

AGENDA
CITY COUNCIL - CITY OF ONTARIO, OREGON
March 22, 2010, 7:00 p.m., M.T.

1) Call to order

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

2) Pledge of Allegiance

This Agenda was posted on Wednesday, March 17, 2010, and a study session was held on Thursday, March 18, 2010. Copies of the Agenda are available at the City Hall Customer Service Counter and on the city's website at www.ontariooregon.org.

3) Motion to adopt the entire agenda

4) Consent Agenda: Motion Action Approving Consent Agenda Items

A) Approval of Minutes of Regular Meeting of 03/01/10 1-4
B) Proclamation: Sexual Assault Awareness Month-April 5
C) Ordinance #2639-2010: Inland Development Franchise Agreement (Final Reading) 6-38
D) Resolution #2010-116: Deed Relinquishing Title of Property to Marlow Pounds and a Deed Conveying Title from Marlow Pounds for Real Property in Malheur County to Become the Site for the Murakami Sanitary Sewer Lift Station 39-49
E) Approval of the Bills

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

6) New Business:

A) Request to Change Park Name: Rotary/Laxon Park to Rotary Park 50-51
B) Approval to Expend Remaining Grant Funds: AIP 3-41-0044-008 52-84
C) Ordinance #2638-2010: Amend OMC 4-5 Regulating Maintenance Standards for Buildings; Defining Dangerous Buildings; and Revising Penalties and Procedure for Enforcement of Maintenance Standards in Compliance with Senate Bill 915 (Final Reading) 85-101
D) Ordinance #2640-2010: Amend OMC 9-3 to add Section 2(B) and Amend P&Z Code 10-57-16(B) Restricting Motor and Recreational Vehicle Parking in Front Yards and Setting Fines for Parking Violations (1st Reading) 102-108
E) Ordinance #2641-2010: Amend OMC 5-3 Add Section 2 Prohibiting the Use of Fireworks in City Parks and on Public School Grounds (1st Reading) 109-110
F) Bid Award: Golf Course Clubhouse Improvements (Hand-Out)

7) Topics for Discussion: Thursday

A) 8-C Facilities Task Force Bond Promotional Committee
B) SREDA Update

8) Executive Session: Thursday Only

A) ORS 192.660(2)(h) 111

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

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

COUNCIL MEETING MINUTES
March 1, 2010

The regular meeting of the Ontario City Council was called to order by Mayor Joe Dominick at 7:00 p.m. on Monday, March 1, 2010, in the Council Chambers of City Hall. Council members present were Norm Crume, Joe Dominick, Charlotte Fugate, John Gaskill, Susann Mills, David Sullivan and Ron Verini.

Members of staff present were Henry Lawrence, Tori Barnett, Larry Sullivan, Kathy Daly, Yorick de Tassigny, and camera operator Erika Hopper.

John Gaskill led everyone in the Pledge of Allegiance.

AGENDA

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

CONSENT AGENDA

Susann Mills moved, seconded by Ron Verini, to approve Consent Agenda Item A: Approval of Minutes of regular meeting of 02/16/2010; Item B: Bid Award: Chipseal Oil; Item C: Indigent Care Services Agreement Addendum: City-Holy Rosary Medial Center; Item D: Resolution #2010-112: Engineering Design for North Oregon Street, Phase 2; and Item E: Approval of the Bills. Roll call vote: Crume-yes; Fugate-yes; Gaskill-yes; Mills-yes; Sullivan-yes; Verini-yes; Dominick-yes. Motion carried 7/0/0.

PRESENTATION: Ford Family Foundation for Improvements at Laxon/Rotary Park

Sandy Jean Fuson, representing the Ford Family Foundation Leadership Program, along with Mary Christianson, Betty Carter, Amber Campbell, and Jan Snyder, provided the Council with their plans to develop a basketball court at Laxon/Rotary Park. The budget would include painting the restrooms mural, the security lighting, painting the playground equipment, new signage, and the basketball court; also, the City had agreed to do in-kind support of the project. They wanted to get moving on the project by spring, and were hoping that the Council would adopt the proposed resolution of support.

Mayor Dominick voiced his appreciation to the organization for their interest in improving the park, and looked forward to working with them on the project.

AMEND AGENDA

Charlotte Fugate moved, seconded by John Gaskill, to amend the Agenda to add Resolution #2010-115 under New Business. Roll call vote: Crume-yes; Fugate-yes; Gaskill-yes; Mills-yes; Sullivan-yes; Verini-yes; Dominick-yes. Motion carried 7/0/0.

NEW BUSINESS

Appointment(s) to Business Loan Fund Committee

Mayor Dominick recommended the three applicants be appointed to the Committee, with staggered terms.

Charlotte Fugate moved, seconded by David Sullivan, to appoint Jackie Hansen, David L. Knight, and Janet Komoto to the City of Ontario Business Loan Fund Committee, effective immediately, with staggered terms: Janet Komoto December 31, 2010, Jackie Hansen December 31, 2012, and David L. Knight December 31, 2011. Roll call vote: Crume-yes; Fugate-yes; Gaskill-yes; Mills-yes; Sullivan-yes; Verini-yes; Dominick-yes. Motion carried 7/0/0.

Resolution #2010-113: Enterprise Zone Redesignation

Jim Jensen, Malheur County Economic Development Director, stated the Malheur County Enterprise Zone was going to sunset, and the proposed resolution would work towards redesignating the zone. The resolution would become part of the application which would be submitted to the state.

Ron Verini moved, seconded by Susann Mills, to adopt Resolution #2010-113, A RESOLUTION BY THE GOVERNING BOARD OF ONTARIO, OREGON, TO SPONSOR AN ENTERPRIZE ZONE. Roll call vote: Crume-yes; Fugate-yes; Gaskill-yes; Mills-yes; Sullivan-yes; Verini-yes; Dominick-yes. Motion carried 7/0/0.

Resolution #2010-114: Receive/Expend American Recovery and Reinvestment Act Energy Efficiency and Conservation Block Grant from Oregon Department of Energy (\$728,000)

Yorick de Tassigny, Facilities Manager, stated the proposed resolution would approve an agreement between the City of Ontario and the State of Oregon Department of Energy (ODOE) for the acceptance of Energy Efficiency and Conservation Block Grant (EECBG) funds for the design and construction of a lighting and HVAC upgrade project at Ontario City Hall. The project was based on recommendations made by McKinstry following a level 1 energy audit of the facility. The upgrade to the energy systems were expected to save the City \$12,500 in energy costs annually. Currently, the City paid approximately \$35,000 annually in electricity costs for City Hall alone. In November 2009, staff applied for American Recovery and Reinvestment Act of 2009 (ARRA) Energy Efficiency and Conservation Block Grant (EECBG) for funding to complete a lighting and HVAC (heating, ventilating and air conditioning) upgrade at City Hall. The projects were identified in a report compiled by McKinstry in October of 2008 following the audit. On January 29, 2010, ODOE issued a press release identifying the cities and counties to receive recovery act funds, and listed the Ontario City Hall lighting and HVAC project as one selected for funding. The City was awarded \$728,000, the full amount for designing and completing the project, less the estimated \$10,000 in staff time that would be required for administering the work. Portions of the project would also qualify for financial incentives available through Idaho Power.

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

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

This project was aimed at reducing City Hall's operational costs by rendering the energy systems more efficient. The City currently paid approximately \$35,000 in electricity costs annually. It was estimated that this project would result in a cost savings of \$12,500. However, the project could be expected to cause some disruption to the normal flow of business but it was highly unlikely to cause any interruption of services or lengthy displacements of staff.

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

Susann Mills moved, seconded by David Sullivan, to adopt Resolution #2010-114, A RESOLUTION ACKNOWLEDGING RECEIPT AND AUTHORIZING EXPENDITURE OF A \$728,000 AMERICAN RECOVERY AND REINVESTMENT ACT (ARRA) ENERGY EFFICIENCY AND CONSERVATION BLOCK GRANT (EECBG) WITHIN THE GRANT FUND. Roll call vote: Crume-yes; Fugate-yes; Gaskill-yes; Mills-yes; Sullivan-yes; Verini-yes; Dominick-yes. Motion carried 7/0/0.

Ordinance #2639-2010: Inland Development Franchise Agreement (1st Reading)

Henry Lawrence, City Manager, began the discussion, and then deferred to Larry Sullivan, City Attorney. The proposed ordinance would grant Inland Development Corporation a telecommunications franchise. Inland Development Corporation was a not-for-profit 501(c)(4) corporation. It requested a franchise agreement with the City to install fiber optic cable in the City rights of way to provide broadband service to 8C School District and TVCC. Its project was part of the Oregon Health Network's Rural Healthcare Pilot Project in Oregon. Inland Development Corporation headquarters was located in Heppner and had franchise agreements with a number of other cities in eastern Oregon. Ordinance 2639-2010 incorporated Title 3, Chapter 2 of the City Code governing telecommunications franchises. It used the Malheur Bell franchise agreement as a template approved by the City Council on March 16, 2009, through Ordinance No. 2626-2009.

The franchise fee of 7% of gross revenues in Section 2.1 of the ordinance was the same fee charged to Malheur Bell. Federal law required that municipalities treat competitive local exchange carriers equally. That requirement appeared in Section 2.2 of the ordinance, just as it occurred in the Malheur Bell ordinance. There were two changes from the Malheur Bell Agreement, in that the proposed franchise agreement would be for five (5) years, not the ten (10) which Malheur Bell had; and second, the Inland franchise would be require posting a bond by the Corporation to use the City's rights of way and to do the construction work in order to string the fiber optic cable. The attorney for Inland Development Corporation had received a draft of the ordinance, and could possibly request changes to the ordinance, prior to the final reading.

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

David Sullivan moved, seconded by Susann Mills, to adopt Ordinance #2639-2010, AN ORDINANCE GRANTING INLAND DEVELOPMENT CORPORATION THE RIGHT TO MAINTAIN A GENERAL TELECOMMUNICATIONS BUSINESS IN THE CITY OF ONTARIO AND TO USE THE RIGHTS OF WAY OF THE CITY OF ONTARIO FOR ITS TELECOMMUNICATIONS OPERATIONS on First Reading by Title Only. Roll call vote: Crume-yes; Fugate-yes; Gaskill-yes; Mills-yes; Sullivan-yes; Verini-yes; Dominick-yes. Motion carried 7/0/0.

Resolution #2010-115: A Resolution Authorizing the City to Cooperate with the Rotary Club and the Ford Family Leadership Class to Make Improvements to Laxon/Rotary Park

Mayor Dominick reminded the Council this was an issue that had been discussed earlier in the meeting.

Kathy Daly, Aquatics/Recreation/Cemetery/Parks Director, voiced her support for the project. City staff would be working closely with the group, and would be assisting in getting the park improved and family ready.

Joe Dominick moved, seconded by Charlotte Fugate, to adopt Resolution #2010-115, A RESOLUTION AUTHORIZING THE CITY OF ONTARIO TO COOPERATE WITH THE ROTARY CLUB AND THE FORD FAMILY LEADERSHIP CLASS TO MAKE IMPROVEMENTS TO LAXON ROTARY PARK. Roll call vote: Crume-yes; Fugate-yes; Gaskill-yes; Mills-yes; Sullivan-yes; Verini-yes; Dominick-yes. Motion carried 7/0/0.

CORRESPONDENCE, COMMENTS, AND EX-OFFICIO REPORTS

- Kathy Daly stated soccer registration was finishing up, and they were at 600+ so far. They were looking for sponsors for the teams, and for volunteers for coaching. Also, swimming lessons would be offered during spring break.
- Tori Barnett stated the Ontario City Government Leadership Scholarship would be opening up for graduating seniors, and had been forwarded to the high school. CK3, LLC had generously donated \$250 to combine with the City's \$500, to make the scholarship \$750; then Anderson-Perry of La Grande had also donated \$750 for a second scholarship. The criteria and application would be the same for the two scholarships.

CITY OF ONTARIO 444 SW 4TH STREET ONTARIO OREGON 97914

- Mayor Dominick stated there were still some vacancies on various City boards – the Recreation Board and the Public Works Committee were two with openings.
- Henry Lawrence stated he had sent the Council a Google link regarding the future Ontario data center, which would be located on the newly sold piece of the Stelling property.
- Councilor Verini stated the VA from Boise had sent over the Veteran's Center van last Friday, and they had expected one or two people from the veteran community to come in, but the van was busy from arrival, until two hours *AFTER* they were supposed to have left. The van would be back, at TVCC, possibly on the 9th.
- Councilor Gaskill reminded everyone of the Firefighter's Auction/Dinner/Dance coming up on Saturday, March 6th. It would be held at the Armory.
- Councilor Fugate stated she was working with the cat capture/neuter/release program, and they were going to be hosting a yard sale in May, called "The Fat Cat" yard sale, so anyone who had things to donate, they could contact her.
- Mayor Dominick stated the Ontario Sister City events would run May 19-31. Host families were all lined up, and there were going to be 13 students and 2 adults. There would be a welcoming reception on the 19th at the Four Rivers Cultural Center, beginning at 6:30, and the public was invited to attend.
- Mayor Dominick stated May 15th was Ontario Serve Day 2010. Sign up sheets were available on the website, www.serveday.info and there were always volunteers needed to help clean up Ontario.

ADJOURN

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

Joe Dominick, Mayor

ATTEST:

Tori Barnett, MMC, City Recorder

PROCLAMATION

- WHEREAS,** sexual assault affects every person of Oregon as a victim-survivor or as a family member, friend, neighbor, employer, or co-worker of a victim-survivor; and
- WHEREAS,** it is estimated that 1 out of 6 adult women in Oregon has been the victim of forcible rape sometime in her lifetime; and
- WHEREAS,** it is important to recognize that sexual violence is preventable; and
- WHEREAS,** it is important to encourage healthy, non-violent interactions and diminish aspects of society that promote and support sexual violence; and
- WHEREAS,** it is important to broaden the scope and increase the effectiveness of sexual violence prevention efforts through partnerships; and
- WHEREAS,** it is important to recognize the compassion and dedication of the individuals who provide services to survivors and work to prevent sexual violence; and
- WHEREAS,** every individual and community in Oregon has the ability to help eliminate sexual violence by working together to promote social change.

NOW, THEREFORE, BE IT RESOLVED, that I, Joe Dominick, Mayor of the City of Ontario, do hereby proclaim the month of April 2010 as

SEXUAL ASSAULT AWARENESS MONTH

and encourage the citizens of Ontario to join in this observance.



Joe Dominick, Mayor

CONSENT AGENDA
March 22, 2010

TO: Mayor and City Council

FROM: Larry Sullivan, City Attorney

THROUGH: Henry Lawrence, City Manager

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

DATE: March 15, 2010

SUMMARY:

Attached are the following documents:

- Ordinance No. 2639-2010 w/Attachments "A" and "B"
- Inland Letter dated 12/10/2009 w/Maps

This ordinance grants to Inland Development Corporation a telecommunications franchise.

PREVIOUS COUNCIL ACTION:

03/01/10 Council passed Ordinance #2639-2010 on 1st reading.

STAFF RECOMMENDATION:

Staff recommends the Council adopt Ordinance #2639-2010, AN ORDINANCE GRANTING INLAND DEVELOPMENT CORPORATION THE RIGHT TO MAINTAIN A GENERAL TELECOMMUNICATIONS BUSINESS IN THE CITY OF ONTARIO AND TO USE THE RIGHTS OF WAY OF THE CITY OF ONTARIO FOR ITS TELECOMMUNICATIONS OPERATIONS, on Second and Final Reading by Title Only.

ORDINANCE NO. 2639-2010

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

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

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

SECTION 1. FRANCHISE AGREEMENT AND ORDINANCE.

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

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

SECTION 2. FRANCHISE FEE.

2.1 Franchise Fee.

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

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

SECTION 3. TERM.

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

SECTION 4. POLICE POWERS.

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

SECTION 5. CHANGING CONDITIONS AND SEVERABILITY.

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

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

- 6.1 Grounds for Termination.** CITY may terminate or revoke this Agreement and all rights and privileges herein provided for any of the following reasons:
- (a) PROVIDER fails to make timely payments of the Franchise fee as required under Section 2 of this Agreement and does not correct such failure within sixty (60) calendar days after written notice by CITY of such failure;
 - (b) PROVIDER, by act or omission fails to comply with requirements set forth in the Telecommunications Code;
 - (c) PROVIDER, by act or omission, materially violates a material duty herein set forth in any manner particularly within PROVIDER's control, and with respect to which redress is not otherwise herein provided. In such event, CITY, acting by or through its CITY Council, may determine, after hearing, that such failure is of a material nature, and thereupon, after written notice giving PROVIDER notice of such determination, PROVIDER, within thirty (30) calendar days of such notice, shall commence efforts to remedy the conditions identified in the notice and shall have ninety (90) calendar days from the date it receives notice to remedy the conditions. After the expiration of such 90-day period and failure to correct such conditions, CITY may declare the Franchise forfeited and this Agreement terminated, and thereupon, PROVIDER shall have no further rights or authority hereunder; provided, however, that any such declaration of forfeiture and termination shall be subject to judicial review as provided by law, and provided further, that in the event such failure is of such nature that it cannot be reasonably corrected within the 90-day time period provided above, CITY shall provide additional time for the reasonable correction of such alleged failure if the reason for the noncompliance was not the intentional or negligent act or omission of PROVIDER; or
 - (d) PROVIDER becomes insolvent, unable or unwilling to pay its debts; is adjudged bankrupt; or all or part of its facilities should be sold under an instrument to secure a debt and is not redeemed by PROVIDER within sixty (60) days.
- 6.2 Reserved Rights.** Nothing contained herein shall be deemed to preclude PROVIDER from pursuing any legal or equitable rights or remedies it may have to challenge the action of CITY. By accepting this Agreement, PROVIDER reserves all rights under the law including, but not limited to, those rights arising under section 253 of the Federal Telecommunications Act and the law of the State of Oregon.
- 6.3 Remedies at Law.** In the event PROVIDER or CITY fails to fulfill any of its respective obligations under this Agreement, CITY or PROVIDER, whichever the case may be, shall have a breach of contract claim and remedy against the other, in addition to any other remedy provided herein or by law; provided, however, that no remedy that would have the effect of amending the specific provisions of this Agreement shall become effective without such action that would be necessary to formally amend the Agreement.
- 6.4 Third Party Beneficiaries.** The benefits and protection provided by this Agreement shall inure solely to the benefit of CITY and PROVIDER. This Agreement shall not be deemed to create any right in any person who is not a party and shall not be construed in any respect to be a contract in whole or in part for the benefit of any third party (other than the permitted successors and assigns of a party hereto).

SECTION 7. PARTIES' DESIGNEES.

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

SECTION 8. INSURANCE AND INDEMNIFICATION

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

SECTION 9. CONSTRUCTION PROVISIONS

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

SECTION 10. GENERAL PROVISIONS.

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

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

AYES:
NAYS:
ABSENT:

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

ATTEST:

Joe Dominick, Mayor

Tori Barnett, MMC, City Recorder

ACCEPTANCE BY PROVIDER:

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

INLAND DEVELOPMENT CORPORATION

By: _____
Nate Arbogast, President

ATTEST:

Secretary

ORDINANCE NO. 2625-2009

AN ORDINANCE AMENDING CODE CHAPTER 2 OF TITLE 3, (TELECOMMUNICATIONS)
AND CODE CHAPTER 8 OF TITLE 8 (RIGHT OF WAY)
TO RESOLVE CONFLICTS AND PROVIDE CONSISTENCY

FEB 20 2009

DEBORAH R. DELONG County Clerk
By *Sherril Chubb* Deputy

- WHEREAS,** On June 29, 1999, the Ontario City Council enacted Ordinance No. 2427, which was codified as Title 3, Chapter 2, under the Chapter heading "Telecommunications"; and
- WHEREAS,** On July 1, 2002, the Ontario City Council enacted Ordinance No. 2496, which was codified as Title 8, Chapter 8, under the chapter heading "Right of Way"; and
- WHEREAS,** Uncertainty and ambiguity exists as to which provisions of Title 8, Chapter 8 (Right of Way) apply to telecommunications companies which have entered into franchise agreements with the City of Ontario; and
- WHEREAS,** The City Council desires to reconcile the application of the two Code chapters to reduce the ambiguity and uncertainty.

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

1. The definition for "Emergency" in Section 8-8-1 is amended to read:
EMERGENCY has the meaning provided for in ORS 401.025.
2. Section 8-8-2 is amended to read:

8-8-2 PERMITS

(A) Permit Required. Any person other than a telecommunications carrier regulated under Chapter 2 of Title 3 (Telecommunications) of the Ontario City Code, who, after the effective date of this Chapter, desires to perform any work on a street or highway, or encroach on a street or highway, shall first apply for and obtain a permit in the manner set forth in this Chapter.

(B) Exemptions from Permit – No permit shall be required in the following circumstances:

1. Work undertaken by the City of Ontario, or by contractors or agents for or on behalf of the City of Ontario;
2. Repair, replacement, or maintenance activities for overhead utilities and street lights which are undertaken within the outer portion of the Street or Highway right-of-way outside of all traffic lanes and with no resulting obstruction of said traffic lanes. Routine maintenance activities within the traffic lanes provided: the work can be accomplished in less than one hour, proper traffic is provided in conformance with the MUTCD, and peak hour traffic is not impaired.

3. Routine maintenance of underground facilities such as sanitary sewer line cleaning, sewer line video inspection, fire hydrant flushing, and valve operations, provided the routine maintenance Work can be accomplished in less than one hour, proper traffic control is provided in conformance with the MUTCD, and peak hour traffic is not impaired.

(C) Emergencies. Nothing in this Chapter shall be construed to prevent any person maintaining any pipe, conduit, cable, or duct on, in or under any street or highway, by virtue of any statute, ordinance, this Chapter or a permit, from making such excavation or street or highway obstruction as may be necessary for the preservation of life or property when an emergency exists, provided that the person making the excavation or obstruction shall notify the Director within one (1) working day following the commencement of the Emergency and obtain a Permit.

3. Section 8-8-7 is amended to read:

8-8-7 LIABILITY INSURANCE

No permit shall be issued unless and until the applicant has submitted to the Director a certificate of Insurance or its equivalent from a company, rated B++ or better by AM Best, authorized to do business in the State of Oregon and licensed by the Oregon Department of Insurance evidencing that the applicant has in force and effect public liability insurance covering death, bodily or personal injury and property damage that may occur during the performance of the permitted work, with minimum limits of liability of not less than ~~five hundred dollars (\$500,000)~~ for any occurrence or accident, regardless of the number of persons injured or the number of claimants. The Director may require that it be named as a co-insured in such policy, and, if so, the insurance shall not be canceled or reduced in coverage until ninety (90) days after written notice of such cancellation or reduction in coverage shall have been given to the City.

