") for providing preliminary project formulation tasks relating to a planned FY '13 Improvement Project at the Ontario Municipal Airport. General scope of the overall project includes the following:

Rehabilitate and Construct Taxiways, Rehabilitate Beacon.

This Contract represents the initial preliminary contract generally covering project planning and preliminary engineering for the scope of work listed above. This Agreement will be amended by a later engineering services Contract that will be put in effect after an independent estimate of our engineering services costs and full negotiations are complete per FAA requirements. The later Contract will incorporate all engineering aspects required for the project.

The specific scope of services, schedule, and fee for the project planning and preliminary engineering formulations tasks are listed below.

Scope of Services

Phases 1-4

1.1 Attend Project Pre Design meeting with Owner and FAA. This meeting will be held at the Ontario Municipal Airport to determine the planning and study issues that will need to be addressed during the design of the project. Project Schedule and Predesign minutes will be prepared for the FAA and the Sponsor and copies will be sent to each. (est. \$500)

1.2 Assist in Project Scope review and formulation. Prepare a Scope of Professional Services narrative. The Scope of Work will include a listing of all work tasks in a spreadsheet with "empty cells" for man-hours, hourly rates, and lump sum costs. Provide a "draft" scope for review by the Sponsor, State and FAA. Discuss review comments and revise accordingly. (est. \$2,200)

1.3 Include a detailed cost proposal based on estimates of professional service man hours, hourly rates and lump sum costs required to accomplish the design development and construction administration of the work. (est. \$2,300)

1.4 Coordinate with Independent Engineering Fee Estimator to describe and review the proposed project Scope of Work and to discuss the project in detail. This meeting will be utilized to assist the Independent Estimator so he/she can better understand the project. If the Estimator is located in Boise, the meeting will be held face to face in Boise. If the Estimator is remotely located the meeting will be accomplished by telephone. One formal meeting will be held to describe and discuss the scope of the project. (est. \$300)

3.1 Prepare a conceptual construction sequence and safety plan for evaluation by the Owner, Airport, FBO, airport users and agencies. An electronic copy must be submitted to the FAA Airport District Office for coordination with other FAA lines of business using the airspace process. (est. \$2,300)

Plan should include:

- Contractor construction routes, Issuance of Notices to Airmen (NOTAM).
- NOTAMS, temporary marking and lighting, safety areas, OFZ, temporary threshold displacements, runway shutdowns, construction phasing, etc.
- Routing of aircraft.
- Address each applicable item identified in AC 150/5370-2E. Submit a safety and phasing checklist, checking items applicable to project that have been included in plan.
- Include estimated dates that navigational aids will be shut down during construction.

3.2 Coordinate with Geotechnical subconsultant and prepare for delivery of work product. The geotechnical laboratory work will be performed utilizing the services of a subconsultant. This item includes providing a Scope of Work document to the Geotechnical subconsultant so that a detailed cost proposal for the project can be estimated. Item does not include the actual geotechnical survey costs but only includes completing the Scope of Work documentation as noted and obtaining costs for the Scope of Work from the subconsultant. (est. \$2,350).

3.3 Coordinate with Survey subconsultant and prepare for delivery of work product. The survey work will be performed utilizing the services of a subconsultant. This item includes providing a Scope of Work document to the Survey subconsultant so that a detailed cost proposal for the project can be estimated. Item does not include the actual survey costs but only includes the completion of the Scope of Work documentation as noted and obtaining costs for the Scope of Work from the subconsultant. (est. \$2,350)

3.4 Prepare applications and supporting documents for governmental grants, loans or advances in connection with the project. (est. \$2,200)

3.4.1 Prepare a draft Grant Application for submittal to FAA prior to project design. Assist Sponsor in coordination of Grant Application submittal and process.

3.4.2 Discuss with FAA and Owner the results of FAA review of draft Application. Prepare a final Grant Application for submittal to FAA prior to project design.

3.4.3 Assist Sponsor in communication and coordination with the Oregon Department of Transportation (ODOT).

3.4.4 Prepare required Sponsor Certifications including Selection of Consultants, Plan and

Specifications, and Drug Free Workplace.

- 3.5 Prepare 7460 for submittal to the FAA prior to the project design. One form will show the FAA the anticipated pavements that will be added as a result of the project. Review of the submitted project configuration on the ALP drawing will be submitted to FAA for the first 7460. The second 7460 will document the anticipated equipment that will be involved in the construction period. (est. \$1,300)
- 3.6 Provide the following services related to Federal Disadvantaged Business Enterprise requirements (DBE). (est. \$3,600)
- 3.6.1 Evaluate contract work scope for DBE subcontract opportunities (both professional and contractor). Develop project specific DBE goals for FY 2013, 2014 and 2015 prepare required FAA justification and obtain FAA approval. The three year annual DBE Plan will need to be approved for this project prior to bidding.
- 3.6.2 Review project contract documents for compliance with current DBE requirements as required by FAA.
- 3.6.3 Review project bids for compliance with DBE requirements, prepare and submit required DBE participation forms at completion of construction.
- 3.6.4 Assist in evaluation and resolution of DBE issues which may arise during the bidding and construction process.
- 3.6.5 Review Contractor provided data, prepare and submit required statements for DBE participation actually achieved in the work as part of the final construction report.
- 3.6.6 Complete the "Uniform Report of DBE Awards or Commitments and Payments" including contract award amount or contractor/engineer's commitment and actual resulting payment to DBE's.
- 3.7 Inquire of FAA Environmental Manager by email to confirm that the project will be categorically excluded pursuant to FAA Order 1050.1E, Paragraph 310(e). Provide a detailed project area map for delineation of planned scope of work. (est. \$500)

