

AGENDA
CITY COUNCIL - CITY OF ONTARIO, OREGON
Monday, April 2, 2012, 7:00 p.m., M.T.

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

2) **Pledge of Allegiance**

This Agenda was posted on Wednesday, March 28, 2012, and a study session was held on Thursday, March 29, 2012. 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 03/19/2012 1-10
- B) Reappointment to Airport Board: Shawn Coleman 11-12
- C) Proclamation: Child Abuse Prevention Month - April 2012 13
- D) Request for Sewer Hook-Up 14-16
- 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) **Old Business:**

- A) Ordinance #2667-2012: Water & Sewer (Final Reading) 17-35

7) **Presentation:** Boys & Girls Club - Erin Cunningham

8) **New Business:**

- A) Audit Presentation (Hand-out)
- B) SBE Contracts 36-103
- C) NW Washington Deeds (Brewer & Vavold) 104-113
- D) Horning and Crest Way Proposed Sewer and Water Fees 114-118

9) **Discussion Items:**

- A) Prothman Corporation
- B) Discuss Possible Joint Meeting with Malheur County Court regarding Industrial Land Expansion and Economic Development
- C) Fire Service Billings
- D) Council Goals

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

11) **Executive Sessions:**

- A) ORS 192.660(2)(e) - Real Property
- B) ORS 192.660(2)(h) - Litigation

12) **Adjourn**

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

COUNCIL MEETING MINUTES

March 19, 2012

The regular meeting of the Ontario City Council was called to order by Mayor Joe Dominick at 7:00 p.m. on Monday, March 19, 2012, in the Council Chambers of City Hall. Council members present were Norm Crume, Joe Dominick, Jackson Fox, Charlotte Fugate, Dan Jones, David Sullivan and Ronald Verini.

Members of staff present were Chuck Mickelson, Tori Barnett, Al Higinbotham, Larry Sullivan, Bob Walker, Lisa Hansen, Mark Alexander, Todd Higinbotham, Lonnie Justus, Liz Amazon, Justin Alison, Frank Grimaldo, Sr., and Anita Zink. The meeting was recorded on tape, and the tapes are available at City Hall.

Jackson Fox led everyone in the Pledge of Allegiance.

AGENDA

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

AMEND AGENDA

Councilor Jones stated he no longer wanted to have the Executive Session, 7A, under New Business. He would voice his comments during open business.

Jackson Fox moved, seconded by David Sullivan, to removed Item 7A from the Agenda. Roll call vote: Crume-yes; Fox-yes; Fugate-yes; Jones-yes; Sullivan-yes; Verini-yes; Dominick-yes. Motion carried 7/0/0.

CONSENT AGENDA

Mayor Dominick and Councilor Crume abstained from voting due to invoices on the bills.

David Sullivan moved, seconded by Ronald Verini, to approve Consent Agenda Item A: Approval of the Regular Minutes of 03/05/2012; Item B: Approval of the Study Session Minutes Excerpt 03/01/2012; and Item C: Approval of the Bills. Roll call vote: Crume-abstain; Fox-yes; Fugate-yes; Jones-yes; Sullivan-yes; Verini-yes; Dominick-abstain. Motion carried 5/0/0/2.

PUBLIC COMMENTS

Heidi Caldwell, New Plymouth: *Thank you Mayor and Council members for allowing me this time for public comments. I come to you this evening with concerns regarding the Ontario Aquatic Center, at which I attended the Total Aquatics Water Aerobics class for the past five years taught by Toni Pointiner, a former employee. I'm concerned about the reasons for which our class was ultimately cancelled given the fact that it is my understanding that this was the most attended and most successful aerobics class that the Aquatic Center had to offer. In recent weeks, the headcount of the class was between 15 to 18 participants every Monday and Wednesday. In the past and until last week, the class has been so full that we have had to split up and take turns in order to accommodate the entire crowd. It is my understanding the trouble began when our instructor Toni was notified by management of the Aquatic Center that we didn't need the full length of the pool for this class, and would have to share with the swimming lessons groups. Over the past two years, many attempts have been made to rectify the problem,*

including following the procedures listed on the City of Ontario website, going through the chain of command and contracting the former City Manager Henry Lawrence.

Henry was given a long list of concerns and letters written on behalf of this group and members of the public. I truly believe Henry tried to make a change but something seemed to be in the way of allowing him to make the change that is still needed. While our efforts did result in the class being reinstated after being cancelled the last time, no further changes in management happened to the problem continued. In more recent months, members of this class were asked to direct any issues with the Aquatic Center to the current Aquatic Center facility Manager, Kathy Daly. Once again, members of the class wrote letters with their concerns. One recent incident occurred when Toni was teaching her class and Kathy decided it was the appropriate time to confront her and began arguing in front of paying participants. It has since been relayed to this group that we are complainers, ultimately resulting in the class being dropped. We as a group feel that Toni has gone out of her way in her attempts to work with the director of the Aquatic Center to rectify the situation. I come to you tonight representing the members of the Total Aquatic Centers Water Aerobics group with these questions: What is the next step in ensuring our voices are heard about the concerns over the management of the Aquatic Center? Why are tax payers footing the bill when there are people wanting to utilize and pay for use of the pool on a regular basis that could bring in revenue to pay for the pools cost of operation? Why does it seem to the swimmers at the pool that the cleanliness and staff management aren't being properly managed?

The pool may be in need of a few repairs to the structural part of the building, but those are minor compared to the repairs and the overhaul needed in regards to the management of the pool. It is the opinion of many in our community that fixing that problem first would have revived the pool and bring in more classes and revenue so the operation of the pool can start on its way to a self-supporting status. With the current management, that will not happen.

We, as a group, have a simple request. I believe if you would see our class, you would see it is made up of mostly mothers and grandmothers and a few men just there for exercise. We have come to know each other and have shared some great times. We are not there to cause trouble. We are there simply to swim for our one hour we are allotted. This class, for many, is time away from family, but the value it brought to our lives and the values Toni, the instructor, gave to us was worth it. We are simply asking for changes to be made. If given the opportunity, some of would show up four nights a week to utilize this pool. Why are we not being given this opportunity?

That's comments on behalf of the Total Aquatics Water Aerobics group.

Joanna Winegar, Fruitland, Idaho: *I am coming to you as a paying customer, and I use the Aquatic Center, and I've been going to the Aquatic Center for the last two years, a little over two years, and I've just observed some things, and I'd like to share some of those things that I've observed, and I'd like to let you know that I do feel like there is a mismanagement of the pool. One of the first things that I thought about when the pool came up was the equipment and the maintenance in the weight room. For those who have, if you use that, the equipment is very old, and I hate to bring this to your attention because I'm scared we'll lose the weights, but it is unsafe. A lot of the things are welded, and they are very old, and I've actually been in the weight room when we've had, there's been an accident there. Somebody was doing a pull-down with the weight in this manner, where you attach the bar to a cable and you pull like this, and the weld broke that attached the bar to the cable and it, the bar came down on somebody's head and it actually did cause someone to have a concussion, and it's quite scary, and whenever, the other thing, let's see, it was shocking and that kind of thing needs to be updated. The other thing that I wanted to bring about was the cleanliness of the bathrooms and the weight room and just in the general area. To my knowledge, I think that the only thing that's being done is the night person cleaning, and I would like to see some of the people who work there could be doing a lot more than what they're doing. I see a lot of sitting, and I know they need to be out there with the, they need to be out there watching the pool, but there's also other things that they could be doing. For instance, when you go into the weight room, if you do take a wipe and wipe, it is filthy. And, if you know anything about physical, being in a gym, I don't know if any of you have heard of MERSA, but it is a staph infection and it's prevalent in gyms because of all the sweating, and it comes from, you can get it just by attaching to your skin, and it's nasty. It's a nasty staph infection, and it's very important, especially in the weight room, and*

in that part of the facility, that those things are cleaned. I have a concern about the lifeguards not being in uniform. If there's an emergency, a lot of them come in in just shorts and a regular t-shirt. How do you know who to go to, if there is an emergency? I know, because of the people that I see there, and I'm assuming that that's who, what their job is. But, a lot of them aren't. I notice in the evening, a lot of them aren't in uniform. A lot of times, when you walk in, you don't feel welcome. There isn't a "hi" or "glad you're here, I hope you have a good workout". I've also noticed that the staff, as well, is not well-informed. If you have a question, a lot of times they'll say "can you call back when Kathy's here?" Well, when is Kathy here? She's usually here in the morning until noon or whatever. The other thing that was upsetting the other day was when I was working out in the weight room, I wanted to go into the aerobic room and stretch and do ab work, and the room is locked. I don't have access to that. I'm a paying customer. I assume that when I give my membership, and I go in for that day, that I have full access to all of the building. That's where there's mats, that where you can get out of the weight room where it's cramped in there, and you can do your stretching, and you can do your, you can do whatever you want to do. But that room has been locked. I'm not sure how long that's been locked. Overall, I don't feel that the staff, I'm not blaming the staff, I think it's mismanagement, but overall, the staff is not professional, and I think it's a poor representation of the city. There's been times when I've gone in in the morning, first thing, and you go and there's no spray bottles. That should be something that those lifeguards should check and make sure those spray bottles are out there, with that chemical to clean so that the people who use the weight room can clean up after themselves, too. A lot of times that isn't there, or, there's no paper towels. Just things of that nature. There should be a check-list when you first come. They're there early. They're there before those doors open, and those are things that they should be doing. I don't know what they're doing, but those are things that they should be doing. There should be a check-list, there should be some accountability, and I don't know that there is. I would like to know what is being done about these issues, and when we can expect to see changes, or do I need to take my money elsewhere.

Patty Barfield, Ontario: *I'm also a member of the Total Aquatic class. They've pretty much touched on all the issues, but the issue I wanted to address was the difficulty with communications between staff and management, and what appears to be sort of block of access of services, due to a systems issue, a communication issue, and an inability to effectively resolve conflict. Toni taught this class for nearly six years, and it's a crazy successful class. Because of what it seems, I'm on the outside looking in, just to be an issue of an inability to resolve conflict, at the core communication. That's concerning for me. The pool is a valuable resource, and every resource that we have in our community for people to work on wellness, should really be nurtured and facilitated. I work in the profession of basically communication and relationships, so I know this problem could be solved. My plea is that if you, as Council members, or a committee could kind of look in the issues, and see if it can't be some spirited cooperation facilitated and some collaboration.*

NEW BUSINESS

City Manager Company Recruitment Proposals

Joe Dominick, Mayor, stated as discussed at the work session last Thursday, they had received three proposals – League of Oregon Cities, The Waldren Corporation, and the Prothman Corporation. Everyone had the chance to review the proposals, and input was received from each Councilor. Consensus was to set up a contract with Protham, who provided a bid maximum of \$24K. He had emailed a copy of the contract to those Councilors with email, which was similar to the one from four years ago.

Councilor Jones questioned the consensus. In reading the Mayor's email from Friday, "yesterday, at the Ontario City Council work session, the Council, by consensus, chose your firm to work with us on selecting a new City Manager". Unless he misunderstood, he had not conceded to Prothman. He asked the Mayor to explain his actions.

Mayor Dominick stated when the majority of the Council was in favor of a proposal, it became the consensus of the Council.

Councilor Jones stated that during the work session, Councilor Fox stated that he had not had time to review his information, and the Mayor stated back that he would give Councilor Fox time to review the information. This was

during a work session. They were supposed to discuss it that night, and vote on it that night, and the Mayor was already giving Prothman, as the Mayor, the authority to move forward. He asked Mr. Sullivan, City Attorney, if that was out of bounds.

Larry Sullivan, City Attorney, stated the City Council had adopted rules that only during limited circumstances could they vote at the work session, and there had been no vote on this. He didn't see the email sent to Prothman, but until a contract was signed, Prothman wasn't hired. Did the Mayor do something bidding the city? He didn't believe so. It was up to the Council, in a public meeting, to vote to enter into the contact with Prothman. It didn't appear there was a commitment to enter into the contract without the action of the Council.

Councilor Jones stated he felt the Prothman contract was way overpriced for a town of this size. Since Ontario was a member of the LOC, and having spoken with Jeannie Mesmer of LOC, for that fee, with regard to the size of Ontario, and regarding some other applications that could possibly come in, he felt, and if they capped out at \$24K, plus another \$3-5K for travel fees, the last time they had done this, it was around \$30K. For topic of conversation say \$28K, that was two times the price of LOC. LOC had success. LOC placed Henry in Eagle Point.

Councilor Fugate stated that Prothman did that.