4. Section 8-8-7 is amended to read:

8-8-7 PERFORMANCE BOND

As a condition of the permit, no permit shall be issued unless and until the applicant therefore has submitted to the Director a performance bond in the amount ~~not less than of the greater of ten thousand dollars (\$10,000.00) or 100% of the estimated cost of constructing permittee's facilities within the public rights of way of the City.~~ namely The performance bond shall name the City as obligee. The performance bond required hereunder shall be in a form prescribed by or acceptable to the Director, shall guarantee the satisfactory completion of any and all work contemplated to be authorized under the permit to be issued, and shall remain in full force and effect for a period of one year after the date of completion and acceptance of the work and the acceptance of the condition of the street or highway by the City. This bond shall be ~~waved~~ waived by the ~~Public Works~~ Director for work being done by a licensed contractor or utility company bonded in the State of Oregon for the work being performed and for sidewalk or irrigation lines being performed by the home owner.

5. Section 8-8-9 is amended to read:

8-8-9 INDEMNIFICATION

~~As a condition of the permit, permittee shall indemnify and save and hold the City harmless from and against all claims, demands, actions or judgments, for damages, injury or death, mechanics and other liens, arising out of the failure or neglect of permittee, permittee's employees, contractors and agents, to properly and reasonably perform permitted work, or that otherwise results from the use and occupation of the street or highway by the permittee, and including any attorney fees and costs that may be incurred by the City in defense of such claims or any appeals therefrom.~~

Each permit issued shall include, to the extent permitted by law, the permittee's express undertaking to indemnify and hold the City and its officers, employees, agents and representatives harmless from and against any and all damages, losses and expenses, including reasonable attorney's fees and costs of suit or defense, arising out of, resulting from or alleged to arise out of or result from the negligent, careless or wrongful acts, omissions, failures to act or misconduct of the permittee or its affiliates, officers, employees, agents, contractors or subcontractors in the construction, operation, maintenance, repair or removal of its facilities.

6. Section 3-2-10 is amended to read as follows:

3-2-10 Construction Codes and Standards.

Telecommunications facilities shall be constructed, installed, operated and maintained in accordance with all applicable federal, state and local codes, rules and regulations including the National Electrical Code and the National Electrical Safety Code. All work undertaken pursuant to a permit shall conform to the City's standard specifications and drawings set forth in the Idaho Standards for Public Works Construction and the Development Policy Manual 2002 with amendments thereto, and according to the plans, specifications and construction details approved by the Director, and any other conditions or requirements set forth in the permit, and shall further conform to the following:

- A. Qualifications:** The permittee shall at all times employ sufficient and qualified personnel and use equipment of sufficient size and in such mechanical condition as is required to properly complete all permitted work within the time frame specified in the permit.
- B. Diligence in Prosecution of Work:** Unless otherwise specified in the permit, all permitted work shall be diligently pursued to completion and, at a minimum; all trenches shall be worked continuously for eight hours each working day until backfilled. The maximum length of open trench in the street or highway permissible at any time shall be 300 feet (92m) or as specified by the Director at his discretion.
- C. Traffic Control Requirements:** During the course of all permitted work, the permittee shall be responsible to provide, erect, and maintain all traffic control devices, including but not limited to signs, temporary striping, barricades, arrow boards, and lighting, in conformance with the latest edition of the MUTCD and the City's supplemental specifications in

effect as of the date of issuance of the permit, or as is necessary to provide for the safety of the public and for the protection of private property as may be required by the Director.

- D. **Highway Closures:** No improved street or highway shall be closed to public use by reason of any permitted work except by the express permission of the Director. Any request for such a closure must be contained in the application for a permit, or if such a closure was not reasonably anticipated at the time the application for permit was made, at least two (2) working days in advance of the proposed closure. During the period of any authorized closure, the permittee shall be responsible for providing such access as is necessary for the passage of any emergency vehicle, equipment or personnel. Prior to initiating any such closure, or commencing any work, which may hinder or delay any emergency vehicle, equipment or personnel, the permittee shall advise all applicable emergency organizations of the location and nature of such closure or work and make any modifications to the proposed closure or work as may be deemed necessary by the emergency organization or the director. Except when closures have been authorized pursuant to the provisions of this subsection, the permittee shall be responsible for keeping the improved street or highway clear and maintained for public travel.

- E. **Alignment of Facilities:** All Facilities to be placed in the street or highway shall be laid to the extent reasonably possible in a straight line either parallel to adjacent property lines or perpendicular to the adjacent property lines in order to minimize the risk of damage to any such facility from any future work in the street or highway. The location and depth shall follow City and State standards.

- F. **Clean Up and Restoration:** During the course of the performance of all permitted work, the street or highway shall be maintained reasonably clear of all refuse, rubbish, excess earth, rock, unused material and other debris as may be reasonably ordered by the Director. Upon completion of any permitted work, or when directed by the Director, the permittee shall immediately clean up and remove from the street or highway all refuse, rubbish, excess earth, rock, unused material and other debris of any kind resulting from said work and restore the surface of the street or highway so as to leave the project area in a condition as good as or better than that prior to the commencement of the work, to the reasonable satisfaction of the Director. In the event the permittee fails to do so, any necessary clean up and restoration work may be performed or contracted by the City and the cost thereof charged to the permittee, which cost may be recovered by the City by making claim against the permittee's performance bond posted in accordance with the provisions of Code Section 3-2-23. No refuse, rubbish, excess earth, rock, unused materials or other debris shall be flushed into storm drains nor placed or maintained on a Street or Highway during the performance of any Permitted Work in such a manner as to constitute a hazard to the traveling public, pedestrians, or the City. Any such refuse, rubbish, excess earth, rock, unused materials or other debris shall immediately be removed upon the order of the Director.

- G. **Avoidance of Nuisance:** All permitted work shall be conducted and carried out in such manner as to avoid unnecessary inconvenience, annoyance or nuisance to the general public and occupants of neighboring property. Appropriate measures shall be taken to reduce noise, dust, mud and unsightly debris. No tool, appliance, or equipment producing noise of sufficient volume to disturb the peace or repose of occupants of neighboring property shall be used in the performance of any permitted work between the hours of 10:00 p.m. and 6:00 a.m., except with the express written permission of the Director, or in the case of an emergency.
- H. **Street or Highway Cuts:** Any pavement, curb, sidewalk or other structure on a street or highway which is removed or damaged during the course of any permitted work shall be restored to its original condition or better. In the event an existing improved street or highway is cut and trenched in the performance of such Work, the trench and cut shall be back filled and at least a temporary surface repair provided as follows: 1). For residential streets a temporary patch for a crosscut shall be made within 3 days. 2). For collector streets a temporary patch for a crosscut shall be made within 2 days. 3). For arterial streets a temporary patch for a crosscut and long cuts shall be made the same day. Any such cut or trench shall, after the back filling thereof, be restored to a condition suitable for the passage of vehicles, pedestrians or other public uses in such a manner that it will not pose a hazard or cause damage thereto, provided the location and existence of such surface conditions shall be posted with signs in accordance with the provisions of the MUTCD or as otherwise required by the Director. Permanent surface repairs shall be provided within thirty (30) calendar days of opening such cuts, unless otherwise authorized by the Director. During the winter months or during periods of weather conditions which prevent the making of permanent surface repairs to street or highway cut areas, the Director may require that temporary patches or surface repairs be placed as may be necessary to restore the traveled way until such time as permanent repairs can be made. Temporary patches or surface repairs shall be made by the use of any material which is not permeable to water, does not become unstable as a result of the common use of the particular area, provides a surface smoothness consistent with posted vehicle speed, and does not constitute a hazard to the public. Notwithstanding anything contained herein to the contrary, any permanent repair to street or highway cuts parallel to the centerline of an improved street or highway must be restored by a paving machine at the discretion of the Director.
- I. **Installation of Facilities Under New Street or Highway Surfaces:** Notwithstanding anything contained in subparagraph H above to the contrary, where an improved Street or highway surface has been in service for five years or less, any facility to be installed thereunder shall be bored and no cutting thereof shall be permitted, except with the written approval of the Director. Any person who is aggrieved by a decision of the Director may take an appeal thereof to the City Council.

J. **Drainage Requirements:** Provision shall be made for the prompt and proper collection and removal of all surplus water, muck, silt, slurry or other runoff pumped from excavations or resulting from sluicing or other permitted work. All gutters shall be maintained free and unobstructed for the depth of the adjacent curb and for at least one foot away from the face of such curb at the gutter line. Where a gutter crosses an intersecting improved street or highway, an adequate waterway shall be provided and at all times maintained. When no gutter exists, the flow line for natural drainage at the improved street or highway edge shall be maintained during construction and at the completion thereof, restored to its original condition. A settling basin or box with adequate capacity to entrap all silt, sand, muck and other such materials shall be provided during any pumping or excavation activities in which surplus water, muck, silt or other runoff is produced. Best management practices (BMP's) for erosion and sediment control shall be employed at all times.

Other Requirements: The Director may impose such different or additional requirements on any permitted work as may be reasonable under the circumstances. In the performance of any permitted work, permittee shall comply with all applicable laws, ordinances and regulations of any government agency with jurisdiction thereof.

7. Section 3-2-11 is amended to read:

3-2-11 Construction Permits.

No person shall construct or install any telecommunications facilities within a public right of way without first obtaining a construction permit, and paying the construction permit fee established in Section ~~3-2-17~~ 3-2-15 of this Chapter. No permit shall be issued for the construction or installation of telecommunications facilities within a public right of way:

- A. Unless the telecommunications carrier has first filed a registration statement with the City pursuant to Sections 3-2-5 through 3-2-8 of this Chapter; and if applicable,
- B. Unless the telecommunications carrier has first applied for and received a franchise pursuant to ~~3-2-34~~ 3-2-29 through ~~3-2-41~~ 3-2-37 of this Chapter.

8. Section 3-2-20 is amended to read:

3-2-20 Completion of Construction.

The permittee shall promptly complete all construction activities so as to minimize disruption of the city rights of way and other public and private property. All construction work within city rights of way, including restoration, must be completed within 120 days of the date of issuance of the construction permit unless an extension or an alternate schedule has been approved pursuant to the schedule submitted and approved by the appropriate City official as contemplated by Section ~~3-2-15~~ 3-2-14 of this Chapter.

9. Section 3-2-23 is amended to read:

3-2-23 Performance and Completion Bond.

Unless otherwise provided in a franchise agreement, a performance bond or other form of surety acceptable to the City equal to at least 100% of the estimated cost of constructing permittee's telecommunications facilities within the public rights of way of the City, shall be provided before construction is commenced.

(A) ~~The surety shall remain in force until sixty (60) days after substantial completion of the work, as determined in writing by the City, including restoration of public rights of way and other property affected by the construction. The surety shall remain in full force and effect for a period of one year after the date of completion and acceptance of the work and the acceptance of the condition of the street or highway by the City. This bond shall be waived by the Director for work being done by a licensed contractor or utility company bonded in the State of Oregon for the work being performed.~~

(B) The surety shall guarantee, to the satisfaction of the City:

1. Timely completion of construction;
2. Construction in compliance with applicable plans, permits, technical codes and standards;
3. Proper location of the facilities as specified by the City;
4. Restoration of the public rights of way and other property affected by the construction; and
5. Timely payment and satisfaction of all claims, demands or liens for labor, material, or services provided in connection with the work.

10. Section 3-2-24 is amended to read:

3-2-24 Location of Facilities.

All facilities located within the public right of way shall be constructed, installed and located in accordance with the following terms and conditions, unless otherwise specified in a franchise agreement:

(A) Whenever all existing electric utilities, cable facilities or telecommunications facilities are located underground within a public right of way of the City, a grantee with permission to occupy the same public right of way must also locate its telecommunications facilities underground.

(B) Whenever all new or existing electric utilities, cable facilities or telecommunications facilities are located or relocated underground within a public right of way of the City, ~~a grantee with permission to occupy the same public right of way must also locate telecommunications facilities underground. a~~

grantee that currently occupies the same public right of way shall relocate its facilities underground concurrently with the other affected utilities to minimize disruption of the public right of way, absent extraordinary circumstances or undue hardship as determined by the City and consistent with applicable state and federal law.

(C) All monuments or property markers set for the purpose of locating or preserving in lines of any street or highway or property adjoining a Street or Highway, all precise reference points, survey benchmarks, elevation markers, or other similar monuments, points or markers, whether temporary or permanent, shall be protected from damage during the performance of any permitted work. No such monument or marker may be removed, disturbed or destroyed, or caused to be removed, disturbed or destroyed without first obtaining the written permission of the Director. This prohibition does not apply to construction stakes belonging to the utility or agency doing the work. Permission to remove, disturb or destroy any such monuments or markers shall be made upon such conditions as shall be reasonably required by the Director, including but not limited to conditions pertaining to the payment of the expenses incidental to the proper replacement of the marker or monument and the method by which such markers or monuments shall be replaced.

11. Section 3-2-25 is amended to read:

3-2-25 Interference with the Public Rights of Way and Other Properties.

No grantee may locate or maintain its telecommunications facilities so as to unreasonably interfere with the use of the public rights of way by the City, by the general public or by other persons authorized to use or be present in or upon the public rights of way. All use of public rights of way shall be consistent with City codes, ordinances and regulations as well as the following requirements:

(A) Location of Existing Facilities and Structures: Prior to commencing any permitted work, the permittee shall attempt to notify the owner of any structure or property which may be located in the street or highway in which such work is to be performed, including but not limited to utility companies and similar entities, and the Director in order to determine the location of any conflicting facilities, structures, properties or signalization equipment so as to avoid any damage thereto during the course of performing the work. The permittee is required to notify the local one-call utility locate agency (Dig Line) and request the marking of underground facilities two working days prior to the commencement of the work.

(B) Protection of Existing Facilities and Structures: All existing facilities and structures, including but not limited to pipes, conduits, poles, wires or other apparatus which may in any way be affected by any permitted work shall be protected against damage by support or other necessary means as the owner thereof may reasonably require. In the event any unidentified facilities or other structures are encountered, or facilities or other structures are damaged during the course of performing the work, the permittee shall promptly notify the owner thereof and provide the owner

reasonable opportunity to inspect the same and set out the reasonable requirements for the support, protection, and repair if necessary.

(C) Relocation of Existing Facilities: No existing facility or other structure, including but not limited to pipes, conduits, poles, wires or other apparatus, whether owned by the City or any other entity, shall be interfered with or relocated without the express written consent of the owner thereof and the Director.

(D) Requirement to Protect from Damage: All property adjoining a street or highway in which permitted work is to be performed shall be protected from injury and damage by such measures as may be suitable and necessary for the purpose, including but not limited to the provision of proper foundations. All buildings, walls, fences, or other property likely to be damaged in the course of any permitted work shall be protected by shoring or other such measures suitable and necessary for the purpose. Where, in the protection of such property, it is necessary to enter upon private property for the purpose of taking appropriate protective measures, the permittee shall obtain the prior written permission of the owner thereof. Any and all costs and expenses of such protective measures shall be borne by the permittee.

(E) Repair and Restoration of Adjoining Property: Any property adjoining a street or highway in which permitted work is to be performed which shall be damaged as a result of any permitted work, shall be repaired and restored to its original condition or better. All permitted work shall be performed in a manner calculated to leave the adjoining property clean of refuse, rubbish, excess earth, rock and other debris, and in a condition as nearly as possible to that which existed prior to the commencement of the permitted work. No trees, shrubs or other landscaping feature or structures shall be removed, even temporarily, without obtaining the prior written consent of the owner thereof. All costs and expenses incurred in the repair or restoration of adjoining property shall be borne by the permittee.

12. Section 3-2-54 is amended to read:

3-2-54 Grantee Insurance.

Unless otherwise provided in a franchise agreement, each grantee shall, as a condition of the grant, secure and maintain the following liability insurance policies from a company, rated B++ or better by AM Best, authorized to do business in the State of Oregon and licensed by the Oregon Department of Insurance, evidencing that the applicant has in force and effect policies insuring both the grantee and the City, and its elected and appointed officers, officials, agents and employees as coinsured:

(A) Comprehensive general liability insurance with limits not less than:

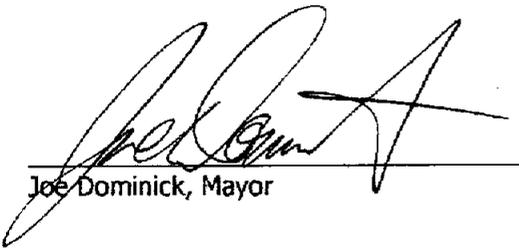
1. Three million dollars (\$3,000,000) for bodily injury or death to each person;
2. Three million dollars (\$3,000,000) for property damage resulting from any one accident; and

3. Three million dollars (\$3,000,000) for all other types of liability.
- (B) Automobile liability for owned, non-owned and hired vehicles with a limit of one million dollars (\$1,000,000) for each person and three million dollars (\$3,000,000) for each accident.
- (C) Worker's compensation within statutory limits and employer's liability insurance with limits of not less than one million dollars (\$1,000,000).
- (D) Comprehensive form premises-operations, explosions and collapse hazard, underground hazard and products completed hazard with limits of not less than three million dollars (\$3,000,000).
- (E) The liability insurance policies required by this Section shall be maintained by the grantee throughout the term of the telecommunications franchise, and such other period of time during which the grantee is operating without a franchise hereunder, or is engaged in the removal of its telecommunications facilities. Each such insurance policy shall contain the following endorsement:
- "It is hereby understood and agreed that this policy may not be canceled nor the intention not to renew be stated until 90 days after receipt by the City, by registered mail, of a written notice addressed to the City finance department of such intent to cancel or not to renew."
- (F) Within sixty (60) days after receipt by the City of said notice, and in no event later than thirty (30) days prior to said cancellation, the grantee shall obtain and furnish to the City evidence that the grantee meets requirements of this Section.
- (G) As an alternative to the insurance requirements contained herein, a grantee may provide evidence of self-insurance subject to review and acceptance by the City.

PASSED AND ADOPTED by the Common Council of the City of Ontario this 17 day of February, 2009, by the following vote:

AYES: Fugate, Sullivan, Mills, Dominick, Verini, Gaskill, Crume
NAYS: None
ABSENT: None

APPROVED by the Mayor this 17 day of February, 2009.


Joe Dominick, Mayor

ATTEST:


Tori Barnett, City Recorder

ORDER NO. 04-275

ENTERED MAY 17 2004

**This is an electronic copy. Format and font may vary from the official version.
Attachments may not appear.**

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

CP 1224

In the Matter of)	
)	
INLAND DEVELOPMENT CORPORATION)	ORDER
)	
Application for a Certificate of Authority to)	
Provide Telecommunications Service in Oregon)	
and Classification as a Competitive Provider.)	

DISPOSITION: APPLICATION GRANTED

Note: By issuing this certificate, the Commission makes no endorsement or certification regarding the certificate holder's rates or service.

The Application

On April 21, 2004, Inland Development Corporation, (Applicant) filed an application for certification to provide telecommunications service in Oregon as a competitive provider.

Applicant proposes to provide intraexchange (local exchange) switched service (i.e., local dial tone) and non-switched, private line service (dedicated transmission service) within all exchanges of the telecommunications utilities and cooperative corporations listed in Appendices A and B to this order.

Applicant also proposes to provide interexchange switched service (toll) and non-switched, private line service (dedicated transmission service) statewide in Oregon. Applicant indicates that it intends to construct its own facilities, operate as a facilities-based provider and as a reseller for intraexchange and interexchange service. Applicant may purchase network elements and finished services for resale only from other certified carriers.

Applicant will not directly provide operator services as defined in OAR 860-032-0001 and will not be an 'operator service provider' as defined in ORS 759.690(1)(d).

Applicant is affiliated with another competitive telecommunications service provider, Morrow Development Corporation dba MorrowNet. *See* Order No. 02-074 in docket CP 1005. Morrow Development Corporation has authority to provide intraexchange and interexchange service throughout Oregon. Two members of Applicant's five-member board of directors also serve as members of the board of directors of Morrow Development Corporation.

The Commission served notice of the application on April 21, 2004. No protests or requests to be made parties of the proceeding were filed.

Based on the record in this matter, the Commission makes the following:

FINDINGS AND CONCLUSIONS

Applicable Law

Two statutory provisions apply to this application. First, ORS 759.020 governs Applicant's request to provide telecommunications as a competitive provider. Under ORS 759.020(5), the Commission shall classify Applicant as a competitive provider if Applicant demonstrates that its services are subject to competition, or that its customers or those proposed to become customers have reasonably available alternatives. In making this determination, the Commission must consider the extent to which services are available from alternative providers that are functionally equivalent or substitutable at comparable rates, terms and conditions, existing economic or regulatory barriers to entry, and any other factors deemed relevant.

Second, ORS 759.050 governs Applicant's request to provide local exchange (intraexchange) telecommunications service. Under ORS 759.050(2)(a), the Commission may authorize Applicant to provide local exchange service within the local exchange of a telecommunications utility if the Commission determines such authorization would be in the public interest. In making this determination, the Commission must consider the extent to which services are available from alternative providers, the effect on rates for local exchange service customers, the effect on competition and availability of innovative telecommunications service in the requested service area, and any other facts the Commission considers relevant. *See* Order No. 96-021.

Designation as a Competitive Provider

Applicant has met the requirements for classification as a competitive telecommunications service provider. Applicant's customers or those proposed to become customers have reasonably available alternatives. The incumbent telecommunications utilities and cooperative corporations listed in the appendices provide the same or similar local exchange services in the local service area requested by Applicant. AT&T, MCI,

Sprint Communications, Qwest Corporation, Verizon Northwest Inc., and others provide interexchange telecommunications service in the service area requested by Applicant. Subscribers to Applicant's services can buy comparable services at comparable rates from other vendors. Economic and regulatory barriers to entry are relatively low.

Public Interest

With regard to the general factual conclusions relevant to this proceeding, the Commission adopts the Commission's findings in Order No. 93-1850 and Order No. 96-021. Based on a review of those findings, as well as information contained in the application, the Commission concludes that it is in the public interest to grant the application of Inland Development Corporation, to provide local exchange telecommunications service as a competitive telecommunications provider in exchanges of the telecommunications utilities and cooperative corporations listed in Appendices A and B, as described in the application. Further, it is in the public interest to grant statewide interexchange authority as described in the application. This finding will have no bearing on any determination the Commission may be called upon to make under sections 251 or 252 of the Telecommunications Act of 1996 (47 USC § 251, 252) with regard to the telecommunications utilities and cooperative corporations in this docket.

Conditions on the Certificate

In Order No. 96-021, the Commission interpreted ORS 759.050 and established conditions applicable to competitive local exchange carriers. Also, other conditions are listed in administrative rules, including among others OAR 860-032-0007. Applicant, as a competitive provider, shall comply with the conditions adopted in Order No. 96-021, as well as all applicable laws, Commission rules, and orders related to provision of telecommunications service in Oregon.

Per ORS 759.050(2)(c) and Order No. 96-021, Applicant shall comply with the following conditions.