Services Not Included

Any other services, including but not limited to the following, are not included in this Agreement but will be included prior to establishment of the Standard Contract for this project that will be forthcoming. These tasks include:

- Project Final Design
- Bidding Services
- Construction Administration
- Operational Phase Services including Project closeout and documentation
- Other Additional Services required on the Project including Geotechnical and Survey Subconsultant fees.

Additional Services

Any services not specifically provided for in the above Scope of Work will be billed as additional services and performed at our then current hourly rates.

Information Provided By Client

We shall be entitled to rely on the completeness and accuracy of all information provided by the Client or the Client's consultants or representatives.

Fee and Expenses

Kimley-Horn will perform the Phases 1-4 (Design Portion) of the Scope of Services as stated in the method of Compensation Section of Exhibit A for a Lump Sum fee of \$19,900.00.

Lump sum fees will be invoiced monthly based upon the overall percentage of services performed. Payment will be due within 25 days of your receipt of the invoice.

Closure

In addition to the matters set forth herein, our Agreement shall include and be subject to, and only to, the attached Standard Provisions, which are incorporated by reference. As used in the Standard Provisions, "Consultant" shall refer to Kimley-Horn and Associates, Inc., and "Client" shall refer to the City of Ontario.

If you concur in all the foregoing and wish to direct us to proceed with the services, please have authorized persons execute both copies of this Agreement in the spaces provided below, retain one copy, and return the other to us. We will commence services only after we have received a fully-executed agreement. Fees and times stated in this Agreement are valid for sixty (60) days after the date of this letter.

We appreciate the opportunity to provide these services to you. Please contact me if you have any questions.

Very truly yours,

KIMLEY-HORN AND ASSOCIATES, INC.

Thomas W. Lemenager, P.E.
Regional Vice President

Attachment – Standard Provisions

Agreed to this _____ day of _____, _____.

City of Ontario, Oregon

(Print or Type Name and Title)

(Email Address)

_____, Witness

KIMLEY-HORN AND ASSOCIATES, INC.
STANDARD PROVISIONS

(1) **Consultant's Scope of Services and Additional Services.** The Consultant's undertaking to perform professional services extends only to the services specifically described in this Agreement. However, if requested by the Client and agreed to by the Consultant, the Consultant will perform Additional Services, which shall be governed by these provisions. Unless otherwise agreed to in writing, the Client shall pay the Consultant for any Additional Services an amount based upon the Consultant's then-current hourly rates plus an amount to cover certain direct expenses including telecommunications, in-house reproduction, postage, supplies, project related computer time, and local mileage. Other direct expenses will be billed at 1.15 times cost.

(2) **Client's Responsibilities.** In addition to other responsibilities described herein or imposed by law, the Client shall:

- (a) Designate in writing a person to act as its representative with respect to this Agreement, such person having complete authority to transmit instructions, receive information, and make or interpret the Client's decisions.
- (b) Provide all information and criteria as to the Client's requirements, objectives, and expectations for the project including all numerical criteria that are to be met and all standards of development, design, or construction.
- (c) Provide to the Consultant all previous studies, plans, or other documents pertaining to the project and all new data reasonably necessary in the Consultant's opinion, such as site survey and engineering data, environmental impact assessments or statements, upon all of which the Consultant may rely.
- (d) Arrange for access to the site and other private or public property as required for the Consultant to provide its services.
- (e) Review all documents or oral reports presented by the Consultant and render in writing decisions pertaining thereto within a reasonable time so as not to delay the services of the Consultant.
- (f) Furnish approvals and permits from governmental authorities having jurisdiction over the project and approvals and consents from other parties as may be necessary for completion of the Consultant's services.
- (g) Cause to be provided such independent accounting, legal, insurance, cost estimating and overall feasibility services as the Client may require.
- (h) Give prompt written notice to the Consultant whenever the Client becomes aware of any development that affects the scope, timing, or payment of the Consultant's services or any defect or noncompliance in any aspect of the project.
- (i) Bear all costs incidental to the responsibilities of the Client.

(3) **Period of Services.** Unless otherwise stated herein, the Consultant will begin work timely after receipt of a properly executed copy of this Agreement and any required retainer amount. This Agreement is made in anticipation of conditions permitting continuous and orderly progress through completion of the services. Times for performance shall be extended as necessary for delays or suspensions due to circumstances that the Consultant does not control. If such delay or suspension extends for more than six months (cumulatively), Consultant's compensation shall be renegotiated.

