

AGENDA
CITY COUNCIL - CITY OF ONTARIO, OREGON
March 21, 2011, 7:00 p.m., M.T.

1) **Call to order**

Roll Call: Norm Crume _____ Jackson Fox _____ Charlotte Fugate _____ Dan Jones _____
David Sullivan _____ Ron Verini _____ Mayor Joe Dominick _____

2) **Pledge of Allegiance**

This Agenda was posted on Wednesday, March 16, 2011, and a study session was held on Thursday, March 17, 2011. Copies of the Agenda are available at the City Hall Customer Service Counter and on the city's website at www.ontariooregon.org.

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

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

- A) Approval of Minutes of Regular Meeting of 3/7/2011 1-5
- B) Approval of Minutes of Telephonic Meeting of 03/15/2011 6-7
- C) Ordinance #2654-2011: Request for Street Vacation; Portion of SW 2nd Avenue between SW 4th Street and SW 6th Street as Proposed by Ontario 8C School District (Final Reading) 8-10
- D) Approval of the Bills

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

6) **Presentation: Pheasants Forever Update**

7) **New Business**

- A) Ordinance #2656-2011: Repealing OMC 3-10-1 (1st Reading) 11-12
- B) Pro-Shop Consignment Agreement 13-15
- C) Engineering Design Agreement with Anderson-Perry for SE 2nd Street 16-32

8) **Topics for Discussion (Thursday):**

- A) SREDA Update
- B) Four Rivers Cultural Center Update
- C) Council Rules

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

10) **Adjourn**

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

COUNCIL MEETING MINUTES

March 7, 2011

The regular meeting of the Ontario City Council was called to order by Mayor Joe Dominick at 7:00 p.m. on Monday, March 7, 2011, in the Council Chambers of City Hall. Council members present were Norm Crume, Joe Dominick, Charlotte Fugate, and David Sullivan. Dan Jones, Jackson Fox and Ronald Verini were excused.

Members of staff present were Henry Lawrence, Tori Barnett, Chuck Mickelson, Mark Alexander, and Larry Sullivan. Due to construction at City Hall, the meeting was unable to be video taped or televised.

David Sullivan led everyone in the Pledge of Allegiance.

AGENDA

David Sullivan moved, seconded by Norm Crume, to adopt the Agenda as amended. Roll call vote: Crume-yes; Fox-out; Fugate-yes; Jones-; Sullivan-yes; Verini-out; Dominick-yes. Motion carried 4/0/3.

CONSENT AGENDA

David Sullivan moved, seconded by Charlotte Fugate, to approve Consent Agenda Item A: Approval of Minutes of regular meeting of 02/22/2011; Item B: Appointment to Airport Board-Kevin Thompson; Item C: Resolution #2011-106: Accept/Expend ODOT Grant Funds for Speed Enforcement; and Item D: Approval of the Bills. Roll call vote: Crume-yes; Fox-out; Fugate-yes; Jones-out; Sullivan-yes; Verini-out; Dominick-yes. Motion carried 4/0/3.

NEW BUSINESS

Resolution #2011-105: Exercising the Power of Eminent Doman for ROW Services

Chuck Mickelson, Public Works Director stated the proposed resolution would authorize the City to proceed with eminent domain in the event that ODOT was unsuccessful in negotiating right of way on the NW Washington project. The resolution had to be passed in order for ODOT to proceed with the appraisal and negotiation process. Before proceeding with any eminent domain action, the City Council would be apprised of the particular situation.

In 2001, ODOT and Ontario entered into Agreement #697 where Ontario accepted maintenance responsibility for West Idaho, including the underpass, SW 2nd Street, SW 4th Avenue and North Oregon Street. ODOT agreed to pay the City \$490,000 for future maintenance of those facilities, and the Agreement superseded prior Agreements made in 1975 and 1979. All right, title and interest in the above mentioned streets would be transferred to Ontario upon completion of the Yturri Beltline. In 2006-07, the City Council approved a project to realign NW Washington to North Oregon. Also in 2007, the City hired the firm of CH2M Hill to prepare plans and specifications for this project. Funding for the acquisition of right of way and construction of the realignment was not clearly identified at that time. In October 2009, the County approved Resolution 2009-126 Amendment #1 with ODOT to Miscellaneous Agreement #23255 also known as Cooperative Agreement OR 201 North Ontario Interchange Bridge #08635, an Agreement transferring NW Washington to the City. In return, ODOT paid the City \$375,200 for the realignment of the intersection of NW Washington and North Oregon and the construction of curb, gutter and sidewalks along NW Washington. In July, 2010, the Council approved Resolution #2010-136 approving a local agency agreement for fund distribution for the NW Washington Avenue realignment between the City of Ontario and the State of Oregon, acting by and through its Department of Transportation, and as authorized by the Oregon Jobs and Transportation Act of 2009 (HB 2001). In November, 2010, the Council approved Amendment #1 to Miscellaneous Contracts and Agreements (#26720) between ODOT and City for fund distribution for NW

Washington Avenue realignment (funds from HB 2001). Finally, in February, 2011, the Council approved Intergovernmental Agreement for right-of-way services #27027 for ODOT to acquire right of way for the NW Washington project.

Since the early 1990's ODOT and Ontario have been discussing various transportation related issues within and adjacent to the City. During this period of time, ODOT reconstructed East Idaho, rebuilt the overpass over I-84, reconstructed the freeway ramps leading to East Idaho, constructed the Yturri Beltline bypass around the City, reconstructed the North Oregon overpass and ramps, constructed an overpass over the railroad on SW 18th Avenue, as well as other miscellaneous projects.

Funding for this project included the \$4.5 million authorized by HB 2001 and \$375,200 cash paid to the City for the project.

Mayor Dominick verified that ODOT could not move forward with eminent domain without going before Council.

Larry Sullivan, City Attorney, stated that any litigation or any condemnation settlement with a landowner that involved the payment of money by the City would require Council approval. However, if a landowner agreed to give property to the City without asking for compensation, it might not be necessary for that to be brought back to the Council for its approval.

Charlotte Fugate moved, seconded by Norm Crume, to approve Resolution #2011-105, A RESOLUTION EXERCISING THE POWER OF EMINENT DOMAIN FOR RIGHT-OF-WAY SERVICES FOR THE NW WASHINGTON PROJECT. Roll call vote: Crume-yes; Fox- out; Fugate-yes; Jones-out; Sullivan-yes; Verini-out; Dominick-yes. Motion carried 4/03/.

CORRESPONDENCE, COMMENTS, AND EX-OFFICIO REPORTS

Mayor Dominick reminded the citizens of the Sister City Visit coming up, and invited everyone to participate.

Mark Alexander stated there would be an officer coming from Hillsboro here to present information on gangs, Thursday, April 7th in English, and Friday, April 8th, in Spanish. The Commission on Children and Families would be providing food. They were also working with the Boys and Girls Club to provide daycare for those parents wishing to attend. They continued to work on ways to get the information and flyers out to the public.

Chuck Mickelson stated they were working diligently on the budget. Also, chip sealing would begin after July 1st and the primary street would be a SW 4th.

Duke Clinton, Ontario School District 8C, gave an update on the improvements going on with the school district. The basis for the request for the upcoming vacation request for 2nd was for safety reasons.