Councilor Jones stated he wouldn't support another \$30K bill. Within Prothman, their reference for what they were going to advertise the City of Ontario, advertised replacing a City Manager that was only there for three years. So the Council had spent \$30K on Mr. Lawrence's position, and now they were going to spend another \$30K. With the economic state this country was in, LOC felt they could, it was the same pool that was going to be applying for a town this size, and a town in this location. He questioned the Mayor's actions on giving Prothman the lead up that they were going to get the deal before it was voted on, and he questioned the Council going forward with Prothman in regards to what it's going to cost the city and its taxpayers.

Councilor Fugate asked who put the city in is this position to begin with? Why did they lose the City Manager? He quit under harassment.

Councilor Jones stated that was a matter of opinion.

Councilor Fugate disagreed, it was more than that. You spread negative stuff about Henry [Lawrence] in the community, how inept he was, how he didn't do his job, you and Mr. Fox had done that for the last five months, and you won your deal. She wasn't going to allow the Council to go ahead and have minimal applications for City Manager. She wanted the best City Manager they could have for the money they had.

Councilor Jones stated LOC would give them that.

Councilor Fugate stated he was mistaken.

Councilor Jones stated that was a matter of opinion.

Councilor Fugate agreed, but she got to vote, just like he did.

Councilor Sullivan asked if there was any indication of what LOC was going to charge. Did they receive a solid figure?

Councilor Jones stated the figure was \$7,750, which includes their travel expenses, their time here, their time putting the program together, and if he understood it correctly, the only other expense would be bringing the candidates. That's how he read that offer.

Councilor Sullivan confirmed that Councilor Jones had seen where Prothman capped it at \$24K.

Mayor Dominick stated Prothman had a not-to-exceed amount of \$24K, which included all their expenses, advertising, mailings, consulting, deliveries, printing, consultant travel, background checks, and any client's required licenses or fees. In the LOC proposal, their inclusive fee for the assistance to the City would be \$7,750, exclusive of all actual costs, which would be billed to the city by LOC. Their priced included a maximum of four background checks. Items not included in the LOC fee, was travel for candidates, and related expenses, costs of the interview process, such as meals and facilities. There were additions to the \$7,750 with LOC.

Councilor Verini stated in looking at all the proposals, one that stood out was Prothman. The reason being that they did such a good job the last time the Council looked for a City Manager. Prothman was very professional. The really brought the Council and the citizens together to do a tremendous job in the interview process. He believed it was the whole package they were buying. The fact that Prothman reduced the initial amount due to repeat business, and they brought, he believed, such a highly qualified group to see, they deserved, as a city, to get the very best they could get. If they selected LOC to save a few bucks, that's not right for the citizens of this community. Protham had a good process. The Council was comfortable with them, and they provided a good selection to the Council. They had to go with a winner.

Councilor Crume stated that with their last discussion, without having Councilor Fox's knowledge of what was there, and the Mayor had asked for his opinion after reviewing it, he believed there was a consensus to go with Protham. It had been talked about, getting the contract, and he was comfortable with that. The three packets – there were two good ones, and one that was incomplete, in his opinion. With the knowledge gained with being on the Council, and picking out contractors, they had to go with what they believed at the time. LOC was by far the least professional, and least equipped. The other two companies were far superior in their ideas and scope of work. For him, that eliminated LOC, even though they were the cheapest. Cost was always put in his decisions. The other two were equal in their proposals. Protham was cheaper, and the Council had worked with them before. He liked the three groups that were involved in the interview process last time – the staff, citizens, and Council, and that was very important to continue. That way, it wasn't just the seven Councilors making the decision. Councilor Jones had previously said he would get further information from other cities who had used LOC – had he?

Councilor Jones stated he had not.

Councilor Crume stated they needed to move forward on this as quickly as possible, and dragging their feet could result in no City Manager being hired in a timely manner. That being said, had to go with Prothman.

Councilor Fox stated regarding last Thursday, the letter or email to Protham – he thought that discussion had been done in Executive Session.

Mayor Dominick stated yes, it had been discussed in Executive Session, but after they finished that, they came out in regular session and discussed moving forward on getting a contract with Prothman for review.

Councilor Fox stated for him, it was always about the money, and he believed it was that way for the tax payers as well. He thought they had past experience with LOC, and the city paid dues to them. He was good with LOC, but it was obvious they were outvoted.

Mayor Dominick stated the community expected things to move forward. As Mayor, he was the target, and he accepted that, but at the same time, when they had an important project such as this, they needed to move forward. As he heard through Council discussions, he heard to move forward. He would continue to move forward, and take the heat.

Ronald Verini moved, seconded by Charlotte Fugate, to select Prothman Corporation as the firm to recruit candidates to fill the position of Ontario City Manager. Roll call vote: Crume-yes; Fox-no; Fugate-yes; Jones-no; Sullivan-yes; Verini-yes; Dominick-yes. Motion carried 5/2/0.

Contract Award: Pierce Manufacturing Company

Al Higinbotham, Fire Chief, stated the city was awarded a FEMA AFG grant in the amount of \$340,000.00 for the purchase of a replacement pumper. To stay within the grant funding, 100% down payment was needed. The city was able to do a Cooperative Procurement purchase through Coburg Fire Protection District allowing staff to proceed without going to competitive bid.

On February 6, 2012, the City Council approved Resolution #2012-102, a resolution authorizing the receipt and expenditure of the \$323,000.00 FEMA Assistance to Firefighter's Grant, and the 5% Grant Match of \$17,000.00. On March 1, 2012, the Council gave consensus to move forward with the Cooperative Procurement process, authorizing 100% funding for the new Pumper.

The base price for the Pierce apparatus was \$340,972.00. The Ontario Volunteer Fire Association has agreed to contribute \$972.00, leaving a balance of \$340,000.00. FEMA would allow 25% down, or \$80,750.00; however, \$259,250.00 was needed for a 100% down payment. While this decrease in the city's contingency fund over a period of seven months would result in a loss of \$745.00 in interest, it would allow a gain of \$15,979.00 in truck value. At the conclusion of the seven month period, FEMA would reimburse the city \$247,250.00, leaving only the city cost of \$17,000.00, the agreed upon 5% grant match.

Councilor Jones stated when the Chief made his presentation to the Council that was a job well done. They had details behind the summary, he had presented them with the summary, it was easy to follow, and it was easy to make a decision on. That was what he was looking for in presentations. Nice job.

Charlotte Fugate moved, seconded by David Sullivan, that the City Council approve the Contract with Pierce Manufacturing, and authorize the City Manager/Contracting Officer to sign the Contract on behalf of the City of Ontario. Roll call vote: Crume-yes; Fox-yes; Fugate-yes; Jones-yes; Sullivan-yes; Verini-yes; Dominick-yes. Motion carried 7/0/0.

Restated Motion for City Manager Recruitment Process

Contract Award: Skyline Reservoir Liner Repair to ACF Construction

Bob Walker, Interim Public Works Director, stated due to winter weather conditions during the project to modify the intake structure as suggested by the City Council, the reservoir liner was damaged in several locations. The best alternative for repair was to replace a 25 foot by 325 foot section of the 60 mil PS HDPE liner and to repair a few tears outside this area. The intake structure modifications were complete and with repair of the liner the reservoir would be available for service prior to irrigation season if this contract was awarded and the liner repairs were made in a timely fashion.

Request for quotes to repair the Skyline Reservoir Liner were sent out in early February. The service requested was to replace a large area of the 60 mil PS HDPE liner (25x325 feet) and to repair additional tears outside of main 25x325 foot area. ACF Construction, also doing business as ACF West of Portland, was the apparent lowest responsive vendor who provided the City with a quote of \$10,776.

Contractor	Bid
ACF Construction also dba; ACF West, Portland OR	\$10,776
Layfield, El Cajon CA	\$18,784
BTL Liners, Prineville OR	NA

This project would be paid for from funds available in project 11SEW-13, Parallel Force Main, which was complete and had an unexpended balance of \$145,932.80.

Councilor Jones stated had had flown over the site Saturday. Was Mr. Walker confident the riser would be in place, and stay in place?

Mr. Walker stated yes, he was.

Councilor Jones stated with regard to the underground pipe sucking out the water, since being fixed, was it ready to go for irrigation?

Mr. Walker stated yes, it was clean and set to go.

Councilor Jones stated the ditch along the northwest bank seemed narrow, and could run risk, possibly, of overflowing. He suggested checking that drain ditch to ensure enough space when needed.

Mr. Walker would look into that.

Charlotte Fugate moved, seconded by Ronald Verini, that the City Council authorize the City to enter into a Contract with ACF Construction also dba ACF West for the Skyline Reservoir Liner Repair Project. Roll call vote: Crume-yes; Fox-yes; Fugate-yes; Jones-yes; Sullivan-yes; Verini-yes; Dominick-yes. Motion carried 7/0/0.

Resolution #2012-104: ODOT 2012 Fund Exchange

Chuck Mickelson, Interim City Manager, stated the State of Oregon offered Fund Exchange programs acting by and through its Department of Transportation, in which Federal funds were exchanged for state funds at a ratio of \$94 state dollars for \$100 federal dollars. This gave the city the ability to build projects under local control instead of federal control. The process would grant the city \$117,951.20 for \$125,480 federal funds.

On April 4, 2005, the City Council authorized the Mayor to sign Fund Exchange Agreement #22388, which allowed staff to construct and complete the southwest 4th Avenue and southwest 4th street signal project. On March 16, 2009, Council adopted Resolution #2009-108, approving Fund Exchange #25415, which authorized the Mayor to sign the agreement for the design and construction of North Oregon Street and rehabilitation between Idaho Street and Northwest 1st Street. On August 16, 2010, the Council adopted Resolution #2010-131, approving Fund Exchange #27023, which authorized the Mayor to sign the agreement for chip sealing and landscaping. On January 17, 2012, the Council adopted Resolution #2012-101, approving Fund Exchange #28277, which authorized the Mayor to sign the agreement for chip sealing and equipment purchases

David Sullivan moved, seconded by Jackson Fox, that the City Council adopt Resolution #2012-104: A RESOLUTION APPROVING FUND EXCHANGE AGREEMENT #28370 BETWEEN THE CITY OF ONTARIO AND THE STATE OF OREGON, ACTING BY AND THROUGH ITS DEPARTMENT OF TRANSPORTATION FOR FUND DISTRIBUTION FOR CHIP SEALING, DESIGN OF SE 2ND STREET, RECONSTRUCTION OF NE 4TH STREET AND PURCHASE OF CERTAIN EQUIPMENT FOR ROAD MAINTENANCE PURPOSES. Roll call vote: Crume-yes; Fox-yes; Fugate-yes; Jones-yes; Sullivan-yes; Verini-yes; Dominick-yes. Motion carried 7/0/0.

Ordinance #2667-2012: Water and Sewer Rates (1st Reading by Title Only)

Larry Sullivan, City Attorney, stated proposed Ordinance 2667-2012 would revise Code sections in Title 8, Chapters 7 (Sewer Use Regulations), 11 (Water Service Regulation) and 12 (Water and Sewer Service Assessments; Annexations). The primary purpose of the revisions was to increase the water and sewer connection fees to reimburse the city for system improvements for un-assessed properties.

Over the years the city has extended water or sewer lines to the city limits and beyond for various projects to serve properties with failing drain fields or to stay ahead of roadway projects such as the Yturri Beltline. These projects came at a time when property owners outside the city limits were not willing to annex into the city and were not included in a local improvement district (LID). When the owners of those properties now requested to connect to the city utility system, the current City Code did not fully compensate the city for prior system improvements.

Ordinance 2667-2012 corrected this through Sections 8-7-3(F) (for sewer connections) and 8-11-10(2) (for water connections). These sections would allow the city to impose new sewer and water connection charges on those properties, as well as parcels already in the city limits that might be acquiring new water or sewer connections.