(4) **Method of Payment.** Compensation shall be paid to the Consultant in accordance with the following provisions:

- (a) Invoices will be submitted periodically for services performed and expenses incurred. Payment of each invoice will be due within 25 days of receipt. The Client shall also pay any applicable sales tax. All retainers will be held by the Consultant for the duration of the project and applied against the final invoice. Interest will be added to accounts not paid within 25 days at the maximum rate allowed by law. If the Client fails to make any payment due to the Consultant under this or any other agreement within 30 days after the Consultant's transmittal of its invoice, the Consultant may, after giving notice to the Client, suspend services and withhold deliverables until all amounts due are paid in full and may commence proceedings, including filing liens, to secure its right to payment under this Agreement.
- (b) If the Client relies on payment or proceeds from a third party to pay Consultant and Client does not pay Consultant's invoice within 60 days of receipt, Consultant may communicate directly with such third party to secure payment.
- (c) If the Client objects to an invoice, it must advise the Consultant in writing giving its reasons within 14 days of receipt of the invoice or the Client's objections will be waived, and the invoice shall conclusively be deemed due and owing. If the Client objects to only a portion of the invoice, payment for all other portions remains due within 25 days of receipt.
- (d) If the Consultant initiates legal proceedings to collect payment, it may recover, in addition to all amounts due, its reasonable attorneys' fees, reasonable experts' fees, and other expenses related to the proceedings. Such expenses shall include the cost, at the Consultant's normal hourly billing rates, of the time devoted to such proceedings by its employees.
- (e) The Client agrees that the payment to the Consultant is not subject to any contingency or condition. The Consultant may negotiate payment of any check tendered by the Client, even if the words "in full satisfaction" or words intended to have similar effect appear on the check without such negotiation being an accord and satisfaction of any disputed debt and without prejudicing any right of the Consultant to collect additional amounts from the Client.

(5) **Use of Documents.** All documents, including but not limited to drawings, specifications, reports, and data or programs stored electronically, prepared by the Consultant are related exclusively to the services described in this Agreement, and

may be used only if the Client has satisfied all of its obligations under this Agreement. They are not intended or represented to be suitable for use, partial use or reuse by the Client or others on extensions of this project or on any other project. Any modifications made by the Client to any of the Consultant's documents, or any use, partial use or reuse of the documents without written authorization or adaptation by the Consultant will be at the Client's sole risk and without liability to the Consultant, and the Client shall indemnify, defend and hold the Consultant harmless from all claims, damages, losses and expenses, including but not limited to attorneys' fees, resulting therefrom. The Consultant's electronic files and source code developed in the development of application code remain the property of the Consultant and shall be provided to the Client only if expressly provided for in this Agreement. Any electronic files not containing an electronic seal are provided only for the convenience of the Client, and use of them is at the Client's sole risk. In the case of any defects in the electronic files or any discrepancies between them and the hardcopy of the documents prepared by the Consultant, the hardcopy shall govern. Because data stored in electronic media format can deteriorate or be modified without the Consultant's authorization, the Client has 60 days to perform acceptance tests, after which it shall be deemed to have accepted the data.

(6) **Opinions of Cost.** Because the Consultant does not control the cost of labor, materials, equipment or services furnished by others, methods of determining prices, or competitive bidding or market conditions, any opinions rendered as to costs, including but not limited to opinions as to the costs of construction and materials, shall be made on the basis of its experience and represent its judgment as an experienced and qualified professional, familiar with the industry. The Consultant cannot and does not guarantee that proposals, bids or actual costs will not vary from its opinions of cost. If the Client wishes greater assurance as to the amount of any cost, it shall employ an independent cost estimator. Consultant's services required to bring costs within any limitation established by the Client will be paid for as Additional Services.

(7) **Termination.** The obligation to provide further services under this Agreement may be terminated by either party upon seven days' written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party, or upon thirty days' written notice for the convenience of the terminating party. If any change occurs in the ownership of the Client, the Consultant shall have the right to immediately terminate this Agreement. In the event of any termination, the Consultant shall be paid for all services rendered and expenses incurred to the effective date of termination, and other reasonable expenses incurred by the Consultant as a result of such termination. If the Consultant's compensation is a fixed fee, the amount payable for services will be a proportional amount of the total fee based on the ratio of the amount of the services performed, as reasonably determined by the Consultant, to the total amount of services which were to have been performed.

(8) **Insurance.** The Consultant carries Workers' Compensation insurance, professional liability insurance, and general liability insurance. If the Client directs the Consultant to obtain increased insurance coverage, the Consultant will take out such additional insurance, if obtainable, at the Client's expense.

(9) **Standard of Care.** The standard of care applicable to Consultant's services will be the degree of care and skill ordinarily exercised by consultants performing the same or similar services in the same locality at the time the services are provided. No warranty, express or implied, is made or intended by the Consultant's undertaking herein or its performance of services, and it is agreed that the Consultant is not a fiduciary with respect to the Client.

(10) **LIMITATION OF LIABILITY.** In recognition of the relative risks and benefits of the Project to the Client and the Consultant, the risks have been allocated such that the Client agrees, to the fullest extent of the law, and notwithstanding any other provisions of this Agreement or the existence of applicable insurance coverage, that the total liability, in the aggregate, of the Consultant and the Consultant's officers, directors, employees, agents, and subconsultants to the Client or to anyone claiming by, through or under the Client, for any and all claims, losses, costs or damages whatsoever arising out of, resulting from or in any way related to the services under this Agreement from any cause or causes, including but not limited to, the negligence, professional errors or omissions, strict liability or breach of contract or any warranty, express or implied, of the Consultant or the Consultant's officers, directors, employees, agents, and subconsultants, shall not exceed twice the total compensation received by the Consultant under this Agreement or \$50,000, whichever is greater. Higher limits of liability may be negotiated for additional fee. Under no circumstances shall the Consultant be liable for extra costs or other consequences due to changed conditions, or for costs related to the failure of contractors to perform work in accordance with the plans and specifications. This Section 10 is intended solely to limit the remedies available to the Client or those claiming by or through the Client, and nothing in this Section 10 shall require the Client to indemnify the Consultant.