Casey Huse presented maps on the proposed change to the Ontario Middle School. There would be a new two-story structure with 22 classrooms. It would fully house the 7th and 8th grade programs, as well as administration. The current Enterprise building would house the 6th grade class. The ground floor would have public parking and a drop off and pick up area off the public streets. The lobby space would give direct access to reception area, but would keep it separate from the students. They anticipated having Health, English, Computer Labs, tech, ESL, Social Studies on first floor, and the second floor would house additional restrooms, the Science labs, a staff area, computer labs, math, reading, and language arts, plus some storage. Also, 1.5% had to be spent on renewable power, making it healthier, less costly, and more efficient. They would also allow for natural sunlight deeper into the classrooms, and would have high four values on insulation. Daylight harvesting with lift shelves meant the lights automatically turned off when enough sunlight came through. There would also be an elevator, located centrally in the building.

Councilor Fugate asked what type of control would there be on the entrances and exits of the building.

Mr. Huse stated there would be exit stairs only. Everyone would have to enter through the front on the first floor. The reception area would be fully glassed so there would be continual monitoring of the halls.

PUBLIC HEARING

Ordinance #2654-2011: Request for Street Vacation; Portion of SW 2nd Avenue between SW 4th Street and SW 6th Street as Proposed by Ontario 8C School District (1st Reading)

It being the date advertised for public hearing on the matter of Ordinance #2654-2011, the Mayor declared the hearing open. There were no objections to the city's jurisdiction to hear the action, no abstentions, ex-parte contact, and no declarations of conflict of interest.

Larry Sullivan, City Attorney, stated the Ontario School District 8C ("Ontario 8C") filed a petition to formally vacate the portion of SW 2nd Avenue that the Council previously closed. A public hearing is legally required as part of the vacation process.

On August 18, 2008, the Council passed Resolution 2008-142 for the indefinite closure of SW 2nd Avenue between SW 6th Street and SW 4th Street.

ORS 271.080 set out the procedure for a property owner to petition a city to vacate a right of way. The landowner was required to file a petition along with consents signed by the following: 1) all abutting property owners; and 2) two-thirds (2/3) of the property owners within a statutorily defined rectangle of land surrounding the road proposed to be vacated. The boundaries of the rectangle were a distance of four hundred (400) feet from the ends of the road and a distance of two hundred (200) feet from the road along its length. Ontario 8C did not file any property owner consents with its petition, but it was not legally required to do so, because Ontario 8C owned all the land abutting the portion of SW 2nd Avenue to be vacated, as well as more than two-thirds of the area within the statutorily defined rectangle surrounding the road.

Once a petition was filed with the necessary consents, ORS 271.090 and 271.100 provided that the City Recorder was required to review it for completeness, then give it to the Council to review at a public meeting of which the petitioner has been given notice. The purpose of the meeting was to allow the Council to determine whether to schedule a public hearing on the petition or to reject it without a hearing. That step was not followed in this case. The City Recorder was not given the opportunity review the petition, nor was the Council. In this case, staff scheduled the public hearing without having the Council review the petition. However, prior to filing the petition, at the December 30, 2010, work session, Ontario 8C's architects made a presentation to the Council showing their architectural plans and describing the reasons for wanting to vacate the road. The Council consensus in that work session appeared to favor the vacation. Arguably this presentation served the same informational purpose as a meeting allowing the Council to review the petition. This presentation was held prior to the time two of the current Council members were sworn in, but they were present as observers.

If the Council had concerns about the failure to comply with ORS 271.090 and 271.100, the Council did retain the option of cancelling or postponing the public hearing in order to give the Council the opportunity to review the petition first. The City attorney determined that Ontario 8C's petition was legally sufficient and complied with ORS 271.080, and that the Council could legally proceed with the public hearing if do desired.

School District 8C was proposing that the City vacate SW 2nd Avenue between SW 4th Street and SW 6th Street for the purpose of locating a new middle school building across that right-of-way. This section of SW 2nd Avenue had been closed for more than two years pursuant to the indefinite closure resolution 2008-142 passed by the Council in 2008.

The central question before the Council was whether making the road closure permanent would prejudice the public interest. The effect of a road vacation was is to convey the land underlying the road to Ontario 8C. This

would deprive the City of any further control of the real property except for a utility easement for City utilities that Ontario 8C would relocate at its expense. The utility reservation was included in the proposed ordinance.

The City's permanent loss of control of the right of way could have long term ramifications for traffic flow in this area of the City. This area was located in the City core next to the library, and within two blocks of commercial buildings on SW 4th Avenue as well as City Hall and the fire station.

In the core area of the City, the east-west traffic pattern was restricted. There were only three streets that would permit a vehicle to cross from the business core to the hospital and beyond, namely SW 4th Avenue, SW 2nd Avenue and West Idaho Avenue. SW 5th Avenue might be a fourth route but did not go further west than the hospital except in segments that were not aligned with one another. NW 4th Avenue traveled all the way west to Highway 201 parallel to SW 4th Avenue, but did not directly connect to the downtown core.

In order to give the Council the widest range of viewpoints about the proposed road vacation, staff sent out 187 notices of the public hearing to property owners. In addition to providing the legally required published notice of the public hearing, staff mailed out individual notices of the public hearing not only to those property owners in the statutorily defined rectangle described above, but all property owners of land fronting within 200 feet of SW 2nd Avenue, from the alley east of South Oregon Street to the west side of SW 13th Street.

After the public hearing, ORS 271.120 required the Council to determine whether "... *the public interest will be prejudiced by the vacation of such plat or street or parts thereof.*" The Council had the option of approving the road vacation petition in full by enacting Ordinance #2654-2011; denying the petition; granting a portion of the vacation request; imposing additional conditions or reservations on the vacation; or tabling the matter for further review.

Staff was recommending approval of Ontario 8C's vacation petition and the enactment of Ordinance #2654-2011. After this portion of SW 2nd Avenue was closed by the Council in 2008, staff has received very few complaints from residents about the closure. Balancing Ontario 8C's immediate need for the road vacation against a theoretical long term impact on traffic, it appeared that the public interest would not be prejudiced by the proposed vacation.

Councilor Fugate asked about the gas utilities.

Mr. Clinton stated the gas line ran on 2nd Avenue, between the two buildings.

Mr. Sullivan stated if the proposed ordinance passed, the school district would have to cooperate with utility companies to make sure they were protected.

Mayor Dominick stated the issue raised by Idaho Power needed to be addressed between the school district and power company, not the City.

Mr. Clinton agreed.

Mayor Dominick stated the sewer and water connections would be rerouted for easier access. That was the main concern of the city for this property.

The Mayor opened the hearing for public testimony.

Opponents: None.

Proponents: Proponents: Letter received from Ann Easley-DeBisschop, dated March 1, 2011; Letter from Ken Hart, 8C Facilities Task Force Co-Chair, Ralph Poole, 8C Facilities Task Force Co-Chair, David Cox, 8C Facilities Task Force Co-Chair, Ben Peterson, Bond Chair, Construction Owner's Team, and Adele Schaffeld-Griffim, School Bond Community Oversight Committee Chair, dated February 28, 2011.

Also submitted: Letter from Idaho Power Company, signed by Tracy Ragan, dated March 3, 2011, requesting a copy of the recorded resolution of the Board of Commissioner's determination on this matter, and any other instrument that would pertain to a conveyance of the subject property if Ontario approved the vacation request.

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

Norm Crume moved, seconded by Charlotte Fugate, to enact Ordinance #2654-2011, AN ORDINANCE VACATING THAT PORTION OF SW 2ND AVENUE BEWTEEN THE WEST EDGE OF SW 4TH STREET AND THE EAST EDGE OF SW 6TH STREET, AND RESERVING A UTILITY EASEMENT FOR THE CITY, on First Reading by Title Only. Roll call vote: Crume-yes; Fox- out; Fugate-yes; Jones-out; Sullivan-yes; Verini-out; Dominick-yes. Motion carried 4/0/3.