The new connection charges could be summarized as follows: **ONE:** The new charges would apply only to the extent that a parcel of property was specially benefitted by the improvements. For instance, if the city extended the sewer line to the city limits, and a number of parcels outside the city limits would benefit from that extension if they ever connected to the city sewer system, the city would not impose the entire cost of the extension on the first parcel that connected; it would be imposed only on a pro rata basis with other parcels that connected in the past or that might connect in the future. **TWO:** The new charges would apply only to "un-assessed properties" as defined in 8-7-1 (for sewer connections) and 8-11-1 (for water connections), which meant properties that were not assessed for those particular improvements through a local improvement district, reimbursement district or other special assessment district. In many cases when the city had planned water or sewer extensions, it had required local property owners to pay for those improvements by including the properties in local improvement districts and putting liens against the properties to pay for the improvements. The ordinance did not impose a new charge on those properties, only on properties that were not previously assessed. **THREE:** The new charges would be based on a new construction cost (within the past year) for constructing a similar water or sewer line extension. Staff considered and rejected imposing the new charge based on the historic cost of constructing a particular water or sewer line extension, because this might be impossible to determine if the extension was paid for many years in the past. If it was based on such a historic charge, the City would also be able to charge interest on that cost, which might make the charge prohibitive. **FOUR:** The charges would not apply to city improvements that were fifty years old or more. **FIVE:** Property owners could apply to pay the connection charge in installments. If they did so and the city agreed, any city lien would be subject to current mortgages and other liens on the property. This was different from LID liens, which were superior to other mortgages and liens other than real property taxes. The terms of the city lien (interest rate, etc.) would be set by the City Council by resolution. **SIX:** Currently there was no Code section in Chapter 12, the annexation chapter that allowed for a reimbursement of water line extensions, only sewer line extensions when the city did an annexation. The new charges would apply instead of the sewer line charges for annexations under Code Sections 8-12-3, 8-12-4 and 8-12-5. Those Code sections would be repealed. The ordinance preserved the additional \$0.02 per square foot charge for annexations in Section 8-12-9, but allowed the Council to change that by resolution.

The other changes in the ordinance were mainly housekeeping changes, including new and revised definitions and formatting changes. A new sentence was added to the end of Section 8-12-2(B) allowing the city to require that annexed properties in diverse ownership (multiple owners) pay for various infrastructure improvements as a condition for annexing into the city. This arose as an issue in the Nadine Drive annexation and was one reason why the city had to establish a local improvement district as part of the annexation.

The Council reviewed a draft of this ordinance at the March 8, 2012, work session, and no substantial changes had been made in this version.

The Public Works Committee reviewed these proposed ordinance revisions at several meetings and at their February 16th, 2012 meeting recommended that the City Council approve the changes.

Norm Crume moved, seconded by Charlotte Fugate, that the Mayor and City Council approve ORDINANCE 2667-2012, AN ORDINANCE MODIFYING SEWER AND WATER CONNECTION CHARGES FOR UNASSESSED PROPERTIES, INCLUDING PROPERTIES TO BE ANNEXED INTO THE CITY, AND MAKING OTHER CHANGES, on First Reading by Title Only. Roll call vote: Crume-yes; Fox-yes; Fugate-yes; Jones-yes; Sullivan-yes; Verini-yes; Dominick-yes. Motion carried 7/0/0.

Restated Motion with Amendment Re: Prothman Corporation

Ronald Verini moved, seconded by Charlotte Fugate, to select Prothman Corporation as the firm to recruit candidates to fill the position of the Ontario City Manager, *and authorize the Mayor to execute the contract*. Roll call vote: Crume-yes; Fox-no; Fugate-yes; Jones-no; Sullivan-yes; Verini-yes; Dominick-yes. Motion carried 5/2/0.

CORRESPONDENCE, COMMENTS, AND EX-OFFICIO REPORTS

- Mayor Dominick introduced Chuck Mickelson, [former] Public Works Director as the City Manager pro-tem. Thank you to Mr. Mickelson for stepping in.
- Al Higinbotham stated last Tuesday, they had an incident on North Oregon. Some indigents had started a small fire in a vacant building. Thankfully, the transients flagged down some Public Works crews who were going into the old city shop. They used the fire extinguishers to knock down the external fire down, and Rescue One was dispatched. Fire personal forced the door open and discovered a smoldering fire, and a small flame under the floor in the crawl space. The transients were required to clean up their mess, and they cleaned up more than they had caused. They also asked the police officer if they would be charged with theft of services for putting their debris in a dumpster. Chief appreciated the Public Works crew for slowing the fire down. It might have ended up being a fire in a vacant building. He believed the transients did receive a ticket for reckless burning.
- Mayor Dominick thanked the Fire and Police Departments for their hospitality during the Sister City visit.
- Lisa Hansen stated the Audit was on schedule for presenting at the April 2nd meeting.
- Tori Barnett stated the Statement of Economic Interest should have been received by the Council; it was due back to the state by April 15th. She asked that they bring them in to her, so she could copy them and mail them back out by registered mail.

Councilor Fox stated he had not received one.

Ms. Barnett stated she would ask that another one be sent.

- Chuck Mickelson stated the East Idaho project was under way. They were working on both sides of the freeway. Also, NE 4th Street was currently shut down from Idaho to the north about a block. They thought they'd be done sometime in June.
- Larry Sullivan stated the right of way acquisition that was discussed last Thursday was moving forward. He believed they'd have a final resolution, maybe by the next meeting.
- Ron Verini stated there was another group of National Guard being deployed, some from this area - the 1186th MP unit. It was a smaller unit, but it would affect some families in the community.
- David Sullivan stated he had spoken with Teri Lindenburgh, Executive Director Treasure Valley Transit, and they went through the numbers. They had ironed out a lot of issues that had been discussed last Thursday. When they discussed it further, he would share his findings with the Council. He was pleased that they were able to get to the bottom of some of the issues.
- Charlotte Fugate stated the feral cat project was organizing another yard sale, and they were looking for donations of items. She believed it was set for the 1-3 of May. They were always looking for both volunteers and items to sell. If anyone was looking to get rid of things from their basements, attics, wherever, they were always happy to take it.
- Mayor Dominick stated they would be getting information out on the process for the City Manager recruitment and would be inviting and meeting with the key stakeholders, so if there was a citizen who wanted to be involved in the process, please contact a Councilor or the Mayor.

ADJOURN

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

APPROVED:

ATTEST:

Joe Dominick, Mayor

Tori Barnett, MMC, City Recorder

CONSENT AGENDA

April 2, 2012

TO: Mayor and City Council

FROM: Tori Barnett, MMC, City Recorder

SUBJECT: REAPPOINTMENT TO AIRPORT BOARD

DATE: March 26, 2012

SUMMARY:

Attached is the following document:

- Letter of Request for Reappointment: Shawn Coleman

The term of appointment for Shawn Coleman has expired, and Mr. Coleman submitted a letter indicating his desire to be reappointed for another term. New term will end December, 2015.

RECOMMENDED MOTION:

Staff recommends appointment of Shawn Coleman to the Airport Board with a term of service terminating December 31, 2015.

Tori Barnett - Fwd: RE: Airport Committee meeting

From: Suzanne Skerjanec
To: Alan Daniels; Tori Barnett
Date: 3/23/2012 8:31 AM
Subject: Fwd: RE: Airport Committee meeting

>>>

From: SHAWN COLEMAN <tcraftap@msn.com>
To: <suzanne.skerjanec@ontariooregon.org>
Date: 3/22/2012 4:57 PM
Subject: RE: Airport Committee meeting

to whom it may concern I would like to be reinstated for the next term of the airport committee.

thank you,
shawn coleman

Date: Wed, 7 Dec 2011 14:41:53 -0700
From: Suzanne.Skerjanec@ontariooregon.org
To: jcdroege@aol.com; dcruson@fmtc.com; thompsonaviation@gmail.com;
jack@jackterry.net; garytaylor57@msn.com; tcraftap@msn.com;
Alan.Daniels@ontariooregon.org; normsautoelectric@yahoo.com
Subject: Airport Committee meeting

Attached is the Agenda report for the Airport Committee meeting scheduled for Monday, December 12, 2011.

Please contact Alan Daniels, Airport Manager at 881-8848 should you have any questions or require additional information.



Treasure Valley
Children's Relief Nursery.

Whereas, preventing child abuse and neglect is a community problem that depends on involvement among people throughout the community;

Whereas, child maltreatment most often occurs when people find themselves in stressful situations, without community resources, and lack of coping skills;

Whereas, the majority of child abuse cases stem from situations and conditions that are preventable in an engaged and supportive community;

Whereas, child abuse and neglect can be reduced by making sure each family has the support they need to raise their children in a healthy environment;

Whereas, child abuse and neglect not only directly harm children, but also increase the likelihood of criminal behavior, substance abuse, health problems such as heart disease and obesity, and risky behavior such as smoking;

Whereas, all citizens should become involved in supporting families in raising their children in a safe, nurturing environment;

Whereas, effective child abuse prevention programs such as that of the Treasure Valley Children's Relief Nursery succeed because of partnerships created among social service and non-profit agencies, schools, faith communities, civic organizations, law enforcement agencies, and the business community;

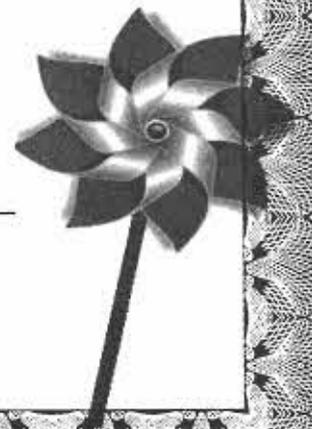
Therefore, I do hereby proclaim April as Child Abuse Prevention Month in

_____ and call upon all citizens, community agencies, faith groups, medical facilities, and businesses to increase their participation in our efforts to support families, thereby preventing child abuse and strengthening the communities in which we live.

Signed this _____ day of _____ 2012.

Signature

Title



CONSENT AGENDA

April 2, 2012

TO: Mayor and City Council

FROM: Dan Shepard, Engineering Technician III

THROUGH: Bob Walker, Public Works Director

SUBJECT: REQUEST FOR SPECIAL PERMISSION TO CONNECT TO SANITARY SEWER

DATE: March 26, 2012

SUMMARY:

- Exhibit "A" – Subject Property
- Request for connection to sanitary sewer

Ron Garfield, who is the proprietor of Ron's Transmission, at 510 SE 13th Street, is requesting special permission from the City Council to connect to the sanitary sewer main. The main is in SE 13th Street, along the property's frontage. The septic system is failing and Malheur County Environmental will not issue a permit to repair the system because they are located within 300 feet of a municipal sewer main. The property itself is owned by Harvey F and Margaret A Miller, 1750 SW 3rd Avenue, Fruitland Idaho.

PROBLEM DISCUSSION:

The property on SE 13th Street is located within 300 feet of the City of Ontario's sanitary sewer main. Oregon Department of Environmental Quality regulations do not allow Malheur County Environmental to issue a permit to fix or construct a septic system if the lot is within 300 feet of a public sewer system. Ontario Municipal Code, Title 8, Chapter 7, Section 8-7-4(M) states "No Sewer Connection Outside City. There shall be no properties outside the City connected to the City sewer lines, except by special permission of the Council." Previous requests to connect from properties outside the city limits have been required by City Council to annex if their property is contiguous to city limits. The property is contiguous to city limits and therefore able to annex. A request to annex would have to be signed by the Miller's.

RECOMMENDATION:

Staff recommends granting permission for Mr. Garfield to connect to the City's municipal sewer system under the condition that the property annexes into the city limits of Ontario.

Application for Sanitary Sewer Service Outside City Limits

Date: _____ 2012



Name of Applicant(s): Ronald W Garfield

Location of Service: 510 SE 13th St

Date service needed: _____

Billing address: Same

Is applicant (mark one) Owner Tenant Agent

If applicant is not owner, name and address of owner:

Harvey F & Magaret Miller

1750 SW 3rd Ave Fruitland ID 83619

For Business

Business Name: _____

Address: _____

Applicant agrees to abide by all rules, regulations and ordinances of the City Of Ontario, as now in effect or as changed or amended. Service installation cost to be paid for in advance by work order at the City of Ontario Permit Application Center, 458 SW 3rd Street, Ontario, Oregon, 97914. Before service can be activated, a Water Application must be submitted at City Hall, 444, SW 4th Street, Ontario, Oregon, 97914. Connection by Special Permission of the City Council. Annexation may be a condition for connection.

Sewer rates for services outside city limits to be determined. A service deposit shall be required.