(11) **Mutual Waiver of Consequential Damages.** In no event shall either party be liable to the other for any consequential, incidental, punitive, or indirect damages including but not limited to loss of income or loss of profits.

(12) **Certifications.** The Consultant shall not be required to execute certifications or third-party reliance letters that are inaccurate, that relate to facts of which the Consultant does not have actual knowledge, or that would cause the Consultant to violate applicable rules of professional responsibility.

(13) **Dispute Resolution.** All claims by the Client arising out of this Agreement or its breach shall be submitted first to mediation in accordance with the Construction Industry Mediation Procedures of the American Arbitration Association as a condition precedent to litigation. Any mediation or civil action by Client must be commenced within one year of the accrual of the cause of action asserted but in no event later than allowed by applicable statutes.

(14) **Hazardous Substances and Conditions.** In no event shall Consultant be a custodian, transporter, handler, arranger, contractor, or remediator with respect to hazardous substances and conditions. Consultant's services will be limited to professional analysis, recommendations, and reporting, including, when agreed to, plans and specifications for isolation, removal, or remediation. The Consultant shall notify the Client of hazardous substances or conditions not contemplated in the scope of services of which the Consultant actually becomes aware. Upon such notice by the Consultant, the Consultant may stop affected portions of its services until the hazardous substance or condition is eliminated.

(15) Construction Phase Services.

(a) If the Consultant's services include the preparation of documents to be used for construction and the Consultant is not retained to make periodic site visits, the Client assumes all responsibility for interpretation of the documents and for construction observation, and the Client waives any claims against the Consultant in any way connected thereto.

(b) If the Consultant provides construction phase services, the Consultant shall have no responsibility for any contractor's means, methods, techniques, equipment choice and usage, sequence, schedule, safety programs, or safety practices, nor shall Consultant have any authority or responsibility to stop or direct the work of any contractor. The Consultant's visits will be for the purpose of endeavoring to provide the Client a greater degree of confidence that the completed work of its contractors will generally conform to the construction documents prepared by the Consultant. Consultant neither guarantees the performance of contractors, nor assumes responsibility for any contractor's failure to perform its work in accordance with the contract documents.

(c) The Consultant is not responsible for any duties assigned to the design professional in the construction contract that are not expressly provided for in this Agreement. The Client agrees that each contract with any contractor shall state that the contractor shall be solely responsible for job site safety and for its means and methods; that the contractor shall indemnify the Client and the Consultant for all claims and liability arising out of job site accidents; and that the Client and the Consultant shall be made additional insureds under the contractor's general liability insurance policy.

(16) **No Third-Party Beneficiaries; Assignment and Subcontracting.** This Agreement gives no rights or benefits to anyone other than the Client and the Consultant, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole benefit of the Client and the Consultant. The Client shall not assign or transfer any rights under or interest in this Agreement, or any claim arising out of the performance of services by Consultant, without the written consent of the Consultant. The Consultant reserves the right to augment its staff with subconsultants as it deems appropriate due to project logistics, schedules, or market conditions. If the Consultant exercises this right, the Consultant will maintain the agreed-upon billing rates for services identified in the contract, regardless of whether the services are provided by in-house employees, contract employees, or independent subconsultants.

(17) **Confidentiality.** The Client consents to the use and dissemination by the Consultant of photographs of the project and to the use by the Consultant of facts, data and information obtained by the Consultant in the performance of its services. If, however, any facts, data or information are specifically identified in writing by the Client as confidential, the Consultant shall use reasonable care to maintain the confidentiality of that material.

(18) **Miscellaneous Provisions.** This Agreement is to be governed by the law of the State of Idaho. This Agreement contains the entire and fully integrated agreement between the parties and supersedes all prior and contemporaneous negotiations, representations, agreements or understandings, whether written or oral. Except as provided in Section 1, this Agreement can be supplemented or amended only by a written document executed by both parties. Provided, however, that any conflicting or additional terms on any purchase order issued by the Client shall be void and are hereby expressly rejected by the Consultant. Any provision in this Agreement that is unenforceable shall be ineffective to the extent of such unenforceability without invalidating the remaining provisions. The non-enforcement of any provision by either party shall not constitute a waiver of that provision nor shall it affect the enforceability of that provision or of the remainder of this Agreement.

AGENDA REPORT
February 19, 2013

TO: Ontario City Council
FROM: Tori Barnett, MMC, City Recorder
SUBJECT: **APPOINTMENTS TO BOARDS, COMMITTEES, AND COMMISSIONS**
DATE: February 11, 2013

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 Visitors & Conventions Board is position specific.

Point of note: Ed Sussman has asked to be appointed to EITHER the Airport Board or the Planning Commission.