ADJOURN

David Sullivan moved, seconded by Norm Crume, that the meeting be adjourned. Roll call vote: Crume-yes; Fox-out; Fugate-yes; Jones-out; Sullivan-yes; Verini-out; Dominick-yes. Motion carried 4/0/3.

ATTEST:

Joe Dominick, Mayor

Tori Barnett, MMC, City Recorder

TELEPHONIC COUNCIL MEETING MINUTES
March 15, 2011

A special telephonic meeting of the Ontario City Council was called for Tuesday, March 15, 2011, in the office of the City Recorder, Ontario City Hall. Council members who participated were Norm Crume, Jackson Fox, Charlotte Fugate, Dan Jones, David Sullivan, Ron Verini and Joe Dominick.

Staff present was City Recorder Tori Barnett and Airport Manager Alan Daniels. Questions of Councilors were addressed by staff via telephone or email.

Notice of the meeting was provided to the Argus Observer on Friday, March 11, 2011.

Due to the deadline requested by the FAA for return of the proposed Resolution accepting the project grant, it was deemed necessary to conduct a telephonic meeting with the Council to allow the document to be returned to the FAA by close of business on Tuesday, March 15, 2011. Documents for the meeting were mailed to the Council on Friday, March 11, 2011 by regular mail.

AGENDA

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

NEW BUSINESS

Alan Daniels, Airport Manager, presented a staff report to the Council. Council was being asked to accept this FAA Grant to be used as part of the City's matching funds for the Connect Oregon III Airport Improvement Project to be funded by the Oregon Department of Transportation.

In February, 2009, the Council adopted Resolution #2009, 104, accepting FAA Grant for Project #3-41-0044-008 for \$124; in July, 2009, the Council approved the contract with Kimley-Horn for \$60,030 for Project Design Start-up; also in July, 2009, the Council approved the contract with USKH for Independent Review of Kimley-Horn Pricing; in November, 2009, the Council approved the Connect Oregon 3 Application and the ODOT Connect Oregon Agreement #24941 dated July 8, 2009, allowing the City to begin the project prior to accepting the Connect Oregon Grant. In March 2010, the Council approved the contract increase with Kimley-Horn from \$60,030 to \$124,168 for additional project design work. In August 2010, the Council accepted the Connect Oregon 3 grant for this project. In September 2010, the Council adopted Resolution #2010-141, accepting FAA Grant 3-41-0044-009 in the amount of \$168,913.

During the winter of 2007 the City of Ontario applied for Connect Oregon II funds for the runway rehabilitation and apron rehabilitation/expansion project for the Ontario Municipal Airport. While waiting to be moved into a funded position on the Connect Oregon 2 project, the City reapplied for the same project under the Connect Oregon 3 funding cycle.

The overall project budget approved by the Connect Oregon 3 Grant was approximately \$4,457,970. This Connect Oregon 3 grant award was for a total of \$3,566,376, or 80% of the overall project budget, which left the City's matching portion a total of \$891,594, or 20%, of the total project budget.

With respect to the City's \$891,594 Connect Oregon 3 match, the City leveraged FAA grant funds that would amount to approximately 95% of the total City match, or \$847,014. The FAA grant funding would be issued in several smaller project grants over the course of the project.

The City already accepted two FAA grants for this project in the amount of \$293,081 which was used to start the engineering work thru Kimley-Horn. The City has been awarded a third FAA grant for this project in the amount of \$553,168 which would be used to finish the project.

The \$553,168 in FAA grant revenue was proposed to be budgeted within the City's Grant Fund with the required matching funds being reallocated from General Fund Contingency to a General Fund transfer to the Grant Fund. This grant was approximately \$765 less than requested, but were all the funds the FAA had available. City Staff would manage the grant project and those costs were not reimbursable thru grant project. Staff recommended acceptance of the grant.

Ms. Barnett contacted Councilors telephonically on Tuesday, March 15, 2011, beginning at 10:00 a.m., and asked each Councilor to cast their vote for approval, disapproval, or abstention regarding the action.

Joe Dominick moved, seconded by Ron Verini, to accept FAA Improvement Project Grant #3-41-0044-010, Grant Agreement Part I for Runway, Taxiway and Apron Rehabilitation and Runway Lighting for a Project at the Ontario Municipal Airport.

ADJOURN

Norm Crume moved, seconded by Joe Dominick, 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.

Joe Dominick, Mayor

ATTEST:

Tori Barnett, MMC, City Recorder

CONSENT AGENDA REPORT
March 21, 2011

TO: Mayor and City Council

FROM: David Richey, Planning & Zoning Administrator

THROUGH: Henry Lawrence, City Manager

SUBJECT: ORDINANCE #2654-2011: A REQUEST FOR VACATION OF THAT PORTION OF SW 2ND AVENUE BETWEEN SW 4TH STREET AND SW 6TH STREET AS PROPOSED BY THE ONTARIO SCHOOL DISTRICT 8C, ON SECOND AND FINAL READING BY TITLE ONLY

DATE: March 14, 2011

SUMMARY:

Attached is the following document:

- Ordinance #2654-2011

PREVIOUS COUNCIL ACTION:

03-07-2011 Council passed Ordinance #2654-2011 on First Reading.

RECOMMENDATION:

As there have been no changes since first reading, staff recommends adoption of Ordinance #2654-2011 on Second and Final Reading by Title Only.

ORDINANCE # 2654-2011

AN ORDINANCE VACATING THAT PORTION OF SW 2ND AVENUE BETWEEN THE WEST EDGE OF SW 4TH STREET AND THE EAST EDGE OF SW 6TH STREET, AND RESERVING A UTILITY EASEMENT FOR THE CITY

- Whereas,** The City has received a petition from Ontario School District 8C for vacation of that portion of SW 2nd Avenue between SW 4th Street and SW 6th Street, which bisects its middle school campus; and
- Whereas,** That portion of SW 2nd Avenue was indefinitely closed to public access after the City Council approved Resolution 2008-142 on August 18, 2008;
- Whereas,** The school district has prepared plans for expansion and redesign of its facilities at its SW 2nd Avenue campus to include construction of a new building on land currently occupied by SW 2nd Avenue; and
- Whereas,** The implementation of the school district's plans require the permanent vacation of that portion of SW 2nd Avenue; and
- Whereas,** City utilities are located in SW 2nd Avenue right of way, which the school district has agreed to relocate at the school district's expense, and to grant the City a utility easement for current and the relocated utilities; and
- Whereas,** The City Council recognizes the need for, and shall therefore retain easements for all public utilities in the affected, with the specific size to be determined by City Staff or relocation of those utilities at the expense of School District 8C; and
- Whereas,** A public hearing was held on March 7, 2011, at 7:30 p.m. at City Council chambers upon the school district's road vacation petition; and
- Whereas,** The City staff has provided the public notices of the public hearing as required by ORS 271.120; and
- Whereas,** After the public hearing, the Council found that notice of the public hearing was duly given; that the owners of the abutting property consented in writing to the proposed street vacation; that none of the property owners in the area affected by the proposed vacation filed objections to the proposed vacation; that the vacation of said property will not prejudice the public interest; and that there was no reason to deny the requested street vacation, subject to the reservation of a utility easement for current City utilities and any utilities relocated by the school district.

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

SECTION 1. The following described street right-of-way is hereby vacated:

That portion of SW 2nd Avenue between the west edge of SW 4th Street and the east edge of SW 6th Street in the City of Ontario.

