

AGENDA
ONTARIO CITY COUNCIL - CITY OF ONTARIO, OREGON
Monday, March 4, 2013, 7:00 p.m., M.T.

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

2) **Pledge of Allegiance**

This Agenda was posted on Wednesday, February 27, 2013, and a study session was held on Thursday, February 28, 2013. Copies of the Agenda are available at the City Hall Customer Service Counter and on the city's website at www.ontariooregon.org.

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

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

- A) Approval of Minutes of Joint Council/Planning Meeting of 02/19/2013 1-7
B) Approval of Study Session (LCRB) Minutes of 02/14/2013 8-11
C) Approval of the Bills

5) **Department Head Updates**

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

7) **Old Business**

- A) Ordinance #2675-2013: Amending OMC 3-11-4 re: TOT Distribution (1st Reading) 12
B) Committee Appointments 13-29

8) **New Business**

- A) Accept Joe Dominick's Resignation from the Office of Mayor 30-31
B) Discussion on Council Vacancies
C) Resolution #2013-106: Request Change in Boundary of Malheur County Enterprise Zone ... 32-38
D) Resolution #2013-107: Accept Easement for a Public Water Main Crossing the Property of 8C School District at Aiken Elementary School 39-43
E) Resolution #2013-108: Denying Loren Weideman's Gainsharing Claim 44-89
F) Ordinance #2677-2013: Amend OMC 6-2 re: Animals, Dogs, and Fowl (1st Reading) 90-93
G) UbiquiTel Water Tower Lease Amendment #1 94-122

9) **Discussion Items**

- A) Possible Resolution: Support of Malheur County: From Poverty to Prosperity

10) **Executive Session**

- A) ORS 192.660(2)(a)

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

12) **Adjourn**

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

JOINT MEETING MINUTES
Ontario City Council – Ontario Planning Commission
February 19, 2013

The joint meeting of the Ontario City Council and the Ontario Planning Commission was called to order by Mayor Joe Dominick at 7:00 p.m. on Tuesday, February 19, 2013, in the Council Chambers of City Hall. Council members present were Norm Crume, Joe Dominick, Jackson Fox, Charlotte Fugate, Larry Tuttle, and Ron Verini. Dan Jones was excused.

Members of the Planning Commission present were Michael Rudd, Greg Tuttle, Cindy Graverson, and Max Twombly. Mike Allen and Rita Kanrich were absent.

Members of staff present were Tori Barnett, Bob Walker, Larry Sullivan, Mark Alexander, and Mike Long, Alan Daniels, Dan Shepard, Ron Park, and Ron Mooney. The meeting was recorded on tape, and the tapes are available at City Hall.

Ronald Verini led everyone in the Pledge of Allegiance.

MAYOR'S RESIGNATION

Mayor Dominick stated: *Citizens of Ontario, you're being screwed by the City Council and your City Manager. There is much about their conduct and their integrity that this community needs to question and watchdog very carefully. Councilor Fugate, I thank you for not being bought, like all the other Councilmen, and remain true to the community that has elected you. Be proud. Effective immediately, I resign as the Mayor of Ontario.*

Mayor Dominick departed the meeting.

It was Council consensus to have Councilor Crume run the meeting, in the absence of both a Mayor and the Council President.

AGENDA

Council consensus to make Item 5E) Approval of the Bills, a separate motion; to move action 8A) Public Hearing for Ordinance #2676-2013 up to just after the motion to adopt the agenda; and to add Item 7C) Resolution #2013-105, a resolution granting an exception for the City Manager's spending authority in compliance with the 2013 Golf Course Management Agreement with Scott McKinney.

Jackson Fox moved, seconded by Charlotte Fugate, to adopt the Agenda as amended. Roll call vote: Crume-yes; Fox-yes; Fugate-yes; Jones-out; Tuttle-yes; Verini-yes. Motion carried 5/0/1.

PUBLIC HEARING

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

It being the date advertised for public hearing on the matter of Ordinance #2676-2012, the hearing was declared open. There were no objections to the city's jurisdiction to hear the action, no abstentions, no ex-parte contact, and no declarations of conflict of interest.

Larry Sullivan, City Attorney, stated on February 11, 2013, the Planning Commission recommended and the City Council moved to approve the Comprehensive Plan Amendment package as set forth in Action 2012-12-15CPAMD and further described in staff report. This package included: (a) Expansion of the Ontario Urban Growth Boundary (UGA) and Comp Plan; (b) Amendment of the Comprehensive Plan text (including the 2007 Urbanization; and (c) Amendment of the Ontario Transportation System Plan (TSP) and the Highway 201 Corridor Refinement . Also on February 11, 2013, the Council passed Ordinance 2674-2013 amending the City of Ontario's Comprehensive Plan and established a Master Plan of development for TVCC.

Mike Rudd, Planning Commission Chair, opened the hearing for public testimony. There were no objections to the Commission's jurisdiction to hear the action, no abstentions, no ex-parte contact, and no declarations of conflict of interest.

Proponents: None. Opponents: None.

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

There was no further discussion by the Planning Commission.

Mike Rudd moved, seconded by Greg Twombly, that the Planning Commission recommend that the City Council approve the Comprehensive Plan Amendment package as set forth in Action 2012-12-15CPAMD, which includes Annexation to the City of Ontario of Tax Lot 2300 (Map 18S47E08D) and Tax Lots 3501, 3500 and 3600 (Map 18S47E08) Exhibit 1, Map 5, supported by Exhibit 1, Appendices E and F; and the Application of the City Industrial Business Park (IBP) zone to the 200-acre industrial site and a City Low Density Residential Zone (RS-50) to intervening property to the north, Exhibit 1, Map 5. Roll call vote: Rudd-yes; Tuttle-yes; Graverson-yes; Twombly-yes. Motion carried 4/0/3.

Mr. Sullivan stated that the property owners, for the most part, agreed to the listed restrictions. Those changes had been discussed with the City Manager, and were agreed to. The Saito-Matthews property was a link between two parcels. Right through the middle of that property, the city was proposing to put in a 30-foot wide easement for sewer and water. That land was currently being farmed, and the owners wanted to continue their farming after annexation. Their concern was regarding water and sewer lines being buried deep enough. According to Bob [Walker], the lines would be no closer than four feet near the surface. That was now in the agreement. Another issue was whether or not the property owner would have to pay the full share of a water and sewer line extension if they chose to tap into the system. After speaking with the City Manager, the preference was to pay a basic connection fee. That, too, was now in agreement, and those agreements had been signed.

Councilor Verini asked about development on the property.

Mr. Sullivan stated they would need to apply for a develop agreement and would have to comply with city requirements with a proportionate share of the extension costs for water and sewer. The existing line was a force main, so they could not tap into it directly. It would also require the construction of a transfer station, and they would incur those costs.

As the Planning portion of action for Ordinance #2676-2013 was completed, the Planning Commission portion of the meeting was closed.

City staff was recommending that the Council approve (a) the annexation of the City of Ontario of Tax Lot 2300 (Map 18S47E08D) and Tax Lots 3501, 3500, and 3600 (Map 18S47E08); and (b) the Application of the City Industrial Business Park (IBP) zone to the 200-acre industrial site and a City Low Density Residential Zone (RS-50) to intervening property to the north.

Ron Verini moved, seconded by Jackson Fox, that the City Council declare an Emergency for the passage of Ordinance #2676-2013. Roll call vote: Crume-yes; Fox-yes; Fugate-yes; Jones-out; Tuttle-yes; Verini-yes. Motion carried 5/0/1.

Ron Verini moved, seconded by Jackson Fox, that the City Council adopt Ordinance #2676-2013, AN ORDINANCE ANNEXING APPROXIMATELY 257 ACRES OF LAND NORTHEAST OF THE INTERSECTION OF HIGHWAY 201 AND SW 18TH AVENUE, WITHDRAWING SAID PROPERTY FROM THE RURAL ROAD ASSESSMENT DISTRICT #3, AND FROM THE ONTARIO RURAL FIRE PROTECTION DISTRICT #7, ASSIGNING CITY ZONING, AND DECLARING AN EMERGENCY, based on the information, findings and facts as set forth in Action 2012-12-15CPAMD and the Planning Commission & City Council staff report, to approve the request to annex and rezone those properties identified in Exhibit 1-Map 5 and further described in Exhibit F, on First Reading by Title Only, and declaring an emergency. Roll call vote: Crume-yes; Fox-yes; Fugate-yes; Jones-out; Tuttle-yes; Verini-yes. Motion carried 5/0/1.

Ron Verini moved, seconded by Jackson Fox, that the City Council adopt Ordinance #2676-2013, AN ORDINANCE ANNEXING APPROXIMATELY 257 ACRES OF LAND NORTHEAST OF THE INTERSECTION OF HIGHWAY 201 AND SW 18TH AVENUE, WITHDRAWING SAID PROPERTY FROM THE RURAL ROAD ASSESSMENT DISTRICT #3, AND FROM THE ONTARIO RURAL FIRE PROTECTION DISTRICT #7, ASSIGNING CITY ZONING, AND DECLARING AN EMERGENCY, based on the information, findings and facts as set forth in Action 2012-12-15CPAMD and the Planning Commission & City Council staff report, to approve the request to annex and rezone those properties identified in Exhibit 1-Map 5 and further described in Exhibit F, on Second and Final Reading by Title Only, and declaring an emergency. Roll call vote: Crume-yes; Fox-yes; Fugate-yes; Jones-out; Tuttle-yes; Verini-yes. Motion carried 5/0/1.

CONSENT AGENDA

Noted that the Consent Agenda would be done with two votes; one for the action items, and one for the bills.

Ron Verini moved, seconded by Charlotte Fugate, to approve Consent Agenda Item A: Approval of the Regular Minutes of 02/04/2013; Item B: Resolution #2013-103: Receive/Expend Donation Funds-OPD (\$13,812); Item C: Resolution #2013-104: Receive/Expend ODOT Safety Funds-OPD (\$2,640); Item D: Ordinance #2673-2013: AN ORDINANCE AMENDING THE CITY OF ONTARIO COMPREHENSIVE PLAN BY ADOPTING THE TREASURE VALLEY COMMUNITY COLLEGE 2012 FACILITY MASTER PLAN AS PART OF THE TVCC MASTER PLAN, on Second and Final Reading by Title Only. Roll call vote: Crume-yes; Fox-yes; Fugate-yes; Jones-out; Tuttle-yes; Verini-yes. Motion carried 5/0/1.

APPROVAL OF THE BILLS

Norm Crume recused himself from this portion as he had an invoice on the bills.

Ron Verini moved, seconded by Jackson Fox, to approve Consent Agenda Item E: Approval of the Bills. Roll call vote: Crume-recuse; Fox-yes; Fugate-yes; Jones-out; Tuttle-yes; Verini-yes. Motion carried 4/0/1/1.

PUBLIC COMMENTS/PRESENTATIONS

Justin Allison, Volunteer Firefighter Chair, invited the City Council to the Annual Volunteer Firefighter's Banquet and Dance on March 2nd. Dinner would be from 6-8pm, and dancing with a live band until midnight. There would be both live and silent auctions conducted. On behalf of the Fire Department, they wanted to invite – and provide a complimentary ticket – to the City Council.

Councilor Verini asked about the fire hydrants that would be up for auction.

Mr. Allison stated there were two – one from the University of Oregon, and one from Boise State University. They actually had the entire BSU football team, along with Coach Peterson, sign the hydrant. They were down in the fire bay if anyone wanted to see them, and they were on their Facebook page as well.

(From her written statement, plus some side commentary)

Ruth Rolland, Ontario, stated: *This evening, you probably noticed the people carrying signs are out there – conducting an informational picket outside City Hall. They are bringing attention and reminding Ontario citizens that Ontario’s City Council has treated the Public Works employees unfairly, without respect for them, when it came time to renegotiate their Labor Contract with the Public Works employees. It seems like the City Council’s attitude toward these workers was and still is, to not really value them for the dedicated workers they are. The Council hired a labor lawyer and it seems they told him to just make sure these public works guys will end up losing benefits on their new contract. So, the decisions were made how much to take away from their overall compensation, and it was pretty much – Take it or leave it. After that, the Council voted to implement the terms of their contract proposal, rather than try to find some kind of reasonable solution somewhere in the middle. These Public Works employees had their good quality health plans taken away, the ability to earn incentive bonuses was taken away and no effort was made to be fair about it.*

One public works employee shared with me this evening that he went to get his prescription and he was told that his diabetic test strips and his meter, he would have to buy a new one. Of course, that’s his expense. The plan doesn’t pay for that. Other drugs that he had been prescribed, the plan does not pay for them. He’s not real happy with the new HSA plan that they were under now.

Then, on the other hand, - - this same City Council fails to be good stewards of the taxes and revenues that are entrusted to them to manage, by the tax-paying residents of this city. They have failed to collect funds from the Prison, those revenues are just gone. What a waste! And we learn that TOT taxes that should have gone into the Streets funds were placed in the General Fund. The same City Council which has on one hand, somehow allowed the collection and use of these millions of dollars of revenue to be neglected and misappropriated has on the other hand, went to the City workers and reached into their pockets to take compensation and benefits away from them. This sounds to me like a very selective form of unfair taxation of a small group of hardworking citizens who don’t deserve it. No working people deserve to be treated like this. It doesn’t make sense and it isn’t fair.

NEW BUSINESS

Contract Award: Kimley-Horn for Preliminary Engineering Services for FAA Airport Improvement Project AIP 3-41-0044-011-FY13

Alan Daniels, Airport Manager/Economic Development Manager, stated this contract was to start the engineering on a FAA funded project to rehabilitate and construct taxi lanes and to rehabilitate the beacon. The cost of this preliminary engineering contract was \$19,900, of which 90% would be paid by the FAA.

This project was supported by the Airport Master Plan and was on the City’s Capital Improvement Projects list. It had been reviewed by the FAA and approved for funding. The entire project was expected to cost approximately \$600,000. FAA funding was 90% leaving the city a match of approximately \$60,000. Staff expected to get an additional grant to pay most of the city match, but if the city was unable to help with the match and did not want to do the project at this time, the city would simply not accept the construction grant. The city would only be responsible for the 10% match of this short contract which would be about \$1990. The city could delay starting the project until next year, but this project was scheduled to be done this year and the FAA was somewhat inflexible.

Charlotte Fugate moved, seconded by Larry Tuttle, that the City Council approve the contract with Kimley-Horn for engineering services for the preliminary engineering for AIP project 3-41-0044-011. Roll call vote: Crume-yes; Fox-yes; Fugate-yes; Jones-out; Tuttle-yes; Verini-yes. Motion carried 5/0/1.

Committee Appointments

Tori Barnett, City Recorder, stated it was time for the annual appointments to City committees; however, as appointments were to be made by the Mayor, with Council consensus, perhaps it would be best to defer this item until a new Mayor was appointed.

Ron Verini moved, seconded by Larry Tuttle, to table this action until March 4, 2013. Roll call vote: Crume-yes; Fox-yes; Fugate-yes; Jones-out; Tuttle-yes; Verini-yes. Motion carried 5/0/1.

Resolution #2013-105: Creating an Exception for the City Manager's Spending Authority in Compliance with the 2013 Golf Course Management Agreement with Scott McKinney

Larry Sullivan, City Attorney, stated at the Council work session on Thursday, February 14, 2013, the City Council approved the Ontario Golf Course Management Agreement with Scott McKinney. Paragraph 8g. of the Agreement authorized the City Manager to spend up to \$25,000 for golf course repairs and equipment replacement without Council authority for the remainder of 2013. The purpose of the proposed resolution was to give the City Manager the authority to carry out Paragraph 8g. by creating a special exception to the \$5,000 spending limit established in the City's Financial Policies Manual.

Jackson Fox moved, seconded by Ron Verini, that the Mayor and City Council approve Resolution #2013-105, A RESOLUTION CREATING AN EXCEPTION FOR THE CITY MANAGER'S SPENDING AUTHORITY IN COMPLIANCE WITH THE 2013 GOLF COURSE MANAGEMENT AGREEMENT WITH SCOTT MCKINNEY. Roll call vote: Crume-yes; Fox-yes; Fugate-yes; Jones-out; Tuttle-yes; Verini-yes. Motion carried 5/0/1.

DISCUSSION:

Dove Alleyway

Larry Sullivan stated it turned out a portion of the alley on the north end of the block was vacated, but the rest was not. But, the Council could deal with that. So, what action did the Council want to take? The Council discussed trying to work with Riley Hill to see if the vacated portion could be used for Project Dove, or perhaps allowing the adjoining land owners to allow vehicles to go thru that land owner's property in order to provide a means of getting trucks in the alley. But, the discussion stopped there.

Councilor Fugate stated that Bob Walker [PW Director] had indicated it could cost upwards of \$15K to move utilities that were in there. They should ask for a right-of-way first, through the property, before moving forward with spending money.

Mr. Sullivan stated the city was limited to the alley itself. If private property owners were to grant a right-of-way through there, the private property owner could set the terms of who could access it. They could say that no one else but Project Dove could use it. That could be an option for use. That property owner and Dove might prefer that, to make it not be thoroughfare.

Councilor Verini stated they had talked at the previous work session about the expense of moving the utilities on the site, and they also had a discussion about since the city was leasing the property from Mr. Hill for five years, could the city put an exception into that, where the city could grant the access to Dove for those five years?

Mr. Sullivan stated the difficulty with that was that the lease allowed the city to use the property as a park. It didn't authorize it to be open for an alley. They would need Mr. Hill's consent for that.

Councilor Tuttle stated the City Council had no jurisdiction on private property, just on the existing alley. Project Dove had access to the existing alley. To go through, it should be Dove's responsibility to deal with Mr. Hill.

Mr. Sullivan stated they also needed the city's permission because of the lease, but Mr. Hill could agree to open it up. Project Dove needed both the city's permission and Mr. Hill's.

Councilor Fox asked if Project Dove was asking for the Council's support.

Mr. Sullivan stated they were hoping the city would find a solution. Dove knew that Mr. Hill had a chance to help, but they hadn't worked out an accommodation with him. Mr. Hill was aware of Project Dove's issues, but didn't know where that was at. It made sense to have Dove approach Mr. Hill first, before the city got involved.

Councilor Crume asked if the city could help if Dove did their part with Mr. Hill.

Councilor Verini stated someone needed to approach Project Dove to see if they would be willing to foot the expense of moving utilities. If they couldn't, it was all moot.

Councilor Crume stated Dove needed to be made aware of the expenses involve.

Councilor Fox asked about the legality of alleyways in Ontario.

Mr. Sullivan stated he would do some research on that.

Bob Walker, Public Works Director, asked if the Council wanted him to prepare a better estimate.

Mr. Sullivan stated yes, that would help.

Mr. Walker stated it would be about \$16K, and that excluded moving the telephone pole.

Councilor Tuttle stated he didn't want to expend time on this issue unless Mr. Hill was agreeable.

CORRESPONDENCE, COMMENTS, AND EX-OFFICIO REPORTS

- Councilor Fugate stated she had heard that the City Manager hired an independent attorney to write up his own contract. That concerned her, as it was up to the city to write that. The City Manager could have input, but she didn't know where he was going with that. The City Council needed to rewrite that.

Mr. Sullivan stated Brian Defonzo sent a draft contract to him, which he had forwarded to Tori, and it did need a discussion.

Councilor Fugate asked if employees normally wrote contracts for themselves.

Mr. Sullivan stated in a position like the City Managers, it was more like an offer to the city to ask for what it would take to keep him on staff. The Council had a right to review the contract, and remove parts they didn't like, making a counter offer, through the city's attorney. There was nothing wrong with the opposing party in initiating a contract. In some respects, it made the Council's job easier since they would know what the City Manager wanted.

Councilor Fugate confirmed that Mr. Sullivan looked out for the city, correct? Mr. Henry had sued his previous employers, so she wanted to ensure the city was taken care of.

Mr. Sullivan stated yes, he worked for the city, not the City Manager.

- Mr. Sullivan stated one issue that arose on Thursday regarding was an email which Mr. Fox had circulated – his reaction was that it wasn't something appropriate for the Council to consider. After reevaluating it, he contacted Councilor Fox, and told him it wasn't his [Sullivan] job to tell the Council what to think about at a meeting. Anything the Council wanted to discuss was up to the Council to decide. In retrospect, Mr. Sullivan was wrong to say it was an irrelevant issue for discussion. Anytime anyone raised something for discussion, it was appropriate to discuss, unless the Council decided otherwise. It wasn't his job to screen.
- Councilor Fox mentioned the Editorial in the Sunday paper about Council voting during Thursday work sessions – he totally agreed with the article, and would do what he could to ensure actions were taken on Monday nights.

- Councilor Crume stated spring was on its way, and Serve Day was coming up. They had already had some meetings, and if anyone knew of a project or of people needing help, please contact him.
- Mr. Sullivan stated with the resignation of the Mayor, the Council had some options available for filling that vacancy. A few options were that they could select from the existing Councilors, resulting in a vacancy on the Council; or they could solicit letters of interest from the community; or they could hold a special election. Those were only a few options available to them. It would be discussed in more detail when the full Council was present.

ADJOURN

Ron Verini moved, seconded by Jackson Fox, that the meeting be adjourned. Roll call vote: Crume-yes; Fox-yes; Fugate-yes; Jones-out; Tuttle-yes; Verini-yes. Motion carried 5/0/1.

APPROVED:

Dan Jones, Council President

ATTEST:

Tori Barnett, MMC, City Recorder

COUNCIL WORK SESSION MEETING MINUTES
Local Contract Review Board – Golf Course Management Agreement
February 14, 2013

The scheduled work session of the Ontario City Council was called to order by Mayor Joe Dominick at 12:00 p.m. on Thursday, February 14, 2013, in the Council Chambers of City Hall. Council members present were Norm Crume, Joe Dominick, Jackson Fox, Charlotte Fugate, Dan Jones, Larry Tuttle, and Ronald Verini.

Members of staff present were Jay Henry, Tori Barnett, Larry Sullivan, Al Higinbotham, Bob Walker, Mark Alexander, Alan Daniels, and Gary Gibbs. The meeting was recorded on tape, and the tapes are available at City Hall. Also present was Larry Meyer, Argus Observer.

LOCAL CONTRACTOR REVIEW BOARD ACTION

Proposed Golf Course Management Agreement

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

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

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

Mayor Dominick asked if the Golf Course was using the solar panels.

Alan Daniels, interim Golf Course Manager, stated they were.

Mr. Sullivan stated another issue had to do with water rights. He was working to ensure that there would be enough water at the Course; however, the owner of the rights and Mr. McKinney might work it out without the city's involvement.

Councilor Fugate stated it was against policy for the City Manager to expend funds over \$5K without Council approval.

Mr. Sullivan stated it was proposed that would be lifted for this project only. He could add language that would indicate this was a unique exception to the Financial Policies.

Mayor Dominick stated he had been keeping notes over the past two years, and the City Manager had exceeded his spending authority on several occasions. He had a problem with continuing to allow that to happen. The auditors, and the City Council, wanted that policy kept in place.

Mr. Sullivan stated the reason behind this exception was so that Mr. McKinney didn't want to have to appear before the Council every time he needed to make a repair.

Mayor Dominick stated he wouldn't have to if the repair was below \$5K.

Councilor Fox stated it would be an exception in the contract. The previous City Manager had not handled it correctly.

Mayor Dominick stated it broke protocol. Councilor Fox and other City Councilors hadn't wanted the City Manager spending money before.

Councilor Crume stated he understood the need for the exception. However, if Mr. McKinney needed to make a repair, say over \$1,000, did he pay the first \$300?

Mr. Sullivan stated as drafted, there would be no deductible. That hadn't been discussed in the negotiations.

Councilor Jones stated they were splitting hairs. The proposed budget and contract were already tight. They didn't need to start adding to the contract now.

Mayor Dominick stated he supported the contract – it was great – he just wanted to point out they were breaking their own rules.

Councilor Verini stated \$25K wasn't too much of a problem, it was basically pre-approving. It wouldn't be spent willy-nilly. The city had a City Manager; it was his job, so give him the flexibility to do it.

Councilor Fox asked how this would be breaking the rules.

Mayor Dominick stated policy gave the City Manager the authority to only spend up to \$5K. The auditors were saying not to exceed that.

Councilor Fox stated he believed the Mayor meant they were breaking budget rules. If they put it into Mr. McKinney's contract, it locked it in place. They were already asking Mr. McKinney to take on old equipment – when would the city draw the line? There were just some things that needed to be addressed quickly.

Mayor Dominick stated the previous City Manager was attacked for doing the same thing.