AIRPORT BOARD: 1 VACANCY

One letter received: Ed Sussman

AUDIT COMMITTEE (COUNCIL MEMBER): 1 VACANCY

One letter received: Dan Jones

BUDGET BOARD: 2 VACANCIES

One letter received: Bob Quinn

GOLF COMMITTEE: 3 VACANCIES

One letter received: Richard Watts

PLANNING COMMISSION: 2 VACANCIES

Two letters received: Ed Sussman and Cindy Graverson

PUBLIC WORKS COMMITTEE: 2 VACANCIES

Three letters received: Tom Frazier, Michael Miller, Ron Commesser, and Gerald Cowperthwait. The Public Works Committee recommends reappointment of Tom Frazier and appointment of Mike Miller.

RECREATION BOARD: 3 VACANCIES

One letter received: Greg Herrera.

V&C BUREAU BOARD: 2 VACANCIES

Two letters received: Bob Quinn and Laura Davis

RECOMMENDATION:

Staff makes no recommendation as these are appointments made by the Council.

PROPOSED MOTION:

I move to appoint Ed Sussman to either the Airport Board or the Planning Commission; Dan Jones as a Councilor to the Audit Committee; Robert Quinn to both the Budget Committee and the V&C Board; Richard Watts to the Golf Committee; Cindy Graverson to the Planning Commission; Tommy Frazier and Michael Miller to the Public Works Committee; Greg Herrera to the Recreation Board; and Laura Davis to the V&C Board. Expiration of terms will coincide with those established by ordinance for each Board.

January 22, 2013

1/22/13

Tori Barnett, MMC
City Recorder
City of Ontario
444 SW 4th St
Ontario, OR 97914

Dear Ms. Barnett,

I would like to be considered for an appointment to any of the following Boards, Commissions and Committees: Airport Committee, Planning Commission, or Visitors & Conventions Board. Although I have been a resident of Ontario for only one year, I bring with me a wealth of experience from my background as a business owner as well as a homeowner's association board member and officer.

I would be happy to discuss further my suitability for any of these vacant positions.

Sincerely yours,

Ed Susman
1216 SW 11th St
Ontario, OR 97914
Phone (303) 548-4659
email to: EASusman@gmail.com

Tori Barnett - Audit committee

From: "djonesocc@centurylink.net" <djonesocc@centurylink.net>
To: "Barnett, Tori" <Tori.Barnett@ontariooregon.org>
Date: 2/8/2013 2:21 PM
Subject: Audit committee
CC: Jay <Jay.Henry@ontariooregon.org>

Tori

I would like to be considered for the vacant position on the Audit Committee. Please let me know if I need to do anything else?

Thank You

Dan Jones

Tori Barnett - Committee Positions

From: Bob Quinn <rmquinn@cableone.net>
To: Tori Barnett <Tori.Barnett@ontariooregon.org>
Date: 1/29/2013 9:34 AM
Subject: Committee Positions

Tori,
I would like serve another term on both the V&C Board and the Budget Committee.
Thanks,

Bob Quinn

--
Robert Quinn
TQ Properties, LLC
1249 Tapadera Ave.
Ontario, OR 97914
(541) 889-8621 Office
(208) 284-5811 Cell
rmquinn@cableone.net

Tori Barnett - Letter of Interest for Golf Committee

From: RICHARD T WATTS <rjwattsgto@msn.com>
To: "tori.barnett@ontariooregon.org" <tori.barnett@ontariooregon.org>
Date: 1/15/2013 1:00 PM
Subject: Letter of Interest for Golf Committee

Ms. Barnett, I would be interested in serving on the Ontario Golf Club Committee should there be an opening. I have been a member of the Golf Club for several years and have assisted in conducting the Junior Golf Camp at the course since 2005. I feel the maintenance and operation of a viable golf course is critical to the City of Ontario. Should there be no golf committee openings I would consider serving on either the Recreation or Visitors & Conventions Boards.

The you very much for your consideration and time.

Richard T. Watts
146 SW 25th Street
Ontario, OR 97914
rjwattsgto@msn.com
541-889-6526

Tori Barnett - Hi Marcy, I'd like to be reappointed as an Ontario Planning Commission member

From: Cindy Graversen <cgraversen2010@hotmail.com>
To: Marcy.Skinner@ontariooregon.org
Date: 1/9/2013 10:48 AM
Subject: Hi Marcy, I'd like to be reappointed as an Ontario Planning Commission member

Hi Marcy, good morning!

I have been on the planning commission, but in talking to you, I found my term had expired in December 2012.

I'd like to be re-appointed as a planning commission member.

I just recently got married, and I am in the process of moving to New Plymouth. However, I feel that I have a vested interest in Ontario because I have eleven rental properties in Ontario. I joined the Ontario Planning Commission because I'm interested in what happens in the area where I live and work.

Please consider reappointing me as an Ontario Planning Commission member.

Thank you,

Cindy McLeran
cgraversen2010@hotmail.com
541-212-7871

P.S. In the future if you have packets for us, you can either scan the complete packet to my email address or contact me and I will swing by your office and pick it up.