1. Applicant shall terminate all intrastate traffic originating on the networks of other telecommunications providers that have been issued a certificate of authority by the Commission.
2. Applicant shall make quarterly contributions to the Oregon Universal Service fund based on a Commission approved schedule and surcharge percentage assessed on all retail intrastate telecommunications services sold in Oregon, pursuant to ORS 759.425. If Applicant bills the surcharge to its end-users, Applicant shall show the charges as a separate line item on the bill with the words "Oregon Universal Service Surcharge ____%".
3. Applicant shall offer E-911 service. Applicant has primary responsibility to work with the E-911 agencies to ensure that all users of its services have access to the emergency system. Applicant will deliver or arrange to

have delivered to the correct 911 Controlling Office its customers' Automatic Number Identification telephone numbers so the lead 911 telecommunications service provider can deliver the 911 call to the correct Public Safety Answering Point. Applicant shall work with each 911 district and lead 911 telecommunications service provider to develop procedures to match Applicant's customer addresses to the 911 district's Master Street Address Guide in order to obtain the correct Emergency Service Number (ESN) for each address. Applicant shall provide the lead 911 telecommunications service provider with daily updates of new customers, moves, and changes with the correct ESN for each.

4. For purposes of distinguishing between local and toll calling, Applicant shall adhere to local exchange boundaries and Extended Area Service (EAS) routes established by the Commission. Applicant shall not establish an EAS route from a given local exchange beyond the EAS area for that exchange.
5. When Applicant is assigned one or more NXX codes, Applicant shall limit each of its NXX codes to a single local exchange or rate center, whichever is larger, and shall establish a toll rate center in each exchange or rate center proximate to that established by the telecommunications utility or cooperative corporation serving the exchange or rate center.
6. Applicant shall pay an annual fee to the Commission pursuant to ORS 756.310 and 756.320 and OAR 860-032-0095. The minimum annual fee is \$100. Applicant is required to pay the fee for the preceding calendar year by April 1.
7. Pursuant to Oregon Laws 1987, chapter 290, sections 2-8, and to OAR chapter 860, division 033, Applicant shall ensure that the Residential Service Protection Fund surcharge is remitted to the Commission. This surcharge is assessed against each retail subscriber at a rate that is set annually by the Commission.

Competitive Zones

All exchanges of the telecommunications utilities and cooperative corporations listed in the appendices to this order are designated competitive zones pursuant to ORS 759.050(2)(b).

Pricing FlexibilityDedicated Transmission Service

The telecommunications utilities listed in Appendix A are granted pricing flexibility for dedicated transmission service in their respective exchanges by this order. See Order No. 93-1850, docket UM 381.

Local Exchange Switched Service

Cooperative telephone companies are generally not regulated by the Commission for local exchange services, and therefore already have pricing flexibility. Any telecommunications utility exempt under ORS 759.040, listed in Appendix A, has pricing flexibility for local exchange service. By Order No. 96-021, at page 82, pursuant to ORS 759.050(5), the Commission established procedures whereby telecommunications utilities would be granted pricing flexibility for local exchange switched services. Qwest has complied with those procedural requirements for all of its exchanges. Verizon has complied with those procedural requirements for forty of its forty-four exchanges.

ORDER

IT IS ORDERED that:

1. The application of Inland Development Corporation, is granted with conditions described in this order.
2. Applicant is designated as a competitive telecommunications provider for intraexchange service in the local exchanges of the telecommunications utilities and cooperative corporations listed in Appendices A and B. In addition, Applicant is designated as a competitive telecommunications provider for interexchange service statewide in Oregon.
3. The local exchanges of the telecommunications utilities and cooperative corporations listed in Appendices A and B are designated as competitive zones.
4. Any obligation regarding interconnection between Applicant and the telecommunications utilities and cooperative corporations listed in Appendices A and B shall be governed by the provisions of the Telecommunications Act of 1996 (the Act). Commission Order No. 96-021 will govern the interconnection obligations between such parties for the provision of switched local services, unless otherwise addressed by an interconnection agreement or subsequent Commission order.

5. No finding contained in this order shall have any bearing on any determination the Commission may be called upon to make under sections 251 or 252 of the Act with regard to the telecommunications utilities and cooperative corporations listed in the appendices to this order.
6. The telecommunications utilities listed in Appendix A shall receive pricing flexibility on an exchange-by-exchange basis as set forth in this order.

Made, entered, and effective _____.

Lee Sparling
Director
Utility Program

A party may request rehearing or reconsideration of this order pursuant to ORS 756.561. A request for rehearing or reconsideration must be filed with the commission within 60 days of the date of service of this order. The request must comply with the requirements in OAR 860-014-0095. A copy of any such request must also be served on each party to the proceeding as provided by OAR 860-013-0070(2). A party may appeal this order to a court pursuant to applicable law.

APPENDIX A

CP 1224

EXCHANGES ENCOMPASSED BY THE APPLICATION:

ALL EXCHANGES OF THE TELECOMMUNICATIONS
UTILITIES LISTED BELOW

Telecommunications Utilities Not Exempt Pursuant to ORS 759.040

CenturyTel of Eastern Oregon, Inc.
CenturyTel of Oregon, Inc.
Qwest Corporation
United Telephone Company of the Northwest dba Sprint
Verizon Northwest Inc.

Telecommunications Utilities Exempt Pursuant to ORS 759.040

Asotin Telephone Company
Cascade Utilities, Inc.
Citizens Telecommunications Company of Oregon
Eagle Telephone System, Inc.
Helix Telephone Company
Home Telephone Company
Malheur Home Telephone Company
Midvale Telephone Exchange
Monroe Telephone Company
Mt. Angel Telephone Company
Nehalem Telecommunications, Inc.
North-State Telephone Company
Oregon Telephone Corporation
Oregon-Idaho Utilities, Inc.
People's Telephone Company
Pine Telephone System, Inc.
Roome Telecommunications, Inc.
Trans-Cascades Telephone Company

APPENDIX A
PAGE 1 OF 1

APPENDIX B

CP 1224

EXCHANGES ENCOMPASSED BY THE APPLICATION:

ALL EXCHANGES OF THE COOPERATIVE
CORPORATIONS LISTED BELOW

Beaver Creek Cooperative Telephone Company
Canby Telephone Association
Clear Creek Mutual Telephone
Colton Telephone Company
Gervais Telephone Company
Molalla Telephone Company
Monitor Cooperative Telephone Co.
Pioneer Telephone Cooperative
Scio Mutual Telephone Association
St. Paul Cooperative Telephone Association
Stayton Cooperative Telephone Co.

APPENDIX B
PAGE 1 OF 1



12/14/09

December 10, 2009

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

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

Henry J. Lawrence, Jr:

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

Sincerely,

Nate Arbogast
Nate Arbogast
Project Manager

P. O. Box 757 ^ Heppner, OR 97836 ^ Phone: 800.862.8508 ^ Fax 541.676.9663



December 10, 2009

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

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

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

CONSENT AGENDA
March 22, 2010

TO: Mayor and City Council

FROM: Dan Shepard, Engineering Technician

THROUGH: Henry Lawrence, City Manager
Chuck Mickelson, Public Works Director

SUBJECT: RESOLUTION No. 2010-116, A RESOLUTION AUTHORIZING THE MAYOR TO BE A SIGNATORY TO A DEED RELINQUISHING TITLE OF PROPERTY TO MARLOW POUNDS AND A DEED CONVEYING TITLE FROM MARLOW POUNDS FOR REAL PROPERTY IN MALHEUR COUNTY OREGON TO BECOME THE SITE OF THE MURAKAMI SANITARY SEWER LIFT STATION

DATE: March 8, 2010

SUMMARY:

- Resolution 2010-116
- Survey of exchange parcels
- Property Deeds
- Color photo (hand out at work session)

Staff is requesting that the City Council authorize the Mayor to accept property exchanged for a similar sized city owned property for the Murakami Lift Station site. This exchange of property will give the city ownership of the lot where the Murakami Lift Station was constructed during the Wastewater System Improvement Project 2006.

PREVIOUS COUNCIL ACTION:

None.

BACKGROUND:

Before the Wastewater System Improvement Project 2006 was to commence, Marlow Pounds proposed a property exchange with the city. He owned property on three sides of the proposed location of the Murakami Lift station. His proposal would place the lift station in a more convenient location for his property and expedite the granting of construction easement for the city. The City agreed to the exchange and a survey was completed for the new site and construction proceeded. Mr. Pounds has recently signed the deeds for the exchange. As this adjusted the City's and Mr. Pounds' property, an Administrative Review for a Lot Line Adjustment was processed and approved by the Planning and Zoning Department. This action became final on March 2, 2010.

FINANCIAL IMPLICATIONS:

None.

RECOMMENDATION:

City staff reviewed this easement and recommends the Council authorize the Mayor to be signatory to the attached deeds transferring property to Mr. Pounds.

RESOLUTION 2010-116

A RESOLUTION AUTHORIZING THE MAYOR TO BE SIGNATORY TO A DEED RELINQUISHING TITLE OF PROPERTY TO MARLOW POUNDS AND A DEED CONVEYING TITLE FROM MARLOW POUNDS FOR REAL PROPERTY IN MALHEUR COUNTY OREGON TO BECOME THE SITE OF THE MURAKAMI SANITARY SEWER LIFT STATION

WHEREAS, Marlow Pounds is the owner of property which was offered in exchange for a similar sized property owned by the City of Ontario; and

WHEREAS, The City of Ontario needs the property for a public purpose, specifically, to serve as the site for the Murakami Sanitary Sewer Lift Station; and

WHEREAS, The Properties are adjacent and have City facilities used for the conveyance of wastewater by pumping; and

WHEREAS, The City of Ontario and Marlow Pounds agree that the exchange of these properties are convenient and beneficial to both parties and both parcels are of equal size and value; and

WHEREAS, This relinquishment of title to the City of Ontario is authorized by ORS 271.330; and

NOW THEREFORE, BE IT RESOLVED by the Ontario City Council to authorize the Mayor to be signatory to the deeds conveying title to the City of Ontario and be a signatory to the deed conveying title to Marlow Pounds of the following described real properties in Malheur County Oregon:

See Attachment "A" and Attachment "B"

EFFECTIVE DATE: Effective immediately upon passage.

PASSED AND ADOPTED by the Ontario City Council this 15th day of March 2010, by the following vote:

Ayes:

Nays:

Absent:

APPROVED by the Mayor this 15th day of March 2010.

ATTEST:

Joe Dominick, Mayor

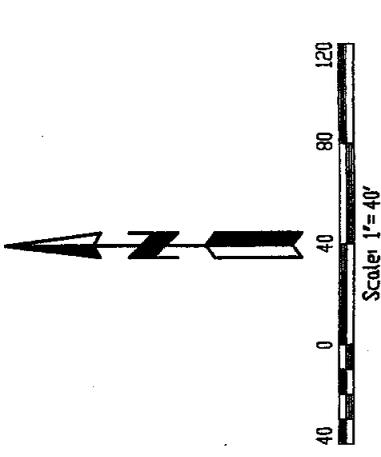
Tori Barnett, City Recorder

RECORD OF SURVEY FOR PROPERTY LINE ADJUSTMENT

BETWEEN LANDS OF THE CITY OF ONTARIO AND GLENDEN R. POUNDS/MARLOW L. POUNDS TRUST
 LOCATED IN LOT 4 OF THE ONTARIO INDUSTRIAL SITE SUBDIVISION
 SOUTHWEST 1/4 OF SECTION 10, T.18S., R.47E., W.M.
 MALHEUR COUNTY, OREGON

NOTES: SEVERAL DEEDS HAVE USED A BEARINGS OF 59°35'54" AS THE PLATTED BEARINGS OF SE 14TH AVENUE. A REVIEW OF THE PLAT OF ONTARIO INDUSTRIAL SITE AND SURVEY RECORDS R3 AND R6 INDICATE THESE BEARINGS HAD BEEN USED FOR THE DETERMINATION OF NECESSARY RECORD ANGLES FOR THIS SURVEY.

THE AREA OF THE CITY OF ONTARIO PARCEL RESULTING FROM THIS PROPERTY LINE ADJUSTMENT IS 3,994 SQUARE FEET (0.092 ACRES).



BASIS OF BEARINGS

BASIS OF BEARINGS IS 59°35'54" ALONG THE NORTH LINE OF LOT 4 OF THE ONTARIO INDUSTRIAL SITE SUBDIVISION AS SHOWN HEREON. THIS BASIS OF BEARINGS IS RELATIVE TO "AS-BUILT" DRAWINGS NORTH BELTLINE WATER AND SEWER LINE CONDUITS, UIC DATED 4-30-2003, ESTABLISHED THIS SITE BY STATIG GPS MEASUREMENTS FROM EDWARDS AND CLUMMINGS CONTROL POINTS NO. 16, 27, AND 431.

LEGEND

- SET 5/8" x 3/4" IRON ROD (REBAR) W/ 1-1/2" ALUM. CAP INSCRIBED "APA WA 41293 OR 2849" (NOTE: THE IRON RODS SET AT THE NE & SE CORNERS OF THE ADJUSTED CITY PARCEL ARE 48" LONG)
- FOUND MONUMENT AS DESCRIBED

(XXX-XX-R1) - RECORD DIMENSION PER CITED DOCUMENT

- DIMENSIONING LINE

- EXISTING FENCELINE

- EXISTING OVERHEAD POWER LINE, WITH POLE AND ANCHOR

- EXISTING GATE

- EXISTING FIRE HYDRANT

- EDGE OF EXISTING CONCRETE

- ADJUSTMENT AREA-CITY OF ONTARIO TO POUNDS/POUNDS TRUST

- ADJUSTMENT AREA-POUND/POUNDS TRUST TO CITY OF ONTARIO

REFERENCE MATERIAL

- R1: PLAT OF "ONTARIO INDUSTRIAL SITE", RECORDED JUNE, 1965 IN PLAT BOOK 3, PAGE 47.
- R2: SURVEY NUMBER 18-47-0079, FEBRUARY, 1964.
- R3: SURVEY NUMBER 18-47-0250, MAY, 1976.
- R4: SURVEY NUMBER 18-47-0426, JUNE, 1983.
- R5: SURVEY NUMBER 18-47-0426, JUNE, 1983.
- R6: SURVEY NUMBER 18-47-0686, JULY, 1994.
- R7: PUBLIC LAND SURVEY CORNER RECORD 18-47-0479, AUGUST, 1968.
- R8: PUBLIC LAND SURVEY CORNER RECORD 18-47-0709, JUNE, 1969.
- R9: MALHEUR COUNTY INSTRUMENT NO. 133516, CITY OF ONTARIO VACATION ORDINANCE NO. 1708.
- R10: MALHEUR COUNTY INSTRUMENT NO. 135756, DEED.
- R11: MALHEUR COUNTY INSTRUMENT NO. 95-5590, DEED.
- R12: MALHEUR COUNTY INSTRUMENT NO. 95-5693, DEED.
- R13: MALHEUR COUNTY INSTRUMENT NO. 95-5693, DEED.
- R14: MALHEUR COUNTY INSTRUMENT NO. 44208, EASEMENT.
- R15: MALHEUR COUNTY INSTRUMENT NO. 44208, EASEMENT.

FILE: R1\ONTARIO\L1\FT-574-2003.dwg (DOTLINEAD-HURBAKAMI)

RECORD OF SURVEY PROPERTY LINE ADJUSTMENT

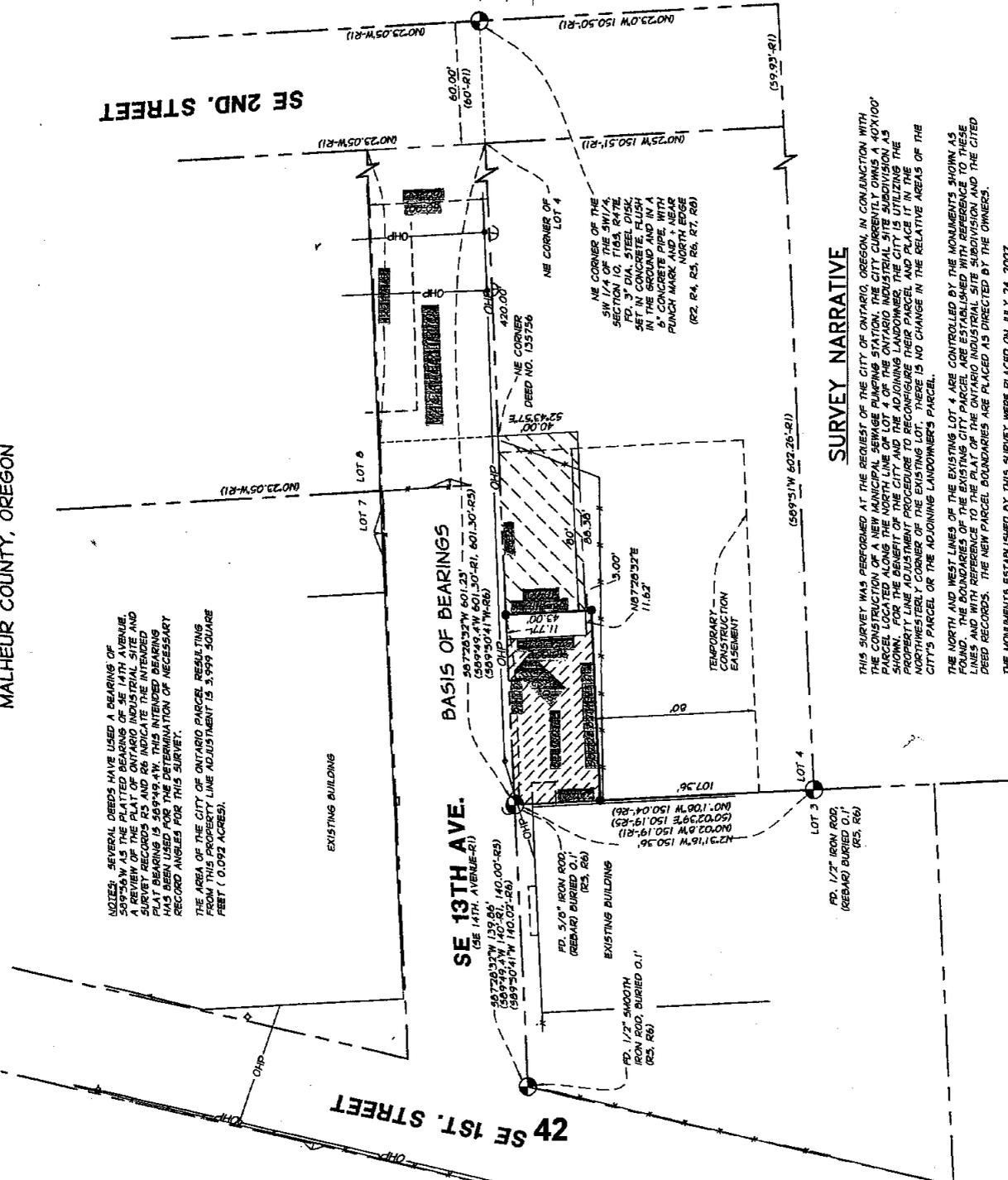
CITY OF ONTARIO-GLENDEN POUNDS/MARLOW POUNDS TRUST
 CITY OF ONTARIO, OREGON 444 SW 4TH STREET
 ONTARIO, OREGON 97114

SCALE 1" = 40'

DATE OCT., 2007

JOB NO. 59-76 (711)

SHEET 1/2



SURVEY NARRATIVE

THIS SURVEY WAS PERFORMED AT THE REQUEST OF THE CITY OF ONTARIO, OREGON, IN CONJUNCTION WITH THE CONSTRUCTION OF A NEW MUNICIPAL SEWAGE PUMPING STATION. THE CITY CURRENTLY OWNS A 40X100' PARCEL LOCATED ALONG THE NORTH LINE OF LOT 4 OF THE ONTARIO INDUSTRIAL SITE SUBDIVISION AS SHOWN. FOR THE BENEFIT OF THE CITY AND THE ADJOINING LANDOWNER, THE CITY IS UTILIZING THE ADJACENT PARCEL TO THE NORTH OF THE CITY PARCEL FOR THE CONSTRUCTION OF THE PUMPING STATION. THE ADJACENT PARCEL AND NORTHWESTERN CORNER OF THE EXISTING LOT 4 THERE IS NO CHANGE IN THE RELATIVE AREAS OF THE CITY'S PARCEL OR THE ADJOINING LANDOWNER'S PARCEL.

THE NORTH AND WEST LINES OF THE EXISTING LOT 4 ARE CONTROLLED BY THE MONUMENTS SHOWN AS FOUND. THE BOUNDARIES OF THE EXISTING CITY PARCEL ARE ESTABLISHED WITH REFERENCE TO THESE MONUMENTS. THE BOUNDARIES OF THE ONTARIO INDUSTRIAL SITE SUBDIVISION AND THE CITED DEED RECORDS. THE NEW PARCEL DIMENSIONS ARE PLACED AS DIRECTED BY THE OWNERS.

THE MONUMENTS ESTABLISHED BY THIS SURVEY WERE PLACED ON JULY 24, 2007.

SURVEYOR'S CERTIFICATE

THIS MAP CORRECTLY REPRESENTS A SURVEY MADE BY ME OR UNDER MY DIRECTION IN ACCORDANCE WITH THE SURVEYING AND MAPPING ACT OF ONTARIO, OREGON. I HAVE BEEN LICENSED BY THE BOARD OF SURVEYING AND MAPPING OF ONTARIO, OREGON. I HAVE BEEN LICENSED BY THE BOARD OF SURVEYING AND MAPPING OF ONTARIO, OREGON. I HAVE BEEN LICENSED BY THE BOARD OF SURVEYING AND MAPPING OF ONTARIO, OREGON.

MICHAEL B. POSADA, P.L.S. 2049

DATE

AFTER RECORDING RETURN TO:

Larry A. Sullivan
PO Box 220
Vale, OR 97918

PROPERTY LINE ADJUSTMENT DEED

This property line adjustment is between the CITY OF ONTARIO, Grantor, and MARLOW L. POUNDS, Trustee of the MARLOW L. POUNDS TRUST, under trust agreement dated August 13, 1999, Grantee. Grantor has an interest in the real property described in Instrument Number 135765, as recorded with the Malheur County Clerk. Grantee has an interest in the real property described in Instrument Number 99-695, as recorded with the Malheur County Clerk.

Grantor conveys to Grantee the following described real property:

See Exhibit "1".

There is no consideration for this transfer. It is done as a property line adjustment.

BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007. THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007.

THIS INSTRUMENT DOES NOT CREATE A SEPARATE LOT OR PARCEL. THE PROPERTY DESCRIBED HEREIN MAY NOT BE SOLD SEPARATE FROM THE PROPERTY DESCRIBED IN INSTRUMENT NUMBER 99-695 AS RECORDED WITH THE MALHEUR COUNTY CLERK, WITHOUT CHECKING WITH THE CITY PLANNING DEPARTMENT.

Dated this _____ day of _____, 2008.

CITY OF ONTARIO
By:

Mike Kee, Interim City Manager

STATE OF OREGON)
) ss.
County of Malheur)

Personally appeared the above named MIKE KEE, as Interim City Manager of the City of Ontario, and acknowledged the foregoing instrument to be his voluntary act and deed before me this ___ day of _____, 2008.