Mr. Sullivan stated the Financial Policies adopted by the Council years ago, stated a \$5K limit. It was within the Council's discretion to state any exceptions – it would be a majority ruling.

Mayor Dominick asked if previous managers had received an increase when dealing with Golf Course issues.

Jay Henry, City Manager, stated yes, they had.

Councilor Fugate stated she wanted to see a Performance Bond for this project. She also wanted a report from Mr. McKinney in December.

Mr. Sullivan stated on page 4 of the contract, it obligated Mr. McKinney and his staff to be available for that.

Councilor Fugate asked if the contract addressed that Mr. McKinney could not hire an employee who had previously been fired by the city.

Mr. Sullivan stated that language was in there because of an earlier contract (Copley), and he had left it in the new contract. Mr. McKinney had to comply with the rules of the contract. He could, however, appear before the Council to ask permission to hire a fired employee. They could also add language regarding a surety bond in later.

Mr. McKinney stated he would like to meet with Mr. Sullivan on the subject of a bond.

Councilor Crume asked Mr. McKinney about his position on the restaurant.

Mr. McKinney stated he was in the process of setting up and figuring out the Pro Shop. He needed that area to function with only one person on duty. They were currently looking to obtain an off-premises liquor license. The restaurant was its own area, and one person couldn't run the whole thing. He didn't want a body in the restaurant when there might be no golfers. He might be able to set specific days and times for that. Otherwise, it would be snacks and beverages purchased through the clubhouse, to satisfy golfers when the restaurant wasn't open. He could also rent out the kitchen and dining area for special functions, banquets, parties, tournaments, etc. It would be difficult to find a full-time restaurant business to go in there. The big thing right now was to get the course open – he had golfers wanting to golf!

Councilor Fugate asked where the money was going that was being made off the passes now.

Mr. Daniels stated it was going into a city account, to be paid out to Mr. McKinney if the contract was signed.

Councilor Jones asked if the issue of a surety bond would hold up the contract.

Mr. Sullivan stated he could discuss it with Mr. McKinney as soon as possible.

Councilor Jones asked why they would need one.

Mr. Sullivan stated a surety bond was for employees who handled large sums of money.

Mr. McKinney stated by contract, they wouldn't be handling money. It came in in quarterly payments, following inspection of the premises and an inventory. His budget would have to be reviewed, because a surety bond might not be worth it.

Mayor Dominick stated, in a worst-case scenario – if it was paid out in four equal installments, the city would only be out about \$18K?

Mr. Sullivan stated it would be more, because Mr. McKinney would also be collecting money from the greens fees, and the passes, etc. But, he was also earning all the money, too, and would be responsible for all the bills. The city needed to appoint a staff member to handle the oversight on this project, and it should be the City Manager.

Councilor Fox stated he would like to hear reports from the Golf Committee, too.

Councilor Verini stated if the city insisted on a surety bond, then the city should pay for it.

Councilor Jones stated they didn't need one. He asked for a consensus from the Council on what direction they wanted to go.

Councilor consensus to move forward on the project, as presented.

(Couldn't hear who asked) Could this issue be voted on at the current meeting?

Mr. Sullivan stated he could have a resolution regarding the \$25K spending authority for the City Manager ready by Tuesday.

Councilor Crume stated it was okay to take action at the current meeting, as they were in a properly noticed public meeting. However, in the past, there had been some Councilors who didn't want to take action on any agenda items at their Thursday work sessions.

Councilor Fox stated normally he wanted to vote on items on Monday, to allow input from anyone for or against an item, but he felt this was an emergency situation.

Ron Verini moved, seconded by Norm Crume, that the Mayor and City Council, sitting as a Local Contract Review Board, declare that a contract between the City and Scott McKinney to act as manager of the Ontario Golf Course is a personal services contract under Section 7.1 of the Ontario Financial Policies Manual. Roll call vote: Crume-yes; Fox-yes; Fugate-yes; Jones-yes; Sullivan-yes; Verini-yes; Dominick-yes. Motion carried 7/0/0.

Ron Verini moved, seconded by Norm Crume, that the Mayor and City Council, sitting as a Local Contract Review Board, approve a personal services contract with Scott McKinney to act as Manager of the Ontario Golf Course for the year 2013, and authorize the City Manager to sign said contract. Roll call vote: Crume-yes; Fox-yes; Fugate-yes; Jones-yes; Sullivan-yes; Verini-yes; Dominick-yes. Motion carried 7/0/0.

No further action taken on any other items. Discussion held on other agenda items.

APPROVED:

ATTEST:

Dan Jones, Council President

Tori Barnett, MMC, City Recorder

OLD BUSINESS - AGENDA REPORT

March 4, 2013

TO: Mayor and City Council

FROM: Tori Barnett, MMC, City Recorder

THROUGH: Jay Henry, City Manager

SUBJECT: ORDINANCE #2675-2013: AMENDING CITY CODE SECTION 3-11-4 AS TO THE DISTRIBUTION OF THE PROCEEDS FROM THE TRANSIENT OCCUPANCY TAX

DATE: February 25, 2013

SUMMARY:

At the February 4, 2013, Council meeting, staff brought before Council proposed Ordinance #2675-2013, an ordinance which would amend Ontario Municipal Code 3-1-4, in regards to the existing ordinance for the Transient Occupancy Tax. At that meeting, following lengthy discussion, the Council moved to table the action pending review of the proposed ordinance by the Public Works Committee, and the receipt of the City's audit from Oster.

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

Due to the language of the motion, the proposed ordinance should have come back before Council at the March 4, 2013 meeting; however, while the Public Works Committee had met and discussed the ordinance, and was ready with a recommendation to the Council, the audit has not been distributed to the Council. That being the case, staff is asking Council to again table the action, either setting it for a specific date, setting it for a specific Council meeting, or again stating language that would allow staff to bring the proposed ordinance back before Council when all requests for information were met.

PROPOSED MOTION:

I move that the Council table Ordinance #2675-2013 until (*select one*) 1) date specific; or 2) meeting specific; or 3) after review of the audit.

**AGENDA REPORT
March 4, 2013**

TO: Ontario City Council
FROM: Tori Barnett, MMC, City Recorder
SUBJECT: APPOINTMENTS TO BOARDS, COMMITTEES, AND COMMISSIONS
DATE: February 25, 2013

SUMMARY:

Attached are the following documents:

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

It is time for the annual appointment of City committee, commission and board members. Following are the vacancies and expressions of interest in serving. The Visitors & Conventions Board is position specific.

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

SUMMARY:

02-19-2013 Due to the resignation of the Mayor at the February 19, 2013 meeting, the Council tabled this issue until the March 4th meeting, as these appointments are to be made by the Mayor, with Council consensus.

AIRPORT BOARD: 1 VACANCY

One letter received: Ed Sussman

AUDIT COMMITTEE (COUNCIL MEMBER): 1 VACANCY

One letter received: Dan Jones

BUDGET BOARD: 2 VACANCIES

One letter received: Bob Quinn

GOLF COMMITTEE: 3 VACANCIES

One letter received: Richard Watts

PLANNING COMMISSION: 2 VACANCIES

Two letters received: Ed Sussman and Cindy Graverson

PUBLIC WORKS COMMITTEE: 2 VACANCIES

Five letters received: Tom Frazier, Michael Miller, Ron Cornmesser, Gerald Cowperthwait, and Rick Conant.

RECREATION BOARD: 3 VACANCIES

One letter received: Greg Herrera.

V&C BUREAU BOARD: 2 VACANCIES

Two letters received: Bob Quinn and Laura Davis

RECOMMENDATION:

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

PROPOSED MOTION:

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

January 22, 2013

1/22/13

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

Dear Ms. Barnett,

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

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

Sincerely yours,

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

Tori Barnett - Audit committee

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

Tori

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

Thank You

Dan Jones

Tori Barnett - Committee Positions

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

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

Bob Quinn

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

Tori Barnett - Letter of Interest for Golf Committee

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

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

The you very much for your consideration and time.

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

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

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

Hi Marcy, good morning!

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

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

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

Please consider reappointing me as an Ontario Planning Commission member.

Thank you,

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

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

2/13/13

Tori Barnett, City Recorder

444 SW 4th St

Ontario, OR 97914

February 13, 2013

Honorable Mayor and City Council,

My name is Rick Conant and I would like to be considered for a vacant position on the Public Works Committee. I've lived in Ontario for the past 25 years and I've worked in Public Works Maintenance for nearly 24 years.

I have a vast knowledge of City of Ontario Public Works budget and operations. I'm recently retired and have time to dedicate to making the City of Ontario a better place to live and work. I am also passionate about running the Public Works Department like a business and preserving the infrastructure of the City.

If you'd like to discuss my qualifications or if you have any questions, please contact me at 541-889-8069.



Rick Conant

153 NW 17th St

Ontario, OR 97914

mancaver1@gmail.com

1-14-2013

Ron Cornmesser
161 SW 18th Street
Ontario, Oregon 97914

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

Re: Letter of Interest - Public Works Committee

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

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

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


Ron Cornmesser

Resume'

Ronald R Cornmesser

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

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

email: ronald.cornmesser@gmail.com

Education:

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

Military Service:

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

Work History:

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

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

Skills

Computer Software - Microsoft Word, Excel, Power Point, Outlook
Communication Skills - Technical Writing
Laboratory QA/QA

Technical Writing Skills/Experience

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

Narrative

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

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

To Whom It May Concern:

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

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

Below is my address and phone number.

Gerald Cowperthwait
6985 Denver Rd
Fruitland, Idaho 83619

Phone number 208-740-4151.

Thank you for considering me for this vacancy.

Gerald Cowperthwait

1/24/13

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

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

Respectfully Submitted

A handwritten signature in black ink, appearing to read "Tommy L Frazier", with a long horizontal flourish extending to the right.

Tommy L Frazier

Frazier Aviation/MVCI, LLC

tom@mvcllc.com

2/7/13

February 6, 2013

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

ATTN: Mayor & Council

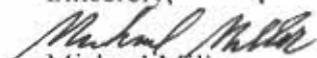
REF: Public Works Committee

Mayor & Council:

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

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

Sincerely,


Michael Miller

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

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

Thanks
Greg Herrera

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

TB

AGENDA REPORT

March 4, 2013

TO: Mayor and City Council

FROM: Tori Barnett, MMC, City Recorder

THROUGH: Jay Henry, City Manager

SUBJECT: ACCEPT JOE DOMINICK'S RESIGNATION FROM THE OFFICE OF MAYOR

DATE: February 25, 2013

SUMMARY:

Attached is the following document:

- Letter of Resignation: Joe Dominick, Mayor, dated February 19, 2013

At the City Council meeting of Tuesday, February 19, 2013, Joe Dominick tendered his resignation from the position of Mayor for the City of Ontario, effective immediately.

To maintain a clear record of the proceeding, staff is asking that Council take motion action to officially accept Mr. Dominick's resignation.

PROPOSED MOTION:

I move that the City Council formally adopt the resignation tendered by Joe Dominic, from the position of Mayor for the City of Ontario, effective February 19, 2013.

02-19-2013

February 19, 2013

Effective immediately I resign as Mayor of Ontario.



Joe Dominick

AGENDA REPORT

March 4, 2013

TO: Mayor and City Council

FROM: Jim Jensen, Malheur County Economic Development Director

THROUGH: Jay Henry, City Manager

SUBJECT: RESOLUTION #2013-106: A RESOLUTION OF THE CITY COUNCIL OF ONTARIO, OREGON, REQUESTING A CHANGE IN THE BOUNDARY OF THE MALHEUR COUNTY ENTERPRISE ZONE

DATE: February 25, 2013

SUMMARY:

Attached are the following documents:

- Resolution #2013-106
- Letter from Jim Jensen, Zone Manager, MC Economic Development Director
- Map - Enterprise Zone Ontario 2010
- Map – Enterprise Zone Ontario 2013
- Map – Aerial of Enterprise Zone

The cover letter provided by Mr. Jensen explains the reason behind the request, and staff defers to Mr. Jensen to present this report.

PROPOSED MOTION:

I move the City Council adopt Resolution #2013-106, A RESOLUTION OF THE CITY COUNCIL OF ONTARIO, OREGON, REQUESTING A CHANGE IN THE BOUNDARY OF THE MALHEUR COUNTY ENTERPRISE ZONE.

RESOLUTION #2013-106

A RESOLUTION OF THE CITY COUNCIL OF ONTARIO, OREGON, REQUESTING A CHANGE IN THE BOUNDARY OF THE MALHEUR COUNTY ENTERPRISE ZONE

- WHEREAS,** in 2010, the County of Malheur, the City of Ontario, the City of Vale, and the City of Nyssa successfully applied for an enterprise zone, which was designated as the Malheur County Enterprise Zone by the Director of the Oregon Economic and Community Development Department on July 1, 2010; 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 of any and all local jurisdictions; nor does it indicate any public intent to modify those processes or restrictions, unless otherwise in agreement with applicable comprehensive land use plans; and
- WHEREAS,** this Enterprise Zone and the three to five-year property tax exemption that it offers for new investments in plant and equipment by eligible business firms are critical elements of local efforts to increase employment opportunities, to raise local incomes, to attract investments by new and existing businesses and to secure and diversify the local economic base; and
- WHEREAS,** officials of the County of Malheur, the City of Ontario, the City of Vale, and the City of Nyssa all agree in requesting a change in the boundary of the Malheur County Enterprise Zone that would add the areas indicated in the attached map (exhibit A) and the following legal description (In Twp. 18S, R47E., W.M., Sec.8, all of SW¼, and the W½SE¼ lying west of the Owyhee Canal), such that the amended Enterprise Zone would be configured according to the attached map and the description and are submitting updated descriptions to the existing zone to better delineate those boundaries; and
- WHEREAS,** a public meeting was held in Ontario, Oregon March 4, 2013, in conjunction with the adoption of this Resolution, to hear the response of the citizenry to the proposed change in the Malheur County Enterprise Zone requested herein.

This change in the boundary of the Malheur County Enterprise Zone would allow benefits to accrue to property located in the general county and is designated as Business Park Industrial.

CONCLUSIONS:

Now, therefore, be it hereby resolved by the Common Council for the City of Ontario, a change in the boundary of the Malheur County Enterprise Zone as shown on the attached map and legal description.

The City Manager is hereby authorized to submit this resolution to the Zone Manager (Jim Jensen) who is authorized to prepare and submit technical memoranda to the Oregon Economic and Community Development Department, along with this resolution and other necessary documents, verifying that the requested boundary change to the Malheur County Enterprise Zone complies with the requirements of ORS 285C.115, so that the requested herein may be approved by order of the Department's Director.

Passed and adopted by the Common Council of the City of Ontario, Oregon by the following vote this ____ day of _____, 2013.

Ayes:

Nays:

Absent:

Abstain:

Approved by the Council this ____ day of _____, 2013.

Dan Jones, Council President

Attest:

Tori Barnett, MMC, City Recorder



March 4th, 2013

City of Ontario
444 SW 4th St.
Ontario, Or. 97914

Subject: Enterprise Zone Expansion

Dear Ontario City Council,

The City of Ontario has been working diligently to add additional industrial land to the Urban Growth Boundary. The reason for this is to have larger parcels of industrial land that businesses are interested in potentially purchasing and building a facility on, thus providing additional good paying jobs to this area. The City of Ontario is a zone sponsor for the Malheur County Enterprise Zone and there is requirement to have all zone sponsors pass a resolution supporting adding the identified industrial land to the Malheur County Enterprise Zone. The Cities of Nyssa and Vale as well as the Malheur County Court are the other zone sponsors.

The Enterprise Zone designation makes available an incentive (property tax abatement) to attract companies to Oregon and in this case to Malheur County. The typical enterprise zone tax abatement is 3 to 5 years. There is a long term enterprise zone option of between 7 – 15 years. Any enterprise zone agreement for more than 3 years requires the approval of the zone sponsors.

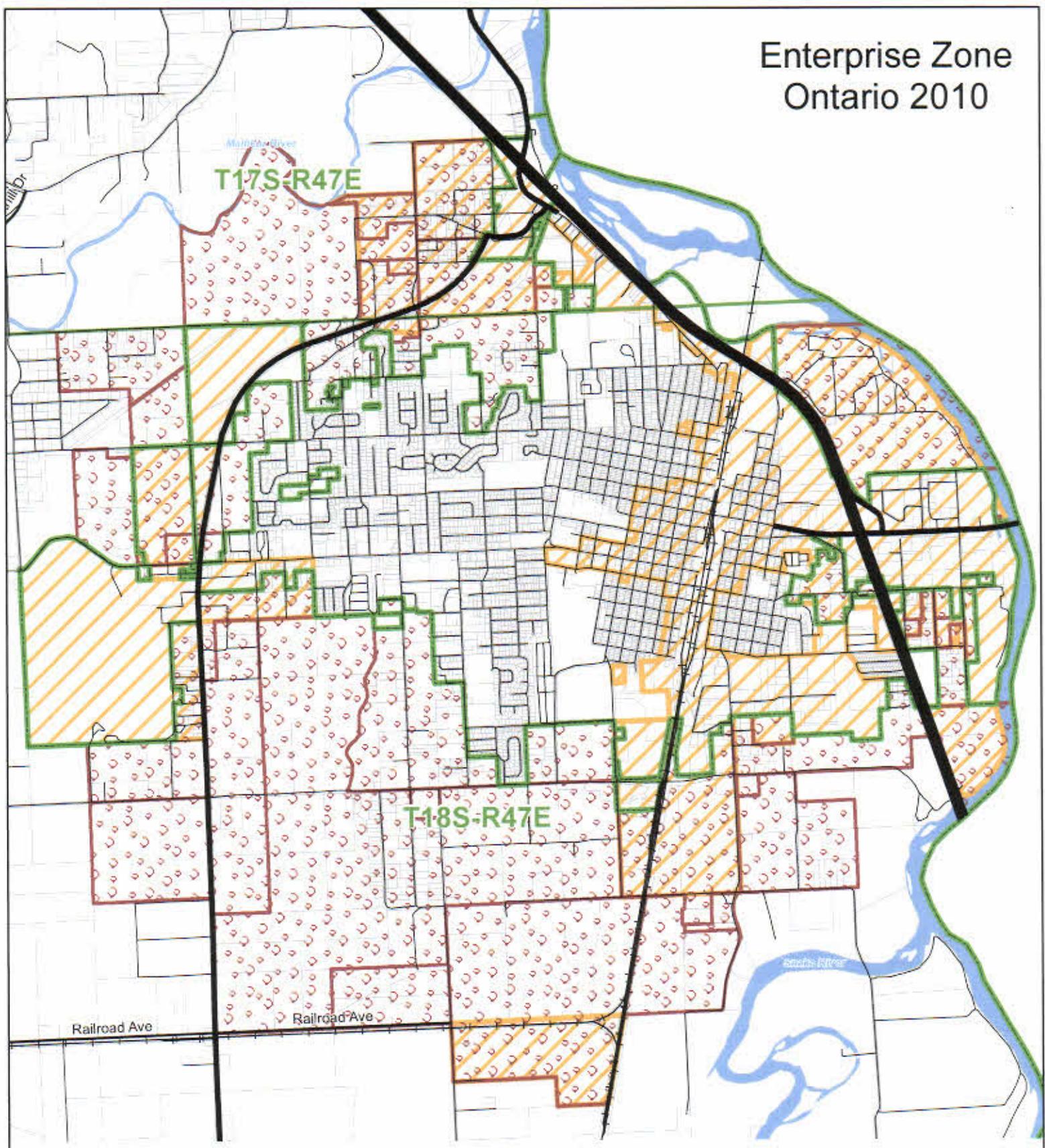
Currently the enterprise zone is 8.13 square miles. The addition of the identified property would increase the size of the zone to 8.44 square miles.

Sincerely,

Jim Jensen

Jim Jensen – Zone Manager
Malheur County Enterprise Zone

Enterprise Zone Ontario 2010



	Enterprise Zone
	Urban Growth Area
	City Limit Boundary
	Taxlot Boundary



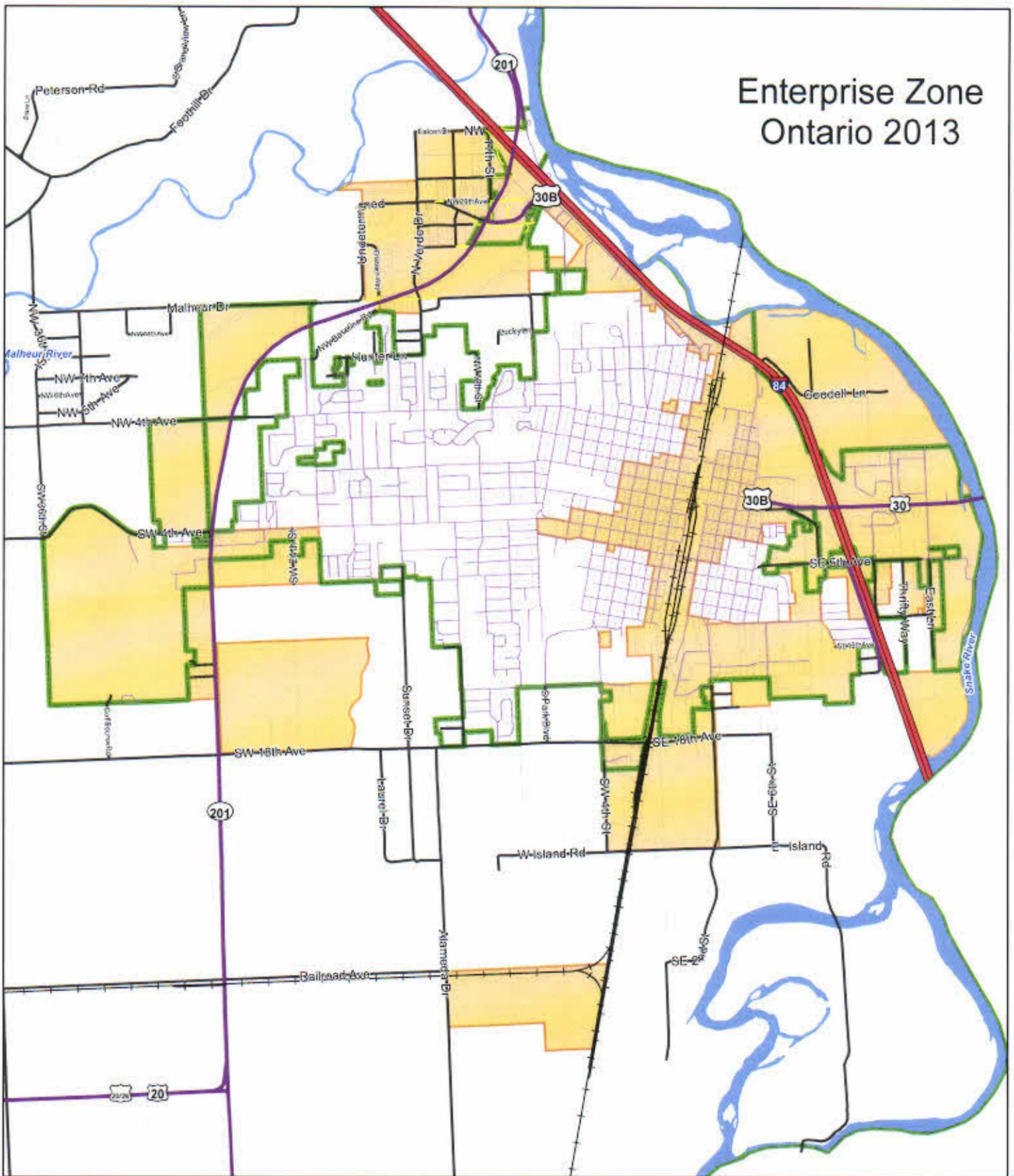
MALHEUR COUNTY GIS
541-475-5574
Vancouver, Oregon

No warranty is made by Malheur County as to the accuracy, reliability, or completeness of these data for individual or aggregate use with other data. Original data were compiled from various sources. This information may not meet National Map Accuracy Standards. This product was developed through digital means and may be updated without notification.

SHP photography from USDA dated August 2005



Enterprise Zone Ontario 2013



	Enterprise Zone		Interstate
	City Limit Boundary		US or State Highway
	Taxlot Boundary		County Road
			City Road
			Vacated Road
			Undeveloped Road



MALHEUR COUNTY GIS
541-473-2674
W. Ore.

No warranty is made by Malheur County as to the accuracy, reliability, or completeness of these data for individual or aggregate use with other data. Original data were compiled from various sources. This information may not meet National Map Accuracy Standards. This product was developed through digital means and may be updated without notification.

NAPF photography from USDA dated August 2011.