Signature of Applicant(s): [Handwritten Signature]

Date: 03.27.12

Date: _____

Approved:

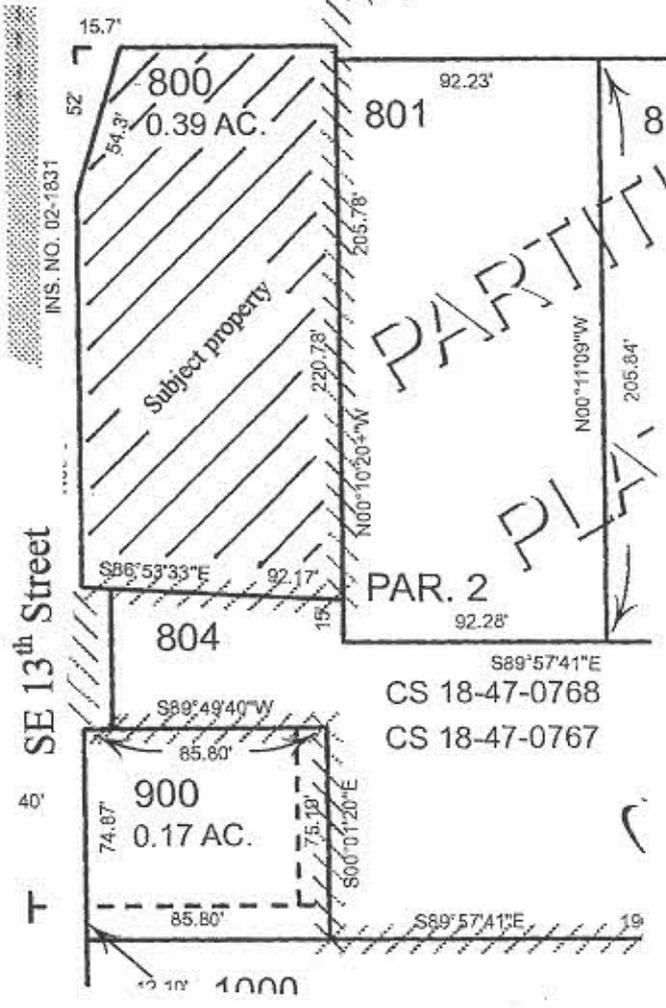
Public Works Director _____

Date: _____

City Manager _____

Date: _____

SE 5th Avenue



Tenant
 Ron's Transmission
 510 SE 13th Street
 Ontario, Oregon 97914

Owner
 Harvey & Margaret Miller
 1750 SW 3rd Avenue
 Fruitland, Idaho 83619

Subject Property

AGENDA REPORT

April 2, 2012

TO: Mayor and City Council

FROM: Larry Sullivan, City Attorney

THROUGH: Chuck Mickelson, Interim City Manager

SUBJECT: **ORDINANCE 2667-2012, AN ORDINANCE MODIFYING SEWER AND WATER CONNECTION CHARGES FOR UNASSESSED PROPERTIES, INCLUDING PROPERTIES TO BE ANNEXED INTO THE CITY, AND MAKING OTHER CHANGES (SECOND READING)**

DATE: March 26, 2012

SUMMARY:

Attached is the following document:

- Ordinance No. 2667-2012

This is for a second reading of Ordinance No. 2667-2012.

PREVIOUS COUNCIL ACTION:

March 19, 2012 Council approved first reading

PUBLIC WORKS COMMITTEE REVIEW AND ACTION:

On March 21, 2012, the Public Works Committee reviewed staff's proposed changes in Ordinance No. 2667-2012 after the first reading and recommended that the City Council approve Ordinance No. 2667-2012 with those changes.

BACKGROUND:

The following changes have been made in Ordinance No. 2667-2012 since the first reading:

1) Section 8-7-3(F)2 on Ordinance Page 7: The formula for calculating the sewer connection fee was changed. The formula used in the first reading of the ordinance was based only on the average cost of constructing a sewer main for the previous year. This formula did not account for the possibility that the City might not have constructed any sewer mains in the previous year. The formula was reworded to account for this possibility by adding this language: ".....or if no such costs were incurred by the City in the previous year, then upon the Engineering News Record (Seattle)

Construction Cost Index, as adjusted for local bid costs”.

2) Section 8-11-10(F)2 on Ordinance Page 14: The same change was made in the formula for calculating the water connection fee.

3) Section 8-7-3(O) on Ordinance Page 9: This is a new subsection that makes it clear that the sewer connection fee is in addition to any system development charges.

4) Section 8-11-10(D) on Ordinance Page 14: This new subsection also differentiates water connection charges from system development charges.

RECOMMENDATION:

Staff recommends the Council approve the second and final reading of Ordinance No. 2667-2012 with the changes discussed.

PROPOSED MOTION:

“I move that the Mayor and City Council approve **ORDINANCE 2667-2012, AN ORDINANCE MODIFYING SEWER AND WATER CONNECTION CHARGES FOR UNASSESSED PROPERTIES, INCLUDING PROPERTIES TO BE ANNEXED INTO THE CITY, AND MAKING OTHER CHANGES**, on First Reading by Title Only.”

ORDINANCE NO. 2667-2012

AN ORDINANCE MODIFYING SEWER AND WATER CONNECTION CHARGES
FOR UNASSESSED PROPERTIES, INCLUDING PROPERTIES TO BE ANNEXED INTO THE CITY,
AND MAKING OTHER CHANGES

- WHEREAS, Over the years, the City has spent large sums of money for sewer and water improvements that ultimately benefit properties for which the owners never paid their fair share of the improvements through an assessment district, reimbursement district or local improvement district; and
- WHEREAS, Chapters 7 and 11 of Title VIII of the City Code should be amended to allow the City to obtain reimbursement for the cost of those improvements when unassessed properties connect to the City sewer or water system; and
- WHEREAS, Chapter 12 of Title VIII, which regulates the annexation of properties into the City, includes sections which conflict with amended Chapters 7 and 11 unless they are amended or deleted; and
- WHEREAS, City staff has completed a comprehensive review of Chapters 7 and 11 of Title VIII of the City Code to correct typographical errors, modernize terminology and bring them into conformance with current law.

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

Section 1. Sections 8-7-1, 8-7-2, 8-7-3, 8-7-3.5 and 8-7-4 of Chapter 7 of Title 8 and 8-11-10, 8-11-21.1, 8-12-2 and 8-12-9 are hereby amended by deleting those portions that are stricken and by adding those portions that are underlined.

8-7-1 Definitions

Unless the context specifically indicates otherwise, the meanings of the terms used in this Chapter shall be as follows:

AVERAGE HOUSEHOLD BOD DISCHARGE, ~~means said discharge shall be~~ A calculation based on the most recent Portland State University Center for Population Research and Census data for the City, relating to population divided by households. This average ~~will be~~ is multiplied by two-tenths (0.2) pounds BOD per person per day multiplied by three hundred sixty five (365) days divided by twelve (12) months.

BOD (Denoting Biochemical Oxygen Demand), means ~~the~~ quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure in five (5) days at twenty degrees (20°) C, expressed in milligrams per liter.

BUILDING DRAIN, means ~~the~~ part of the lowest horizontal piping of a drainage system which receives the discharge from soil, waste, and other drainage pipes inside the walls of the building and conveys it to the building sewers, beginning five feet (5') (1.5 meters) outside the inner face of the building walls.

BUILDING SEWER, means ~~the~~ extension from the building drain, to the public sewer or other place of disposal.

COLLECTION SYSTEM, means ~~the~~ system of public sewer to be operated by the City designated for the collection of sanitary sewage.

COMBINED SEWER, means ~~a~~ sewer receiving both surface runoff and sewage.

COMMERCIAL USER, means ~~a~~ Any premises used for commercial or business purposes, which are not an industry as defined in this Chapter.

COMBINED SEWER, means ~~a~~ sewer receiving both surface runoff and sewage.

CONNECTION, means ~~two~~ (2) pipes, generally service pipes, that are connected by means of a flexible coupling or other approved fitting.

DEQ, means Department of Environmental Quality, State of Oregon.

DIRECTOR, means ~~the~~ Public Works Director and/or Environmental Officer of the City or his authorized deputy, agent or representative.

DOMESTIC USER. Any person who contributes, causes, or allows the contribution of wastewater into the POTW that is of a similar volume and/or chemical make-up as that of a residential dwelling unit.

DOMESTIC WASTE, means ~~a~~ Any wastewater emanating from dwellings.

EQUIVALENT RESIDENTIAL UNIT (ERU), means ~~a~~ A volume of domestic waste discharged from an average residential dwelling unit in the treatment works service area. For purposes of this determination, the City shall utilize the metered water user records of the City of Ontario Water Department. Where a user believes his wastewater discharge to the treatment works is substantially different than his water consumption, an appropriate adjustment shall be made, providing the user demonstrates to the satisfaction of the City the actual wastewater discharge. The volume attributed to an ERU where the BOD, suspended solids or other characteristic of the wastewater discharged by a user is significantly greater than a domestic waste shall be adjusted to account for the difference in the costs of treatment.

EPA, means ~~the~~ United States Environmental Protection Agency.

~~GARBAGE_ means sSolid wastes from the domestic and commercial preparation, cooking and dispensing of food and from the handling, storage and sale of produce.~~

~~INDUSTRIAL USER_ means aAny nongovernmental, nonresidential user of the public treatment works which is identified in the Standard Industrial Classification Manual, 1972, Office of Management and Budget, as amended and supplemented, under the following division:~~

- ~~Division A – Agriculture, Forestry and Fishing~~
- ~~Division B – Mining~~
- ~~Division D – Manufacturing~~
- ~~Division E – Transportation, Communications, Electric, Gas and Sanitary Services.~~
- ~~Division I – Services~~

~~A user in the division listed may be excluded if it is determined that it will introduce primary segregated domestic wastes or wastes from sanitary conveniences. A source of indirect discharge of effluent into the POTW by means of pipes, conduits, pumping stations, force mains, constructed drainage ditches, surface water intercepting ditches, and all constructed devices and appliances appurtenant thereto. This tem include federal, state, and local facilities as part of the regulated community, and shall not include "domestic user" as defined herein.~~

~~INDUSTRIAL WASTE_ means tThat portion of the wastewater emanating from an iIndustrial uUser which is not domestic waste or waste from sanitary convenience.~~

~~INDUSTRIAL WASTE WATER MONITORING STATION_ means tThe monitoring station that may be required by the City determining the contribution of the industry to the public sewer system. Monitoring equipment shall include composite refrigerated sampler, recording pH meter and recording flow meter. The City shall provide plans and specifications for the construction of the station. Cost of the construction of the station shall be at the industry's expense. Maintenance and upkeep of the station shall be at the industry's expense.~~

~~INDUSTRIAL WASTES_ means tThe liquid wastes from any Industrial User as defined herein. nongovernmental user of publicly owned treatment works identified in the Standard Industrial Classification Manual, 1972, Office of Management and Budget, as amended and supplemented under the following divisions:~~

- ~~Division A – Agriculture, Forestry and Fishing~~
- ~~Division B – Mining~~
- ~~Division D – Manufacturing~~
- ~~Division E – Transportation, Communications, Electric, Gas and Sanitary Services.~~
- ~~Division I – Services~~

~~A user in the division listed may be excluded if it is determined that it will introduce primary segregated domestic wastes or wastes from sanitary conveniences.~~

~~NATURAL OUTLET_ means aAny outlet into a watercourse, pond, ditch, lake or other body of surface or ground water.~~

~~OPERATION AND MAINTENANCE_ means aActivities required to ensure the dependable and economical function of collection and treatment work.~~

(A) Maintenance: Preservation of functional integrity and efficiency of equipment and structures. This includes preventive maintenance, corrective maintenance and replacement of equipment.

(B) Operation: Control of the unit processes and equipment that make up the collection and treatment works. This includes keeping financial and ~~personal~~ personnel management records, laboratory control, process control, safety and emergency operation planning, employment of attorneys and consultants, payment of court costs, and payment of any costs or fees reasonably associated with any of the above.

PERSON. ~~means a~~ Any individual, firm, company, association, society, corporation or group.

pH. ~~means t~~ The logarithm of the reciprocal of the weight of hydrogen ions in grams per liter of solution.

PROPERLY SHREDED GARBAGE. ~~means t~~ The wastes from the preparation, cooking and dispensing of food that have been shredded to such a degree that all particles will be carried freely under the flow conditions normally prevailing in public sewers, with no particle greater than one-half inch (1/2") (1.27 centimeters) in any dimension.

PUBLIC SEWER. ~~means a~~ A sewer that is available for public use and is controlled by public authority.

PUBLICLY OWNED TREATMENT WORKS (POTW). ~~means a~~ treatment works owned and operated by a public authority.

REPLACEMENT. ~~means o~~ Obtaining and installing equipment, accessories or appurtenances that are necessary during the design or useful life, whichever is longer, of the collection and treatment works to maintain the capacity and performance for which such works were designed and constructed.

RESIDENTIAL USER. ~~means t~~ The user(s) of a single family dwelling, duplex, multi-family dwelling, apartment, townhouse, non-commercial condominium or mobile home.

SANITARY SEWER. ~~means a~~ A sewer which carries sewage and to which storm, surface and ground waters are not intentionally admitted.

SEPTAGE. Any wastewater from holding tanks such as vessels, chemical toilets, campers, trailers, recreation vehicles, septic tanks, sealed vaults and vacuum-pump trucks.

SEPTIC TANK. ~~means a~~ A holding tank which receives either human excreta, liquid or solid waste from one or more premises. Included within the scope of this definition are privies or chemical type toilets.