Notary Public for Oregon
My Commission Expires: _____

ACCEPTANCE:

Marlow L. Pounds
MARLOW L. POUNDS, trustee

STATE OF OREGON)
) ss.
County of Malheur)

Personally appeared the above named Marlow L. Pounds , as Trustee of the Marlow L. Pounds Trust, and acknowledged the foregoing instrument to be his voluntary act and deed before me this 22nd day of January, 2008. 2010 ms

Marcella J Skinner
Notary Public for Oregon
My Commission Expires: Oct 13, 2012

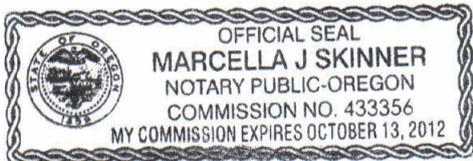


EXHIBIT "1"
(Ontario to Pounds)

Land in Malheur County, Oregon as follows:

Twp. 18 S., R 47 E., W.M

Commencing at the Northeast corner of said Lot 4 of the Ontario Industrial Site, thence S 87° 28' 32" W 420.00 feet along the North line of said Lot 4 to the Northeast corner of that certain parcel of land conveyed to the City of Ontario, Oregon by Bargain and Sale deed recorded as Malheur County Instrument Number 135756 and **The True Point of Beginning;**

Thence continuing S 87° 28' 32" W 88.23 feet along the North line of said Lot 4 to a point in a line running parallel with the West line of said Lot 4 and lying 93.00 feet Easterly therefrom;

Thence leaving said North line of Lot 4 S 2° 31' 16" E 40.00 feet along said line running parallel with the West line of said Lot 4 to its intersection with the South line of said parcel conveyed to the City of Ontario, Oregon;

Thence N. 87° 28' 32" E 88.38 feet along said South line of said parcel conveyed to the City of Ontario, Oregon to the Southeast corner of said parcel conveyed to the City of Ontario, Oregon;

Thence N. 2° 43' 57" W 40.00 feet along the East line of said parcel conveyed to the City of Ontario, Oregon to the Point of Beginning.

EXCEPTING THEREFROM:

Commencing at the Northeast corner of said Lot 4 of the Ontario Industrial site, thence S. 87° 28' 32" W 520.00 feet along the North line of said Lot 4 to the Northwest Corner of that certain parcel of land conveyed to the City of Ontario, Oregon by Bargain and Sale deed recorded as Malheur County Instrument Number 135756 and **the True Point of Beginning;**

Thence leaving said North line of Lot 4 S 2° 43' 57" E 40.00 feet along the West line of said parcel conveyed to the City of Ontario, Oregon to the Southwest corner of said parcel conveyed to the City of Ontario, Oregon;

Thence N. 87° 28' 32" E 11.62 feet along the South line of said parcel, conveyed to the City of Ontario, Oregon to a Point in a line running parallel with the West line of said Lot 4 and lying 93.00 feet Easterly therefrom;

Thence S 2° 31' 16" W 3.00 feet along said line running parallel with the West line of said Lot 4 to a Point in a line running parallel with the North Line of said Lot 4 and lying 43.00 feet Southerly therefrom;

Thence S 87° 28' 32" W 93.00 feet along said line running parallel with the North line of said Lot 4 to its intersection with the West line of said Lot 4;

Thence N 2° 31' 16" W 43.00 feet along said West line of Lot 4 to the Northwest corner of said Lot 4;

Thence N. 87° 28' 32" E 81.23 feet along the North line of said Lot 4 to the True Point of Beginning.

Tax Lot No. 1301 Ref No. 18075 Code No. 1 Map No. 18S4710C

AFTER RECORDING RETURN TO:

Larry A. Sullivan
PO Box 220
Vale, OR 97918

PROPERTY LINE ADJUSTMENT DEED

This property line adjustment is between MARLOW L. POUNDS, Trustee of the MARLOW L. POUNDS TRUST, under trust agreement dated August 13, 1999, Grantor, and the CITY OF ONTARIO, Grantee. Grantor has an interest in the real property described in Instrument Number 99-695, as recorded with the Malheur County Clerk. Grantee has an interest in the real property described in Instrument Number 135765, as recorded with the Malheur County Clerk.

Grantor conveys to Grantee the following described real property:

See Exhibit "1".

There is no consideration for this transfer. It is done as a property line adjustment.

BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007. THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007.

THIS INSTRUMENT DOES NOT CREATE A SEPARATE LOT OR PARCEL. THE PROPERTY DESCRIBED HEREIN MAY NOT BE SOLD SEPARATE FROM THE PROPERTY DESCRIBED IN INSTRUMENT NUMBER 135765 AS RECORDED WITH THE MALHEUR COUNTY CLERK, WITHOUT CHECKING WITH THE CITY PLANNING DEPARTMENT.

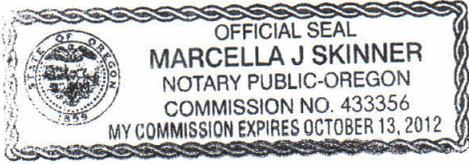
Dated this 22nd day of January, 2008. ms

Marlow L. Pounds

MARLOW L. POUNDS, trustee

STATE OF OREGON)
) ss.
County of Malheur)

Personally appeared the above named Marlow L. Pounds , as Trustee of the Marlow L. Pounds Trust, and acknowledged the foregoing instrument to be his voluntary act and deed before me this 20th day of January, ~~2008~~ 2010 ms.



Marcella J Skinner
Notary Public for Oregon
My Commission Expires: Oct 13, 2012

ACCEPTANCE:

CITY OF ONTARIO
By:

Mike Kee, Interim City Manager

STATE OF OREGON)
) ss.
County of Malheur)

Personally appeared the above named MIKE KEE, as Interim City Manager of the City of Ontario, and acknowledged the foregoing instrument to be his voluntary act and deed before me this ___ day of _____, 2008.

Notary Public for Oregon
My Commission Expires:_____

EXHIBIT "1"
(Pounds to Ontario)

Land in Malheur County, Oregon as follows:

Twp. 18 S., R 47 E., W.M

Commencing at the Northeast corner of said Lot 4 of the Ontario Industrial Site, thence S 87° 28' 32" W 520.00 feet along the North line of said Lot 4 to the Northwest corner of that certain parcel of land conveyed to the City of Ontario, Oregon by Bargain and Sale Deed recorded as Malheur County Instrument Number 135756 and **THE TRUE POINT OF BEGINNING;**

Thence leaving said North Line of Lot 4 S 2° 43' 57" E 40.00 feet along the West line of said parcel conveyed to the City of Ontario, Oregon to the Southwest corner of said parcel conveyed to the City of Ontario, Oregon; Thence 87° 28' 32" E 11.62 feet along the South line of said parcel conveyed to the City of Ontario, Oregon to a point in a line running parallel with the West line of said Lot 4 and lying 93.00 feet Easterly therefrom;

Thence S. 2° 31' 16" E 3.00 feet along said line running parallel with the West line of said Lot 4 to a point in a line running parallel with the North line of said Lot 4 and lying 43 feet Southerly therefrom.;

Thence S. 87° 28' 32" W 93.00 feet along said line running parallel with the North line of said Lot 4 to its intersection with the West line of said Lot 4; Thence N 2° 31' 16" W 43.00 feet along said West line of Lot 4 to the Northwest corner of said Lot 4;

Thence N 87° 28' 32" E 81.23 feet along the North line of said Lot 4 to the True Point of Beginning.

EXCEPTING THEREFROM:

Commencing at the Northeast corner of said Lot 4 of the Ontario Industrial Site, thence S 87° 28' 32" W 420.00 feet along the North line of said Lot 4 to the Northeast corner of that certain parcel of land conveyed to the City of Ontario, Oregon by Bargain and Sale Deed recorded as Malheur County Instrument Number 135756 and **THE TRUE POINT OF BEGINNING;**

Thence continuing S 87° 28' 32" W 88.23 feet along the North Line of said Lot 4 to a point in a line running parallel with the West line of said Lot 4 and lying 93.00 feet Easterly therefrom;

Thence leaving said North line of Lot 4 S 2° 31' 16" E 40.00 feet along said line running parallel with the West Line of said Lot 4 to its intersection with the South line of said parcel conveyed to the City of Ontario, Oregon;

Thence N 87° 28' 32" E 88.38 feet along said South line of said parcel conveyed to the City of Ontario, Oregon to the Southeast corner of said parcel conveyed to the City of Ontario, Oregon;

Thence N 2° 43' 57" W 40.00 feet along the East line of said parcel conveyed to the City of Ontario, Oregon to the Point of Beginning.

Tax Lot No. 1300 Ref No. 3314 Code No. 1 Map No. 18S4710C



Murakami Sanitary Sewer Lift Station – view west



Murakami Sanitary Sewer Lift Station – view east
In the background is the property of Marlow Pounds.

AGENDA REPORT
March 22, 2010

TO: Mayor and City Council

FROM: Tori Barnett, MMC, City Recorder

THROUGH: Henry Lawrence, City Manager

SUBJECT: REQUEST TO CHANGE PARK NAME: ROTARY-LAXSON PARK TO ROTARY PARK

DATE: March 15, 2010

SUMMARY:

Attached is the following document:

- Email from Stu Edwards, Rotarian

A representative of the Western Treasure Valley Rotary Club of Ontario will be in attendance to discuss their request.

From: "Dan Cummings" <dan@ck3llc.net>
To: "Henry Lawrence" <Henry.Lawrence@ontariooregon.org>
Date: 3/10/2010 1:54 PM
Subject: Rotary Laxon Park

Dear Mr. Lawrence,

The Western Treasure Valley Rotary Club of Ontario would like to request the City of Ontario to have the City Park now known as "Rotary Laxon Park" also shown on city maps as "Laxson Park" to be officially renamed to "ROTARY PARK".

Thank you in advance for your consideration.

Respectfully submitted by:

Rotarian Stu Edwards

Via e-mail

AGENDA REPORT

March 22, 2010

TO: Mayor and City Council

FROM: Alan Daniels, Airport Manager/Community Development Director

THROUGH: Henry Lawrence, City Manager

**SUBJECT: APPROVAL TO EXPEND REMAINING GRANT FUNDS TO KIMLEY-HORN FOR
ENGINEERING SERVICES FOR AIRPORT IMPROVEMENT PROJECT 3-41-0044-008**

DATE: March 12, 2010

SUMMARY:

Attached is the following document

- Contract from Kimley-Horn

The attached contract is a revision of the City's current contract with Kimley-Horn. The first contract was limited to \$60,030 of the FAA grant of \$124,168. (FAA Grant AIP 3-41-0044-008 accepted by Resolution No. 2009-104). The proposed revision will allow for the use of the remainder of that FAA grant, to continue the engineering work on the long lead-time item for the anticipated airport improvement project that includes overlaying the runway, taxiway, ramp and adding new ramp area. The full cost of the project is expected to be about \$4.4 million dollars.

PREVIOUS COUNCIL ACTION:

The City Council previously approved applying for the grants to fund this project, and has accepted a grant from the FAA for this purpose.

BACKGROUND:

In anticipation of major construction at the airport funded by Connect Oregon 2 or 3 and by FAA funds, the long lead time items need to be started as soon as possible. The State of Oregon has agreed and has give us written approval to start (ODOT Grant Agreement number 24941) and that the funds spent will be applied to the City's matching requirements. The FAA agreed, and has already awarded the City \$124,168 of the \$775,000 of the funds allocated for this project. By starting now, when and if the airport moves into a funded position, the project will not be delayed by these long lead-time items. At this time, the environmental requirements have been signed off and much other work has been done. This second contract will supercede the first contract with Kimley-Horn and will be amended for the entire project if and when full funding is received.

ALTERNATIVE:

If no action is taken the project may be delayed if funded. There is some risk that the project will not get funded.

FINANCIAL IMPLICATIONS:

This contract will be paid out of the FAA reimbursement grant at 95%, which the City has already accepted.

RECOMMENDATION:

Staff recommends approval of the contract.

PROPOSED MOTION:

I move that the City Council approve expending the remaining grant funds to Kimley-Horn for engineering services for Airport Improvement Project 3-41-0044-008.

**STANDARD AGREEMENT BETWEEN CLIENT AND
KIMLEY-HORN AND ASSOCIATES, INC. FOR PROFESSIONAL SERVICES**

THIS AGREEMENT is made this 1st day of February, 2010, by and between _____ the City of Ontario, Oregon ("the Client") and KIMLEY-HORN AND ASSOCIATES, INC., ("the Consultant").

NAME OF PROJECT: Rehabilitate Runway 14-32, Rehabilitate Parallel Taxiway, Install New Runway Edge Lighting & Shouldering, Rehabilitate and Expand Existing Apron - AIP 3-41-0044-008.

The Client and the Consultant agree as follows:

(1) Scope of Services and Additional Services. The Consultant's undertaking to perform professional services extends only to the services specifically described in Exhibit A, which is attached and made a part of this Agreement ("the Services"). However, if requested by the Client and agreed to by the Consultant, the Consultant will perform additional services ("Additional Services"), and such Additional Services shall be governed by these provisions. Unless otherwise agreed to in writing, the Client shall pay the Consultant for the performance of any Additional Services an amount based upon the Consultant's then-current hourly rates plus an amount to cover certain direct expenses including in-house duplicating, local mileage, telephone calls, postage, and word processing. Other direct expenses will be billed at 1.15 times cost. Technical use of computers for design, analysis, GIS, and graphics, etc., will be billed at \$5.00 per hour.

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

(a) Designate in writing a person to act as the Client's representative with respect to this Agreement. Such person shall have complete authority to transmit instructions, receive information, interpret and define the Client's policies and decisions with respect to the Consultant's services for the Project.

(b) Provide all criteria and information as to the Client's requirements, objectives and expectations for the Project, including performance requirements, budgetary limitations, and copies of all design and construction standards which the Client will require to be used or included in the drawings and specifications.

(c) Assist the Consultant by placing at its disposal all available information pertinent to the Project including previous reports and any other data relative to studies, design, or construction or operation of the Project.

(d) Furnish to the Consultant, as required for performance of the Consultant's Services (except to the extent provided otherwise in Exhibit A), data prepared by or services of others, including without limitation borings, probings and subsurface explorations, hydrographic surveys, laboratory tests and inspection of samples, materials and equipment; appropriate professional interpretations of all of the foregoing; environmental assessment and impact statements; property, boundary, easement, right-of-way, topographic and utility surveys; property

descriptions; zoning, deed and other land use restrictions; and other special data or consultations; all of which Consultant may use and rely upon in performing services under this Agreement.

(e) Provide Consulting surveys to establish reference points for construction (except to the extent provided otherwise in Exhibit A).

(f) Arrange for access to and make all provisions for the Consultant to enter upon public and private property as required for the Consultant to perform services under this Agreement.

(g) Examine all studies, reports, sketches, drawings, specifications, proposals and other documents presented by the Consultant, obtain advice of an attorney, insurance counselor and other consultants as the Client deems appropriate for such examination and render in writing decisions pertaining thereto within a reasonable time so as not to delay the services of the Consultant. The Consultant shall have no liability to the Client for delays resulting from Client's failure to review documents promptly.

(h) Furnish approvals and permits for all government authorities having jurisdiction over the Project and such approvals and consents from others as may be necessary for completion of the Project.

(i) Cause to be provided such accounting, legal, independent cost estimating and insurance counseling services as may be required for the Project, including services for issues raised by any contractor(s) of the Client ("the Contractor"), such auditing services as the Client may require to ascertain how the Contractor has used the moneys paid to it under the construction contract, and such inspection services as the Client may require to ascertain that the Contractor is complying with any law, rule, regulation, ordinance, code or order applicable to it.

(j) If the Client designates a person to represent it at the site other than Consultant or its agent or employee, set forth the duties, responsibilities and limitations of authority of the representative and the effect on the responsibilities of the Consultant in an exhibit to this Agreement before services begin.

(k) If more than one prime contract is to be awarded for construction, materials, equipment and services for the Project, designate a person or organization to have authority and responsibility for coordinating the activities among the various prime contractors.

(l) Furnish to the Consultant data or estimates as to the Client's anticipated costs for services to be provided by others as required for the Consultant to support opinions of probable total Project costs.

(m) Attend the pre-bid conference, bid opening, pre-construction conferences, construction progress and other job-related meetings and substantial completion inspections and final payment inspections.

(n) Give prompt written notice to the Consultant whenever the Client observes or otherwise becomes aware of any development that affects the scope or timing of Consultant's services, or any defect or nonconformance in any aspect of the Project.

(o) Bear all costs incident to the responsibilities of the Client.

(3) Period of Services. This Agreement has been made in anticipation of conditions permitting orderly and continuous progress of the Project through completion of the Services. The Consultant shall begin work timely after receipt of a fully executed copy of this Agreement and will complete the Services described in Exhibit A

within a reasonable length of time. The times for performance shall be extended as necessary for periods of delay or suspension resulting from circumstances the Consultant does not control. If such delay or suspension extends for more than six months (cumulatively) for reasons beyond the Consultant's control, the rates of compensation provided for in this Agreement shall be renegotiated.

(4) Compensation for Services.

(a) Kimley-Horn will perform the Design Portion of the Scope of Services as stated in the method of Compensation Section of Exhibit A for a lump Sum fee of \$223,752.00. Kimley-Horn will perform a portion of the Bidding and Construction Portion which will include all of Bidding-Phase 5 and a portion of Additional Services-Phase 8 including 8.1, 8.2, 8.3, 8.4, 8.5, 8.6, 8.8, 8.9, 8.11, 8.12, 8.14, & 8.15 as stated in the method of Compensation Section of Exhibit A for a Prevailing Rates Basis Fee of \$93,030.00. The Client shall pay the Consultant an amount based upon the Consultant's then current hourly rates plus an amount to cover certain direct expenses including in-house duplicating, local mileage, telephone calls, facsimiles, word processing, and postage. Other direct expenses will be billed at 1.15 times cost. Technical use of computers for design, analysis, GIS, and graphics, etc., will be billed at \$5.00 per hour.

(b) If the Consultant's compensation is on an hourly basis, the parties may have estimated in Exhibit A costs and expenses for the various portions of the scope of Services. Services undertaken or expenses incurred by the Consultant exceeding any estimates shall be the liability of the Client.

(c) The Client shall also be invoiced for and shall pay to the Consultant all taxes, if any, whether state, local, or federal levied with respect to amounts paid hereunder.

(5) Method of Payment.

(a) Invoices will be submitted periodically, via regular mail or email, for services performed and expenses incurred. Payment of each invoice will be due within 45 days of receipt. The Client shall also pay any applicable sales tax. All retainers will be held by the Consultant for the duration of the project and applied against the final invoice. Interest will be added to accounts not paid within 45 days at the maximum rate allowed by law. If the Client fails to make any payment due the Consultant under this or any other agreement within 45 days after the Consultant's transmittal of its invoice, the Consultant may, after giving notice to the Client, suspend services until all amounts due are paid in full.

(b) If the Client objects to any charge on an invoice submitted by the Consultant, the Client shall so advise the Consultant in writing giving its reasons within 14 days of receipt of the invoice or all such objections shall be waived, and the amount stated in the invoice shall be conclusively deemed due and owing.

(c) If the Consultant initiates legal proceedings to collect payments for services, it may recover, in addition to all amounts due and payable, its reasonable attorneys' fees, reasonable experts' fees, and other expenses related to the proceedings, including the cost, determined at the Consultant's normal hourly billing rates, of the time devoted to such proceedings by its employees.

(d) The Client agrees that the payment to the Consultant is not subject to any contingency or condition. The Consultant may negotiate payment of any check tendered by the Client, even if the words "in full satisfaction" or words intended to have similar effect appear on the check without such negotiation being an accord and satisfaction of any disputed debt and without prejudicing any right of the Consultant to collect additional amounts from the Client.

(6) Use of Documents.

(a) All work the Engineer performs under this Agreement shall be considered work made for hire and shall become the property of the Owner. The Owner shall own any and all data, documents, plans, copyrights, specifications, working paper and any other materials the Engineer produces in connection with this Agreement. On completion or termination of the Agreement the Engineer shall deliver these materials to the Owner's Airport Manager.

(b) The Engineer may retain for its own use and as its own cost copies of the materials referred to in section (a) of this section.

(c) Any use the Owner makes of the materials referred to in subsection (a) of this section, except for purposes of the work contemplated by this Agreement, shall be at the Owner's risk and the Owner shall indemnify and hold harmless the Engineer from any and all liability for any reuse of the material referred to in subsection (a) of this section, except for purposes of the work contemplated by this Agreement.

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

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

(9) Standard of Care. In performing its professional services, the Consultant will use that degree of care and skill ordinarily exercised, under similar circumstances, by reputable members of its profession practicing in the same or similar locality at the time the services are provided. No warranty, express or implied, is made or intended by the Consultant's undertaking herein or its performance of services, and it is agreed that the Consultant is not a fiduciary of the Client.

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

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

(12) Dispute Resolution. All claims by the Client arising out of this Agreement shall be submitted first to mediation in accordance with the Construction Industry Mediation Rules of the American Arbitration Association as a condition precedent to litigation. Failing to reach agreement thereby and if then agreed to by the parties, the matter shall then be submitted to binding arbitration. Any mediation, arbitration or civil action must be commenced within one year of the accrual of the cause of action asserted but in no event later than allowed by applicable statutes.

(13) Construction Phase Services.

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

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

nor assumes responsibility for any contractor's failure to perform its work in accordance with the contract documents.

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

(14) Hazardous Substances.

(a) Services related to determinations involving hazardous substances or conditions, as defined by federal or state law, are limited to those tasks expressly stated in the scope of services. In any event, Consultant shall not be a custodian, transporter, handler, arranger, contractor, or remediator with respect to hazardous substances and conditions. Consultant's services will be limited to professional analysis, recommendations, and reporting, including, when agreed to, plans and specifications for isolation, removal, or remediation.

(b) The Consultant shall notify the Client of hazardous substances or conditions not contemplated in Exhibit A of which the Consultant actually becomes aware. Upon such notice by the Consultant, the Consultant may stop affected portions of its services until the hazardous substance or condition is eliminated. The parties shall decide if Consultant is to proceed with the services and if Consultant is to conduct testing and evaluations, and the parties may enter into further agreements as to the additional scope, fee, and terms for such services.

(15) Assignment and Subcontracting. Nothing under this Agreement shall be construed to give any rights or benefits in this Agreement to anyone other than the Client and the Consultant, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of the Client and the Consultant and not for the benefit of any other party. The Client shall not assign, sublet or transfer any rights under or interest in this Agreement, or any claim arising out of the performance of services by Consultant, without the written consent of the Consultant. The Consultant reserves the right to augment its staff with subconsultants as it deems appropriate due to project logistics, schedules, or market conditions. If the Consultant exercises this right, the Consultant will maintain the agreed-upon billing rates for services identified in the contract, regardless of whether the services are proved by in-house employees, contract employees, or independent subconsultants.