Section 2. The street vacation is subject to reservations by the City of Ontario of: 1) a 20-foot wide utility easement for public utilities; and 2) an easement for free and unhindered ingress and egress necessary for the operation, inspection, repair or replacement, alteration, and protection of public utilities in the utility easement. No structure other than for utility purposes shall be erected within the limits of the utility easement; and the property owner shall be responsible for the removal and replacement of any fence, asphalt, concrete, landscaping irrigation or other ancillary improvements associated with the reserved easements set forth above. No utilities shall be relocated by Ontario School District 8C without the written permission of the City of Ontario in advance of the relocation, and under the supervision of the City of Ontario. Ontario School District 8C shall execute and convey to the City of Ontario a permanent utility easement describing the location of any relocated utilities on the same terms as provided in this Ordinance.

Section 3. As provided in ORS 271.150, a certified copy of this Ordinance shall be filed and recorded with the Malheur County Clerk, and certified copies shall be filed with the Malheur County Assessor and the Malheur County Surveyor.

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

AYES:

NAYS:

ABSENT:

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

Joe Dominick, Mayor

ATTEST:

Tori Barnett, MMC, City Recorder

AGENDA REPORT

March 15, 2011

TO: Mayor and City Council

FROM: Larry Sullivan, City Attorney

THROUGH: Henry Lawrence, City Manager

SUBJECT: ORDINANCE #2656-2011: AN ORDINANCE REPEALING SECTION 3-10-1 OF THE ONTARIO CITY CODE (1ST READING)

DATE: March 21, 2011

SUMMARY:

Attached is the following document:

- Ordinance #2656-2011

This is a housekeeping ordinance to repeal an ordinance that conflicts with the Telecommunications chapter of the Ontario City Code.

BACKGROUND:

Section 3-10-1 of the Ontario City Code was originally enacted in 1951 and amended in 1960. It imposes a 2% annual tax on the local gross revenues of telephone companies operating in the City limits. In 1996, comprehensive federal legislation was enacted that severely limits the authority of municipalities to tax telecommunications carriers, including telephone companies. After the passage of that federal legislation, the City enacted various code provisions consistent with the 1996 Telecommunications Act. Those provisions are in Chapter 2 of the Title 3 of the City Code, and they authorize the City to charge fees for the use of the City rights of way. Section 3-10-1 conflicts with those provisions of the City Code and should be repealed.

None of the franchise agreements that the City has with telecommunications carriers refer to Code Section 3-10-1, and the repeal of that ordinance will not have any legal effect on those franchise agreements.

PROPOSED MOTION:

I move that the City Council enact Ordinance #2656-2011, AN ORDINANCE REPEALING SECTION 3-10-1 OF THE ONTARIO CITY CODE, on First Reading by Title Only.

ORDINANCE NO. 2656-2011

AN ORDINANCE REPEALING SECTION 3-10-1 OF THE ONTARIO CITY CODE

- WHEREAS,** Section 3-10-1 of Chapter 10 of Title 3 of the Ontario City Code, entitled "Telephone company exchange service tax", was enacted in 1951 and amended in 1960; and
- WHEREAS,** Section 3-10-1 purports to impose a 2% gross revenue tax on telephone companies operating within the City, and to limit the imposition of any other fees; and
- WHEREAS,** Section 3-10-1 conflicts with Chapter 2 of Title 3 of the Ontario City Code, which regulates all telecommunications providers, including telephone companies, and authorizes the imposition of fees on telecommunications carriers; and
- WHEREAS,** Section 3-10-1 should be repealed.

NOW THEREFORE, The Common Council For The City Of Ontario Ordains As Follows:

Section 1. Section 3-10-1 of the Ontario City Code is hereby repealed.

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

AYES:
NAYS:
ABSENT:

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

ATTEST:

Joe Dominick, Mayor

Tori Barnett, MMC, City Recorder

AGENDA REPORT
March 21, 2011

TO: Mayor and City Council

FROM: Larry Sullivan, City Attorney

THROUGH: Henry Lawrence, City Manager

SUBJECT: Pro Shop Consignment Agreement

DATE: March 14, 2011

SUMMARY:

Attached is the following document:

- Pro Shop Consignment Agreement

DISCUSSION:

David Boles of Flagstick Golf Center in Fruitland, Idaho, sent a letter to Henry Lawrence in which he proposes to stock the Golf Course pro shop with merchandise. The attached agreement is based on that proposal. It is referred to as a consignment agreement because the inventory will continue to be owned by Mr. Boles until it is sold by the City's golf course staff. Under the agreement, the City will retain 15% of gross merchandise sales and disburse the rest to Mr. Boles.

RECOMMENDATION:

City staff recommends that the City Council approve the Pro Shop Consignment Agreement.

PROPOSED MOTION:

I move that the City Council approve the Ontario Municipal Golf Course Pro Shop Consignment Agreement with David Boles.

Ontario Municipal Golf Course Pro Shop Consignment Agreement

THIS CONSIGNMENT AGREEMENT, entered into by the CITY OF ONTARIO, a municipal corporation of the State of Oregon, hereinafter referred to as "City", and DAVID BOLES, doing business as Flagstick Golf Center, a sole proprietorship, hereinafter referred to as "Consignor."

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

1. CONSIGNMENT. City is the owner of the Ontario Municipal Golf Course, which includes a pro shop in which merchandise is sold at retail. Consignor agrees to provide to City and City agrees to accept from Consignor a complete inventory of golf merchandise and supplies to stock the City's pro shop, on the terms and conditions set forth herein.
2. TERM. The term of this Agreement shall commence on April 1, 2011, and shall continue until terminated by either party in accordance with this Agreement.
3. EXCLUSIVE SUPPLIER. During the term of this Agreement and so long as Consignor is not in default thereof, City grants to Consignor the exclusive license to provide golf merchandise and supplies to the Ontario Municipal Golf Course pro shop.
4. MERCHANDISE AND SUPPLIES TO BE PROVIDED. During the term of this Agreement, Consignor shall deliver to the pro shop and continuously provide to City first-quality merchandise, supplies, and equipment suitable for use upon the golf course, including but not limited to soft goods such as clothing, golf clubs, balls, shoes, accessories and golf supplies, in sufficient quantity to fully stock the pro shop during the regular golf season from approximately March 1 to October 31 of each year. The inventory shall include accessories and supplies to make minor repairs to golf equipment, including the re-gripping of golf clubs. Consignor shall also provide "demo" clubs for use on the practice range, as well as tournament gift certificates and/or gift cards for golf tournament prizes. Consignor shall also assist in arranging for company-represented product demonstration days. Consignor will reasonably cooperate with City in providing merchandise requested by the City; in increasing or reducing the inventory of merchandise based upon actual and anticipated sales; and in promptly restocking merchandise that has been sold.
5. CONSIGNMENT FEE. The City will retain fifteen percent (15%) of gross merchandise sales revenues as compensation for selling Consignor's merchandise. City shall disburse to Consignor eighty five percent (85%) of the gross merchandise sales revenues, to be accounted for and disbursed as follows:
 - a. All of the daily pro shop revenue sales will be registered at the golf shop, and included in the regular daily deposit to the City.
 - b. The City will deposit and track the daily pro shop retail sales to arrive at an accumulated total.
 - c. The City will disburse the remaining 85% of gross sale proceeds to Consignor no less than two times per month.
6. PURCHASE OF INVENTORY. Consignor has purchased from City the current pro shop inventory for the cash price of \$ _____, receipt of which is hereby acknowledged by City.