SERVICE AREA. ~~means a~~ All the area served by the treatment works and for which there is one uniform user charge system.

SEWAGE. ~~means a~~ A combination of the water carried wastes from residences, business buildings, institutions and industrial establishments, together with such ground, surface and storm water as may be present. The term "sewage" means wastewater.

SEWAGE TREATMENT PLANT_ ~~means a~~Any arrangement of devices and structures used for treating sewage.

SEWAGE WORKS_ ~~means a~~All facilities for collecting, pumping, treating and disposing of sewage.

SEWERLINE_ ~~means a~~ A pipe or conduit for carrying sewage.

SHALL_ ~~means s~~Shall is mandatory, may is permissive.

SINGLE FAMILY HOUSING_ ~~means a~~A single family dwelling that does not share a wall with any other building.

SLUG_ ~~means a~~Any discharge of water, sewage or industrial waste which in concentration of any given constituent or in quality of flow exceeds for any period of duration longer than fifteen (15) minutes more than four (4) times the average twenty-four (24) hour concentration of flows during normal operation.

STORM DRAIN (also called storm sewer)_ ~~means a~~A sewer which carries storm and surface waters and drainage, but excludes sewage and industrial wastes, other than unpolluted cooling water.

SUSPENDED SOLIDS_ ~~means s~~Solids that either float on the surface of, or are in suspension in water, sewage or other liquids, and which are removable by laboratory filtering.

TAPPED. ~~means when a~~ A sewer service pipe is tapped when it is connected by the use of a insert-a Tee or "Y" to an existing collection pipe, usually located within a public right of way.

TREATMENT WORKS_ ~~means a~~All facilities for collecting, pumping, treating and disposal of sewage. "Treatment System" and "sewerage system" shall be the equivalent terms for "treatment works."

UNASSESSED PROPERTY. Real property that was beneficially benefitted by water or sewer improvements and was not assessed for those particular improvements through a local improvement district, reimbursement district or other special assessment district.

USER_ ~~means e~~Every person using any part of the public treatment works of the City of Ontario, Oregon.

USER CHARGE_ ~~means t~~The monthly charges levied on all users of the public treatment works, and shall, at a minimum, cover each user's proportionate share of the cost of operation and as provided under Section 204 (b)(1)(A) of the Clean Water Act.

WATERCOURSE_ ~~means a~~A channel in which a flow of water occurs, either continuously or intermittently.

8-7-2 Use of public sewers required.

(A) It shall be unlawful for any person to place, deposit or permit to be deposited in any unsanitary manner on public or private property within the City, or in any area under the jurisdiction of the City, any human or animal excrement, garbage or other objectionable waste.

(B) It shall be unlawful to discharge to any natural outlet within the City, or in any area under the jurisdiction of said City, any sewage or other polluted waters, except where suitable treatment has been provided in accordance with subsequent provisions of this Chapter.

(C) Except as hereinafter provided, it shall be unlawful to construct or maintain any privy, privy vault, septic tank, cesspool, or other facility intended or used for the disposal of sewage where a public sanitary sewer is available for use. In any property where septic tanks presently exist, septic tanks shall not be hooked into the City sewer system and no septic tank waste will be discharged into the City sewer system, except as provided for in Title 8, Chapter 10.

(D) The owner of all houses, buildings or properties used for human occupancy, employment, recreation or other purposes, situated within the City and abutting on any street, alley or right of way in which there is located a sanitary ~~or combined~~ sewer of the City, is hereby required at ~~his~~ the owner's expense to install suitable toilet facilities therein, and to connect such facilities directly with the proper public sewer in accordance with the provisions of this Chapter, and keep such facilities in proper repair at all times, provided that said public sewer is within two hundred feet (200') of the property line, ~~unless special conditions exist, and at the discretion of the Public Works Director, he may temporarily grant a waiver of this requirement, and time limits may be made.~~ The owner may apply to the Public Works Director for a temporary waiver of this connection requirement, and the Public Works Director may grant a temporary waiver under special circumstances, but shall set time limits for compliance.

8-7-3 Building Sewers and connections.

(A) Compliance With Regulations, Standards: No sewer main within the City or owned by the City will be tapped and/or connection will be made to any such sewer except in the manner set forth and subject to the terms of this Chapter.

(B) Fee for Constructing Sewer Tap: When a sewer is tapped by any City employee or employees, the person for whom or which such sewer is tapped will pay a charge or fee to be set by fee resolution in advance of the tap being made.

(C) Sewer Connection Permit Required, Conditions: Any person desiring a connection to be made to any sewer will first obtain from the Public Works Director a permit to connect or hook up to such sewer. The Public Works Director will impose a fee to be set by fee resolution for the issuance of such permit to connect to a sewer. Such permit from the Public Works Director will be first had and obtained whether such connection to a sewer be performed by the City or by a licensed plumber as provided below.

No connecting sewer service line from any building or other facility shall be constructed on or under any street or alley rights of way unless the sewer pipe to be so connected is of the type and quality used and approved in the City sewer system.

(D) Work Done by Authorized Persons: No hookup or connection will be made to any sewer unless the same be done and performed by an employee or employees of the City or unless the same be done by a plumber duly and regularly licensed under the laws of the State of Oregon and ordinances of the City. All hookups or connections shall be inspected and approved by the Public Works Director or his duly appointed representative.

No sewer will be opened or tapped unless the same be done and performed by an employee or employees of the City in performance conformance with standards and specifications established by the Public Works Director. The Public Works Director may authorize other person or persons to perform said sewer tap if ~~he feels~~ the situation ~~may warrants~~ it.

(E) Specifications for Sanitary Sewer Taps: After fee, set by fee resolution, has been paid to the City, the person or persons constructing the connection shall schedule the tap to be made by the City personnel at least twenty four (24) hours in advance of when they desire the tap to be made.

The trench shall be excavated and the sewer main exposed in accordance with Oregon Occupational Safety & Health Division (Or-OSHA) and State of Oregon requirements and guidelines for trenching and excavation. If the trench or excavation appears unsafe, no City employee will enter that area until the unsafe or hazardous condition is corrected.

The City personnel will tap the sewer main with a cutter that is approved by the Public Works Director and attach an approved tapping saddle or inserta tee fitting. ~~The plumber installs the pipe into the tapping saddle or inserta tee fitting insert pipe into the saddle.~~

~~(F) Connection Requirements Outside Sewer or Local Improvement District For Unassessed Properties. Any person desiring to extend or connect to a City sewer main property which is outside the boundaries of a sewer or local improvement district that established sewer assessments will make application for such permission with the City Manager. If the City Manager shall grant said application for connection or extension, said person will pay to the City Recorder as a connection charge, a sum of money equal to the proportionate share of the cost of construction of said original sewer main. The charge shall be based on the square footage of each lot or area to be serviced by such extension or connection limited to a depth of one hundred fifty feet (150'). The total cost of said original improvement will be determined as well as the area originally benefited therefrom in order to determine the pro-rata expense attributed to such original area on a square foot basis. The connection charge will then be determined based on the square footage of such lot or area sought to be served which will be in an amount per square foot based on the original cost of said sewer main as set forth herein, any extension or lateral sanitary sewer line constructed upon private property will be at the sole expense of the owner or owners of said property.~~

1. An applicant for City sewer service desiring to connect unassessed property is required to pay the connection charge specified herein. The City imposes a connection charge for the prior construction of sewer main improvements specially benefitting property that has not been assessed for that benefit. The connection charge shall be paid prior to the time that property connects to the City sewer system, except as provided in subsection (N) of this section.

2. The connection charge shall be calculated by: a) determining the cost of the improvement using a rate based either on the average cost to the City of constructing a sewer main for the previous year, regardless of the year in which the improvement was constructed; or if no

such costs were incurred by the City in the previous year, then upon the Engineering News Record (Seattle) Construction Cost Index, as adjusted for local bid costs; b) determining the total square footage of the entire area specially benefitted by the improvement, including all assessed and unassessed properties; and c) determining the pro rata share of the improvement's cost for the unassessed property connecting to the City sewer system. The pro rata share of that unassessed property shall be based on the square footage of that property limited to a depth of one hundred fifty feet (150'). If the property is irregular in shape, less than 150 feet in depth or abuts the end of a main, the front-footage shall be considered as the area of the lot or parcel within 150 feet of the property line divided by 150.

3. Any unassessed property making a new connection to a main where sewer service was available for fifty years or more before shall be exempt from the unassessed property charge in subsection (F)(2).

(G) Construction of Sewers: Sewers shall be constructed according to ~~the provisions contained in Section 10C-6-3(C) of this City Code,~~ the standard specification for the City, and the requirements of the Oregon Department of Environmental Quality.

(H) All costs and expenses incident to the installation and connection of the building sewer shall be borne by the owner. The owner shall indemnify the City from any loss or damage that may directly or indirectly be occasioned by the installation of the building sewer.

(I) A separate and independent building sewer shall be provided for every building, residential and commercial, except where one building stands at the rear of another on an interior lot are under common ownership and no public sewer is available or can be constructed to the rear building through an adjoining alley, court, yard, or driveway, the building sewer from the front building may be extended to the rear building and the whole shall be as two (2) building sewers. Industrial wastes may enter the public sewer at as many points as are required by the industrial facility. Each point of entry may have an industrial monitoring station at that point.

(J) Old building sewers (i.e., more than 50 years old) may be used in conjunction with new buildings only when they are found, on examination or test by the City, to meet all requirements of this Chapter. If an old building sewer is used, the City will be held harmless from any liability arising from the use. It will be the responsibility of the seller of any structure using an old building sewer to disclose this information to any purchaser of the property. If the old sewer tap is not used, it must shall be capped within one foot of the sewer main line or removed and inspected by the City.

(K) The size, slope, alignment, materials of construction of a building sewer, and the methods to be used in excavating, placing of the pipe, jointing, testing and backfilling the trench, shall all conform to the requirements of the Building and Plumbing Code or other applicable rules and regulations of the City and/or State of Oregon. ~~In the absence of Code provisions or in amplification thereof, the materials and procedures set forth in appropriate specifications of the ASTM (American Society for Testing and Materials) and WPCF (Water Pollution Control Federation) Manual of Practice No. 9 shall apply.~~

(L) No person shall make connection of roof downspouts, exterior fountain drains, areaway drains or other sources of surface runoff, ground water, or other uncontaminated water to the building sewer or building drain, which in turn is connected directly or indirectly to a public sanitary sewer.

(M) The connection of the building sewer into the public sewer shall conform to the requirements of the Building and Plumbing Codes or other applicable rules and regulations of the City, or the procedures set forth in appropriate specifications. ~~of the ASTM and WPCF Manual of Practice No. 9.~~ All such connections shall be made gastight and watertight. Any deviation from the prescribed procedures and materials must be approved by the City before installation.

(N) In lieu of paying the sewer connection charge provided in subsection (F) of this section in a single payment, the owner may make application to pay the charge in installments as provided in the Bancroft Bonding Act in the same manner as assessment liens in the City. In such case the owner shall execute an agreement which constitutes a voluntary lien against the property which is not subject to Article XI, Section 11b of the Oregon Constitution. Upon filing of such an agreement, approved as to form by the City Attorney, the director of finance shall enter such assessment in the docket of city liens. The City Council shall set the installment terms, including interest rates, by resolution.

O) The sewer connection charge provided herein is in addition to any system development charges for which the owner may be liable under Title 8, Chapter 13 of the City Code.

8-7-3.5 Sewer Service Rates.

Meters will be read ~~twice annually~~ monthly for all users including, but not limited to, residential, motels/hotels, manufactured home parks, businesses, multi-family residential dwellings and apartment complexes.

A Users' ~~user's~~ wastewater charge shall be established based upon the average water consumption during the months of November, December, January, February and March of each fiscal year.

The consumption will then be divided by five (5) months to determine the average sewer usage per month.

New accounts will be based on an average of similar accounts.

The City shall establish a surcharge on users discharging wastes into the sewerage system which exceed either the BOD and/or TSS for the ERU. Said surcharge shall be in accordance with the formulas proposed in the City of Ontario Sewer Rate Study dated October 1994.

8-7-4 Use of public sewer restricted.

(A) No person shall discharge or cause to be discharged any storm water, surface water, ground water, roof runoff, subsurface drainage, uncontaminated cooling water or unpolluted industrial process waters to any sanitary sewer, unless specifically approved by the Public Works Director.

(B) Storm water and all other unpolluted drainage shall be discharged to such sewers as are specifically designed as ~~combined sewers~~ or storm sewers, or to a natural outlet approved by the City. Industrial cooling water or unpolluted process waters may be discharged on approval of the City to a storm sewer, ~~combined sewer~~, or natural outlet.