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

(17) Public Contracting Law. Pursuant to the requirements of ORS Chapter 279, the following terms and

conditions are made a part of this Agreement. The Engineer agrees that he or she shall:

(a) Make payments promptly, as due, to all persons supplying to Engineer labor or materials for the prosecution of the work performed for in this Agreement.

(b) Pay all contributions or amounts due the Industrial Accident Fund incurred in the performance of this Agreement.

(c) Pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.

(d) If the Engineer fails, neglects or refuses to make prompt payment of any claim for labor or series furnished to Engineer by any person in connection with this Agreement, as such claim become due, the proper office representing Owner may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due the Engineer by reason this Agreement.

(e) No person shall be employed for more than ten (10) hours in any one day, or more than forty (40) hours in any one week, except in cases of necessity, emergency, or where the public policy absolutely requires it.

(f) Since this Agreement is for personal services as defined in ORS 279.051, the laborer shall be paid at least time and a half for all overtime worked in excess of 40 hours in any one week, except for individuals under these contracts who are excluded under ORS 653.010 to 653.261 or under 29 U.S.C. sections 201 to 209 from receiving overtime.

(g) The Engineer shall promptly, as due, make payments to any person, copartnership, association or corporation, furnishing medical, surgical and hospital care or other needed care and attention, incident to sickness or injury, to the employees of the Engineer, of all sums which the Engineer agrees to pay for such services and all moneys and sums which the Engineer collected or deducted from the wages of employees pursuant to any law, contract or agreement for the purpose of providing or paying for such services.

(h) The Engineer and all employees working under this agreement are subject employers under ORS 656.017.

(18) Early Termination of Agreement

(a) The Owner and the Engineer, by mutual written agreement, may terminate this Agreement at any time.

(b) The Owner on Thirty (30) days written notice to the Engineer, by may terminate this Agreement for any reason deemed appropriate in its sole discretion.

(c) Either the Owner or Engineer may terminate this Agreement in the event of a breach of the Agreement by the other. Prior to such termination, however, the party seeking the termination shall give the other party written notice of the breach and of the party's intent to terminate. If the party has not substantially cured the breach within fifteen (15) days of the notice, then the party giving notice may terminate the Agreement at any time thereafter giving a written notice of termination.

(19) Payment on Early Termination

(a) In the event of termination under Paragraphs 18.a. and 18.b., Early Termination of Agreement, herof, the Owner shall pay the Engineer, for work performed in accordance with the Agreement prior to the termination date.

(b) In the event of termination under Paragraphs 18.c., Early Termination of Agreement, by the Engineer due to a breach by the Owner, the Owner shall pay the Engineer as provided in Paragraph (a).

(c) In the event of termination under Paragraphs 18.c., Early Termination of Agreement, by the Owner due to a breach by the Engineer, then the Owner shall pay the Engineer as provided in Paragraph (a), subject to set off of excess cost, as provide in Paragraph (20), Remedies.

(d) In the event of termination, all of the Engineer's work product will become and remain property of the Owner.

(20) Remedies

(a) In the event of termination under Paragraphs 18.c. by the Owner due to a breach by the Engineer, then the owner may complete the work itself, or be agreement with another Consultant, or by a combination thereof. In the event the cost of completing the work exceeds the remaining unpaid balance of the compensation provide under paragraph 4. Compensation for Services, then the Engineer shall pay to the Owner the amount of the excess.

(b) The remedies provided to the Owner under paragraph (18) , Early Termination of Agreement, Paragraph (19) Payment on Early Termination and Paragraph (20), Remedies, hereof for a breach by the Engineer shall not be exclusive, The Owner also shall be entitled to any other equitable and legal remedies that are available.

(c) In the event of breach of this Agreement by the Owner, then the Engineer's remedy shall be limited to termination of the Agreement and receipt of payment as provided in Paragraph 18, Early Termination of Agreement, and Paragraph (19), Early Termination of Agreement, and Paragraph (19), Payment on Early Termination, hereof.

(21) Miscellaneous Provisions. This Agreement is to be governed by the law of the State of Arizona. This Agreement contains the entire and fully integrated agreement between the parties, and supersedes all prior and contemporaneous negotiations, representations, agreements or understandings, whether written or oral. Except as provided in Section 1, this Agreement can be supplemented or amended only by a written document executed by both parties. Provided, however, that any conflicting or additional terms on any purchase order issued by the Client shall be void and are hereby expressly rejected by the Consultant. Any provision in this Agreement that is unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such unenforceability without invalidating the remaining provisions or affecting the enforceability of the provision in any other jurisdiction. The non-enforcement of any provision by either party shall not constitute a waiver of that provision or affect the enforceability of that provision or the remainder of this Agreement.

CLIENT: _____

KIMLEY-HORN AND ASSOCIATES, INC.

BY: _____

BY: _____

ITS: _____

ITS: _____

ATTEST: _____

ATTEST: _____

(IF CORPORATION, AFFIX CORPORATE SEAL)

DESCRIPTION OF PROJECT

AND

**SCOPE OF CONSULTANT
SERVICES**

FOR

AIP 3-41-0044-008

PROJECT LOCATION:

**ONTARIO MUNICIPAL AIRPORT
ONTARIO, OREGON**

Owner:

CITY OF ONTARIO, OREGON

May, 2009

Revised June 2009 and January 2010

PROJECT DESCRIPTION

Proposed project work is to include the following generally described physical improvements to Airport Facilities:

1. Rehabilitate Runway 14-32, including Shouldering
2. Install New Runway Edge Lighting System
3. Rehabilitate Parallel Taxiway and Associated Connecting Taxiways
4. Rehabilitate and Expand Existing Apron Area

See the attached drawings for the general location of these improvements. The work will be performed and constructed with financial assistance from the State of Oregon-Connect Oregon funds and the Federal Aviation Administration (FAA) Airport Improvement Program (AIP). The remaining funds will be provided by the Owner. The FAA Project Number is AIP 3-41-0044-008. The estimated total project budget is in the range of \$3.8 million to \$4.3 million. The estimated total project construction cost is in the range of \$3.2 million to \$3.6 million.

Professional services to be provided shall include planning, civil design, grant administration, site planning, preliminary design, final design, bidding, construction administration and observation, quality assurance and the overall coordination of all phases of the project with the Owner, State of Oregon and the FAA.

PROJECT IMPROVEMENTS TO INCLUDE:

1. **Rehabilitate Runway 14-32, including new Shouldering (approximately 600,000 square feet)**
Work is anticipated to include pavement removal, new drainage structures, retrofitted edge drain system, crack filling, paving fabric and bituminous asphalt placement, aggregate shouldering, and pavement marking.
2. **Install New Runway Edge Lighting System (approximately 10,300 linear feet)**
Work is anticipated to include installation of new electrical conduit, cable, edge lights including light bases and transformers.
3. **Rehabilitate Parallel Taxiway and Associated Connecting Taxiways (approximately 175,000 square feet)**
Work is anticipated to include crack filling, paving fabric installation, bituminous asphalt placement, and pavement marking.
4. **Rehabilitate and Expand Existing Apron Area (approximately 322,500 square feet)**
Work is anticipated to include new drainage structures, crack filling, paving fabric, bituminous asphalt placement, unclassified excavation, subbase, base course, and pavement marking.

AVAILABLE INFORMATION:

- Existing Airport Layout Plan set and Associated Master Plan Update prepared by Toothman-Orton Engineering Company dated December 2007.
- Connect Oregon II Program Application 2007-2009 prepared by Toothman-Orton Engineering Company dated August, 2007.

SCOPE OF SERVICES

More specifically, professional services required to accomplish the Project are anticipated to include the following activities.

PHASE 1 - GENERAL ADMINISTRATION

During the course of the Project the following general administrative services shall be provided.

- 1.1 Assist in Project Scope review and formulation. Prepare a Scope of Professional Services narrative. The Scope of Work will include a listing of all work tasks in a spreadsheet with "empty cells" for man-hours, hourly rates, and lump sum costs. Provide a "draft" scope for review by the Sponsor, State and FAA. Discuss review comments and revise accordingly.
- 1.2 Prepare an Agreement for Professional Services for submittal and review by the Sponsor. The Agreement will be comprehensive in description of services and responsibilities of contract parties. Agreement will contain verbiage endemic to Oregon State Statutes.
- 1.3 Include a detailed cost proposal based on estimates of professional service man hours, hourly rates and lump sum costs required to accomplish the design development and construction administration of the work.
- 1.4 Attend Project PreDesign meeting with Owner and FAA by telephone. In addition a prescoping meeting will be held at the airport to determine the planning and study issues that will need to be addressed during the design of the project.
- 1.5 Obtain existing survey control data, preliminary design drawings as required, the Airport Layout Plan Set and other documents from the previous Engineer-of-Record at the airport. Provide release letter for the Owner to obtain documents.
- 1.6 Coordinate with Independent Engineering Fee Estimator to describe and review the proposed project Scope of Work and to discuss the project in detail. This meeting will be utilized to assist the Independent Estimator so he/she can better understand the project. If the Estimator is located in Boise, the meeting will be held face to face in Boise. If the Estimator is remotely located the meeting will be accomplished by telephone. One formal meeting will be held to describe and discuss the scope of the project.
- 1.7 Advise and Coordinate with Owner regarding compliance documentation, procedure requirements, Scope of Work and Engineering Services Contract and

general guidance with the design process. Coordinate with FAA concerning these and other procedural items.

- 1.8 Initiate internal budgets, prepare monthly invoices with status reports of project progress in performing the work.

PHASE 2 - PLANNING AND STUDY

Planning and Study Phase Services shall include:

- 2.1 Investigate the proposed job site and environs. Allow civil design personnel to become familiar with the proposed job site. Take photographs and otherwise document findings of visit.
- 2.2 Review Preliminary cost estimate compiled in association with the original Connect Oregon application. Determine the feasibility of the associated scope of the work that determined the costs. Review unit costs used in original application and determine fluctuations from current potential bid costs. Discuss any construction alternatives not included in the original scope of the application that may be advantageous to adopt for the project. Discuss method to adopt alternative while staying within the budget as established by Connect Oregon Application/Grant.
- 2.3 Determine alternatives for the rehabilitation of the existing Runway 14-32 shoulder. Alternatives will consider the viability of reusing the existing runway shoulder drainage facility. If reuse of the facility is not feasible, determine a new drainage system that will address runway runoff.
- 2.4 Determine the feasibility of overlaying the existing apron prior to expansion as an alternative to complete reconstruction. Use geotechnical testing to determine the structural reliability of overlaying the apron. Determine if an overlay will allow finish apron grades to meet FAA grading criteria without reconstruction.
- 2.5 Determine if the existing Connecting Taxiway width at the intersection of the old runway and Runway 14-32 is necessary. Also determine the cost effectiveness of other "extra" pavement at Taxiway A-2.
- 2.6 Determine the best method to smooth the existing Runway where it was extended in 2007. Review runway survey data to determine additional areas that may need asphaltic leveling or grinding. Determine the most cost effective method of smoothing these sections.
- 2.7 Determine if an overlay of Runway 14-32 is structurally feasible and a cost effective method. This will be determined from a review of geotechnical data.
- 2.8 Determine the most effective apron configuration for the various activities in the apron environ. This includes insuring adequate spacing between tie-down rows, circulation for aircraft traffic, providing adequate separation between taxiing and fueling aircraft and fuel facilities.

- 2.9 Inspect electrical vault for upgrades that may need to be made to existing facilities due to upgrades of runway edge light system and associated electrical codes. If substantial upgrades to the electrical vault or its appurtenances are required, these tasks will be considered an additional service.

PHASE 3 - PRELIMINARY DESIGN

Preliminary Design Phase Services shall include:

- 3.1 Assemble base data and base maps for the project work area from the design survey.

3.2 Compile existing utility data, required to develop the project current conditions and to form the basis for design. The utility investigation will be based on as-built documentation provided by the Airport plus topographic survey information of surface features gathered by the Consultant. One trip to the airport site to observe the location and condition of existing runway drainage system and associated inlets will be required.

3.3 Prepare a conceptual construction sequence and safety plan for evaluation by the Owner, Airport, FBO, airport users, agencies, and the FAA. FAA requires a construction Safety Plan showing construction haul routes and staging areas, Notices to Airmen, and temporary marking, lighting and operational surface shutdowns for each of the construction phases as required. It is anticipated that due to the time needed for construction and the amount of pavement effected, phasing will be required during both the runway rehabilitation and apron construction.

- 3.4 Prepare preliminary Design Plans (65% complete) for review and discussion with the Sponsor. See Item 4.1 for the number and type of anticipated plan sheets.

- 3.5 Determine detention or retention requirements required as a result of alterations in existing storm drainage scenarios if required. Perform storage calculations as required by local best management practices. Alteration of drainage scenarios are anticipated both in the apron and the runway area.

- 3.6 Determine configuration for retro reflective markers for proposed apron configuration in accordance with FAA Advisory Circulars. Determine/review new Runway 14/32 edge and threshold light layouts.

- 3.7 Define critical aircraft for the pavement design of the project and develop pavement design criteria accordingly. Pavement design criteria shall be in accordance with the FAA Advisory Circular (AC) 150/5320-6D.

- 3.8 Attend three meetings with the Airport Advisory Board during the design of the project in order to keep Airport personnel and management abreast of the progress

of the design. Discussions concerning project phasing and the impact of movement of aircraft from within the existing apron will need to be discussed.

- 3.9 Consultant shall review existing drainage studies developed for the Airport and surrounding developments to evaluate existing drainage patterns and systems. Consultant shall conduct a required analysis for the design of drainage improvements associated with the project in accordance with the FAA AC 150/5320-5C, Surface Drainage Design. It is anticipated that a new drainage system presently located in the shoulder east of the runway will need to be relocated to a location between the Runway and the parallel taxiway for the entire length of the runway. Any necessary drainage improvements will be sized to accommodate a 5-year storm event based on FAA design criteria.

PHASE 4 - FINAL DESIGN

The Final Design phase shall include the preparation of detailed construction plans and specifications, required design report, cost estimates, bid and contract documents suitable for obtaining competitive bids for construction of improvements. Final Design Services shall include the following work tasks:

- 4.1 Prepare final design drawings in conformance with FAA AC 150/5300-13 "Airport Design" including Change 13. Plans will include a Final Construction Sequence and Safety Plan. Incorporate comments received during the preliminary design review process into project design.

Note: An indication of the number of anticipated project plan sheets will be shown with the cost proposal. It is anticipated that the project design will require forty-nine plan sheets. The Plan Sheets include the following:

- Sheet 1 Cover
- Sheet 2 Construction Layout Plan
- Sheet 3-5 Safety & Phasing
- Sheet 6-10 Demo Runway Shoulder Plans
- Sheet 11-12 Grading & Drainage (Apron)
- Sheet 13-17 Grading and Drainage (Runway & P. Taxiway)
- Sheet 18-19 Grading and Drainage (Fill Area)
- Sheet 20-21 Plan and Profile (Apron)
- Sheet 22-26 Plan & Profile (Runway)
- Sheet 27-31 Plan & Profile (Parallel Taxiway)
- Sheet 32-35 Plan & Profile (Connecting Taxiways)
- Sheet 36 Marking (Apron)
- Sheet 37-38 Marking (Runway)
- Sheet 39-40 Marking (P. Taxiway)
- Sheet 41-45 Runway, Lighting, Taxiway Reflector Layout
- Sheet 46-47 Details (Civil)
- Sheet 48 Details (Electrical)
- Sheet 49 Details (Marking)

- 4.2 Prepare construction specifications based on FAA AC 150/5370-10C "Standards for Specifying Construction on Airports" including the current Regional Notice published by the FAA Seattle Airports Districts Office.
- 4.3 Prepare Bid Documents to include Bid Advertisement, Instructions to Bidders, Proposal, Bid Documents, Construction Agreement and Bond Forms, Notice of Award, Notice to Proceed, Wage Rates, Special Provisions, General Provisions,

Technical Specifications, and other Contract Documents required for solicitation of Bids and execution of a construction contract following bid award.

- 4.4 Prepare a revised estimate of project costs based on detailed bid schedules and advise the Owner as to budget status.
- 4.5 Prepare the Engineer's Design Report in conformance with FAA guidelines. The report shall include a Summary of the Project and its specific design issues, Project Schedule, reference to the Construction Operation Safety Plan, Modification of Standards, Design Analysis, Geotechnical Investigation Report, and Construction Cost Estimate.
- 4.6 Prepare Modification(s) of FAA Standards, as required to document changes to FAA standard regulations identified in the Design Phase, and obtain FAA and Sponsor approval prior to Grant offer.
- 4.7 Review final design drawings and associated documents with the Owner. Send copies of the drawings, Specifications and Engineers Design Report to the FAA and the State of Oregon for their review. Review design philosophy, phasing and safety plan, preliminary design drawings, design analysis and project schedules with the Sponsor. Coordinate with airport users, if required. Anticipate two (2) review meetings with the Owner in Ontario, Oregon including attendance by the Project Manager and Senior Engineer. Upon receipt of FAA review, address comments to all Contract Documents. Consultant will provide a written response to the airport and the FAA to the final review comments.
- 4.8 Consultant shall conduct a Peer and Quality Control Review for the contract documents performed in the Final Design Phase. Consultant shall assign individuals who have not worked on the development of the Drawings and Specifications.
- 4.9 Provide the Owner with two (2) complete sets of Final Design Documents, including plans, specifications, and design report. Submit one (1) set of similar documentation to each of the FAA and the State of Oregon.

PHASE 5 - BIDDING

Assist the Owner in the competitive sealed bid and Contractor selection process. Prepare and process contract award and construction agreement documents for the Sponsor. Bidding phase services shall include the following tasks:

- 5.1 Provide Pre-Bid Conference coordination to familiarize bidders and interested parties with the construction project scope and requirements. Prepare a detailed agenda and displays, prepare and issue conference minutes. It is anticipated that the Engineer will conduct this meeting in Ontario, Oregon.
- 5.2 Respond to questions that arise during the Contractor's or supplier's bid preparation process. Issue addenda or other clarifications as may be required. The actual preparation and issuance of Addenda shall be considered an Additional Service in Phase 8.
- 5.3 Administer the public bid advertisement process including bid document reproduction and distribution of documents to plan rooms, contractors and suppliers. Submit advertisements to appropriate newspaper(s) and trade magazines as required for publication. Maintain a "bidders list" and distribute plans as requested.
- 5.4 Assist the Owner in preparation for the project Bid Opening as required, including preparation of a Project Bid Summary. It is anticipated that the Engineer will coordinate and attend this meeting in Ontario, Oregon.
- 5.5 Prepare detailed Bid Tabulations documenting bid results and submit to Owner, FAA and the State of Oregon.
- 5.6 Assist the Owner with review and analysis of bids received. Consultant will determine his opinion on "responsiveness" of bid submittal. Provide Engineer's letter of recommendation of award to Owner.
- 5.7 Prepare and distribute Notice of Award, Construction Agreement and other contract documents. Review Construction Agreement, bonds and insurance documents submitted by Contractor, and assist Owner and Contractor in processing documents for the project.
- 5.8 Advise the Owner of possible action in cases where bids exceed Sponsor's budget for the work to be performed by the Contractor.
- 5.9 Coordinate with FAA and State of Oregon throughout the bid and award process. Submit bid documentation including copies of all executed contract documents as required by the FAA.

Note: The Consultant is to assume an orderly and routine bid process in preparation of man-hour estimates. Resolution of non-routine issues which may be associated with, but not limited to the following: bid protests; questionable contractor or subcontractor qualifications; failure to submit a "responsive" bid; rebid services or bid negotiations. If these items are required, they will be considered Additional Services beyond the scope of man-hours and costs estimated to complete the work described herein.

PHASE 6 - CONSTRUCTION

During the construction phase, the Consultant shall administer all aspects of the construction contract over which the Consultant can be expected to have realistic control in order to assist the Owner in monitoring and documenting the construction process for design compliance, quality assurance, and cost control. Construction phase services shall more specifically include the following work tasks:

- 6.1 Provide pre-construction coordination; prepare a detailed Pre-Construction Conference agenda and displays; conduct a Pre-Construction Conference on behalf of the Owner in Ontario, Oregon, and prepare and issue minutes of the Pre-Construction Conference; advise the FAA and State of Pre-Construction Conference dates and include FAA items in conference agenda.
- 6.2 Prepare a Construction Management Plan in accordance with FAA guidelines. Clarify specification and document submittal requirements. Include Contractor's Quality Control Plan information into the plan. Submit document to the FAA.
- 6.3 Review the Contractor's Work Schedule and verify that it is consistent with the requirements of the Contract Documents. Coordinate construction activity schedule with Owner and Airport operations. The Consultant shall advise the Contractor of any areas where the schedule is not in compliance with the contract for construction.
- 6.4 Obtain from the Contractor proposed shop drawings and submittal schedule which shall identify all shop drawings, sample and submittals required by the contract for construction, along with the anticipated dates for submission. The Consultant shall review the Contractors shop drawings, samples, and other submittals. The Consultant shall log and track all shop drawings, samples and submittals.
- 6.5 Organize and conduct weekly construction meetings with Sponsor, Contractor and others as appropriate. Contractor's schedule review and work progress will be discussed at all meetings. The Resident Field Engineer will hold these meetings on the construction site at the Ontario Municipal Airport in Ontario, Oregon.
- 6.6 Provide three project representatives to monitor and document construction activities as appropriate. Duties for the resident personnel will include conformance with schedules, plans and specifications; review and document construction quantities; document significant conversations, situations, events or changed conditions; document input or visits from local authorities and officials; prepare and submit routine inspection reports; maintain a project diary, and attend weekly safety meetings. It is anticipated that the Consultant will provide a Resident Engineer for a period of 60 working days at 10 hours per day.

- 6.7 A second inspector will be required during the days the Contractor will be paving. The second inspector will be on-site for 16 working days for an anticipated period of 9.5 hours per day.
- 6.8 A third inspector will be required during the anticipated night construction. The third inspector will be on-site for 35 working days for an anticipated period of 9.5 hours per night.
- 6.9 Provide office administration support and assistance to the Onsite Project Representative with senior design management or other personnel as field activities may require.
- 6.10 The Consultant shall receive and review the Contractor's requests for payment. The Consultant shall determine whether the amount requested reflects the progress of the Contract's work and is in accordance with the contract for construction. The Consultant shall provide recommendations to the Owner as to the acceptability of the requests. The Consultant shall advise the Owner as to the status of the total amounts requested, paid, and remaining to be paid under the terms of the construction contract.
- 6.11 Monitor and coordinate Contractor Quality Control Testing Program pursuant to current FAA specifications for Quality Control and Quality Assurance.
- Note:** It is anticipated that Consultant will monitor and test for Quality Assurance compaction testing on bituminous concrete placement only. It is anticipated that the Contractor shall be responsible for all source approval testing, aggregate materials production, bituminous mix design and Quality Control Testing of bituminous concrete production and placement and Quality Assurance Testing for subgrade, subbase and base course. The Consultant will provide supplemental Quality Control testing only during aggregate production operations. The Consultant shall review and accept the mix design(s) submitted by the Contractor and coordinate with and review test results performed by Contractor as required.
- 6.12 Conduct a Final Completion Inspection with the Owner and Contractor. Advise and coordinate with FAA and the State of Oregon regarding inspection dates. Produce substantial and final completion inspection certificates and document "punch list" items.
- 6.13 Assist Sponsor with review of Contractor Wage and EEO documentation review. Conduct Wage interview with Contractor personnel as required.
- 6.14 Coordinate with Owner, FAA and the State throughout the construction process. Submit required construction documentation, including weekly activity report forms, mix designs, change orders, etc. Coordinate with Owner and FAA verbally concerning change orders, as required.