1 24/13

Ms. Tori Barnett, Mr. Bob Marshall, Suzanne Skeranec and Chairman Riley Hill

As you are aware I was contemplating not seeking another term on the Public Works Committee but after some arm twisting and conversation I have agreed to serve another term. It seems as though time to serve and spend the time needed to correctly have the kind of input needed has become increasing hard to do. Having said that I do have a sincere desire to see the City of Ontario Public Works Department be in the forefront of management, technology, and city development as I feel it is the "Back Bone" of the City of Ontario.

Respectfully Submitted

A handwritten signature in black ink that reads "Tommy L Frazier". The signature is written in a cursive style with a long, sweeping horizontal stroke at the end.

Tommy L Frazier

Frazier Aviation/MVCI,LLC

tom@mvcillc.com

2/7/13

February 6, 2013

City of Ontario, Oregon
444 S.W. 4th Street
Ontario, Oregon 97914

ATTN: Mayor & Council

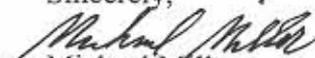
REF: Public Works Committee

Mayor & Council:

I respectfully request to be appointed to serve on the Public Works Committee.

I am a long time Oregonian and have resided in Ontario since 1964. I am local businessman in Ontario for the past 35 years.

Sincerely,


Michael Miller

1-14-2013

Ron Cornmesser
161 SW 18th Street
Ontario, Oregon 97914

Tori Barnett, MMC
City Recorder
City of Ontario
444 SW 4th Street
Ontario, Oregon 97914

Re: Letter of Interest - Public Works Committee

I am responding to the advertisement placed in the Argus Observer for volunteers to service on committees and commissions for the City of Ontario. I am interested in serving on the Public Works Committee.

I recently retired and would like to offer my experience to the community. I have more than twenty years experience in the wastewater treatment industry with a good working knowledge of storm water and drinking water treatment and the federal and state rules applicable to those fields. I have enclosed a brief resume' for your review.

Thank you for considering me for this position. You may contact me at the above address or by phone at 541-881-9977 (home) or 541-709-0350 (cell).


Ron Cornmesser

Resume'

Ronald R Cornmesser

Address: 161 SW 18th Street, Ontario, Oregon 97914

Phone: 541-881-9977 home
541-709-0350 cell

email: ronald.cornmesser@gmail.com

Education:

- High School - Ontario High School, Ontario, Oregon Class of 1965
- Treasure Valley Community College - Ontario, Oregon...AS Biology 1974
- Eastern Oregon State College - LaGrande, Oregon 1975 -1977
- Oregon State University - Corvallis, Oregon BS Zoology 1978
- Ken Kerri Correspondence Courses: Operations of wastewater Treatment Plants, Volume I; Volume II; Operations and Maintenance of Wastewater Collection Systems; Industrial Waste Treatment; Advance Waste Treatment; Treatment of Metal Waste Streams; Pretreatment Facility Inspection.
- EPA Pretreatment 101 Course
- EPA/State and Professional Organization Pretreatment Seminars and Conference at least one per year for 20 years.

Military Service:

- 1965 - 1972 US Navy, Nuclear Power Plant Operator, USS Pollack, SSN-603

Work History:

- 1978 - 1988 - Freelance Photographer & Camera Store Clerk, Ontario, Oregon
- 1988 (6 months) - Chemist, Idaho Bureau of Laboratories, Boise, Idaho

-
- 1988 - 1991 Water Quality Laboratory Supervisor/Wastewater Treatment Plant Assistant Superintendent, City of Caldwell
 - 1991 - 2012 - Technical Direction Group-Industrial Pretreatment Program Technical Manager, Veolia Water North America, 101 W Washington Street, Suite 1400 East, Indianapolis, IN 46204

Skills

Computer Software - Microsoft Word, Excel, Power Point, Outlook

Communication Skills - Technical Writing

Laboratory QA/QA

Technical Writing Skills/Experience

Special Knowledge includes: Industrial Pretreatment Programs; Stormwater Programs; Laboratory QA/QC; Evaluation of Pollutant Impact on Wastewater Treatment Processes; Evaluation of industrial wastewater discharges. Technical Writing includes: Wastewater treatment plant O&M Manuals; Standard Operating Procedures; IP Implementation Procedures; Study Plans, Industrial User Wastewater Discharge Permits; Slug Discharge Control Plans; Petroleum SPCC Plans (Spill, Prevention, Containment, and Control Plans); Industrial Pretreatment Program Manuals; Laboratory QA/QC Manuals; Proposals; Routine and Non-Routine Reports; Enforcement Orders; Training Materials; Pollution Prevention Plans; Stormwater Management Plans; Biosolids Management Plans;

Narrative

When I started work for Veolia Water North America, I requested that instead of a project management career, I requested that I be allowed to specialize in the Municipal Industrial Pretreatment Programs. I was transferred to from Caldwell, Idaho, to Conroe, Texas, as the project manager for an industrial pretreatment program administrator. I not only administered the Conroe project, but I was used to provide technical assistance to Veolia projects across the US. I have had a unique opportunity to work at many different cities and with many different industrial dischargers. I have worked with small industries and very large industries. I have inspected facility of many different industrial sectors. I have evaluated many different treatment plants for the impacts caused by industrial discharges and have worked to resolve many serious problems. I have worked in Veolia's laboratory QA/QC program reviewing laboratory QA/QC reports. As my experience grew I was directed into other programs that are considered outside the company's core services such as, stormwater, pollution prevent, FOG source control programs and most recently, sliver reduction programs for dental practices. I have had the opportunity to develop new Industrial Pretreatment Programs and to upgrade many others. I have worked in the bioassay programs (WET testing) and have participated (supervised) many Toxicity Reduction