(C) No person shall discharge or cause to be discharged any of the following described waters and wastes to any public sewers:

1. Any gasoline, benzene, naphtha, fuel oil, or other flammable or explosive liquid, solid or gas.
2. Any waters or wastes containing toxic or poisonous solids, liquids or gases in sufficient quality or quantity, either singly or by interaction with other wastes to injure or interfere with any sewage treatment process, constitute a hazard in the receiving waters of the sewage treatment plant, including, but not limited to, cyanides in excess of two (2) mg/L or CN in the wastes as discharged to the public sewer.
3. Any water or wastes having a pH lower than five and five-tenths (5.5) or having any other corrosive property capable of causing damage or hazard to structures, equipment, and personnel of the sewage works.
4. Solid or viscous substances in quantities or of such size capable of causing obstruction to the flow in sewers, or other interference with the proper operation of the sewage works such as, but not limited to, ashes, cinders, sand, mud, straw, shavings, whole blood, paunch manure, hair and fleshings, metal, glass, rags, diapers, feathers, tar, plastics, wood, ground garbage, entrails and paper dishes, cups, milk containers, etc. either whole or ground by garbage grinders.

(D) No person shall discharge or cause to be discharged the following substances, materials, waters or wastes if it appears likely in the opinion of the City that such wastes can harm either the sewers, sewage treatment process or equipment, have an adverse effect on the receiving stream or can otherwise endanger life, limb, public property or constitute a nuisance. In forming its opinion as to the acceptability of these wastes, the City will give consideration to such factors as to quantities of subject wastes in relation to flows and velocities in the sewers, materials of construction of sewers, nature of the sewage treatment process, capacity of the sewage treatment plant, degree of treatability of wastes in the sewage treatment plant, and other pertinent factors.

The substances described are:

1. Any liquid or vapor having a temperature higher than one hundred fifty degrees (150°) F (0° and 65°C).
2. Any water or waste containing fats, gas, grease or oils, whether emulsified or not, in excess of one hundred (100) mg/L or containing substances which may solidify or become viscous at a temperature between thirty two degrees (32°) F and one hundred fifty degrees (150°) F (0° and 65°C).
3. Any garbage that has not been properly shredded. The installation and operation of any garbage grinder equipped with a motor of three-fourths (3/4) horsepower or greater shall be subject to the review and approval of the City.
4. Any waters or wastes containing strong acid iron pickling wastes, or concentrated solutions whether neutralized or not.
5. Any waters or wastes containing iron, chromium, copper, zinc, and similar objectionable or toxic substances; or wastes exerting an excessive chlorine requirement, to such degree that any such material received in the composite sewage at the sewage treatment works exceeds the limits established by the City for such materials.
6. Any waters or wastes containing phenols or other taste or odor producing substances, in such concentrations exceeding limits which may be established by the City as necessary, after treatment of the composite sewage, to meet the requirements of the State, Federal or other public agencies of jurisdiction of such discharge to the receiving waters.

7. Any radioactive wastes or isotopes of such half-life or concentration as may exceed limits established by the City in compliance with applicable State or Federal regulations.
8. Any waters or wastes having a pH in excess of nine and five-tenths (9.5).
9. Materials which exert or cause:
 - (a) Unusual concentrations of inert suspended solids, such as, but not limited to, Fuller's earth, lime slurries, and lime residues or of dissolved solids, such as, but not limited to, sodium chloride and sodium sulfate.
 - (b) Excessive discoloration such as, but not limited to, dye wastes and vegetable tanning solutions.
 - (c) Unusual BOD, chemical oxygen demand, or chlorine requirements in such quantities as to constitute a significant load on the sewage treatment works.
 - (d) Unusual volume of flow or concentration of wastes constituting "slugs" as herein defined.
10. Water or wastes containing substances which are not amenable to treatment or reduction by the sewage treatment or reduction by the sewage treatment processes employed, or are amenable to treatment only to such degree that the sewage treatment plant effluent cannot meet the requirements of other agencies having jurisdiction over discharge to the receiving waters.

(E) If any waters or wastes are discharged, or are proposed to be discharged to the public sewers, which waters contain the substances or possess the characteristics enumerated in subsection (D) of this Section, and which in the judgment of the City may have a deleterious effect upon the sewage works, process, equipment, or receiving water, or which otherwise create a hazard to life or constitute a public nuisance, the city may:

1. Reject the wastes,
2. Require pretreatment to an acceptable condition for discharge to the public sewers,
3. Require control over the quantities and rates of discharge, and/or
4. Require payment to cover the added cost of handling and treating the wastes not covered by existing taxes or sewer charges under the provisions of Section 8-9-2 of the City Code. If the City permits the pretreatment or equalization of waste flows, the design and installation of the plants and equipment shall be subject to the review and approval of the City and subject to the requirements of the applicable codes, ordinances and laws.

(F) Grease, oil and sand interceptors shall be provided when, in the opinion of the City, they are necessary for the proper handling of liquid wastes containing grease in excessive amounts, or any flammable wastes, sand or other harmful ingredients; except that such interceptors shall not be required for private living quarters or dwelling units. All interceptors shall be of a type and capacity approved by the City and shall be located as to be readily and easily accessible for cleaning and inspection.

Clean grease traps and interceptors routinely as noted in the Oregon Association of Clean Water Agencies. Cleaning must be done by licensed septic hauler or recycler and the Oregon Department of Environmental Quality must be notified when hauling grease and waste to a recycling plant. Compliance on inspection and cleaning must be turned into the City at least once a year and more often depending on the size of the tank. Inspection and cleaning shall be performed by certified and licensed septic haulers or recyclers in conformance with information established by the Oregon Association of Clean Water Agencies.

(G) Where preliminary treatment or flowing-equalizing facilities are provided for any waters or wastes, they shall be maintained continuously in satisfactory and effective operation by the owner at ~~his~~ the owner's expense.

(H) When required by the City, the owner of any property serviced by a building sewer carrying industrial wastes shall install an industrial waste water monitoring station together with such necessary meters and other appurtenances in the building sewer to facilitate observation, sampling and measurement of the wastes. Such stations, when required, shall be accessible and safely located, and shall be constructed in accordance with plans approved by the City. The station shall be installed by the owner at ~~his~~ the owner's expense, and shall be maintained by ~~him~~ the owner so as to be safe and accessible at all times.

(I) All measurements, tests, and analyses of the characteristics of waters and wastes to which reference is made in this Chapter shall be determined in accordance with the latest edition of "Standard Methods for the Examination of Water and Wastewater," published by the American Public Health Association, and shall be determined at the station provided. Sampling shall be carried out by an approved composite sampling device. The composite sample shall be used to determine BOD and suspended solids values. The pH values shall be taken from a continuous recording pH meter. Total organic carbon values may be substituted for BOD values if the City so desires. A continuous recording flow meter shall be provided to monitor the flow.

(J) No statement contained in this Chapter shall be construed as preventing any special agreement or arrangement between the City and an industrial concern whereby an industrial waste of unusual strength or character may be accepted by the City for treatment, subject to payment therefore, by the industrial concern. All industrial users shall be under contract with the City.

(K) Connection Required: The owner of each and every parcel of real estate abutting upon any street, avenue or alley in the City shall connect their premises, whether vacant or not, to the sanitary sewer in such street, avenue or alley, whenever said street, avenue or alley is to be paved, and when notified to do so by the Public Works Director, which notice shall be sent by registered mail to the last known address of the owner. If said owner shall fail, neglect or refuse, within the time indicated in such notice, to comply, the City may make the aforesaid connections and the whole costs of such connections shall be assessed against said property as a lien which shall be placed on the lien docket of the City and shall be collectible through one or more of the following collection procedures at the option of the City-;

- (a) By foreclosure and sale of the property in the same manner and with the same force and effect as is or may be provided with respect to property within the City or a proceeding in Court to foreclose such liens in accordance with ORS 224.110;
- (b) In the manner provided by ORS 454.225 by certification and presentation to the Malheur County Tax Assessor for assessment on the general tax roll;
- (c) By an action at law;
- (d) By foreclosure in the manner that is or may be provided for in the collection of other City liens;
- (e) In the manner provided by ORS 223.505 through 223.650 describing methods of enforcing liens and collecting assessment.

In any suit, action at law, or other nonjudicial action, the City shall be entitled to recover its reasonable attorney fees at trial and on appeal and such sums shall be a lien upon the property.

(L) Supervision: The construction, repair and maintenance of all sewer drains, whether public or private, shall be under the supervision and control of the City. It shall be unlawful for any person to tap or connect any sewer line of the City except in the presence and with the approval of the City.

M) No Sewer Connection Outside City: There shall be no properties outside the City connected to the City sewer lines, except by special permission of the Council.

(N) Backfilling: All trenches and backfills shall be accomplished in accordance with specifications provided by the City.

(O) Valves and ~~Size Drains~~ Sewer Laterals: No ~~drain and~~ sewer pipe within a street or alley right of way shall be less than four inches (4") internal diameter, and all sewers ~~and drains~~ shall be of sufficient size to accommodate any property they are intended to drain in accordance with the State of Oregon Plumbing Code. The City shall ~~recommend~~ require a Sewer Back Check device on all new construction or the rehabilitation of an old service connection. ~~Back check device shall be required~~ when there is any living occupied space below the elevation of the street.

(P) Inspection: The City may adopt such rules as it may deem necessary to provide for proper inspection of the work, and no work shall be covered until it shall have been approved by the City, who will endorse a certificate of final inspection upon the permit issued for that particular work or connection.

SECTION 2. Sections 8-11-1, 8-11-10 and 8-11-21.1 of Chapter 11 of Title 8 of the Ontario City Code are amended by deleting those portions that are stricken and by adding those portions that are underlined:

8-11-1 Definition of terms.

UNASSESSED PROPERTY means property that was beneficially benefitted by water or sewer improvements and was not assessed for those particular improvements through a local improvement district, reimbursement district or other special assessment district.

8-11-10 Connection charges for assessed properties; additional charge for unassessed properties.

(A) The City shall impose ~~a charge~~ the following charges for making the aforesaid connections:

~~(1) and said charges shall be~~ The applicant shall pay a water connection charge based on the actual cost of affecting said connection, including but not limited to labor, materials, equipment and overhead, as set by fee resolution prior to work being done. If the applicant chooses the accelerated premium installation (overtime) option, charges will be based on actual cost of affecting said connection, including but not limited to premium labor rates (overtime rates vary from time and a half Monday through Saturday to double time on Sundays), materials, equipment, and overhead, as set by fee resolution. All connections require a Applicants must request a forty-eight (48) hour utility line locate call

~~request must occur before any excavations can occur. Such charges shall be paid to the City Finance Department within thirty (30) days of completion of work, to the satisfaction of the City. If not paid within forty-five (45) days of the completion of work, the City may proceed with discontinuance of water service in accordance with Code Section 8-11-26. Before connection, all other applicable charges such as, but not limited to building permits, system development fees, and storm sewer connection fees shall be paid in full, and any applicable local improvement district assessments shall be brought current. The charges shall be the same for connections both within and without the boundaries of the City.~~

(2) In addition to paying the water connection charge in subsection (A)(1), an applicant desiring to connect unassessed property is required to pay the unassessed property connection charge specified herein. The City imposes an unassessed property connection charge for the prior construction of water main improvements specially benefitting property that has not been assessed for that benefit. The unassessed property connection charge shall be paid prior to the time that property connects to the City water system, except as provided in subsection (C) of this section. The unassessed property connection charge shall be calculated by: a) determining the cost of the improvement using a rate based either on the average cost to the City of constructing an eight-inch water main for the previous year, regardless of the year in which the improvement was constructed; or if no such costs were incurred by the City in the previous year, then upon the Engineering News Record (Seattle) Construction Cost Index, as adjusted for local bid costs; b) determining the total front footage of the area specially benefitted by the improvement, including all assessed and unassessed properties; and c) determining the pro rata share of the improvement's cost for the unassessed property connecting to the City water system. The charge shall be based on front footage served by the water main. Property will be considered as being specially benefitted to a depth of 400 150 feet from the property line being served or from the main itself if the main is not in a public right-of-way. If the property is irregular in shape, less than 400 150 feet in depth or abuts the end of a main, the front-footage shall be considered as the area of the lot or parcel within 400 150 feet of the property line divided by 400 150.

(B) Any unassessed property making a new connection to a main where water service was available for fifty years or more before shall be exempt from the unassessed property charge in subsection (A)(2).