PHASE 7 - OPERATIONAL

The Operational Phase shall consist of project closeout and documentation services. Operational phase services shall include the following tasks:

- 7.1 Prepare As-Constructed revisions to Design and Construction Drawings for project improvements. Provide Sponsor and FAA with copies of Record Drawings and one electronic copy to be submitted to the FAA as required. Provide Sponsor with one set of prints of Record Drawings.
- 7.2 Prepare an As-Constructed Airport Layout Plan Set (ALP) to document improvements. Consultant will be required to update ALP to show new development at the airport since the previous update. This includes any added facilities including new hangar development.
- 7.3 Document the Project work and accomplishments in a Final Construction Report in accordance with FAA guidelines. Contents to address test results and quality control program compliance per FAA guidelines. The following minimum items are required in the report: bid abstract narrative describing work sequence, problems and conditions; list of sub and prime contractors, change orders; dates for award; NTP; contract and actual completion dates; labor statement of compliance; final construction quantities; liquidated damages; Contractor statement that no further payment is due; updated pavement strength survey; construction management plan; acceptance test summary sheets; mix design information; consultant certifications; DBE program approval and participation summary; and copy of approval letter for the ALP revision.

7.4 Coordinate with Contractors on Owners behalf to obtain lien releases from subcontractors and prime Contractors in preparation to making final payment.

7.5 Assist Sponsor with overall budget status analysis and reports, closeout documentation review, and coordination with the FAA, as requested by the Owner. Assist in preparation of required project certifications.

PHASE 8 - ADDITIONAL SERVICES:

The following services shall be provided by Consultant as "Additional Services" to basic services required under Phases 1 through 7:

- 8.1 Prepare applications and supporting documents for governmental grants, loans or advances in connection with the project.
 - 8.1.1 Prepare a Grant Application for submittal to FAA prior to project design. Update the Grant Application for FAA-AIP funding assistance based on project bid results. Assist Sponsor in coordination of Grant Application submittal and process.
 - 8.1.2 Assist the Sponsor in preparation and processing of the following required certifications for Sponsors submittal to the FAA: "Selection of Consultants", "Project Plans and Specifications", "Equipment/Construction Contracts", and "Construction Project Final Acceptance".
 - 8.1.3 Assist Sponsor in communication and coordination with the Oregon Department of Transportation and the Connect Oregon personnel.
 - 8.1.4 Prepare a Pre-Application for FAA-AIP funding assistance. Assist Sponsor in coordination of Pre-Application submittal and process.
- 8.2 Assist Sponsor in preparation and processing of periodic project Request for Reimbursement (RFR) submittals to the FAA. Based on the size of the project anticipate approximately seventeen RFR's on this project. Consultant will provide the Owner and the FAA a spreadsheet that will track the RFR payments for the project for all of the anticipated seventeen RFR's. It is assumed that the owner will perform their own reimbursement of State of Oregon funds.
- 8.3 Provide the following services related to Federal Disadvantaged Business Enterprise requirements (DBE).
 - 8.3.1 Contact FAA to obtain most recent revisions to Federal DBE Program requirements. Research and advise the Owner as to program requirements and the Owners responsibilities as a grantee. Prepare a DBE program acceptable to the Owner and FAA following the FY 2004 requirements of the Federal DBE program. Review contract documents and special provisions for compliance with FY 2004 Federal and FAA requirements. Develop methodology for establishing contract DBE goals.

Note: Not included in this Scope of Work are services relating to significant revisions or updates to the DBE program beyond the FY 2004 Federal DBE program required format.

- 8.3.2 Evaluate contract work scope for DBE subcontract opportunities (both professional and contractor). Develop project specific goals, prepare required FAA justification and obtain FAA approval.
 - 8.3.3 Review project contract documents for compliance with current DBE requirements as required by FAA.
 - 8.3.4 Review project bids for compliance with DBE requirements, prepare and submit required DBE participation forms at completion of construction.
 - 8.3.5 Assist in evaluation and resolution of DBE issues which may arise during the bidding and construction process.
 - 8.3.6 Review Contractor provided data, prepare and submit required statements for DBE participation actually achieved in the work as part of the final construction report.
 - 8.3.7 Complete the "Uniform Report of DBE Awards or Commitments and Payments" including contract award amount or contractor/engineer's commitment and actual resulting payment to DBE's.
- 8.4 Administer design Geotechnical subconsultant contract and coordinate delivery of work product. Provide quality control review of work products. The geotechnical laboratory work will be performed utilizing the services of a subconsultant. The general scope of the geotechnical work will included the following:

Administer 8 cores/bore logs to a depth of 4-feet on existing Runway 32-14, 4 cores/bore logs to a depth of 4-feet on existing parallel taxiway, 8 cores/bore logs to a depth of 5-feet on existing asphalt shoulders, and 6 cores/bore logs to a depth of 5-feet on existing asphalt terminal apron. The geotechnical engineer shall immediately patch all pavement core holes to the satisfaction of Ontario Airport Manager. Data shall be collected on the soil type, existing asphalt condition, and depths and categorized according to the Unified Soil Classification System (USCS) as well as including Moisture Content, Atterberg Limits, Grain Size Distribution. Ground water depth shall be recorded if encountered. Recommendations concerning the ability to overlay with asphalt on the runway, parallel taxiway, and apron should be included.

Administer 6 cores/bore logs to a depth of 5-feet on existing future terminal apron area. Data shall be collected on the soil types and depths and categorized according to the Unified Soil Classification System (USCS) as well as including

Moisture Content, Atterberg Limits, and Grain Size Distribution. Ground water depth shall be recorded if encountered. One California Bearing Ratio (CBR) test shall be performed on one of the bore log samples at a depth of 18-inches which is the anticipated depth of subgrade.

Approximate locations of the cores/bore logs are shown on the attached drawing. The geotechnical engineer shall coordinate with the Engineer to determine exact core/bore log locations.

The geotechnical work shall be conducted in accordance to FAA AC 150/5370-2E safety guidelines. It should be anticipated that the bore logs taken on the Runway 32-14 and the existing shoulder area will be connected after 11 p.m. in which the runway will be closed to aircraft. The geotechnical firm will need to coordinate with the Airport Manager and Engineer anticipated for closure time.

The geotechnical firm shall submit 3 copies of the final geotechnical report including all required information as mentioned above to the Engineer in a timely manner upon finishing field work.

8.5 Provide periodic project budget updates to Sponsor during performance of the work.

8.6 Provide or obtain field surveys, which include detailed topographic and cross section information of improvement areas for design purposes. Coordinate with subconsultant surveyors to assure that design survey is performed as required. Provide survey subconsultant with an adequate scope of work such that he can provide an accurate cost for performing the services as described below:

The primary area is along Runway 14-32, parallel taxiway, connector taxiways, and the terminal apron. Runway 14-32 shall be section surveyed every 50-foot longitudinally with 6 shots (edge pavement, midpoint between centerline and edge of pavement, and centerline) taken at each section. The parallel taxiway and connector taxiways shall be section surveyed every 50-foot longitudinally with 3 shots (edge pavement and centerline) taken at each section. The area west of Runway 14-32 to the existing fence, infield between Runway 14-32 and parallel taxiway, and 50-foot east of parallel taxiway shall be surveyed at 50-foot by 50-foot grid. The terminal apron area shown on the map including all ground features shall be surveyed at a minimum of 50-foot by 50-foot grid. All topographical features within all of these areas shall be surveyed including but not limited to: grade brakes, pavement markings, tie-downs, building corners, fence, drainage structures (invert elevations, pipes sizes, & rim elevations), utility markers, edge of pavements, and electrical components. At a minimum the area shall be survey on a 50-foot by 50-foot grid. The total of all areas are approximately 368,500 square yards.

The secondary area is the Runway 32 safety area and the east expansion area. These areas shall be surveyed at a minimum of 100-foot by 100-foot grid. All topographical features shall be surveyed including but not limited to: grade brakes, pavement markings, tie-downs, building corners, fence, drainage structures, utility markers, edge of pavements, and electrical components. The area is approximately 258,500 square yards.

Existing control monuments to be used for the survey control are shown on the attached drawing (will need to be tied together to double check for accuracy).

The survey will have to be coordinated with the Ontario Airport Manager for airport access and optimum time to minimize disruption to air traffic. Survey crew working on and around Runway 14-32 shall have hand held radio which can receive aircraft signals in order to avoid disruption to air traffic.

The survey shall be conducted in accordance to FAA AC 150/5370-2E. Vertical datum should be in accordance to NAVD 88, and horizontal datum should be in accordance to NAD 83. Vertical tolerances shall be ± 0.02 -feet for paved surfaces and ± 0.05 -feet for unpaved surfaces. Horizontal tolerances shall be ± 0.03 -feet.

The collected data shall be provided on a compact disk to Kimley-Horn with the following information: point number, description, northing, easting, and elevation along with paper copies of any pertinent field notes. No map or drawing will be required.

This line item will also reimburse the Consultant for the payment to the survey subconsultant in accomplishing the work as described above.

8.7 Perform the survey for the construction portion of the project. The construction survey will entail providing the Contractor with an initial vertical and horizontal survey control only. Grade control staking i.e. slope staking, "blue tops", etc. will be the Contractor's responsibility. Coordinate with surveying subconsultant to assure that construction surveys are performed as required.

8.8 Respond to Sponsor's questions during comparison of consultant proposal and independent fee estimate. Participate in negotiation and revision of work scope and engineering services costs, if required by Sponsor.

8.9 Prepare Bid Addendums. Addenda are normally required in response to Contractor questions and/or design changes initiated by the Owner and/or the FAA. Cost estimate includes cost for the preparation of two Addendums.

- 8.10 Prepare Contract Change Order/Supplemental Agreements. All services associated with evaluation, negotiation, and preparation and processing of Contract Change Orders or Supplemental Agreements are considered to be an Additional Service. Man-hour estimates and costs are to be based on normal construction events as experienced by the consultant for projects of this type and size. Cost estimate is based on three Change Orders.
- 8.11 Address subsurface drainage requirements for the Runway 14-32 and propose appropriate methods for compliance with the FAA Northwest Mountain Region policy on subsurface pavement drainage.
- 8.12 Submit monthly Construction Project Reports from the U.S. Department of Commerce- U.S. Census Bureau during the design and construction periods of the project. These forms are required by the agency on a random basis and if required will include Project Information, Ownership and Construction Start dates, Cost Estimates and Monthly construction progress reports including monthly value of construction placed on the project.
- 8.13 Assist and coordinate with independent auditors in locating appropriate documents for performing A-133 annual audit. In addition to finding appropriate project files, answer questions concerning Contractors wage rates and interview forms as required.
- 8.14 Prepare two 7460's for submittal to the FAA prior to the project design. One form will show the FAA the anticipated pavements that will be added as a result of the project. Review of the submitted project configuration on the ALP drawing will be submitted to FAA for the first 7460. The second 7460 will document the anticipated equipment that will be involved in the construction period. Both documents will be reviewed by approximately five FAA divisions as part of the 7460 process.
- 8.15 Prepare and Submit a FAA Northwest Mountain Region, Airports Division Environmental Checklist. The purpose is to present to FAA information concerning the effect of the proposed project on environmental categories in an effort to support a categorical exclusion from the National Environmental Policy Act (NEPA). It is assumed that the area to be included in the documentation of the categorical exclusion will be the apron expansion area, runway shoulder and associated drainage area. Overlay of the runway, parallel taxiway, connecting taxiways and apron are not anticipated to require an environmental study.

The checklist includes the following NEPA categories:

Noise, Compatible Land Use, Social Impact, Induced Socio-Economic Impacts, Environmental Justice, Air Quality, Water Quality, Section 4F Impacts, Cultural

Resources, Biotic Communities, Threatened and Endangered Activities, Essential Fish Habitats, Migratory Birds, Wetlands, Floodplains, Wild and Scenic Rivers, Farmlands, Energy Supply and Natural Resources, Light Emissions, Solid Waste Impacts, Construction Impacts and Hazardous Materials.

TARGET SCHEDULE

The following dates summarize the target completion of significant Project tasks.

<u>ACTIVITY</u>	<u>COMPLIANCE</u>
Final Scope of Work Narrative	June 2009
Contracts to Owner	July 2009
Consultant Contract Execution	August 2009
Initiate Design	January 2010
Final Design Completion	**April 1, 2010
Advertise Project	April 15, 2010
Bid Opening	May 15, 2009
Award Project	June 1, 2010
Construction Contracts	July 1, 2010
Pre-Construction Conference	July 1, 2010
Start Construction	July 15, 2010
*Complete Construction	October 15, 2010
Project Construction Closeout	December 2010

Schedule is based on execution of a FAA Grant Offer in February 2010.

*Construction completion and commencements are weather dependent.

** Will depend on date of receipt of Connect Oregon funding

AGENDA REPORT

March 22, 2010

TO: Mayor and City Council

FROM: Larry Sullivan, City Attorney

THROUGH: Henry Lawrence, City Manager

SUBJECT: **ORDINANCE #2638-2010: AMENDING OMC 4-5 REGULATING MAINTENANCE STANDARDS FOR BUILDINGS; DEFINING DANGEROUS BUILDINGS; AND REVISING PENALTIES AND PROCEDURES FOR ENFORCEMENT OF MAINTENANCE STANDARDS IN COMPLIANCE WITH SENATE BILL 915 (FINAL READING)**

DATE: March 12, 2010

SUMMARY:

Attached is the following document:

- Ordinance #2638-2010

Proposed Ordinance #2638-2010 is a substantial revision of Title 4, Chapter 5 of the Ontario City Code, the "Ontario Residential Maintenance Code." This ordinance expands the Chapter to set maintenance standards for all buildings in Ontario, not just residences; it authorizes the Building Inspector to regulate all dangerous buildings, not just substandard residences; and it changes the penalties and procedures for building code violations, to bring the City Code into compliance with a new state law governing the enforcement of building code violations.

This report addresses the Ordinance revisions discussed in the Council work session on February 25, 2010.

PREVIOUS COUNCIL ACTION:

02/01/2010	Council passed Ordinance #2638-2010 on 1 st reading.
02/16/2010	Second reading tabled.
03/01/2010	Second reading tabled.

DISCUSSION

At the Council work session on February 25, 2010, there was a discussion about making revisions in Ordinance #2638-2010, including revisions suggested in a memorandum written by Dan Cummings of CK3 and circulated among the Councilors. The revisions are as follows:

- Section 4-5-3: Revised the definition of “Building” to partially incorporate a definition suggested in Dan Cummings’ memorandum; deleted the definition of “Street” because that word no longer appears in the Ordinance.
- Section 4-5-4: Deleted subsection 4-5-4(B) “Alteration”, because it created an ambiguity as to whether the Ordinance applied to unaltered buildings existing before the enactment of the Ordinance. The remaining paragraph of Section 4-5-4 was revised to clarify that the Ordinance applies to existing structures as well as new ones; it now states that it applies to all structures, including those “now existing, under construction or to be constructed.”
- Section 4-57(B)(2): Revised to require residential homeowners to replace broken windows rather than boarding them over.
- Section 4-5-7(C)(7): Reorganized and revised to eliminate the requirement that all buildings have gutters and downspouts.
- Section 4-5-7(C)(16): Revised to require that basement windows protect against entry by stray and feral animals, including cats as well as rodents.

STAFF RECOMMENDATION:

Staff recommends the Council adopt Ordinance #2638-2010, AN ORDINANCE AMENDING ONTARIO MUNICIPAL CODE TITLE 4, CHAPTER 5, REGULATING MAINTENANCE STANDARDS FOR BUILDINGS, DEFINING DANGEROUS BUILDINGS; AND REVISING PENALTIES AND PROCEDURES FOR ENFORCEMENT OF MAINTENANCE STANDARDS IN COMPLIANT WITH SENATE BILL 915, on Second and Final Reading.

PROPOSED MOTION:

“I move that the Mayor and City Council approve Ordinance #2638-2010, AN ORDINANCE REGULATING MAINTENANCE STANDARDS FOR BUILDINGS; DEFINING DANGEROUS BUILDINGS; AND REVISING PENALTIES AND PROCEDURES FOR ENFORCEMENT OF MAINTENANCE STANDARDS IN COMPLIANCE WITH SENATE BILL 915, on Second and Final Reading by Title Only.”

ORDINANCE NO. 2638-2010

**AN ORDINANCE REGULATING MAINTENANCE STANDARDS
FOR BUILDINGS; DEFINING DANGEROUS BUILDINGS; AND REVISING
PENALTIES AND PROCEDURES FOR ENFORCEMENT OF MAINTENANCE STANDARDS IN
COMPLIANCE WITH SENATE BILL 915**

- WHEREAS,** Chapter 5 of Title 4 of the Ontario City Code is a Residential Maintenance Code regulating maintenance standards for residential buildings and structures; and
- WHEREAS,** the City Council finds that maintenance standards should also be enacted for other buildings and structures and that the Residential Maintenance Code should be expanded to apply to all buildings and structures in the City; and
- WHEREAS,** explicit standards should be established to authorize the City to take remedial action when the City's Building Inspector determines that a building is a dangerous building; and
- WHEREAS,** persons who fail to timely comply with a notice from the Building Inspector to remediate a dangerous building should be subject to a penalty for failure to comply; and
- WHEREAS,** Senate Bill 915, enacted by the Oregon Legislature in 2009 and effective on January 1, 2010, regulates the procedures and penalties that may be imposed in connection with violations of a municipal building code; and
- WHEREAS,** it is necessary to revise Chapter 5 of Title 4 to bring it into compliance with Senate Bill 915.

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

Section 1. The title of Chapter 5 of Title 4 of the Ontario City Code is renamed the "Building Maintenance Code."

Section 2. The following Sections of Chapter 5 of Title 4 are amended by adding those provisions which are underlined and deleting those provisions which are stricken:

4-5-1 Title.

This Chapter shall be known as the Ontario Residential Building Maintenance Code, may be cited as such, and will be referred to herein as "this Code".

4-5-2 Purpose.

The purpose of this Code is to provide minimum requirements for the protection of life, limb, health, property, safety, and welfare of the general public and the owners and occupants of residential, commercial and industrial buildings.

4-5-3 Definitions.

For the purpose of this Code, certain abbreviations, terms, phrases, words, and their derivatives shall be construed as specified in this Code. Words used in the singular include the plural and plural the singular. Words used in the masculine gender include the feminine, and the feminine the masculine.

~~APARTMENT: Apartment shall mean a dwelling unit as defined in this Code.~~

~~APARTMENT HOUSE: Apartment house is any building, or portion thereof which is designed, built, rented, leased, let, or hired out to be occupied, or which is occupied as the home or residence of three or more families living independently of each other in dwelling units.~~

~~APPROVED: Approved as to materials and types of constructed, refers to approval by the Building Inspector as the result of investigation and tests conducted by him, or by reason of accepted principles or tests by national authorities, technical or scientific organizations.~~

~~BOARDING HOUSE: Boarding house is a lodging house in which meals are provided.~~

~~BUILDING: Building is any building or structure, or portion thereof which is used, or designed or intended to be used for human habitation, for living, sleeping, cooking or eating purposes or any combination thereof supporting or sheltering any use or occupancy.~~

~~BUILDING, EXISTING: Existing building is a building erected prior to the adoption of this Code, or one for which a legal building permit has been issued.~~

~~BUILDING INSPECTOR: Building Inspector shall mean the City official designated by the City to be charged with the administration and enforcement of this Code, or his regularly authorized representatives.~~

~~CELLAR: Cellar means that portion of a building, the ceiling of which is entirely below grade or less than four feet six inches (4'6") above grade.~~

DANGEROUS BUILDING: A building, structure or premises defined in Section 4-5-7A(B) of this Chapter.

~~DWELLING: Dwelling is any building or any portion thereof, which is not an apartment house, a lodging house, or a hotel as defined in this Code, which may contain not more than two (2) dwelling units or guest rooms, used, intended or designed to be used, or occupied for living purposes.~~

~~DWELLING UNIT: Dwelling unit is one or more habitable rooms which are occupied or which are intended or designed to be occupied by one family with facilities for living, sleeping, cooking and eating.~~

~~EXIT: An exit, as referred to in this Code, shall be a way of departure from the interior of a building. It may comprise vertical and horizontal means of travel such as doorways, stairways, escalators, ramps, corridors, passageways and fire escapes, including all elements necessary for the purpose of emergency escape from the building or structures. An exit begins at any doorway or other point of access to an exit from which occupants may proceed to a public way.~~

~~EXTERMINATION: The control and elimination of insects, rodents or other pests by eliminating their harborage places; by removing or making inaccessible materials that may serve as their food; by poison spraying, fumigating, trapping, or by any other approved pest elimination methods.~~

~~GUEST: Guest is any person hiring and occupying a room for living or sleeping purposes, exclusive of any member of a family occupying a dwelling unit.~~

GUEST ROOM: Guest room is any room or rooms used, or intended to be used by a guest for sleeping purposes.

HABITABLE ROOM: Habitable room means a room occupied by one or more persons for living, eating or sleeping purposes. It does not include toilets, laundries, serving and storage pantries, corridors, cellars, and spaces that are not used frequently or during extended periods.

HOTEL: ~~Hotel is any building containing six (6) or more guest rooms intended or de-signed to be used, or which are used, rented or hired out to be occupied, or which are occupied for sleeping purposes by guests, whether rent is paid in money, goods, labor or otherwise. It does not include any jail, hospital, asylum, sanitarium, orphanage, prison, detention home, or other institution in which human beings are housed and detained under legal restraint.~~

INFESTATION: ~~The presence, within or contiguous to a dwelling unit, rooming house, rooming unit, or premises, or insects, rodents, vermin or other pests.~~

KITCHEN: ~~Kitchen shall mean a room used or designed to be used for the preparation of food.~~

LODGING HOUSE: Lodging house is any building or portion thereof, containing not more than five (5) guest rooms, which are used by not more than five (5) guests where rent is paid in money, goods, labor or otherwise.

NUISANCE: The following shall be defined as nuisances:

(A) Any public nuisance known at common law or in equity jurisprudence.

(B) Any attractive nuisance which may prove detrimental to children whether in a building, or the premises of a building, or upon an unoccupied lot. This includes any abandoned wells, shafts, basements, or excavations; abandoned refrigerators and motor vehicles; or any structurally unsound fences or structures; or any lumber, trash, fences, debris, or vegetation which may prove a hazard for inquisitive minors.

