

AGENDA
CITY COUNCIL - CITY OF ONTARIO, OREGON
March 1, 2010, 7:00 p.m., M.T.

1) Call to order

A) Roll Call: Norm Crume ___ Charlotte Fugate ___ John Gaskill ___
Susann Mills ___ David Sullivan ___ Ron Verini ___
Joe Dominick ___

2) Pledge of Allegiance

This Agenda was sent to the media on Wednesday, February 24, 2010, and a study session was held on Thursday, February 25, 2010. Copies of the Agenda are available at the City Hall Customer Service Counter and on the city's website at www.ontariooregon.org.

3) Motion to adopt the entire agenda

4) Consent Agenda: Motion Action Approving Consent Agenda Items

A) Approval of Minutes of Regular Meeting of 02/16/10 1-3
B) Bid Award: Chipseal Oil 4-5
C) Indigent Care Services Agreement Addendum: City / Holy Rosary Medical Center 27-31
D) Resolution #2010-112: Engineering Design for North Oregon Street, Phase 2 32-46
E) Approval of the Bills

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

6) Presentation: Ford Family Foundation for Laxon/Rotary Park

7) Old Business:

A) ~~Ordinance #2638-2010: Amend OMC 4-5 Regarding Maintenance Standards for Buildings; Defining Dangerous Buildings; and Revising Penalties and Procedures for Enforcement of Maintenance Standards in Compliance with Senate Bill 915 (Final Reading) Tabled to 3/18/10 6-22~~

8) New Business:

A) Appointment(s) to Business Loan Fund Committee 23-26
B) Resolution #2010-113: Enterprise Zone Redesignation 47-64
C) Resolution #2010-114: Receive/Expend American Recovery and Reinvestment Act Energy Efficiency and Conservation Block Grant from Oregon Department of Energy: \$728,000 65-92
D) Ordinance #2639-2010: Inland Development Franchise Agreement (1st Reading) 93-108

9) Topics for Discussion: Thursday

A) SREDA Update: See Hand-Out
B) Lawn Parking / Junk Vehicles Discussion

10) Correspondence, Comments and Ex-Officio Reports

11) Adjourn

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

The City of Ontario does not discriminate in providing access to its programs, services and activities on the basis of race, color, religion, ancestry, national origin, political affiliation, sex, age, marital status, physical or mental disability, or any other inappropriate reason prohibited by law or policy of the state or federal government. Should a person need special accommodations or interpretation services, contact the City at 889-7684 at least one working day prior to the need for services and every reasonable effort to accommodate the need will be made. T.D.D. available by calling 889-7266.

**COUNCIL MEETING MINUTES
February 16, 2010**

The regular meeting of the Ontario City Council was called to order by Mayor Joe Dominick at 7:00 p.m. on Tuesday, February 16, 2010, in the Council Chambers of City Hall. Council members present were Norm Crume, Joe Dominick, Charlotte Fugate, John Gaskill, Susann Mills, David Sullivan and Ron Verini.

Members of staff present were Henry Lawrence, Tori Barnett, Chuck Mickelson, Larry Sullivan and camera operator Delaney Kee.

Norm Crume led everyone in the Pledge of Allegiance.

Request to move items B (Ordinance #2638-2010) and C (Approval of the Bills) from Consent Agenda to New Business.

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

CONSENT AGENDA

Charlotte Fugate moved, seconded by Norm Crume, to approve Consent Agenda Item A: Approval of Minutes of regular meeting of 02/01/2010. Roll call vote: Crume-yes; Fugate-yes; Gaskill-yes; Mills-yes; Sullivan-yes; Verini-yes; Dominick-yes. Motion carried 7/0/0.

NEW BUSINESS

Ordinance #2638-2010: Amend OMC 4-5 Regarding Maintenance Standards for Buildings: Defining Dangerous Buildings; and Revising Penalties and Procedures for Enforcement of Maintenance Standards in Compliance with Senate Bill 915 (Final Reading)

Larry Sullivan, City Attorney, presented an amended agenda report, which incorporated the changes requested by Council at the February 11th study session. It included a provision that would allow the City to recapture more costs in the event a demolition of a building was ordered, and the City incurred costs in connection with the demolition.

Mayor Dominick stated there were still questions related to the proposed ordinance, and he did not feel there had been ample time to review it all. He recommended tabling the ordinance.

John Gaskill moved, seconded by Susann Mills, to table the action on Ordinance #2638-2010 to the next study session (February 25, 2010). Roll call vote: Crume-yes; Fugate-yes; Gaskill-yes; Mills-yes; Sullivan-yes; Verini-yes; Dominick-yes. Motion carried 7/0/0.

Approval of the Bills

Norm Crume recused himself from voting as his business would be receiving payment if approved.

John Gaskill moved, seconded by Susann Mills, to approve the bills. Roll call vote: Crume-abstain; Fugate-yes; Gaskill-yes; Mills-yes; Sullivan-yes; Verini-yes; Dominick-yes. Motion carried 6/0/0/1.

Resolution #2010-110: Reallocation of Expenditures within the Sewer Fund for Eliminating Storm Discharge into the Sanitary Sewer System in Southwest Ontario

Chuck Mickelson, Public Works Director, stated the original intention had been that Ontario have a separate sanitary sewer system and a separate storm sewer system. The sanitary sewer system was not designed to transport or treat storm water. Unfortunately, there were areas in Ontario where that separation had not occurred and because storm sewers did not exist, decisions were made to connect storm water to sanitary sewer lines, which did exist in those areas.

In the Sanitary Sewer Master Plan, October 2001, Section 3.3, Infiltration and Inflow, there were various locations shown where storm water discharged to the sanitary sewer system. As stated in the Sewer Master Plan, the City would continue the program to identify, and where feasible, remove inflow sources.

In the area just east of Treasure Valley Community College campus on SW 9th Avenue, SW 5th Street, and SW 4th Street, there were ten storm drainage inlets discharging to the sanitary sewer system. There were also two storm drain inlets in the alley on SW 8th Avenue just west of SW 4th Street that discharged to the sanitary sewer. Those two areas were also within the 2010 Chip Seal area. Operations staff recommended eliminating those storm drain inlets from discharging to the sanitary sewer before those streets were chip sealed. Staff proposed to install a storm drainage system that discharged directly into the existing storm drainage pipe. By installing a storm drainage mainline system in that area, all twelve inlets could be eliminated from discharging into the sanitary sewer system. By eliminating the storm water from discharging into the sanitary sewer system, the City would see savings by not having to treat the storm water at the Wastewater Treatment Plant. This would also result in increased capacity at the Wastewater Treatment Plant for future wastewater treatment needs.

Staff was requesting the use of Sewer Fund Contingency dollars to pay for the purchase of materials to complete the project. It was proposed that existing staff complete the work of removing storm sewer from being discharged into sanitary sewer lines. The project cost was proposed to be \$29,000 and it was requested to be funded by a reduction of Sewer Fund Contingency. Labor for the project would be provided by existing City staff, and would be absorbed by the fund and department where labor costs were already budgeted.

Susann Mills moved, seconded by Ron Verini, to adopt Resolution #2010-110, A RESOLUTION AUTHORIZING A REALLOCATION OF EXPENDITURES WITHIN THE SEWER FUND FOR ELIMINATING STORM DISCHARGE INTO THE SANITARY SEWER SYSTEM IN SOUTHWEST ONTARIO. Roll call vote: Crume-yes; Fugate-yes; Gaskill-yes; Mills-yes; Sullivan-yes; Verini-yes; Dominick-yes. Motion carried 7/0/0.

Resolution #2010-111: Reallocation of Expenditures within the Sewer and Storm Sewer Funds, Creating an Interfund Loan for an Emergency Storm Drainage Repair

Chuck Mickelson, Public Works Director, stated the existing storm drain line that ran from the TVCC campus has been in place since the 1960's. This line served a large drainage area and was vital for the storm water disposal for much of the southwest portion of Ontario. The line also functioned as a farm irrigation drainage system for the area south and west of town. This failing storm drain line was found while performing maintenance work (cleaning) on the storm drainage line just north of the Four Rivers Cultural Center. Through CCTV work, it was discovered that the existing 24" clay pipe storm drain line had failed for about 140 feet. Various options to repair were reviewed and the most economical option for the required repairs was to have the City's existing staff perform the construction work. Project costs would include PVC pipe materials, equipment rental, and an additional trench box. Staff investigated the storm drain piping systems adjacent to the problem area and this section of pipe was the only area found to be failing. Staff was requesting \$12,000 to purchase materials and rent equipment to make emergency repairs to a section of 24" Storm Drainage Mainline on SW 7th Street, between SW 4th Avenue and SW 5th Avenue.

The City Council could choose not to fund this work, although doing nothing could result in the street over this section of failing pipe to collapse and cause a traffic hazard. This would place the City in a position of liability for the repairs of citizen's property (vehicles) and/or personal injury. The City Council could also opt to put this project out to bid for private contractors to complete the work, although doing so could result in higher project costs. Or, the City Council could direct staff to borrow project funds from a traditional financing source and not utilize the interfund loan between the Sewer and Storm Sewer Funds during the 2009-11 Biennial Budget.

The overall approved Storm Drain budget for FY 09-11 did not include funding for this emergency repair work and there was virtually no operating contingency available in the Storm Sewer Fund to reallocate. The City Council could approve an interfund loan to complete the project, a total of \$12,000, between the City's Sewer Fund and the City's Storm Sewer Fund to create a loan revenue and a capital project expense to complete the emergency project. The interfund loan action would require that the loan funds be paid back to the Sewer Fund at the close of the biennium, June 30, 2011. If approved by the Council, once loan

proceeds were collected from the Sewer Fund, the City could pay off the interfund loan with new Storm Sewer revenues or, more likely, with a traditional financing that would allow for a longer repayment period for the Storm Sewer Fund. The City Council could alternatively choose to direct staff to locate outside financing to complete this project.

Susann Mills moved, seconded by John Gaskill, to adopt Resolution #2010-111, A RESOLUTION AUTHORIZING A REALLOCATION OF EXPENDITURES WITHIN THE SEWER AND STORM SEWER FUNDS, CREATING AN INTERFUND LOAN FOR AN EMERGENCY STORM DRAINAGE REPAIR. Roll call vote: Crume-yes; Fugate-yes; Gaskill-yes; Mills-yes; Sullivan-yes; Verini-yes; Dominick-yes. Motion carried 7/0/0.

CORRESPONDENCE, COMMENTS, AND EX-OFFICIO REPORTS

- Councilor Gaskill informed everyone of the passing of long-time Ontario resident Harry Hoch. He passed away over the prior week-end. Among other things, Mr. Hoch had been a board member at the Cultural Center, and his memorial service would be held there on Saturday, February 20th, beginning at 11:00 a.m.
- Councilor Sullivan stated they were moving forward with the golf course renovations, including significant work on the outside.
- Tori Barnett stated she had distributed 2 additional letters of interest for appointment to the Business Loan Fund, bringing the total letters to 3. There were currently 3 open positions on the Committee, all for citizens at large.
- Mayor Dominick reminded everyone that the Sister City delegation would be arriving in Ontario March 19th. Host homes were still needed, so please contact the Mayor if interested.

ADJOURN

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

Joe Dominick, Mayor

ATTEST:

Tori Barnett, MMC, City Recorder

CONSENT AGENDA

March 1, 2010

TO: Mayor and City Council

FROM: John Bishop, Operations Manager

THROUGH: Henry Lawrence, City Manager
Charles R Mickelson, Public Works Director

SUBJECT: BID AWARD: CHIPSEAL OIL

DATE: February 22, 2010

SUMMARY:

Attached is the following document:

- Chipseal Oil Bids

Bids were opened on February 3, 2010, for the purchase of CRS-2R and QuickSeal oil to be used in the 2010 chipseal project. There are only two local businesses who supply this type of oil and both companies submitted bids. The bid amounts were as follows for approximately 262 ton of CRS-2R and 35 ton of QuickSeal. Spreading charges were also requested and received:

BUSINESS	CRS-2R	QUICK SET	SPREADING CHARGE
IDAHO ASPHALT SUPPLY (P.O. BOX 966, NAMPA)	\$525.00/TON	\$413.00/TON	\$18.00/TON
WESTERN STATES ASPHALT (4304 GEKELER LANE, BOISE)	\$565.00/TON	\$410.00/TON	\$18.00/TON

PREVIOUS COUNCIL ACTION:

June 15, 2009 Council approved the Biennial Budget for 2009-2010, which includes funds budgeted to purchase CRS-2R oil for the chipseal base and finish courses and Quick Set Oil for the fog coat.

BACKGROUND:

In an effort to preserve the streets in the City, the Street Department has taken on the project of chipsealing the streets. This year will be the final year of the ten-year chipseal cycle. This process requires CRS-2R and Quick Set oil plus 5/8" and 3/8" chips.

FINANCIAL IMPLICATIONS:

Project	Bid Amount	FY 09-11 Budget
STREET SEALING – Chip Seal	Approx. \$157,351	\$172,460*

*Total Budget Amount: \$195,000 (oil: \$172,460; chips: \$22,540)

RECOMMENDATION:

Staff recommends the Council approve the bid award to Idaho Asphalt Supply, Inc., the apparent lowest, responsive and responsible bidder, to supply CRS-2R & QuickSeal oil for fiscal year 2010.

CHIPSEAL OIL BIDS					
Present: Bret Turner & Karen Mowry				Opened 3:00 pm 2/3/10	
	Idaho Asphalt	Western States Asphalt	Estimated Tons	Idaho Asphalt	Western States Asphalt
CRS-2R	\$525	\$565	262	\$137,550	\$148,030
Quick Seal (w/freight)	\$413	\$410	35	\$14,455	\$14,350
Spreading Charge	\$18/ton or \$150/hr	\$19/ton or \$150/hr	297	\$5,346	\$5,643
Overnight hold	\$350/night	\$250/night			
Restocking fee	\$250	\$300			
				\$ 157,351	\$ 168,023

AGENDA REPORT
March 1, 2010

TO: Mayor and City Council

FROM: Tori Barnett, MMC, City Recorder

THROUGH: Henry Lawrence, City Manager

SUBJECT: **INDIGENT CARE SERVICES AGREEMENT – AMENDMENT #1**
CITY OF ONTARIO – HOLY ROSARY MEDICAL CENTER

DATE: February 22, 2010

SUMMARY:

Attached are the following documents:

- Current Indigent Care Services Agreement, dated October 15, 2007
- Amendment to Agreement

The City of Ontario entered into an Indigent Care Services Agreement with Holy Rosary Medical Center in October 2007. The duration of the Agreement was set at 3 years, ending on February 28, 2010. Holy Rosary Medical Center has presented an Amendment to the Agreement, requesting the continuation of the Agreement for an additional 3 years.

New terminology in the Agreement would automatically renew for additional 3-year terms unless one party notifies the other party of the intent not to renew at least ninety days prior to the expiration of the current term.

PREVIOUS COUNCIL ACTION:

10/15/2007 Council entered into the Indigent Care Services Agreement.

STAFF RECOMMENDATION:

Staff recommends the Council authorize the Mayor to sign the Agreement.

PROPOSED MOTION:

I move that the City Council authorize the Mayor to execute the Addendum to the current Indigent Care Services Agreement with Holy Rosary Medical Center.

INDIGENT CARE SERVICES AGREEMENT

This INDIGNET CARE SERVICES AGREEMENT ("Agreement") is made and entered into by and between Dominican Sisters of Ontario, Inc., dba Holy Rosary Medical Center, an Oregon nonprofit corporation ("HRMC") and City of Ontario, ("City"), and is dated and effective as of the Effective Date set forth in Section 3.1 below.

RECITALS

- A. HRMC is experienced in the provision of general acute care and outpatient hospital services.
- B. City desires to ensure adequate healthcare coverage to its citizens who have no means of health care coverage.

NOW, THEREFORE, in consideration of the mutual covenants and obligations set forth below, the parties hereby agree as follows:

1. HRMC's Responsibilities

- 1.1 HRMC will provide acute care and emergent health care services to persons resident within the Ontario City limits. Patients treated under this agreement will have no coverage under commercial insurance, Medicare, Medicaid, Workers Compensation, or any other employer sponsored health plan, private health plan, or government assistance for health care benefits.
- 1.2 HRMC will offer its Charity Care program to individuals qualifying under this program.
- 1.3 HRMC will have the right to pursue collection of accounts receivable against all individuals who do not otherwise qualify for the Charity Care program or avail themselves of its benefits.

2. City's Responsibilities.

- 2.1 City agrees to work cooperatively with HRMC in the delivery of health care services to the residents of the City of Ontario.
- 2.2 City agrees to support HRMC's efforts to qualify for the Section 340B of the Public Health Service Act.

3. Term and Termination.

- 3.1 Term. Unless terminated earlier pursuant to the provisions of this Agreement, the term of this Agreement shall be for a period of three (3) years beginning on March 1, 2007 (the "Effective Date") and ending on February 28, 2010.

- 3.2.1 HRMC or City may terminate this Agreement at any time by providing the other party with 30 days written notice of their intent to terminate.

- 4. Force Majeure and Liability. If HRMC is rendered unable, wholly or in part, by force majeure (as hereinafter defined), to carry out its obligations under this Agreement, then upon prompt written notice of the force majeure to City, the obligations of HRMC, so far as they are affected by the force majeure, shall be suspended during but no longer than the continuance of the force majeure. The term "force majeure" shall mean an act of God, strike, lockout, or other industrial disturbance, act of the public enemy, war, blockade, public riot, lightning, earthquake, fire, storm, flood, explosion, governmental restraint, adverse weather conditions and any other cause whether of the kind specifically enumerated above or otherwise, which directly precludes HRMC's performance hereunder and is not reasonably within the control of HRMC. HRMC SHALL NOT BE

LIABLE FOR CONSEQUENTIAL, INCIDENTAL OR SPECIAL ACTS WHICH ARE BEYOND ITS ABILITY TO CONTROL.

5. Confidentiality and Disclosure of Patient Information. The parties anticipate, and warrant one to the other, full compliance with applicable requirements under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"). To the extent full compliance can be obtained through appropriate notices to patients, the parties agree to cooperate and coordinate the preparation and dissemination of notices compliant under HIPAA. The parties acknowledge that they are each covered entities under the Administrative Simplification provisions of HIPAA, including the final Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and 164 (the "Privacy Regulations") and agree to each of the terms set forth in Attachment A. In the event the parties are also determined to be business associates of one another under HIPAA, or in the event GSH determines that the parties should engage in an Organized Health Care Arrangement or other similar arrangement under HIPAA, the parties will also enter into such other or additional contractual provisions that may be required under HIPAA with respect thereto. In any event, each party shall fully comply with all requirements under and shall fully cooperate with the other party to insure HIPAA compliance. This provision shall survive the expiration or termination of this Agreement for any reason. This Agreement is confidential and may only be disclosed to the parties hereto, government agencies, and the parties' insurance carriers, accountants, and lawyers, or as agreed upon by the parties hereto in writing, or as required by law. Each party shall treat all nonpublic information obtained as part of this Agreement as confidential and shall not, without written authorization from the other party, release or share such information obtained from a party with any third party, except as may be required by law.

6. Restrictions on Transfers. No party shall assign, transfer, convey, sell, encumber, mortgage, hypothecate, pledge or lease all or any part of its rights or interests under this Agreement without the written consent of the other party.

7. Indemnification. Each party (the "Indemnifying Party") shall forever defend, indemnify and hold the other party and its directors, officers, employees, agents, and representatives (the "Indemnified Party") harmless from and against, any and all liabilities that might be asserted by a third-party against the Indemnified Party together with any and all costs, expenses, and damages, including reasonable attorneys' fees and costs (collectively, "Damages"), which are wrongful act of the Indemnifying Party, its director, officers, employees, agents and representatives. Damages shall not include any amount resulting from the Indemnified Party's (i) negligent acts or omissions, intentional acts or wrongful acts or (ii) breach or failure of performance of this Agreement. The indemnification obligation stated herein shall survive the termination or expiration of this Agreement.

8. Successors and Assigns. This Agreement shall not be assigned by either party without the express prior written consent of the other party. Subject to the foregoing restriction on assignment, this Agreement shall be binding upon and shall inure to the benefit of the parties and their respective successors, assigns, representatives, employees, agents, directors and officers.

9. Notices. All notices to be given by one party to the other pursuant to this Agreement shall be delivered in person, transferred by facsimile or deposited in the United States mail, postage prepaid, by certified or registered mail, return receipt requested, and addressed or faxed as follows:

CITY: City of Ontario
444 S W 4TH
Ontario, Oregon 97914
Attention: Mayor
Facsimile

HRMC: Holy Rosary Medical Center
351 SW Ninth Street
Ontario, OR 97914
Attention: CFO
Facsimile: 541-881-7184

Notices shall be deemed to have been given and delivered (a) upon receipt if hand delivered or transferred by facsimile, or (b) if mailed, three (3) days after being properly mailed. Written confirmation from the sender's facsimile transmission¹ equipment that the facsimile transmission has been successfully completed to the recipient's correct facsimile telephone number shall be conclusive evidence of receipt of a facsimile notice; the postmark affixed by the United States Postal Service shall be conclusive evidence of the date of mailing. Any party, by written notice to the other(s) as described above, may alter the address or facsimile telephone number for receipt by it and its agents of written notices hereunder.

10. Attorneys' Fees. In any action at law or in equity or in any arbitration to enforce any of the provisions or rights under this Agreement, the unsuccessful party in such litigation or arbitration, as determined by the court or arbitrator(s) in a final judgment or decree, shall pay the successful party or parties all costs, expenses and reasonable attorneys' fees incurred therein by such party or parties (including, without limitation, such costs, expenses and fees on any appeals), and if such successful party shall recover judgment in any such action or proceeding, such costs, expenses and attorneys' fees shall be included in, as part of, such judgment.

11. Corporate Authority; Binding Signatures. Each of the individuals executing this Agreement on behalf of one of the parties, represent and warrant that they are an authorized signatory of the entity for which they are signing and have sufficient corporate authority to execute this Agreement.

12. Interpretation. The titles of the sections herein have been inserted as a matter of convenience of reference only and shall not control or affect the meaning or construction of any of the terms and provisions hereof. As used in this Agreement, the plural shall include the singular and the singular shall include the plural whenever appropriate.

13. Governing Law. This Agreement shall be governed by and construed and interpreted in accordance with the laws of the State of Oregon.

IN WITNESS OF THEIR AGREEMENT, the parties have executed this Agreement as of the Effective Date.

City:

By:  MAYOR

Date: 10/15/07

HRMC:

Dominican Sisters of Ontario, Inc. dba Holy Rosary Medical Center

By: 

Date: 10/3/2007

AMENDMENT TO INDIGENT CARE SERVICES AGREEMENT

This Amendment to that certain Indigent Care Services Agreement by and between Holy Rosary Medical Center, an Oregon nonprofit corporation ("Hospital") and City of Ontario ("City") is made effective on this 1st day of March, 2010 (the "Effective Date") by and between Hospital and City.

WHEREAS, Hospital and City entered into an Indigent Care Services Agreement effective March 1, 2007 (the "Agreement"), under which Hospital agreed to provide health care services to City residents, and City agreed to support Hospital's efforts to qualify for the benefits available under Section 340B of the Public Health Service Act.

WHEREAS, the parties desire to extend the term of the agreement for an additional 3-year term.

NOW, THEREFORE, in consideration of the foregoing premises and the following covenants and agreements, the parties agree as follows:

1. **Extension of Term.** Section 3.1 of the Agreement shall be deleted in its entirety and replaced with the following:

Term. Unless earlier terminated as set forth in this Agreement, this Agreement shall be for a term of three (3) year(s), commencing on March 1, 2010 (the "Effective Date"). Thereafter, this Agreement shall automatically renew for additional 3-year terms unless one party notifies the other party of an intent not to renew at least ninety (90) days prior to the expiration of the then-current term.

2. **Applicability of Remainder of Agreement.** Except as specifically amended hereby, the Agreement shall remain in full force and effect, enforceable in accordance with its terms.

IN WITNESS WHEREOF, Hospital and City have caused this Amendment to be signed and executed as of the day and year first above written.

HOSPITAL

By Mark Dalley
Mark Dalley, President and CEO

Date 2-5-2010

CITY OF ONTARIO

By _____

Title _____

Date _____

AGENDA REPORT
March 1, 2010

TO: Mayor and City Council

FROM: Chuck Mickelson, Public Works Director

THROUGH: Henry Lawrence, City Manager

SUBJECT: **RESOLUTION #2010-112: ENGINEERING DESIGN FOR NORTH OREGON STREET, PHASE 2**

DATE: February 22, 2010

SUMMARY:

Attached are the following documents:

- Resolution #2010-112
- Agreement

This resolution approves an agreement with Anderson-Perry and Associates of La Grande, Oregon for the preparation of plans, specifications and estimates for the rehabilitation/reconstruction of North Oregon Street Phase 2 from NW 8th Avenue to the proposed realignment of NW Washington. This roadway is in need of reconstruction and completion of these plans will enable the City to be in a position to take advantage of potential state or federal funding.

BACKGROUND:

North Oregon Street was formerly part of the Oregon State Highway System known as Olds Ferry-Ontario Highway, State Highway No. 455. As a result of negotiations between ODOT and the City, this section of North Oregon was transferred to Ontario in 2001 via ODOT agreement number 697 and City resolution number 2001-107.

Ontario was successful in securing ARRA money for Phase 1 of North Oregon Street in 2009. The City Council authorized the design of the project before construction funding was secured. This vision by the City Council placed Ontario in a position to receive nearly \$2M for the reconstruction of the first phase. Design and construction was completed in 2009.