7. DETERMINATION OF RETAIL PRICE OF MERCHANDISE. The retail price for all merchandise provided by Consignor shall be determined by Consignor. At the time of delivery of merchandise to City, Consignor shall provide to City a complete and detailed list of all inventory provided, including the retail prices for which the City shall sell Consignor's merchandise to customers.

8. TERMINATION. Either party may terminate this Agreement with or without cause upon not less than 30 days written notice to the other party, unless the parties agree to a shorter time. In the event of termination, the Consignor shall remove all property belonging to Consignor within 10 days of the termination of this Agreement. The City may, but need not, treat any property remaining on the Premises after the expiration of this Agreement or period of removal of the Consignor's property, as abandoned by the Consignor and may make any disposition of such property as the City deems fitting.

9. PERSONAL PROPERTY DAMAGE INSURANCE. Until the merchandise subject to this Agreement is sold to customers, title to all merchandise and all risk of loss shall remain with Consignor. The cost of obtaining any personal property insurance to insure said merchandise against loss or damage shall be Consignor's sole responsibility.

10. ENTIRE AGREEMENT. This Agreement constitutes the entire Agreement between the parties. No agent or representative of City has any authority to vary the terms of this Agreement, or to extend the rights and privileges, as herein set forth, or to make any statements or representations concerning this Agreement, or the rights and privileges herein set forth, except as may be evidenced in writing by City's Manager.

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

IN WITNESS WHEREOF, the parties have duly executed this Agreement this _____ day of _____, 2011.

CITY OF ONTARIO

CONSIGNOR

Henry Lawrence, City Manager

David Boles

ATTEST:

Tori Barnett, MMC, City Recorder

AGENDA REPORT

March 21, 2011

To: Mayor and City Council

FROM: Bob Walker, Deputy Public Works Director

THROUGH: Henry Lawrence, City Manager

SUBJECT: APPROVAL OF ENGINEERING DESIGN AGREEMENT WITH ANDERSON - PERRY & ASSOCIATES FOR SE 2ND STREET

DATE: March 10, 2011

SUMMARY:

Attached are the following documents:

- Agreement for the design of SE 2nd Street from E. Idaho Avenue to SE 18th Avenue.

This agreement with Anderson-Perry and Associates of La Grande, Oregon provides for the preparation of plans and estimates for the rehabilitation/reconstruction of SE 2nd Street from E. Idaho Avenue to SE 18th Avenue. This roadway is the number one priority within the City for reconstruction and completion of these plans will enable the City to be in a position to take advantage of potential state or federal funding.

PREVIOUS COUNCIL ACTION:

Budget Approved for design – June 2009

BACKGROUND:

This project is to provide the engineering design for rebuilding SE 2nd Street from E Idaho Avenue to SE 18th Avenue to a standard that will allow the street section to holdup to the truck traffic loading that it is currently supporting.

At present, SE 2nd Street is experiencing deterioration of the structural integrity of the street section due to inadequate road base material and pavement depth that is needed to support the loading it is receiving. The roadway was built many years ago with inadequate sub-grade, sub-base and pavement for the current truck weight limits. By rebuilding this section of street, the north /south freight route would become more user accessible and user friendly and would be built to withstand the volume of traffic that is traveling on it for local business and access to the south bypass. The design will provide for upgrades to the existing utilities (sewer, storm and water), replacement of curbs, gutters and sidewalks, and the installation of an upgraded road section along SE 2nd Street.

Public Works Staff received formal responses to the RFP for this project from six firms on December 22, 2010. The formal responses were from Anderson-Perry Associates of La Grande, Oregon, CH2M-Hill of Boise, Idaho, Engineering & Waste Solutions of Boise, Idaho, Ferguson

Surveying & Engineering, of Mt. Vernon, Oregon, Holladay Engineering of Payette, Idaho, and Keller Associates of Meridian, Idaho. Chuck Mickelson, Bob Walker, Bret Turner and Norm Crume each reviewed the proposals. Each of the firms presented an excellent proposal and it is obvious that each of them could be successful in preparing the plans and specifications. However, we ranked each of the firms based on schedule, resumes (qualifications of the personnel to be assigned to the project), references and similar projects completed, and locations where the work will be completed. The committee unanimously selected Anderson Perry as the highest ranked firm based on their proposal.

The project will be designed to Federal Highway Administration and ODOT standards. Anderson-Perry and Associates has significant experience in preparing plans and specifications to these standards and performed very effectively in the Phase 1 of North Oregon Street project. CK3 will conduct the surveying for the project.

This motion is for the approval of the agreement with Anderson Perry in the lump sum amount of \$143,000.

ALTERNATIVE:

The project needs to be designed whether we are successful or not in securing funding. Without the design, which makes this a "Shovel Ready" project, it would be difficult to obtain stimulus funds. Consequently, the street will continue to deteriorate due to truck loading, weathering and water damage. The City is required to maintain the City streets in a serviceable condition. If the street is not built to a serviceable standard the street will be a continuous maintenance issue and cost the City's taxpayers more money in the long run.

FINANCIAL IMPLICATIONS:

This project was included in the 2009 – 2011 budget as STR-7 in the amount of \$175,000. When and if this project is approved for construction funding there will need to be an amendment to this agreement for completion of the specifications, preparation of an environmental study if needed and other additional services during construction to include inspection.

RECOMMENDATION:

Staff recommends approval of the **AGREEMENT BETWEEN THE CITY OF ONTARIO OREGON AND ANDERSON-PERRY AND ASSOCIATES INCORPORATED OF LA GRANDE, OREGON FOR THE PROFESSIONAL ENGINEERING SERVICES FOR THE DESIGN OF THE RECONSTRUCTION OF SE 2ND STREET FROM IDAHO AVENUE TO SE 18TH AVENUE.**

PROPOSED MOTION:

I move the City Council approve the **AGREEMENT BETWEEN THE CITY OF ONTARIO OREGON AND ANDERSON PERRY AND ASSOCIATES INCORPORATED OF LA GRANDE OREGON FOR THE PROFESSIONAL ENGINEERING SERVICES FOR THE DESIGN OF THE RECONSTRUCTION OF SE 2ND STREET FROM IDAHO AVENUE TO SE 18TH AVENUE** and authorize the City Manager to sign the agreement on behalf of the City of Ontario.

AGREEMENT FOR ENGINEERING SERVICES

THIS AGREEMENT, made this _____ day of _____, 2011, by and between the City of Ontario, Oregon, hereinafter referred to as the OWNER, and Anderson-Perry & Associates, Incorporated, hereinafter referred to as the ENGINEER:

The OWNER intends to reconstruct S.E. 2nd Street from E. Idaho Avenue to S.E. 18th Avenue. The project generally consists of full reconstruction of the existing roadway including asphalt pavement, curb and gutter, and sidewalks; installation of new curb and gutter and sidewalks in some areas where not currently existing; and realigning the intersection of S.E. 2nd Street and S.E. 9th Avenue. Utility work includes replacing existing water, sewer, and storm drain facilities as needed and design of storm drain facilities for the south portion of the project to connect to existing storm facilities at S.E. 9th and S.E. 18th Avenues. The limits of the project are shown on maps provided by the OWNER, shown on Exhibit "A."

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

WITNESSETH:

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

SECTION A - ENGINEERING SERVICES

DESIGN ENGINEERING

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

1. Pre-Design Coordination Meeting

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

2. Design Survey

- A field survey was previously conducted by ODOT and will be provided to the ENGINEER. The existing survey data will be ground verified and supplemented as required to identify roadway centerline, ground elevations, existing utilities, and basic right-of-way positions as required to perform the roadway design. It is

anticipated that minimal surveying will be required to check and supplement the existing ODOT survey information.