Google earth

AGENDA REPORT

March 4, 2013

TO: Mayor and City Council

FROM: Dan Shepard, Engineering Technician III

THROUGH: Bob Walker, Public Works Director

SUBJECT: RESOLUTION #2013-107, A RESOLUTION ACCEPTING AN EASEMENT FOR A PUBLIC WATER MAIN CROSSING THE PROPERTY OF 8C SCHOOL DISTRICT AT AIKEN SCHOOL

DATE: February 25, 2013

SUMMARY:

Attached is the following document:

- 8C School District, Aiken School, Water Line Easement

8C School District added class rooms to Aiken School, 1297 West Idaho Avenue. A water main was constructed on the development site to provide potable water and fire service to the development. Water mains, fire hydrants and meters are to remain under control and jurisdiction of the city. Staff is requesting the Mayor be authorized to sign an easement for the water main construction at Aiken School. The easement gives the City of Ontario the authority to maintain and repair this water main and meters as necessary.

The City of Ontario has requested a 20-foot wide utility easement for the water main at Aiken School and the 8C School District accepts conveyance of the described easement for a water main and agrees to the terms of the City.

BACKGROUND:

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

RECOMMENDATION:

Staff has reviewed this easement and recommends the Council authorize the Mayor to be signatory to the attached Permanent Utility Easement for a water main and the City Recorder attest the Mayor's signature.

MOTION:

I move we accept **RESOLUTION #2013-107, A RESOLUTION ACCEPTING AN EASEMENT FOR A PUBLIC WATER MAIN CROSSING THE PROPERTY OF 8 C SCHOOL DISTRICT AT AIKEN SCHOOL**

Resolution 2013-107

**A RESOLUTION ACCEPTING AN EASEMENT
FOR A PUBLIC WATER MAIN CROSSING THE PROPERTY
OF 8 C SCHOOL DISTRICT AT AIKEN SCHOOL**

- WHEREAS,** Section 8-11-30 of the Ontario City Code requires all water mains, service connections, and water meters to be laid on dedicated City streets, public property, or on property on which the City has an easement to construct and maintain the water lines; and
- WHEREAS,** 8 C School District has added on to Aiken School and have extended a public water main to serve it; and
- WHEREAS,** This water main extension included a connection for the water meter serving the building and a fire hydrant; and
- WHEREAS,** These improvements have been inspected and accepted as in conformance to City specifications.

NOW, THEREFORE, BE IT RESOLVED by the Ontario City Council as follows:

Accept an easement for a public water main crossing the property of 8C School District at Aiken School, 1297 West Idaho Avenue.

EFFECTIVE DATE: Immediately upon passage.

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

Ayes:

Nays:

Absent:

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

ATTEST:

Dan Jones, Council President

Tori Barnett, MMC, City Recorder

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

PUBLIC UTILITY EASEMENT

FOR VALUE RECEIVED, **ONTARIO SCHOOL DISTRICT 8C, INC.**, an Oregon Corporation ("Grantor"), whose address is 195 SW 3RD Avenue, Ontario, Oregon, in consideration of the sum of zero dollars, the receipt of which is hereby acknowledged, does hereby grant a utility easement to the **CITY OF ONTARIO**, ("Grantee"), whose address is 444 SW 4TH Street, Ontario, Oregon 97914, together with the right to erect, construct, install, and lay and thereafter use, operate, inspect, repair, maintain, replace, and remove public utilities over, across, and through the following described real property located in the City of Ontario, Malheur County, Oregon (the "Property"), to wit:

Land situated in the NW ¼ SW¼ of section 4, Township 18 South, Range 47 East, Willamette Meridian, Malheur County, Oregon, being a 20 foot wide easement, lying 10 feet on either side of the following described centerline as follows:

Commencing at the West ¼ Corner of Section 4, Township 18 South, Range 47 East;
thence S 0°00'00" E, coincident with the centerline of Verde Drive a distance of 1035.25 feet;
thence N 89°26'50" E, a distance of 30 feet to the east right of way line of Verde Drive, and the **Point of Beginning**;
thence, N 89°26'50" E, a distance of 3.12 feet;
thence, N 0°33'10" W, a distance of 30.54 feet;
thence, S 0°33'10" E, a distance of 30.54 feet;
thence, N 89°26'50" E, a distance of 306.71 feet to the **Point of Terminus**.

Said Easement is shown on the attached Exhibit 1 and made a part hereof.

It is agreed, and made a condition herein, that the Grantor has existing improvements within this easement and is reserving the rights to have said improvements within this easement, and grantee shall recognize said improvements and preserve said improvements. The Grantor shall not install any new improvements within said easement without written consent of the Grantee.

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

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

IN WITNESS WHEREOF, the Grantor has executed this instrument on this 15th day of February,
2008.

2008.
2613

GRANTOR: **ONTARIO SCHOOL DISTRICT 8C, INC.**

By: Nicole Albisu
(Signature)

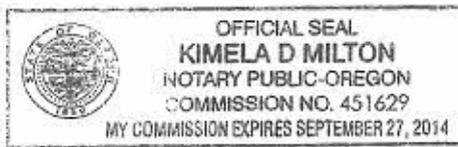
Name: Nicole Albisu
(Print)

Its: Superintendent
(Title, (Print))

STATE OF Oregon)
County of Malheur SS.

On this 15th day of February, 2013, before me, the undersigned Notary Public in and for said State, personally appeared Nicole Albisus, known or identified to me to be the Superintendent of **ONTARIO SCHOOL DISTRICT 8C, INC.**, an Oregon Corporation, and the corporation that executed the within instrument, or the person who executed the instrument in behalf of said corporation, and acknowledged to me that such corporation executed the same.

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



Kimela D Milton
Notary Public for Oregon
My Commission expires: 9-27-14

IN WITNESS WHEREOF, the Grantee has executed this instrument on this _____ day of _____, 2008.

GRANTEE:

CITY OF ONTARIO

By: _____
(Signature)

Name: _____
(Print)

Attested: _____
City Clerk: Tori Barnett

Its: _____
(Title)

EX 1

SHEET NO. **1** OF **1**
DWG NO. **AIKEN EASEMENT**
JOB NO. **VO-08030**



CKS, LLC

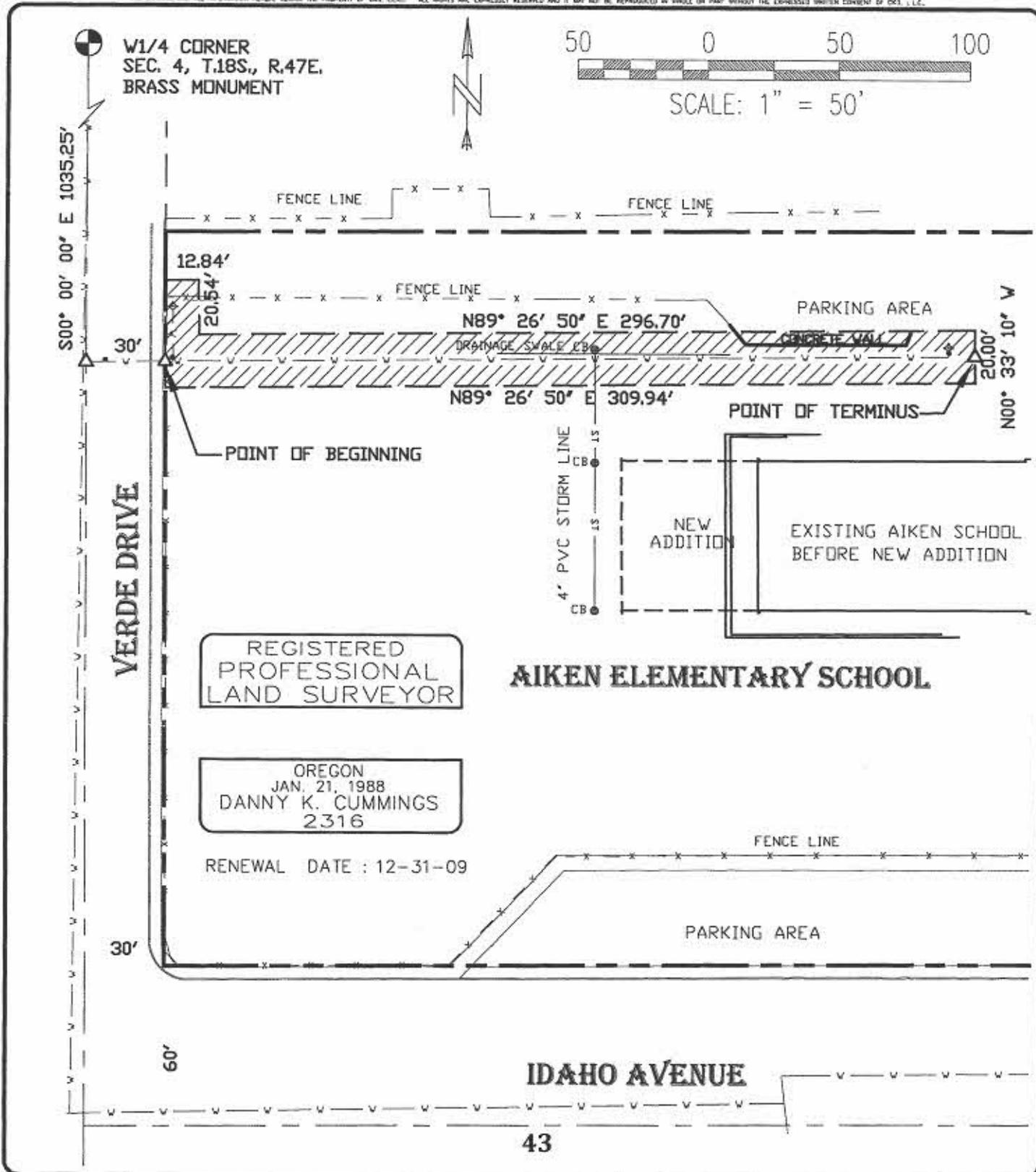
CIVIL-STRUCTURAL-ELECTRICAL
ENGINEERING, SURVEYING & PLANNING
368 S.W. 5th Avenue
Ontario, Oregon 97914
PHN: (541) 889-5411
FAX: (541) 889-2074
E-MAIL: CK3@fntc.com

EASEMENT EXHIBIT
**AIKEN ELEMENTARY SCHOOL
FIRE HYDRANT & WATERLINE**

ONTARIO SCHOOL DISTRICT 8C
195 SW 3rd AVENUE
ONTARIO, OREGON 97914

ENG. BY: DKC
APR. BY: DKC
DWG. BY: DKC
DATE: Aug. 27, 2008
SCALE: 1" = 50'

THIS DRAWING AND ALL INFORMATION HEREON REMAIN THE PROPERTY OF CKS, LLC. ALL RIGHTS ARE EXPRESSLY RESERVED AND IT MAY NOT BE REPRODUCED IN WHOLE OR PART WITHOUT THE EXPRESSED WRITTEN CONSENT OF CKS, LLC.



AGENDA REPORT
March 4, 2013

TO: Ontario City Council
FROM: Larry Sullivan, City Attorney
Through: Jay Henry, City Manager
SUBJECT: **RESOLUTION #2013-108: DENYING LOREN WEIDEMAN'S GAINSHARING CLAIM**
DATE: February 25, 2013

SUMMARY:

Attached are the following documents:

- Resolution No. 2013-108 Denying the Weideman Claim
- Resolution No. 2004-130 Establishing a Gainsharing Policy [Exhibit A].
- August, 2005, emails between Scott Trainor and Loren Weideman [Exhibit B].
- December 19, 2005, Council Minutes and Agenda Report approving modification of the Doug Stipe lease [Exhibit C].
- Undated Gainsharing proposal from Mr. Weideman [Exhibit D].
- Council Minutes for February 6, 2012, Temporarily Re-forming Gainsharing Committee [Exhibit E].
- February 21, 2012, letter from Scott Trainor to Loren Weideman regarding Mr. Trainor's recollection of the circumstances surrounding Mr. Weideman's Gain Sharing claim [Exhibit F].
- 1998 Farm Lease Agreement with Skyline Applications Systems [Exhibit G].
- Art Allen Memo to Bob Walker in 2009 [Exhibit H].
- Timeline from Loren Weideman [Exhibit I]
- Information from Loren Weideman about time spent by City employees on the farm property leased to Doug Stipe before the contract was renegotiated [Exhibit J]

PRIOR COUNCIL ACTION:

- August 16, 2004 Council adopts Gainsharing Resolution #2004-130.
- August 17, 2009 Council adopts Resolution #2009-120, rescinding Resolution #2004-130.
- February 6, 2012 In response to a demand letter from Loren Weideman's attorney, Council passes a motion to temporarily re-form the Gainsharing Committee to evaluate Loren Weideman's Gainsharing claim in accordance with the Gainsharing guidelines in Resolution #2004-130.

TIMELINE:

A timeline for Mr. Weideman's Gainsharing claim is as follows:

- In 2004, the City Council passed a Gainsharing resolution creating a policy and guidelines for Gainsharing [See Exhibit A].
- In August, 2005, a City employee, Swen Peterson, quit after taking a new job elsewhere. A large portion of his City job during the irrigation season (approximately six months of the year) was to maintain the irrigation works (pumps, etc.) on land that the City was leasing to farmer Doug Stipe [See Exhibit H].
- When Swen Peterson quit, Loren Weideman sent an email to Scott Trainor suggesting that the City should not hire an employee to replace Peterson but should renegotiate Doug Stipe's lease to have Mr. Stipe handle the operation and maintenance of the irrigation system. He noted in the email that his suggestion was similar to what the City had done in its Skyline Farms operation. [The Skyline Farms lease is attached as Exhibit G].
- On August 29, 2005, Scott Trainor emailed him that it was a good idea and "we'll be getting back with you to have you share the idea with the Gainsharing Committee" [See Exhibit B]. According to Scott Trainor's subsequent recollection [See Exhibit F] he did not convene the Gainsharing Committee because Mr. Weideman failed to give him a proposal with sufficient details to implement it.
- In December, 2005, the lease with Doug Stipe was renegotiated by City personnel, and no employee was hired by the City to replace Swen Peterson [See Exhibit C].
- Sometime thereafter, Loren Weideman prepared a formal Gainsharing proposal [See Exhibit D]. The exact date is unknown, but it appears from an email that Loren Weideman's wife wrote to Scott Trainor that the formal proposal was prepared around August, 2006.
- In 2007, Scott Trainor quit without resolving the Gainsharing claim made in Mr. Weideman's proposal and without convening the Gainsharing Committee. No action was taken on it thereafter.
- In 2009, the Gainsharing resolution was rescinded by the City Council.
- On February 6, 2012, in response to a demand letter from Mr. Weideman's lawyer, J. David Coughlin, the City Council re-formed the Gainsharing Committee to evaluate Mr. Weideman's Gainsharing written proposal [See Exhibit E].

GAINSHARING POLICY:

Resolution 2004-103 created the following guidelines ("Gainsharing Guidelines") to determine which ideas are eligible for Gainsharing [see paragraph no. 1 below]; which are ineligible [see paragraph no. 2 below]; and the procedure for Gainsharing submissions [see paragraph no. 3 below]:

1. Eligible Ideas. Any unique, innovative/creative proposal that is created, researched, and developed by an employee(s) that results in:
 - a. Cost savings to the City over a multi-year period. These savings must be measurable in actual, hard dollar figures; and,
 - b. Equivalent or increased customer service, to either internal or external customers; or,
 - c. Recognition of missed revenue opportunities within existing revenue streams (example: quicker billing of accounts receivable, showing earlier receipts and possibly increased interest earnings).

2. Ineligible Ideas. The following are ideas which are generally considered to be ineligible for gainsharing bonuses:
 - a. Concepts that provide for one-time savings.
 - b. Non-unique ideas that merely "piggyback" off of existing policies, practices, or normal operating procedures (example: going out to bid for services).
 - c. Anything that, at the discretion of the City Manager or Gainsharing Committee, does not seem to fit the overall spirit of this policy.

3. Process:
 - a. Employee(s) develop concept idea and provide a written submittal to City Manager. If developed as a team, the written submittal must include all the names of the team involved in creation and development of the idea.
 - b. City Manager reviews concept and determines whether the idea should be developed further.
 - c. If the idea has merit, then the City Manager gives approval to further development of the concept to the Employee(s).
 - d. Employee(s) fully research idea, develop necessary information, develop implementation strategy (timelines, procedures, costs, etc.), and provides a written and oral presentation to a "Gainsharing Committee", made up of the City Manager, Finance Director, Applicable Department Head, and Council-member.
 - e. The Gainsharing Committee determines feasibility of final concept and, if feasible, provides a recommendation to approve. All proposals that come before the Gainsharing Committee, whether approved or not, shall be presented to the City Council and the Council shall have final approval authority.

DISCUSSION:

On February 25, 2013, as required by the Council the temporarily re-formed Gainsharing Committee met for the purpose of evaluating Mr. Weideman's Gainsharing claim and making a recommendation to the City Council as required under paragraph 3.e. of the Gainsharing Guidelines. The Gainsharing Committee unanimously passed a motion to recommend to the City Council that Mr. Weideman's claim be denied. The Committee also passed a motion to adopt findings of fact and conclusions of law, which are included in Resolution #2013-108.

RECOMMENDATION:

Staff recommends that that the City Council adopt Resolution #2013-108 Denying Loren Weideman's Gainsharing claim.

PROPOSED MOTION:

(1) I move that City Council adopt RESOLUTION #2013-108 DENYING LOREN WEIDEMAN'S GAINSHARING CLAIM.

RESOLUTION #2013-108
A RESOLUTION DENYING LOREN WEIDEMAN'S GAINSHARING CLAIM

- WHEREAS,** In 2004, the City Council adopted a Gainsharing policy in Resolution #2004-130 which was intended to reward employees with bonuses for developing and presenting ideas that would result in cost savings or increased revenues for the City; and
- WHEREAS,** In 2005, an employee, Loren Weideman, sent the City Manager, Scott Trainor, an email with an idea for potential cost-savings to the City, for evaluation under the City's Gainsharing policy; and
- WHEREAS,** Neither Scott Trainor nor subsequent City managers convened a Gainsharing Committee to formally evaluate Loren Weideman's idea; and
- WHEREAS,** In 2009, the City Council adopted Resolution #2009-120, rescinding Resolution #2004-130; and
- WHEREAS,** On February 6, 2012, the Council passed a motion to temporarily re-form the Gainsharing Committee to evaluate Loren Weideman's idea, in response to a demand letter from Loren Weideman's attorney; and
- WHEREAS,** On February 25, 2013, the re-formed Gainsharing Committee recommended that the City Council deny approval of Loren Weideman's idea under the Gainsharing policy; and
- WHEREAS,** In support of that recommendation, the Gainsharing Committee adopted findings of fact and conclusions of law, which are set forth in Exhibit A; and
- WHEREAS,** the City Council accepts the Gainsharing Committee's recommendation that the idea proposed by Loren Weideman is not an eligible idea under the Gainsharing Guidelines and should not be approved; and

NOW, THEREFORE, BE IT RESOLVED as follows:

- 1) The City Council adopts the findings of fact and conclusions of law set forth in Exhibit A.
- 2) Based upon the findings of fact and conclusions of law adopted by the City Council, Loren Weideman's Gainsharing idea is disapproved and his Gainsharing Claim is denied.

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

Ayes:

Nays:

Absent:

APPROVED by the Council President this _____ day of _____, 2013.

Dan Jones, Council President

Attest:

Tori Barnett, MMC, City Recorder

Exhibit A
Findings of Fact and Conclusions of Law
In Support of Resolution #2013-108

Findings of Fact:

1. The idea that Mr. Weideman suggested in his email on August 26, 2005 to Scott Trainor is not unique. It relied on and specifically referred to a procedure that the City had already implemented with another farm tenant, in the City's 1998 lease with Skyline Application Systems.

2. After suggesting his idea to Mr. Trainor, Mr. Weideman failed to determine the impact on the City of leaving Peterson's position vacant; failed to suggest ways to minimize that impact; failed to suggest ways to renegotiate Doug Stipe's lease; and otherwise failed to develop an implementation strategy before the City implemented the idea on its own.

3. The City had a limited amount of time before the 2006 irrigation season to implement Mr. Weideman's idea by renegotiating the Doug Stipe Farm lease and assigning Swen Peterson's job duties to other employees.

4. Mr. Weideman had, at a minimum, four months in the summer and fall of 2005 to develop and submit an implementation strategy for his idea to Scott Trainor.

5. Swen Peterson was employed by the City to work on the property leased to Doug Stipe during the irrigation season and on other jobs for the remainder of the year. Eliminating his job duties on the Stipe farm eliminated only a portion of the work he was doing for the City.

6. Loren Weideman left it to other staff members to determine how to use current employees to handle Swen Peterson's job duties.

7. After the Doug Stipe lease was renegotiated, Swen Peterson's remaining job duties were assigned to other City employees, which added to their workload.

8. Loren Weideman left it to other staff members to determine how to renegotiate the lease with Doug Stipe. The lease was renegotiated without Loren Weideman's participation or assistance.

9. When Loren Weideman sent his email to Scott Trainor in August, 2005, he did not know whether Doug Stipe would agree to renegotiate his lease with the City, and did nothing to determine that fact before other staff members undertook negotiations with Mr. Stipe.

10. Loren Weideman's formal Gainsharing proposal submitted on or after August, 2006, did not account for the fact that Swen Peterson had job duties for the City beyond working on the property leased to Doug Stipe.

Conclusions of Law:

1. The idea suggested by Mr. Weideman in his email to Scott Trainor was an ineligible Gainsharing idea under paragraph 2.b. of the Gainsharing Guidelines, because it merely piggybacked upon an existing procedure already in use by the City.

2. The idea suggested by Mr. Weideman in his email to Scott Trainor did not fit within the overall spirit of the Gainsharing Guidelines under paragraph 2.c. and was an ineligible idea.

3. Without an implementation strategy, a potential Gainsharing idea suggesting that an employee's position be eliminated is not an eligible Gainsharing idea under paragraph 2.c. of the Gainsharing Guidelines. In general, implementing such an idea puts burdens on City staff and has an impact on efficiency that cannot be measured simply by looking at cost savings.

4. An idea requiring the renegotiation of a contract with a third party is an ineligible Gainsharing idea under paragraph 2.c. of the Gainsharing Guidelines, unless it includes an implementation strategy successfully addressing the terms of the renegotiated contract and the third party's willingness to agree to those terms.

5. An idea is not an eligible idea under paragraph 2.c. of the Gainsharing Guidelines unless the employee formally develops and submits an implementation strategy to the City Manager before the City implements it.

6. An employee has a legal obligation to submit the information required in paragraph 3.d of the Gainsharing Guidelines in a timely manner in order for the employee's idea to be eligible for a Gainsharing bonus.

7. Loren Weideman failed to comply with paragraph 3.d. of the Gainsharing Guidelines in a timely manner.

8. The City Manager did not interfere with Loren Weideman's ability to comply with paragraph 3.d. of the Gainsharing Guidelines.

9. The City Manager is not legally required to convene the Gainsharing Committee if an employee fails to submit the information required by paragraph 3.d. of the Gainsharing Guidelines.

10. The City Manager is not legally required to convene the Gainsharing Committee if an employee submits the information required by paragraph 3.d. of the Gainsharing Guidelines only after the idea has already been implemented by the City.

10. If the City implements an employee idea after the City Manager gives the employee a reasonable time to comply with paragraph 3.d. of the Gainsharing Guidelines, and the employee fails to do so, the employee is not entitled to a Gainsharing bonus.

11. Loren Weideman failed to comply with paragraph 3.d. of the Gainsharing Guidelines both before and after the City implemented his idea, by failing to address the fact that Swen Peterson had job duties for the City beyond working on the property leased to Doug Stipe.

12. The City did not violate the Gainsharing Guidelines by failing to convene the Gainsharing Committee to evaluate Loren Weideman's Gainsharing claim before rescinding Resolution 2004-130 in 2009.

RESOLUTION NO. 2004-130

A RESOLUTION CREATING AND IMPLEMENTING A GAIN-SHARING POLICY FOR THE CITY OF ONTARIO.

- WHEREAS,** The City Council has set goals to decrease the costs of service while also maintaining or improving levels of service to customers; and,
- WHEREAS,** A Gain-sharing policy, as proposed below, will have the effect of encouraging cost-saving innovations by employees.
- WHEREAS,** The Council feels that Employees should be rewarded for innovative/cost-savings ideas that maintain or increase levels of service.