For the Phase 2 project, four firms were forwarded copies of the "Request for Qualifications" and an ad was placed in Argus Observer as required by Oregon statute. Several additional RFQ's were requested by other firms who saw the ad.

Staff received formal responses from Anderson-Perry of La Grande, CH2M-Hill of Boise, and Holladay Engineers of Payette. Chuck Mickelson, Bob Walker, Bret Turner, Norm Crume, and Sean Maloney of ODOT reviewed the proposals. Each of the firms presented an excellent proposal and it was obvious that each of them could be successful in preparing the plans and specifications. However, the ranking of each firm was based on schedule, resumes (qualifications of the personnel to be assigned to the project), references, similar projects completed, and locations where the work will be completed. The committee unanimously selected Anderson-Perry as the highest ranked firm based on their proposal.

The project will be designed to Federal Highway Administration and ODOT standards with the necessary environmental clearances. Anderson-Perry has significant experience is preparing plans and specifications to these standards and performed very effectively in the Phase 1 project. CK3 will conduct the surveying for the project.

The proposed resolution approves the agreement with Anderson-Perry in the lump sum amount of \$144,250. This project was budgeted as STR-9 in the 2009-2011 budget. Funds are available from the \$490,000 contribution ODOT made when the city agreed to take over the state highways through Ontario.

ALTERNATIVE:

The project needs to be designed whether we are successful or not in securing funding during this budget period. The City Council could choose not to approve this agreement with Anderson-Perry and nothing would be done to prepare for the rebuilding of this section of N Oregon.

FINANCIAL IMPLICATIONS:

This project was budgeted as STR-9 in the amount of \$150,000. When this project is approved for construction funding there will be need to be an amendment to this agreement "Services during construction and inspection."

RECOMMENDATION:

Staff recommends approval of Resolution Number 2010-112.

PROPOSED MOTION:

I move the City Council adopt Resolution No. 2010-112, **A RESOLUTION APPROVING AN AGREEMENT BETWEEN THE CITY OF ONTARIO, OREGON AND ANDERSON-PERRY AND ASSOCIATES, INCORPORATED OF LA GRANDE, OREGON FOR PROFESSIONAL ENGINEERING SERVICES FOR THE DESIGN OF THE RECONSTRUCTION OF NORTH OREGON STREET FROM NW 8th AVENUE TO THE PROPOSED REALIGNMENT OF NW WASHINGTON.**

RESOLUTION #2010-112

A RESOLUTION APPROVING AN AGREEMENT BETWEEN THE CITY OF ONTARIO, OREGON AND ANDERSON-PERRY AND ASSOCIATES, INCORPORATED OF LA GRANDE, OREGON FOR THE PROFESSIONAL ENGINEERING SERVICES FOR THE DESIGN OF THE RECONSTRUCTION OF NORTH OREGON STREET PHASE TWO

WHEREAS, North Oregon Street was accepted by Ontario from the Oregon Department of Transportation (ODOT) in 2001; and

WHEREAS, Ontario secured ARRA funding for Phase one of North Oregon Street Reconstruction, in which construction was completed in 2009; and

WHEREAS, The project will be designed to Federal Highway Administration and ODOT standards by Anderson-Perry and Associates, Incorporated, and they have significant experience in this area, as their performance was very effective in Phase one; and

WHEREAS, This project was budgeted as STR-9 in the 2009-2011 budget, and the funds are available from the contribution that ODOT made when the city agreed to take over the state highways through Ontario.

NOW THEREFORE, BE IT HEREBY RESOLVED by the Ontario City Council, to approve the agreement between the City of Ontario, Oregon and Anderson-Perry and Associates, Incorporated for engineering services for the design of the reconstruction of North Oregon Street Phase two.

EFFECTIVE DATE: Effective immediately upon passage.

PASSED AND ADOPTED by the City Council of the City of Ontario this ____ day of _____ 2010, by the following vote:

AYES:

NAYES:

ABSENT:

APPROVED by the Mayor this ____ day of _____, 2010.

Joe Dominick, Mayor

ATTEST:

Tori Barnett, MMC, City Recorder

AGREEMENT FOR ENGINEERING SERVICES

THIS AGREEMENT, made this _____ day of _____, 2010, by and between the City of Ontario, Oregon, hereinafter referred to as the OWNER, and Anderson-Perry & Associates, Incorporated, hereinafter referred to as the ENGINEER:

The OWNER intends to reconstruct North Oregon Street Phase 2 from NW 1st Street to the connection at the future NW Washington Avenue. The project work generally consists of reconstruction of the existing roadway, installation of curb and gutter on the freeway side of the roadway, installation of curb and sidewalk on the west side of the roadway, replacement of existing water line with new 12-inch water line, storm sewer facilities as needed, streetlights, and possible landscaping along the freeway side of the roadway. See attached Exhibit "A."

The ENGINEER agrees to provide professional engineering services for this Project.

WITNESSETH:

That for and in consideration of the mutual covenants and promises between the parties hereto, it is hereby agreed:

SECTION A - ENGINEERING SERVICES

DESIGN ENGINEERING

Upon approval by the OWNER for the ENGINEER to proceed, the ENGINEER shall provide design of the project utilizing the Oregon Department of Transportation (ODOT) Standard Drawings, Standard Specifications, and approved ODOT drawing formats. The design services shall include:

1. Pre-Design Coordination Meeting

- A pre-design coordination meeting will be held with the OWNER's appropriate staff and other appropriate entities to review the project and discuss critical design issues, objectives, needs, etc. This meeting will also include an on-site walkthrough to address existing site conditions that may affect the design.
- Deliverable - meeting minutes.

2. Design Survey

- A field survey will be performed to identify roadway centerline, ground elevations, existing utilities, and right-of-way positions as required to perform the roadway design.
- Deliverable - copy of survey files.

3. Environmental Review

- A Programmatic Categorical Exclusion (PCE) Closeout form, the No Effect Memo (for ESA compliance), an historic and prehistoric cultural resource survey and report, and Programmatic Agreement Memo (for ODOT signature) will be prepared, meeting Federal Highway Administration criteria. If more in depth environmental evaluation is required over and above qualifying for a categorical exclusion, notice will be provided to the OWNER and additional environmental services can be provided as outlined under "Other Engineering Services."
- Deliverable - copy of environmental documentation.

4. Geotechnical Evaluation

- An on-site geotechnical evaluation will be conducted to evaluate existing soil, pavement, and base conditions of the roadway and to obtain sufficient information to analyze pavement section alternatives for the project.
- Deliverable – copy of geotechnical report.

5. Preliminary Plans

- Preliminary plans will be prepared for the project, which will include plan profile sheets, identification of potential utility conflicts, water, and storm sewer utility improvements. A preliminary construction cost estimate will be prepared. Preliminary plans will be provided to the OWNER for review and comment.
- Deliverable – three sets of preliminary plans, preliminary construction cost estimate, and a list of utility conflicts.

6. Preliminary Plan Review Meeting

- A preliminary plan review meeting will be held with the OWNER to obtain comments and suggestions based upon the OWNER's review of the preliminary plan.
- Deliverable – copy of plan review meeting minutes.

7. Advance Plans and Specifications

- Incorporating comments received on the preliminary plans, final advance plans will be prepared for the project, utility conflict relocations will be finalized, and an updated construction cost estimate will be prepared. Special provisions will be prepared based upon the advance plan design. Copies of the advance plans and specifications will be provided to the OWNER for review and comment.
- Deliverable – three sets of advance plans and specifications and an updated construction cost estimate.

8. Advance Plan Review Meeting with the OWNER

- An advance plan review meeting will be held with the OWNER to receive

- comments and suggestions on the advance plan set provided to the OWNER.
- Deliverable – copy of advance plan review meeting minutes.

9. Final Plans, Specifications, and Estimates

- The comments received on the advance plans will be incorporated into the final plans, specifications, and estimates. Verification of final special provisions, right-of-way verification, utility certifications, and final construction costs will be prepared. An on-site plan-in-hand will be conducted with the OWNER. The project will be ready for bidding at the conclusion of this phase.
- Deliverable – three sets of final plans and specifications and final construction cost estimate, along with verification that right-of-way utility issues are resolved. Bid documents will be complete and ready for bidding.

CONSTRUCTION ENGINEERING

The ENGINEER shall provide Construction Engineering services for this project when the project is funded. The scope of Construction Engineering services shall be negotiated between the OWNER and ENGINEER and an amendment to this Agreement shall be prepared defining the scope and fees for these services.

OTHER ENGINEERING SERVICES

In addition to the foregoing being performed, the following services may be provided by the ENGINEER when requested by the OWNER in writing for each phase of the project, as required.

1. Provide engineering services as may be required to assist the OWNER in obtaining construction funding for the Project. Work may include assistance in preparing technical portions of grant and loan applications, assistance in public meetings, ongoing coordination and agreements with funding agencies, updating cost estimates, and other funding services that may be required.
2. Perform additional environmental services if such services are needed over and above services provided in Section A.3 of this Agreement.
3. Assist the OWNER with obtaining permits, etc., as necessary for the work. The OWNER shall pay all fees associated with such permits and applications, if such fees are required.
4. Assist the OWNER with property surveys, property plats, legal descriptions, and other items necessary for negotiating for land rights and easements if required for the project. Such work may include appearances before courts and boards on these matters.
5. Redesign work when requested to do so by the OWNER. Such work shall include changes in the design, after the conceptual design stage, that are beyond the control of the ENGINEER, and/or changes in the Bidding Documents after such plans have been accepted by the OWNER.

6. Perform special tests, specialized geological, hydraulic, or other studies, or tests other than as previously outlined herein that may be required on the project.
7. Prepare to serve or serve as a consultant or witness for the OWNER in any litigation, arbitration, or other dispute resolution process relating to the project.

SECTION B - RESPONSIBILITIES OF OWNER

1. The OWNER shall provide the ENGINEER with all criteria and full information as to the OWNER's requirements for the project, including design objectives and constraints, performance requirements, and any budgetary limitations; furnish copies of all design and construction standards which the OWNER will require to be included in the Drawings and Specifications; and furnish copies of the OWNER's standard forms, conditions, and related documents for the ENGINEER to include in the Bidding Documents, when applicable.
2. The OWNER shall furnish to the ENGINEER all available information pertinent to the project including reports and data relative to previous designs, all existing maps, field survey data, lines of streets and boundaries or rights-of-way, and other surveys presently available. The OWNER shall also provide all known information concerning the existing underground utilities, etc., that could impact the proposed improvements.
3. The OWNER shall provide for full, safe, and free access for the ENGINEER to enter upon all property required for the performance of the ENGINEER's services under this Agreement.
4. The OWNER shall give prompt written notice to the ENGINEER whenever the OWNER observes or otherwise becomes aware of a Hazardous Environmental Condition or of any development that affects the scope or time of performance of the ENGINEER's services, or any defect or nonconformance in the ENGINEER's services or in the work of any Contractor.
5. The OWNER shall pay for any agency plan review fees, advertisement for bids, building or other permits, licenses, etc., as may be required by local, state, or federal authorities. The OWNER shall also secure the necessary land easements, rights-of-way, and construction permits. The ENGINEER can assist the OWNER with these tasks, if requested.
6. The OWNER shall examine all alternate solutions, plan reviews, Drawings, Specifications, and other documents presented by the ENGINEER (including obtaining the advice of an attorney, insurance counselor, and other consultants as the OWNER deems appropriate with respect to such examination) and render timely decisions pertaining thereto.
7. The OWNER shall assist the geotechnical subconsultant with traffic control and excavation for and repair of test pit holes along the roadway alignment.

SECTION C - COMPENSATION FOR ENGINEERING SERVICES

1. The OWNER shall compensate the ENGINEER for "Design Engineering" a lump sum amount of \$144,250. If, during the course of the work, the scope of the work should substantially change, the OWNER and the ENGINEER shall amend this section of the contract as necessary.
2. The OWNER shall compensate the ENGINEER for "Construction Engineering" by amendment to this Agreement.
3. The OWNER shall compensate the ENGINEER for "Other Engineering Services" requested by the OWNER on a time and materials basis, plus direct reimbursable expenses. See attached Hourly Fee Schedule, Exhibit "B."
4. The OWNER agrees to pay the ENGINEER for the services provided in accordance with this Agreement on a monthly basis for the services actually provided. The ENGINEER will render to the OWNER an itemized bill at the end of each month, for compensation for such services performed hereunder during such month, the same to be due and payable by the OWNER to the ENGINEER.
5. Past due amounts owed shall include a service fee charge of 12 percent annual interest beginning the 30th day after the date of billing. The ENGINEER may suspend work under this Agreement until the account is paid in full. If collection is made by suit or otherwise, and if the ENGINEER prevails, the OWNER agrees to pay interest until the account and all collection costs, including a reasonable attorney's fee, are paid.

SECTION D - GENERAL PROVISIONS

1. Approval of this Agreement by the OWNER and the ENGINEER will serve as written authorization for the ENGINEER to proceed with the services called for in the Agreement.
2. Neither party shall hold the other responsible for damages or delay in performance caused by acts of God, strikes, lockouts, accidents, or other events beyond the control of the other or the other's employees and agents.
3. In the event any provisions of this Agreement shall be held to be invalid and unenforceable, the remaining provisions shall be valid and binding upon the parties. One or more waivers by either party of any provisions, term, condition, or covenant shall not be construed by the other party as a waiver of a subsequent breach of the same by the other party.
4. The ENGINEER intends to render his services under this Agreement in accordance with generally accepted professional practices for the intended use of the project and makes no warranty expressed or implied. The ENGINEER shall be responsible for the professional quality, technical accuracy, timely completion, and coordination of all designs, Drawings, Specifications, reports, and other services furnished by the

ENGINEER under this Agreement. The ENGINEER shall, without additional compensation, correct or revise any errors, omissions, or other deficiencies in his designs, Drawings, Specifications, reports, and other services.

5. Any opinion of the probable construction cost or probable total project cost prepared by the ENGINEER represents his judgment as a design professional and is supplied for the general guidance of the OWNER. Since the ENGINEER has no control over the cost of labor and material, or over competitive bidding or market conditions, the ENGINEER does not guarantee the accuracy of such opinions as compared to Contractor bids or actual cost to the OWNER.
6. This Agreement is to be binding on the heirs, successors, and assigns of the parties hereto and is not to be assigned by either party without first obtaining the written consent of the other.
7. This Agreement represents the entire and integrated agreement between the OWNER and the ENGINEER for this project and supersedes all prior negotiation, representations, or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the OWNER and the ENGINEER.
8. Original documents, survey notes, tracings, and the like, except those furnished to the ENGINEER by the OWNER, are and shall remain the property of the ENGINEER. Documents, including Drawings and Specifications which contain an ENGINEER's stamp prepared under this Agreement, are instruments of service of the ENGINEER. Reuse of any of the Drawings and Specifications that may be developed during the project by the OWNER on extensions of this project or on any other project without the written permission of the ENGINEER shall be at the OWNER's risk. The OWNER agrees to defend, indemnify, and hold harmless the ENGINEER from all claims, damages, and expenses including attorneys' fees arising out of such unauthorized reuse of the ENGINEER's instruments of service by the OWNER. The ENGINEER shall make available to the OWNER, when requested, all documents, Drawings, pictures, etc., that are prepared as part of the ENGINEER's services under this Agreement. There will be no cost for these documents except for labor, reproduction, and copying costs.
9. There are no third party beneficiaries of this Agreement between the OWNER and the ENGINEER, and no third party shall be entitled to rely upon any work performed or reports prepared by the ENGINEER hereunder.
10. Neither the OWNER nor the ENGINEER shall delegate his duties under this Agreement without the written consent of the other.
11. This Agreement may be terminated by either party in the event of default under this contract by the other party. Either party may do so by giving written notice to the other of its intent to terminate this Agreement for substantial failure to perform according to this Agreement, which written notice shall specify the failure and demand correction or remedy thereof in 10 days. In the event of failure to remedy or correct in 10 days, this Agreement may be terminated in writing at the option of the

- party giving the prior notice. If this Agreement is terminated, the ENGINEER shall be paid for services based on actual man hours worked to the termination notice date, including reimbursable expenses due, less any amount in dispute.
12. Unless otherwise specified within this Agreement, this Agreement shall be governed by the laws of the State of Oregon.
 13. The ENGINEER shall acquire and maintain statutory Worker's Compensation insurance coverage, employer's liability, and comprehensive general liability insurance coverage.
 14. The OWNER will require that any Contractor or subcontractor performing work in connection with Drawings and Specifications produced under this Agreement shall hold harmless, indemnify, and defend the OWNER and the ENGINEER, their consultants, and each of their officers, agents, and employees from any and all liability claims, losses, or damage arising out of or alleged to arise from the Contractor's (or subcontractor's) negligence in the performance of the work described in the construction Contract Documents, but not including liability that may be due to the sole negligence of the OWNER, the ENGINEER, their consultants, or their officers, agents, and employees.
 15. The OWNER and the ENGINEER acknowledge that in a project of this magnitude and complexity, changes may be required as the result of possible omissions, ambiguities, or inconsistencies in the Drawings and Specifications or changes that are identified during construction which will result in an overall better end project for the OWNER, or changes which are necessary due to unusual field conditions or construction circumstances beyond the control of the OWNER, ENGINEER, or Contractor. As a consequence of the above, the OWNER realizes that the Construction Contractor may be entitled to additional payment. The OWNER agrees to set up a reserve in the project budget to be used as required to make additional payments to the Construction Contractor with respect to such changes. When additional payments are due to the Contractor, they will be made in accordance with an approved Change Order.
 16. The ENGINEER shall comply with all applicable provisions of the Regulations of the U.S. Department of Commerce (Part 8 of Subtitle 15 of the Code of Federal Regulations) issued pursuant to the Civil Rights Act of 1964, in regard to nondiscrimination in employment because of race, religion, color, sex, or national origin. The ENGINEER shall comply with applicable federal, state, and local laws, rules, and regulations concerning Equal Employment Opportunity.
 17. To the fullest extent permitted by law, the OWNER and ENGINEER each agree to indemnify and hold the other harmless, and their respective officers, employees, agents, and representatives from and against liability for all claims, losses, damages, and expenses, including reasonable attorneys' fees, to the extent such claims, losses, damages, and expenses are caused by the indemnifying party's negligent acts, errors, or omissions. In the event claims, losses, damages, or expenses are caused by the joint or concurrent negligence of the OWNER and ENGINEER, they shall be borne by each party in proportion to its negligence.

This Agreement is executed in duplicate the day and year written at the beginning of this Agreement.

OWNER:

City of Ontario, Oregon

By _____

Type Name _____

Title _____

(SEAL)

ENGINEER:

Anderson-Perry & Associates, Inc.

By _____

Type Name Brad D. Baird

Title President

(SEAL)

ATTEST

By _____

Type Name _____

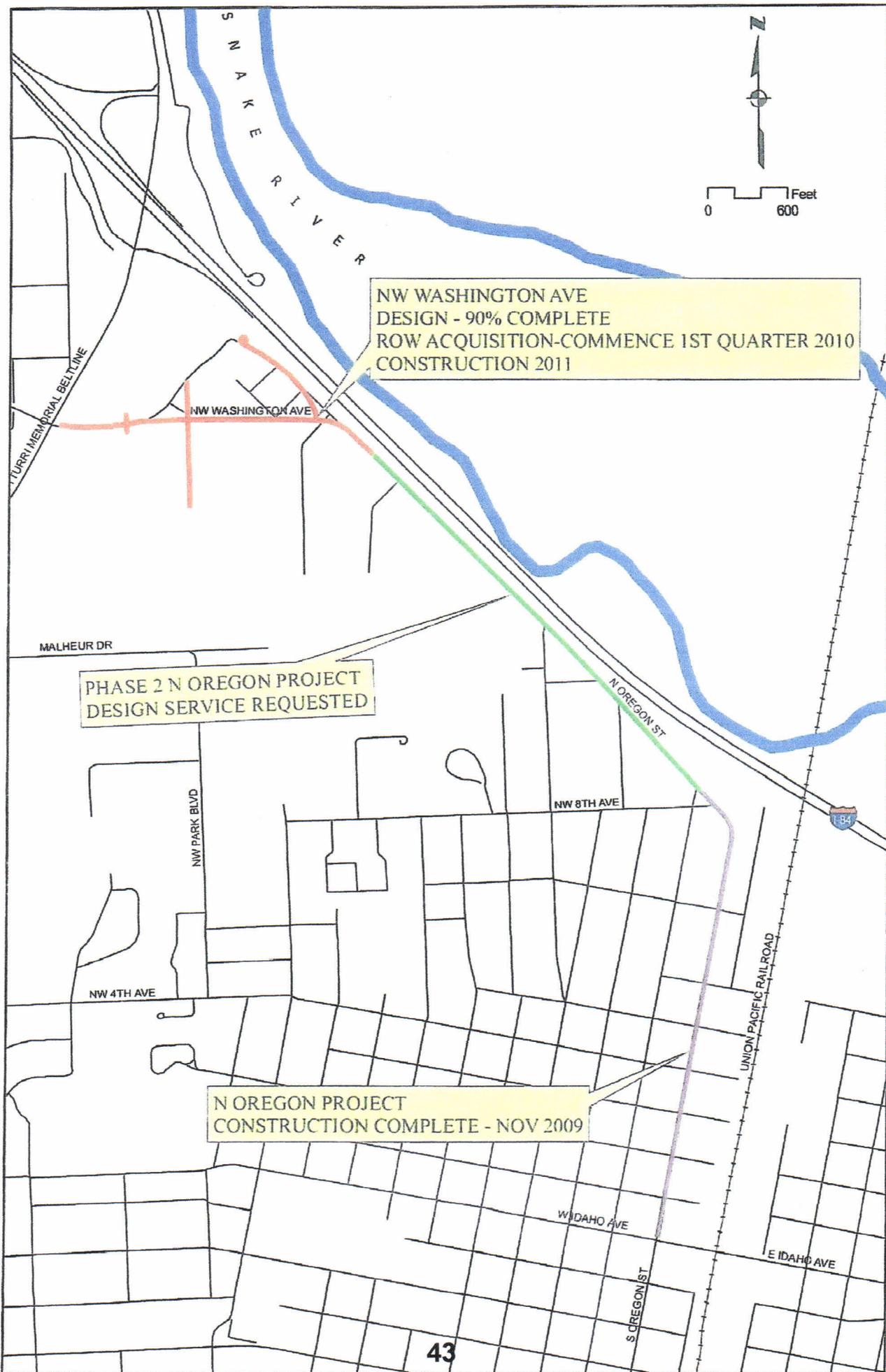
Title _____

ATTEST

By _____

Type Name Brett Moore

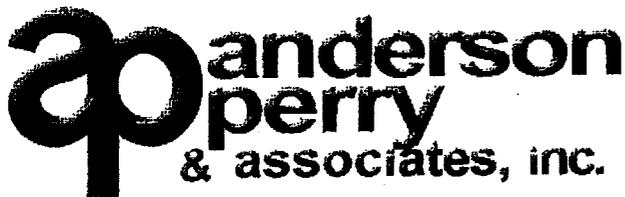
Title Board Member



NW WASHINGTON AVE
DESIGN - 90% COMPLETE
ROW ACQUISITION-COMMENCE 1ST QUARTER 2010
CONSTRUCTION 2011

PHASE 2 N OREGON PROJECT
DESIGN SERVICE REQUESTED

N OREGON PROJECT
CONSTRUCTION COMPLETE - NOV 2009



engineering · surveying · natural resources

EXHIBIT B HOURLY FEE SCHEDULE

January 1, 2010

<u>TECHNICIANS AND ENGINEERS</u>	<u>HOURLY RATE</u>
Technician I	\$ 46.00
Technician II	\$ 51.25
Technician III	\$ 56.50
Technician IV	\$ 61.50
Technician V	\$ 66.75
Technician VI	\$ 71.75
Senior Technician I	\$ 82.00
Senior Technician II	\$ 87.25
Senior Technician III	\$ 92.25
Senior Technician IV	\$ 97.50
Senior Technician V	\$102.50
Senior Technician VI	\$112.75
Senior Technician VII	\$133.25
Staff Engineer I	\$ 82.00
Staff Engineer II	\$ 87.25
Staff Engineer III	\$ 92.25
Project Engineer I	\$ 97.50
Project Engineer II	\$102.50
Project Engineer III	\$107.75
Project Engineer IV	\$112.75
Senior Engineer I	\$118.00
Senior Engineer II	\$123.00
Senior Engineer III	\$148.75
Senior Engineer IV	\$153.75
Senior Engineer V	\$174.25
Project Representative I	\$ 75.00
Project Representative II	\$ 80.00
Project Representative III	\$ 87.25
Project Representative IV	\$ 91.25
Project Representative V	\$ 94.50
Secretary	\$ 51.25
Overtime Surcharge	\$ 20.50

La Grande, Oregon 97850-0939 / 1901 N. Fir, P.O. Box 1107 / (541) 963-8309, Fax (541) 963-5456
 Walla Walla, Washington 99362-0032 / 214 E. Birch, P.O. Box 1687 / (509) 529-9260, Fax (509) 529-8102

OUT OF TOWN WORK

Mileage will be charged at the rate of \$0.50 per mile for standard highway vehicles and \$0.90 per mile for vans and pickup trucks. Subsistence and lodging will be billed at actual cost.

OTHER

Other miscellaneous, direct, and outside expenses, including special Consultants, will be charged at actual cost. All accounts unpaid 30 days after date of invoice will be charged a service fee of 1.5% per month.