Evaluations (TRE) for failure of the bioassays. Since my technical writing skills have improved over the years, I have had the opportunity to write several Wastewater Treatment Plant O&M Manuals. The last manual was an O&M Manual for the management of a lake level from a 100 year old hydroelectric project. I have been involved in numerous enforcement actions against industrial dischargers. I have performed many IP Program audits for in-house audits of Veolia projects, and have attended many PCI and IP Audits by State, EPA and/or Private Contractors. I have been involved in preparing a response to a regulatory agency for a Veolia project that experienced permit violations. I have worked with the projects to develop plans to resolve compliance issued quickly and economically.

To Whom It May Concern:

My name is Gerald Cowperthwait and I was informed that you have a spot on the Public Works Committee. I would be interested in filling that vacancy.

I am the Maintenance Superintendent at Heinz here in Ontario and have worked for them for over 30 years.

Below is my address and phone number.

Gerald Cowperthwait
6985 Denver Rd
Fruitland, Idaho 83619

Phone number 208-740-4151.

Thank you for considering me for this vacancy.

Gerald Cowperthwait

From: Aurelio Herrera <agherrera70@hotmail.com>
To: <tori.barnett@ontariooregon.org>
Date: 1/15/2013 4:17 PM
Subject: Rec. Board

I was told my term on the rec board is up. I would like to continue participating on the rec board. I have coached and continue to coach rec teams. I also would like help keep recreational opportunities for kids available and expand those opportunities. I have enjoyed my time on the board and would like to continue.

Thanks
Greg Herrera

Spoke with Laura Davis on Thursday, February 7, 2013. Mrs. Davis has requested reappointment to the Visitors & Conventions Board.

TB

PUBLIC HEARING AGENDA REPORT

February 19, 2013

TO: Mayor and City Council

FROM: Marcy Skinner, Planning & Zoning Technician

THROUGH: Jay Henry, City Manager

SUBJECT: ORDINANCE #2676-2013: AN ORDINANCE ANNEXING APPROXIMATELY 257 ACRES OF LAND NORTHEAST OF THE INTERSECTION OF HIGHWAY 201 AND SW 18TH AVENUE, ASSIGNING CITY ZONING, FIRST AND SECOND READINGS BY TITLE ONLY, AND DECLARING AN EMERGENCY

DATE: February 11, 2013

SUMMARY:

Attached is the following document:

- Ordinance #2676-2013

PREVIOUS COUNCIL ACTION:

02-11-2013 Council passed Ordinance 2674-2013 amending the City of Ontario's Comprehensive Plan and established a Master Plan of development for TVCC.

BACKGROUND:

On February 11, 2013 the Planning Commission recommended and the City Council moved to approve the Comprehensive Plan Amendment package as set forth in Action 2012-12-15CPAMD and further described in staff report. This package included:

- (a) Expansion of the Ontario Urban Growth Boundary (UGA) and Comp Plan Map as shown in Exhibit 1- Map 4.
- (b) Amendment of the Comprehensive Plan text (including the 2007 Urbanization Study as indicated in Exhibit 1- Appendices A and B).
- (c) Amendment of the Ontario Transportation System Plan (TSP) and the Highway 201 Corridor Refinement Plan as indicated in Exhibit 1-Appendix C and supported by Appendix D.

RECOMMENDATION:

Staff recommends:

- (a) Annexation of the City of Ontario of Tax Lot 2300 (Map 18S47E08D) and Tax Lots 3501, 3500, and 3600 (Map 18S47E08) as shown on Exhibit 1-Map 5 and supported by Exhibit 1- Appendices E and F; and

- (b) Application of the City Industrial Business Park (IBP) zone to the 200-acre industrial site and a City Low Density Residential Zone (RS-50) to intervening property to the north as shown in Exhibit 1-Map 5.

PROPOSED MOTIONS:

- 1) I move that the City Council declare an Emergency for the passage of Ordinance #2676-2013.
- 2) I move that the City Council adopt Ordinance #2676-2013, based on the information, findings and facts as set forth in Action 2012-12-15CPAMD and the Planning Commission & City Council staff report, to **APPROVE** the request to annex and rezone those properties identified in Exhibit 1-Map 5 and further described in Exhibit F, on First Reading by Title Only, **AND DECLARING AN EMERGENCY**.
- 3) I move that the City Council adopt Ordinance #2676-2013, based on the information, findings and facts as set forth in Action 2012-12-15CPAMD and the Planning Commission & City Council staff report, to **APPROVE** the request to annex and rezone those properties identified in Exhibit 1-Map 5 and further described in Exhibit F, on Second and Final Reading by Title Only, **AND DECLARING AN EMERGENCY**.