(C) Whatever is dangerous to human life or is detrimental to health.

(D) Any condition that is either defined as a nuisance or is identified as dangerous to health, safety or morals as defined in by any ordinances of the City.

OWNER: Owner as herein used shall include the owners or owners of the freehold of the premises or any lesser estate therein, a mortgagee or vendee in possession, an assignee for rents, receiver, executor, trustee, lessee or other person, firm or corporation in control of a building.

PASSAGEWAY: Means of egress connecting a required exit with a public way.

PERSON: Person is a natural person, his heirs, executors, administrators or assigns, and also includes a firm, partnership, or corporation, its or their successors or assigns, or the agent of any of the aforesaid.

ROOMING HOUSE: See "lodging house".

SERVICE ROOM: ~~Service room shall mean any room used for storage, bath or utility purposes, and not included in the definition of habitable rooms.~~

~~STREET: Street is any thoroughfare or public space not less than sixteen feet (16') in width which has been dedicated or deeded to the public for public use.~~

~~STRUCTURE: Structure is that which is built or constructed, an edifice or building of any kind, or any piece of work artificially built up or composed of parts joined together in some definite manner.~~

~~SUBSTANDARD BUILDING: Any dwelling or dwelling unit in which there exists any conditions less than required by this Code to a degree that endangers the life, limb, health, property, safety or welfare of the public or the occupants.~~

4-5-4 Application, alteration.

~~(A) Application. The provisions of this Code shall apply to all buildings or portions thereof, used, or designed or intended to be used, for human habitation. Such occupancies in existing buildings may be continued, except such structures as are found to be substandard as defined in this Code. Where any building or portion thereof, is used or intended to be used as a combination apartment house hotel, the provisions of this Code shall apply to the separate portions as if they were separate buildings. The provisions of this chapter shall apply to all matters affecting or relating to buildings, structures, and premises, whether now existing, under construction or to be constructed.~~

~~(B) Alteration. Existing buildings which are altered or enlarged shall be made to conform to this Code insofar as the new work is concerned and in accordance with applicable ordinances of the City.~~

4-5-5 Building Inspector, inspection of premises

(A) Authority. The Building Inspector is hereby authorized and directed to administer and enforce all of the provisions of this Code.

(B) Inspections: It shall be the duty of the Building Inspector charged with the enforcement of this Code to make routine and periodic inspections of properties and premises within the corporate limits of the City to determine whether there is compliance with the provisions of this Code and it shall also be the duty of such person to make such inspections upon the receipt of complaints or specific or general information indicating the existence of violations or noncompliance with these Code provisions. In the event that any authorized officer or employee charged with the enforcement of this Code shall be denied access to any property or premises for the purpose of making an inspection provided for in this Chapter, then, except as otherwise provided for in this Chapter, such officer or employee shall not inspect such premises unless and until he shall have obtained from the Municipal Judge of the City a search warrant for the inspection of such premises.

(C) Search Warrants. No search warrant shall be issued under the terms of this Chapter for the inspection of any property or premises within the corporate limits of the City unless and until there shall have been filed with the Municipal Court of the City an affidavit showing probable cause for such inspection, by stating the purpose and extent of the proposed inspection, the ordinance or ordinances which form the basis for such inspection, whether it is a routine or periodic inspection or an inspection instituted by complaint or other specific or general information concerning the property or premises or the area in which it is situated. The search warrant issued by the Court shall specify the purpose and extent of the inspection which is proposed to be made and the specific property or premises covered by such warrant.

(D) Emergency. When property or premises exhibit outward manifestations of hazardous and dangerous conditions or when there is other reliable information from which it appears reasonably probable that immediate action is required to protect the safety of persons or property, then an emergency shall be deemed to exist and officers or employees of the City shall have the right to make inspection of the property and premises without the consent of the owner, occupant or other persons in charge of such property or premises and without a search warrant.

(E) Penalty Obstruction Prohibited. It shall be unlawful for any person to hinder, delay or otherwise obstruct the inspection of property or premises when such inspection is authorized by a warrant or emergency as provided in the terms of this Chapter; and upon conviction of violation of ~~any of the terms of this Chapter~~ this provision such person shall be subject to punishment a civil penalty as provided in Sections ~~4-4-4~~ 4-5-8A and 4-5-8B of this City Code.

4-5-6 Dwelling unit regulations and standards

[Unamended]

4-5-7 Responsibilities of owners and occupants.

~~(A) Public Areas. Every owner of an apartment house, lodging house or hotel shall be responsible for maintaining in a sanitary condition the shared or public areas of the building and premises thereof.~~

~~(B) Sanitation. Every occupant of a dwelling unit shall keep in a sanitary condition that part of the dwelling unit and premises thereof which he occupies and controls. Every occupant of a dwelling unit shall keep all plumbing fixtures therein in a sanitary condition and shall be responsible for the exercise of reasonable care in the proper use and operation thereof. The owner of every lodging house, hotel or dormitory shall be responsible for the sanitary maintenance of all walls, floors, ceilings, and for the maintenance of a sanitary condition in every other part thereof; and he shall be further responsible for the sanitary maintenance of the entire premises where the entire structure or building is under his control.~~

~~(C) Rubbish and Garbage. Every occupant of a dwelling unit shall dispose of all his rubbish, garbage and any other organic waste which might provide food for rodents, in a clean and sanitary manner by placing it in approved disposal facilities or containers. It shall be the responsibility of the owner to supply or cause to be supplied garbage rubbish disposal facilities or containers for all apartment houses, lodging houses and hotels.~~

~~(D) Extermination. Every occupant of a building containing a single dwelling unit shall be responsible for the extermination of any insects, rodents, or other pests therein or on the premises.~~

~~Notwithstanding the foregoing provisions of this Section, whenever infestation is caused by a failure of the owner to maintain a building in a ratproof or reasonable insectproof condition, extermination shall be the responsibility of the owner or operator.~~

~~(E) Maintenance of Buildings and Premises. Every owner of a building, either occupied or vacant, shall be responsible for maintaining the building in good repair and free of refuse, debris, and rubbish.~~

(A) General Responsibility. The requirements set forth herein apply to all residential, commercial and industrial premises and are in addition to the requirements set forth in Section 4-5-6 applicable to dwelling units. The owner of the premises shall maintain the buildings, exterior structures, exterior property and stairways and walkways in compliance with these requirements, except as otherwise provided for in this title. A person shall not occupy as owner-occupant or permit another person to occupy buildings, premises, or structures which are not in a sanitary and safe condition or which do not comply with the requirements of this chapter. Occupants of a dwelling unit, rooming unit or housekeeping unit are responsible for keeping in a clean, sanitary and safe condition that part of the dwelling unit, rooming unit, housekeeping unit or premises which they occupy and control.

(B) Exterior Property. All exterior property and premises shall be maintained in a clean, safe and sanitary condition. The occupant shall keep that part of the exterior property which such occupant occupies or controls in a clean and sanitary condition.

(1) All holes, cisterns, open cesspools, open or unsanitary septic tanks, excavations, open foundations, refrigerators, freezers, or iceboxes with unlocked attached doors, and any other similar substance, material or condition which may endanger neighboring property or the health or safety of the public or the occupants of the property shall be removed or filled, where filling will abate the nuisance.

(2) All open or broken exterior doors, windows, or apertures of any structure shall be secured so as to prevent access by unauthorized persons through such openings. Broken windows in dwelling units shall be replaced rather than boarded over.

(3) Pipes, ducts, conductors, fans or blowers shall not discharge gases, steam, vapor, hot air, grease, smoke, odors or other gaseous or particulate wastes directly upon abutting or adjacent public or private property or that of another tenant.

(4) All accessory structures, including detached garages, fences and walls, shall be maintained structurally sound and in good repair.

(C) Exterior Structure. The exterior of a structure shall be maintained in good repair, structurally sound and sanitary so as not to pose a threat to the public health, safety or welfare.

(1) Every exterior wall and weather-exposed exterior surface or attachment shall be free of holes, breaks, loose or rotting boards or timbers, and any other conditions which might admit rain or dampness to the interior portions of the walls or the occupied spaces of the building.

(2) All exterior wood surfaces shall be made substantially impervious to the adverse effects of weather by periodic application of a protective coating of weather-resistant preservative, and be maintained in good condition. Wood used in construction of permanent structures and located nearer than six inches to earth shall be treated wood or wood having a natural resistance to decay.

(3) Exterior metal surfaces shall be protected from rust and corrosion.

(4) Every section of exterior brick, stone, masonry, or other veneer shall be maintained structurally sound and be adequately supported and tied back to its supporting structure.

(5) All structural members shall be maintained free from deterioration, and shall be capable of safely supporting the imposed dead and live loads.

(6) All foundation walls shall be maintained plumb and free from open cracks and breaks and shall be kept in such condition as to prevent the entry of rodents and other pests.

(7) All buildings and structures shall have a roof drainage system adequate to prevent dampness or deterioration in the walls and interior portion of the structure. The roof and flashing shall be sound, tight and have no defects that might admit rain. Roof drains, gutters and downspouts, if installed, shall be maintained in good repair and free from obstructions. The roof drainage system shall not connect into the City's sanitary sewer system. Roof water shall be discharged in a manner that does not create a public nuisance.

(8) All cornices, belt courses, corbels, terra cotta trim, wall facings and similar decorative features shall be maintained in good repair with proper anchorage and in a safe condition.

(9) All overhang extensions including, but not limited to, canopies, marquees, signs, metal

awnings, fire escapes, standpipes and exhaust ducts shall be maintained in good repair and be properly anchored so as to be kept in a sound condition. When required, all exposed surfaces of metal or wood shall be protected from the elements and against decay or rust by periodic application of weather-coating materials, such as paint or similar surface treatment.

(10) All chimneys, cooling towers, smoke stacks, and similar appurtenances shall be maintained in a condition which ensures there will be no leakage or backup of noxious gases. Every chimney shall be reasonably plumb. Loose bricks or blocks shall be repaired in an approved manner and loose or missing mortar shall be replaced. Unused openings into the interior of the structure must be permanently sealed using approved materials. All exposed surfaces of metal or wood shall be protected from the elements and against decay or rust by periodic application of weather-coating materials, such as paint or similar surface treatment.

(11) Every window, skylight, door and frame shall be kept in sound condition, good repair and weathertight.

(12) All glazing materials shall be maintained free from cracks and holes.

(13) Every window, other than a fixed window, that is required to be properly designed for emergency egress or ventilation shall be easily openable and capable of being held in position by window hardware.

(14) All exterior doors, door assemblies and hardware shall be maintained in good condition. Locks at all entrances to dwelling units, rooming units and guestrooms shall tightly secure the door.

(15) Every basement hatchway shall be maintained to prevent the entrance of rodents, rain and surface drainage water.

(16) Every basement window that is openable shall be supplied with screens or other approved protection against the entry of rodents.

(D) Stairways, Walking Surfaces. Every stair, ramp, landing, balcony, porch, deck or other walking surface shall comply with the code in effect at time of construction and shall be properly designed for its use and be maintained in sound condition and good repair. Every handrail and guard shall comply with the code in effect at time of construction, but at a minimum shall be firmly fastened and capable of supporting normally imposed loads and shall be maintained in good condition.

4-5-7A Dangerous Buildings

(A) Generally. No premises shall contain any dangerous building or structure as described in this title. Once identified and determined to be dangerous by the Building Inspector, all such buildings, premises, or structures shall be repaired or demolished in accordance with Section 4-5-8.

(B) Definition. A dangerous building, premises, or structure shall be considered to exist whenever any premises, building, structure, or portion thereof meets any of the following criteria to the extent that the life, health, property, or safety of the public or the building, structure, or premises' occupants are unreasonably endangered:

(1) High Loads. Whenever the stress in any materials, member, or portion of a

structure, due to all dead and live loads, is more than one and one-half times the working stress or stresses allowed in the State Building Code and Fire and Life Safety Code for new buildings of similar structure, purpose, or location.

(2) Weakened or Unstable Structural Members or Appendages.

(i) Whenever any portion of a structure has been damaged by fire, earthquake, wind, flood, or by any other cause, to such an extent that the structural strength or stability is materially less than it was before such catastrophe and is less than the minimum requirements of the State Building Code and Fire and Life Safety Code for new buildings of similar structure, purpose, or location; and/or

(ii) Whenever appendages including parapet walls, cornices, spires, towers, tanks, statuaries, signs, or other appendages or structural members which are supported by, attached to, or part of a building, are in a deteriorated condition or otherwise unable to sustain the design loads which are specified in the State Building Code and Fire and Life Safety Code.

(3) Buckled or Leaning Walls, Structural Members. Whenever the exterior walls or other vertical structural members list, lean, or buckle to such an extent that a plumb line passing through the center of gravity does not fall inside the middle one-third of the base.

(4) Vulnerability to Earthquakes, High Winds.

(i) Whenever any portion of a structure has wracked, warped, buckled, or has settled to such an extent that walls or other structural portions have materially less resistance to winds or earthquakes than is required in the case of similar new construction; and/or

(ii) Whenever any portion of a building, or any member, appurtenance, or ornamentation of the exterior thereof is not of sufficient strength or stability, or is not so anchored, attached or fastened in place so as to be capable of resisting a wind pressure of one-half of that specified in the State Building Code and Fire and Life Safety Code for new buildings of similar structure, purpose, or location without exceeding the working stresses permitted in the State Building Code and Fire and Life Safety Code for such buildings.

(5) Insufficient Strength or Fire Resistance. Whenever any structure which, whether or not erected in accordance with all applicable laws and ordinances:

(i) Has in any nonsupporting part, member, or portion, less than 50 percent of the strength or the fire-resisting qualities or characteristics required by law for a newly constructed building of like area, height, and occupancy in the same location.

(ii) Has in any supporting part, member, or portion less than 66 percent of the strength or the fire-resisting qualities or characteristics required by law in the case of a newly constructed building of like area, height, and occupancy in the same location.

(iii) This subsection does not apply to strength required to resist seismic

loads. For application of seismic requirements see the State Building Code.

(6) Risk of Failure or Collapse.

(i) Whenever any portion or member or appurtenance thereof is likely to fail, or to become detached or dislodged, or to collapse and thereby injure persons or damage property.

(ii) Whenever the structure, or any portion thereof, is likely to partially or completely collapse as a result of any cause, including, but not limited to:

(a) Dilapidation, deterioration, or decay;

(b) Faulty construction;

(c) The removal, movement, or instability of any portion of the ground necessary for the purpose of supporting such structure; or

(d) The deterioration, decay, or inadequacy of its foundation.

(7) Excessive Damage or Deterioration. Whenever the structure, exclusive of the foundation:

(i) Shows 33 percent or more damage or deterioration of its supporting member or members.

(ii) Shows 50 percent damage or deterioration of its nonsupporting members.

(iii) Shows 50 percent damage or deterioration of its enclosing or outside wall coverings.

(8) Demolition Remnants On-Site. Whenever any portion of a structure, including unfilled excavations, remains on a site for more than 30 days after the demolition or destruction of the structure.

(9) Lack of Approved Foundation.

(i) Where a structure is not placed on an approved foundation and no valid permit exists for a foundation for that structure.

(ii) For more than 60 days after issuance of a permit for a foundation for a structure, where the structure is not placed on an approved foundation.

(10) Fire Hazard.

(i) Whenever any structure is a fire hazard as a result of any cause, including but not limited to: dilapidated condition, deterioration, or damage; inadequate exits; lack of sufficient fire-resistive construction; vegetation overgrowth; faulty electric wiring, gas connections, or heating apparatus; storage or keeping of combustibles; or any other cause that is determined by the Fire Marshal or Building Inspector to be a fire hazard.

(ii) Whenever any door, aisle, passageway, stairway, or other means of exit is

not of sufficient width or size or is not so arranged as to provide safe and adequate means of exit in case of fire or panic.

(ii) Whenever the walking surface of any aisle, passageway, stairway, or other means of exit is so warped, worn, loose, torn, or otherwise unsafe as to not provide safe and adequate means of exit in case of fire or panic.

(11) Other Hazards to Health, Safety, or Public Welfare.

(i) Whenever, for any reason, the structure, building, or premises, or any portion thereof, is manifestly unsafe for the purpose for which it is currently being used.

(ii) Whenever a structure, building, or premises has any of the conditions or defects described in Sections 4-5-6 or 4-5-7, to the extent that life, health, property, or safety of the public or its occupants are endangered.

(12) Public Nuisance.

(i) Whenever any structure, building, or premises is in such a condition as to constitute a public nuisance as defined in this Chapter or Chapter 1 of Title 7 of the Ontario City Code.

(ii) Whenever the structure, building, or premises has been so damaged by fire, wind, earthquake or flood or any other cause, or through abandonment for in excess of six months, has become so dilapidated or deteriorated as to become:

(a) An attractive nuisance;

(b) A harbor for vagrants or criminals; or as to

(c) Enable persons to resort thereto for the purpose of committing unlawful acts.

(13) Drug Lab Property. Is currently listed as "unfit for use" by the state of Oregon due to toxic contamination resulting from illegal drug manufacturing.

(14) Violations of Codes, Laws. Whenever any structure, building, or premises has been constructed, exists, or is maintained in violation of any specific requirement or prohibition applicable to such structure provided by the building regulations of this City, as specified in the State Building Code, Fire and Life Safety Code, or any law or ordinance of this state or City relating to the condition, location, or structure of buildings.

4-5-8 Enforcement

(A) Notice to Owner. The Building Inspector shall examine or cause to be examined every building or structure or portion thereof reported as dangerous or damaged and, if such is found to be an unsafe a dangerous building as defined in Section 4-5-7A of this Chapter, the Building Inspector shall give to the owner of such building or structure written notice stating that states the defects thereof, and that complies with the notice requirements of Section 4-5-8B. This notice may require the owner or person in charge of the building or premises, within thirty (30) days, to commence either the required repairs or improvements or demolition and removal of the building or structure or portions thereof, and all such work shall be completed within ninety (90) days from date of notice, unless otherwise stipulated by the Building Inspector. If necessary, If the Building Inspector determines that the

dangerous building is an imminent threat to health, safety or welfare, such notice shall also require the building, structure, or portion thereof to be vacated forthwith and not reoccupied until the required repairs and improvements are completed, inspected and approved by the Building Inspector.

Proper service of such notice shall be by personal service upon the owner of record, if he shall be found within the City limits. If he is not found within the City limits, such service may be made upon said owner by registered mail; provided, that if such notice is by registered mail, the designated period within which said owner or person in charge is required to comply with the order of the Building Inspector shall begin as of the date he receives such notice. Service of such notice shall be as provided in Section 4-5-8B(G).

(B) If the dangerous building can be reasonably repaired or rehabilitated so that it will comply with the requirements of this Code, it shall be ordered repaired or rehabilitated by the Building Inspector; provided, that the failure to comply with a final order of the Building Inspector shall authorize the Building Inspector to order the building vacated and closed. If the dangerous building cannot be repaired or rehabilitated so it can comply with the requirements of this Code, it shall be demolished.

(C) Appeals. Appeals from the Building Inspector's written notice issued under subsection (A) shall be taken as provided in Section 4-5-8D.

(B) (D) The City's Right to Repair or Demolish; Penalty. In case the owner shall fail, neglect, or refuse to comply with the notice to repair, rehabilitate, or to demolish and remove said building or structure or portion thereof, the City Council may order direct the owner of the building prosecuted as a violator of the provisions of this Code and may order City staff the Building Inspector to proceed with the work specified in such notice or to contract with third parties to do so. A statement of the cost of such work shall be transmitted to the City Council, who shall cause the same to be paid and levied as a special assessment against the property after determining that the owner was properly served with the Building Inspector's notice under subsection (A). A failure to comply with the Building Inspector's notice shall also subject the owner to a civil penalty under Sections 4-5-8A and 4-5-8B.

(E) Costs. Costs incurred under subsection (B) (D) shall be paid out of the City Treasury. Such costs, including incidental expenses, shall be charged to the owner of the premises involved as a special assessment on the land on which the building or structure is located, and shall be collected in the manner provided for special assessments. The term "incidental expense" shall include, but not be limited to personnel costs, both direct and indirect; attorney's fees; demolition, hauling, storage and disposal expenses; costs of any required permits and fees; and actual expenses and costs of the City in preparing notices, specifications and contracts, and in accomplishing and/or contracting and inspecting the work, and the costs of any required printing and mailing.

4-5-8A Violations; Maximum Penalty; Remedies

(A) No person, firm, corporation or other entity however organized shall erect, construct, enlarge, alter, repair, move, improve, remove, convert or demolish, equip, use, occupy or maintain a building or structure in the City, or cause the same to be done, contrary to or in violation of this code.

(B) Violation of a provision of this ordinance shall be subject to an administrative civil penalty not to exceed \$1,000 and shall be processed in accordance with the procedures set forth in this Chapter.

(C) Each day that a violation of a provision of this ordinance exists constitutes a separate violation.

(D) In addition to the above penalties, a condition caused or permitted to exist in violation of this

ordinance is a public nuisance and may be abated by any of the procedures set forth under law, including a suit for an injunction.

(E) The penalties and remedies provided in this section are not exclusive and are in addition to other penalties and remedies available to the City under any ordinance, statute or law.

4-5-8B Authority to Impose Civil Penalty

(A) Upon a determination by the Building Inspector that any person, firm, corporation or other entity however organized has violated a provision of this chapter or a rule adopted thereunder, the Building Inspector may issue a notice of civil violation and impose upon the violator and/or any other responsible person an administrative civil penalty as provided by subsections (A) to (K) of this section. For purposes of this subsection, a responsible person includes the violator, and if the violator is not the owner of the building or property at which the violation occurs, may include the owner as well.

(B) Prior to issuing an order to correct a violation under this section, the Building Inspector may pursue reasonable attempts to secure voluntary correction.

(C) Prior to issuing a notice of civil violation and imposing an administrative civil penalty under this section, the Building Inspector shall issue an order to correct a violation to one or more of the responsible persons. Except where the Building Inspector determines that the violation poses an immediate threat to health, safety, environment, or public welfare, the time for correction shall be not less than thirty (30) calendar days. The Building Inspector may grant reasonable extensions based on the projected cost of repairs, the availability of contractors to do the work, the resources of the responsible person or owner, the age of the building, and other factors beyond the control of the responsible person or owner.

(D) Following the date or time by which the correction must be completed as required by an order to correct a violation, the Building Inspector shall determine whether such correction has been completed. If the required correction has not been completed by the date or time specified in the order, the Building Inspector may issue a notice of civil violation and impose an administrative civil penalty to each responsible persons to whom an order to correct was issued.

(E) Notwithstanding subsections (B) and (C), the Building Inspector may issue a notice of civil violation and impose an administrative civil penalty without having issued an order to correct violation or made attempts to secure voluntary correction where the Building Inspector determines that the violation was knowing or intentional or a repeat of a similar violation.