NOW THEREFORE, BE IT HEREBY RESOLVED by the Common Council for the City of Ontario, that the City implement a Gain-sharing policy, as follows:

GAIN-SHARING POLICY

POLICY STATEMENT

The City of Ontario rewards employees for innovative, cost saving ideas that provide for the same or increased levels of service for the customer. Gain-sharing is a bonus-incentive policy that provides a share of the cost savings to the employees who developed the innovative idea.

PURPOSE

The purpose of this policy is to reward employees for creative, innovative ideas while either saving the City money or recognizing missed revenue opportunities from existing revenue streams.

GUIDELINES

1. **Eligible Ideas.** Any unique, innovative/creative proposal that is created, researched, and developed by an employee(s) that results in:
 - a. Cost savings to the City over a multi-year period. These savings must be measurable in actual, hard dollar figures; and,
 - b. Equivalent or increased customer service, to either internal or external customers; or,
 - c. Recognition of missed revenue opportunities within existing revenue streams (example: quicker billing of accounts receivable, showing earlier receipts and possibly increased interest earnings).
2. **Ineligible Ideas.** The following are ideas which are generally considered to be ineligible for gainsharing bonuses:
 - a. Concepts that provide for one-time savings.

Exhibit A

- b. Non-unique ideas that merely "piggyback" off of existing policies, practices, or normal operating procedures (example: going out to bid for services).
 - c. Anything that, at the discretion of the City Manager or Gain-sharing Committee, does not seem to fit the overall spirit of this policy.
3. Process:
- a. Employee(s) develop concept idea and provide a written submittal to City Manager. If developed as a team, the written submittal must include all the names of the team involved in creation and development of the idea.
 - b. City Manager reviews concept and determines whether the idea should be developed further.
 - c. If the idea has merit, then the City Manager gives approval to further development of the concept to the Employee(s).
 - d. Employee(s) fully research idea, develop necessary information, develop implementation strategy (timelines, procedures, costs, etc.), and provides a written and oral presentation to a "Gainsharing Committee", made up of the City Manager, Finance Director, Applicable Department Head, and Council-member.
 - e. The Gainsharing Committee determines feasibility of final concept and, if feasible, provides a recommendation to approve. All proposals that come before the Gainsharing Committee, whether approved or not, shall be presented to the City Council and the Council shall have final approval authority.
 - f. Incentive payments are made to Employee(s) as provided below, following monitoring of actual savings after the first and second years of implementation.
4. At the end of the year, the City Manager determines the actual savings or revenues recognized from the implemented concept. These actual savings (or revenues) are then used to calculate incentives to be paid out to employees in the form of one-time bonuses.
5. Allocation of savings. For the first two (2) years of savings, 50% of the savings are retained by the City, 25% are given directly to the employee(s) developing the idea, and 25% are provided to an overall employee incentive pool (see below). Following the second year, 100% of all cost savings or revenue recognition is retained by the City.
6. Of the portion of the savings retained by the City, a minimum of 75% will be retained within the department from which it was saved. The remaining 25% may be apportioned out to other portions of the same Fund. If deemed necessary by the Council, this apportionment may be changed.
7. There is no maximum amount payable to any employee for any cost-saving idea.
8. Incentive Pool. A calculation is made to determine what an equal payout would be to all employees scoring a 2.0 or greater on their most recent performance evaluation ("eligible incentive"). Disbursement of this incentive is as follows:
- a. 100% of this eligible incentive is disbursed equally to all employees scoring a 2.0 or greater on their most recent performance evaluation.

- b. Any employee scoring less than a 2.0 is not eligible for any share of the eligible incentive.
 - c. Generally, incentives will not be disbursed for amounts less than \$20.
9. The City Manager has the full ability to make adjustments to this policy, relating to eligible proposals, procedural issues, or disbursement of the cost-saving incentives, as may be necessary from time to time, in order to ensure that the intent of the policy is being met. The City Council shall have the ability to make the final determination on gainsharing disbursements to employees.

EFFECTIVE DATE: Effective immediately upon passage.

PASSED AND ADOPTED by the Common Council of the City of Ontario, Oregon, this 16 day of August, 2004, by the following vote:

AYES: Allen, Phillips, Gaskill, Cheatham, Hytrek, Jacobs

NAYS: None

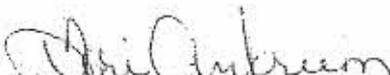
ABSENT: Cammack

APPROVED by the Mayor this 16 day of August, 2004.

ATTEST:



LeRoy Cammack, Mayor



Toni Ankrum, City Recorder

Date: 8/29/05 07:27
From: Scott Trainor
To: <Loren.Weideman@notreallyasite.mil>
Copy: "Steve Gaschler" <Steve.Gaschler@ontariooregon.org>
Subject: Re: Gain share

Great idea. Thanks Loren. Steve and I both think this is a very good concept. We'll be getting back with you to have you share the idea with the Gainsharing Committee.

Thanks,

Scott

>>> "Loren Weideman" <loren.weideman@ontariooregon.org> 08/26/05 1:36 PM >>>
Scott,

This is my idea on a cost-saving action for the WWTP. A great deal of time is spent by personnel here on mowing, spraying, pivot and pump maintenance, etc. If we were able to renegotiate a contract with the current farmer so that he could take care of all the tasks related to the farming operation, we would not need to fill another position out here. The WWTP could run on minimal staff, and if a situation came up requiring more people, someone from the Water Treatment plant could fill in temporarily. This would be similar to the way SkyLine is operating. All we do is take readings there and we could do the same here at a considerable cost savings to the city.

Let me know if this is all you need.

Thanks for this opportunity,
Loren

Exhibit B

CITY OF ONTARIO 444 SW 4TH STREET ONTARIO OREGON 97914

COUNCIL MEETING MINUTES
December 19, 2005

The regular meeting of the Ontario City Council was called to order by Mayor LeRoy Cammack at 7:00 p.m. in the Council Chambers of City Hall. Council members present were Lewie Allen, Earl Cheatham, Dan Cummings, John Gaskill, Audrey Jacobs, Jim Mosier and LeRoy Cammack.

Members of staff present were City Recorder Tori Ankrum, Police Captain Mark Alexander, Interim Fire Chief Terry Mairs, Wastewater Supervisor Glen Schoeneman, Planning and Zoning Administrator Grant Young, Engineering Technician II Tom Davis, and Camera Operator Renee Trainor.

The meeting was recorded on tape and the tape is on file at City Hall.

John Gaskill led everyone in the Pledge of Allegiance.

A Council work session was held Friday, December 18, 2005. The agenda for this meeting was published December 18, 2005, and copies of the Agenda are available at the City Hall customer service counter, the Malheur County Library, and the City's website www.ontariooregon.org.

Earl Cheatham moved, seconded by Dan Cummings, to adopt the entire Agenda as presented. Roll call vote - Allen-yes; Cheatham-yes; Cummings-yes; Gaskill-yes; Jacobs-yes; Mosier-yes; Cammack-yes. Motion carried 7/0/0.

CONSENT AGENDA

Audrey Jacobs moved, seconded by Jim Mosier, to approve Consent Agenda Item A - Approval of Minutes of 12/05/05; Item B - Meetings List: January-June, 2006; Item C - Ordinance #2561-2005: E-2 and E-5 Zones (Final Reading); Item D - Committee Appointments; and Item E - Approval of Bills. Roll call vote - Allen-yes; Cheatham-yes; Cummings-yes; Gaskill-yes; Jacobs-yes; Mosier-yes; Cammack-yes. Motion carried 7/0/0.

NEW BUSINESS:

ADDENDUM TO FARM LEASE: CITY OF ONTARIO / DOUG STIPE:

Glen Schoeneman, Wastewater Supervisor, presented a staff report to the Council. He stated the City was in a contract with Doug Stipe, who took care of all the farming except the irrigation. Earlier this year when one of the operators quit from the Wastewater Treatment Plant, the decision was made that instead of rehiring that position, staff would renegotiate with Mr. Stipe to take over the irrigation and the repairs. When they renegotiated the addendum, it made some changes to that contract. This would result in a reduction in the percentage the City would receive, but the crops were a little higher pay back. With the reduction in personnel, the City was looking at saving about \$56,000 in fully burdened costs. There would be some modifications to that amount depending on crop sales.

Dan Cummings moved, seconded by Lewie Allen, to approve the addendum to the farm lease between the City of Ontario and Doug Stipe. Roll call vote - Allen-yes; Cheatham-yes; Cummings-yes; Gaskill-yes; Jacobs-yes; Mosier-yes; Cammack-yes. Motion carried 7/0/0.

RESOLUTION #2005-144: REIMBURSEMENT FOR OVERTIME - OPD:

Mark Alexander, Police Captain, presented a staff report to the Council. He indicated this was just a simple budget adjustment. Earlier in the year the Department was able to participate in a large-scale marijuana investigation that incurred west of Vale. Several officers spent some time doing some surveillance and in the end helped with the take down of that operation. When there were large-scale operations like that, there was eligibility for reimbursement of overtime. There was a month's worth of reports sent in on how much overtime was spent and they received money from the State in the amount of \$5,917. The proposed resolution acknowledged receipt of those funds and placed it back

AGENDA REPORT
December 19, 2005

TO: Mayor and City Council

FROM: Glen Schoeneman, Wastewater Supervisor

THRU: Scott Trainor, City Manager
Steve Gaschler, Development Services Director

SUBJECT: **ADDENDUM TO FARM LEASE**

DATE: December 13, 2005

SUMMARY:

Attached is the following document:

- Addendum to Farm lease

The City entered into an agreement with Doug Stipe to do the contract farming. The proposed Addendum makes several changes to this agreement.

PREVIOUS COUNCIL ACTION:

None.

BACKGROUND:

In March of 2004 Doug Stipe was awarded the bid for the agricultural lease. In April the City and Doug Stipe entered in to an agreement for the lease. As part of that lease the City was to manage the watering of crops, maintain the irrigation system, roads, and buffer zones. Mr. Stipe was to take care of all the crop requirements, planting, cultivation, harvest of the crops, and selling of the harvest. The crops were limited to hay, corn, and grain crops. The departure of a Wastewater Plant Operator, who took employment elsewhere, resulted in a reduction of personnel, so the decision was made to turn the operation and maintenance of the irrigation system over to the lease farmer, instead of filling the vacant operator position. This reduction in personnel results in a savings to the City.

Staff and Doug Stipe have worked out an addendum that will benefit both the City and Doug Stipe. With Mr. Stipe's increase in operating costs, he has proposed to decrease the percentage that the City will received in crop share; however, Mr. Stipe is also requesting that he be allowed to grow corps that will give a higher return, which will increase the amount that the City gets even though the percentage is smaller. Further, Mr. Stipe is requesting for a 5-year lease instead of the current 3-year lease.

ALTERNATIVE:

Not approve the addendum, and keep the current contract.

FINANCIAL IMPLICATIONS:

With a reduction in a staff position at the wastewater plant, the City will save approximately \$56,000 fully burdened cost, for one operator, per year.

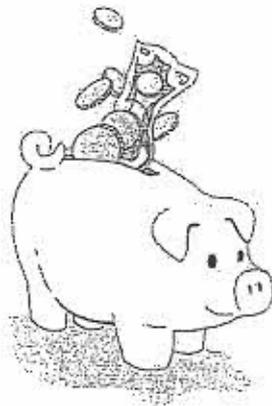
RECOMMENDATION:

Staff is recommending that the Council approve the addendum to the farm lease.

PROPOSED MOTION:

I move the City Council approve the addendum to the farm lease between the City of Ontario and Doug Stipe.

City of Ontario



Gain-Sharing Policy

Submitted by:
Loren Weideman
Waste Water Treatment Plant

City of Ontario Gain-Sharing Policy

Submitted by: Loren Weideman

Cost Saving Idea:

A great deal of time is spent by personnel here at the Waste Water Treatment Plant on mowing, spraying, pivot and pump maintenance, etc. If we were able to renegotiate a contract with the current farmer so that he could take care of all the tasks related to the farming operation, we would not need to fill the position vacated by Swen Pettersen. The WWTP could run on minimal staff, and if a situation came up requiring more people, someone from the Water Treatment Plant could fill in temporarily. This would be similar to the way SkyLine is operating. All we do is take readings there and we could do the same here at a considerable cost savings to the City.

Projected Cost Savings:

- Annual salary costs for vacated position = \$61,734.40
(as of 5-12-06 per Shawn Smith)
- City crop share decreased from 28% to 24% after re-negotiated contract.
2006 total crop income = \$156,460.00
City crop share at 28% = \$43,808.80
City crop share at 24% = \$37,550.40

City crop share loss = \$6,258.80
- Spraying herbicide in buffer zones will now be carried out by contractor.
Savings to City for herbicides used in buffer zones = \$3,000.00 (approx.)

Salary savings	\$61,734.40
- Crop share loss	\$ 6,258.80
<u>+ Herbicide savings</u>	<u>\$ 3,000.00</u>
= Total savings to City	\$58,475.60

x 25% = Employee Gain Share \$14,618.90

- Second year savings will be calculated after 2007 crop year is finished.

CITY OF ONTARIO 444 SW 4TH STREET ONTARIO OREGON 97914

- Dan Jones stated three months ago, he had asked for a printout on the Public Works facility, and the total cost, and that had been provided by the City Manager. He had an extra copy if anyone wanted one. He appreciated getting the document.
- Charlotte Fugate stated there had been rumor swirling around the city for about three months, and she wanted to address it. It was about the cost of the Public Works road. The cost, according to some people on the Council, was \$70K. After checking with the Public Works staff, the cost of the road was \$10,093. They got the grindings from the airport project for free, the fellow delivered the materials, and staff used some of the chip seal that was left over. She wanted that cleared up. She felt like they had an obligation as Councilors to be truthful and to speak the truth. She wanted to let everyone know that was the cost, and she had the document with her if anyone wanted a copy.

Jackson Fox stated his point of contention was that money was spent from an approval project, taken from that, and spent on an unapproved project. That was a violation of the code.

Ms. Fugate stated she was talking about the \$70K that it was supposedly supposed to cost, and it didn't cost \$70K.

Mr. Fox stated it didn't cost \$10K either.

Ms. Fugate stated according to the Public Works Director...

Mr. Fox stated those chips were not free.

Ms. Fugate stated she did not interrupt him when he was talking, so don't interrupt her. Thank you.

- Mayor Dominick stated on March 13th, the Sister City Delegates would be here. There would be five ladies from Japan, ages 18-21. They had the host families lined up, and there were many activities planned for around the area, but were still looking for ideas on other things to do. They were also looking for donated items for their welcome bags. The 40th Anniversary was coming up, and he anticipated having a large delegation come to Ontario.

EXECUTIVE SESSION

Executive Session: ORS 192.660(2)(d)

An executive session was called at 8:08 p.m. under provisions of ORS 192.660(1)(d) to discuss labor negotiations. The Council convened into a second Executive Session at 9:05 p.m.

Executive Session: ORS 192.660(2)(h)

An executive session was called at 9:06 p.m. under provisions of ORS 192.660(1)(h) to discuss pending or potential litigation. The Council reconvened into regular session at 9:23 p.m.

AMEND AGENDA

David Sullivan moved, seconded by Ronald Verini, to amend the Agenda to include item 7E, formation of a temporary gain-sharing committee to evaluate Loren Weideman's gain sharing proposal. Roll call vote: Crume-yes; Fox-yes; Fugate-yes; Jones-yes; Sullivan-yes; Verini-yes; Dominick-yes. Motion carried 7/0/0.

Formation of Temporary Gain-Sharing Committee to Evaluate Loren Weideman's Gain-Sharing Proposal

Larry Sullivan, City Attorney, stated the purpose of this agenda item was to consider whether to establish a procedure to evaluate employee Loren Weideman's Gain-sharing proposal.

In 2004, the City Council adopted a Gain-sharing policy through Resolution No. 2004-130 as a financial incentive for employees to submit cost-saving ideas. The policy included a procedure to evaluate and approve Gain-sharing proposals submitted by employees. The policy required that a Gain-sharing Committee be formed to evaluate proposals and make recommendations to the City Council. The policy gave the Council final authority to approve or disapprove Gain-sharing proposals.

In August, 2005, employee Loren Weideman submitted a Gain-sharing proposal to reduce the number of employees at the Wastewater Treatment Plant by contracting out the work to a local farmer through the farmer's share-crop agreement with the City. The City subsequently reduced, through attrition, the number of employees at the Wastewater Treatment Plant, and renegotiated the share crop agreement with the local farmer.

Although Mr. Weideman's proposal was reviewed by both the former Public Works Director, Steve Gaschler, and the former City Manager, Scott Trainor, no Gain-sharing Committee was convened to evaluate the proposal and no formal action was taken on the proposal to determine whether it met the criteria in the Gain-sharing policy; whether it resulted in cost savings to the City; or the amount, if any, of those savings.

In 2009, the City Council rescinded the Gain-sharing policy through Resolution No. 2009-120.

On January 11, 2012, a claim against the City was made by an attorney in a letter sent on Mr. Weideman's behalf demanding that the City pay Mr. Weideman an amount specified in the letter for his Gain-sharing proposal.

Although the Gain-sharing policy was rescinded by the Council, this would not prevent the Council from temporarily adopting the same procedure specified in Resolution No. 2004-130 solely for the purpose of processing Mr. Weideman's Gain-sharing proposal. This could be done by forming a temporary Gain-sharing committee solely for the purpose of evaluating Mr. Weideman's proposal and making a recommendation to the Council. Following this procedure, the Committee would consist of the current City Manager, Public Works Director and Finance Director, as well as a Council member appointed by the Mayor.

Temporarily adopting this procedure would not authorize employees to make any new Gain-sharing proposals. The only proposal that would be evaluated would be Mr. Weideman's 2005 proposal.

Charlotte Fugate moved, seconded by Norm Crume, that the Mayor and City Council establish a temporary Gain-sharing Committee, consisting of the City Manager, Public Works Director, Finance Director, and a Council member appointed by the Mayor, solely for the purpose of evaluating and making a recommendation to the Council concerning Loren Weideman's 2005 Gain-sharing proposal, applying the same criteria and standards as set forth in former Resolution No. 2004-130. Roll call vote: Crume-yes; Fox-yes; Fugate-yes; Jones-yes; Sullivan-yes; Verini-yes; Dominick-yes. Motion carried 7/0/0.

Mayor Dominick stated Councilor Sullivan would be the Council representative on the Committee.

ADJOURN

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

APPROVED:

ATTEST:

Joe Dominick, Mayor

Tori Barnett, MMC, City Recorder

February 21 2012

Loren Weideman
WWTP Operator
City of Ontario

Re: Gainsharing Proposal

Dear Loren,

I am in receipt of your e-mail requesting me to provide my recollection of the Gain-Sharing issue in the City of Ontario. It has been at least 5 years, but let me try to provide some information that I hope will be of use to you.

Background

In August of 2004, the City Council reviewed and approved Resolution#2004-130, which created a "Gain-sharing" policy for the City of Ontario. The concept was based on policies in place in multiple other large jurisdictions such as Denver, Phoenix, Augusta, and San Diego. These policies were intended to instill some creativity and to encourage City employees to use their own personal time to develop ideas that could financially benefit the municipality.

While it is easy to see how and why many private sector companies have concepts such as "profit-sharing" to encourage employee productivity, municipalities don't have a profit motive and, therefore, do not typically have profit-sharing. "Gain-sharing" stems from the idea that public employees might not be able to effect the profit of the organization (because profit doesn't exist), but they can certainly effect the bottom line through concepts that can save considerable sums of money.

The Ontario City Council, at that time, wanted to provide a monetary incentive to employees who took their own personal time to develop ideas that would save the City money. Thus, the idea of "gain-sharing" was taken from other jurisdictions and adopted to Ontario's organization.

Your Proposal

I left the City of Ontario in 2007, so some time has gone by since the last time that I reviewed your gainsharing proposal. Therefore, my recollection may not be entirely complete on this. However, following are a few points, as I remember them:

- You had proposed an idea that involved not hiring a position that someone leaving the plant had just vacated (I think that was Swen?). Since that position had primarily been focused on the farming issues at the plant, your proposal was to contract with the farmer who had been farming the area around the plant. With the differences in the way the City had been doing it versus your proposal, you felt the City would be saving considerably.
- I recall having several conversations with you initially because you did not have the level of detail needed to implement your proposal. You had given me an overall concept, which seemed to have some potential, but without any of the details. Some time went by between discussions with you, each time I indicated that I needed to have details. You were going to refine the proposal, get with Steve Gaschler to review it, and then get the final proposal to the Gainsharing Committee for review. My recollection is that this went on for a very long time. . . possibly a couple of years.

SCOTT TRAINOR
116 SOUTH MAIN STREET • FOUNTAIN • COLORADO • 80817
strainor@fountaincolorc

- I don't recall seeing a final proposal that showed a cost analysis which would have shown the actual costs we had incurred in past years under the old model, versus a pro-forma look at what your new proposal costs would be. I recall seeing some things that got close to that, but never seemed to address certain questions like how we were supposed to calculate the gain-share when the annual figures that came in from the farmer (how much we sold and received in our lease) fluctuated so much depending on the weather, market, etc. However, I believe you were going to be working this out with Steve.
- In looking through my records, I cannot find anything where you had presented a final version of your gainshare proposal to the gainshare committee. That may have happened after I left, but I cannot find it nor can I recall meeting and then having a final proposal go to the Council.
- I do recall it being a very interesting concept that both Steve and I felt had quite a bit of potential. Also, because it was taking so long for you to develop your figures, it seems that the City had decided to move forward in that direction. However, I'm not sure how the final figures ended up. It had to save money for multiple years but the challenge was how to calculate what the savings were actually based on. I also remember us hoping that when you had your final proposal together, it would be a catalyst for other proposals in the City.

Following were the guidelines to the Gainshare program:

1. Eligible Ideas. Any unique, innovative/creative proposal that is created, researched, and developed by an employee(s) that results in:
 - a. Cost savings to the City over a multi-year period. These savings must be measurable in actual, hard dollar figures; and,
 - b. Equivalent or increased customer service, to either internal or external customers; or,
 - c. Recognition of missed revenue opportunities within existing revenue streams (example: quicker billing of accounts receivable, showing earlier receipts and possibly increased interest earnings).
2. Ineligible Ideas. The following are ideas which are generally considered to be ineligible for gainsharing bonuses:
 - a. Concepts that provide for one-time savings.
 - b. Non-unique ideas that merely "piggyback" off of existing policies, practices, or normal operating procedures (example: going out to bid for services).
 - c. Anything that, at the discretion of the City Manager or Gain-sharing Committee, does not seem to fit the overall spirit of this policy.
3. Process:
 - a. Employee(s) develop concept idea and provide a written submittal to City Manager. If developed as a team, the written submittal must include all the names of the team involved in creation and development of the idea.
 - b. City Manager reviews concept and determines whether the idea should be developed further.
 - c. If the idea has merit, then the City Manager gives approval to further development of the concept to the Employee(s).
 - d. Employee(s) fully research idea, develop necessary information, develop implementation strategy (timelines, procedures, costs, etc.), and provides a written and oral presentation to a "Gainsharing Committee", made up of the City Manager, Finance Director, Applicable Department Head, and Council-member.
 - e. The Gainsharing Committee determines feasibility of final concept and, if feasible, provides a recommendation to approve. All proposals that come before the Gainsharing Committee,

- whether approved or not, shall be presented to the City Council and the Council shall have final approval authority.
- f. Incentive payments are made to Employee(s) as provided below, following monitoring of actual savings after the first and second years of implementation.
4. At the end of the year, the City Manager determines the actual savings or revenues recognized from the implemented concept. These actual savings (or revenues) are then used to calculate incentives to be paid out to employees in the form of one-time bonuses.
 5. Allocation of savings. For the first two (2) years of savings, 50% of the savings are retained by the City, 25% are given directly to the employee(s) developing the idea, and 25% are provided to an overall employee incentive pool (see below). Following the second year, 100% of all cost savings or revenue recognition is retained by the City.
 6. Of the portion of the savings retained by the City, a minimum of 75% will be retained within the department from which it was saved. The remaining 25% may be apportioned out to other portions of the same Fund. If deemed necessary by the Council, this apportionment may be changed.
 7. There is no maximum amount payable to any employee for any cost-saving idea.
 8. Incentive Pool. A calculation is made to determine what an equal payout would be to all employees scoring a 2.0 or greater on their most recent performance evaluation ("eligible incentive"). Disbursement of this incentive is as follows:
 - a. 100% of this eligible incentive is disbursed equally to all employees scoring a 2.0 or greater on their most recent performance evaluation.
 - b. Any employee scoring less than a 2.0 is not eligible for any share of the eligible incentive.
 - c. Generally, incentives will not be disbursed for amounts less than \$20.
 9. The City Manager has the full ability to make adjustments to this policy, relating to eligible proposals, procedural issues, or disbursement of the cost-saving incentives, as may be necessary from time to time, in order to ensure that the intent of the policy is being met. The City Council shall have the ability to make the final determination on gainsharing disbursements to employees.