ORDINANCE #2676-2013

AN ORDINANCE ANNEXING APPROXIMATELY 257 ACRES OF LAND NORTHEAST OF THE INTERSECTION OF HIGHWAY 201 AND SW 18TH AVENUE, ASSIGNING CITY ZONING, AND DECLARING AN EMERGENCY

- WHEREAS:** Each of the identified property owners has signed an annexation agreement with the City of Ontario as documented in Exhibit 1 – Appendix F; and
- WHEREAS:** The City Council conditionally approved an expansion of the Ontario Urban Growth Area and designation of these properties for urban Industrial, Commercial or Residential use in Ordinance No. 2674-2013; and
- WHEREAS:** The Comprehensive Plan amendment package approved by the Council under Ordinance No. 2674-2013 shall become effective upon co-adoption of relevant comprehensive plan amendments by the Malheur County Court; and
- WHEREAS:** The City is able to provide necessary sewer and water utilities to the subject properties within a reasonable period following annexation as documented in (Exhibit 1 – Appendix E);
- WHEREAS:** Development of the subject properties as allowed under City zoning will not result in significant impacts to state transportation facilities, as documented in the Transportation Impact Study prepared by Lancaster Engineering (Exhibit 1 – Appendix D); and
- WHEREAS:** To implement the plan amendment proposal to provide an urban industrial site to meet the needs of mega data centers, it is necessary for approximately 200 acres to be annexed and classified with the Industrial - Business Park zone in accord with the City of Ontario Municipal Code, Oregon Revised Statute and Oregon Administrative Rule provisions for annexation and rezoning; and
- WHEREAS:** To implement the plan amendment proposal for the Saito-Mathews property it is necessary for the entirety of this property to be annexed and classified with the Residential RS-50 (southern 39.3 acres) and Commercial C-2 zone (northern 17.8 acres) in accord with the City of Ontario Municipal Code, Oregon Revised Statute and Oregon Administrative Rule provisions for annexation and rezoning; and

WHEREAS: Hearings were held before the Ontario Planning Commission and City Council on February 11, 2013 in a special joint public hearing after legal notice of this hearing was given to affected property owners, affected agencies; and, to the local newspaper and electronic media, and otherwise as required by Sections 106-03 and 106-15 of the Ontario Municipal Code; and

WHEREAS: The hearing for annexation and rezoning of properties identified in this ordinance was continued until February 19, 2013; and

WHEREAS: At the conclusion of the February 19, 2013 public hearing, the City Council, based upon the Planning Commission's favorable recommendation and upon a motion duly made and seconded, voted to approve the request as set forth above based on decision criteria, findings of fact and conclusions of law as set forth in this order and exhibits attached hereto by this reference; and

WHEREAS: In order to meet the short timetable set by potential developers and the competition with other cities to attract data centers, it is necessary for the economic development of the City for the ordinance to go into effect in less than 30 days upon approval by the Malheur County Court.

WHEREAS: The City Council made the following findings of fact and adopted the following conclusions of law:

FINDINGS OF FACT:

- 1) The City Council adopts the findings and conclusion in Exhibit 1, including Appendices D, E and F and Map 5; and Exhibit 3, Planning Staff Report, the exhibits attached hereto, testimony received, and the findings made by the Planning Commission as the basis for this decision; and
- 2) The City Council accepts the Planning Commission's concluding recommendation on the subject proposal.

CONCLUSIONS OF LAW

1. The burden of proof is upon the applicant in proving the proposal fully complies with applicable Code criteria, Oregon State Statutes and Oregon Administrative Rules.
2. The City Council finds that above-mentioned exhibits and evidence and testimony presented at the hearings, address relevant comprehensive plan policies, standards of the Municipal Code, Statewide Planning Goals, Oregon Revised Statute and Oregon Administrative Rules sufficiently to support the burden of proof needed to approve the proposed amendment.

THE CITY OF ONTARIO ORDAINS AS FOLLOWS:

Section 1. The City of Ontario approves the portion of Land Use Action **2012-12-15CPAMD** filed by City of Ontario to implement annexation agreements with property owners whose lands are the subject of this action. The properties identified in Exhibit 1-Map 5 and further described in Attachment F are hereby annexed to the City and assigned the following zones:

<u>Ref #</u>	<u>Map & Tax lot#</u>	<u>Acres</u>	<u>Owner</u>	<u>City Zone</u>
8261	18S4708 #3500	23.7	Yanagawa	Industrial – Business Park
8262	18S4708 #3600	87.5	King	Industrial – Business Park
15483	18S4708 #3501	39.0	Hasebe	Industrial – Business Park
15483	18S4708 #3501	49.01	Hasebe	Industrial – Business Park
8242	18S4708 #2300	39.3	Saito-Mathews	Residential – RS-50 (Southern portion)
8242	18S4708 #2300	17.8	Saito-Mathews	Commercial – C-2 (Northern portion)

Section 2. An emergency having been declared, this ordinance shall become effective upon co-adoption by the Malheur County Court of the Comprehensive Plan amendment package for the subject properties, approved by the City Council as a result of Ordinance No. 2676-2013.

PASSED AND ADOPTED by the Common Council of the City of Ontario this ____ day of _____, 2013, by the following vote:

AYES:

NAYS:

ABSENT:

APPROVED by the Mayor this ____ day of _____, 2013.

ATTEST

Joe Dominick, Mayor

Tori Barnett, MMC, City Recorder