- Deliverable – copy of survey files.

3. Geotechnical Evaluation

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

4. Preliminary Plans

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

5. Preliminary Plan Review Meeting

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

6. Advance Plans and Outline for Future Specifications

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

7. Advance Plan Review Meeting with the OWNER

- An advance plan review meeting will be held with the OWNER to obtain comments and suggestions on the advance plan set provided to the OWNER.

- Deliverable – advance plan review meeting minutes

8. Final Plans and Estimate

- The comments received on the advance plans will be incorporated into the final plans and estimate. The project Special Provisions will be updated to a 90 percent complete level incorporating comments received at the advance plan review meeting.
- Deliverable – three sets of final plans and construction cost estimate, 90 percent Special Provisions, and a list of tasks required to prepare the project for bidding. These future work tasks will not be included at this stage of the project. They will need to be completed prior to the design being ready for advertising and bidding. These items are anticipated to include the following:
 - Technical Specifications
 - Environmental Clearance
 - 100 Percent Special Provisions
 - Contract Documents

CONSTRUCTION ENGINEERING

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

OTHER ENGINEERING SERVICES

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

1. Complete the Special Provisions to 100 percent and prepare the project for bidding. Bidding documents may be provided to bid the project through ODOT or directly by the OWNER.
2. Provide engineering services as may be required to assist the OWNER in obtaining construction funding for the Project. Work may include assistance in preparing technical portions of grant and loan applications, assistance in public meetings, ongoing coordination and agreements with funding agencies, updating cost estimates, and other funding services that may be required.
3. Perform environmental review services if such services are needed.

4. Assist the OWNER with obtaining permits, etc., as necessary for the work. The OWNER shall pay all fees associated with such permits and applications, if such fees are required.
5. Assist the OWNER with property surveys, property plats, legal descriptions, and other items necessary for negotiating for land rights and easements if required for the project. Such work may include appearances before courts and boards on these matters.
6. Redesign work when requested to do so by the OWNER. Such work shall include changes in the design, after the conceptual design stage, that are beyond the control of the ENGINEER after such plans have been accepted by the OWNER.
7. Perform special tests, specialized geological, hydraulic, or other studies, or tests other than as previously outlined herein that may be required on the project.
8. Prepare to serve or serve as a consultant or witness for the OWNER in any litigation, arbitration, or other dispute resolution process relating to the project.

SECTION B - RESPONSIBILITIES OF OWNER

1. The OWNER shall provide the ENGINEER with all criteria and full information as to the OWNER's requirements for the project, including design objectives and constraints, performance requirements, and any budgetary limitations; furnish copies of all design and construction standards which the OWNER will require to be included in the Drawings and Specifications; and furnish copies of the OWNER's standard forms, conditions, and related documents for the ENGINEER to include in the Bidding Documents, when applicable.
2. The OWNER shall furnish to the ENGINEER all available information pertinent to the project including reports and data relative to previous designs, all existing maps, field survey data, lines of streets and boundaries or rights-of-way, and other surveys presently available. The OWNER shall also provide all known information concerning the existing underground utilities, etc., that could impact the proposed improvements.
3. The OWNER shall provide for full, safe, and free access for the ENGINEER to enter upon all property required for the performance of the ENGINEER's services under this Agreement.
4. The OWNER shall give prompt written notice to the ENGINEER whenever the OWNER observes or otherwise becomes aware of a Hazardous Environmental Condition or of any development that affects the scope or time of performance of the ENGINEER's services, or any defect or nonconformance in the ENGINEER's services or in the work of any Contractor.
5. The OWNER shall pay for any agency plan review fees, advertisement for bids, building or other permits, licenses, etc., as may be required by local, state, or federal

authorities. The OWNER shall also secure the necessary land easements, rights-of-way, and construction permits. The ENGINEER can assist the OWNER with these tasks, if requested.

6. The OWNER shall examine all alternate solutions, plan reviews, Drawings, Specifications, and other documents presented by the ENGINEER (including obtaining the advice of an attorney, insurance counselor, and other consultants as the OWNER deems appropriate with respect to such examination) and render timely decisions pertaining thereto.
7. The OWNER shall assist the geotechnical subconsultant with traffic control and excavation for and repair of test pit holes along the roadway alignment.

SECTION C - COMPENSATION FOR ENGINEERING SERVICES

1. The OWNER shall compensate the ENGINEER for "Design Engineering" a lump sum amount of \$143,000. If, during the course of the work, the scope of the work should substantially change, the OWNER and the ENGINEER shall amend this section of the contract as necessary.
2. The OWNER shall compensate the ENGINEER for "Construction Engineering" by amendment to this Agreement.
3. The OWNER shall compensate the ENGINEER for "Other Engineering Services" requested by the OWNER on a time and materials basis, plus direct reimbursable expenses. See attached Hourly Fee Schedule, Exhibit "B."
4. The OWNER agrees to pay the ENGINEER for the services provided in accordance with this Agreement on a monthly basis for the services actually provided. The ENGINEER will render to the OWNER an itemized bill at the end of each month, for compensation for such services performed hereunder during such month, the same to be due and payable by the OWNER to the ENGINEER.
5. Past due amounts owed shall include a service fee charge of 12 percent annual interest beginning the 30th day after the date of billing. The ENGINEER may suspend work under this Agreement until the account is paid in full. If collection is made by suit or otherwise, and if the ENGINEER prevails, the OWNER agrees to pay interest until the account and all collection costs, including a reasonable attorney's fee, are paid.

SECTION D - GENERAL PROVISIONS

1. Approval of this Agreement by the OWNER and the ENGINEER will serve as written authorization for the ENGINEER to proceed with the services called for in the Agreement.

2. Neither party shall hold the other responsible for damages or delay in performance caused by acts of God, strikes, lockouts, accidents, or other events beyond the control of the other or the other's employees and agents.
3. In the event any provisions of this Agreement shall be held to be invalid and unenforceable, the remaining provisions shall be valid and binding upon the parties. One or more waivers by either party of any provisions, term, condition, or covenant shall not be construed by the other party as a waiver of a subsequent breach of the same by the other party.
4. The ENGINEER intends to render his services under this Agreement in accordance with generally accepted professional practices for the intended use of the project and makes no warranty expressed or implied. The ENGINEER shall be responsible for the professional quality, technical accuracy, timely completion, and coordination of all designs, Drawings, Specifications, reports, and other services furnished by the ENGINEER under this Agreement. The ENGINEER shall, without additional compensation, correct or revise any errors, omissions, or other deficiencies in his designs, Drawings, Specifications, reports, and other services.
5. Any opinion of the probable construction cost or probable total project cost prepared by the ENGINEER represents his judgment as a design professional and is supplied for the general guidance of the OWNER. Since the ENGINEER has no control over the cost of labor and material, or over competitive bidding or market conditions, the ENGINEER does not guarantee the accuracy of such opinions as compared to Contractor bids or actual cost to the OWNER.
6. This Agreement is to be binding on the heirs, successors, and assigns of the parties hereto and is not to be assigned by either party without first obtaining the written consent of the other.
7. This Agreement represents the entire and integrated agreement between the OWNER and the ENGINEER for this project and supersedes all prior negotiation, representations, or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the OWNER and the ENGINEER.
8. Original documents, survey notes, tracings, and the like, except those furnished to the ENGINEER by the OWNER, are and shall remain the property of the ENGINEER. Documents, including Drawings and Specifications which contain an ENGINEER's stamp prepared under this Agreement, are instruments of service of the ENGINEER. Reuse of any of the Drawings and Specifications that may be developed during the project by the OWNER on extensions of this project or on any other project without the written permission of the ENGINEER shall be at the OWNER's risk. The OWNER agrees to defend, indemnify, and hold harmless the ENGINEER from all claims, damages, and expenses including attorneys' fees arising out of such unauthorized reuse of the ENGINEER's instruments of service by the OWNER. The ENGINEER shall make available to the OWNER, when requested, all documents, Drawings, pictures, etc., that are prepared as part of the ENGINEER's

services under this Agreement. There will be no cost for these documents except for labor, reproduction, and copying costs.