If I come across any additional information, I will be sure to provide that to you.

Best Regards,



Scott Trainor

FARM LEASE AGREEMENT

DATED: This 16 day of September, 1998.

BETWEEN: CITY OF ONTARIO, OREGON, a municipal corporation
hereinafter referred to as "Landlord",

AND: SKYLINE APPLICATION SYSTEMS, LLC.,
hereinafter referred to as "Tenant."

PREMISES:

A. Landlord owns a certain tract of land, described in Exhibit "A" attached hereto and by this reference incorporated herein, together with all improvements thereon, hereinafter referred to as the "Premises," which Landlord intends to use as a spray field for effluent from the municipal sewer lagoons.

B. Landlord is installing an irrigation system on the premises. Although it is the opinion of Landlord's engineer that the system is appropriately designed to operate effectively on the premises, this will not be truly known until the system has been installed and operated. Landlord, pursuant to the terms of this Lease, will be installing, operating, and responsible for the maintenance of that system for the first two (2) years of the Lease. The purpose of this arrangement is to allow the Landlord time to make sure the system works in accordance with the manufacturers specifications.

C. Landlord desires to have a tenant occupy the Premises for the purpose of caring for, cultivating, and maintaining the Premises.

D. Tenant wishes to lease the Premises from Landlord for the purpose of cultivating and harvesting a crop.

AGREEMENT:

The parties agree as follows:

SECTION 1. LEASE OF REAL PROPERTY.

Landlord leases to Tenant and Tenant leases from Landlord that property located in Malheur County, Oregon, which is described in Exhibit A attached hereto and by this reference incorporated herein, together with all improvements thereon, hereinafter referred to as "the Premises," on the terms and conditions set forth herein.

SECTION 2. POSSESSION.

Tenant shall be entitled to possession of the Premises from the date hereof as a tenant, subject to Landlord's rights set forth herein, and will be entitled to remain in peaceful possession thereof until

November 1, 2008, so long as he does, keeps, and performs each and all of the terms of this lease.

SECTION 3. TERM.

3.1 Original Term.

The term of this lease shall commence upon the date hereof and shall continue until November 1, 2008.

3.2 Continuous Occupancy.

Tenant or his assigns shall occupy the Premises continuously during the term of this lease.

3.3 Renewal Terms.

Provided Tenant is not in default of this Agreement, Tenant shall have four options for up to renewal terms of ten years each. Tenant's renewal option(s), no later than 180 days prior to the expiration date hereof or any renewals hereof, Tenant shall deliver in writing to Landlord a notice of intent to renew the lease agreement. Upon Landlord's receipt of said notice, the lease shall be continued pursuant to the terms and provisions herein for an additional ten years from the date of expiration.

SECTION 4. RENT.

Consideration for the term of the lease shall be the maintenance and upkeep of the Premises, including all improvements thereon, in accordance with the terms and provisions herein.

SECTION 5. USE OF THE PREMISES.

5.1 Landlord's Right of Access.

Landlord shall have a continuous right of access to the Property during the first year of this lease for the purpose of constructing effluent irrigation structures and any activity incident thereto. Thereafter, Landlord shall have access to the Property for a period of two years to operate and maintain the irrigation system in accordance with the provisions in section 6.1.4. Thereafter, Landlord shall have access to the Property for the purpose of inspecting the effluent irrigation activities on the Property for compliance with the terms of this lease and with any and all statutes, laws, codes, rules or regulations relating to the operation of an effluent disposal facility. Landlord shall take reasonable steps to minimize loss of crops to Tenant. However, Tenant shall bear all risk of loss of crops. Tenant shall not in any way impede, obstruct, hinder or otherwise interfere with Landlord's rights of access set forth in this subsection.

5.2 Tenant's Use of the Premises.

Tenant expressly acknowledges the primary purpose of the Premises is for sewer effluent application. However, subject to the primary purpose, Tenant shall be entitled to use of and shall use

the Premises for agricultural purposes only. Tenant shall be able to use the elevated flat area located in the northeast corner of the premises for Tenant's personal agricultural purposes so long as Tenant's use does not significantly interfere with Landlord's use of the property.

SECTION 6. OBLIGATIONS OF THE PARTIES.

6.1 Landlord's Obligations:

The following shall be obligations of the Landlord.

- 6.1.1. Irrigation System. Landlord, at its cost, shall provide the labor and material necessary to install irrigation equipment upon the Premises for the primary purpose of distributing effluent from the municipal sewer lagoons upon the Premises, and for the secondary purpose of irrigating the Premises. The irrigation system will be installed in accordance with the manufacturers and the engineers specifications as set forth in the Wastewater Treatment Plant Expansion Schedule H-1, Effluent Irrigation System specifications, incorporated herein by reference as the "Irrigation System Specifications". Except in areas abutting the hillside, Landlord shall, in the design, maintain minimum buffers for the irrigation systems of at least 100 feet from the closest property line. Said plan design may, in coordination with Tenant, but at the discretion of the City, be revised or amended. Landlord shall take appropriate steps to insure that the irrigation system warranties will be available to Tenant as well as to Landlord. Landlord will also cause to be installed flood control devices, including dikes, berms, or other topographic enhancements or features, in accordance with the engineers designs to route runoff water for the 100 year flood event around the effluent reservoir to be constructed by Landlord. At the time Landlord turns the maintenance of the irrigation equipment over to Tenant, Landlord shall make sure the system will operate in accordance with the Manufacturer's design specifications, the engineer's Irrigation System Specifications, and in accordance with the approved Water Reuse Plan.
- 6.1.2 Landlord shall, in consultation with Tenant, develop and obtain approval from the Oregon Department of Environmental Quality of a Water Reuse Plan for the effluent disposal operations to be conducted on the property.
- 6.1.3 Landlord shall, no later than May 1, 1999, at Landlord's expense, plant or cause to be planted a crop in accordance with the accepted Water Reuse Plan in all portions of the Premises to be irrigated with effluent.
- 6.1.4 Irrigation System Maintenance and Operations (M&O) Manuals. Landlord, for a period of two (2) years following the installation and acceptance of the irrigation system will perform the maintenance on the system and will coordinate with Tenant to develop a supplemental appendix to the Manufacturers Irrigation System Maintenance and Operations Manuals. Following said two year period, Landlord, shall in accordance with paragraph 6.1.1 turn responsibility for the maintenance of

said system over to Tenant. Landlord shall have the primary right and responsibility to insure completion of the supplemental appendix. The supplemental appendix will set forth maintenance and operations procedures which result from the particular topography and conditions of the property on which the irrigation systems are installed and will set forth maintenance and operations procedures which are needed by virtue of the irrigation system being used for effluent application.

- 6.1.5 To the extent adequate effluent is produced, Landlord agrees to provide effluent to irrigate approximately 352 acres on the Premises with an average annual irrigation application of approximately 34.8 inches per acre of effluent. In the event insufficient effluent is available to irrigate all of Landlord's effluent property, effluent will be provided to irrigate the Premises before effluent is applied on any other properties. The effluent will be pumped at Landlord's expense from the City sewer treatment facilities to a reservoir constructed by Landlord at the location as shown in Exhibit B attached hereto.
- 6.1.6 Landlord shall, no later than February 28, 1999, provide Tenant with a list of the information which Landlord will need, together with a list of dates by which said information will be needed, to comply with the regulatory reporting requirements for the effluent application operation. As regulatory reporting requirements are revised, amended, newly adopted or otherwise changed in the future, Landlord shall provide Tenant with a list of the revised, amended newly adopted or changed information needs within thirty (30) days of the date Landlord becomes aware of the changes.
- 6.1.7 Landlord shall maintain the pump station which pumps the effluent from the reservoir to be applied to the premises. Said pump station will be located as indicated in Exhibit B. The pump station will have an installed, automatic backwashing, filtration screening device which shall have screening installed which shall have a mesh design smaller than the smallest apertures on any spray heads initially installed on the pivot system in accordance with the designed standards.
- 6.1.8 After the irrigation system has served its designed life, Landlord shall be responsible for replacement of the irrigation system as needed. The designed life of the irrigation system is twenty (20) years. Except for damages due to Tenant's negligence, reckless or willful act, and as otherwise set forth herein, Landlord shall be responsible for the repair or replacement of the underground lines which transport effluent from the reservoir to the pivot systems.
- 6.1.9 Landlord, will make reasonably available, at Landlord's expense, Hepatitis vaccinations for Tenant's employees who perform work on the Premises.
- 6.1.10 In the event Landlord determines it to be necessary to install exterior space lighting on the premises, said lighting shall be installed to as to prevent the direct glare of beams onto any adjacent property.

6.2 Tenant's Obligations. Tenant's obligations are conditioned upon the delivery of effluent to the premises and upon Landlord's turning over the maintenance responsibility as set forth in Paragraph 6.1.4, *supra*. If effluent is not being delivered to the premises, then Tenant is not required to meet the obligations reflected in this Section 6.2, during such time as effluent is not being delivered. Subject to this condition, Tenant Covenants to and with the Landlord as follows:

6.2.1 Perform any and all cultivation, irrigation and/or harvesting on said Premises in compliance with the Landlord's Water Reuse Plan which shall be approved by the Oregon Department of Environmental Quality (ODEQ). Tenant shall, prior to implementation of any significant deviations from the approved Water Reuse Plan, submit to Landlord a complete proposal setting forth all changes in the manner and method by which the Tenant intends to cultivate, irrigate and harvest crops upon the Premises, the type of crop which Tenant intends to grow on the Premises and any other information relevant to cultivation, irrigation and harvesting upon the Premises. Landlord will review the proposal for consistency with Landlord's primary purpose of using the Premises as a spray field for effluent from the municipal sewer lagoons. Tenant shall also submit said proposal to ODEQ in the form of a proposed amendment to Landlord's Water Reuse Plan. Tenant shall bear any and all costs associated with application for any Tenant proposed amendments to the Water Reuse Plan and shall bear the responsibility and costs to provide ODEQ with all information needed to evaluate the proposed amendment. Tenant shall not commence cultivation, irrigation and/or harvesting activities which differ from the approved Water Reuse Plan without Landlord's and ODEQ's prior written approval.

As used above, "cultivation" or "cultivating" shall mean the plowing, seeding, fertilizing, planting, or in any manner working the soil. The term "irrigating" or "irrigation" shall refer to the application, other than by natural means, of any water, including effluent water to the crops or soil. And the term "harvest" or "harvesting" shall mean the plucking, gathering, cutting, pulling up, reaping, grazing animals upon, or any other method of taking the crops or any part thereof from the field.

6.2.2 Tenant shall not use herbicides, pesticides or practices that may harm any perennial crop now upon or in the future planted upon the Premises or which may render the soil unfit for any future contemplated use.

6.2.3 Liens. Tenant will keep the Premises free from farm labor liens, agricultural liens, or liens of any other nature or type, over which Tenant has control. Nothing in this agreement shall be deemed or construed in any way as constituting the consent or request of Landlord, express or implied, by inference or otherwise, to any contractor, subcontractor, laborer, or materialman for the performance of any labor or furnishing of any materials for any specific improvement, alteration or repair of or to the Premises or any part thereof, nor as giving Tenant any right, power or authority to contract for

or permit the rendering of any such mechanic's lien. If any such mechanic's lien shall at any time be filed against the Premises, Landlord may but shall not be obligated to, discharge the same either by paying the amount claimed or by procuring the discharge of such lien by deposit in court of bonding, and in any such event, Landlord shall be entitled, if Landlord so elects, to compel the prosecution of any action for the foreclosure of such mechanic's lien by the lienor and to pay the amount of the judgment, if any, in favor of the lienor with interest, cost, and allowances. Any amount paid by Landlord for any of the aforesaid purposes, and all reasonable legal and other expenses of Landlord, including reasonable counsel fees in defending any such action in or by procuring the discharge of such lien, with all necessary disbursements in connection therewith, with interest thereon at the rate of twelve percent (12%) per annum from the date of payment, shall be repaid by Tenant to Landlord on demand, and if unpaid may be treated as a debt due and owing.

Landlord herewith, beginning the first year Tenant assumes maintenance responsibility of the irrigation system, specifically grants to Tenant permission to pledge the growing crops for that current crop year for the purpose of financing Tenant's annual operating expenses. Additionally, each year thereafter during which this lease agreement or any renewal thereof continues, the Tenant shall have Landlord's permission to pledge the growing crops for such current year for the purpose of financing Tenant's annual operating expense. Permission is not granted to pledge the crops for more than a year in advance.

- 6.2.4 Farming Practices. Tenant will use and employ the methods of farming in such a manner as to prevent the erosion and cutting away of said lands. Excepting damages resulting from acts of nature beyond Tenant's control, Tenant shall be responsible to maintain the Premises consistent with the engineered design parameters, including all flood control devices, dikes, berms, or other topographic enhancements or features installed by Landlord. Tenant will take reasonable steps to control weed growth in all buffer areas in a husbandlike manner and to keep the buffer areas properly maintained at all times. Tenant shall use Tenant's best efforts to prevent irrigation waters from washing and eroding the land through overflow of water or otherwise. All effluent applied to the Premises shall be applied at agronomic rates and shall not be allowed to pool or to runoff.
- 6.2.5 Cost Incident to Spraying the Effluent. Tenant shall be responsible for and pay all costs to pump the effluent from the reservoir and to spray the effluent upon the Premises. These costs include all electricity costs for the pumps, motors and electrical systems for the irrigation system to pump the effluent from the reservoir and apply it to the Premises. For the purposes of allocating electricity costs, Landlord shall install or cause to be installed a separate meter for electricity to be provided to the pumps and irrigation equipment.

- 6.2.6 Repair and Maintenance of the Irrigation System. Tenant shall, during the term of this lease, maintain, repair and as provided in Section 7 *infra*, replace all irrigation equipment installed on the premises, including the booster pump used to pump effluent to pivots 4 - 6 as indicated in Exhibit B. Maintenance schedules shall be in accordance with the Maintenance and Operations Manuals (M&O) supplied by the manufacturer as supplemented through mutual agreement as set forth in Subsection 6.1.4 herein. Tenant shall be responsible for and pay the costs of materials and all labor required for the maintenance, repair and as provided in Section 7 *infra*, replacement of the effluent irrigation equipment.
- 6.2.7 Required Reporting Information. Tenant will provide Landlord with all information requested by Landlord, in the form specified and at the times specified in the list of information needed for regulatory reporting as set forth in Section 6.1.6 *supra*.
- 6.2.8 Maintenance of Improvements. Except as otherwise set forth within this Agreement, Tenant shall be responsible for the maintenance and upkeep of all structures and other improvements, including roads, and fences on the Premises in substantially the same condition as said improvements are in when Tenant assumes responsibility for the Premises. Tenant is not responsible for maintaining the fence around the reservoir area or any improvements contained therein.
- 6.2.9 Tenant shall not suffer or commit any waste to the property.
- 6.2.10 Weed Control. Tenant shall substantially control all weeds including dodder and noxious weeds, growing on the Premises, including but not limited to such weeds growing in, along and around cultivated fields, roadways, ditches, drains, fences and buildings in a good and husband-like manner. Tenant shall use no herbicides or pesticides unless Tenant or Tenant's operator has prior to using such herbicides or pesticides, obtained a state pesticide/herbicide applicator's license and certifies to Landlord that any and all chemicals applied have been applied in accordance with the applicable state statutes or rules and regulations promulgated thereto. Tenant shall, prior to March 1st of each year of this lease, provide Landlord with a list of all herbicides or pesticides Tenant intends to use on the property in the following season. Landlord shall review said list and prior to April 1st of each year, barring any objections to the listed chemicals, provide Tenant written approval for Tenant to apply said herbicides and/or pesticides. In the event Landlord objects to any of the herbicides or pesticides listed, Landlord shall provide Tenant written notice of the objections. In any event, Tenant shall not use herbicides or pesticides on the property without the prior written consent of Landlord.
- 6.2.11 Rodent Control. Tenant shall control all gophers and other rodents on the Property in a good and husband-like manner. Tenant shall not use any

poisons to control said gophers and rodents unless said poison is a non-secondary, rapidly dissipating poison for which Landlord has given its prior written approval, and such use is in conformance with the instructions for such use and in compliance with all environmental statutes, rules or regulations.

- 6.2.12 Materials for Production of Crops. Except as Landlord has otherwise herein agreed, Tenant shall, at his own cost and expense, furnish all labor, machinery, seed, fertilizer, and be responsible for other expenses required for the production of the crops on the Premises during the term of this lease.
- 6.2.13 Tenant's Use of Fertilizer. Tenant will apply fertilizer only in accordance with Landlord's specification as set forth in the approved Water Reuse Plan as to the type, amount and time of application, or as shall otherwise be approved in writing by the Oregon Department of Environmental Quality.
- 6.2.14 Time of Harvest. Tenant may only harvest crops in conformance with the approved Water Reuse Plan or any amendments approved as set forth in Paragraph 6.2.1 *supra*.
- 6.2.15 Perimeter Road. Tenant shall provide general maintenance to the road around the perimeter of the Premises to keep it in at least as good a condition as it is in at the time Tenant assumes maintenance responsibilities for the Premises. This maintenance requirement shall not be construed to require the removal of snow during the winter months.

SECTION 7. OWNERSHIP AND MAINTENANCE OF THE SPRINKLER IRRIGATION EQUIPMENT.

The effluent irrigation equipment and all components thereof belong to Landlord. Upon Tenant's assumption of the maintenance responsibility as set forth in Section 6.2, *supra*, Tenant is responsible for all costs, labor and materials for the maintenance, winterization and repair of all motors, electrical systems, telemetry, towers, sprinklers, and related appurtenances. Tenant shall care for and protect the irrigation equipment in accordance with the M&O Manuals provided by Landlord, reasonable wear and tear and unavoidable casualty alone excepted during the term of this lease. Equipment damaged due to Tenant's neglect or negligence shall be replaced on demand and at the Tenant's expense. Failure to properly maintain, store, winterize, or use said equipment shall constitute a default on the part of tenant as specified under Section 13, *infra*.

SECTION 8. ENVIRONMENTAL PRACTICES.

Except as otherwise specifically set forth herein, Tenant shall neither use, generate, manufacture, produce, store or release on, under or about the Premises, or transfer to or from the Premises, any hazardous substances, nor permit any third party to do so. As used herein, the following terms shall have the meanings specified below:

8.1 Relevant Environmental Laws.

The term "environmental law" shall mean any federal, state or local statute, ordinance or regulation pertaining to health, industrial hygiene, or the environment, including, without limitation, the Comprehensive Environmental Response, Compensation, Liability Act of 1980, as amended, 42 U.S.C. § 9601, *et seq.* ("CERCLA"), and the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901, *et seq.* ("RCRA"), and all rules adopted and guidelines promulgated pursuant to the foregoing.

8.2 The term "hazardous substance" shall include:

8.2.1 The substances included within the definitions of "hazardous substances," "hazardous materials," "toxic substances," or "solid waste" in CERCLA, RCRA, The Hazardous Materials Transportation Act, 49 U.S.C. § 1801, *et seq.*, and in the regulations promulgated pursuant thereto;

8.2.2 Those substances listed in the United States Department of Transportation Table (49 CFR 172.101 and amendments thereto) or by the Environmental Protection Agency as a hazardous substance (40 CFR part 302 and amendments thereto); and

8.2.3 All other substances, materials and waste that are, or that become regulated under, or that are classified as hazardous or toxic under any environmental law.

8.3 The term "release" shall mean any releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, disposing of or dumping.

8.4 To insure compliance with the provisions of this section, Tenant covenants to allow inspection of the Premises from time to time (including the interior of all buildings) by Landlord or Landlord's authorized representatives upon the giving of reasonable notice of intent to make such an inspection at least 24 hours before undertaking inspection.

8.5 Tenant agrees to indemnify and hold Landlord harmless from any liability which may arise hereinafter due to Tenant's use, generation, manufacture, production, storage or release on, under or about the Premises, or transfer to or from the Premises of any hazardous substances or due to Tenant's suffering any third party to do the same.

SECTION 9. INSURANCE.

9.1 Insurance Required.

9.1.1 Liability Insurance. Tenant shall maintain, at Tenant's expense, for the protection of Tenant and Landlord, as their interests may appear, policies of insurance issued by a ~~7~~responsible carrier or carriers which afford

comprehensive public liability insurance in amounts not less than \$500,000 with respect to bodily injury or death to any one person, and not less than \$100,000 with respect to property damage. Such insurance shall cover all risks arising directly or indirectly out of Tenant's activities on or any condition of the Property, whether or not related to an occurrence caused or contributed to by Landlord's negligence and shall protect Landlord and Tenant against claims of third persons.

- 9.1.2. Worker's Compensation. Tenant agrees to keep all of his employees covered with Worker's Compensation insurance to satisfy the Oregon Workmen's Compensation laws.

SECTION 10. INDEMNIFICATION.

10.1 General Liability. Tenant agrees to indemnify and hold Landlord harmless from and against any and all claims arising from Tenant's use of the Property, or from the conduct of Tenant's business or from any activity, work or things done, permitted or suffered by Tenant in or about the Property, and shall further indemnify and hold harmless Landlord from and against any and all claims arising from any breach or default in the performance of any obligation on Tenant's part to be performed under the terms of this Agreement, or arising from any negligence of the Tenant, or any of Tenant's agents, contractor, or employees, and from and against all costs, attorney fees, expenses and liabilities incurred in the defense of any such claim or action or proceeding brought against the Landlord by reason of any such claim. Tenant upon notice from Landlord shall defend the same at Tenant's expense by counsel reasonably satisfactory to Landlord. Tenant, as a material part of the consideration to Landlord, hereby assumes all risk of damage to property or injury to persons in or about the Property arising from any cause, and Tenant hereby waives all claims in respect thereof against Landlord, except for any claims arising from Landlord's gross negligence or willful act.

10.2 Liability to Tenant. Tenant hereby agrees that, except for any matters arising out of Landlord's gross negligence or willful act, Landlord shall not be liable for injury to Tenant's property, or to the person of Tenant, Tenant's employees or contractors, whether such damage or injury is caused by or results from fire, water or rain, or from the breakage, leakage, obstruction or other defects of pipe, wires, or from any other cause, whether the said damage or injury results from conditions arising upon the Property, and regardless of whether the cause of such damage or injury or the means of repairing the same is inaccessible to Tenant.

10.3 Regulatory Liability. Tenant agrees that Tenant shall be responsible for any fines, penalties or assessments issued by the Oregon Department of Environmental Quality, the United States Environmental Protection Agency or any other regulatory body having jurisdiction over the effluent application operations, for failure on the part of Tenant to abide by any statute, law, rule, regulation, code, etc. applicable to effluent application, whether such fine, penalty or assessment is issued against Tenant or against Landlord.

10.4 Indemnity Surety. To guarantee Landlord is adequately protected under the provisions of this Section, in consideration of this lease agreement, Farrell Larson and Larson Skyline Farms jointly and severally guarantee to Landlord, performance of Tenant's obligations in full and

strict accordance with the provisions, terms and conditions within this Agreement. Guarantors consent to: any extension of time of performance of the whole or any part of the Agreement; or any addition or change of the Agreement and waive notice of that consent. This guarantee and every part of it shall bind guarantor's heirs, executors and administrators, successors and assigns.

SECTION 11. ASSIGNMENT.

Tenant shall not assign or sublet his interest under this contract without having first obtained Landlord's prior written consent to such assignment or sublease. In determining whether to grant consent to an assignment or sublease, Landlord may consider the proposed assignee's or transferee's experience and/or education in effluent application and may consider the proposed assignee's financial ability to perform all obligations, conditions and responsibilities set forth in this Agreement. In the event Landlord gives written consent and pursuant thereto Tenant assigns or sublets the Premises to a third party, the third party shall be required to execute a contract with the City of Ontario and shall be bound by all terms and provisions of this agreement. Also, in the event Landlord gives written consent and pursuant thereto an assignment is completed so that the assignee accepts all Tenants responsibilities and obligations, Landlord will provide Tenant with a release from any obligations accruing after the date of the assignment.

SECTION 12. TERMINATION.

12.1 Yielding of the Premises upon Termination. Tenant will yield, at the termination of the tenancy herein provided and any renewal thereof under Section 3.3 *supra*, all of the Premises in such state of repair and condition as the same are now in, reasonable wear and tear, effects of treated sewer effluent application and unavoidable casualty alone excepted during the term of this lease, without interruption by the Landlord or any persons claiming under Landlord.