(C) In lieu of paying the unassessed property connection charge provided in subsection (A)(2) in a single payment, the owner may make application to pay the charge in installments as provided in the Bancroft Bonding Act in the same manner as assessment liens in the City. In such case the owner shall execute an agreement which constitutes a voluntary lien against the property which is not subject to Article XI, Section 11b of the Oregon Constitution. Upon filing of such an agreement, approved as to form by the City Attorney, the director of finance shall enter such assessment in the docket of city liens.

D) The water connection charge provided herein is in addition to any system development charges for which the owner may be liable under Title 8, Chapter 13 of the City Code.

8-11-21.1 - Potential contamination of City water supply.

(A)

Backflow prevention devices for protecting the City's water system shall be installed on all service connections to the premises where:

1. There is an auxiliary water supply which is, or can be, connected to the potable water piping;
2. There is piping for conveying or containing liquids other than potable water, and where that piping is under pressure and is installed and operated in a manner which could cause a cross connection;
3. There is intricate plumbing which makes it impractical to ascertain whether or not cross connections exist;
4. There is back-siphonage potential.

(B)

Backflow prevention devices for protecting the City's water supply shall be installed at or near the points where the water service enters the premises.

(C)

The type of backflow prevention device required under subsections (A) and (B) of this provision shall be commensurate with the degree of hazard which exists:

1. An approved air gap of at least twice the inside diameter, but not less than one inch (1"), of the incoming supply line measured vertically above the top rim of the vessel, or an approved Reduced Pressure (RP) device shall be installed where the substance which could backflow is hazardous to health; e.g., sewage treatment plants, sewage pumping stations, chemical manufacturing plants, plating plants, hospitals, mortuaries, car washes, medical clinics, etc.;
2. An approved double check valve assembly shall be installed where the substance which could backflow is objectionable but does not pose an unreasonable risk to health;
3. An approved pressure vacuum breaker or an atmospheric vacuum breaker shall be installed where the substance which could backflow is objectionable but does not pose an unreasonable risk to health and where there is no possibility of back pressure in the downstream piping. A shutoff valve may be installed on the line downstream of a pressure vacuum breaker but shall not be installed downstream of an atmospheric vacuum breaker.

(D)

All backflow prevention devices required under these provisions shall be of a type and model approved by the Oregon State Health Division.

(E)

The water user or the owner of a premises where one or more backflow prevention devices have been installed shall have the device tested at least once per year. Devices shall be tested immediately after installation and after they are removed. Reports on the tests shall be prepared by the tester and copies of the report shall be provided to

the City. Tests shall be performed by certified testers in conformance with procedures established by the Foundation for Cross Connection Control and Hydraulic Research. All testers shall possess a valid certification issued by the Oregon State Health Division.

- (F) Backflow prevention devices installed before the effective date of these provisions, which were approved at the time they were installed but are not on the current list of approved devices maintained by the Health Division, shall be permitted to remain in service provided they are properly maintained, are commensurate with the degree of hazard, are tested at least annually, and perform satisfactorily. When devices of this type are moved or require more than minimum maintenance, they shall be ~~placed~~ replaced by devices which are on the Health Division list of approved devices.
- (G) Tests shall be performed with in the time allotted by notice of the City. In the event the customer elects to have the City perform the backflow testing at the customer's address where City water services are supplied, the fee for the testing, set according to fee resolution, will be applied to the utility bill.
- (H) In the event the customer does not respond in the time allotted by the City in the third and final notice, ~~the City will perform the backflow testing and the cost, set by fee resolution, will be applied to the utility bill for the City address receiving City water services.~~ the City will terminate water service to said property. The property owner will have to comply with required backflow installation before the water will be turned back on. All costs for water turn off and on will be paid by the property owner per fee resolution. All costs for backflow assembly installation will be borne by the property owner.
- (I) Payments not received in City Hall in a timely manner shall be subject to the same late fees, interest and shut-off fees as set by Fee Resolution for Section 8-11-25
(Ord. 2521 5 12, 2003: Ord. 2233, 12-21-87)

SECTION 3. Sections 8-12-3, 8-12-4 and 8-12-5 of Chapter 12 of Title 8 of the Ontario City Code are hereby repealed.

SECTION 4. Sections 8-12-2 and 8-12-9 of Chapter 12 of Title 8 of the Ontario City Code are hereby amended by deleting those portions that are stricken and by adding those portion that are underlined:

8-12-2 Consideration for ~~annex-ation~~ annexation, improvements.

(A) Development Area. A development area shall be considered for annexation only if the following minimum improvements are existing in such area, as follows:

1. Master street plan on file and approved by the Planning Commission for the entire area.
2. Area to be completely platted or, if in the opinion of the Planning Commission, the area lends itself to stage development, partial ~~planning~~ platting will be acceptable.
3. All streets be graded, ballasted to the full roadway width, and provision be made for the handling of storm water run-off or in the event such development area is suitable for stage development, then such streets to be so graded, ballasted, and provision for storm sewers to be made, after annexation in conjunction with such stage development.

4. All streets be improved to the full roadway width, brought to grade with a gravel base and paved comparable to minimum standards of other paved streets in the City, which improvements may be made after annexation in conjunction with stage development as may be approved by the City Council.
 5. Concrete curbs and gutters shall be constructed along both sides of all roadways but the same may be constructed after annexation in conjunction with stage development.
 6. Sanitary sewers constructed serving the area together with lateral lines, including sewage pumps and lift stations. In the event no sanitary trunk sewers are available or to be made available to serve the area prior to annexation, the City Council may waive this requirement, and the same may be constructed after annexation in conjunction with stage development.
 7. The property owners of the lands sought to be annexed and the developer shall enter into an agreement and contract with the City prior to annexation to provide for such stage development and for construction of said improvements subsequent to annexation.
 8. Improvements as required herein that by their nature are to be operated and/or maintained by the City, shall be approved and accepted in all respects by the Public Works Director before construction.
 9. All of such improvements shall be made in accordance with plans and specifications approved by the Public Works Director.
- (B) Diverse Ownership Area. A diverse ownership area shall be considered for annexation regardless of the existing improvements therein. This shall not prevent the City from rejecting an annexation request or from imposing conditions on the annexation, including conditions relating to the construction of future improvements and the imposition of assessments for those improvements.

8-12-9 Charge imposed.

Annexation Charge. On any parcel of land annexed to the City after the effective date of this Chapter, a two cent (\$0.02) per square foot charge shall be imposed on the gross land area annexed at the time of annexation. The City Council may amend the annexation charge from time to time by resolution. In addition to the annexation charge, any annexed properties connecting to City utilities shall also be subject any other fees, charges and assessments imposed by the City for connecting to the City utility system.

PASSED AND ADOPTED by the Common Council of the City of Ontario this ____ day of _____, 2012, by the following vote:

AYES:
NAYS:
ABSENT:

APPROVED by the Mayor this ____ day of _____, 2012.

ATTEST:

Joe Dominick, Mayor

Tori Barnett, MMC, City Recorder

AGENDA REPORT

April 2, 2012

TO: Mayor and City Council

FROM: Larry Sullivan and Yorick de Tassigny

THROUGH: Chuck Mickelson, Interim City Manager

SUBJECT: Approval of Solar Project Ground Lease Agreements with Site Based Energy (SBE) and for Approval of Idaho Power Energy Sales Agreement

DATE: March 26, 2012

SUMMARY:

Attached are the following documents:

- Form for the eight Solar Project Ground Leases with SBE, with Idaho Power Energy Sales Agreement as an exhibit
- SBE spreadsheet showing financial projections for eight solar panel sites

The purpose of this agenda item is for the Council to approve eight ground leases with SBE for the installation of eight solar panels on City real property, and to enter into an Energy Sales Agreement with Idaho Power. The eight leases are identical, except for the descriptions and maps showing the location of the City property on which solar panel is to be installed.

PREVIOUS COUNCIL ACTION:

October 17, 2011 Council approved motions to undertake preliminary negotiations with Idaho Power and SBE to participate in Idaho Power's Oregon Solar Photovoltaic Pilot Program

December 19, 2011 Council approved Letter of Intent with SBE to participate in Idaho Power program

BACKGROUND:

The terms and conditions of the City's participation in Idaho Power's Oregon Solar Photovoltaic Pilot Program have been discussed by the Council in several meetings. In 2009, this pilot program was mandated by the Oregon legislature to encourage the development of solar energy in the state. Under the program, electrical utility providers operating in Oregon are required to purchase electricity at above-market rates from a limited number of non-commercial participants.

With the assistance of SBE, an Idaho solar energy development company, the City applied to participate in the program and received preliminary approval from Idaho Power for the installation of ten solar panels.

Since that time, two of the City's potential solar panel sites have been eliminated from consideration by the City or SBE, leaving eight sites for the installation of solar panels. The last financial projection provided to the City Council by SBE was based on the installation of nine panels. Attached is a new spreadsheet from SBE revising its financial projection for eight sites instead of nine.

On December 20, 2011, the City Manager, with Council approval, signed a Letter of Intent with SBE to enter into leases of City property for the installation of the panels. SBE representatives met with the Council to review various options for structuring the leases. The Council consensus was to have SBE own the solar panels for the first eight years of the fifteen-year Idaho Power pilot program and have the City own the panels for the final seven years, and thereafter. That is the model incorporated into the attached Solar Project Ground Lease form.

City staff has reviewed several drafts of the proposed lease prepared by SBE, and SBE has incorporated all the changes requested by staff. Attached is the master template or form that will be used for each of the eight individual leases with SBE.

If the City Council authorizes the signing of the leases, City staff and SBE will work together to satisfy the remaining requirements imposed by Idaho Power for participation in the pilot program, including the execution of an Energy Sales Agreement with Idaho Power as shown in Exhibit * to the leases.

RECOMMENDATION:

Staff recommends that the City Council approve the form for the eight Solar Panel Ground Leases with SBE, and authorize the City to sign the Energy Sales Agreement with Idaho Power that is attached as an exhibit to the leases.

PROPOSED MOTIONS:

- 1) "I move that the Mayor and City Council approve eight Solar Panel Ground Leases with Site Based Energy, and authorize the Interim City Manager to execute a separate Solar Panel Ground Lease with SBE or its designee for each of the City's eight solar panel sites."
- 2) "I move that the Mayor and City Council approve the Idaho Power Sales Agreement in the form attached to the SBE Ground Leases as Exhibit D, and authorize the Interim City Manager to execute the Idaho Power Sales Agreement."

SOLAR PROJECT GROUND LEASE

among

**CITY OF ONTARIO
“Landlord”**

and

**SBE OREGON LLC
an Idaho limited liability company,
“Tenant”**

Dated: _____, 2012

SOLAR PROJECT GROUND LEASE

THIS SOLAR PROJECT GROUND LEASE (this "Lease") is made and entered into as of _____, 2012 (the "Effective Date") by and between CITY OF ONTARIO, a city incorporated under the laws of the State of Oregon ("Landlord"), and SBE OREGON LLC, an Idaho limited liability company ("Tenant"). Capitalized terms used and not otherwise defined herein have the meanings set forth on Schedule A.

RECITALS

A. Landlord owns certain real property in the city of Ontario, State of Oregon, legally described on Exhibit A, attached hereto and incorporated herein (the "Land").

B. Tenant desires to ground lease a portion of the Land from Landlord as legally described or graphically depicted on Exhibit B, attached hereto (the "Premises"), in order to construct, maintain and operate a photovoltaic power system and related improvements (the "System") in accordance with that certain Schedule 88, Solar Photovoltaic Pilot Program (the "Program") established by Idaho Power Company, an Idaho corporation ("Idaho Power"), a copy of which is attached hereto as Exhibit C (the "Program Requirements").

C. Landlord has determined it is in the public interest to lease the Premises, not needed for public purposes, to Tenant for the implementation of the Program and the operation of the System in accordance with the terms and conditions contained herein.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant hereby agree as follows:

1. Land; Access.

Commencing on the Effective Date, Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, the Premises. Tenant acknowledges that it has examined the Premises and accepts the same as being in the condition called for by the Lease. Tenant, its agents, contractors, approved third parties and employees, and lenders, have a non-exclusive right of ingress and egress over the Land to access the Premises to carry out the purposes set forth in this Lease, which right of access may not be terminated by Landlord during the Term of this Lease, provided that Landlord may restrict such right on a temporary basis for reasonable cause so long as such temporary restriction does not inhibit Tenant's ability to comply with the Program Requirements and its obligations under this Lease.

2. Term.

2.1 Construction Term. The initial term of this Lease (the "Construction Term") shall commence on the Effective Date and continue until the Operation

Date, as defined in the Energy Sales Agreement, substantially in the form attached hereto as Exhibit D.

2.2 Operations Term. The operations term (the “**Operations Term**”) shall commence upon the expiration of the Construction Term and continue for eight (8) years.