9. There are no third party beneficiaries of this Agreement between the OWNER and the ENGINEER, and no third party shall be entitled to rely upon any work performed or reports prepared by the ENGINEER hereunder.
10. Neither the OWNER nor the ENGINEER shall delegate his duties under this Agreement without the written consent of the other.
11. This Agreement may be terminated by either party in the event of default under this contract by the other party. Either party may do so by giving written notice to the other of its intent to terminate this Agreement for substantial failure to perform according to this Agreement, which written notice shall specify the failure and demand correction or remedy thereof in 10 days. In the event of failure to remedy or correct in 10 days, this Agreement may be terminated in writing at the option of the party giving the prior notice. If this Agreement is terminated, the ENGINEER shall be paid for services based on actual man hours worked to the termination notice date, including reimbursable expenses due, less any amount in dispute.
12. Unless otherwise specified within this Agreement, this Agreement shall be governed by the laws of the State of Oregon.
13. The ENGINEER shall acquire and maintain statutory Worker's Compensation insurance coverage, employer's liability, and comprehensive general liability insurance coverage.
14. The OWNER will require that any Contractor or subcontractor performing work in connection with Drawings and Specifications produced under this Agreement shall hold harmless, indemnify, and defend the OWNER and the ENGINEER, their consultants, and each of their officers, agents, and employees from any and all liability claims, losses, or damage arising out of or alleged to arise from the Contractor's (or subcontractor's) negligence in the performance of the work described in the construction Contract Documents, but not including liability that may be due to the sole negligence of the OWNER, the ENGINEER, their consultants, or their officers, agents, and employees.
15. The OWNER and the ENGINEER acknowledge that in a project of this magnitude and complexity, changes may be required as the result of possible omissions, ambiguities, or inconsistencies in the Drawings and Specifications or changes that are identified during construction which will result in an overall better end project for the OWNER, or changes which are necessary due to unusual field conditions or construction circumstances beyond the control of the OWNER, ENGINEER, or Contractor. As a consequence of the above, the OWNER realizes that the Construction Contractor may be entitled to additional payment. The OWNER agrees to set up a reserve in the project budget to be used as required to make additional payments to the Construction Contractor with respect to such changes. When additional payments are due to the Contractor, they will be made in accordance with an approved Change Order.

16. The ENGINEER shall comply with all applicable provisions of the Regulations of the U.S. Department of Commerce (Part 8 of Subtitle 15 of the Code of Federal Regulations) issued pursuant to the Civil Rights Act of 1964, in regard to nondiscrimination in employment because of race, religion, color, sex, or national origin. The ENGINEER shall comply with applicable federal, state, and local laws, rules, and regulations concerning Equal Employment Opportunity.
17. To the fullest extent permitted by law, the OWNER and ENGINEER each agree to indemnify and hold the other harmless, and their respective officers, employees, agents, and representatives from and against liability for all claims, losses, damages, and expenses, including reasonable attorneys' fees, to the extent such claims, losses, damages, and expenses are caused by the indemnifying party's negligent acts, errors, or omissions. In the event claims, losses, damages, or expenses are caused by the joint or concurrent negligence of the OWNER and ENGINEER, they shall be borne by each party in proportion to its negligence.

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

OWNER:

ENGINEER:

City of Ontario, Oregon

Anderson · Perry & Associates, Inc.

By _____

By Brad D. Baird

Type Name _____

Type Name Brad D. Baird

Title _____

Title President

(SEAL)

(SEAL)

ATTEST

ATTEST

By _____

By Brett Moore

Type Name _____

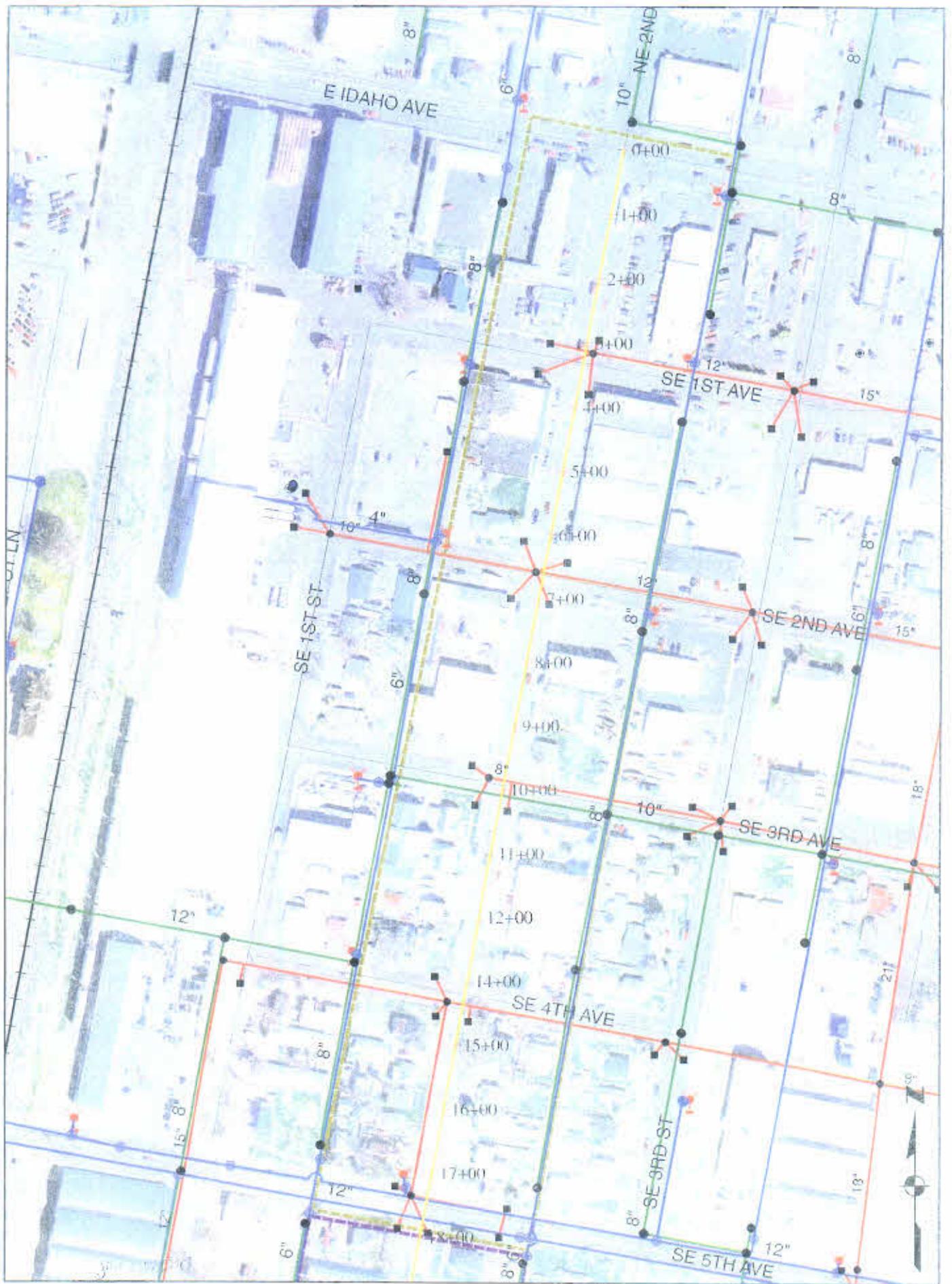
Type Name Brett Moore

Title _____

Title Secretary-Treasurer

Exhibit "A"