12.2 Provision for Early Termination. In the event statutory or regulatory changes are made that substantially impair Tenant's ability to sell the crops raised on the Premises, Tenant may provide Landlord with a 60 day written notice of Tenant's intent to terminate this lease. In the event of a termination in accordance with this paragraph, Tenant shall be released from any obligation accruing after said termination. Additionally, in the event of termination under this paragraph, Tenant shall, during the remaining term of the existing lease, excluding any optional renewal terms, have right of first refusal as to any management contract or other arrangement made by the City with any third party, excluding the City and its employees, for operation and maintenance/management of the effluent disposal site on the Premises. This right of first refusal shall continue during the remainder of the existing term of the lease and may be exercised each time a new contract is offered to a third party, regardless of Tenant's election to exercise or not the right of first refusal for previous contracts. To exercise said right of first refusal, Tenant shall notify Landlord in writing of his exercise of said right of first refusal no later than ten (10) days following the date of Landlord's written notice to Tenant. If Tenant, fails to deliver written notice to Landlord within said ten day period, then Tenant will be deemed to have waived said right of first refusal for said contract and Landlord shall be free to enter into said contract with the third party.

12.3 Provision for Termination upon Non-acceptance of Irrigation System. The Landlord, pursuant to the terms of this Lease, is installing, operating, and is responsible for the

maintenance of the irrigation system for the first two (2) years of this Lease. The purpose of this arrangement, as discussed in the premises of this Lease, is to allow the Landlord time to make sure the system works in accordance with the manufacturer's specifications. It is possible that the system will operate with those specifications, but at the same time, not be economical to operate. Therefore, the Tenant shall have the opportunity to terminate this Lease by providing the Landlord with written notice of tenant's intent to terminate this Lease not less than ninety (90) days prior to the expiration of the first two years of the Lease. In the event of the termination in accordance with this paragraph, Tenant shall be released from any obligation accruing after said termination. Additionally, Tenant shall retain all rights provided in paragraph 12.2 above concerning the right of first refusal discussed therein, and shall retain all rights in the right of first refusal to purchase the property as set forth in Exhibit D to the "Memorandum of Sale," dated the 16 day of September, 1998, between Larsons as Seller and the City of Ontario as Buyer.

SECTION 13. DEFAULT.

13.1 If Tenant defaults in performing any of the provisions of this lease to be performed by Tenant, except as provided in Section 13.2, Landlord shall notify Tenant thereof specifying such defaults. If Tenant fails to or initiate necessary corrective action within within thirty (30) days after service of such notice and complete correction in a diligent, timely fashion, Landlord may, without further notice, immediately:

- 13.1.1 Correct specified defaults, in which event the cost thereof to Landlord shall be deemed to be additional rent and shall be immediately due without further notice of default, and Landlord may institute all necessary proceedings to collect the same;
- 13.1.2 Declare this lease terminated in which event all of Tenant's rights under this lease and in the Premises shall terminate, and Landlord shall be entitled to immediate possession of the Premises and all crops then growing and stored on the Premises; and/or
- 13.1.3 Immediately discontinue the deliverance of treated effluent to the Premises.
- 13.1.4 Pursue any other remedy now or hereafter provided by law, the remedies above not being exclusive.

13.2 If Tenant defaults in performing any of the provisions of this lease to be performed by Tenant, and Landlord reasonably determines that due to the nature of the default, that should the default not be immediately corrected Landlord could be held liable for a violation of the state or federal environmental laws, statutes, rules or regulations Landlord shall have the right to immediately take possession of the property and to take any and all steps deemed by the Landlord to be necessary to mitigate the violation. Tenant shall be responsible for all costs for such mitigation and shall pay the same to the Landlord within thirty days of the date said costs are billed to Tenant, together with interest at the rate of twelve percent per annum and reasonable administrative costs.

SECTION 14. RIGHT OF RE-ENTRY IN EVENT OF ABANDONMENT OR BREACH.

In the event Tenant abandons the within described Property or should he fail in any manner or neglect or refuse to keep and perform the terms and conditions hereof, the Landlord may, at its option, reenter and take possession of said Property and any and all personal property or other fixtures thereon and may sell said personal property and/or fixtures. Should Landlord sell any personal property or fixtures under this subparagraph, Landlord may first pay to itself all the necessary expenses incurred in exercising its remedy hereunder, including costs of reentry, costs of sale, costs of cleanup of the Property, and reasonable attorney fees incurred in the process of exercising its rights or incurred in any legal proceeding in connection therewith, including any appeal therefrom, then Landlord shall pay over the balance, if any there be, to the Seller or to his heirs, assigns or representatives and Seller shall have no further right, title or interest in and to said Property or to any personal property or fixtures thereon.

SECTION 15. INSPECTION OF PREMISES.

Tenant shall allow and permit Landlord or its representatives or agents at all reasonable times to enter upon the within described Property to examine the same or to make improvements thereon.

SECTION 16. NOTICES.

All notices given by one party to the other which pertain to this lease or any provision hereof or to the Premises shall be in writing and shall be served personally or by registered mail, return receipt requested. A notice shall be deemed served personally when it is delivered to the party to be served. A notice shall be deemed served by registered mail when it is so mailed with postage prepaid thereon and addressed to the party to be served at the address as follows:

To Landlord:	City Manager City of Ontario City Hall 444 S.W. 4th Street Ontario, OR 97914
To Tenant:	Farrell Larson Skyline Application Systems, LLC <i>4395 N Lima</i> <i>Ontario, OR 97914</i>

Any party may change such party's address by giving notice of such change of address as herein provided.

SECTION 17. TIME OF ESSENCE.

Time and prompt performance of each provision of this lease is of the essence of this agreement.

SECTION 18. WAIVER.

Waiver by one party of one or more defaults in performance of any provision herein contained to be preformed by the other parties shall not waive the provision itself or any subsequent default in performance thereof.

SECTION 19. INTERPRETATION

The underlying paragraph headings used herein are for convenience only, are not a part of this lease and shall not be used in construing it. Singular terms used herein which relate to the Landlord or to the Tenant shall be read as if written in the plural when the context so requires or permits.

SECTION 20. BINDING EFFECT.

The agreement herein contained shall be binding upon, apply and inure to the Landlord and the Tenant's respective heirs, executors, administrators, successors and assigns.

SECTION 21. ATTORNEY FEES.

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

SECTION 22. RELATIONSHIP.

This Agreement shall in no way be construed as creating a joint venture, partnership or a business association between the parties, and the relationship will always be and remain that of Landlord and Tenant until termination of this agreement.

SECTION 23. REMOVAL OF TENANT'S PROPERTY.

Tenant may, upon termination of this lease except for the default of Tenant, but not otherwise, remove all improvements installed by and belonging to Tenant on the Premises but upon such removal, Tenant must totally restore and refinish the portion of the Premises occupied by such improvements to the same condition as the Premises existed previous to the installation of such improvement. Tenant further agrees that upon termination of this lease, or any renewal hereof, he will thereupon immediately vacate the Premises leaving the said Premises in a neat and orderly condition and in as good a condition as the same was in at the time Tenant first entered in possession of said Premises.

SECTION 24. TENANT'S COMPENSATION.

All labor performed and all materials supplied by Tenant on the Premises for any purpose during the term of this lease shall conclusively be deemed to have been done and furnished by him on his own behalf and at his own instance and expense as Tenant hereunder unless the parties hereto have agreed in writing with respect to the particular items of such labor and materials in advance of the performance or furnishing of the same that they are to be deemed extra work and materials

outside the scope of this Lease Agreement for which compensation is to be paid by the Landlord to the respect party performing such labor or supplying such materials and unless the amount or rate of compensation is fixed by the terms of said writing; and Tenant shall not be entitled to claim compensation therefore unless Landlord has so ordered the same and agreed to pay therefore as herein provided. No waiver of any of the provisions of this clause of the Agreement shall be effective unless in writing.

SECTION 25. PROPERTY TAXES.

The Premises are intended and will be used for the primary purpose of a municipal effluent disposal facility. As such, the parties believe that the property will be exempt from real property taxes. In the event the Premises become taxable, the Landlord shall be responsible for the taxes.

/////
/////
/////

IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the day and year first above written.

LANDLORD:

ATTEST:

By: Robert Switzer
Robert Switzer, Mayor

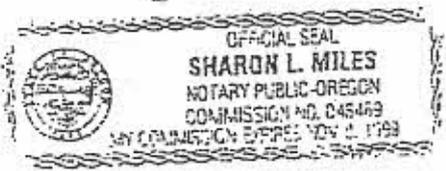
Jane Victoria Barnett
Jane Victoria Barnett, City Recorder
TORI BARNETT, DEPUTY RECORDER

TENANT:

Farrell Larson
By: Farrell Larson, President Skyline
Application Systems, LLC

STATE OF OREGON)
) ss.
County of Malheur)

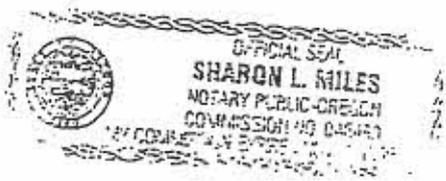
The foregoing instrument was acknowledged before me this 16 day of September 1998, by Farrell V. Larson, President of Skyline Application Systems, LLC.



Sharon L. Miles
Notary Public for Oregon.
My commission expires: 11-8-99

STATE OF OREGON)
) ss.
County of Malheur)

The foregoing instrument was acknowledged before me this 16 day of September 1998, by Robert Switzer, Mayor of the City of Ontario.



Sharon L. Miles
Notary Public for Oregon.
My commission expires: 11-8-99

Good Day Bob:

I've looked into the situation of the wages paid to Swen Petterson as an effluent disposal operator. By the way, this was the position I held prior to 98" when I transferred back to the Water Treatment Plant. At one time the effluent disposal was under a separate budget from the Wastewater treatment. This paid for one-full time operator, a half time operator and half of the supervisors wages. This was added to with another operator when we bought and developed Skyline Farms into an effluent disposal site. For the first two years, the City was responsible for the irrigation and maintenance on Skyline as well as continuing operations on the Malheur Farm. So one operator was not entirely responsible and did more than just the farming tasks. In the irrigation season, the operator (Swen) would have been full-time on the farms with at least another operator helping him, while in the off-season, he may have been only doing half or less farm related tasks. About this time the City also started hiring a part-time helper for the farm during the irrigation season, a practice that continued until this summer when I chose to do without one. Note: The part-time employee started the summer of 2000. So to make my long explanation even longer I think I would have to say that in equivalence (Is that a word?) all of Swen's wages would have to be counted towards this, since the other operators aren't included. Yes, as I've said before this was a highly inefficient and clumsy way to Farm, way too much money spent to achieve things that we let go now with no ill effects, but past management and supervisors wouldn't hear of it. Also a Wastewater operator is too highly paid to be farming, at least on a full-time basis. We are learning, and I hope that we are getting more efficient as time goes on.

I spoke with Doug Stipe, the current contract farmer, and he thought that he spent about 35 hours a week doing those farming tasks previously done by the City staff. There have been other changes, such as less spraying and mowing to allow more game bird habitat for Pheasants Forever since they have taken over the hunting side. This is not only a change in philosophy of the way to do things, it has shown real cost savings in manhours and chemicals.

To finally finish, these changes made the explanation of wages saved into more of a complication than it really should have been, but I wanted to give some background on things and how this department has evolved, I hope for the better. I was hoping to keep my head down and stay out of this gain-sharing thing, but I knew better. If you have anymore questions or want some budget numbers please don't hesitate to ask and I can throw some more stuff your way.

Good Luck with this

Art

Exhibit I
rec'd from Mr. Coughlin
2-25-13 AJ

Timeline:

- Employee Committee Meeting minutes from 1-29-04 when Scott Trainor gave a draft of his proposed Gain-sharing Policy.
- At the Employee Committee Meeting on 2-19-04 the committee discussed some possible problems with the Gain-sharing Policy. Scott Trainor stated he did not want a maximum limit on proposals or pay-outs.
- Agenda Report for 8-2-04 from former City Manager Scott Trainor outlining his proposal for a Gain-sharing program.
- Council Meeting minutes from 8-2-04 showing a lengthy discussion about the Gain-sharing program.
- Agenda Report for 8-16-04 from Scott Trainor showing the changes to the Gain-sharing program that were requested by City Council.
- Council Meeting minutes from 8-16-04 detailing the creation of the Gain-sharing program resolution.
- Employee Committee Meeting minutes from 8-26-04 stating the Gain-sharing Policy was adopted by City Council.
- On 8-31-04 a memo was sent to all employees from Scott Trainor announcing the new Gain-sharing program.
- Employee Committee Meeting minutes from 8-25-05 when Loren presented his cost-saving proposal to the committee and they suggested he submit it for Gain-sharing consideration.
- Email dated 8-26-05 from Loren to Scott Trainor outlining his cost-saving proposal for consideration to the Gain-sharing program.
- Email from Scott Trainor dated 8-29-05 telling Loren that he and then Public Works Director Steve Gaschler thought it was a great idea and should be shared with the Gain-sharing Committee.
- Scott Trainor asked for a more detailed proposal for Loren's Gain-sharing idea. After gathering details from former Human Resources employee Shawn Smith and Steve Gaschler, Loren submitted a formal proposal in August 2005.
- Agenda Report for 12-19-05 from former Wastewater Supervisor Glen Schoeneman giving some background and reason for the proposed changes to the farming contract. Report indicates that the farming duties were equivalent to 1 FTE.
- Council Meeting minutes from 12-19-05 where the farm lease contract was changed just as outlined in the Gain-share submission from Loren. Neither Scott Trainor nor Steve Gaschler were present at this meeting.

- Email dated 6-12-08 from former Finance Director Rachel Hopper saying she is looking into the situation and that the City had not perfected a pay-out and acknowledged that Loren had "been more than patient" since the request was submitted 2 years ago.
- On 3-24-09 Loren called former City Manager Henry Lawrence about his Gain-share proposal.
- On 4-23-09 Henry spoke with Loren and said he was planning on taking the issue to the City Council at the 5-28-09 work session.
- Email dated 6-1-09 to Loren from former City Manager Henry Lawrence saying he didn't bring the issue to the council on May 28th, but would try to bring the issue to the City Council in July 2009.
- Email dated 6-2-09 from Loren to Henry Lawrence saying he would like to sit down together in good faith and come to a resolution.
- Email dated 6-2-09 from Henry Lawrence to Loren stating he didn't want a public discussion and would like to lay the groundwork first before proceeding and didn't want Loren to be the "bad guy".
- Agenda Report for 8-13-09 from City Manager Henry Lawrence giving background on the Gain-sharing program resolution, and stating Loren's proposal was submitted in 2005 and his idea was instituted by the City in 2006.
- Informal minutes from City Recorder for the 8-13-09 City Council work session in which Loren and his wife were present.
- Loren sent a letter to City Manager Henry Lawrence on 9-30-08 requesting resolution to this issue.
- Email dated 8-21-09 from former Wastewater Supervisor Art Allen to Bob Walker, current Public Works Director, saying he felt the farming duties throughout the year, as they were being done prior to the changes Loren suggested, were equivalent to one full time position.
- Letter dated 9-24-09 from Bob Walker to former City Manager Henry Lawrence suggesting they use a ½ FTE rather than the 1 FTE that Art Allen stated was required. He also shows that the crop sales actually increased when the farmer took over and Bob suggested not using those figures (which is contrary to the Gain-share Resolution).
- 11-28-11 Loren seeks the counsel of attorney J. David Coughlin.
- 2-6-12 City Council establishes a Gain-sharing committee for the purpose of evaluating Loren's claim.
- Email dated 2-7-12 from Larry Sullivan saying the City Council voted to set up a Gain-sharing committee to evaluate Loren's claim.

Exhibit J
 rec'd from Mr. Gughlin 2-25-13

In response to questions regarding how much employee time was spent doing tasks that are now the responsibility of the contracted farmer, below is a list of tasks related to the farming operation that were previously done by City employees. The tasks and times in this list have been viewed and corroborated by Swen Petersen and Bob McDaniels who were employed at the WWTP prior to the change in farming practices.

The irrigation season typically refers to the time from March 1 – November 1. Therefore the season consisted of 35 weeks, or 175 days for tasks done 5 days per week, and 245 days for tasks done 7 days per week.

Mowing

Description: Mowed in buffer zones and along fence lines for weed control and to reduce fire hazards.

Duration: Mostly during growing season, but as needed throughout the year.

Time spent: It usually took 1.5 - 2 weeks for 1 employee, 4 - 5 times per year, 8 hrs per day.

Hours: 240 – 400 hours per year

Total Mowing Hours: 240 – 400 hours per year (320 average)

Spraying

Description: Herbicide spraying for control of noxious weeds within the buffer zones, right of ways, and around pivots at the plant.

Duration: Mainly during the irrigation season, but as needed throughout the year.

Time spent: 2 employees would usually work on this task for 2 weeks straight during the early part of the season to get things under control. Spot spraying by 1 employee would be done for 4 - 5 hours per week through the rest of the season and less often the remainder of the year.

Hours: 2 employees x 40 hours each per week spraying x 2 weeks = 160 hours
 1 employee x 4.5 hours per week spraying x 33 weeks = 148.5 hours
 1 employee x 8 hours spraying during off-season = 8 hours

Total Spraying Hours: 316.5 hours

Pivot Maintenance

Description: There are 9 pivots on the property around the treatment plant. Readings were taken daily on all pivots, water pressure had to be checked and maintained at the proper rate, and sprinklers were inspected regularly to ensure they were operating properly. The amount of water being applied was tracked, gear boxes and other components were examined regularly and any necessary repairs performed. All the pivots were checked frequently to make sure they remained in alignment. If a problem was found and repair was necessary, it typically involved 2 employees and the job could take from 2 hours to 2 days depending on the complexity.

Duration: Beginning just before irrigation season started and continuing until shortly after the season was finished.

Time spent: 1 employee spent 2 hours each day taking readings and checking sprinklers, gear boxes and other components. These tasks were done 7 days a week during irrigation season. It is difficult to figure an average number of hours spent on repairs. It could be a few minor problems during the season, or it would seem like there were problems every day. Re-alignment of a pivot would take 2 employees approximately 2 hours and typically occurred 2 or 3 times per season, per pivot.

Hours: 1 employee x 2 hours taking readings and inspecting x 245 days = 490 hours
2 employees x 2 hours realigning x 2.5 occurrences x 9 pivots = 90 hours
Variable Repairs and replacements per season = 8 – 200 hours

Total Pivot Maintenance Hours: 580 hours + Variable

Pivot Track Maintenance

Description: The tracks that the pivot wheels ran in needed to be refilled with sand prior to irrigation season. A stockpile of sand would initially be hauled in before filling began. There are 9 pivots with an average of 5 wheel tracks per pivot to maintain making a total of 45 tracks. After the tracks were readied for irrigation, they would be checked periodically and either refilled with sand or, if there was enough of the original material that had been pushed out of the tracks, a loader would be used to push that material back in. Each track would require maintenance at least once after the season began.

Duration: Initial stockpiling of sand and track filling would be done just prior to irrigation season and then periodically throughout the season.

Time spent: 2 employees would work 1 full week on hauling in a stockpile of sand. At least 30 tracks would need to be filled prior to starting irrigation. 2 employees would work to fill the tracks, with one operating the dump truck with side delivery and the other operating the loader. It takes 20 minutes to fill a truck, 20 minutes to travel and return, and approximately 2 hours to fill each track, depending on severity.

Hours: 2 employees x 40 hours to stockpile sand = 80 hours
2 employees x 2.7 hours to fill a track before irrigation x 30 tracks = 162 hours
2 employees x 2 hours to fill/fix a track during irrigation x 15 tracks = 60 hours

Total Pivot Track Maintenance Hours: 302 hours

Pump Maintenance

Description: Pump screens were washed at the river station daily, took pump readings, inspected seals and mechanical components, and ensured proper operation. The pump will also shut off during a power outage or if there was a problem with a pivot. If this occurred after hours an employee would be required to come in and restart the pump or fix the problem. This would happen several times during the year, but it's difficult to estimate an average number or an average amount of time spent for each occurrence. There were times during difficult weather that an employee could spend over 30 hours in one week dealing with the pump. All repairs and replacements on pumps were done by employees and it is also difficult to estimate the time spent on this activity.

The pump would need to be stopped and started according to the contracted farmer's requests. The fields at the WWTP were typically divided into 2 sections. The farmer would stop irrigating one section at a time in order to harvest that section. At that time all the fields were planted in alfalfa and there would be typically 3 harvests per year. Each section would require the stopping and starting of the pump with every harvest, which would be 6 times per year per section that an employee would do this.

Duration: During irrigation season.

Time spent: 1 employee would spend 1 hour per day washing the screens. Taking readings and inspecting the equipment would take 1 employee 0.5 hours each day. Stopping and starting the pump would take 1 employee 0.25 hours each time this was necessary. Time spent on repairs, replacements, and shut-offs is variable. It could require 1 employee 2 hours, or 3 employees 2 days, and could occur during regular work hours or it could happen after hours and require overtime.

Hours: 1 employee x 1 hour per day to wash screens x 175 days = 175 hours
1 employee x 0.5 hours per day readings/inspection x 175 days = 87.5 hours
1 employee x 0.25 hour to start/stop pump x 12 events = 3 hours
Variable Repairs, replacements and shut-offs per season = 8 – 200 hours

Total Pump Maintenance Hours: 265.5 hours + Variable

Input Pivot Readings into Computer Program

Description: It was necessary to input daily pivot readings into the irrigation program on the computer. The program figured inches of water applied to determine the water usage as compared to the appropriate agronomic rates. This is still being done for Skyline Farms.

Duration: Seven days a week during irrigation season.

Time spent: 1 employee would spend 0.5 hours per day, 7 days a week, inputting the information into the computer.

Hours: 1 employee x 0.5 hours per day during irrigation x 245 days = 122.5 hours

Total Input Pivot Readings Hours: 122.5 hours

Coordination With Contracted Farmer and Harvesters

Description: Coordination was required between the farmer and City employees regarding which pivots would be run at what times and for how long in order to maximize crop potential. Additional coordination was required with harvesters to make sure pivots were turned off on fields ready for harvest. It was necessary to determine what harvest time would be optimal for the crop and reasonable for WWTP production.

Also, any time there were pump or pivot issues requiring employee time, there would need to be communication with the farmer or harvester.

Duration: Throughout irrigation season.

Time spent: With 2 sections of fields and 3 harvests per section, there would be a minimum of 6 times coordination was necessary. That figure does not take into account the communication necessary during problem events. Each coordination would take 0.25 – 1 hour for one employee.

Hours: 1 employee x 0.5 hour x 6 times = 3 hours
Variable time spent on problems = 0 – 5 hours

Total Coordination With Contractors Hours: 3 hours + Variable

Rodent Control

Description: Gopher traps were placed, checked and moved as needed. Poison was also placed in advantageous locations and employees would use the rodent extermination equipment ("Gopher Banger") where possible.

Duration: Throughout irrigation season and at various times during the rest of the year.

Time spent: 1 employee would spend approximately one full month prior to irrigation. After that period, 1 employee would spend 2 hours per week on rodent control during the remainder of the growing season and 1-2 hours per week during the rest of the year.

Hours: 1 employee x 160 hours prior to irrigation = 160 hours
1 employee x 2 hours per week during rest of season x 31 weeks = 62 hours
1 employee x 1.5 hours per week during off-season x 17 weeks = 25.5 hours

Total Rodent Control Hours: 247.5 hours

Aeration and Harrowing

Description: All 384 acres of fields would be aerated for more efficient irrigation. All the fields would then be harrowed for weed abatement, to knock down any gopher mounds, and to remove old and dying alfalfa plants.

Duration: Aeration and harrowing would be done at the beginning of the irrigation season.

Time spent: 1 employee would spend 3 weeks aerating and harrowing the fields.

Hours: 1 employee x 120 hours = 120 hours

Total Aeration and Harrowing Hours: 120 hours

Winterizing Equipment

Description: Pivots needed to be flushed to prevent plugging of sprinklers. Lines, down spouts and other components had to be blown out. The gear boxes were inspected every fall and every spring to make sure no water had collected in them. Pumps were drained and the valves were isolated.

Duration: Just prior to and following irrigation season.

Time spent: 2 employees would spend 1 week each spring and fall inspecting the gear boxes. 3 employees would spend 2 days servicing and winterizing all the pivots after irrigation was finished.