G:\Clients\Ontario\Roads\53-87\Hourly Fee Schedule-Jan2010.doc

**City of Ontario, Oregon
North Oregon Street Rehabilitation - Phase 2
Design Engineering Cost
February 2010**



TASKS	MAN-HOURS					TOTAL
	Project Eng V \$174.25	Project Eng III \$107.75	Senior Tech IV \$112.75	Senior Tech I \$82.00	LS IV \$107.75	
(1) Pre-Design Coordination	10	10				20
(2) Design Survey - Subconsultant (see below)	6	6		4	15	31
(3) Environmental	2	2	40	6		50
(4) Geotechnical Evaluation - Subconsultant (see below)	18	6	10			34
(5) Preliminary Plans	50	136	70	190		446
(6) Preliminary Plan Review	8	10				18
(7) Advance Plans/Specifications	32	90	40	100		262
(8) Advance Plan Review	10	10				20
(9) Final Plans, Specifications, and Estimates	34	75	20	50		179
Total Hours	170	345	180	350	15	1,060
Total Cost	\$29,622.50	\$37,173.75	\$20,295.00	\$28,700.00	\$1,616.25	\$117,407.50
Direct Costs						
(1) Foundation Engineering						14,800
(2) CK3, LLC						9,040
(3) Cultural Resource Report						3,000
Total						\$ 26,840
TOTAL ESTIMATED AMOUNT						\$144,247.50

AGENDA REPORT

March 1, 2010

TO: Mayor and City Council

FROM: Tori Barnett, MMC, City Recorder

THROUGH: Henry Lawrence, City Manager

SUBJECT: **REQUEST FOR APPOINTMENT TO BUSINESS LOAN FUND COMMITTEE**

DATE: February 22, 2010

SUMMARY:

Attached are the following documents:

- Letter Requesting Appointment to BLF: Jackie Hansen
- Letter Requesting Appointment to BLF: David L. Knight
- Letter Requesting Appointment to BLF: Janet Komoto

The City Council recently revamped the City's Business Loan Fund Program and revised the Loan Criteria and Procedures, through Resolution #2010-102, dated January 19, 2010. One significant change to the structure related directly to the Loan Committee. Section 10-A now states the Committee shall be comprised of five members, two from the city Council, and three from citizens at large, with at least one member having significant accounting experience. Terms of service are perpetual.

Letters were sent to the existing Committee, explaining the changes in the resolution, thanking them for their service on the Committee, and asking that they submit a letter of interest if they desired to be appointment to the newly structured Committee.

RECOMMENDATION:

Appointments are made based on the Mayor's recommendation, with Council approval.

PROPOSED MOTION:

I move that the Council appoint Jackie Hansen, David L. Knight and Janet Komoto to the City of Ontario Business Loan Fund Committee, effective immediately.

From: "Jackie Hansen" <jackie@malheurfcu.org>
To: <tori.barnett@ontariooregon.org>
Date: 2/9/2010 10:03 AM
Subject: Letter of Interest - Business Loan Fund Committee

To Whom It May Concern:

My name is Jackie Hansen and I am very interested in serving on the City's Business Loan Fund Committee. I have extensive experience in the accounting field, as I have worked for an accounting firm from Prineville, Oregon in the past for over 15 years. I still work for this accounting firm on a part-time basis via the internet during tax season. I have also in the past worked for a logging company as their Staff Accountant/Officer Manager for 6 years. I was also the bookkeeper for my first husband's logging business from 1990 until our divorce in 2006.

In 2006, I moved from Prineville to Hermiston where I was employed at Columbia River Bank as a Credit Analyst II. During my 3 years at Columbia River Bank I learned how to do a complete loan write-up from start to finish. In October of 2009, I moved to Ontario when I married my new husband, Sonny. I am currently employed at Malheur Federal Credit Union as a Loan Officer/Credit Analyst. I was hired to help expand their business lending program.

As you can see, I have both the accounting and lending background that I believe will help this committee. I can supply you with references upon your request.

Thank you for your time,

Jackie Hansen
4455 Sage Rd
Ontario OR 97914
Home - 541-889-0409
Work - 541-823-4481
jackie@malheurfcu.org

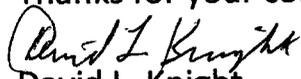
Received
3/11 12:32pm vcl

Tori Barnett
MMC
City Recorder
City of Ontario

Per your advertisement, in the Argus Observer newspaper, I am interested in a position with the Business Loan Fund Committee. My background is outlined below:

1. 29 years of accounting and finance (Financial Analyst, Finance Manager, Cost Accounting Manager, and Group Controller).
2. Master of Business Administration from the University of Portland.
3. Bachelor of Science in Business and Economics with a minor in Accounting from Lewis & Clark College.
4. I have done many business evaluations where I created a proforma income statement and balance sheet. Primarily 5 year business plans.
4. I am retired and have very flexible hours.

Thanks for your consideration,


David L. Knight
541-889-6484

Janet Komoto
P O Box 143
Ontario OR 97914-0143
work: 541-889-6485
janetkomoto@gmail.com

January 15, 2010

Ms. Tori Barnett
City Recorder
City of Ontario
444 SW 4th Street
Ontario OR 97914

To Whom This May Concern:

I am interested in serving on the City's Business Loan Fund Committee. I believe the combination of my education, experience and willingness to be involved in community activities makes me a good candidate for this position.

Community Activities:

1. I am on the Osakasayama Sister City Committee with Joe Dominick & Cathy Yasuda. I have been on this committee for two years, but have been involved with the Sister City program intermittently for the past 15 years.
2. I have been the local chapter president of the Japanese American Citizens League (JACL) since 2005. Prior to that, I was the chapter secretary for eight years.
3. Past president and treasurer of our local American Business Women's Association.
4. Treasurer of a women's investment club since 1996. Prepare monthly reports & tax returns.
5. Organized the Japanese Village component of America's Global Village Festival in Ontario for the past several years. This involves securing a food vendor and a variety of craft vendors, martial arts entertainment, and many volunteers to man the booth during the festival.
6. Organized the first local group and have played taiko (Japanese drums) since 2000. We have performed at many festivals, conventions, dinners, schools & nursing homes from Weiser to Jerome.

Work Experience:

1. Employed at Ontario Produce Company for 23 years as Transportation and Office Manager. Prior to our company being purchased, I was a part owner and corporate secretary. Ontario Produce Company Inc. was the recipient of a loan from the city's Business Loan Fund so I am familiar with the process and procedures.
2. Worked 3 years with Stephen Long, CPA as a tax accountant.
3. Worked 2 years at Price Waterhouse in their auditing and tax departments.

Education and Personal Information:

1. BA in Sociology, University of California, Davis.
2. Masters in Social Work (Community Organizing & Social Planning), U. C. Berkeley.
3. BS in Business Administration (Accounting), California State University, Hayward.
4. Resident of Ontario for 27 years.

STAFF REPORT
March 1, 2010

TO: Mayor and City Council

FROM: Tori Barnett, MMC, City Recorder

THROUGH: Henry Lawrence, City Manager

SUBJECT: RESOLUTION #2010-113: ENTERPRISE ZONE REDESIGNATION

DATE: February 16, 2010

SUMMARY:

Attached are the following documents:

- Cover Memo: Jim Jensen
- Resolution #2010-113
- Map and Property Description: Enterprise Zone Restructuring – Ontario
- Map and Property Description: Enterprise Zone Restructuring – Nyssa
- Map and Property Description: Enterprise Zone Restructuring – Vale
- Map and Property Description: Enterprise Zone Restructuring – Outlying Areas

Jim Jensen, Malheur County Economic Development Director, will be in attendance to give the presentation.

ENTERPRISE ZONE RE-DESIGNATION

The Malheur County Enterprise Zone expires on July 1, 2010.

An enterprise zone is a specific area in which new plant and equipment of "eligible" businesses (typically manufacturing) that create jobs receive exemption from local property taxes for three or more years.

To be designated, the proposed enterprise zone must have the sponsorship of city/county government, conform to size limitations, satisfy hardship criteria and contain available quality industrial sites.

An acceptable application includes local resolutions, economic data, documentation of consultations with local taxing districts, and a map & legal description of the proposed zone boundary.

The Cities of Nyssa, Ontario, and Vale as well as the Malheur County Board of Commissioners are the current enterprise zone sponsors and the proposed resolution would affirm you would be a zone sponsor under the new designation, if approved by the State of Oregon.

Passing the attached resolution in support of renewing the Malheur County Enterprise Zone is part of the application for re-designation of the Malheur County Enterprise Zone.

RESOLUTION #2010-113

**A RESOLUTION BY THE GOVERNING BOARD OF
ONTARIO, OREGON TO SPONSOR ENTERPRISE ZONE**

- WHEREAS** The City of Ontario, Oregon is co-sponsoring an application for designation of an enterprise zone in the Cities of Ontario, Vale, Nyssa, and Malheur County; and
- WHEREAS** The *CITY of Ontario, Oregon* is interested in an enterprise zone to encourage new business investment, job creation, higher incomes for local residents, greater diversity of economic activity; and
- WHEREAS** The proposed enterprise zone has a total area of **8.13** square miles, and it meets other statutory limitations on size and configuration; it is depicted on the drawn-to-scale map (Exhibit A) and described in (Exhibit B); and
- WHEREAS** The proposed enterprise zone contains significant land that is reserved for industrial use, as indicated by land use zoning map(s) with the application, consistent with Comprehensive Plan(s) acknowledged by the Land Conservation and Development Commission, such industrial sites are accessible, serviced or serviceable, and otherwise ready for use and further development; and
- WHEREAS** The designation of an enterprise zone does not grant or imply permission to develop land within the Zone without complying with prevailing zoning, regulatory and permitting processes and restrictions for applicable jurisdictions; nor does it indicate any intent to modify those processes or restrictions, except as otherwise in accordance with Comprehensive Plans; and
- WHEREAS** The *CITY of Ontario, Oregon* appreciates the impacts that a designated enterprise zone would have and the property tax exemptions that eligible business firms might receive therein, as governed by Oregon Revised Statutes (ORS) Chapter 285C and other provisions of Oregon Law; and
- WHEREAS** All of the other municipal corporations, school districts, special service districts and so forth, other than the sponsoring governments, that receive operating revenue through the levying of *ad valorem* taxes on real and personal property in any area of the proposed enterprise zone were sent notice and invited to a public meeting regarding this proposal, in order for these sponsoring governments to effectively consult with these other local taxing districts. Follow-up arrangements as agreed to with these consultations will be completed with affected districts within six months of the proposed enterprise zone's designation.

NOW, THEREFORE, BE IT RESOLVED by the City Council for the City of Ontario:

The *CITY of Ontario, Oregon* proposes and applies for an Oregon enterprise zone to be named: The Malheur County Enterprise Zone, and requests that the director of the Oregon Business Development Department order the designation of this enterprise zone.

Jim Jensen – Malheur County Economic Development Director is authorized to submit the enterprise zone application for the *CITIES of Ontario, Vale, and Nyssa and Malheur County* and to make any substantive or technical change to the application materials, as necessary, after adoption of this resolution.

The *CITIES of Ontario, Vale and Nyssa and Malheur County* will give priority to the use in the proposed enterprise zone, if designated, of any economic development or job training funds received from the federal government, consistent with ORS 285C.065(3)(d).

The *CITIES of Ontario, Vale, and Nyssa and Malheur County* appoints **Jim Jensen**, the Director of the Malheur County Economic Development Department as the local enterprise zone manager.

The *CITIES of Ontario, Vale, and Nyssa and Malheur County* will jointly comply with the requirements and provisions of ORS 285C.105 and otherwise fulfill its duties under ORS 285C.050 to 285C.250.

The *CITIES of Ontario, Vale, and Nyssa and Malheur County* jointly commit, within six months of designation, to implement and to confirm for the department its fulfillment of such duties, as specified in OAR 123-065-0210, including but not limited to preparation of a list or map of local lands and buildings owned by the state or by municipal corporations within the enterprise zone that are not being used or designated for a public purpose and that have appropriate land use zoning, and to efforts for making such real property available for lease or purchase by authorized business firms under ORS 285C.110.

The *CITIES of Ontario, Vale, and Nyssa, and Malheur County* request that the Director of the Oregon Business Development Department waive the distance maximum of [25 miles overall and/or of 15 miles between separate areas] within the proposed enterprise zone pursuant to this application for designation. (Available only for rural zones entirely in sparsely populated county)

Special Statutes—

The *CITIES of Ontario, Vale, and Nyssa, and Malheur County* as sponsors of the proposed Malheur County Enterprise Zone exercises the option herewith under ORS 285C.070 that qualified property of and operated by a qualified business firm as a hotel or motel may receive a property tax exemption in the Zone, and that such business firms are eligible for purposes of authorization upon the effective designation of the Zone.

EFFECTIVE DATE: Effective immediately upon passage.

PASSED AND ADOPTED by the Ontario City Council this ____ day of _____, 2010.

Ayes:

Nays:

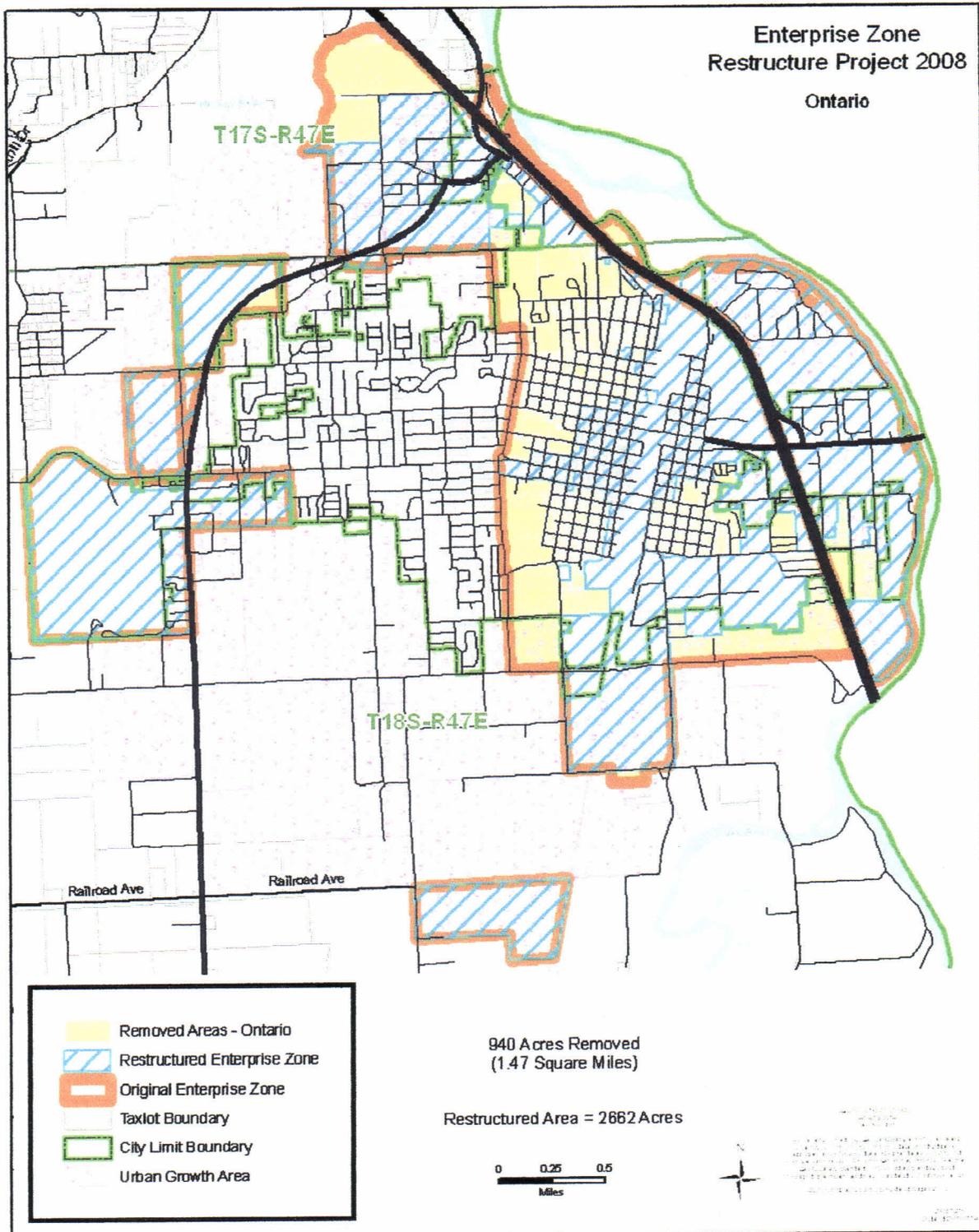
Absent:

APPROVED by the Mayor this ____ day of _____, 2010.

Joe Dominick, Mayor

ATTEST:

Tori Barnett, City Recorder



ONTARIO AREA DESCRIPTION

(as revised February, 2010)

The following five tracts:

In T. 17 S., R. 47 E., W.M.: portions of Sections 28, 29, 32, 33, and 34

In T. 18 S., R. 47 E., W.M.: portions of Sections 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 14, 15, 16 and 21

TRACT 1 (Downtown)

Beginning at the North 1/4 Corner of Section 9 (SW. 4th Avenue and Park Boulevard); thence east and southeast on SW. 4th Avenue to SW. 7th Street; thence northeast on SW. 7th Street to SW. 3rd Avenue; thence southeast on SW. 3rd Avenue to SW. 4th Street; thence northeast on SW. 4th Street to a point opposite the southwesterly line of Lot 7, Block 41, Ontario Original Town Plat; thence southeast on the southwesterly line of said Lot 7 to the alley; thence northeast on the alley to SW. 2nd Avenue; thence northwest on SW. 2nd Avenue to SW. 4th Street; thence northeast on SW. 4th Street to NW. 1st Avenue; thence southeast on NW. 1st Avenue to NW. 2nd Street; thence northeast on NW. 2nd Street to a point opposite the southwesterly line of Lot 3, Block 19, Ontario Original Town Plat; thence southeast on the southwesterly line of said Lot 3 to the alley; thence northeast on the alley to NW. 2nd Avenue; thence southeast on NW. 2nd Avenue to N. Oregon Street; thence northeast on N. Oregon Street to NW. 4th Avenue; thence northwest on NW. 4th Avenue to a point opposite the alley in Block 107, Wilson's Supplemental Plat; thence northeast on the alley to NW. 5th Avenue; thence southeast on NW. 5th Avenue to N. Oregon Street; thence northeast on N. Oregon Street to NW. 6th Avenue; thence southeast on NW. 6th Avenue to River Street; thence northeast on River Street to point opposite the southwesterly line of Lot 30, Block 6, Riverside Addition; thence southeast on the southwesterly line of said Lot 30 to the southeasterly line of said Lot 30; thence northeast on the southeasterly lines of Lots 30-10 to the midpoint of the southeasterly line of Lot 10; thence northwest on the midpoint line of said Lot 10 to River Street; thence southwest on River Street to the southwesterly line of Lot 15, Block 5, Riverside Addition; thence northwest on the southwesterly line of said Lot 15 to N. Oregon Street; thence northeast on N. Oregon Street to a point opposite the southwesterly line of Lot 36, Block 4, Riverside Addition; thence northwest on southwesterly line of said Lot 36 to the alley; thence northeast on the alley to a point opposite the southwesterly line of Lot 5 of said Block 4; thence northwest on the southwesterly line of said Lot 5 to NW. 1st Street; thence northeast on NW. 1st Street to NW. 8th Avenue; thence East on NW. 8th Avenue to N. Oregon Street; thence northwest on N. Oregon Street approximately 420 feet to a point opposite a tax lot boundary line; thence southwest 130 feet on said tax lot boundary line; thence northwest parallel with N. Oregon Street on a tax lot boundary line to Manor Way; thence North on Manor Way to N. Oregon Street; thence northwest on N. Oregon Street to NW. 11th Avenue; thence West on NW. 11th Avenue to a point 75 feet west of the east line of the Routh Tracts; thence South on a tax lot boundary line 147.21 feet to a tax lot boundary line; thence West on said tax lot boundary line 130 feet to a tax lot boundary line; thence North on said tax lot boundary line to NW. 11th Avenue; thence West on NW. 11th Avenue to Fortner Street; thence North on Fortner Street to the northwest corner of Section 3; thence East on the north line of Section 3 to the southwesterly right of way line of Interstate 84; thence southeasterly on said right of way line approximately 2 miles to SE. 9th Avenue; thence West on SE. 9th Avenue to a

point opposite the east line of Partition Plat 2009-06; thence North on the east line of said Partition to the north line of said Partition; thence West on the north line of said Partition to the west line of said Partition; thence South on the west line of said Partition to SE. 9th Avenue; thence continuing South across SE. 9th Avenue to SE. 10th Street; thence southeast on SE. 10th Street to SE. 13th Avenue; thence East on SE. 13th Avenue approximately 530 feet to a point opposite a tax lot boundary line; thence South on said tax lot boundary line to the north line of the SE¹/₄SE¹/₄ of Section 10; thence West on the north line of the SE¹/₄SE¹/₄ to the midpoint of said north line; thence South on the east line of the NW¹/₄SE¹/₄SE¹/₄ to the center of the SE¹/₄SE¹/₄; thence West on the south line of the NW¹/₄SE¹/₄SE¹/₄ to the west line of the SE¹/₄SE¹/₄; thence North on said west line approximately 170 feet to a tax lot boundary line; thence West on said tax lot boundary line to the west line of the SW¹/₄SE¹/₄; thence South on said west line to the midpoint of said west line; thence West on the south line of the N¹/₂SE¹/₄SW¹/₄ of Section 10 to a point that is 429 feet east of the west line of the SE¹/₄SW¹/₄ of Section 10; thence North parallel with said west line to the north line of the SE¹/₄SW¹/₄; thence West on the north line of the SE¹/₄SW¹/₄ to the west line of the SE¹/₄SW¹/₄ (SE. 2nd Street); thence South on the west line of the SE¹/₄SW¹/₄ to E. Island Road; thence West on E. Island Road to the Union Pacific Railroad; thence West on W. Island Road to SW. 4th Street; thence North on SW. 4th Street to the north line of the SE¹/₄SE¹/₄ of Section 9; thence East on the north line of said SE¹/₄SE¹/₄ to a point that is 100 feet west of the northeast corner of said SE¹/₄SE¹/₄; thence North on a tax lot boundary to SW. 12th Avenue (undeveloped); thence West on SW. 12th Avenue (undeveloped) to a point that is approximately 700 feet West of the east line of the NE¹/₄SE¹/₄ of Section 9; thence North on a tax lot boundary line to the north line of said NE¹/₄SE¹/₄; thence East on the north line of said NE¹/₄SE¹/₄ to the alley in Block 122, Wilson's Supplemental Plat; thence northeast on the alleys of Blocks 122-119, Wilson's Supplemental Plat, and the alley of Block 18, Ontario Original Town Plat, to SW. 6th Avenue; thence northwest on SW. 6th Avenue to SW. 1st Street; thence northeast on SW. 1st Street to SW. 5th Avenue; thence northwest on SW. 5th Avenue to a point opposite the alley in Block 44, Ontario Original Town Plat; thence southwest on said alley to a point 4 feet southwest of the south line of Lot 5, said Block 44; thence northwest parallel with said south line to SW. 4th Street; thence northeast on SW. 4th Street to SW. 5th Avenue; thence northwest on SW. 5th Avenue to S. Park Boulevard; thence North on S. Park Boulevard to the Point of Beginning; AND

Beginning at the intersection of NW. 1st Street and NW. 5th Avenue; thence northwest on NW. 5th Avenue to NW. 2nd Street; thence northeast on NW. 2nd Street to a point opposite the north line of Lot 5, Block 115, Wilson's Supplemental Plat; thence southeast on said north line to the alley in Block 115; thence northeast on the alley to a point opposite the north line of Lot 49, Block 9, Riverside Addition; thence southeast on said north line to NW. 1st Street; thence southwest on NW. 1st Street to the Point of Beginning; EXCEPT

Beginning at the intersection of SE. 1st Street and SE. 9th Avenue; thence southeast on SE. 9th Avenue to a point opposite the alley in Block 184, Wilson's Supplemental Plat; thence southwest on said alley to the south line of the SW¹/₄NW¹/₄ of Section 10; thence East on the south line of the SW¹/₄NW¹/₄ and on the south line of the SE¹/₄NW¹/₄ of Section 10 to a point opposite the alley in Block 192, Wilson's Supplemental Plat; thence northeast toward said alley to the center of SW. 9th Avenue; thence southeast and east on SW. 9th Avenue to a point that is 140 feet east of the east line of Sierra Subdivision; thence North on a tax lot boundary line to Sierra Drive;

thence East on Sierra Drive 137.48 feet to a tax lot boundary line; thence North on said tax lot boundary line 260 feet to the south line of the NE $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 10; thence West on a tax lot boundary line to the west line of the NE $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$; thence North on the west line of the NE $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ to a point that is 289.77 feet south of the north line of the SWNE of Section 10; thence West 6.8 feet on a tax lot boundary line; thence North on said tax lot boundary line to a point that is 198 feet south of the north line of the SW $\frac{1}{4}$ NE $\frac{1}{4}$; thence West parallel with the north line of the SW $\frac{1}{4}$ NE $\frac{1}{4}$ to the west line of the SW $\frac{1}{4}$ NE $\frac{1}{4}$; thence North on said west line to the north line of the SW $\frac{1}{4}$ NE $\frac{1}{4}$; thence North to the north right of way line of SE. 5th Avenue; thence East on said north right of way line 82.62 feet to a tax lot boundary line; thence northeast on said tax lot boundary line to the southwesterly right of way line of SE. 3rd Avenue; thence southeast on the extension of said right of way line 393.37 feet; thence North on a tax lot boundary line 67.38 feet; thence northeast on said tax lot boundary line approximately 69 feet to a tax lot boundary line; thence North on said tax lot boundary line to the south line of the N $\frac{1}{2}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 10; thence West on said south line to a point that is 570 feet east of the west line of the NW $\frac{1}{4}$ NE $\frac{1}{4}$; thence North on a tax lot boundary line to the south line of the Eastside Subdivision; thence West on said south line to the east line of the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 10; thence South on said east line to SE. 3rd Avenue; thence northwest on SE. 3rd Avenue to a point opposite the alley in Block 78, Ontario Original Town Plat; thence southwest on the alleys of Blocks 78 and 79 to SE. 5th Avenue; thence northwest on SE. 5th Avenue to SE. 1st Street; thence southwest on SE. 1st Street to the Point of Beginning;

TRACT 2 (North Side)

Beginning at the southeast corner of Section 33; thence West on the south line of Section 33 to "A" Place; thence northerly on "A" Place to a point opposite the south line of the unnamed (undeveloped) street between Lots 8 and 13, Block 6, Corrected Plat of the Oregon and Western Colonization Company Subdivision Second Addition; thence West on said south line to the west line of Lot 12, said Block 6; thence North to the centerline of said unnamed (undeveloped) street; thence West on said unnamed (undeveloped) street to N. Park Boulevard; thence South on N. Park Boulevard to Malheur Drive; thence West on Malheur Drive to Verde Drive; thence South on Verde Drive to the south line of the Malheur Acres Subdivision; thence westerly on said south line to the west line of said subdivision; thence North on said west line to Malheur Drive; thence West on Malheur Drive approximately 330 feet to a sixteenth line; thence North on the sixteenth line of Section 32 to the southwest corner of Commercial Acres Subdivision; thence North, West and Northeast on the west line of said subdivision to the northwest corner of said subdivision; thence East on the north line of the Commercial Acres Subdivision to the west line of the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 33; thence North on the west line of the SW $\frac{1}{4}$ NW $\frac{1}{4}$ (Verde Drive) to the south right of way line of Falcon Drive; thence East on said south right of way line to the southwesterly right of way line of Interstate 84; thence northwest on said southwesterly right of way line to the north right of way line of Falcon Drive; thence East on said north right of way line to the southwesterly right of way line of Interstate 84; thence southeasterly on said right of way line approximately 1 mile to the south line of Section 34; thence West on the south line of Section 34 to the Point of Beginning; EXCEPT

Beginning at the southeast corner of the intersection of N. Park Boulevard and the unnamed (undeveloped) street between Lots 2 and 6, Block 6, Corrected Plat of the Oregon and Western

Colonization Company Subdivision Second Addition; thence North on the east right of way line of N. Park Boulevard to the southeasterly right of way line of the Dork Canal (which separates Blocks 5 and 6 of said Addition; thence northeast on said southeasterly right of way line to Hollars Street; thence southeast on Hollars Street to the southeasterly right of way line of a drain ditch; thence southwest on said southeasterly right of way line, bisecting Lot 8, said Block 6, to NW. 9th Street; thence North on NW. 9th Street to a point opposite a tax lot boundary line that is 295 feet North of the south line of Lot 7, said Block 6; thence West on said tax lot boundary line 430 feet to a tax lot boundary line; thence North on said tax lot boundary line 230 feet to the south right of way line of the unnamed street between Lots 2 and 6, said Block 6; thence West on said south right of way line to the Point of Beginning.