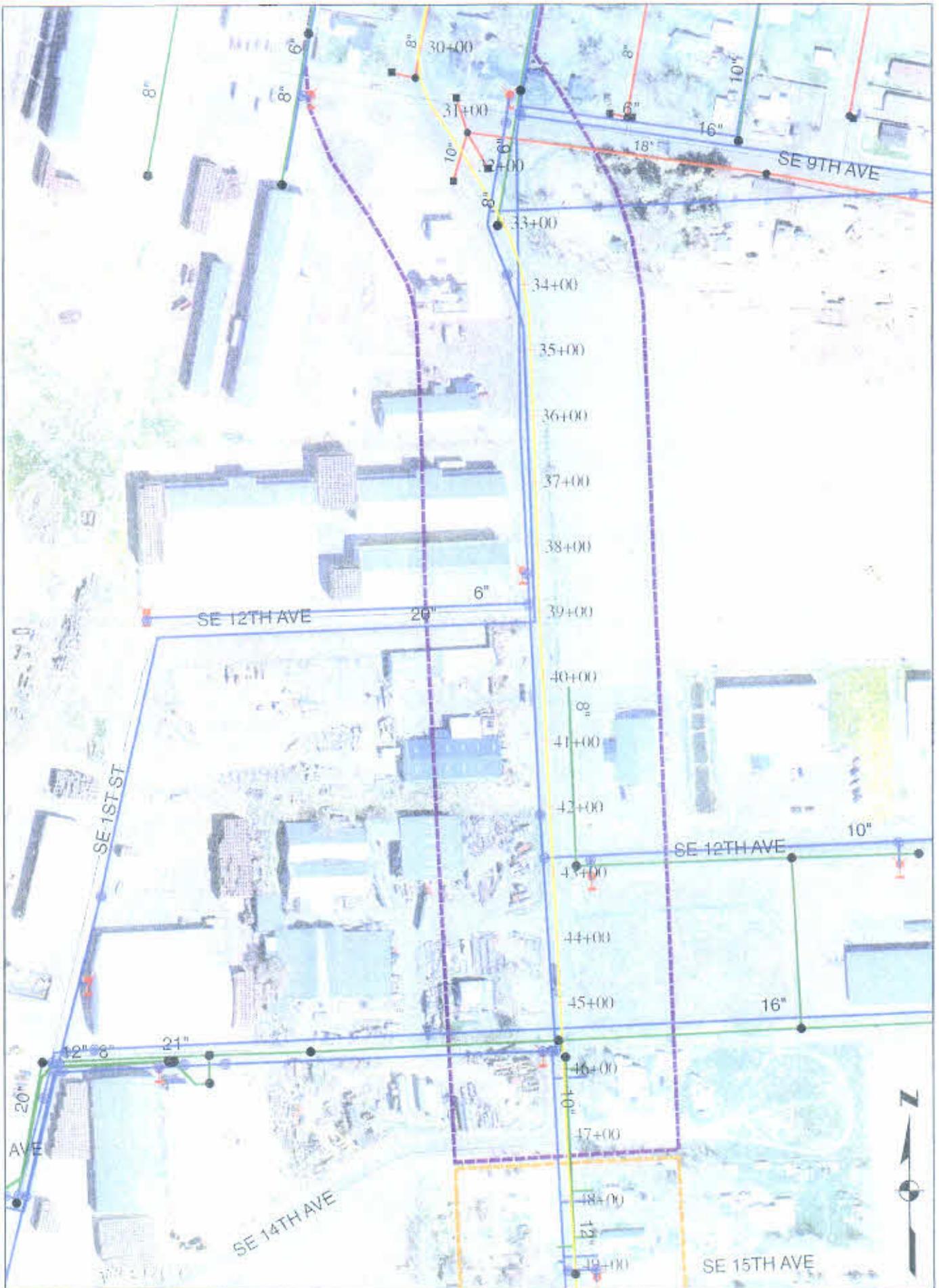
- **Schedule A**
- **Schedule B**
- **Schedule C**



- SANITARY SEWER
- WATER MAIN
- STORM DRAIN

28
 SCHEDULE A
 SE 2ND ST [E IDAHO AVE - SE 5TH AVE]

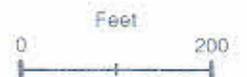




- SANITARY SEWER
- WATER MAIN
- STORM DRAIN

29 SCHEDULE B

SE 2ND ST [SE 5TH AVE - SE 14TH AVE]





- SANITARY SEWER
- WATER MAIN
- STORM DRAIN

30 SCHEDULE C

SE 2ND ST [SE 14TH AVE - SE 18TH AVE]



HOURLY FEE SCHEDULE

April 1, 2009

<u>TECHNICIANS AND ENGINEERS</u>	<u>HOURLY RATE</u>
Technician I	\$ 45.00
Technician II	\$ 50.00
Technician III	\$ 55.00
Technician IV	\$ 60.00
Technician V	\$ 65.00
Technician VI	\$ 70.00
Senior Technician I	\$ 80.00
Senior Technician II	\$ 85.00
Senior Technician III	\$ 90.00
Senior Technician IV	\$ 95.00
Senior Technician V	\$100.00
Senior Technician VI	\$110.00
Senior Technician VII	\$130.00
Staff Engineer I	\$ 80.00
Staff Engineer II	\$ 85.00
Staff Engineer III	\$ 90.00
Project Engineer I	\$ 95.00
Project Engineer II	\$100.00
Project Engineer III	\$105.00
Project Engineer IV	\$110.00
Senior Engineer I	\$115.00
Senior Engineer II	\$120.00
Senior Engineer III	\$145.00
Senior Engineer IV	\$150.00
Senior Engineer V	\$170.00
Project Representative I	\$ 73.00
Project Representative II	\$ 78.00
Project Representative III	\$ 85.00
Project Representative IV	\$ 89.00
Project Representative V	\$ 92.00
Secretary	\$ 50.00
Overtime Surcharge	\$ 20.00

SURVEYORS AND CREWS

HOURLY RATE

Survey Technician I	\$ 45.00
Survey Technician II	\$ 55.00
Survey Technician III	\$ 65.00
Survey Crew Chief IV	\$ 70.00
Survey Crew Chief V	\$ 80.00
Survey Crew Chief VI	\$ 85.00
Professional Land Surveyor I	\$ 75.00
Professional Land Surveyor II	\$ 80.00
Professional Land Surveyor III	\$ 90.00
Professional Land Surveyor IV	\$105.00
Professional Land Surveyor V	\$120.00
GPS Total Station	\$ 37.50
Robotic Survey Station	\$ 27.50
Total Station	\$ 20.50
ATV (4 hour minimum)	\$ 27.50
Computer/Plotter	\$ 19.50

OUT OF TOWN WORK

Mileage will be charged at the rate of \$0.55 per mile for standard highway vehicles and \$0.90 per mile for vans and pickup trucks. Subsistence and lodging will be billed at actual cost.

OTHER

Other miscellaneous, direct, and outside expenses, including special Consultants, will be charged at actual cost plus 10%. All accounts unpaid 30 days after date of invoice will be charged a service fee of 1.5% per month.