Hours: 2 employees x 40 hours inspecting x twice per year = 160 hours
3 employees x 16 hours winterizing = 48 hours

Total Winterizing Equipment Hours: 208 hours

Total Hours Spent on Farming Operation: 2,485 hours + Variables

AGENDA REPORT
March 4, 2013

TO: Mayor and City Council

FROM: Larry Sullivan, City Attorney
Mark Alexander, Chief of Police

Through: Jay Henry, City Manager

SUBJECT: ORDINANCE #2677-2013: AMENDING ONTARIO MUNICIPAL CODE TITLE 6, CHAPTER 2, RELATING TO ANIMALS, DOGS AND FOWL

DATE: February 21, 2013

SUMMARY:

Attached are the following documents:

- Ordinance #2677-2013

The Police Department would like to amend Municipal Code Title 6, Chapter 2 relating to Animals, Dogs and Fowl in order to allow residents to keep domestic fowl on their property.

PREVIOUS COUNCIL ACTION:

February 14, 2013: After receiving a citizen request, Council agreed to changes in city code to allow domestic fowl on properties within the City of Ontario.

BACKGROUND:

Ontario Municipal Code Title 6, Chapter 2 regulates the ownership of certain animals along with dogs and fowl. City Code currently prohibits the ownership of domestic fowl within the City of Ontario.

The Police Department and Council has heard from residents who would like to keep domestic fowl for butcher or keep for collection of eggs. The Police Department is open to this with the exception of roosters due to the noise they create and as long as animals do not run at large.

FINANCIAL IMPLICATIONS:

None. The Police Department does not desire requirements for permits to keep domestic fowl.

RECOMMENDATION:

Staff recommends the City Council adopt Ordinance #2677-2013.

PROPOSED MOTION:

I move the Council adopt Ordinance #2677-2013, AN ORDINANCE AMENDING ONTARIO MUNICIPAL CODE TITLE 6, CHAPTER 2, on first reading by title only.

ORDINANCE NO. 2677-2013

**AN ORDINANCE AMENDING ONTARIO MUNICIPAL CODE
TITLE 6, CHAPTER 2, SECTION 19 RELATING TO DOMESTIC FOWL**

- WHEREAS,** the City Council of Ontario is authorized through its legislative authority to regulate animal ownership within the City of Ontario; and,
- WHEREAS,** citizens within the City of Ontario have an interest in responsibly keeping domestic fowl; and,
- WHEREAS,** Ontario Municipal Code currently prohibits the ownership of domestic fowl within City Limits; and
- WHEREAS,** changes to Ontario Municipal Code Title 6, Chapter 2, Section 19 are required to allow ownership of domestic fowl.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Ontario, Oregon, as follows:

Section 1. Section 6-2-19 of the Ontario City Code is hereby amended by adding those portions, which are underlined and removing those portions which is stricken:

6-2-19 –Animal Control Restrictions.

(A) The following are prohibited from residing in the City limits:

1. Beekeeping. No person shall possess, maintain or keep bees in the City limits.
2. Dogs. No single-family residence shall contain more than three (3) adult dogs and one litter of puppies under three (3) months of age.
3. Exotic Animals. No person shall possess, maintain or keep any exotic animal in the City limits.
4. Livestock ~~and Domesticated Fowl~~. No person shall possess, maintain or keep any livestock ~~or domesticated fowl~~ in the City limits.
5. Wildlife. No person shall possess, maintain or keep any wildlife.

6. Wolves and Hybrids. No person shall possess, maintain or keep wolves and hybrid wolves. Pure breed wolves are considered wildlife or exotic animals by definition. Hybrid wolves that contain twenty percent (20%) or more wolf breed are considered exotic animals. Neither qualifies as a dog by definition and may not be licensed as such and any inoculations for rabies are not recognized as valid.

7. Domesticated Fowl. No person shall possess domesticated fowl other than as set forth in this section. A single residence or community garden may have no more than six (6) chicken hens, subject to the following restrictions:

a. No roosters are permitted within the city limits.

b. Chickens may be kept on a single-family parcel. For parcels under one ownership, with up to three stand-alone dwellings, chickens may be kept at one or more dwellings, provided that the person in charge of each dwelling provides a written consent to the owner of the chickens. The owner of the chickens shall produce the written consent upon request from the City.

c. Chickens may be kept on community garden lots subject to the same restrictions as apply to single-family parcels.

d. Chickens shall be provided with a covered, predator-proof chicken coop that is thoroughly ventilated; of sufficient size to admit free movement of the chickens; designed to be easily accessed, cleaned and maintained by the owners; and be at least 2 square feet per chicken in size.

e. No chicken coop shall be located closer than 20 feet to any residential structure occupied by a household other than the household of the chicken owner, custodian, or keeper. If the owner of the neighboring dwelling consents, a waiver may be granted for this condition.

f. All chickens shall be shut into a chicken coop at night, from sunset to sunrise.

g. During daylight hours adult chickens shall have access to the chicken coop and, weather permitting, shall have access to an outdoor enclosure on the subject property.

h. All parcels of real property containing chickens shall be adequately fenced to contain the chickens and to prevent access to the chickens by dogs and other predators, and the owner of the chickens shall be responsible for keeping the chickens from running at large.

i. No chicken manure shall be put into household trash. All waste must be composted.

j. Stored feed must be kept in a rodent- and predator-proof container.

k. Every owner of chickens shall be responsible for controlling noxious odors and excessive noise from the chickens.

l. Keeping chickens in violation of any of the restrictions in this section shall constitute a nuisance subject to abatement under the City Code.

(B) An owner of animals listed under subsection (A)2 of this Section may apply for an animal facility license for the keeping of such animals in the manner as set forth in Section 6-2-3

(C) A property owner may apply to the City for a Conditional Use Permit to allow such animals listed under subsections (A)1 and (A)4 of this Section to remain on their property.

(D) Nothing in this Section shall prohibit any animal listed under subsection (A) of this Section from being in the City while in the care and custody of a licensed veterinarian or animal care provider for medical treatment and on the premises of the animal care facility.

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

AYES:

NAYS:

ABSENT:

ABSTAIN:

APPROVED by the Council President this _____ day of _____, 2013

ATTEST:

Dan Jones, Council President

Tori Barnett, MMC, City Recorder

AGENDA REPORT

March 4, 2013

TO: Mayor and City Council

FROM: Larry Sullivan, City Attorney

THROUGH: Jay Henry, City Manager

SUBJECT: UBIQUITEL WATER TOWER LEASE AMENDMENT NO. 1

DATE: February 20, 2013

SUMMARY:

Attached are the following documents:

- 2002 UbiquiTel "Water Tower Lease With Option"
- Amendment No. 1 to Lease

BACKGROUND:

On October 7, 2002, the City entered into a five-year lease with UbiquiTel, Inc., an agent for Sprint, to lease space on the water tower for cell phone transmission equipment, with a five-year renewal option. The monthly rent was \$550 per month, with annual increases of 5%. The lessee exercised its option to automatically renew the lease for an additional five-year term. The lease expires on June 30, 2013. Including the annual 5% increase the current rent amount is \$823.20.

During the summer of 2012, interim city manager Chuck Mickelson began negotiating with the lessee for an extension of the lease. After researching other cell phone tower leases, Mr. Mickelson concluded that the rent being paid was below market value for municipal water tower leases to cell phone companies. He proposed that the monthly rent be increased to \$1,500, which would require the lessee to pay an additional \$647 per month above the current rent. The lessee said it was willing to do so if the lessee was given the option to extend the lease for up to 20 years, with 3% annual increases instead of 5%.

The lessee's proposed lease extension includes the \$647 rent increase for the first year, with 3% annual increases. The lease is a five-year lease, with optional renewals by the lessee for three more five-year terms, for a total of twenty years.

RECOMMENDATION:

Staff recommends that the Council approve the UbiquiTel, Inc. lease amendment.

MOTION:

I move that the Mayor and City Council approve Amendment No. 1 to the water tower lease with UbiquiTel, Inc.

To Tenant: Sprint/Nextel Property Services
Sprint Site ID: SL03UB621
Mailstop KSOPHT0101-Z2650
6391 Sprint Parkway
Overland Park, Kansas 66251-2650

With a mandatory copy to: Sprint/Nextel Law Department
Sprint Site ID: SL03UB621
Mailstop KSOPHT0101-Z2020
6391 Sprint Parkway
Overland Park, Kansas 66251-2020
Attn.: Real Estate Attorney

7. **General Terms and Conditions.**

a. All capitalized terms used in this Amendment, unless otherwise defined herein, will have the same meaning as the terms contained in the Agreement.

b. In case of any inconsistencies between the terms and conditions contained in the Agreement and the terms and conditions contained in this Amendment, the terms and conditions herein will control. Except as set forth herein, all provisions of the Agreement are ratified and remain unchanged and in full force and effect.

c. This Amendment may be executed in duplicate counterparts, each of which will be deemed an original.

d. Each of the parties represents and warrants that it has the right, power, legal capacity and authority to enter into and perform its respective obligations under this Amendment.

SIGNATURES ON FOLLOWING PAGE

The parties have executed this Amendment as of the Effective Date.

Landlord:

City of Ontario, a municipal corporation

Tenant:

UbiquiTel Leasing Company,
a Delaware corporation

By: _____

Printed Name: _____

Title: _____

Date: _____
(Date must be completed)

By: _____

Printed Name: _____

Title: _____

Date: _____
(Date must be completed)

Exhibit B-1

[see attached]

Sprint

SAMSUNG

NO.	DATE	REVISION	BY	APP.
1				
2				
3				
4				
5				
6				
7				
8				
9				
10				
11				
12				
13				
14				
15				
16				
17				
18				
19				
20				
21				
22				
23				
24				
25				
26				
27				
28				
29				
30				
31				
32				
33				
34				
35				
36				
37				
38				
39				
40				
41				
42				
43				
44				
45				
46				
47				
48				
49				
50				

KMB

PRELIMINARY
NOT FOR CONSTRUCTION

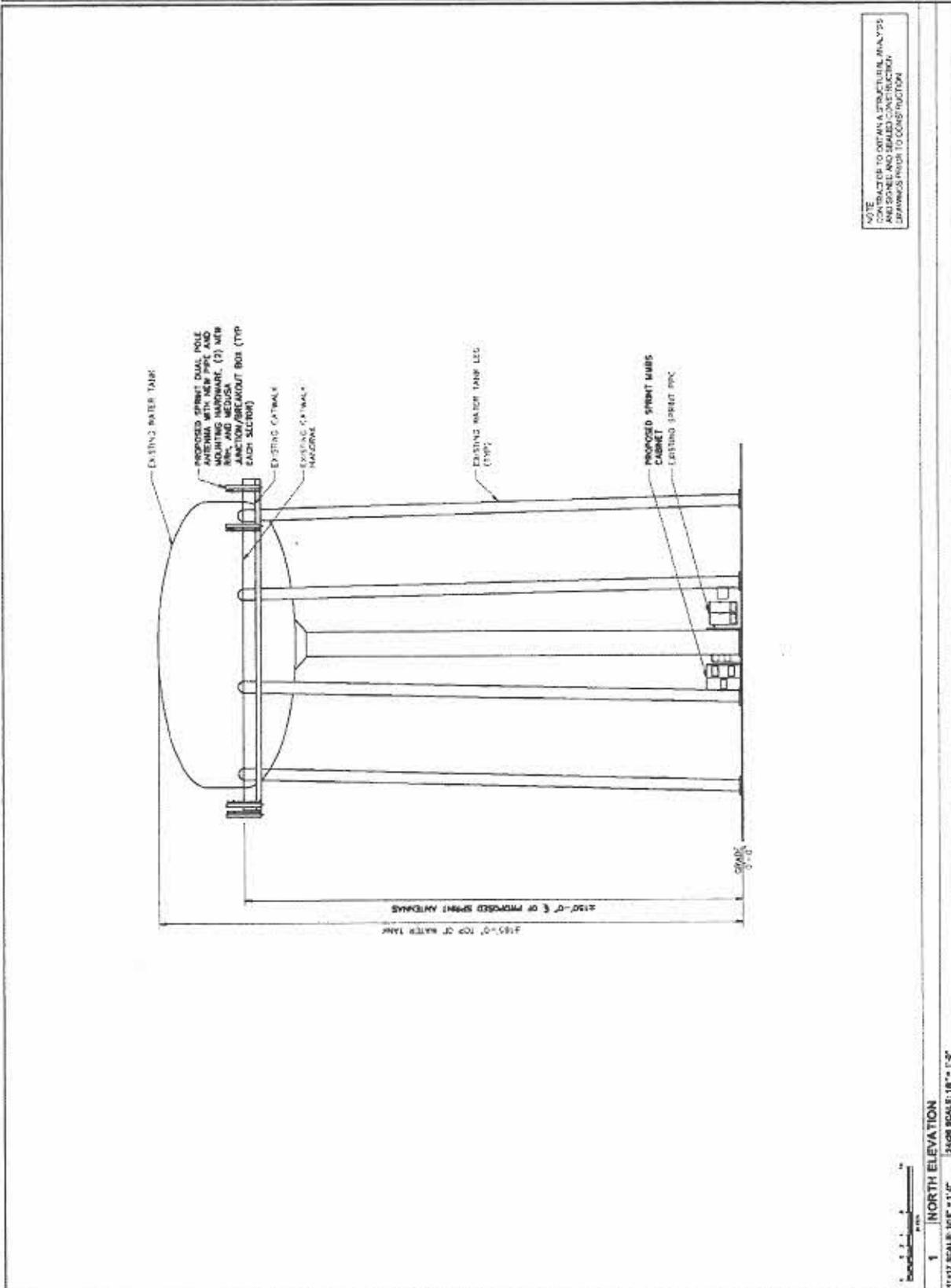
PROJECT NUMBER: 332.3.097
DATE: 03-20-12
56 NE 2ND AVENUE
ONTARIO, OR 97146
MALHEUR COUNTY

SUBJECT: SLR3U/B621

DATE: 03-20-12
BY: JIM
CHECKED: JIM
DATE: 03-20-12

ELEVATION

NO. A04 B



1" NORTH ELEVATION
SCALE: 1/4" = 1'-0"
SCALE: 1/8" = 1'-0"

Water Tower Lease With Option

THIS WATER TOWER LEASE AGREEMENT (this "Lease") is effective this 7th day of OCTOBER, 2002, between City of Ontario, a municipal corporation, ("Landlord"), and UbiquiTel, Inc., an Idaho corporation, ("Tenant").

1. Term. The initial term of this Lease shall be five (5) years commencing upon construction start date and terminating at Midnight on the last day of the month in which the fifth annual anniversary of the Commencement Date shall have occurred.

2. Permitted Use. The Premises may be used by Tenant for, among other things, the transmission and reception of radio communication signals and for the construction, maintenance, repair or replacement of related facilities, including six antennas to be placed on the water tower, equipment or buildings and related activities, occupying no more than 200 square feet of ground space at a location under the water tower to be designated by Landlord. Tenant shall obtain, at Tenant's expense, all licenses and permits required for Tenant's use of the Premises from all (the "Governmental Approvals") and may (prior to or after the Commencement Date) obtain a title report, perform surveys, soils tests, and other engineering procedures on, under and over the Property, necessary to determine that Tenant's use of the Premises will be compatible with Tenant's engineering specifications, system, design, operations and Governmental Approvals. Landlord agrees to reasonably cooperate with Tenant (at no cost to Landlord), where required, to perform such procedures or obtain Governmental Approvals; provided, however, that such cooperation does not imply, nor may it be construed to imply, that Landlord gives its prior approval to or guarantees the approval of any application submitted by Tenant. If necessary, Tenant has the right to immediately terminate this Lease if Tenant notifies Landlord of unacceptable results of any title report or of the survey or soils tests.

3. Rent.

(a) Tenant shall pay Landlord, as Rent, Five Hundred Fifty and no/100 dollars per month ("Rent"). Rent shall be payable on the fifth day of the month of the Commencement Date (the "Payment Date"), and on the fifth day of each month thereafter in advance, to City of Ontario at Landlord's address specified in Section 12 below. For the purpose of this Lease, all references to "month" shall be deemed to refer to a calendar month. If the Commencement Date does not fall on the Payment Date, then Rent for the period from the Commencement Date to the next following Payment Date shall be prorated based on the actual number of days from the Commencement Date to the Payment Date.

(b) The monthly rent shall be subject to annual increase of five percent (5%); such increase shall take effect on the anniversary date of the Commencement Date.

(c) If this Lease is terminated at a time other than on the last day of a month, Rent shall be prorated as of the date of termination for any reason other than a default by Tenant, and all prepaid Rents shall be refunded to Tenant.

4. Renewal. Tenant shall have the right to extend this Lease for one (1) additional, five (5)-year term ("Renewal Term"). The Renewal Term shall be on the same terms and conditions as set forth herein, except that after the completion of the tenth (10th) year Landlord shall have the right to give Tenant a notice to vacate the Lease Premise and remove all its equipment and improvements within one year from date of notice.

This Lease shall automatically renew for the successive Renewal Term unless Tenant shall notify Landlord, in writing, of Tenant's intention not to renew this Lease, at least sixty (60) days prior to the expiration of the term.

If Tenant shall lawfully remain in possession of the Premises at the expiration of this Lease or any Renewal Term without a written agreement, such tenancy shall be deemed a month-to-month tenancy under the same terms and conditions of this Lease.

5. Interference. Tenant shall not use the Premises in any way which interferes with the use of the Property by Landlord, or tenants or licensees of Landlord, with rights to the Property prior in time to Tenant's (subject to Tenant's rights under this Lease, including without limitation, non-interference). Similarly, Landlord shall not use, nor shall Landlord permit its tenants, licensees, employees, invitees or agents to use, any portion of Landlord's properties in any way which interferes with the operations of Tenant. Such interference shall be deemed a material breach by the interfering party, who shall, upon notice from the other, be responsible for terminating said interference. In the event any such interference does not cease promptly, the parties acknowledge that continuing interference may cause irreparable injury and, therefore, the injured party shall have the right, in addition to any other rights that it may have at law or in equity, to bring action to enjoin such interference or to terminate this Lease immediately upon written notice.

6. Improvements; Utilities; Access.

(a) Tenant shall have the right, at its expense, to erect and maintain on the Premises improvements, personal property and facilities, including without limitation six radio transmitting and receiving antennas, and an electronic equipment shelter (collectively the "Antenna Facilities"). The Antenna Facilities shall be initially configured generally as set forth in Exhibit C. Tenant shall have the right to replace or upgrade the Antenna Facilities at any time during the term of this Lease. Tenant shall cause all construction to occur lien-free and in compliance with all applicable laws and ordinances. The Antenna Facilities shall remain the exclusive property of Tenant. Tenant shall have the right to remove the Antenna Facilities upon termination of this Lease.

(b) Tenant, at its expense, may use any and all appropriate means of restricting access to the Antenna Facilities, including, without limitation, the construction of a fence which may be built within the perimeter of Landlord's existing fence, limited to the immediate vicinity of Tenant's Facilities and related equipment area. Any other means of restricting access shall require the prior written approval of Landlord, which approval shall not be unreasonably withheld or delayed.

(c) Tenant shall have the right to install utilities, at Tenant's expense, and to improve the present utilities on the Premises (including, but not limited to the installation of

emergency power generators). Tenant shall, wherever practicable, install separate meters for utilities used on the Property. In the event separate meters are not installed, Tenant shall pay the periodic charges for all utilities attributable to Tenant's use and Tenant shall in such case indemnify and hold Landlord harmless from any interruption of such utility service which is caused by Tenant, its agents and employees. Landlord shall diligently correct any variation, interruption or failure of utility service which variation, interruption or failure was caused by the Landlord.

(d) As partial consideration for rent paid under this Lease, Landlord hereby grants Tenant an easement ("Easement") for ingress, egress, and access to the Premises adequate to install and maintain utilities and to service the Premises and the Antenna Facilities at all times during the term of this Lease or any Renewal Term. Upon prior written notice, Landlord shall have the right, at Landlord's sole expense, to relocate the Easement to Tenant, provided such new location shall not materially interfere with Tenant's operations. Any Easement provided hereunder shall have the same term as this Lease.

(e) Tenant shall have twenty-four (24)-hours-a-day, seven (7)-days-a-week access to the Premises subject to the normal route of ingress and egress through the entry gate to the property and subject to applicable security measures at the entry gate in effect, from time to time, at all times during the term of this Lease and any Renewal Term. Tenant shall notify the Ontario Police Department prior to accessing the Antenna Facilities.

(f) Landlord shall not be liable for damage to the Antenna Facilities as may result during Landlord's routine maintenance of the water tower and related grounds, except to the extent the same may be caused by the gross negligence or the intentional act or omission of Landlord, its employees, servants, agents, invitees, or any other party for whom Landlord may be responsible. Landlord shall provide Tenant with reasonable and sufficient prior notice of Landlord's maintenance of the water tower and related grounds.

(g) Tenant agrees that any attachments to the tank, piping, or tower legs will be by construction methods other than welding, and that such attachments and/or construction methods will not interfere with the operation and/or structural integrity of the tank, piping, or tower legs.

(h) Prior to commencing construction of Tenant Facilities, Tenant shall obtain Landlord's approval of Tenant's work plans. Landlord shall not be entitled to receive any additional consideration in exchange for giving its approval of Tenant's plans.

8. Termination. Except as otherwise provided herein, this Lease may be terminated, without any penalty or further liability as follows:

(a) upon thirty (30) days' written notice by Landlord for failure to cure a material default for payment of amounts due under this Lease within that thirty (30)-day period;

(b) upon thirty (30) days' written notice by either party if the other party defaults and fails to cure such default within that thirty (30)-day period, or such longer period as may be required to diligently complete a cure commenced within that thirty (30)-day period;

(c) upon ninety (90) days' written notice by Tenant, if it is unable to obtain, maintain, or otherwise forfeits or cancels any license, permit or Governmental Approval necessary to the construction and/or operation of the Antenna Facilities or Tenant's business;

(d) upon ninety (90) days' written notice by Tenant if the Premises are or become unacceptable under Tenant's design or engineering specifications for its Antenna Facilities or the communications system to which the Antenna Facilities belong;

(e) immediately upon written notice if the Premises or the Antenna Facilities are destroyed or damaged so as in Tenant's reasonable judgment to substantially and adversely affect the effective use of the Antenna Facilities. In such event, all rights and obligations of the parties shall cease as of the date of the damage or destruction, and Tenant shall be entitled to the reimbursement of any unused Rent prepaid by Tenant. If Tenant elects to continue this Lease, then all additional Rent shall abate until the Premises and/or Antenna Facilities are restored to the condition sufficient to allow Tenant's reasonable use of the Premises;

(f) at the time title of the Property transfers to a condemning authority, pursuant to a taking of all or a portion of the Property sufficient in Tenant's determination to render the Premises unsuitable for Tenant's use. Landlord and Tenant shall each be entitled to pursue their own separate awards with respect to such taking. Sale of all or part of the Property to a purchaser with the power of eminent domain in the face of the exercise of the power, shall be treated as a taking by condemnation.

(g) If Tenant shall:

(i) admit in writing its inability to pay its debts as they become due; or
(ii) file a petition in bankruptcy or for reorganization or for the adoption of an arrangement under the bankruptcy act as now or in the future amended, or file a pleading asking for relief; or

(iii) make an assignment for the benefit of creditors; or
(iv) consent to the appointment of a trustee or receiver for all or a major portion of its property; or
(v) be finally adjudicated as bankrupt or insolvent under any federal or state law; or

(vi) allow the entry of a final and nonappealable court order under any federal or state law appointing a receiver or trustee for all or a major part of its property, or ordering the windup or liquidation of its affairs, or approving a petition filed against it under the bankruptcy act, as now or in the future amended, which order, if not consented to by it, shall not be vacated, denied, set aside or stayed within thirty (30) days after the final entry, or levy or after any contest is finally adjudicated or any stay is vacated or set aside; or

(vii) allow a writ or warrant of attachment or any similar process to be issued by any court against all or any substantial portion of its property, and the writ or warrant of attachment or any similar process shall not be contested, stayed, or shall not be released within thirty (30) days after the final entry, or levy or after any contest is finally adjudicated or any stay is vacated or set aside.

9. Taxes. Tenant shall pay any personal property taxes assessed on, or any portion of such taxes attributable to, the Antenna Facilities. Landlord shall pay when due all real property taxes and all other fees and assessments attributable to the Property and the Building. In the event that Landlord fails to pay said real property taxes, then Tenant shall have the right to pay said taxes and deduct them from Rent amounts due under this agreement.