TRACT 3 (East Side)

All that portion of Sections 2, 3, 10, 11, and 14, T. 18 S., R. 47 E., W.M., lying east of the Interstate 84 right of way and east of the Union Pacific Railroad right of way and west of the Snake River; EXCEPT

Beginning at the southwest corner of the SW¹/₄NW¹/₄ of Section 11; thence West to the northeasterly right of line of Interstate 84; thence southeasterly on said right of way line to the south line of the NW¹/₄SW¹/₄ of Section 11; thence East on the south line of the NW¹/₄SW¹/₄ to the east line of the NW¹/₄SW¹/₄; thence North on the east line of the NW¹/₄SW¹/₄ to the southeast corner of the SW¹/₄NW¹/₄; thence North on the east line of the SW¹/₄NW¹/₄ 495 feet to a tax lot boundary line; thence West on said tax lot boundary line 165 feet to a tax lot boundary line; thence South on said tax lot boundary line to the south line of the SW¹/₄NW¹/₄; thence West on said south line 65 feet to a tax lot boundary line; thence North on said tax lot boundary line 165 feet to a tax lot boundary line; thence West on said tax lot boundary line 100 feet to a tax lot boundary line; thence South on said tax lot boundary line to the south line of the SW¹/₄NW¹/₄; thence West on said south line to the east line of the W¹/₂SW¹/₄NW¹/₄; thence North on said east line (Thrifty Way) to the north line of the SW¹/₄NW¹/₄; thence West on said north line 264 feet to a tax lot boundary line; thence South on said tax lot boundary line to the north line of the SW¹/₄SW¹/₄NW¹/₄; thence West 66 feet to the east line of the W¹/₂SW¹/₄SW¹/₄NW¹/₄; thence South on said east line to the midpoint of said east line; thence West on the midline of the W¹/₂SW¹/₄SW¹/₄NW¹/₄ 330 feet to the west line of the SW¹/₄NW¹/₄; thence South on said west line 330 feet to the Point of Beginning.

TRACT 4 (West Side)

Beginning at the 1/4 corner between Sections 5 and 6; thence West to the NW corner of the E¹/₂SE¹/₄ of said Section 6; thence South to a point 220 feet North of the SW corner of said E¹/₂SE¹/₄; thence East 220 feet; thence South 220 feet to SW. 4th Avenue; thence West on SW. 4th Avenue to the west line of the E¹/₂W¹/₂ of Section 7; thence South on the west line of the E¹/₂W¹/₂ to the southwest corner of the NE¹/₄SW¹/₄; thence East on the south line of the NE¹/₄SW¹/₄ and the south line of the N¹/₂SE¹/₄ of Section 7 to SW. 30th Street (Highway 201); thence North on SW. 30th Street (Highway 201) to the south line of the N¹/₂NW¹/₄ of Section 8; thence East on the south line of the N¹/₂NW¹/₄ to east line of the N¹/₂NW¹/₄; thence North on the east line of the N¹/₂NW¹/₄ to the north line of the N¹/₂NW¹/₄; thence West on the north line of the N¹/₂NW¹/₄ to the

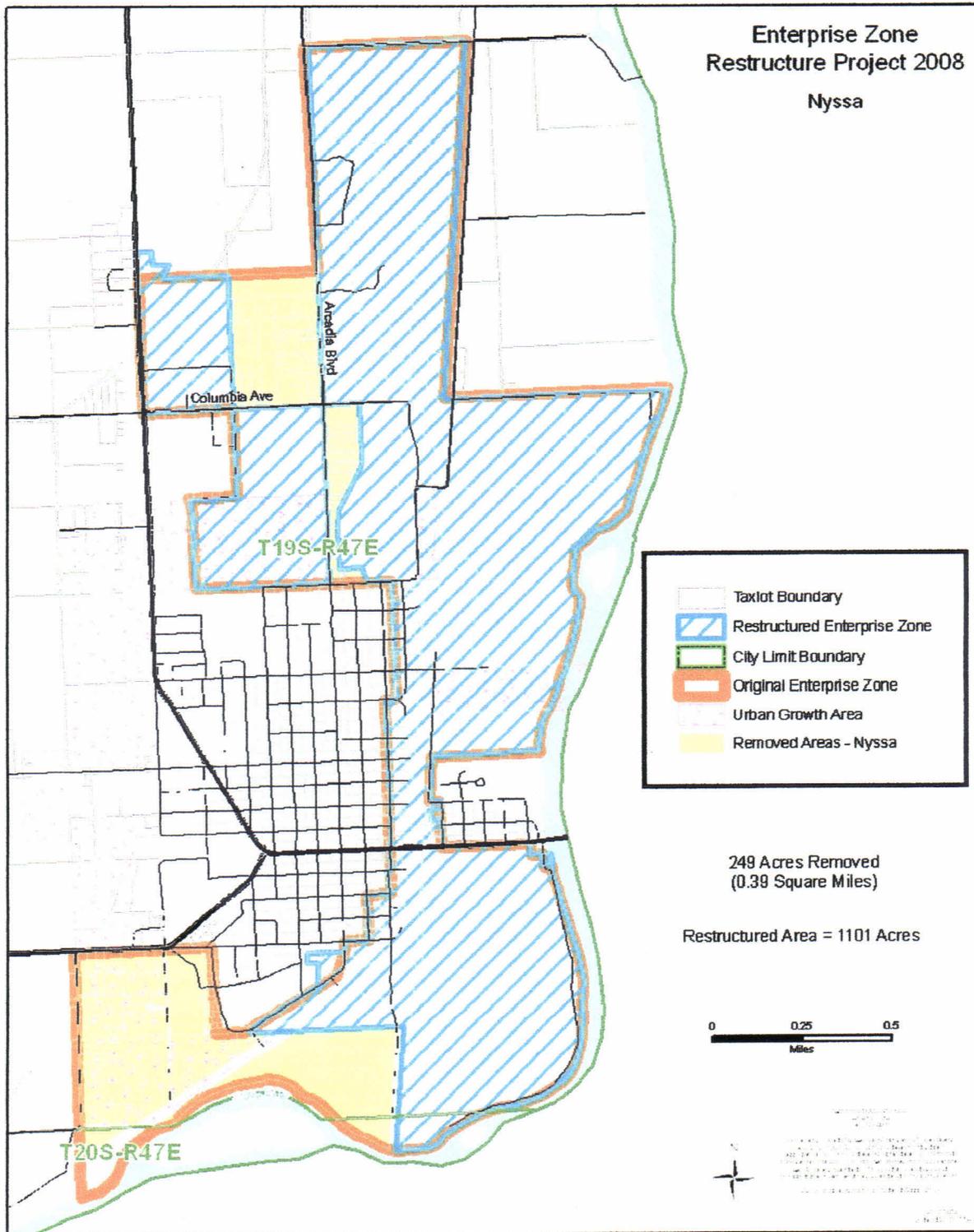
centerline of the Tony Yturri Memorial Beltline; thence northeasterly on said centerline to the east line of the NW $\frac{1}{4}$ of Section 5; thence North on the east line of the NW $\frac{1}{4}$ to the north line of the NW $\frac{1}{4}$; thence West on the north line of the NW $\frac{1}{4}$ to the west line of the NW $\frac{1}{4}$; thence South on the west line of the NW $\frac{1}{4}$ to the Point of Beginning; EXCEPT

Beginning at the northeast corner of Section 7; thence West on the north line of Section 7 to the west line of the NE $\frac{1}{4}$ NE $\frac{1}{4}$; thence South on the west line of the NE $\frac{1}{4}$ NE $\frac{1}{4}$ to the south line of the N $\frac{1}{2}$ N $\frac{1}{2}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$; thence East on the south line of the N $\frac{1}{2}$ N $\frac{1}{2}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ to the east line of Section 7; thence East to Tony Yturri Memorial Boulevard; thence northerly on said Boulevard to the north line of Section 8; thence West on said north line to the Point of Beginning.

TRACT 5 (South Side)

T. 18 S., R. 47 E., W.M.: portion of Section 21

N $\frac{1}{2}$ NW $\frac{1}{4}$, E $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$, all of the N $\frac{1}{2}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ lying west of the Union Pacific Railroad, and all of the NW $\frac{1}{4}$ NE $\frac{1}{4}$ lying west of the Union Pacific Railroad.



NYSSA AREA DESCRIPTION

(as revised February, 2010)

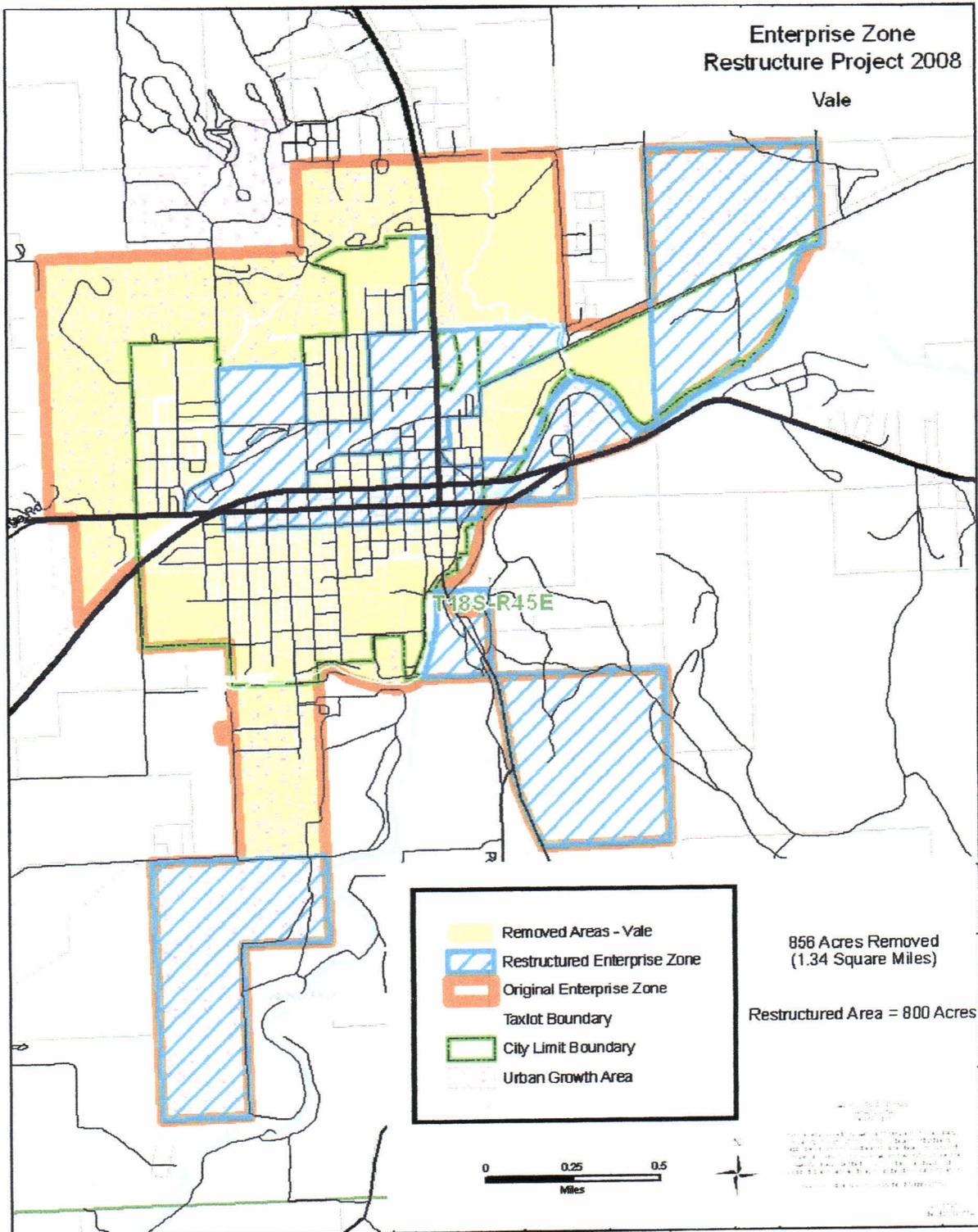
T. 19 S., R. 47 E., W.M.: portions of Sections 20, 28, 29, 32, and 33

T. 20 S., R. 47 E., W.M.: portion of Section 4

Beginning at the intersection of the centerline of the Union Pacific Railroad right of way and the south line of Section 32; thence southerly on said right of way centerline to the north bank of the Snake River; thence easterly and northerly on said north bank around the Amalgamated Sugar Company's property to the south line of the Nyssa River Front Park property; thence following said Park's boundary West 114.3 feet, North 186.6 feet, West 181.1 feet, North 169 feet to the centerline of Main Street; thence West on Main Street to E. 1st Street; thence North on E. 1st Street to a point opposite the south line of Lot 9, Block 145, Ward's Addition; thence West to the south line of said Lot 9 and continuing West on the south line of said Lot 9 to the west line of said Lot 9; thence North on the west lines of Lot 9-4 to the north line of said Lot 4; thence East on the north line of said Lot 4 and extending to E. 1st Street; thence North on E. 1st Street to Ehrgood Avenue; thence West on Ehrgood Avenue to Long Drive; thence northerly on Long Drive to the south line of Section 29; thence East on the south lines of Sections 29 and 28 to the west bank of the Snake River; thence northerly on said west bank to the north line of Section 28; thence West on the north lines of Sections 28 and 29 to the centerline of the Union Pacific Railroad right of way; thence northerly on said right of way centerline to Eureka Avenue; thence West on Eureka Avenue to Arcadia Boulevard; thence South on Arcadia Boulevard to Columbia Avenue; thence East on Columbia Avenue 530.34 feet to a point on the boundary of a tax lot; thence southerly on said tax lot boundary to a point that is 540 feet east of the west line of the NE $\frac{1}{4}$ of Section 29 and 867.7 feet south of the north line of said NE $\frac{1}{4}$; thence southwesterly on a tax lot boundary to a point that is 165 feet east of the west line of said NE $\frac{1}{4}$ and 1082.5 feet north of the south line of said NE $\frac{1}{4}$; thence southerly on a tax lot boundary to a point that is 209 feet north of the south line of said NE $\frac{1}{4}$ and 145 feet east of the west line of said NE $\frac{1}{4}$; thence East parallel with the south line of said NE $\frac{1}{4}$ on a tax lot boundary 323 feet to a point; thence southeasterly on a tax lot boundary to a point on the south line of said NE $\frac{1}{4}$ (Chestnut Avenue) that is 560 feet east of the west line of said NE $\frac{1}{4}$; thence East on Chestnut Avenue to the alley between N. Idaho Street and N. 1st Street; thence South on the alleys to Walnut Avenue; thence West on Walnut Avenue to N. 1st Street; thence South on N. 1st Street, crossing Main Street, to Reece Avenue; thence West on Reece Avenue to S. 2nd Street; thence South on S. 2nd Street to King Avenue; thence West on King Avenue to S. 3rd Street; thence South on S. 3rd Street to a point opposite the south line of Lot 1, Block 10, Voeller's Replat; thence West to said south line and continuing West on the south lines of said Lots 1-5, across Thompson Avenue and continuing West on the north lines of Lots 6 and 7, Block 1, Voeller's Replat; thence South on the west line of said Lot 6 and extending South to the centerline of Thompson Avenue; thence East 155.87 feet to a tax lot boundary; thence South on said tax lot boundary 280.34 feet to Commercial Avenue right of way and extending South to the centerline of Commercial Avenue; thence southwesterly on Commercial Avenue extended to the south line of the N $\frac{1}{2}$ S $\frac{1}{2}$ of Section 32; thence East on the south line of said N $\frac{1}{2}$ S $\frac{1}{2}$ to the centerline of the Union Pacific Railroad right of way; thence southerly on said right of way centerline to the Point of Beginning; and

Beginning at the intersection of Columbia Avenue and N. 3rd Street; thence West on Columbia Avenue to the northwest corner of the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 29; thence South on the west line of said NE $\frac{1}{4}$ NW $\frac{1}{4}$ (N. 7th Street) to a point 15 feet north of the southwest corner of said NE $\frac{1}{4}$ NW $\frac{1}{4}$; thence West parallel with the north line of the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 29 (N. 14th Avenue) to a point opposite the west line of the E $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$; thence South to said west line and continuing South on said west line to the south line of said SW $\frac{1}{4}$ NW $\frac{1}{4}$; thence East on the south line of the NW $\frac{1}{4}$ of Section 29 to N. 3rd Street; thence North on N. 3rd Street to Columbia Avenue and the Point of Beginning; and

Beginning at the southeast corner of the W $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 20; thence North on the east line of said W $\frac{1}{2}$ SW $\frac{1}{4}$ to the south line of the N $\frac{1}{2}$ N $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 20; thence West on said south line to a point that is 343 feet east of the west line of Section 20; thence following the boundary of a tax lot northeasterly to a point that is 200 feet north of the south line of said N $\frac{1}{2}$ N $\frac{1}{2}$ SW $\frac{1}{4}$ and 447 feet east of the west line of Section 20; thence westerly on said tax lot boundary to a point that is 218 feet east of the west line of Section 20; thence following the boundary of another tax lot northerly 200 feet; thence westerly on said tax lot boundary 218 feet to Oregon Highway 201; thence South on Oregon Highway 201 to Columbia Avenue; thence East on Columbia Avenue to the Point of Beginning.



VALE AREA DESCRIPTION

(as revised February, 2010)

In T. 18 S., R. 45 E., W.M.: portions of Sections 19, 20, 21, 29, 30, and 31

All of the SE $\frac{1}{4}$ of Section 29 lying east of Lytle Boulevard; AND

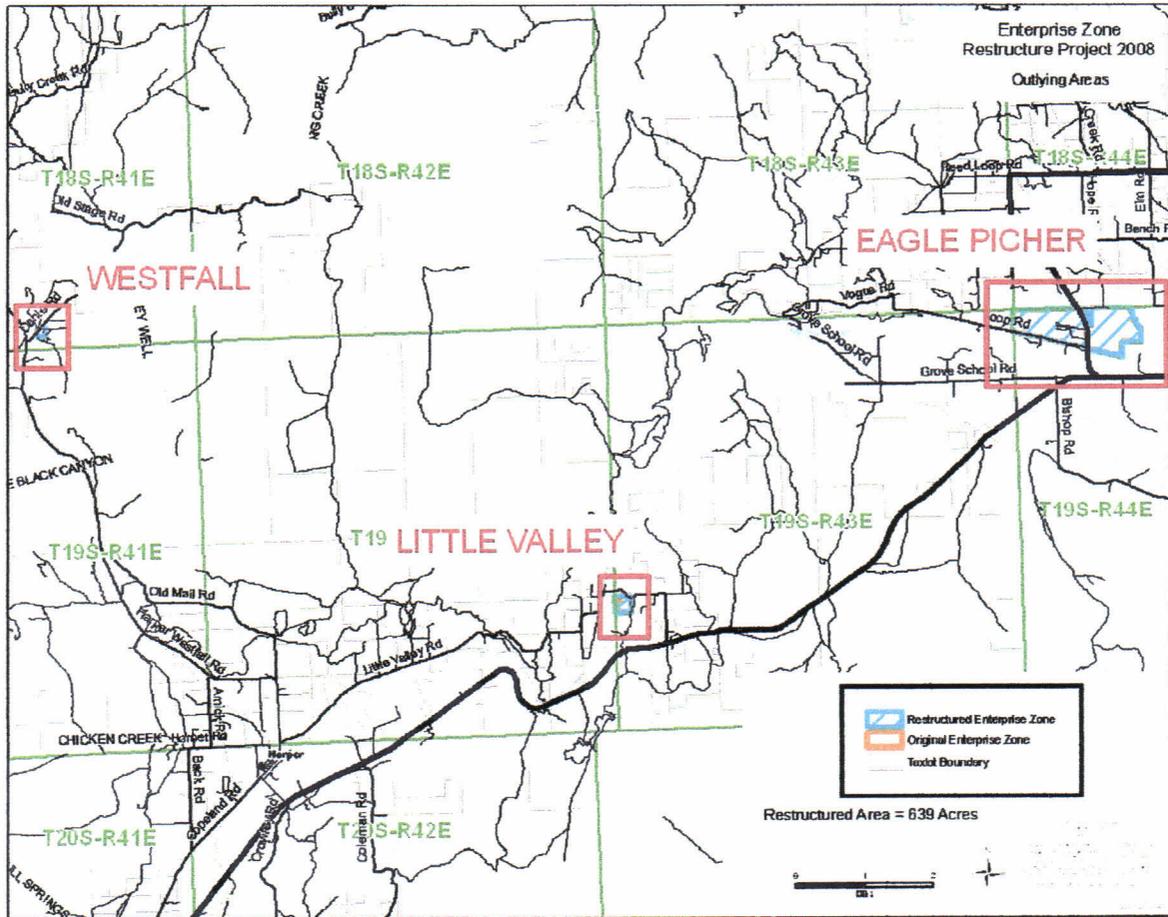
All of the W $\frac{1}{2}$ of Section 21 lying northwesterly of the Malheur River; AND

All of the NE $\frac{1}{4}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$, and NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 31; AND

All of the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 29 lying east of the Malheur River; AND

Beginning at the southeast corner of the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 19; thence West on the south line of the SW $\frac{1}{4}$ SE $\frac{1}{4}$ to Barkley Drive; thence north and northeast on Barkley Drive to the west line of the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 19; thence North on the west line of the SE $\frac{1}{4}$ SE $\frac{1}{4}$ and the west line of the NE $\frac{1}{4}$ SE $\frac{1}{4}$ to a point opposite the extension of Petrie Street; thence East on said extension and on the south line of Parcel 1, Partition Plat 95-12 to the east line of the NE $\frac{1}{4}$ SE $\frac{1}{4}$; thence South on the east line of the NE $\frac{1}{4}$ SE $\frac{1}{4}$ (17th Street) to the south line of the NE $\frac{1}{4}$ SE $\frac{1}{4}$; thence East on Hope Street to 14th Street; thence North on 14th Street to Ellsworth Street; thence East on Ellsworth Street to a point opposite the alley between Lots 46 and 47 in Cottonwood Addition 1; thence North on said alley to the north line of Blue Sky Drive; thence East on said north line to Highway 26; thence South on Highway 26 to the north line of the NE $\frac{1}{4}$ SW $\frac{1}{4}$; thence East on the north line of the NE $\frac{1}{4}$ SW $\frac{1}{4}$ and on the north line of the NW $\frac{1}{4}$ SE $\frac{1}{4}$ to Willow Creek (approximately 35 feet west of the east line of the NW $\frac{1}{4}$ SE $\frac{1}{4}$); thence southerly on Willow Creek to Lagoon Drive; thence southwest on Lagoon Drive to 10th Street; thence South on 10th Street to Hope Street; thence West on Hope Street to a point opposite the alley in Block 32, Hope-Holland Addition; thence South on said alley to Morton Street; thence West on Morton Street to Highway 26; thence southeast on the old highway curve centerline bisecting Block 3, Eldridge's Addition to Harrison Street; thence East on Harrison Street to 10th Street; thence North on 10th Street to a point opposite the north line of Partition Plat 97-7; thence East on said north line to the Malheur River; thence easterly (downstream) on the Malheur River to the east line of the SE $\frac{1}{4}$ SE $\frac{1}{4}$; thence South on the east line of the SE $\frac{1}{4}$ SE $\frac{1}{4}$ to Highway 20/26; thence southwest on Highway 20/26 to the east line of the SW $\frac{1}{4}$ SE $\frac{1}{4}$; thence south on the east line of the SW $\frac{1}{4}$ SE $\frac{1}{4}$ to the south line of the SW $\frac{1}{4}$ SE $\frac{1}{4}$; thence West on the south line of the SW $\frac{1}{4}$ SE $\frac{1}{4}$ to the Malheur River; thence southwest (upstream) on the Malheur River to a point opposite the extension of "B" Street; thence West on said extension and on "B" Street to the west line of the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 30 (Yakima Street); thence North on the west line of the NE $\frac{1}{4}$ NE $\frac{1}{4}$ to the Point of Beginning; EXCEPT

Beginning at the intersection of Washington Street and West Street; thence North on West Street to Harrison Street; thence East on Harrison Street to Cottage Street; thence North on Cottage Street to Morton Street; thence East on Morton Street to N. Main Street; thence South on N. Main Street to Harrison Street; thence West on Harrison Street to Court Street; thence South on Court Street to Washington Street; thence West on Washington Street to the Point of Beginning.