(F) In imposing an administrative civil penalty authorized by this section, the Building Inspector shall consider:

1. The person's past history in taking all feasible steps or procedures necessary or appropriate to correct the violation;
2. Any prior violations of statutes, rules, orders, and permits;
3. The gravity and magnitude of the violation;
4. Whether the violation was repeated or continuous;
5. Whether the cause of the violation was an unavoidable accident, negligence, or an intentional act;
6. The violator's cooperativeness and efforts to correct the violation; and

7. Any relevant rule of the Building Inspector.

(G) Any notice of a civil violation that imposes an administrative civil penalty under this section shall either be served by personal service or shall be sent by registered or certified mail and by first class mail. Any such notice served by mail shall be deemed received for purposes of any time computations hereunder three days after the date mailed if to an address within this state, and seven days after the date mailed if to an address outside this state. Every notice shall include:

1. Reference to the particular code provision, ordinance number, or rule involved;

2. A short and plain statement of the matters asserted or charged;

3. A statement of the amount of the penalty or penalties imposed;

4. The date on which the order to correct was issued and time by which correction was to be made, or if the penalty is imposed pursuant to subsection (E), a short and plain statement of the basis for concluding that the violation was knowing, intentional, or repeated; and

5. A statement of the party's right to appeal the civil penalty to the City Manager or designee; a description of the process the party may use to appeal the civil penalty; and the deadline by which such an appeal must be filed.

(H) Any person, firm, corporation or other entity however organized who is issued a notice of civil penalty may appeal the penalty to the City Manager or his designee. The City Manager's designee shall not be the Building Inspector. The provisions of Section 4-5-8C of this code shall govern any requested appeal.

(I) A civil penalty imposed hereunder shall become final upon expiration of the time for filing an appeal, unless the responsible person appeals the penalty to the City Manager or his designee pursuant to, and within the time limits established by Section 4-5-8C.

(J) Each day the violator fails to remedy the code violation shall constitute a separate violation.

(K) The civil administrative penalty authorized by this section shall be in addition to:

(1) Assessments or fees for any costs incurred by the City in remediation, cleanup, or abatement, and

(2) Any other actions authorized by law, provided that the City shall not issue a citation to Municipal Court for a violation of this Chapter.

4-5-8C Appeal Procedures

(A) A person, firm, corporation or other entity however organized aggrieved by an administrative action of the Building Inspector taken pursuant to any section of this code that authorizes an appeal under this section may, within fifteen (15) days after the date of notice of the action, appeal in writing to the Building Inspector. The written appeal shall be accompanied by a \$200 appeal fee and shall include:

1. The name and address of the appellant;

2. The nature of the determination being appealed;

3. The reason the determination is incorrect; and

4. What the correct determination of the appeal should be.

If a person, firm, corporation or other entity however organized appeals a civil penalty to the City Manager or designee, the penalty shall become final, if at all, upon issuance of the City Manager or designee's decision affirming the imposition of the administrative civil penalty.

(B) If a notice of revocation of a license or permit is the subject of the appeal, the revocation does not take effect until final determination of the appeal. Notwithstanding this paragraph, an emergency suspension shall take effect upon issuance of, or such other time stated in, the notice of suspension.

(C) Unless the appellant and the City agree to a longer period, an appeal shall be heard by the City Manager or his designee within thirty (30) days of the receipt of the notice of intent to appeal. At least ten (10) days prior to the hearing, the City shall mail notice of the time and location thereof to the appellant.

(D) The City Manager or designee shall hear and determine the appeal on the basis of the appellant's written statement and any additional evidence the City Manager or designee deems appropriate. At the hearing, the appellant may present testimony and oral argument personally or by counsel. The burden of proof shall be on the Building Inspector. The rules of evidence as used by courts of law do not apply.

(E) The City Manager or designee shall issue a written decision within 10 days of the hearing date. The written decision of the City Manager or designee is final.

(F) Other than as provided in this subsection, the appeal fee is not refundable. The City Manager or designee may make a determination on the motion of the appellant that the appeal fee shall be refunded to the appellant upon a finding by the City Manager or designee that the appeal was not frivolous.

(G) Failure to pay a penalty imposed hereunder within ten days after the penalty becomes final as provided in subsection (A) shall constitute a violation of this code. Each day the penalty is not paid shall constitute a separate violation. The Building Inspector is authorized to collect the penalty by any administrative or judicial action or proceeding authorized by Section 4-5-8D, other provisions of this code, or state statutes.

4-5-8D Unpaid Penalties

(A) Failure to pay an administrative penalty imposed pursuant to this code within ten days after the penalty becomes final shall constitute a violation of this code. Each day the penalty is not paid shall constitute a separate violation. The Building Inspector is authorized to collect the penalty by any administrative or judicial action or proceeding authorized by subsection (B) below, other provisions of this code, or state statutes.

(B) If an administrative civil penalty is imposed on an owner because of a violation of any provision of this code resulting from prohibited use or activity on real property, and if the owner was properly served with a notice of the violation, and the penalty remains unpaid 30 days after such penalty become final, the Building Inspector shall assess the property the full amount of the unpaid fine and shall enter such an assessment as a lien in the docket of City liens. At the time such an assessment is made, the Building Inspector shall notify the

owner that the penalty has been assessed against the real property upon which the violation occurred and has

been entered in the docket of City liens. The lien shall be enforced in the same manner as all City liens. Interest shall commence from the date of entry of the lien in the lien docket.

(C) In addition to enforcement mechanisms authorized elsewhere in this code, failure to pay an administrative civil penalty imposed pursuant to this code shall be grounds for withholding issuance of requested permits or licenses, issuance of a stop work order, if applicable, or revocation or suspension of any issued permits or certificates of occupancy.

Section 3. Sections 4-5-9, 4-5-10 and 4-5-11 of the Ontario City Code are repealed.

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

AYES:

NAYS:

ABSENT:

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

ATTEST:

Joe Dominick, Mayor

Tori Barnett, City Recorder

AGENDA REPORT

March 22, 2010

TO: Mayor and City Council

FROM: Larry Sullivan, City Attorney

THROUGH: Henry Lawrence, City Manager

SUBJECT: ORDINANCE 2640-2010: AMEND OMC 9-3 AND P&Z CODE 10-57-16(B) RESTRICTING MOTOR AND RECREATIONAL VEHICLE PARKING IN FRONT YARDS AND SETTING FINES FOR PARKING VIOLATIONS (FIRST READING)

DATE: March 12, 2010

SUMMARY:

Attached is the following document:

- Ordinance 2640-2010

Proposed Ordinance 2640-2010 restricts the parking of motor vehicles in the front yards of houses; imposes the same restrictions on the parking and storage of recreational vehicles; and corrects an error created by a previous ordinance in setting fines for parking violations.

PREVIOUS COUNCIL ACTION:

None.

DISCUSSION

The Council discussed placing restrictions on front yard parking in several work sessions, during which the Council reviewed draft language for a possible ordinance. Ordinance 2640-2010 is the product of those discussions. It adds a front yard parking restriction as a new subsection (B) of City Code Section 9-3-2:

(B) A motor vehicle may be parked temporarily on the lawn in the front yard of a dwelling unit solely for loading, unloading, or washing. With that exception, a motor vehicle may be parked in the front yard of a single or multi-family dwelling unit only on a driveway directly connected to a curb cut on the street, or in a parking space that is adjacent to the driveway, and that is located behind the public sidewalk or sidewalk area. The driveway and any adjacent parking space shall be on a prepared surface consisting of concrete, gravel, brick, asphalt or their equivalent, but not dirt or vegetation. The front yard is that portion of the front yard setback extending from the sides of the principal dwelling unit to the street in front of the dwelling unit.

Violations of the ordinance are handled as parking violations rather than through a 14-day nuisance abatement procedure, which was an alternative discussed in previous work sessions.

The same parking restriction is added to subsection (B) of Section 10A-57-16 of the Planning and Zoning Development Standards, governing the storage of recreational vehicles.

Ordinance 2640-2010 also renumbers the subsections of Code Section 9-3-2 for clarity.

During a review of City Code Section 9-3-2, it was discovered that an error had been made in a previous ordinance, Ordinance 2622-2008, in setting the penalties for parking violations under Section 9-3-2. The earlier ordinance erroneously eliminated the penalty for all but one of the parking violations in 9-3-2. Ordinance 2640-2010 corrects that error by creating a new Section 9-3-10 that allows the Council to set by resolution the penalties and fees for all violations in Title 9, Chapter 3, including the parking violations in Section 9-3-2.

STAFF RECOMMENDATION:

Staff recommends the Council approve a first reading of Ordinance 2640-2010.

PROPOSED MOTION:

“I move that the Mayor and City Council approve Ordinance #2640-2010, AN ORDINANCE AMENDING ONTARIO MUNICIPAL CODE 9-3, ADDING SECTION 2(B), AND ONTARIO PLANNING AND ZONING CODE 10-57-16(B) RESTRICTING MOTOR AND RECREATIONAL VEHICLE PARKING IN FRONT YARDS AND SETTING FINES FOR PARKING VIOLATIONS, on First Reading by Title Only.”

ORDINANCE NO. 2640-2010

**RESTRICTING MOTOR AND RECREATIONAL VEHICLE PARKING
IN FRONT YARDS AND SETTING FINES FOR PARKING VIOLATIONS**

- WHEREAS,** At many places in the City of Ontario, people regularly park their vehicles on dirt or grass in the front yards of houses; and
- WHEREAS,** The City Council finds that this contributes to blight and disorderly conditions, as well as damaging public and private property values and the appearance of the community at large, and should be restricted; and
- WHEREAS,** Section 9-3-2 of the City Code is the section dealing explicitly with parking restrictions in the City and should be amended to include this prohibition; and
- WHEREAS,** Section 10A-57-16(B), which authorizes the parking of recreational vehicles, trailers, boats and similar devices in any front yard, should be amended to be consistent with the amendment to Section 9-3-2; and
- WHEREAS,** Ordinance 2622-2008, enacted by the City Council in 2008, was intended to authorize the City Council to set, by resolution, parking fines for parking violations in Section 9-3-2 and other sections of Chapter 3 of Title 9 of the City Code, which Chapter deals generally with parking regulations; and
- WHEREAS,** as written, Ordinance 2622-2008 applies only to parking restrictions identified in Section 9-3-2(X), rather than all parking restrictions identified in Chapter 3 of Title 9; and
- WHEREAS,** To conform with the City Council's intent expressed in Ordinance 2622-2008, the reference to parking fines in Section 9-3-2(X) should be deleted, and a new section should be added to Chapter 3 of Title 9, authorizing the City Council to set all parking fines and fees by resolution.

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

Section 1. Section 9-3-2 of the Ontario City Code is amended by adding those provisions which are underlined and deleting those provisions which are stricken:

9-3-2 Prohibited parking and ~~standing~~ stopping.

(A) In addition to the State motor vehicle laws prohibiting parking, no person shall park or stop, as defined in ORS Chapter 801:

~~(A)~~(1) A vehicle in any alley other than for the expeditious loading or unloading of persons or materials, but in no case for a period of more than thirty (30) consecutive minutes,

~~(B)~~(2) A motor truck as defined by ORS 801.355 on a street between the hours of nine o'clock (9:00) P.M. and seven o'clock (7:00) A.M. of the following day in front of or adjacent to a residence, motel, apartment house, hotel, or other sleeping accommodation,

~~(C)~~(3) A vehicle upon a parkway or freeway, except as authorized,

~~(D)~~(4) A vehicle in a manner such that the front of the vehicle is facing the oncoming traffic on that side of the street, avenue, parkway, freeway or highway,

~~(E)~~(5) On a sidewalk,

~~(F)~~(6) Within an intersection,

~~(G)~~(7) Alongside or opposite a street excavation or obstruction when stopping, standing or parking would obstruct traffic,

~~(H)~~(8) Upon a bridge or other elevated structure upon a highway,

~~(I)~~(9) In the area between roadways of a divided highway, including crossovers,

~~(J)~~(10) At any place where traffic control devices prohibit stopping,

~~(K)~~(11) In front of a public or private driveway,

~~(L)~~(12) Within ten feet (10') of a fire hydrant,

~~(M)~~(13) Within twenty feet (20') of a crosswalk at an intersection,

~~(N)~~(14) Within fifty feet (50') upon the approach to an official flashing signal, stop sign, yield sign or traffic control device located at the side of the roadway if the standing or parking of a vehicle will obstruct the view of any traffic control device located at the side of the roadway,

~~(O)~~(15) Within fifteen feet (15') of the driveway entrance to a fire station and on the side of a street opposite the entrance to a fire station within seventy-five feet (75') of the entrance,

~~(P)~~(16) At any place where traffic control devices prohibit standing,

~~(Q)~~(17) Within fifty feet (50') of the nearest rail of a railroad,

~~(R)~~(18) At any place where traffic control devices prohibit parking,

~~(S)~~(19) On a bicycle lane,

~~(T)~~(20) On a bicycle path,

~~(U)~~(21) More than twelve inches (12") from the curb,

~~(V)~~(22) On any public highway at a time the vehicle registration is not current, or

~~(W)~~(23) Within a parking by permit only zone and the vehicle does not have a valid visible permit.

(B) A motor vehicle may be parked temporarily on the lawn in the front yard of a dwelling unit solely for loading, unloading, or washing. With that exception, a motor vehicle may be parked in the front yard of a single or multi-family dwelling unit only on a driveway directly connected to a curb cut on the street, or in a parking space that is adjacent to the driveway, and that is located behind the public sidewalk or sidewalk area. The driveway and any adjacent parking space shall be on a prepared surface consisting of concrete, gravel, brick, asphalt or their equivalent, but not dirt or vegetation. The front yard is that portion of the front yard setback extending from the sides of the principal dwelling unit to the street in front of the dwelling unit.

~~(X)~~(C) When signs are erected in each block giving notice thereof, no person shall park a vehicle for longer than the designated time between the hours of eight o'clock (8:00) A.M. and eight o'clock (8:00) P.M. of any day except Sundays and legal holidays upon any of the streets or sections thereof described in Exhibit "A."

~~The Council will determine the amount of the fine by resolution.~~

~~(Y)~~(D) A special construction parking zone may be established when in the judgment of the City Manager or his designee a street must be vacated during a short period of time in order to complete a City sponsored construction project. This designation will allow the Police Department to impound vehicles or other objects, which are parked within the construction area interfering with the progress of a City sponsored construction project.

(1) Prior to the impounding of any vehicle from a special construction parking zone, the Public Works Department will:

1 a. Place door hangers on all residences and commercial buildings in the area to be vacated at least thirty-six (36) hours prior to the required vacation of the street, informing occupants of the date of vacation; and

2 b. Place street signs conspicuously within the project boundaries, on the day of vacation informing residents and visitors that no parking is allowed on the street. Prior to the impounding of any vehicle from a special construction parking zone, the Police Department will:

(a) 1) Request police dispatch to contact the registered owner by telephone if a telephone number is available, in order to have the vehicle moved; and

(b) 2) Attempt to contact residences in the immediate area of a vehicle in danger of impound for the purpose of notifying the vehicles' owner.

(2) When a vehicle is impounded from a special construction parking zone, the Police Department will send notice to the registered owner within forty-eight (48) hours of the impound. The notice will comply with Ontario Municipal Code 9-4-5, (2)-9-4-5(2). The registered owner of the impounded vehicle will have the ability to appeal the impound. The City will waive all administrative costs for vehicles impounded from a special construction parking zone.

Section 2. The following Section 9-3-10 is added to Chapter 3 of Title 9 of the Ontario City Code:

Section 9-3-10 Penalties and Fees

The Ontario City Council shall set by resolution the penalties and fees for any violations of this Chapter.

Section 3. Section 10A-57-16 of the Planning and Zoning Development Standards is amended by adding those provisions which are underlined and deleting those provisions which are stricken:

10A-57-16 OFF-STREET PARKING, PLACEMENT OR STORAGE OF RECREATIONAL VEHICLES, UTILITY TRAILERS, BOATS, FLOTATION DEVICES OR OTHER SIMILAR DEVICES.

(A) It shall be unlawful within the limits of the City, for any person to park or locate any recreational vehicle, utility trailer, boat, flotation device or similar device on any street, alley or highways except as provided for in the Zoning Ordinance.

(B) Subject to Section 10A-57-15, vision clearance, recreational vehicles, utility trailers, boats, flotation devices or similar devices may be parked, placed, or stored in any front yard provided they are parked, placed or stored behind the public sidewalk or sidewalk area of any front yard, subject to Section 10A-57-15, vision clearance, only on a driveway directly connected to a curb cut on the street, or in a parking space that is adjacent to the driveway, and that is located behind the public sidewalk or sidewalk area. The driveway and any adjacent parking space shall be on a prepared surface consisting of concrete, gravel, brick, asphalt or their equivalent, but not dirt or vegetation. The front yard is that portion of the front yard setback extending from the sides of the principal dwelling unit to the street in front of the dwelling unit.

(C) No recreational vehicle shall be used as a place of habitation on any public street, alley or highway within the limits of the City, except; recreational vehicles may be parked in the front yard (behind the sidewalk or sidewalk area of a lot, parcel or tract of land) temporarily as a place of habitation not to exceed 72 hours. Longer periods of time, up to 14 consecutive days may be authorized in writing by the Planning and/or Building Department with no fee required. Habitation permits shall not exceed three per year.

Recreational vehicles, utility trailers, boats, flotation devices and other similar devices shall gain access to the front yard parking, placement or storage area via a developed curb cut or where the curb is not developed by an established driveway.

(D) The unoccupied temporary stopping or parking of a recreational vehicle is permitted on any street, alley or highway for a period of 72 hours in any seven consecutive days subject to any other prohibitions, regulations or limitations imposed by the traffic and parking regulations or ordinances for that street, alley or highway.

- (E) Other circumstances allowing for temporary habitation of a recreational vehicle are:
1. Authorized R.V. overnight park or mobile home park;
 2. Authorized watchman's quarters;

3. Authorized use during construction of a permitted or conditional use; or
4. During a health hardship as provided in subsection (I).

~~D.~~ (F) Recreational vehicles and manufactured dwelling on sales lots, not set up for occupancy are exempt from any requirements of this Section, with the exception of Section 10A-57-15, Vision Clearance.

~~E.~~ (G). Chapter 10A-57 MISCELLANEOUS PROVISIONS shall apply to all manufactured housing and recreational vehicle outdoor sales lots.

~~F.~~ (H) Any person who is constructing a dwelling house upon his own lot, tract or parcel of land, may for a period of not to exceed 120 days park and occupy a recreational vehicle upon said lot, tract or parcel of land which may be occupied by the owners of said property during the period of construction. The Planning Commission may, it determines that an extension of time is warranted, grant an extension in monthly increments of up to three months, pursuant to the requirements of Chapter 10B-35.

~~G.~~ (I) A conditional use for a health hardship may be authorized by the Planning Commission according to the procedures set forth in Chapter 10B-25, provided that the use is of a temporary nature. Approval of a health hardship permits the placement of a recreational vehicle (travel trailer) subject to the following conditions in addition to the requirements of Chapter 10B-25:

1. The applicant can demonstrate that approval of the request would allow for the care of a seriously ill person in a manner that could not be achieved by any reasonable existing alternative.
2. The applicant has a medical doctor's written confirmation of a health hardship.
3. The approval is for a length of time not to exceed 12 months or the duration of the health hardship, whichever is less. The Planning Commission may extend approval for an additional 12-month period if a written request for renewal is submitted by the applicant before expiration and written reconfirmation of the health hardship is provided by a medical doctor.

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

AYES:
NAYS:
ABSENT:

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

ATTEST:

Joe Dominick, Mayor

Tori Barnett, City Recorder

AGENDA REPORT

March 22, 2010

TO: Mayor and City Council

FROM: Larry Sullivan, City Attorney

THROUGH: Henry Lawrence, City Manager

SUBJECT: **ORDINANCE NO. 2641-2010: AMEND OMC 5-3, ADD SECTION 2, PROHIBITING THE USE OF FIREWORKS IN CITY PARKS AND ON PUBLIC SCHOOL GROUNDS-First Reading**

DATE: March 15, 2010

SUMMARY:

Attached is the following document:

- Ordinance 2641-2010

Proposed Ordinance 2641-2010 prohibits the use of fireworks in City parks or on school grounds without a valid permit.

DISCUSSION

Ordinance 2641-2010 was prepared at the request of the Fire Department. It is intended to protect bystanders from injuries caused by the use of fireworks and other combustible materials, such as those that have been caused by spectators discharging fireworks in Beck Kiwanis Park and on May Roberts school grounds during the City's annual July 4 fireworks display. Violation of the Ordinance would be a Class A infraction under the City Code, which currently carries a penalty of \$722. Persons with a valid permit issued by the State Fire Marshall would be exempt from the ordinance. So would those persons who were authorized by the City or by 8C School District. For instance, police or fire training exercises would be exempt, as would the use of combustible chemicals by a teacher during chemistry class.

STAFF RECOMMENDATION:

Staff recommends the Council approve a first reading of Ordinance No. 2641-2010.

PROPOSED MOTION:

"I move that the Mayor and City Council approve Ordinance #2641-2010, AN ORDINANCE AMENDING ONTARIO MUNICIPAL CODE 5-3, ADDING SECTION 2, PROHIBITING THE USE OF FIREWORKS IN CITY PARKS AND ON PUBLIC SCHOOL GROUNDS, on First Reading by Title Only."

ORDINANCE NO. 2641-2010

**PROHIBITING THE USE OF FIREWORKS IN CITY PARKS
AND ON PUBLIC SCHOOL GROUNDS**

WHEREAS, The use of fireworks without a permit in City parks and on public school grounds is a fire hazard and is a danger to the health and safety of students and City residents.

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

Section 1. The following Section 5-3-2 is added to Chapter 3 of Title 5 of the Ontario City Code:

Section 5-3-2 Prohibiting Use of Fireworks in City Parks and Public School Grounds.

(A) The use of all classes of fireworks, including the use of sparklers, snakes, or other spark or smoke producing articles containing combustible material, is prohibited in all City parks and on the grounds of all public schools in the Ontario City limits.

(B) The prohibition in subsection (A) does not apply to a public fireworks display by a person or organization possessing a valid permit issued pursuant to the Oregon Fireworks Law, ORS 480.110 through 480.165.

(C) The prohibition in subsection (A) on the use of fireworks in City parks does not apply to activities conducted by or sponsored by the City of Ontario. The prohibition in subsection (A) on the use of fireworks on public school grounds does not apply to activities conducted by or sponsored by the Ontario 8C School District.

(D) Violation of this Ordinance shall be a Class A violation as provided in Section 1-4-1 of the Ontario City Code.

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

AYES:
NAYS:
ABSENT:

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

ATTEST:

Joe Dominick, Mayor

Tori Barnett, MMC, City Recorder

EXECUTIVE SESSION

March 22, 2010 or March 18, 2010

TO: Mayor and City Council
FROM: Tori Barnett, MMC, City Recorder
THROUGH: Henry Lawrence, City Manager
SUBJECT: EXECUTIVE SESSION
DATE: March 15, 2010

SUMMARY:

Council will convene into Executive Session under ORS 192.660(2)(h) – current or potential litigation.

Time into Executive Session: _____
Time out of Executive Session: _____