10. Insurance and Subrogation.

(a) Tenant will provide Commercial General Liability Insurance in an aggregate amount of \$1,000,000 for personal injury or death and \$200,000 for property damage or any damages other than personal injury and name Landlord as an additional insured on the policy or policies. Tenant agrees to provide increased insurance coverage consistent with increased coverage required by OREGON TORT CLAIMS ACT as it may be amended from time to time during the term of this Lease or any Renewal Term of this Lease. Tenant may satisfy this requirement by obtaining appropriate endorsement to any master policy of liability insurance Tenant may maintain.

(b) Landlord and Tenant hereby mutually release each other (and their successors or assigns) from liability and waive all right of recovery against the other for any loss or damage covered by their respective first party property insurance policies for all perils insured thereunder. In the event of such insured loss, neither party's insurance company shall have a subrogated claim against the other.

11. Hold Harmless. Tenant agrees to hold Landlord harmless from third party claims or damages or claims or damages of the Landlord arising from the installation, use, maintenance, repair or removal of the Antenna Facilities, except for claims arising from the gross negligence or intentional acts of Landlord, its employees, agents or independent contractors.

12. Notices. All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed given if personally delivered or mailed, certified mail, return receipt requested, or sent by overnight carrier to the following addresses:

If to Tenant, to:
Librautel Leasing
ATTN: Property Manager
One West Elm St
Suite 400
Conshohocken, PA 19388

with a copy to:
Librautel
ATTN: Vice President / General Counsel
One West Elm St
Suite 400
Conshohocken, PA 19388

If to Landlord to:
City Manager
City of Ontario
444 S. W. 4th Street
Ontario, OR 97914
Phone: (541) 881-3223
Fax: (541) 889-7121

13. Quiet Enjoyment, Title and Authority. Landlord covenants and warrants to Tenant that (i) Landlord has full right, power and authority to execute this Lease; (ii) it has good and unencumbered title to the Premises free and clear of any liens or mortgages, except those disclosed to Tenant which will not interfere with Tenant's rights or use of the Premises; (iii) execution and performance of this Lease will not violate any laws, ordinances, covenants, or the provisions of any mortgage, lease, or other agreement binding on Landlord.

Landlord covenants that at all times during the term of this Lease, Tenant's quiet enjoyment of the Premises or any part thereof shall not be disturbed as long as Tenant is not in default beyond any applicable grace or cure period.

14. Environmental Laws. Tenant represents, warrants and agrees that it will conduct its activities on the Property in compliance with all applicable Environmental Laws (as defined in attached Exhibit D). Landlord represents, warrants and agrees that it has in the past and will in the future conduct its activities on the Property in compliance with all applicable Environmental Laws and that the Property is free of Hazardous Substance (as defined in attached Exhibit D) to the best of Landlord's knowledge as of the date of this Lease.

Landlord shall be responsible for, and shall promptly conduct any investigation and remediation as required by any Environmental Laws or common law, of all spills or other releases of Hazardous Substance, not caused solely by Tenant, Tenant's suppliers, employees, or agents, that have occurred or which may occur on the Property.

Tenant agrees to defend, indemnify and hold Landlord harmless from and against any and all claims, causes of action, demands and liability including, but not limited to, damages, costs, expenses, assessments, penalties, fines, losses, judgments and attorney's fees that Landlord may suffer due to the existence or discovery of any Hazardous Substance on the Property or the migration of any Hazardous Substance to other properties or release into the environment arising solely from Tenant's or, Tenant's suppliers, employees, or agents activities on the Property.

Landlord agrees to defend, indemnify and hold Tenant harmless from and against any and all claims, causes of action, demands and liability including, but not limited to, damages, costs, expenses, assessments, penalties, fines, losses, judgments and attorney's fees that Tenant may suffer due to the existence or discovery of any Hazardous Substance on the property or the migration of any Hazardous Substance to other properties or released into the environment, that relate to or arise from Landlord's activities during this Lease and from all activities on the Property prior to the commencement of this Lease.

The indemnifications in this section specifically include costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work required by any governmental authority.

15. Assignment. Tenant may not assign, sublease or otherwise transfer all or any part of its interest in this Lease, or in the Premises without the prior written consent of Landlord, said consent not to be unreasonably withheld or delayed; provided, however, that Tenant may assign or otherwise transfer upon notice but without consent such interest to its parent company, any

subsidiary or affiliate or to any successor-in-interest or entity acquiring a controlling interest in its stock or assets. Tenant shall supply Landlord with any and all documents reasonably deemed necessary by Landlord to evaluate any proposed non-affiliated Transfer at least thirty (30) days in advance of Tenant's proposed Transfer date."

16. Successors and Assigns. This Lease shall run with the Property, and shall be binding upon and inure to the benefit of the parties, their respective successors, personal representatives and assigns.

17. Mediation and Arbitration. If any dispute or claim on law or equity arises out of the Lease, Tenant and landlord agree in good faith to attempt to settle such dispute or claim by mediation under the Commercial Mediation rules of the American Arbitration Association. If such mediation is not successful in resolving such dispute or claim, then such dispute or claim shall be decided by neutral binding arbitration before a single arbitrator in accordance with the Commercial Arbitration rules of the American Arbitration Association. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

18. Waiver of Landlord's Lien. Landlord hereby waives any and all lien rights it may have, statutory or otherwise, concerning the Antenna Facilities or any portion thereof which shall be deemed personal property for the purposes of this Lease, regardless of whether or not the same is deemed real or personal property under applicable laws, and Landlord gives Tenant and Lender the right for Thirty (30) days from termination of this Lease to remove all or any portion of the same from time to time, whether before or after a default under this Lease, in Tenant's and/or Lender's sole discretion and without Landlord's consent.

19. Miscellaneous.

(a) The substantially prevailing party in any litigation arising hereunder shall be entitled to its reasonable attorneys' fees and court costs, including appeals, if any.

(b) Each party agrees to furnish to the other, within ten (10) days after request, such truthful estoppel information as the other may reasonably request.

(c) This Lease constitutes the entire agreement and understanding of the parties, and supersedes all offers, negotiations and other agreements. There are no representations or understandings of any kind not set forth herein. Any amendments to this Lease must be in writing and executed by both parties.

(d) If either party is represented by a real estate broker in this transaction, that party shall be fully responsible for any fee due such broker, and shall hold the other party harmless from any claims for commission by such broker.

(e) Each party agrees to cooperate with the other in executing any documents (including a Memorandum of Lease in substantially the form as attached in Exhibit E) necessary to protect its rights or use of the Premises. The Memorandum of Lease may be recorded in place of this Lease, by either party.

(f) This Lease shall be construed in accordance with the laws of the state in which the Property is located.

(g) If any term of this Lease is found to be void or invalid, such invalidity shall not affect the remaining terms of this Lease, which shall continue in full force and effect. The parties intend that the provisions of this Lease be enforced to the fullest extent permitted by applicable law. Accordingly, the parties shall agree that if any provisions are deemed not enforceable, they shall be deemed modified to the extent necessary to make them enforceable.

(h) The persons who have executed this Lease represent and warrant that they are duly authorized to execute this Lease in their individual or representative capacity as indicated.

(i) The submission of this document for examination does not constitute an offer to lease or a reservation of or option for the Premises and shall become effective only upon execution by both Tenant and Landlord.

(j) This Lease may be executed in any number of counterpart copies, each of which shall be deemed an original, but all of which together shall constitute a single instrument.

(k) The parties understand and acknowledge that Exhibit A (the legal description of the Property), Exhibit B (the Premises location within the Property) and Exhibit C (the site plan) are attached to this Lease in preliminary form. Accordingly, the parties agree that upon the preparation of final, more complete exhibits, Exhibits A, B and/or C, as the case may be, which are attached hereto in preliminary form, will be replaced by Lessee with such final, more complete exhibit(s). Such final exhibits shall require Lessor's approval, which approval shall not be unreasonably delayed or withheld.

The Execution Date of this Lease is the 7th day of OCTOBER, 2002.

LANDLORD: City of Ontario

By: LeRoy Cammack
LeRoy Cammack, Mayor

Attested By: Tori Ankrum
Tori Ankrum, City Recorder

TENANT:

By: Jim Ames
Its: DIRECTOR

STATE OF OREGON)
)ss.
County of Malheur)

On this 14th day of October, 2002, before me Shannon C. Aguiar, a notary public in and for said State, personally appeared LeRoy Cammack, known or identified to me to be the Mayor of City of Ontario, the municipal corporation that executed the within instrument or the person who executed the instrument on behalf of said municipal corporation and acknowledged to me that such municipal corporation executed the same.

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

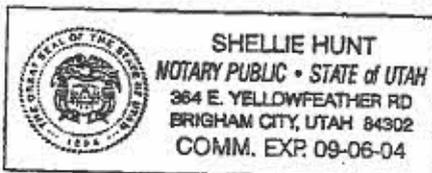


Shannon C. Aguiar
NOTARY PUBLIC in and for the
State of OREGON.
My commission expires 2/26/04.

STATE OF Utah)
)ss.
County of Box Elder)

On this 9th day of September, 2002, before me Shellie Hunt, a notary public in and for said State, personally appeared Jim Ames, known or identified to me to be the Director of UbiquiTel, Inc., an Delaware corporation that executed the within instrument or the person who executed the instrument on behalf of said corporation and acknowledged to me that such corporation executed the same.

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



Shellie Hunt
NOTARY PUBLIC in and for the
State of Utah
My commission expires 9-6-04.

EXHIBIT A

Legal Description

To the Water Tower Lease with Option dated this 7th day of October, 2002,
between City of Ontario, as Landlord, and UbiquiTel, Inc., as Tenant

The Property is legally described as follows:

Land in the CITY OF ONTARIO, Malheur County, Oregon, according to Wilson's
Supplemental Plat thereof, as follows:

In Block 155: Lot(s) 10, 11, 12, 13, 20, 21, 22, 23, 24, 25, and 26.

EXHIBIT B

To the Water Tower Lease with Option dated this 7th day of OCTOBER,
2002, between City of Ontario, as Landlord, and UbiquiTel, Inc., as Tenant.

The location of the Premises within the Property is more particularly described or depicted
as follows:

SITE PLAN ATTACHED IS MADE A PART OF
THIS AGREEMENT

(Attach a copy of the site plan showing the location of the equipment to be installed)

EXHIBIT C

To the Water Tower Lease dated this 7th day of OCTOBER, 2002, between City of Ontario, as Landlord, and UbiquiTel, Inc., as Tenant.

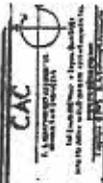
Conceptual Site Plan and Equipment

Equipment Schedule

The installation may include the following:

(Attach list of equipment to be installed)

Ubiquite
 Sprint PCS
 Network Partner
 66 SOUTH MAIN ST
 BRIGHAM CITY, UT 843
 TEL: 435-734-1188
 FAX: 435-734-1188



APPROVALS

DESIGNER _____
 CHECKER _____
 DATE _____
 AREA _____
 PROJECT _____
 OWNER _____
 DRAWING _____
 CONSTRUCTION _____
 SECTION _____

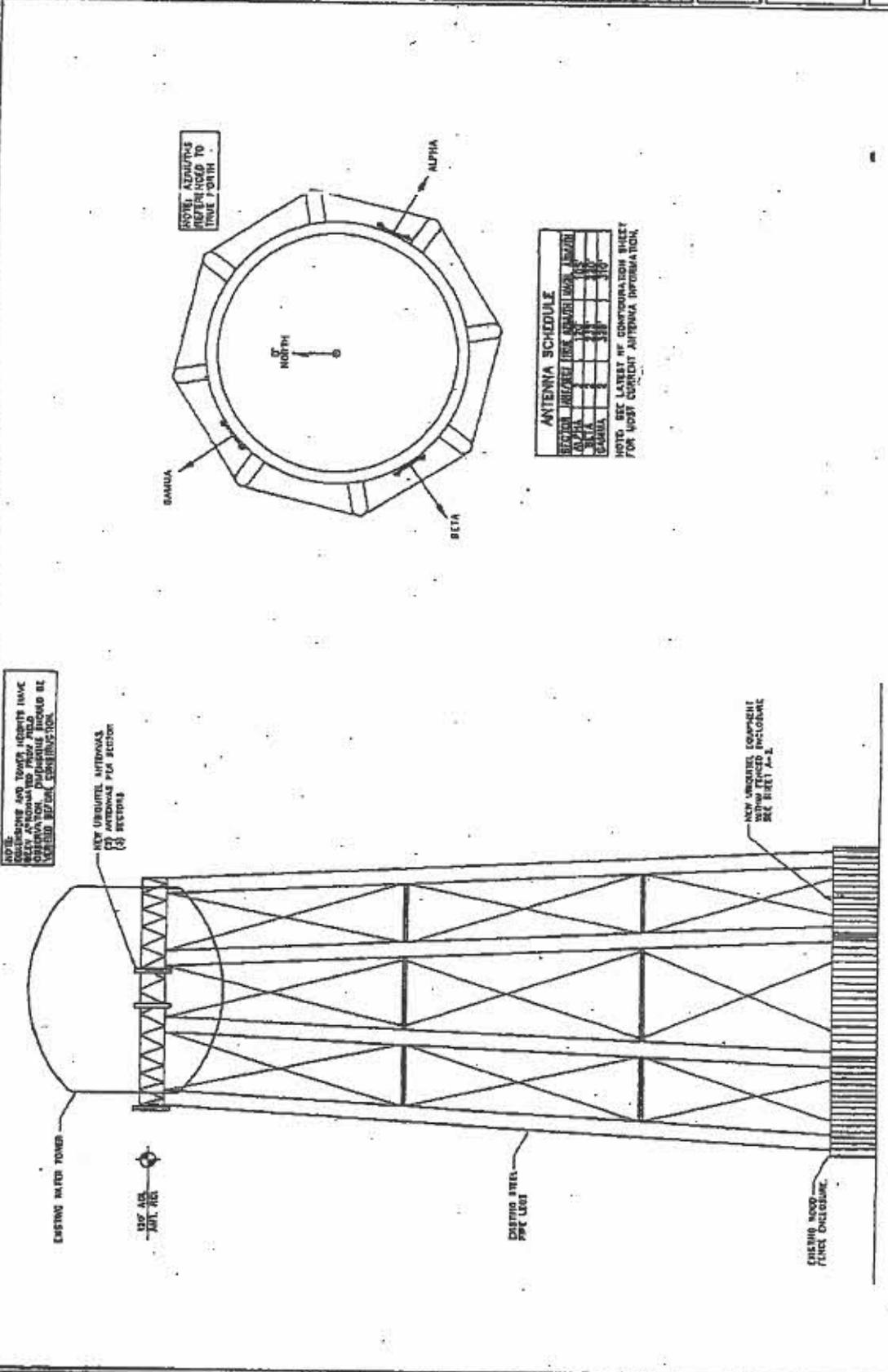
REVISIONS

NO.	DATE	DESCRIPTION

SITE
 EL200BELL-A
 ONTARIO WATER TANK
 15140 2ND AVE
 OAKS, UT 84053

SHEET TITLE
 SITE ELEVATION

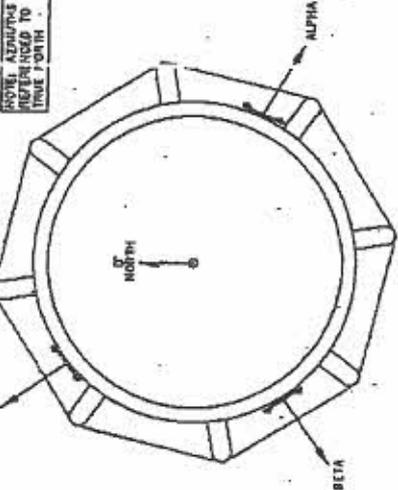
A-3



NOTE:
 COLLISIONS AND TOWER HEIGHTS HAVE
 BEEN APPROVED FROM FIELD
 OBSERVATION. PURPOSES SHOULD BE
 CHECKED BEFORE CONSTRUCTION.

NEW UBIQUITE ANTENNAS
 (3) ANTENNAS PER SECTION
 (3) SECTIONS

EXISTING WATER TOWER



ANTENNA SCHEDULE

SECTION	ANTENNA	TYPE	HEIGHT	WIND	WIND
ALPHA	1				
BETA	1				
GAMMA	1				

NOTE: SEE LATEST UT CONSTRUCTION SHEET
 FOR LATEST CURRENT ANTENNA INFORMATION.

NEW UBIQUITE COMPONENT
 WITH PERCHED ENCLOSURE
 SEE SHEET A-2

EXISTING HOOD
 PER LOT ENCLOSURE

(A) WATER TOWER ELEVATION
 SCALE: 1/16" = 1'-0"

EXHIBIT D

To the Water Tower Lease with Option dated this 7th day of OCTOBER, 2002, between City of Ontario, as Landlord, and UbiquiTel, Inc., as Tenant

Environmental Laws

As used in this Lease, "Environmental Laws" means all federal, state and local environmental laws, rules, regulations, ordinances, judicial or administrative decrees, orders, decisions, authorizations or permits, including, but not limited to, the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901, et seq., the Clean Air Act, 42 U.S.C. §§ 7401, et seq., the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251, et seq., the Emergency Planning and Community Right to Know Act, 42 U.S.C. §§ 1101, et seq., the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601, et seq., the Toxic Substances Control Act, 15 U.S.C. §§ 2601, et seq., the Oil Pollution Control Act, 33 U.S.C. §§ 2701, et seq., the Hazardous Materials Transportation Act, 49 U. S. C. §§ 1801 et seq., the Safe Drinking Water Act, 42 U.S.C. §§ 300f through §§ 300f, and state laws, or any other comparable local, state or federal statute or ordinance pertaining to the environment or natural resources and all regulations pertaining thereto.

As used in this Lease, "Hazardous Substance" means any hazardous substances as defined by the Comprehensive Environmental Response, Compensation and Liability Act, as amended from time to time; any hazardous waste as defined by the Resource Conservation and Recovery Act of 1976, as amended from time to time; any and all material or substance defined as hazardous pursuant to any federal, state or local laws or regulations or order; and any substance which is or becomes regulated by any federal, state or local governmental authority; any oil, petroleum products and their by-products.

EXHIBIT E

Memorandum of Lease

To the Water Tower Lease with Option dated this 7th day of OCTOBER, 2002, between City of Ontario, as Landlord, and UbiquiTel, Inc.

Memorandum of Lease Between City of Ontario ("Landlord") and Western PCS II Corporation ("Tenant")

Water Tower Lease between City of Ontario ("Landlord") and UbiquiTel, Inc., ("Tenant") was made regarding the following premises:
See attached Exhibit A

The date of exercise of the Water Tower Lease was 10-28-02. Subject Lease is for a term of five (5) years and will commence on the Commencement Date outlined in the notice to exercise provided to the Landlord and shall terminate at midnight on the last day of the month in which the 5th anniversary of the Commencement Date shall have occurred. Tenant shall have the right to extend this Lease for one (1) additional five (5)-year term.

IN WITNESS WHEREOF, the parties hereto have respectively executed this memorandum this 7th day of OCTOBER, 2002.

LANDLORD: City of Ontario

By: LeRoy Cammack
LeRoy Cammack, Mayor

Attested By: Tori Ankrum
Tori Ankrum, City Recorder

TENANT: UbiquiTel, Inc.,

By: [Signature]
Its: Director

STATE OF OREGON)
)ss.
County of Malheur)

On this 14th day of October, 2002, before me Shannon C. Aguiar, a notary public in and for said State, personally appeared LeRoy Cammack, known or identified to me to be the Mayor of City of Ontario, the municipal corporation that executed the within instrument or the person who executed the instrument on behalf of said municipal corporation and acknowledged to me that such municipal corporation executed the same.

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

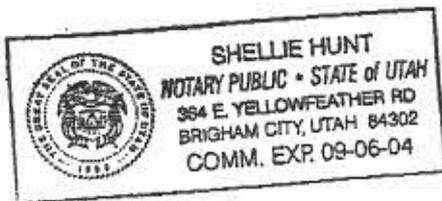


Shannon C. Aguiar
NOTARY PUBLIC in and for the
State of OREGON.
My commission expires 2/26/04.

STATE OF Utah)
)ss.
County of Box Elder)

On this 9th day of Sept, 2002, before me Shellie Hunt, a notary public in and for said State, personally appeared JIM AMES, known or identified to me to be the Director of UbiquiTel, Inc., a Delaware corporation that executed the within instrument or the person who executed the instrument on behalf of said corporation and acknowledged to me that such corporation executed the same.

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



Shellie Hunt
NOTARY PUBLIC in and for the
State of Utah
My commission expires 9-6-04.

ACORD™ CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YY)

1/14/03

PRODUCER
 Herbert L. Jamison & Co., LLC
 100 Executive Drive
 West Orange NJ 07052
 (973) 731-0806

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

COMPANIES AFFORDING COVERAGE

COMPANY A Atlantic Mutual Insurance Company
COMPANY B
COMPANY C
COMPANY D

INSURED
 UbiquiTel Holdings, Inc. d/b/a Sprint PCS
 One West Elm St., 4th Floor
 Conshohocken, PA 19428

COVERAGES

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED, NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS								
GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> OWNERS & CONTRACTOR'S PROT	486407271	11/16/02	11/16/03	GENERAL AGGREGATE \$ 2,000,000 PRODUCTS-COMP/OP AGG \$ 1,000,000 PERSONAL & ADV INJURY \$ 1,000,000 EACH OCCURRENCE \$ 1,000,000 FIRE DAMAGE (Any one fire) \$ 100,000 MED EXP (Any one person) \$ 5,000								
AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS	486407271	11/16/02	11/16/03	COMBINED SINGLE LIMIT \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE \$								
GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN AUTO ONLY: EACH ACCIDENT \$ AGGREGATE \$								
EXCESS LIABILITY <input checked="" type="checkbox"/> UMBRELLA FORM <input type="checkbox"/> OTHER THAN UMBRELLA FORM	486407271	11/16/02	11/16/03	EACH OCCURRENCE \$ 1,000,000 AGGREGATE \$ 1,000,000								
WORKERS COMPENSATION AND EMPLOYERS' LIABILITY THE PROPRIETOR/PARTNERS/EXECUTIVE OFFICERS ARE: <input checked="" type="checkbox"/> INCL <input type="checkbox"/> EXCL	401552362	11/16/02	11/16/03	<table border="1"> <tr> <td>WC STATUTORY LIMITS</td> <td>OTHER</td> </tr> <tr> <td>EL EACH ACCIDENT</td> <td>\$ 100,000</td> </tr> <tr> <td>EL DISEASE-POLICY LIMIT</td> <td>\$ 500,000</td> </tr> <tr> <td>EL DISEASE-EA EMPLOYEE</td> <td>\$ 100,000</td> </tr> </table>	WC STATUTORY LIMITS	OTHER	EL EACH ACCIDENT	\$ 100,000	EL DISEASE-POLICY LIMIT	\$ 500,000	EL DISEASE-EA EMPLOYEE	\$ 100,000
WC STATUTORY LIMITS	OTHER											
EL EACH ACCIDENT	\$ 100,000											
EL DISEASE-POLICY LIMIT	\$ 500,000											
EL DISEASE-EA EMPLOYEE	\$ 100,000											
OTHER Commercial Property All Risk-Special Form Replacement Cost	486407271	11/16/02	11/16/03	\$500,000								

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/SPECIAL ITEMS
 Certificate Holder is added as Additional Insured under General Liability, if required by lease or contract and subject to policy terms and conditions.
 SL03UB621 - Ontario Water Tank 44 N.E. 3rd, Ontario, OR 97914

CERTIFICATE HOLDER
 City of Ontario
 444 S.W. 4th Street
 Ontario, OR 97914

CANCELLATION
 SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE COMPANY, ITS AGENTS OR REPRESENTATIVES.
 AUTHORIZED REPRESENTATIVE
 121 *[Signature]*



UbiquiTel Inc.
 One West Elm Street
 Suite 400
 Conshohocken, PA 19428
 Phone: (610) 832-3300
 Fax: (610) 832-3400

TENANT RENT COMMENCEMENT NOTIFICATION

Tenant Name: UbiquiTel Inc.
 Landlord Name: City of Ontario
 Tenants Site Number: SL03UB621
 Tenants Site Name: Ontario Water Tank

Trigger for Rent Commencement

Commencement of Tenant Equipment Installation Date: 6-23-03

We hereby acknowledge and agree the above trigger has been met on date as noted above.

Tenant Signature: [Signature] Date: 6/30/03
 Landlord Signature: Sten Guehli Date: 6-25-03

This form must be executed by both parties for rent to commence.