EAGLE PICHER SITE AREA DESCRIPTION
(as edited February, 2010)

T. 19 S., R. 44 E., W.M.: portion of Section 5

Government Lot 3, Government Lot 4 except the West 380 feet, the S $\frac{1}{2}$ NW $\frac{1}{4}$, that portion of the SW $\frac{1}{4}$ lying North of the Wyoming-Colorado Railroad right of way, the SW $\frac{1}{4}$ NE $\frac{1}{4}$, the West 165 feet of the South 1150 feet of the SE $\frac{1}{4}$ NE $\frac{1}{4}$, and these portions of Government Lot 2:
W $\frac{1}{2}$, W $\frac{1}{2}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$, and W $\frac{1}{2}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$;

AND

T. 19 S., R. 44 E., W.M.: portion of Section 6

Government Lots 1, 2, 3, and 4, and that portion of the following parcels lying North of the Wyoming-Colorado Railroad right of way:

Government Lot 5, the SE $\frac{1}{4}$ NW $\frac{1}{4}$, the NW $\frac{1}{4}$ SE $\frac{1}{4}$, the NE $\frac{1}{4}$ SE $\frac{1}{4}$, and the S $\frac{1}{2}$ NE $\frac{1}{4}$,
excepting therefrom that portion as conveyed to the State of Oregon in Deed recorded Oct. 7,
1946, in Book 68, Page 297, of Deed Records.

WESTFALL SITE AREA DESCRIPTION
(as edited February, 2010)

T. 18 S., R. 41 E., W.M.: portion of Section 34

SW $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$, NE $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$, and NW $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$.

LITTLE VALLEY SITE AREA DESCRIPTION
(unchanged)

T. 19 S., R. 43 E., W.M.: portion of Section 30

Government Lot 1 (also known as Tax Lot 1200).

AGENDA REPORT

March 1, 2010

TO: Mayor and City Council

FROM: Yorick de Tassigny, Facilities Manager

THROUGH: Henry Lawrence, City Manager

SUBJECT: RESOLUTION #2010-114: A RESOLUTION ACKNOWLEDGING RECEIPT AND AUTHORIZING EXPENDITURE OF A \$728,000 AMERICAN RECOVERY AND REINVESTMENT ACT (ARRA) ENERGY EFFICIENCY AND CONSERVATION BLOCK GRANT (EECBG) WITHIN THE GRANT FUND.

DATE: February 22, 2010

SUMMARY:

Attached are the following documents:

- Resolution #2010-114
- Sample ODOE ARRA EECBG Intergovernmental Agreement
- Exhibit A: The American Institute of Architects AIArchitect Article *New and Cool: Variable Refrigerant Flow Systems*

This resolution approves an agreement between the City of Ontario and the State of Oregon Department of Energy (ODOE) for the acceptance of Energy Efficiency and Conservation Block Grant (EECBG) funds for the design and construction of a lighting and HVAC upgrade project at Ontario City Hall. The project is based on recommendations made by McKinstry following a level 1 energy audit of the facility. The upgrade to these energy systems are expected to save the City \$12,500 in energy costs annually. Currently, the City pays approximately \$35,000 annually in electricity costs for City Hall alone.

BACKGROUND:

In November 2009, staff applied for American Recovery and Reinvestment Act of 2009 (ARRA) Energy Efficiency and Conservation Block Grant (EECBG) for funding to complete a lighting and HVAC (heating, ventilating and air conditioning) upgrade at City Hall. These projects were identified in a report compiled by McKinstry in October of 2008 following a level 1 energy audit of the facility. On January 29, 2010, ODOE issued a press release identifying the cities and counties to receive recovery act funds, and listed the Ontario City Hall lighting and HVAC project as one selected for funding. The City was awarded \$728,000, the full amount for designing and completing the project, less the estimated \$10,000 in staff time that will be required for administering the work. Portions of the project will also qualify for financial incentives available through Idaho Power.

The project targets the two largest energy consuming systems in the facility: Lighting and HVAC. The lighting portion of the project, estimated at \$103,000, includes a complete retrofit of interior and exterior lights and fixtures. The old T12 fluorescent fixtures will be replaced with T5 or T8 equivalents (depending on the application) that boast the latest and significantly more efficient technology in the industry. This phase of the project will also analyze current lighting levels and compare them with existing needs and generally accepted standards. This effort will allow for the delamping of over-lit areas, maximizing efficiency even further. Motion sensors and other such lighting control devices will also be part of this project.

The HVAC portion of the project, estimated at \$625,000, will seek to completely dismantle and replace the existing variable air volume (VAV) system that is original to the building. This system is very inefficient and has reached the end of its useful life, which makes it very costly to operate and maintain. The City will follow McKinstry's recommendation to design and install a variable refrigerant flow (VRF) system. These systems distribute refrigerant instead of piping hot and chilled water to each evaporator unit like chilled water systems do. By supplying different amounts of refrigerant to evaporators, the VRF systems are able to provide simultaneous heating and cooling for comfortable HVAC operation. Despite having a somewhat higher initial cost, VRF systems are significantly more efficient than comparable HVAC system. The installation of this equipment is expected to translate into a favorable return on investment.

This project is aimed at reducing City Hall's operational costs by rendering the energy systems more efficient. The City currently pays approximately \$35,000 in electricity costs annually. It is estimated that this project will result in a cost savings of \$12,500.

The project can be expected to cause some disruption to the normal flow of business but it is highly unlikely to cause any interruption of services or lengthy displacements of staff.

This resolution authorizes the City Manager to enter into an agreement between the City of Ontario and the ODOE conceding to the terms set forth in the American Recovery and Reinvestment Act of 2009 for the receipt of EECBG funds for the lighting and HVAC upgrade at City Hall contingent upon approval of the final document by all parties.

ALTERNATIVE:

The council could choose not to approve this agreement with the State of Oregon Department of Energy which would result in the abandonment of the grant funding and the pursuit of this project for the near term. Project could be revisited during the course of future budget preparations.

FINANCIAL IMPLICATIONS:

Expenditures for this project are estimated at \$728,000, 100% of which will be covered through grant funds. The City will provide an estimated \$10,000 in staff time managing the project from infancy to completion. The proposed Resolution identifies the revenue and expense budget as being within the City's Grant Fund.

RECOMMENDATION:

Staff recommends the Council approves Resolution Number 2010-114.

PROPOSED MOTION:

I move the City Council adopt Resolution Number 2010-114, A **RESOLUTION ACKNOWLEDGING RECEIPT AND AUTHORIZING EXPENDITURE OF A \$728,000 AMERICAN RECOVERY AND REINVESTMENT ACT (ARRA) ENERGY EFFICIENCY AND CONSERVATION BLOCK GRANT (EECBG) WITHIN THE GRANT FUND.**

RESOLUTION NO 2010-114

A RESOLUTION ACKNOWLEDGING RECEIPT AND AUTHORIZING EXPENDITURE OF A \$728,000 AMERICAN RECOVERY AND REINVESTMENT ACT (ARRA) ENERGY EFFICIENCY AND CONSERVATION BLOCK GRANT (EECBG) WITHIN THE GRANT FUND

WHEREAS, the 2009-2011 Biennial Budget was adopted without the knowledge of funding for a an American Recovery and Reinvestment Act Energy Efficiency and Conservation Block Grant; and

WHEREAS, the City applied for and was awarded an ARRA EECBG in the amount of \$728,000 for the design and construction of a lighting and HVAC upgrade project at Ontario City Hall; and

WHEREAS, the City desires to accept the grant from the Oregon Department of Energy together with the project terms and modify the 2009-2011 Budget, acknowledging new grant revenue of \$728,000 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 2009-2011 Biennial Budget:

Line Item	Item Description	FY 09-11 Budget	Amount of Change	Adjusted Budget
GRANT FUND				
Revenue				
010-000-456138	ODE ARRA EECBG Energy Proj	\$ 0	\$ 728,000	\$ 728,000
Expenses				
010-038-714138	ODE ARRA EECBG Energy Proj	\$ 0	\$ 728,000	\$ 728,000

Effective Date: Upon adoption

Passed and adopted by the Ontario City Council this ____ day of _____ 2010.

Ayes:

Nays:

Absent:

Approved by the Mayor this ____ day of _____ 2010.

Joe Dominick, Mayor

ATTEST:

Tori Barnett, City Recorder



STATE OF OREGON DEPARTMENT OF ENERGY
American Recovery and Reinvestment Act of 2009
Energy Efficiency and Conservation Block Grant

INTERGOVERNMENTAL AGREEMENT
Project

This agreement is between the State of Oregon, acting by and through its Department of Energy, hereafter referred to as "ODOE," and the **RECIPIENT**, acting by and through its elected officials, hereinafter referred to as "Recipient."

RECIPIENT		ODOE	
Administrator:		Administrator:	Sven Anderson
Title:		Title:	ARRA EECBG Project Manager
Organization:		Organization:	State of Oregon: Dept of Energy
Address:		Address:	625 Marion Street NE Salem, OR 97301-3737
Phone:		Phone:	(503) 378-6469
Fax:		Fax:	(503) 373-7806
Email:		Email:	Sven.Anderson@state.or.us
Federal ID #:			
DUNS #:			

RECITALS

- Oregon Revised Statutes (ORS) 190.110 authorizes state agencies to enter into agreements with counties, cities and other local government units to cooperate for any lawful purpose.
- ORS 469.030 authorizes ODOE to accept and disburse federal funds for energy conservation projects and to contract with public and private agencies for energy activities consistent with ORS 469.010.
- The American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, ("ARRA") was enacted to preserve and create jobs and promote economic recovery, assist those most impacted by the recession, provide investments needed to increase economic efficiency by spurring technological advances in science and health, invest in transportation, environmental protection, and other infrastructure that will provide long-term economic benefits, stabilize State and local government budgets, in order to minimize and avoid reductions in essential services and counterproductive State and local tax increases. Recipients shall use grant funds in a manner that maximizes job creation and economic benefit.
- ARRA funds provided to the Oregon Department of Energy (ODOE) will be used to fund energy efficiency improvements, to develop renewable energy resources and to for environmental protection.

NOW THEREFORE, the ODOE and Recipient agree to the following:

AGREEMENT

1. Effective Date. This Agreement shall become effective on the date this Agreement is fully executed and approved as required by applicable law. Unless otherwise terminated or extended, the Project shall be completed on July 15, 2012 ("Project Completion Date"). This Agreement shall expire on the earlier of August 31, 2012, or the date final payment is made by ODOE.

2. Agreement Documents. This agreement consists of this document and includes the following listed exhibits which are incorporated into this Agreement:

- Exhibit A: Project Requirements
- Exhibit B: Federal Assurances and Certifications
- Exhibit C: Retrofit Equipment List

Exhibit D: ARRA Requirements
 Exhibit E: Insurance Requirements

In the event of a conflict between two or more of the documents comprising this Agreement, the language in the document with the highest precedence shall control. The precedence of each of the documents comprising this Agreement is as follows, listed from highest precedence to lowest precedence: Exhibit D, Exhibit B, this Agreement including the Recitals but without Exhibits; Exhibit A; Exhibit C.

3. Grant. In accordance with the terms and conditions of this Agreement, ODOE shall provide Recipient \$XX,XXX (Grant Funds or Grant moneys) for the purposes described in Section 4 (the "Project"). ODOE shall pay the Grant from monies available through DE-EE0000926 ARRA – Energy Efficiency and Conservation Block Grant issued to ODOE under ARRA, the Energy Policy Act of 2005 and Public Law 109-58 by the U.S. Environment Protection Recipient (EPA).

Use of the Grant Funds are subject to the regulations and cost principles applicable to this Agreement, including but not limited to OMB Circular A133 Audits of States, Local Government and Non-Profit Organizations, Exhibit B (Federal Assurances and Certifications) and, for any ARRA funds, Exhibit D. The Grant Funds may be used only for eligible expenditures and for purposes set out in federal regulations governing the source of these funds.

Any Program Income deriving from the Grant Funds must be added to the Grant Funds. Program Income shall be considered Grant Funds for purposes of this Agreement and must be used or expended in accordance with the terms and conditions of this Agreement. Recipient must obtain written approval from ODOE prior to earning any Program Income. Program Income includes any interest or other income generated with or deriving from the Grant Funds.

4. Project: The Project is the "project" described in Exhibit A.

5. Progress and Final Reports. Recipient shall monthly provide to ODOE Project Status Reports by entering data as required by ODOE at <http://ARRA.wesd.org>. The Project Status Reports must be submitted during the last five business days of each month and no later than the last business day of each month.

The Recipient must submit a Final Report at the completion of the Project and no later than fifteen days after the Project Completion Date. The Final Report shall be submitted by entering data as required by ODOE at <http://ARRA.wesd.org>.

All equipment and materials purchased with funds made available by this Agreement must be used only for purposes of the same general nature outlined in this Agreement. The Recipient will include in each Project Status Report and its Final Report notice to ODOE of any equipment purchased with funds made available under this Agreement.

6. Disbursement and Recovery of Grant.

a. Disbursement Generally. ODOE shall disburse up to 75 percent of the Grant Funds to Recipient on a cost reimbursement basis upon approval of invoices submitted to ODOE. Recipient shall submit invoices monthly to ODOE. Invoices must be in the form provided at <http://ARRA.wesd.org> and provide detail indicating the nature of costs to be reimbursed. All such costs must be directly related to the Project and Project budget as shown in Exhibit A. Invoices must be submitted by an authorized representative of Recipient. Prior to approval of any invoice, all reports due under Section 5 hereof must be complete and provided to and approved by ODOE. ODOE will disburse the final 25 percent of the Grant Funds upon approval by ODOE of the Final Report and the completed Project. ODOE will not be obligated to make final payment to Recipient until all documentation and reports due under Section 5 hereof are complete and provided to ODOE, and in no event shall ODOE make any disbursement after March 31, 2012.

b. Advance Disbursement. ODOE shall disburse \$_____ ("advance amount") within 15 days after the effective date of this Agreement. ODOE shall not make any disbursements under paragraph a. of this section until Recipient has submitted invoices in amounts totaling the advance amount.

b. Allowable Costs. The Grant is for the Project and shall not be used for any other purpose. No Grant Funds will be disbursed for any changes to the Project unless such changes are approved by ODOE by Amendment pursuant to section 12.b hereof. Recipient shall not use any Grant Funds for administration, overhead or indirect costs, whether or not related to this Agreement.

c. Conditions Precedent to Disbursement. ODOE's obligation to disburse Grant moneys to Recipient under this Agreement is subject to satisfaction, with respect to each disbursement, of each of the following conditions precedent:

- i. ODOE has received sufficient expenditure authorizations to allow ODOE, in the exercise of its reasonable administrative discretion, to make the disbursement.
- ii. No default as described in section 10 has occurred.
- iii. Recipient's representations and warranties set forth in section 7 are true and correct on the date of disbursement with the same effect as though made on the date of disbursement.
- iv. Recipient shall provide ODOE a copy of all necessary federal, state and local permits required for the Project.
- v. ODOE has not found any deficiencies such as funds not disbursed, jobs not created, insufficient technical monitoring, failure to meet reporting requirements, or failure to make progress on the Project as described in Exhibit A.

d. Recovery of Grant Moneys. Any Grant moneys disbursed to Recipient under this Agreement that are expended in violation or contravention of one or more of the provisions of this Agreement ("Misexpended Funds") or that remain unexpended on the earlier of termination or expiration of this Agreement must be returned to ODOE. Recipient shall return all Misexpended Funds to ODOE promptly after ODOE's written demand and no later than 15 days after ODOE's written demand. Recipient shall return all Unexpended Funds to ODOE within 14 days after the earlier of expiration or termination of this Agreement.

7. Representations and Warranties of Recipient. Recipient represents and warrants to ODOE as follows:

a. Organization and Authority. Recipient is a:

- Non-profit Corporation
- Municipal agency
- State Agency
- Federal Government Agency
- Other Governmental Entity (regional governments, port districts, special districts, etc)

duly organized and validly existing under the laws of the State of Oregon and is eligible to receive the Grant. Recipient has full power, authority and legal right to make this Agreement and to incur and perform its obligations hereunder, and the making and performance by Recipient of this Agreement (1) have been duly authorized by all necessary action of Recipient and (2) do not and will not violate any provision of any applicable law, rule, regulation, or order of any court, regulatory commission, board, or other administrative agency or any provision of Recipient's Articles of Incorporation or Bylaws (3) do not and will not result in the breach of, or constitute a default or require any consent under any other agreement or instrument to which Recipient is a party or by which Recipient or any of its properties may be bound or affected. No authorization, consent, license, approval of, filing or registration with or notification to any governmental body or regulatory or supervisory authority is required for the execution, delivery or performance by Recipient of this Agreement.

b. Binding Obligation. This Agreement has been duly executed and delivered by Recipient and constitutes a legal, valid and binding obligation of Recipient, enforceable in accordance with its terms subject to the laws of bankruptcy, insolvency, or other similar laws affecting the enforcement of creditors' rights generally.

The warranties set forth above are in addition to, and not in lieu of, any other warranties set forth in this Agreement or implied by law.

8. Certain Covenants of Recipient.

a. Grant Funds. Recipient shall vigilantly safeguard the Grant moneys received hereunder and maintain financial controls sufficient to protect such moneys and ensure that the Grant moneys are used solely for purposes of the Project;

b. Completion. Recipient shall complete the Project on or before the Project Completion Date and submit a final report for the Project to ODOE in accordance with Section 5 hereof.

c. Publicity. Recipient shall make every effort to acknowledge and publicize ODOE's participation and assistance with the project. Recipient agrees to place signs at the Project location acknowledging ODOE's grant program support. Recipient also agrees to maintain the signs for the life of the project. State may withhold final reimbursement payment until signage has been placed.

9. Grant Contract Administration. Recipient agrees and acknowledges that ODOE may contract with a Grant Administrator to administer this Agreement in all respects other than the disbursement and recovery of Grant moneys and notice of and remedies for default. Upon notification from ODOE that it has contracted with a Grant Administrator, Recipient shall respond promptly to questions from the Grant Administrator on implementation of the Project, use of the Grant Funds and compliance with the terms and conditions of this Agreement, give the Grant Administrator full access to Recipient's records and facilities as described in Section 10, and otherwise cooperate with the Grant Administrator in its oversight of Recipient's implementation of the Project and use of the Grant Funds. Recipient shall submit copies of its reports and invoices to the Grant Administrator as directed by ODOE. Recipient further agrees and acknowledges that the contracted Grant Administrator will periodically report to ODOE on Recipient's progress in implementing the Project, on Recipient's use of the Grant Funds and on Recipient's compliance with the terms and conditions of this Agreement. Finally, Recipient agrees and acknowledges that ODOE may designate a new grant administrator for this Agreement at any time by and effective upon written notice to Recipient and upon such designation, Recipient shall treat the new grant administrator as the Grant Administrator hereunder. The new Grant Administrator may be a third party or Department itself.

10. Records Maintenance and Access.

a. Access to Records and Facilities. ODOE, the Secretary of State of the State of Oregon (Secretary) and their duly authorized representatives shall have access to the books, documents, papers and records of Recipient that are directly related to this Agreement, the Grant moneys provided hereunder, or the Project for the purpose of making audits and examinations and to review Project accomplishments and management control systems and to provide technical assistance if required. In addition, ODOE, the Secretary and their duly authorized representatives may make and retain excerpts, copies, and transcriptions of the foregoing books, documents, papers, and records. Recipient shall permit authorized representatives of ODOE and the Secretary to perform site reviews of all services delivered as part of the Project.

b. Retention of Records. Recipient shall retain and keep accessible all books, documents, papers, and records, that are directly related to this Agreement, the Grant moneys or the Project for a minimum of three (3) years, or such longer period as may be required by applicable law, following the later of (1) termination or expiration of this agreement or (2) the date of the conclusion of any audit, controversy or litigation arising out of or related to this Agreement.

c. Expenditure Records. Recipient shall document the expenditure of all Grant moneys disbursed by ODOE under this Agreement. Recipient shall create and maintain all expenditure records in accordance with generally accepted accounting principles and in sufficient detail to permit ODOE to verify how the Grant moneys were expended.

11. Default. Recipient shall be in default under this Agreement upon the occurrence of any of the following events:

a. Recipient fails to perform, observe, or discharge any of its covenants, agreements, or obligations set forth herein.

b. Any representation, warranty or statement made by Recipient herein or in any documents or reports relied upon by ODOE to monitor implementation of the Project, the expenditure of Grant moneys or the performance by Recipient is untrue in any material respect when made;

c. Recipient (i) applies for or consents to the appointment of, or taking of possession by, a receiver, custodian, trustee, or liquidator of itself or all of its property, (ii) admits in writing its inability, or is generally unable, to pay its debts as they become due, (iii) makes a general assignment for the benefit of its creditors, (iv) is adjudicated a bankrupt or insolvent, (v) commences a voluntary case under the Federal Bankruptcy Code (as now or hereafter in effect), (vi) files a petition seeking to take advantage of any other law relating to bankruptcy,

insolvency, reorganization, winding-up, or composition or adjustment of debts, (vii) fails to controvert in a timely and appropriate manner, or acquiesces in writing to, any petition filed against it in an involuntary case under the Bankruptcy Code, or (viii) takes any action for the purpose of effecting any of the foregoing; or

d. A proceeding or case is commenced, without the application or consent of Recipient, in any court of competent jurisdiction, seeking (i) the liquidation, dissolution or winding-up, or the composition or readjustment of debts, of Recipient, (ii) the appointment of a trustee, receiver, custodian, liquidator, or the like of Recipient or of all or any substantial part of its assets, or (iii) similar relief in respect to Recipient under any law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, and such proceeding or case continues undismissed, or an order, judgment, or decree approving or ordering any of the foregoing is entered and continues unstayed and in effect for a period of sixty consecutive days, or an order for relief against Recipient is entered in an involuntary case under the Federal Bankruptcy Code (as now or hereafter in effect).

e. **Remedies upon Default.** If Recipient's default is not cured within 30 calendar days of written notice thereof to Recipient from ODOE or such longer period as ODOE may authorize in its sole discretion, ODOE may pursue any remedies available under this Agreement, at law or in equity. Such remedies include, but are not limited to, termination of this Agreement, return of all or a portion of the Grant moneys, payment of interest earned on the Grant moneys, and declaration of ineligibility for the receipt of future grant awards from ODOE. If, as a result of Recipient's default, ODOE demands return of all or a portion of the Grant moneys or payment of interest earned on the Grant moneys, Recipient shall pay the amount upon ODOE's demand.

12. TERMINATION

a. **Termination for Convenience.** Either party may terminate this Agreement in whole or in part, at any time prior to the expiration date of this Agreement upon 15 days notice to the other party. Neither party shall incur any new obligations for the terminated portion of this Agreement and shall cancel as many obligations as possible immediately upon receipt of notification from the other party. Payment in full shall be allowed for the non-cancelable obligations properly incurred up to the effective date of the termination. All Unexpended Funds shall be returned to ODOE within 14 days of termination.

b. **ODOE Termination.** ODOE may terminate this Agreement:

i. Immediately upon written notice to Recipient, if ODOE does not obtain sufficient funding and expenditure authorizations to allow ODOE to meet its payment obligations under this Agreement.

ii. Immediately upon written notice to Recipient if state or federal laws, regulations, or guidelines are modified, changed or interpreted in such a way that ODOE does not have the authority to provide Grant moneys for the Project or no longer has the authority to provide the Grant moneys from the funding source it had planned to use.

iii. Upon 30 calendar days advance written notice to Recipient, if Recipient is in default under this Agreement and such default remains uncured at the end of said 30 day period or such longer period, if any, as ODOE may specify in the notice.

13. GENERAL PROVISIONS

a. **Indemnification.** To the extent permitted by the Oregon Constitution and the Oregon Tort Claims Act, Recipient shall indemnify, defend (subject to ORS chapter 180), and hold harmless the State of Oregon and ODOE and their officers, employees, and agents from all claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature, resulting from, arising out of or relating to the activities of the Recipient or Recipient's officers, employees, sub-contractors, or agents under this Agreement.

Recipient assumes sole liability for Recipient's breach of the conditions of the grant, and shall, upon Recipient's breach of grant conditions that requires the State of Oregon to return funds to the grantor, hold harmless and indemnify the state for an amount equal to the funds which the State of Oregon is required to pay to grantor.

b. **Insurance.** Recipient shall maintain insurance as set forth in Exhibit E or a program of self insurance acceptable to ODOE, which is attached hereto. Recipient shall furnish to ODOE a Certificate of Insurance or self

insurance for the coverage and limits as set forth in Exhibit E which is to be in force and applicable to the Project for the duration of the Agreement.

c. **Amendments.** This Agreement may be amended or extended only by a written instrument signed by both parties. Any such amendment or extension is effective only when fully executed and approved as required by applicable law.

e. **Participation in Similar Activities.** This Agreement in no way restricts Recipient or ODOE from participating in similar activities with other public or private agencies, organizations, or individuals.

f. **Duplicate Payment.** Recipient shall not be compensated for or receive any other form of duplicate, overlapping or multiple payments for the same work performed under this Agreement from any agency of the State of Oregon or the United States of America or any other party, organization or individual. All Recipient matching contributions must be used and expended for this project only and within the Project period.

g. **No Third Party Beneficiaries.** ODOE and Recipient are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly or indirectly, to a third person unless such a third person is individually identified by name herein and expressly described as intended beneficiary of the terms of this Agreement.

h. **Notices.** Except as otherwise expressly provided in this Agreement, any communications between the parties hereto or notices to be given hereunder shall be given in writing by personal delivery, facsimile, email, or mailing the same, postage prepaid to Recipient or ODOE to the applicable Principal Contact at the address or number set forth below, or to such other addresses or numbers as either party may indicate pursuant to this section. Any communication or notice so addressed and mailed shall be effective five (5) days after mailing. Any communication or notice delivered by facsimile shall be effective on the day the transmitting machine generates a receipt of the successful transmission, if transmission was during normal business hours of the Recipient, or on the next business day, if transmission was outside normal business hours of the Recipient. Any communication or notice given by email shall be effective upon the sender's receipt of confirmation generated by the recipient's email system that the notice has been received by the recipient's email system. Any communication or notice given by personal delivery shall be effective when actually delivered.

ODOE:

Rhea Rodriguez, Contracts Coordinator
Oregon Department of Energy
625 Marion Street NE
Salem, OR 97301
Phone: (503) 373-2296
Fax: (503) 373-7386
Email: rhea.r.rodriquez@state.or.us

Recipient:

Phone:
Fax:
Email:

Sven Anderson
ARRA EECBG Project Manager
Oregon Department of Energy
625 Marion Street NE
Salem, OR 97301
Phone: (503) 378-6469
Fax: (503) 373-7806
Email: sven.anderson@state.or.us

Either party may designate a different person or change the contact information given in this section by providing notice in the manner provided in this section and such change shall be effective without need for amendment under Section 13.c.

i. **Governing Law, Consent to Jurisdiction.** This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively, "Claim") between ODOE (and/or any other agency or department of the State of Oregon) and Recipient that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Marion County in the State of Oregon. In no event shall this section be construed as a waiver by the State

of Oregon of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the eleventh amendment to the Constitution of the United States or otherwise, from any Claim or from the jurisdiction of any court. RECIPIENT, BY EXECUTION OF THIS AGREEMENT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF THE CIRCUIT COURT OF MARION COUNTY.

j. Compliance with Law. Recipient shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the Agreement or to the implementation of the Project. Without limiting the generality of the foregoing, Recipient expressly agrees to comply with the following laws, regulations and executive orders to the extent they are applicable to the Agreement or the implementation of the Project: (a) all applicable requirements of state civil rights and rehabilitation statutes, rules and regulations, (b) Titles VI and VII of the Civil Rights Act of 1964, as amended, (c) Sections 503 and 504 of the Rehabilitation Act of 1973, as amended, (d) the Americans with Disabilities Act of 1990, as amended, and ORS 659A.142, (e) Executive Order 11246, as amended, (f) the Health Insurance Portability and Accountability Act of 1996, (g) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended, (h) the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, (i) ARRA, (j) all regulations and administrative rules established pursuant to the foregoing laws, and (k) all other applicable requirements of federal civil rights and rehabilitation statutes, rules and regulations. These laws, regulations and executive orders are incorporated by reference herein to the extent that they are applicable to the Agreement or the Project and required by law to be so incorporated. Recipient shall not discriminate against any individual, who receives or applies for services as part of the Project, on the basis of actual or perceived age, race, creed, religion, color, national origin, gender, disability, marital status, sexual orientation, alienage or citizenship. All employers, including Recipient, that employ subject workers who provide services in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126.

k. Public Records. All information and records submitted to ODOE are subject to disclosure under the Public Records Law, ORS 192.410 to 192.505. If Recipient believes that any information or records it submits to ODOE may be a trade secret under ORS 192.501(2), or otherwise is exempt from disclosure under the Public Records Law, Recipient must identify such information with particularity and include the following statement:

"This data is exempt from disclosure under the Oregon Public Records Law pursuant to ORS 192, and is not to be disclosed except in accordance with the Oregon Public Records Law, ORS 192.410 through 192.505."

If Recipient fails to identify with particularity the portions of such information that Recipient believes are exempt from disclosure, Recipient is deemed to waive any future claim of non-disclosure of that information.

l. False Claim Act. Recipient will refer to the ODOE Grant Administrator any credible evidence that a principal, employee, agent, sub-grantee contractor, contractor or other person has submitted a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity or similar misconduct involving funds provided under this Grant Agreement.

m. Sensitive Information. Except for information that is already a matter of public record, Recipient shall not publish or otherwise disclose, except to ODOE or as otherwise required by law, any information or data obtained hereunder from private individuals, organizations, or public agencies in a publication wherein the information or data furnished by or about any particular person or establishment can be identified, except with the written consent of such person or establishment. Unless otherwise required by law, information concerning the business of the ODOE, its financial affairs, and its relations with its clients and employees, as well as any other information that may be specifically classified as confidential by the ODOE, shall be kept confidential. Recipient shall instruct its employees and subcontractors to keep such information confidential by using the same care and discretion that they use with similar information that the Recipient designates as confidential.

n. Severability. If any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if this Agreement did not contain the particular term or provision held to be invalid.

o. Assignment of Agreement, Successors in Interest. Recipient shall not assign or transfer any interest in this Agreement, enter into any subcontracts, or subgrant any Grant moneys, without the prior written approval of ODOE. Any such assignment, transfer, subcontract, or subgrant, if approved, is subject to such conditions and provisions, as ODOE may deem necessary, including without limitation that ODOE shall have reasonable access to the

facilities of the assignee, transferee, subcontractor, or subgrantee to the same extent as to the facilities of ODOE as described in Section 9 hereof and that all ARRA requirements apply. No approval by ODOE of any assignment, transfer, subcontract or subgrant shall be deemed to create any obligation of ODOE in addition to those set forth in this Agreement nor will ODOE's approval of an assignment, transfer, subcontract or subgrant relieve Recipient of any of its duties or obligations under this Agreement.

p. Headings. The headings and captions to sections of this Agreement have been inserted for identification and reference purposes only and shall not be used to construe the meaning or to interpret this Agreement.

q. Construction. The parties agree and acknowledge that the rule of construction that ambiguities in a written agreement are to be construed against the party preparing or drafting the agreement shall not be applicable to the interpretation of this Agreement.

r. Independent Contractors. The parties agree and acknowledge that their relationship is that of independent contracting parties and that Recipient is not an officer, employee, or agent of the State of Oregon as those terms are used in ORS 30.265 or otherwise.

s. Force Majeure. Neither Department nor Recipient shall be held responsible for delay or default caused by fire, civil unrest, natural causes and war which is beyond, respectively, the Department's or Recipient's reasonable control. Each party shall, however, make all reasonable efforts to remove or eliminate such cause of delay or default and shall, upon the cessation of the cause, diligently pursue performance of its obligations under this Agreement.

t. Survival. All rights and obligations shall cease upon termination or expiration of this Agreement, except for the rights and obligations set forth in Sections 5, 6.d, 7, 10, 13.a, 13.b, 13.g, 13.i, 13.t, 13.u., and Exhibit A, Section 4.

u. Integration and Waiver. This Agreement, including all Exhibits, constitutes the entire agreement between the parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. The delay or failure of either party to enforce any provision of this Agreement shall not constitute a waiver by that party of that or any other provision. Recipient, by the signature below of its authorized representative, hereby acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms and conditions.

IN WITNESS THEREOF: the parties hereto have caused this agreement to be properly executed by their authorized representatives as of the day and year hereinafter written.

RECEIPT

OREGON DEPARTMENT OF ENERGY

By: _____

By: _____
Joan M. Fraser, Deputy Director

Title

Date

Date

Shellí Honeywell, ARRA Manager

Date

Lorena Wise, Designated Procurement Officer

Date

EXHIBIT A

Statement of Work Placeholder

EXHIBIT B**Federal Assurances and Certifications**

ODOE, as a recipient of federal funds, is subject to Federal Assurances and Certifications. Recipient must comply with terms of this Exhibit B to support ODOE's compliance with the Federal Assurances and Certifications.

I. STATEMENT OF FEDERAL STEWARDSHIP

U.S. DOE will exercise normal Federal stewardship in overseeing the project activities performed under this award. Stewardship activities include, but are not limited to, conducting site visits; reviewing performance and financial reports; providing technical assistance and/or temporary intervention in unusual circumstances to correct deficiencies which develop during the project; assuring compliance with terms and conditions; and reviewing technical performance after project completion to ensure that the award objectives have been accomplished. Recipient acknowledges and agrees that such site visits may occur, and that a provision authorizing such site visits will be included in any subcontracts or other sub-agreements entered into by Recipient.

II. REPORTING REQUIREMENTS**A. Requirements.**

Failure by ODOE to comply with the reporting requirements contained in this the federal grant is considered a material noncompliance with the terms of the award. Noncompliance may result in withholding of future payments, suspension, or termination of the current award, and withholding of future awards. A willful failure to perform, a history of failure to perform, or unsatisfactory performance of this and/or other financial assistance awards, may also result in a debarment action to preclude future awards by Federal agencies. Recipient's failure to comply with the reporting requirements contained in this Agreement may result in termination of the Agreement repayment of Grant Funds to ODOE.

B. Dissemination of scientific/technical reports. Scientific/technical reports submitted under the federal grant will be disseminated on the Internet via the DOE Information Bridge (www.osti.gov/bridge), unless the report contains patentable material, protected data, or SBIR/STTR data. Citations for journal articles produced under the award will appear on the DOE Energy Citations Database (www.osti.gov/energycitations).

C. Restrictions. Reports submitted to the DOE Information Bridge must not contain any Protected Personal Identifiable Information (PII), limited rights data (proprietary data), classified information, information subject to export control classification, or other information not subject to release.

III. PUBLICATIONS

A. ODOE is encouraged to publish or otherwise make publicly available the results of the work conducted under the award. Recipient may publish or make publicly available the results of work conducted under this Agreement in accordance with this section III.

B. An acknowledgment of Federal support and a disclaimer must appear in the publication of any material, whether copyrighted or not, based on or developed under this project, as follows:

Acknowledgment: "This material is based upon work supported by the Department of Energy under Award Number DE-EE0000926."

Disclaimer: "This report was prepared as an account of work sponsored by an agency of the United States Government. Neither the United States Government nor any agency thereof, nor any of their employees, makes any warranty, express or implied, or assumes any legal liability or responsibility for the accuracy, completeness, or usefulness of any information, apparatus, product, or process disclosed, or represents that its use would not infringe privately owned rights. Reference herein to any specific commercial product, process, or service by trade name, trademark, manufacturer, or otherwise does not necessarily constitute or imply its endorsement, recommendation, or favoring by the United States Government or any agency thereof. The views and opinions of authors expressed herein do not necessarily state or reflect those of the United States Government or any agency thereof."

IV. INTELLECTUAL PROPERTY PROVISIONS AND CONTACT INFORMATION FOR INTELLECTUAL PROPERTY MATTERS

A. This award is subject to Intellectual Property Provisions (NRD-1003), Nonresearch and Development. Nonprofit organizations are subject to 10 CFR 600.136(a), (c) and (d). All other organizations are subject to 10 CFR 600.136 (a) and (c). A list of all intellectual property provisions may be found at http://www.gc.doe.gov/financial_assistance_awards.htm.

10 CFR 600.136 provides, in pertinent part:

(a) Recipients may copyright any work that is subject to copyright and was developed, or for which ownership was purchased, under an award. U. S DOE reserves a royalty-free, nonexclusive and irrevocable right to reproduce, publish or otherwise use the work for Federal purposes, and to authorize others to do so.

(c) U.S. DOE has the right to:

1. Obtain, reproduce, publish or otherwise use the data first produced under an award; and
2. Authorize others to receive, reproduce, publish, or otherwise use such data for Federal purposes.

(d)(1) In addition, in response to a Freedom of Information Act (FOIA) request for research data relating to published research findings produced under an award that were used by the Federal Government in developing an agency action that has the force and effect of law, the U. S. DOE shall request, and the recipient shall provide, within a reasonable time, the research data so that they can be made available to the public through the procedures established under the FOIA. If the DOE obtains the research data solely in response to a FOIA request, the agency may charge the requester a reasonable fee equaling the full incremental cost of obtaining the research data. This fee should reflect costs incurred by the agency, the recipient, and applicable sub recipients. This fee is in addition to any fees the agency may assess under the FOIA (5 U.S.C. 552(a)(4)(A)).

B. Questions regarding intellectual property matters should be referred to the DOE Award Administrator and the Patent Counsel designated as the service provider for the DOE office that issued the award. The IP Service Providers List is found at [http://www.gc.doe.gov/documents/Intellectual_Property_\(IP\)_Service_Providers_for_Acquisition.pdf](http://www.gc.doe.gov/documents/Intellectual_Property_(IP)_Service_Providers_for_Acquisition.pdf). Recipient shall direct any questions regarding intellectual property matters to ODOE for reference to the DOE Award Administrator.

V. LOBBYING RESTRICTIONS

By accepting funds under this award, Recipient agrees that none of the funds obligated on the award shall be expended, directly or indirectly, to influence congressional action on any legislation or appropriation matters pending before Congress, other than to communicate to Members of Congress as described in 18 U.S.C. 1913. This restriction is in addition to those prescribed elsewhere in statute and regulation.

Recipient agrees that no portion of the federal grant funds will be used to engage in lobbying of the Federal Government or in litigation against the United States unless authorized under existing law. Recipient shall abide by its respective OMB Circular (A-21, A-87, or A-122), which prohibits the use of federal grant funds for litigation against the United States.

Pursuant to Section 18 of the Lobbying Disclosure Act, the Recipient affirms that it is not a nonprofit organization described in Section 501(c) (4) of the Internal Revenue Code of 1986; or that it is a nonprofit organization described in Section 501(c) (4) of the Code but does not and will not engage in lobbying activities as defined in Section 3 of the Lobbying Disclosure Act.

Recipient shall execute the Lobbying and Litigation Certificate, attached hereto as Attachment 1 to this Exhibit B, and submits it to ODOE on or before the Project Completion Deadline.

VI. RESTRICTION ON DISPOSAL ACTIVITIES

Prior to the expenditure of Federal funds to dispose of sanitary or hazardous waste, the Recipient shall provide documentation to the DOE Project Officer demonstrating that it has prepared a disposal plan for sanitary or hazardous waste generated by the approved activities. Sanitary or hazardous waste includes, but is not limited to, old light bulbs,

lead ballasts, piping, roofing material, discarded equipment, debris, asbestos, etc. Upon DOE Project Officer review and written approval of the disposal plan, the Recipient may proceed with all activities associated with the disposal of sanitary or hazardous waste. The Recipient shall ensure the safety and structural integrity of any repair, replacement, construction, and/or alteration performed under this project.

VII. PRESERVATION OF OPEN COMPETITION AND FEDERAL GOVERNMENT NEUTRALITY TOWARDS CONTRACTORS' LABOR RELATIONS ON FEDERALLY FUNDED CONSTRUCTION PROJECTS

A. Unless in conflict with State or local laws, Recipient must ensure that bid specifications, project agreement, or other controlling documents in construction contracts awarded pursuant to this agreement, or pursuant to a sub award to this agreement, do not:

1. Require or prohibit bidders, offerors, contractors, or subcontractors to enter into or adhere to agreements with one or more labor organizations, on the same or other related construction project(s); or
2. Otherwise discriminate against bidders, offerors, contractors, or subcontractors for becoming or refusing to become or remain signatories or otherwise to adhere to agreements with one or more labor organizations, on the same or other related construction project(s).

B. The term "construction contract" as used in this provision means any contract for the construction, rehabilitation, alteration, conversion, extension, or repair of buildings, highways, or other improvements to real property.

C. Nothing in this provision prohibits bidders, offerors, contractors, or subcontractors from voluntarily entering into agreements with labor organizations.

VIII. DECONTAMINATION AND/OR DECOMMISSIONING (D & D) COSTS

Notwithstanding any other provisions of this Agreement, the federal government shall not be responsible for or have any obligation to the recipient for (i) Decontamination and/or Decommissioning (D&D) of any of the recipient's facilities, or (ii) any costs which may be incurred by the recipient in connection with the D&D of any of its facilities due to the performance of the work under this Agreement, whether said work was performed prior to or subsequent to the effective date of this Agreement.

EXHIBIT B – Attachment 1

STATE OF OREGON – DEPARTMENT OF ENERGY
LOBBYING AND LITIGATION CERTIFICATE

The Recipient certifies, to the best of the Recipient's knowledge and belief, that:

(1) No Federally appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form LLL "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all sub awards at all tiers (including subcontracts, sub grants, and contracts under grants, loans, and cooperative agreements) and that all sub recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed under section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for such failure.

ODOE Grant Agreement #: DE-EE0000926 ARRA

Federal Grant: Energy Efficiency and Conservation Block Grant

Recipient Name: Recipient

Recipient Address:

Project Name: Window Upgrades

I hereby certify that none of the funds awarded under the State of Oregon Department of Energy American Recovery and Reinvestment Act of 2009 _____ Grant have been used to engage in the lobbying of the Federal Government or in litigation against the United States unless authorized under existing law.

Authorized Signer:

Signature Date

Printed Name / Title:

At Project completion, complete this form and submit to:

Oregon Department of Energy
625 Marion St. NE
Salem OR 97301-3737

EXHIBIT C
EQUIPMENT LIST

<i>Recipient:</i> XXXXXX	<i>ODOE Agreement #:</i> EECBG 10-XXXX
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List of Vehicles and Equipment

(Insert list of equipment – this list will be used to verify equipment used when requests for payment are received)

Type of retrofit technology to be installed (if known), and manufacturer of retrofit technology (if known)

EXHIBIT D ARRA Requirements

The requirements contained in this Exhibit D apply to all funding under this Agreement that is provided from ARRA funds.

1. COMPLIANCE WITH ARRA REQUIREMENTS

Recipient specifically agrees to comply with all requirements of the American Recovery and Reinvestment Act of 2009, Pub.L.111-5 ("ARRA" or "the Act") and the ARRA-related terms and conditions of this Agreement. Recipient understands and acknowledges that the federal stimulus process is still evolving and that new requirements relating to ARRA compliance may still be forthcoming from the federal government and the State of Oregon. Accordingly, Recipient specifically agrees that both it and its subcontractors will comply with all current requirements and all future requirements of the federal government and the State of Oregon while this Agreement is in force.

2. REGISTRATION

Under Section 1512 of the Act, Recipient shall obtain a Dun and Bradstreet Data Universal Numbering System ("DUNS") number, and have registered with the Central Contractor Registration ("CCR"), on or before full execution of this Agreement. Recipient shall keep its DUNS and CCR information current, while this Agreement is in force.

3. REPORTING

Under Section 1512 of ARRA, state agencies receiving ARRA funds must submit a report to the federal government no later than ten (10) calendar days after the end of each calendar quarter. This report must contain at least the information outlined below. Accordingly, Recipient agrees to provide the State with the following information on or before the third day following the end of the calendar quarter, in order for the State to timely provide the required information to the federal government, as well as any additional information requested by ODOE that is required by the federal agency that is the source of the ARRA funds.

Standard data elements and federal instructions for use in complying with reporting requirements under Section 1512 of ARRA are pending review by the federal government, and were published in the Federal Register on April 1, 2009 [74 FR 14824 (to become part of 2 CFR 176)] See also OMB guidance memo M-09-21, Implementing Guidance for the Reports on Use of Funds Pursuant to the American Recovery and Reinvestment Act of 2009 (June 22, 2009), as supplemented, and any additional guidance that OMB may later issue. Final reporting rules and an online recipient reporting tool will be provided at www.FederalReporting.gov.

4. WHISTLEBLOWER PROTECTION

Recipient shall, and in its subcontracts shall require its subcontractor to, comply with Section 1553 of ARRA, which prohibits all non-federal contractors of ARRA funds, including the State of Oregon, and all contractors of the State, from discharging, demoting or otherwise discriminating against an employee as a reprisal for the employee's disclosure of information that the employee reasonably believes is evidence of: (a) gross mismanagement of a contract or grant relating to ARRA funds; (b) a gross waste of ARRA funds; (c) a substantial and specific danger to public health or safety related to the implementation or use of ARRA funds; (d) an abuse of authority related to implementation or use of ARRA funds; or (e) a violation of law, rule, or regulation related to an agency contract (including the competition for or negotiation of a contract) or grant, awarded or issued relating to ARRA funds. Recipient shall, and in its subcontracts shall require its subcontractors to, post notice of the rights and remedies available to employees under Section 1553 of ARRA.

5. PROHIBITION ON USE OF ARRA FUNDS

Under Section 1604 of ARRA, Recipient agrees that none of the funds made available under this Agreement may be used for any casino or other gambling establishment, aquarium, zoo, golf course, swimming pools or similar projects.

6. INSPECTION OF RECORDS

Recipient shall comply with Section 902 of ARRA, which grants the U.S. Comptroller or its designated representatives the authority to examine any records of the Contractor or any of its subcontractors, or any state or local agency administering

such contract, that directly pertain to, and involve transactions relating to, the contract or subcontract;" and "to interview any officer or employee of the Contractor or any of its subcontractors, or of any state or local government agency administering the contract, regarding such transactions."

Recipient shall comply with Section 1515 of ARRA, which grants the Inspector General or its designated representatives the authority "to examine any records of the Contractor or grantee, any of its subcontractors or sub grantees, or any state or local agency administering such contract, that pertain to, and involve transactions relating to, the contract, subcontract, grant, or sub grant;" and "to interview any officer or employee of the contractor, grantee, sub grantee, or agency regarding such transactions."

7. BUY AMERICAN

Recipient agrees that under Section 1605 of ARRA, neither Recipient nor its subcontractors will use ARRA funds for a project for the construction, alteration, maintenance or repair of a public building or public work unless all of the iron, steel and manufactured goods used in the project are produced in the United States. Recipient understands that this requirement may be waived only by the applicable federal agency in limited situations as set out in Section 1605 of ARRA. Application of this requirement will be consistent with United States obligations under international agreements.

8. PREVAILING WAGES

Under Section 1606 of ARRA, Recipient shall comply and shall require its subcontractors to fully comply with this section in that, notwithstanding any other provision of law and in a manner consistent with the other provisions of ARRA, all laborers and mechanics employed by contractors and subcontractors on projects funded in whole or in part with funds available under ARRA must be paid wages at rates not less than those prevailing on projects of a similar character in the locality, as determined by the United States Secretary of Labor under subchapter IV of chapter 31 of title 40 of the United States Code. The United States Secretary of Labor's determination, regarding the prevailing wages applicable in the State of Oregon, are located at: <http://www.gpo.gov/davisbacon/or.html>.

9. SIGNAGE

In addition to any other signage requirements that the State may require, Recipient shall post ARRA signage to designate the project as a federal stimulus recovery project. The following website contains the ARRA logo: <http://www.recovery.gov/?q=node/203> or from ODOE.

10. FALSE CLAIMS ACT

Recipient shall promptly refer to an appropriate federal inspector general any credible evidence that a principal, employee, agent, subcontractor or other person has committed a false claim under the False Claims Act (31 U.S.C. §§ 3729-3733) or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity or similar misconduct involving those funds.

11. ENFORCEABILITY

Recipient agrees that if Recipient or one of its subcontractors fails to comply with all applicable federal and state requirements governing the use of ARRA funds, the federal agency or the State may withhold or suspend, in whole or in part, funds awarded under the program, or recover misspent funds following an audit. This provision is in addition to all other remedies available to the State under all applicable State and federal laws.

12. SEGREGATION OF FUNDS

Recipient shall segregate obligations and expenditures of ARRA funds from other funding. No part of funds made available under ARRA may be commingled with any other funds or used for a purpose other than that of making payments for costs allowable under ARRA. Recipients covered by the Single Audit Act Amendments of 1996 and OMB Circular A-133 shall separately identify the expenditures provided through ARRA grants on the Schedule of Expenditures of Federal Awards (SEFA) and the Data Collection Form (SF-SAC) required by OMB Circular A-133.

13. SUB-RECIPIENT AGREEMENTS

Recipient shall include these standard terms and conditions, including this requirement, in any of its subcontracts in connection with projects funded in whole or in part with funds available under ARRA.

14. CONFLICTING PROVISIONS

Recipient agrees that, to the extent ARRA requirements conflict with State requirements, the ARRA requirements control.

15. STATE OF OREGON WORKSOURCE POSTING REQUIREMENTS

Recipient shall list any job openings at Recipient's firm/business through WorkSource Oregon. Recipient shall also require its subcontractors and sub-consultants to list any job openings at the subcontractor's/sub-consultant's firms/businesses through WorkSource Oregon. Recipient is not required to list job openings (or require listing by Recipient's subcontractors or sub-consultants), where an employer, contractor, or subcontractor of an ARRA-funded State contract intends to fill the job opening created by ARRA funding with a present employee, a laid-off former employee, or a job candidate from a previous recruitment.

EXHIBIT E

REQUIRED INSURANCE

Recipient shall obtain the insurance specified in this section prior to performing under this Agreement and shall maintain it in full force and at its own expense throughout the duration of this Agreement and all warranty periods. Recipient shall obtain the following insurance from insurance companies or entities that are authorized to transact the business of insurance and issue coverage in the State of Oregon and that are acceptable to ODOE ("Agency"), or with approval of Agency, provide this insurance coverage through a program of self insurance.

(Agency must check boxes #2, #3, & #4 as to whether insurance is required or not.)

1. **Required by Agency of contractors with one or more workers, as defined by ORS 656.027**

Workers' Compensation. All employers, including Recipient, that employ subject workers who work under this Agreement in State shall comply with ORS 656.017 and provide the required workers' compensation coverage, unless the employers are exempt under ORS 656.126(2). Recipient shall require each of its subcontractors, if any, to comply with, and shall ensure that each of its subcontractors, if any, complies with, these requirements.

- Required by Agency** **Not required by Agency.**

2. **Professional Liability** This is to cover damages caused by error, omission or negligent acts related to the professional services to be provided under this Agreement. Recipient shall provide proof of insurance of not less than the following amounts:

Amounts not less than the amounts listed in the following schedule:

Combined single limit per occurrence:

From commencement of the Agreement term to June 30, 2010:	\$1,500,000
July 1, 2010 to June 30, 2011	\$1,600,000
July 1, 2011 to June 30, 2012	\$1,700,000

Aggregate limit for all claims per occurrence:

From commencement of the Agreement term to June 30, 2010:	\$3,000,000
July 1, 2010 to June 30, 2011	\$3,200,000
July 1, 2011 to June 30, 2012	\$3,400,000

- Required by Agency** **Not required by Agency.**

3. **Commercial General Liability.** This to cover Bodily Injury, Death and Property Damage.

This insurance shall include contractual liability coverage for the indemnity provided under this Agreement, personal and advertising injury liability, products liability and completed operations liability. Coverage may be written in combination with Automobile Liability Insurance (with separate limits). Recipient shall provide proof of insurance of not less than the following amounts:

Amounts not less than the amounts listed in the following schedule:

Combined single limit per occurrence:

From commencement of the Agreement term to June 30, 2010	\$1,500,000
July 1, 2010 to June 30, 2011	\$1,600,000
July 1, 2011 to June 30, 2012	\$1,700,000

Aggregate limit for all claims per occurrence:

From commencement of the Agreement term to June 30, 2010:	\$3,000,000
July 1, 2010 to June 30, 2011	\$3,200,000
July 1, 2011 to June 30, 2012	\$3,400,000

Amounts not less than the amounts listed in the following schedule:

Combined single limit per occurrence shall not be less than the following schedule:

From commencement of the Agreement term to January 1, 2010:	\$100,000.
From January 1, 2010, and every year thereafter the adjusted limitation as determined by the State Court Administrator pursuant to Oregon Laws 2009, chapter 67, section 5 (Senate Bill 311).	

Aggregate limits for all claims per occurrence shall not be less than the amounts listed in the following schedule:

From commencement of the Agreement term to January 1, 2010:	\$500,000
From January 1, 2010, and every year thereafter the adjusted limitation as determined by the State Court Administrator pursuant to Oregon Laws 2009, chapter 67, section 5 (Senate Bill 311).	

Required by Agency Not required by Agency.

4. Automobile Liability. This is to cover each accident for bodily Injury and Property Damage, including coverage for owned, hired or non-owned vehicles, as applicable. This coverage may be written in combination with the Commercial General Liability Insurance. Recipient shall provide proof of insurance of not less than the following amounts:

Amounts not less than the amounts listed in the following schedule:

Combined single limit per occurrence:

From commencement of the Agreement term to June 30, 2010	\$1,500,000
July 1, 2010 to June 30, 2011	\$1,600,000
July 1, 2011 to June 30, 2012	\$1,700,000

Aggregate limit for all claims per occurrence:

From commencement of the Agreement term to June 30, 2010:	\$3,000,000
July 1, 2010 to June 30, 2011	\$3,200,000
July 1, 2011 to June 30, 2012	\$3,400,000

Amounts not less than the amounts listed in the following schedule:

Combined single limit per occurrence shall not be less than the following schedule:

From commencement of the Agreement term to January 1, 2010:	\$100,000.
From January 1, 2010, and every year thereafter the adjusted limitation as determined by the State Court Administrator pursuant to Oregon Laws 2009, chapter 67, section 5 (Senate Bill 311).	

Aggregate limits for all claims per occurrence shall not be less than the amounts listed in the following schedule:

From commencement of the Agreement term to January 1, 2010:	\$500,000
From January 1, 2010, and every year thereafter the adjusted limitation as determined by the State Court Administrator pursuant to Oregon Laws 2009, chapter 67, section 5 (Senate Bill 311).	

5. Additional Insured.

The Commercial General Liability insurance and Automobile Liability insurance required under this Agreement shall include State, and its agencies, departments, divisions, commissions, branches, officers employees and agents as Additional Insureds but only with respect to Recipient's performance obligations under this Agreement. Recipient shall ensure that coverage is primary and non-contributory with any other insurance and self-insurance.

6. "Tail" Coverage

If any of the required liability insurance is on a "claims made" basis, Recipient shall maintain either "tail" coverage or continuous "claims made" liability coverage, provided the effective date of the continuous "claims made" coverage is on or before the effective date of this Agreement, for a minimum of 24 months following the later of

- (i) Recipient's completion of all Services and Agency's acceptance of all Services required under this Agreement, or
- (ii) the expiration of all warranty periods provided under this Agreement. Notwithstanding the foregoing 24-month requirement, if Recipient elects to maintain "tail" coverage and if the maximum time period "tail" coverage reasonably available in the marketplace is less than the 24-month period described above, then Recipient shall maintain "tail" coverage for the maximum time period that "tail" coverage is reasonably available in the marketplace for the coverage required under this Agreement. Recipient shall provide to Agency, upon Agency's request, certification of the coverage required under this section 4.C.

7. Notice of Cancellation or Change

There shall be no cancellation, material change, potential exhaustion of aggregate limits or non-renewal of insurance coverage(s) without sixty (60) days' written notice from this Recipient or its insurer(s) to Agency. Any failure to comply with the reporting provisions of this clause shall constitute a material breach of Agreement and shall be grounds for immediate termination of this Agreement by Agency.

8. Certificate(s) of Insurance.

As evidence of the insurance coverage's required by the Agreement, the Recipient shall provide to Agency Certificate(s) of Insurance for all required insurance before delivering any Goods and performing any Services required under this Agreement. The Certificate(s) must specify all entities and individuals who are endorsed on the policy as Additional Insured (or Loss Payees). Recipient shall pay for all deductibles, self-insured retention and self-insurance, if any.

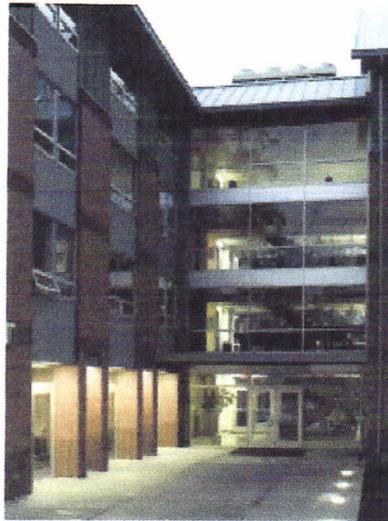
PRACTICE

New and Cool: Variable Refrigerant Flow Systems

Superior control and efficiency are bringing VRF systems to America

by Sara Fernández Cendón

Summary: Variable refrigerant flow (VRF) systems have been around for almost three decades, but they're new to the U.S. HVAC market. As American engineers become familiar with the technology, and especially as they learn of its energy efficiency advantages, more in the industry might be willing to give the systems a try.



Cooling the old-school way

If you've been shopping for HVAC systems lately, you might have encountered a new contender among the usual choices. Introduced in the U.S. about five years ago, VRF systems were invented in Japan more than 20 years ago. They're widely used not only in Asia, but also in Europe and South America.

VRF systems manufacturers highlight qualities such as energy efficiency, design flexibility for architects and engineers, quiet operation, and the ability the system grants individual users to control temperature in their own areas. Another appealing feature offered by most manufacturers is a centralized monitoring application that gives users control over the entire system from a single location or via the Web. The technology that makes it all possible is sophisticated, but VRF systems (also known as VRV, or variable refrigerant volume systems) are not very complicated.

A quick review of air-conditioning principles might be useful in describing VRF technology—the most basic principle, of course, being that air conditioning removes heat from the space to be cooled by pushing refrigerant through a

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- Variable Refrigerant Flow
- Global HVAC Trends
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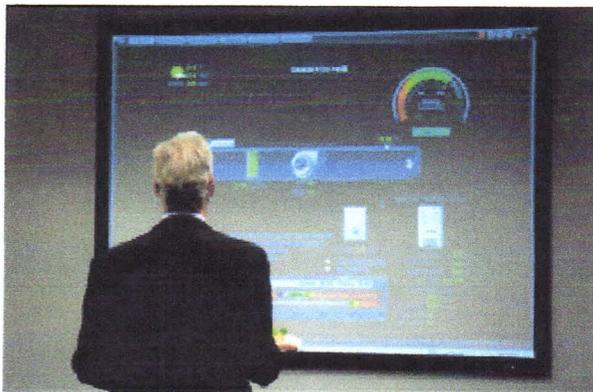
THIS WEEK CONNECTS IS A COLLECTION OF RESOURCES DIRECTLY RELATED TO THE ARTICLE YOU ARE READING. WE HOPE YOU FIND THIS A VALUABLE, USEFUL NEW TOOL FROM AIARCHITECT.

cycle. The cycle comprises four elements common to all HVAC systems, which is based on the fluid dynamics that when a refrigerant expands, it becomes cooler; when it is compressed, it becomes warmer; and changing phases from fluid to gas or back again adds to the cooling/warming effect. So the system is composed of a compressor, a condensing unit, a metering device (or expansion valve), and an evaporator or heat sink.

In a direct expansion (DX) system, the simplest among air conditioning systems, the “hot” part of the cycle starts at the compressor, which compresses refrigerant vapor and turns it into a high-temperature gas. The refrigerant then goes through a condensing unit, a series of coils in which the gas loses heat and becomes liquid. The “cold” part of the cycle begins as the liquid refrigerant passes through the metering device, which causes a drop in pressure. The refrigerant then goes through the evaporator (another series of coils), and in the process of evaporating it absorbs heat from the surrounding area, producing a cooling effect that is dissipated through fans. After completing the cycle, the refrigerant goes back to the compressor in its initial low-pressure, gaseous state.

Slight variations in the refrigerant cycle have led to different applications designed for different uses. Window units, for example, pack all the elements of the cycle into one small device—the hot side being on the outside, the cool part facing the space to be cooled. Split-system units split the hot side of the cycle (placed outside the building) from the cold side (inside). In these types of systems, cool air is often transferred from the evaporator to many different rooms by an air-handling unit, which distributes the conditioned air through a series of ducts.

Industry standards set limits on the length of piping running between the condenser and the evaporator in DX systems. When the needs of a particular project exceed such limits, chilled water systems are often used as an alternative. In chilled water systems water is cooled by a regular refrigeration system and then circulated through ducts to air handlers throughout the building. Because there is no limit to the permitted length of water pipes, these systems are often used to cool large buildings or entire campuses. Chilling is often cycled at night to take advantage of off-peak energy rates.



The variable beauty of VRF technology

Configurations vary among the types of air-conditioning systems available, but one key ratio remains the same: always one condensing unit to one evaporator. For DX systems, this means that once a condensing unit is connected to an evaporator inside the building, providing

cool air to several spaces requires either ductwork or additional condensing units and evaporators.

Not so with VRF systems, in which one condensing unit can be connected to multiple evaporators, each individually controllable by its user. Similar to the more conventional ductless multi-split systems, which can also connect one outdoor section to several evaporators, VRF systems are different in one important respect—although multi-split systems, like DX systems, turn on and off depending on whether the room to be cooled is too warm or not warm enough, VRF systems constantly modulate the amount of refrigerant being sent to each evaporator. By operating at varying speeds, VRF units work only at the needed rate, which is how they consume less energy than on/off systems, even if they run more frequently.

Although systems vary among manufacturers, VRF technology is usually available as heat pump or heat recovery units. Heat pumps provide either heating or cooling. Heat recovery systems allow for simultaneous heating and cooling—which means, for example, that one condensing unit might be connected to six indoor units, three of which could be used to cool some areas, and three of which could be used to heat other areas, all at the same time.

The modular nature of VRF offers a dizzying array of options. And, to help engineers interested in exploring the use of this technology, the American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) has assembled a group to study VRF. ASHRAE included a description of the VRF system in its 2008 handbook on HVC systems and equipment and is now working on a separate chapter on VRF to be published in 2012.

Several manufacturers of VRF systems are part of the ASHRAE committee working on documentation for the technology, but only a handful are already marketing their systems in the U.S., with **Mitsubishi Electric HVAC Advanced Products Division** in Suwanee, Ga., and **Daikin Industries** (based in Osaka, Japan, with U.S. headquarters in Dallas) currently being the major players.

Both Mitsubishi and Daikin are taking steps to educate U.S. engineers, architects, and contractors on the technology. According to Meredith Emmerich, director of application support with Mitsubishi, about 10,000 people went through the company's training on ductless and VRF systems last year alone. The company offers support and training through 1,100 locations across the U.S.

Daikin's Dallas location, too, includes a training facility where VRF equipment is installed and exposed, so engineers, architects, and contractors may come in and see the outdoor and indoor units, the piping, the installation, and controls on all the models.



Breaking it down

VRF systems offer an energy-efficient solution that provides considerable flexibility. But, as with any other HVAC system, their cost-effectiveness and

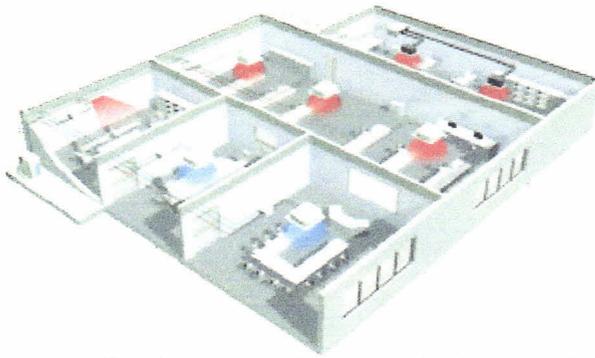
usefulness needs to be evaluated on a building-by-building basis. VRF systems are a good option for buildings with varying loads and different zones: structures such as hotels, schools, and office buildings where individual users want to have control over the temperature in their areas. VRF systems tend to have greater piping length allowances than DX systems and use copper piping with small diameters, which makes them suitable for buildings with low-ceiling spaces or for adaptive reuse and other projects aimed at preserving historic value with minimal destruction during installation.

Less likely candidates to benefit from VRF technology are large open volumes, such as gyms, theaters, or sanctuaries. These building types often fail to maximize the potential of the system, which is ideal for areas with different zones.

Lee Shadbolt, AIA, principal with [Commonwealth Architects](#), based in Richmond, Va., says his firm is considering a VRF system for the renovation of Hotel John Marshall, a historic landmark built in the 1920s. Energy efficiency was one of the main factors considered, but there were other reasons to look at VRF.

"First, it's a great application for multi-family residential use," he says. "Second, it was extremely efficient and gave us a lot of points toward LEED certification. And third, it allowed us to work with the high-rise nature of the building."

Shadbolt says other options (such as split systems or a central chiller boiler plant) have been considered for the project. But VRF, which is about 20 percent more expensive than other alternatives considered, is also significantly more efficient, according to his team's assessment.



Regarding cost, Jami Billman, sales engineer with [Daikin](#), says that VRF systems can be designed both in expensive and more affordable ways. For example, a system with one evaporator in every single room may be more costly initially, but the installation might require less

ductwork. Or, in a different arrangement, several spaces might share a nearby evaporator. The smaller footprint of VRF equipment can also reduce costs. According to Billman, in most cases the system eliminates the need to have mechanical rooms, so useable space is given back to the client.

Joe Bush, application specialist for [City Multi](#), Mitsubishi's line of VRF systems, explains that Mitsubishi is the only manufacturer to use two refrigerant lines, instead of three, for heat recovery systems. He says this patented technology translates into considerable installation cost savings as well.

Ramez Afify, PE, LEED-AP, director of engineering at New York-based [Clifford Dias Consulting Engineers](#), is a member of the ASHRAE group devoted to the study of VRF. In general, he estimates the initial cost of a VRF system to be 20

to 40 percent higher than a traditional split/heat pump HVAC system, but, he says, operating costs might be at least 10 percent less. According to Afify, the difference in price between a VRF and a conventional system might be recovered in fewer than five years.

Beyond the initial cost of VRF systems, disadvantages often cited revolve around refrigerant lines and ventilation. Afify explains that if VRF systems are large, as many chilled water systems are, a significant amount of refrigerant gas, instead of water, ends up running through the building.

"Of course refrigerant is not dangerous within certain volume limits, but if the system grows huge, it becomes a concern," he says, adding that ASHRAE Standard 15, "Safety Code for Mechanical Refrigeration," discusses the topic in detail.

Concerning ventilation, Afify explains that providing outside air can turn into a hurdle, because VRF units may require a separate ventilation system, especially in hot and humid climates or when dealing with high occupancy areas. Major manufacturers do generally offer outside air processing solutions that can be tied into the same control systems used for VRF units.

More than any of the above setbacks, however, Afify believes that what has kept U.S. engineers away from VRF systems has been a lack of familiarity and clear documentation. As more U.S. engineers become familiar with the technology, many in the industry expect to see VRF systems grow in popularity.

AGENDA REPORT

March 1, 2010

TO: Mayor and City Council

FROM: Larry Sullivan, City Attorney

THROUGH: Henry Lawrence, City Manager

SUBJECT: ORDINANCE NO. 2639-2010, AN ORDINANCE GRANTING TO INLAND DEVELOPMENT CORPORATION THE RIGHT TO MAINTAIN A GENERAL TELECOMMUNICATIONS BUSINESS IN THE CITY OF ONTARIO AND TO USE THE RIGHTS OF WAY OF THE CITY OF ONTARIO FOR ITS TELECOMMUNICATIONS OPERATIONS—FIRST READING

DATE: February 23, 2010

SUMMARY:

Attached are the following documents:

- Ordinance No. 2639-2010
- Inland Letter dated 12/10/2009 w/Maps

This ordinance grants to Inland Development Corporation a telecommunications franchise.

DISCUSSION:

Inland Development Corporation is a not-for-profit 501(c)(4) corporation. It has requested a franchise agreement with the City to install fiber optic cable in the City rights of way to provide broadband service to 8C School District and TVCC. Its project is part of the Oregon Health Network's Rural Healthcare Pilot Project in Oregon. Inland Development Corporation has its headquarters in Heppner and has franchise agreements with a number of other cities in eastern Oregon.

Ordinance 2639-2010 incorporates Title 3, Chapter 2 of the City Code governing telecommunications franchises. It uses as a template the Malheur Bell franchise agreement approved by the City Council on March 16, 2009, in Ordinance No. 2626-2009.

The franchise fee of 7% of gross revenues in Section 2.1 of the ordinance is the same fee charged to Malheur Bell. Federal law requires that municipalities treat competitive local exchange carriers equally. That requirement appears in Section 2.2 of the ordinance, just as it did in the Malheur Bell ordinance.

The attorney for Inland Development Corporation has received a draft of the ordinance and may request changes in it prior to the first reading.

FINANCIAL IMPACT:

As required by the City Code, Inland Development Corporation paid the City \$2,000 as an application fee. The financial impact of the 7% gross revenue franchise fee is likely to be small, because of the limited nature of the services that will be provided by Inland Development Corporation. Inland Development Corporation has a for-profit subsidiary, WindWave Technologies, Inc., that may request a separate telecommunications franchise from the City to provide commercial broadband services using the same fiber optic cable.

RECOMMENDATION:

City staff recommends the Mayor and City Council approve Ordinance #2639-2010.

PROPOSED MOTION:

“I move that the Mayor and City Council approve Ordinance #2639-2010, AN ORDINANCE GRANTING INLAND DEVELOPMENT CORPORATION THE RIGHT TO MAINTAIN A GENERAL TELECOMMUNICATIONS BUSINESS IN THE CITY OF ONTARIO AND TO USE THE RIGHTS OF WAY OF THE CITY OF ONTARIO FOR ITS TELECOMMUNICATIONS OPERATIONS, on First Reading by Title Only.”

ORDINANCE NO. 2639-2010

AN ORDINANCE GRANTING TO INLAND DEVELOPMENT CORPORATION THE RIGHT TO MAINTAIN A GENERAL TELECOMMUNICATIONS BUSINESS IN THE CITY OF ONTARIO AND TO USE THE RIGHTS OF WAY OF THE CITY OF ONTARIO FOR ITS TELECOMMUNICATIONS OPERATIONS

- WHEREAS,** Inland Development Corporation (hereinafter "PROVIDER") desires to provide broadband transmission services within the City of Ontario, Oregon (hereinafter "CITY") and in connection therewith to establish a telecommunications network in, under, along, over and across present and future rights-of-way of CITY; and
- WHEREAS,** Chapter 2 of Title 3 of the Ontario City Code, including Ordinance No. 2625-2009, enacted on February 17, 2009, and effective on March 19, 2009, governs the application and review process for Telecommunication Franchises in CITY; and
- WHEREAS,** CITY, in exercise of its management of public rights-of-way, believes that it is in the best interest of the public to provide the PROVIDER a nonexclusive Franchise to operate a telecommunications network in CITY.

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

SECTION 1. FRANCHISE AGREEMENT AND ORDINANCE.

- 1.1 **Agreement.** Upon approval by the City Council and execution by the parties, this Agreement shall be deemed to constitute a contract by and between CITY and PROVIDER.
- 1.2 **Ordinance.** Chapter 2 of Title 3 of the Ontario City Code, including Ordinance No. 2625-2009, enacted on February 17, 2009, and effective on March 19, 2009 (hereinafter the "Telecommunications Code") is attached to this Agreement as Exhibit "A" and incorporated herein by reference. PROVIDER acknowledges that it has had an opportunity to read and become familiar with the Telecommunications Code. The parties agree that the provisions and requirements of the Telecommunications Code are material terms of this Agreement, and that each party hereby agrees to be contractually bound to comply with the terms of the Telecommunications Code. The definitions in the Telecommunications Code shall apply herein unless a different meaning is indicated. Nothing in this Section shall be deemed to require PROVIDER to comply with any provision of the Telecommunications Code which is determined to be unlawful or beyond CITY's authority.
- 1.3 **Ordinance Amendments.** CITY reserves the right to amend the Telecommunications Code at any time. CITY shall give PROVIDER notice and an opportunity to be heard concerning any proposed amendments. If there is any inconsistency between PROVIDER's rights and obligations under the Telecommunications Code as amended and this Agreement, the provisions of this Agreement shall govern during its term. Otherwise, PROVIDER agrees to comply with any such amendments.

- 1.4 **Franchise Description.** The Telecommunications Franchise provided hereby shall confer upon PROVIDER the nonexclusive right, privilege, and Franchise to construct and maintain a telecommunications network in, upon, under, above and across the present and future public Rights-of-Way in CITY. Such poles, wires and other appliances and conductors comprising the telecommunications network may be strung upon poles or other fixtures above ground, or at the option of PROVIDER, may be laid underground, and such other apparatus may be used as may be necessary or property to operate and maintain the same. The Franchise does not grant to PROVIDER the right, privilege or authority to engage in community antenna (or cable) television business; although, nothing contained herein shall preclude PROVIDER from (1) permitting those with a cable Franchise who are lawfully engaged in such business to utilize PROVIDER's System within CITY for such purposes, or (2) from providing such service in the future if an appropriate Franchise is obtained and all other legal requirements have been satisfied.
- 1.5 **Licenses.** PROVIDER acknowledges that it has obtained the necessary approvals, licenses or permits required by federal and state law to provide telecommunication services consistent with the provisions of this Agreement and with the Telecommunications Code.
- 1.6 **Registration.** PROVIDER acknowledges and agrees that, as part of this Agreement, PROVIDER must file written registration with CITY, pursuant to the Telecommunications Code. Said registration is attached as Exhibit "B" and incorporated herein by reference.
- 1.7 **Relationship.** Nothing herein shall be deemed to create a joint venture or principal-agent relationship between the parties, and neither party is authorized to, nor shall either party act toward third persons or the public in a manner that would indicate any such relationship with each other.

SECTION 2. FRANCHISE FEE.

2.1 Franchise Fee.

- (a) For the Franchise granted herein, PROVIDER shall pay to CITY a franchise fee of 7% per annum of its Gross Revenues for local service rendered subscribers within CITY limits as defined in ORS 401.710.
- (b) All payments shall be made to CITY, and sent as follows, unless PROVIDER is otherwise notified of a change in address in writing by CITY:
City of Ontario
Attn: Finance Department
444 SW 4th Street
Ontario, Oregon 97914
- (c) The fee required by this section shall be due and payable within 45 days after the end of each applicable financial quarter.

- 2.2 **Equal Treatment.** CITY agrees that if any service forming part of the base for calculating the Franchise fee under this Agreement is, or becomes, subject to competition from a third party, CITY will work to impose and collect from such third party a fee or tax on Gross Revenues from such competing service in the same percentage specified herein, plus the percentage specified as a utility revenue tax or license fee in the then current ordinances of CITY. Any such fee imposition will be subject to local, state, and federal rules and regulations.

SECTION 3. TERM.

- 3.1 **Term.** The Franchise granted to PROVIDER shall be for a period of five (5) years commencing on the first day of the month following this Agreement, unless this Franchise be sooner terminated as herein provided.
- 3.2 **Rights of PROVIDER Upon Expiration or Revocation.** Upon expiration of the Franchise granted herein, whether by lapse of time, by agreement between PROVIDER and CITY, or by revocation or forfeiture, PROVIDER shall have the right to remove from the Rights-of-Way any and all of its System, but in such event, it shall be the duty of PROVIDER, immediately upon such removal, to restore the Rights-of Way from which such System is removed to as good condition as the same was before the removal was effected.

SECTION 4. POLICE POWERS.

CITY expressly reserves, and PROVIDER expressly recognizes, CITY's right and duty to adopt, from time to time, in addition to provisions herein contained, such ordinances and rules and regulations as CITY may deem necessary in the exercise of its police power for the protection of the health, safety and welfare of its citizens and their properties.

SECTION 5. CHANGING CONDITIONS AND SEVERABILITY.

- 5.1 **Meet to Confer.** PROVIDER and CITY recognize that many aspects of the telecommunication business are currently the subject of discussion, examination and inquiry by different segments of the industry and affected regulatory authorities and that these activities may ultimately result in fundamental changes in the way PROVIDER conducts its business and the way CITY regulates the business. In recognition of the present state of uncertainty respecting these matters, PROVIDER and CITY each agree, upon request of the other during the term of this Agreement, to meet with the other and discuss in good faith whether it would be appropriate, in view of developments of the kind referred to above during the term of this Agreement, to amend this Agreement or enter into separate, mutually satisfactory arrangements to effect a proper accommodation of any such developments.
- 5.2 **Severability.** If any section, sentence, paragraph, term or provision of this Agreement or the Telecommunications Code is for any reason determined to be or rendered illegal, invalid or superseded by other lawful authority, including any state or federal, legislative, regulatory or administrative authority having jurisdiction thereof, or is determined to be unconstitutional, illegal or invalid by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such determination shall have no effect on the validity of any other section, sentence, paragraph, term or provision, all of which shall remain in full force and effect for the term of this Agreement or any renewal or renewals thereof. Provided that if the invalidated portion is considered a material consideration for entering into this Agreement, the parties will negotiate, in good faith, an amendment to this Agreement. As used herein, "material consideration" for CITY is its ability to collect the Franchise fee during the term of this Agreement and its ability to manage the Rights-of-Way in a manner similar to that provided in this Agreement and the Telecommunications Code in Exhibit "A". For PROVIDER, "material consideration" is its ability to use the Rights-of-Way for telecommunication purposes in a manner similar to that provided in this Agreement and the Telecommunications Code.

SECTION 6. EARLY TERMINATION, REVOCATION OF FRANCHISE AND OTHER REMEDIES.

6.1 Grounds for Termination. CITY may terminate or revoke this Agreement and all rights and privileges herein provided for any of the following reasons:

- (a) PROVIDER fails to make timely payments of the Franchise fee as required under Section 2 of this Agreement and does not correct such failure within sixty (60) calendar days after written notice by CITY of such failure;
- (b) PROVIDER, by act or omission fails to comply with requirements set forth in the Telecommunications Code;
- (c) PROVIDER, by act or omission, materially violates a material duty herein set forth in any manner particularly within PROVIDER's control, and with respect to which redress is not otherwise herein provided. In such event, CITY, acting by or through its CITY Council, may determine, after hearing, that such failure is of a material nature, and thereupon, after written notice giving PROVIDER notice of such determination, PROVIDER, within thirty (30) calendar days of such notice, shall commence efforts to remedy the conditions identified in the notice and shall have ninety (90) calendar days from the date it receives notice to remedy the conditions. After the expiration of such 90-day period and failure to correct such conditions, CITY may declare the Franchise forfeited and this Agreement terminated, and thereupon, PROVIDER shall have no further rights or authority hereunder; provided, however, that any such declaration of forfeiture and termination shall be subject to judicial review as provided by law, and provided further, that in the event such failure is of such nature that it cannot be reasonably corrected within the 90-day time period provided above, CITY shall provide additional time for the reasonable correction of such alleged failure if the reason for the noncompliance was not the intentional or negligent act or omission of PROVIDER; or
- (d) PROVIDER becomes insolvent, unable or unwilling to pay its debts; is adjudged bankrupt; or all or part of its facilities should be sold under an instrument to secure a debt and is not redeemed by PROVIDER within sixty (60) days.

6.2 Reserved Rights. Nothing contained herein shall be deemed to preclude PROVIDER from pursuing any legal or equitable rights or remedies it may have to challenge the action of CITY. By accepting this Agreement, PROVIDER reserves all rights under the law including, but not limited to, those rights arising under section 253 of the Federal Telecommunications Act and the law of the State of Oregon.

6.3 Remedies at Law. In the event PROVIDER or CITY fails to fulfill any of its respective obligations under this Agreement, CITY or PROVIDER, whichever the case may be, shall have a breach of contract claim and remedy against the other, in addition to any other remedy provided herein or by law; provided, however, that no remedy that would have the effect of amending the specific provisions of this Agreement shall become effective without such action that would be necessary to formally amend the Agreement.

6.4 Third Party Beneficiaries. The benefits and protection provided by this Agreement shall inure solely to the benefit of CITY and PROVIDER. This Agreement shall not be deemed to create any right in any person who is not a party and shall not be construed in any respect to be a contract in whole or in part for the benefit of any third party (other than the permitted successors and assigns of a party hereto).

SECTION 7. PARTIES' DESIGNEES.

- 7.1 **CITY Designee and Address.** The City Manager or his/her designee(s) shall serve as CITY's representative regarding administration of this Agreement. Unless otherwise specified herein or in the Telecommunications Code, all notices from PROVIDER to CITY pursuant to or concerning this Agreement, shall be delivered to CITY's representative at 444 SW 4th Street, Ontario, Oregon, 97914, or such other officer and address as CITY may designate by written notice to PROVIDER.
- 7.2 **PROVIDER Designee and Address.** The Corporate President or his/her designee(s) shall serve as PROVIDER's representative regarding administration of this Agreement. Unless otherwise specified herein or in the Telecommunications Code, all notices from CITY to PROVIDER pursuant to or concerning this Agreement, shall be delivered to 162 N. Main, Heppner, OR 97836, or such other office as PROVIDER may designate by written notice to CITY.
- 7.3 **Failure of Designee.** The failure or omission of CITY's or PROVIDER's representative to act shall not constitute any waiver or estoppel by CITY or PROVIDER.

SECTION 8. INSURANCE AND INDEMNIFICATION

- 8.1 **Insurance.** Prior to commencing operations in CITY pursuant to this Agreement, PROVIDER shall furnish to CITY evidence that it has adequate general liability and property damage insurance, automobile insurance, worker's compensation insurance, and comprehensive hazards insurance, all as set forth in Telecommunications Code Section 3-2-54 in Exhibit "A" attached hereto. The evidence may consist of a statement that PROVIDER is effectively self-insured if PROVIDER has substantial financial resources, as evidenced by its current certified financial statements and established credit rating, or substantial assets located in the state of Oregon. Any and all insurance, whether purchased by PROVIDER from a commercial carrier, whether provided through a self-insured program, or whether provided in some other form or other program, shall be in a form, in an amount and of a scope of coverage acceptable to CITY.
- 8.2 **Performance Bond and Surety.** PROVIDER shall satisfy the performance bond and surety requirements in Section 3-2-23 of the Telecommunications Code in Exhibit "A".
- 8.3 **Indemnification.** Both parties to this Franchise agree to indemnify and hold the other respective party and its officers, employees, agents and representatives harmless from and against any and all claims, demands, liens, and all liability or damage of whatsoever kind on account of or arising from the indemnifying party's acts or omissions, actual or alleged, pursuant to or related to this Agreement, and to pay any and all costs, including reasonable attorneys' fees, incurred in defense of such claims. The indemnified party shall promptly give written notice to the indemnifying party of any claim, demand, lien, liability, or damage with respect to which the indemnified party seeks indemnification and, unless in the indemnified party's judgment a conflict of interest may exist between the parties with respect to the claim, demand, lien, liability, or damage, the indemnified party may permit the indemnifying party to assume the defense of such with counsel of the indemnifying party's choosing, unless the indemnified party reasonably objects such counsel. Notwithstanding any provision of this section to the contrary, the indemnifying party shall not be obligated to indemnify, defend or hold the indemnified party harmless to the extent any claim, demand, lien, damage, or liability arises solely out of or in connection with negligent acts or omissions of the indemnified party.

SECTION 9. CONSTRUCTION PROVISIONS

- 9.1 **Construction Permit Fee.** Pursuant to Section 3-2-15 of the Telecommunications Code in Exhibit "A".
- 9.2 **Oregon Utility Notification.** CITY agrees to locate underground facilities owned and operated by CITY in accordance with Oregon Administrative Rules, in particular section 952-001-0070, entitled "Operators to Mark Underground Facilities or Notify Excavators that None Exist." Furthermore, it is agreed and understood that there are existing sewer service lines that run from the user to CITY's main line that are defined as un-locatable underground facilities pursuant to paragraph 17 of the "Definitions" section 952-001-0010. In these cases, and in CITY's judgment, CITY has no record of location or practical way of locating these sewer service lines. PROVIDER will assume all responsibility for damages to these lines and all damages to property related to damaging these lines by PROVIDER or its agents.

SECTION 10. GENERAL PROVISIONS.

- 10.1 **Binding Agreement.** The parties represent that (a) when executed by their respective parties, this Agreement shall constitute legal and binding obligations of the parties; and (b) that each party has complied with all relevant statutes, ordinances, resolutions, by-laws and other legal requirements applicable to their operation in entering into this Agreement.
- 10.2 **Governing Law.** This Agreement shall be interpreted pursuant to the provisions of the Constitution and laws of the United States, the State of Oregon, and the ordinances and Charter of the City.
- 10.3 **Time of Essence.** Time shall be of the essence of this Agreement.
- 10.4 **Interpretation of Agreement.** The invalidity of any portion of this Agreement shall not prevent the remainder from being carried into effect. Whenever the context of any provision shall require it, the singular number shall be held to include the plural number, and vice versa, and the use of any gender shall include any other and all genders. The paragraphs and section headings in this Agreement are for convenience only and do not constitute a part of the provisions hereof.
- 10.5 **Amendments.** This Agreement may be modified or amended by written agreement only. No oral modifications or amendments shall be effective.
- 10.6 **Binding on Successors.** This Agreement shall be binding upon the heirs, successors, administrators and assigns of each of the parties.
- 10.7 **Confidentiality.** CITY agrees to use its best efforts to preserve the confidentiality of information as requested by PROVIDER, to the extent permitted by the Oregon Public Records Law.
- 10.8 **Transfer of Franchise.** PROVIDER shall not, directly or indirectly, transfer, assign, or dispose of by sale, lease, merger, consolidation or other act of PROVIDER, ownership or control of a majority interest in the telecommunications system, without the prior consent of CITY, which consent shall not be unreasonably withheld or delayed, and then only on such reasonable conditions as may be prescribed in such consent.
- 10.9 **Acceptance of Franchise.** Within 30 days from the effective date of this ordinance, PROVIDER shall file with the City Recorder a written unconditional acceptance of this Franchise and all of its terms and conditions, and if they fail to do so, this ordinance shall be void and of no effect.

PASSED AND ADOPTED by the Common Council of the City of Ontario this ____ day of _____, 2010, by the following vote:

AYES:
NAYS:
ABSENT:

APPROVED by the Mayor this ____ day of _____, 2010.

ATTEST:

Joe Dominick, Mayor

Tori Barnett, MMC, City Recorder

ACCEPTANCE BY PROVIDER:

Ordinance No. _____ accepted this _____ day of _____, 2010.

INLAND DEVELOPMENT CORPORATION

By: _____
Nate Arbogast, President

ATTEST:

Secretary



12/14/09

December 10, 2009

City of Ontario
Attn: Henry J. Lawrence, Jr.
City Manager
444 S. W. 4th St
Ontario, OR 97914

RE: Request on behalf of Inland Development Corporation
For a Telecommunications Franchise from the City of Ontario

Henry J. Lawrence, Jr:

Inland Development Corporation an Oregon 501(c) 4 not-for-profit corporation registered with the PUC as a Competitive Local Exchange Carrier, would like to obtain a franchise from the City of Ontario ("City"), authorizing Inland to utilize the publicly-owned rights-of-way to locate, operate and maintain telecommunications facilities and provide services in the City of Ontario.
Enclosed is our application with information requested in Section 3-2-30 of your municipal code. Also enclosed is a check for \$2000 made out to the City of Ontario to cover our application fees. Please contact me if you have any questions regarding this request.

Sincerely,

Nate Arbogast
Nate Arbogast
Project Manager



December 10, 2009

City of Ontario
Attn: Henry J. Lawrence, Jr.
City Manager
444 S. W. 4th St
Ontario, OR 97914

RE: Request on behalf of Inland Development Corporation
For a Telecommunications Franchise from the City of Ontario

- (A) Inland Development an Oregon 501(c) 4 not-for-profit, registered with the Oregon PUC as a Competitive Local Exchange Carrier. OPUC ID No: 8204
- (B) Inland Development will be providing Fiber Optic Ethernet & Internet Data Services
- (C) Engineering plans, specifications and network map are enclosed with this document
- (D) Inland Development will provide service areas and preliminary construction schedule to the City of Ontario as the scope of our customers' needs becomes apparent. Inland has been contracted to provide a redundant fiber optic circuit within the City of Ontario.
- (E) Inland Development Corporation has a Certificate of Authority (CP1224) with the OPUC as a Competitive Local Exchange Carrier.
- (F) Inland Development currently does not have existing Telecommunication facilities in the City of Ontario that we intend to use or lease. The fiber optic network that we are proposing to build for our customer will connect back to our current fiber optic network.

The Snake River Economic Development Alliance – (SREDA)

SREDA's purpose is to market the Western Treasure Valley to potential employers. For communities to grow and prosper there must be a shared vision of direction and path to build a better economic outlook for everyone. SREDA encompasses these ideals and provides a brand new infrastructure for this vision. This new framework of sharing resources and marketing the business attributes that our three local counties Washington, Payette, and Malheur provide to prospective new businesses is modeled after other successful marketing organizations in other areas. Soon new contacts will know what we already know. The Western Treasure Valley area is a great place to live, work, and raise a family.

Why is SREDA important and why should you get involved?

What can SREDA Membership do for my community?

- Increase the amount of investment in the Western Treasure Valley economy.
- Market the tri-county area to potential employers
- Create jobs for citizens in the Western Treasure Valley
- Attracting businesses in the manufacturing and distribution sectors, which will benefit the entire local business community

What can SREDA do for your business?

- New Business = New Consumers
- Bring leaders of the private and public sectors together to promote economic growth and sustainability across state lines
- Provide regular information about business and economic issues in the Western Treasure Valley
- Provide participants with opportunities to interact with local business and community leaders

Who is a part of SREDA?

SREDA is a collaboration of the cities, counties, utilities, businesses and TVCC that have a stake in the economic development of the Western Treasure Valley. In order to represent this diverse area, there is both a Board of Directors and a Board of Representatives. The Board of Directors sets the policy and direction of the Organization, while the Board of Representatives reflects the broad membership and provides participation for all stakeholders. Membership on the Board of Representatives also includes participants from state agencies in both Idaho and Oregon.

The Board of Representatives selected the initial Board of Directors into the following categories:

Elected Officials – 3 Directors

Business Members – 3 Directors

Open Seats – 3 Directors

Economic Development Professionals – 3 Directors (one from each county in predetermined positions)

Treasure Valley Community College – 1 Director (predetermined position)

SREDA Executive Director – 1 Director in an ex-officio, non-voting member capacity

SREDA BOARD OF DIRECTORS (Elected 7/29/09)

Elected Official, Position Vacant

Elected Official, Harry Flock, City of Nyssa

Elected Official, Ken Bishop, City of Fruitland

Business Official, Mark Dalley, Holy Rosary Medical Center

Business Official, Mike Hanigan, Hanigan Dealerships

Business Official, Sandy Hemenway, Intermountain Community Bank

Open, At Large, Jeff Williams, Coldwell Banker Classic Properties

Open, At Large, Doug Lamm, Nichols Accounting Group

Open, At Large, Logan Hamilton, Logan's Market

Economic Seat, Jim Jensen, Malheur County Economic Development

Economic Seat, Courtney Thompson, Washington County Economic Development

Economic Seat, Payette County Economic Development Coordinator, Kevin Coates

Treasure Valley Community College, Randy Griffin, Acting President

City of Ontario, Economic Development, Alan Daniels, ex-officio, non voting

SREDA Director (UNFILLED) ex officio, non-voting

What is SREDA designed to accomplish?

- SREDA is an organization devoted to marketing the value of doing business in the Western Treasure Valley

SREDA Goals

- Increase the number of businesses and industries that locate in the Western Treasure Valley.
- Increase business market awareness of the positive and productive economic opportunities available in the Western Treasure Valley.
- Enhance the community's competitive edge through regional and national marketing efforts.
- Remove relocation obstacles by facilitating cooperation between state, county, and local governmental entities working with private enterprise

Where is SREDA located?

TVCC will house the initial office with an executive director who will be hired by a board of directors. The college has donated office space to contribute to this exciting initiative.

When will SREDA be fully operational?

Between January and March 2010, members of the SREDA Board of Directors will have finalized the organization's budget, and begun fund raising efforts. As fund raising is successful, the Board will fill the Executive Director position.

Fundraising will include cities, counties, area businesses, utilities and individuals that will benefit from increased economic development in the Western Treasure Valley.

Between April and December 2010, SREDA will begin actively pursuing leads. Advertising the organization and leveraging the benefits of doing business in the Western Treasure Valley will be led by the Board and new Executive Director.

Who Can be a Member?

Any business, government entity, utility, and individual resident can be a member for an annual fee. There will be quarterly and annual meetings promoting the organization, outlining the plan, and measuring the success.

Snake River Economic Development Alliance, Inc. - Budget (Proposed)
Updated 1/22/10

	<u>2010</u>	<u>Population</u>	<u>Comments</u>
Receipts			
Public Sector Funds			
Payette County	\$ 9,000	23,000	#1
Malheur County	10,000	31,000	#2
Washington County	5,000	10,000	#3
City of Fruitland	4,500	4,500	
City of New Plymouth	2,000	2,000	
City of Ontario	10,000	11,000	
City of Payette	7,500	7,500	
City of Vale	2,000	2,000	
City of Weiser	5,000	5,000	
City of Nyssa	3,000	3,000	
City of Jordan Valley	-	240	#4
City of Adrian	-	185	#4
City of Midvale	-	116	#4
City of Cambridge	-	493	#4
Private Sector Funds			
Utilities (Qwest, ID Power, etc.)	30,000		#5
Business, Grants, Private, Dues	50,000		#6
Total Receipts	<u>\$ 138,000</u>		
Disbursements			
Salaries			
Executive Director	\$ 50,000		#7
Office Specialist	17,000		#7
Payroll Taxes	6,700		Estimated 10% of Gross
Health Insurance	17,000		To Cover Both Employees
Employment, WC, Gen./Director Liability Ins.	3,000		
General and Administrative			
Printing, Brochure, Stationary	500		
Trade Membership Dues	1,250		
Travel (In State)	2,000		
Travel (Out of State)	4,500		
Business Recruiting	4,000		
Telephone	-		TVCC In-Kind
Rent	-		TVCC In-Kind
Food, Entertainment, Meetings	1,500		
Subscriptions	100		
Public Relations	2,000		

Other Services, Freight	1,000	
Legal and Accounting	2,500	If Costs Exceed In-Kind
Supplies		
Office Supplies	1,000	
Newsletter	750	
Postage	400	
Direct Mail Campaign	1,400	
Advertising	10,000	
Trade Show, Other	3,000	
Equipment	-	Possibly TVCC In-Kind
Total Disbursements	<u>\$ 129,600</u>	
Receipts in Excess of Disbursements	<u><u>\$ 8,400</u></u>	

Snake River Economic Development Alliance

Budget Development Comments

Updated January 22, 2010

General Comment on Public Sector Funds

The general budgetary concept adopted for the public sector was to use a figure of \$ 1.00 per resident of the public entity. We took into consideration that cities lie within the boundary of counties so we reduced the allocation to each county based on the population of each city within their boundary, hopefully netting to a figure that approximates the rural residency. We then applied a cap of \$ 10,000 to any public entity.

We also chose to exclude the very small towns of Jordan Valley, Adrian, Midvale, and Cambridge in our budget calculations. Each of those towns are welcome to contribute and we will not exclude them from any of the involvement in the SREDA but geographically, they are on the outer edges of the area we hope to impact directly.

Comment # 1

Payette County total population of 23,000 reduced by Payette 7,500, Fruitland 4,500, and New Plymouth 2,000 = 9,000.

Comment # 2

Malheur County total population of 31,000 reduced by Ontario 11,000, Vale 2,000 and Nyssa 3,000 = 15,000. Capped at 10,000.

Comment # 3

Washington County total population of 10,000 reduced by Weiser 5,000 = 5,000.

Comment # 4

Small towns excluded as described more fully in the general comments above.

Comment # 5

Utility Companies – we reviewed the list of utility companies and came up with the following sub-groups.

A Level Utility Companies (3) – Idaho Power, Quest, Cable One

B Level Utility Companies (3) – Syringa, Intermountain Gas, Cascade Natural Gas

C Level Utility Companies (3) – Farmers Mutual Telephone Company, Midvale Telephone Company, Cambridge Telephone Company

We then evaluated the benefit each of these levels would receive by SREDA's proposed efforts. In so doing, we allocated 10,000 to each A level, 5,000 to each B level, and 2,500 to each C level utility. If all of the utilities contributed at those levels, we would receive 52,500 but we realize we will get push back from all of them to some degree. We budgeted for 30,000.

Comment # 6

Business, Grants, Private parties, Dues – This business sector is still an issue we are struggling with to figure out what it is that we are going to ask of each business and what the benefit is that they could anticipate seeing with the growth we hope to create. We know we have received commitments from a variety of businesses that have been involved from the beginning. Those totaled somewhere around 18K and of that, 4,500 was collected by 12/31/09. One additional comment for this area is that we need to get smart about getting press coverage on these companies contributing their money to the cause. We want this in the paper and we want other businesses seeing their counterparts investing in the organization so that when we go out to the masses to ask for funds, they have seen this in the paper already, have heard it at chamber meetings, etc. This is going to need more work and we are scheduling a follow up meeting to address possible levels, etc. We are going to prepare a draft concept and then ask for feedback from business sector board members, from Board of Representative members, and from the general membership.

We realize that grant money is likely available to assist in certain expenditures we will face but we have not budgeted for any of those possible funds. Likewise, we realize that private parties may want to become involved and we have not put together a membership fee that would attract them.

Comment # 7

Executive Director and Office Specialist Positions – We have budgeted 50,000 for the director position and 17,000 for a part time assistant position. We anticipate that for the first year, part of the 50,000 budget for a director will be used for a consultant contract to get us up and running in the right direction. We have received feedback that the 50K level is likely too low to attract quality folks. We have been told that 60 – 80K is more likely the level we will need to plan for. At this point, we felt that we need to be cautious in our presentation of a budget to

remain conservative in this economic environment. Depending on the applicants who reply with resumes, we might be surprised what we find in our local area that are currently unemployed or looking to change from their current job. We feel that we must be careful to not offend some of our patrons who don't net 50K in their businesses or make 50K in their management positions. We also realized that we have a line item of 17K for health insurance for both employees. Depending on the person we hire, they may already have health insurance through another source.