2.3 Service Term. Upon the written election of Tenant to Landlord, the Service Term (the “**Service Term**”) shall commence upon the expiration of the Operations Term and continue for the remainder of the term of the Energy Sales Agreement unless earlier terminated by Landlord or Tenant at the end of any calendar quarter upon not less than three (3) months notice.

The Construction Term, Operations Term and Service Term shall be referred to collectively herein as the “**Term**”.

3. Rent; Assignment of Payments.

3.1 Rent. Commencing on the Operation Date, as defined in the Energy Sales Agreement, and continuing through the Operations Term, Tenant shall pay to Landlord at the place directed by Landlord, rent in the amount of One Dollar (\$1.00) per year (the “**Rent**”). The first Rent payment shall be paid on the Operation Date and the subsequent seven payments shall be paid on the anniversary of the Operation Date.

3.2 Assignment of Volumetric Incentive Payments. During the Term and as additional consideration for the services provided by Tenant hereunder, Landlord assigns and conveys to Tenant, as a **Qualifying Assignee** pursuant to the Program, one hundred percent (100%) of the Volumetric Incentive Payments Landlord receives from Idaho Power pursuant to the terms of the Energy Sales Agreement (“**Assigned Payments**”). Landlord shall pay to Tenant the Assigned Payments within thirty (30) days of receiving the Volumetric Incentive Payments from Idaho Power.

3.3 Interest and Late Charge. On default in payment of any installment of Rent or payment of Assigned Payments on the date on which such installment or payment is due, the defaulting party shall also be obligated to pay a late charge of four percent (4%) of the amount due. Any amounts payable under this Lease shall bear interest from the date due at the rate of eighteen percent (18%) per annum.

4. Construction and Ownership of the System and Improvements.

4.1 Construction of System. During the Construction Term, Tenant shall at its sole cost and expense construct the System on the Premises in accordance with the provisions hereof and the Program Requirements. Prior to commencing construction of the System, Tenant shall submit to Landlord, for its review, preliminary plans in sufficient detail to enable Landlord to determine the design, style and character of the proposed System. Landlord shall provide Tenant will all necessary information and support and cooperation as may be reasonably necessary to complete the construction and installation of the System and Improvements on the Premises during the Construction Term.

4.2 Other Improvements. Subject to Landlord's prior written approval, which approval shall not be unreasonably withheld, Tenant shall have the right to make improvements and alterations to the System as Tenant from time to time deems necessary or desirable in connection with the use permitted under Section 7.1 below.

4.3 Legal Requirements. All construction, alteration, maintenance, repair, replacement or renewal of the System shall be in accordance with applicable Legal Requirements. Landlord shall cooperate with Tenant in all respects in connection therewith, including the execution of any applications, consents or other instruments upon request. Tenant shall pay all fees and costs reasonably necessary to comply with such Legal Requirements.

4.4 Ownership of the System. The System shall be and remain the sole property of Tenant until conveyed to Landlord at the end of the Operations Term. Upon termination of the Operations Term, Tenant shall convey the System to Landlord by bill of sale for a purchase price of One Dollar (\$1.00).

5. Operations of System and Improvements.

5.1 Taxes.

(a) Personal Property. Parties understand and intend that the System is exempt from personal property taxation under Oregon law. If the System is deemed by a taxation authority to not be exempt from personal property taxation, Tenant may, in its sole discretion, terminate this Lease. As an alternative to termination, Tenant may propose an amendment to this Section 5.1 and/or the Rent and Assignment of Payment provisions in Section 3 herein, provided that Tenant's right to terminate as provided in this Section 5.1 is not restricted in any way by such proposal.

(b) Real Property. Tenant shall pay in full and discharge, or cause to be paid in full and discharged, prior to delinquency, any additional real property tax that is assessed on the Land as a result of the System's effect on exemptions for government entities or public uses.

5.2 Liens. Tenant shall keep the Land free from any liens arising out of work performed, materials furnished to or obligations incurred by or on behalf of Tenant. If any mechanic's or materialmen's lien is filed against the Land for work claimed to have been done for or materials claimed to have been furnished to or obligations incurred by Tenant, Tenant shall discharge the same as soon as reasonably practical. Tenant shall have the right to contest any such liens if it notifies Landlord of its intention to do so; provided, that Tenant shall diligently prosecute any such contest, at all times effectually stay or prevent any official or judicial sale of the Land under execution or otherwise, and pay or otherwise satisfy any final judgment adjudicating or enforcing such contested mechanics or other lien claim and thereafter procure and record a release and satisfaction thereof. Landlord agrees to cooperate fully with Tenant in good faith during the course of such contest.

5.3 Utilities. Tenant shall pay all charges for gas, electricity, light, water, telephone service, refuse and all other public or private utilities or services which shall be used in or charged against or in connection with the use of the Premises during the Term of this Lease.

6. Maintenance. Tenant shall maintain the Premises and the System in a good state of repair, subject to ordinary wear and tear, in accordance with the Program Requirements and generally accepted industry practices. Tenant shall not cause or permit waste, nuisance, contamination, or other similar act upon the Premises. Subject to Section 16 below, Tenant shall at the expiration of this Lease surrender and deliver the Premises in as good condition, normal wear and tear excepted, as hereafter improved.

7. Use.

7.1 Permitted Use. Tenant is permitted to use the Premises for the design, construction, and operation of the System and Improvements, and for no other use or purpose without the prior written consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed.

7.2 Legal Compliance. Throughout the Term, Tenant shall promptly comply in all material respects with all Legal Requirements and Program Requirements that may apply to the Premises, System and/or to the Improvements, to the use or manner of uses of the Premises, System or the Improvements. Tenant shall have the right, after prior written notice to Landlord, to contest by appropriate legal proceedings, diligently conducted in good faith in the name of Tenant or Landlord or both and without cost or expense to Landlord, the validity or application of any Legal Requirement; provided, that if any lien or charge would be incurred by reason of any delay in compliance with such Legal Requirement, Tenant nevertheless may contest the matter and delay compliance, provided, that such delay would not subject Landlord to civil or criminal liability or fine, and Tenant furnishes to Landlord security, reasonably satisfactory to Landlord, against any lien or charge by reason of such contest or delay. Landlord shall execute and deliver any appropriate papers that may be necessary or proper to permit Tenant to contest the validity or application of any Legal Requirement, provided all the requirements of this Section have been satisfied by Tenant and Landlord will incur no cost (or Tenant shall have agreed to reimburse such cost).

8. Representations and Warranties of Landlord.

As of the Effective Date and during the Term, Landlord hereby represents and warrants that the following is true and correct in all respects:

8.1 Landlord is a city duly incorporated under the laws of the State of Oregon.

8.2 Landlord is authorized by the laws and regulations of the State of Oregon and the ordinances of the Landlord, including but not limited to the laws, regulations, and ordinances governing leasing of public property, procurement of goods and services, and conduct of public meetings, to enter into this Lease and to carry out its obligations hereunder.

8.3 Landlord has duly authorized the execution and delivery of this Lease, which is the legal, valid and binding obligation of the Landlord, enforceable against the Landlord in accordance with its terms.

8.4 Neither the execution and delivery of this Lease, the consummation of the transactions contemplated hereby, nor the fulfillment or compliance of the terms and conditions

of this Lease conflicts with or results in a breach of any of the terms, conditions, or provisions of any restriction or any agreement or instrument to which the Landlord is now a party or by which it is bound, or constitutes a default under any of the foregoing or results in the creation or imposition of any prohibited lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the Landlord under the terms of any instrument or agreement.

8.5 To Landlord's knowledge, there is no litigation pending or threatened against Landlord affecting its ability to perform its obligations under this Lease.

9. Further Agreements.

9.1 Interconnection Application – Part B. Prior to the Effective Date, Landlord submitted the Interconnection Application – Part B (the “**Interconnection Application**”) to Idaho Power.

9.2 Energy Sales Agreement. Upon Idaho Power's approval of the Interconnection Application, Landlord shall, within thirty (30) days of receiving notice of such approval, provide the information required by Idaho Power to execute the Energy Sales Agreement. Landlord shall execute the Energy Sales Agreement as soon as practicable and no later than thirty (30) days after Tenant's request. Pursuant to the Program Requirements, the application fees that were paid by Tenant on behalf of the Landlord will be reimbursed by Idaho Power upon execution of the Energy Sales Agreement. Landlord shall immediately transfer all reimbursed application fees to Tenant. In the event that the application fees are not reimbursed because Landlord, through no fault of Tenant, fails to execute the Energy Sales Agreement, Landlord shall reimburse Developer for un-reimbursed Application Fees.

9.3 Authorized Agent of Landlord. Landlord authorizes Tenant to serve as Landlord's agent and attorney-in-fact to communicate with the Oregon Public Utilities Commission and Idaho Power and to execute any necessary documents on behalf of Landlord regarding the Program and this Lease. Landlord shall execute the Consent Form attached hereto and incorporated herein as Exhibit E, authorizing Idaho Power and Tenant to communicate regarding the implementation of the Program, this Lease and all other transactions contemplated by this Lease and the Program Requirements.

9.4 Inverter Replacement. Parties understand that the inverter equipment has a fifteen year manufacturer's warranty and will likely require replacement after approximately fifteen (15) years of use. To contribute to the costs of such replacement, Tenant shall pay Landlord three and 1/3 cents (\$0.033) per watt of the Contracted System each year of the Operations Term, to be paid as follows: the first payment shall be paid one calendar year from the Operation Date and the following seven payments shall be paid on the anniversary of the first payment, for a total of eight (8) annual payments.

9.5 Tax Benefits. All tax benefits available to Tenant or Landlord as a result of the construction and operation of the System, including, without limitation, the U.S. Treasury Grant, established in Section 1603 of the American Recovery and Reinvestment Tax Act; the Business Energy Investment Tax Credit, codified at 26 U.S.C. § 48; the Renewable Electricity Production Tax Credit, codified at 26 U.S.C. § 45; and the Modified Accelerated

Cost-Recovery System + Bonus Depreciation, codified at 26 U.S.C. § 168, shall be for the benefit of Tenant, and Landlord shall execute and deliver any assignments or other documentation, at no cost to Tenant, required to assign any rights and benefits under such programs from Landlord to Tenant.

9.6 Renewable Energy Certificates. Pursuant to the Program Requirements, all Renewable Energy Certificates (also known as renewable energy credits, green tags, green certificates, and RECs) associated with the System under any existing or implemented law, regulation or ordinance are the property of the Idaho Power and neither Landlord nor Tenant shall have any right, title or interest in such benefits or allowances.

10. Insurance.

10.1 Property Insurance. Tenant, at its sole expense, shall obtain and keep in force at all times during the term hereof on all Improvements insurance coverage, with extended coverage endorsement, including coverage against losses by fire, extended risk, vandalism, flood and malicious mischief.

10.2 Liability Insurance. Tenant shall, during the entire Term, keep in full force and effect a policy of comprehensive general liability insuring property damage insurance and bodily injury with respect to the operations of the System by Tenant on the Premises, in amount not less than \$1,000,000.00 per occurrence, combined single limit.

10.3 Policy Form. Tenant shall provide Landlord with satisfactory evidence of insurance, and the current effective status thereof. All liability policies shall be issued naming Landlord and Idaho Power as additional insureds or loss payees. So long as such provisions are available on commercially reasonable terms, all policies of insurance must contain a provision that the company writing said policy will give to Landlord and Idaho Power sixty (60) days notice in writing in advance of any cancellation or lapse or the effective date of any reduction in the amounts of insurance. All public liability, property damage and other casualty policies shall be written by insurance companies qualified to do business in the State of Oregon with an A.M. Best Company rating of A- or better.

10.4 Waiver of Subrogation. Whether loss or damage is due to the negligence of either Landlord or Tenant or their agents or employees, or any other cause, Landlord and Tenant do each hereby release and relieve the other and its agents and employees from responsibility for, and waive their entire claim of recovery for, any loss resulting from business interruption at the Land or loss of income from the Improvements or any loss or damage to the real or personal property of either located anywhere in the Land or Improvements, arising out of or incident to the occurrence of any of the perils which are covered by any all-risk direct physical damage insurance policy now or from time to time carried by the parties hereto or any of the perils which would be covered by the standard form of all-risk direct physical damage insurance policy in common use in the State of Oregon for comparable properties. Each party shall cause its insurance carriers to consent to such waiver and to waive all rights of subrogation against the other party. Notwithstanding the foregoing, no such release by Landlord or Tenant shall be effective unless such waivers are obtainable by each party.

11. Indemnification.

11.1 By Tenant. Tenant shall indemnify, protect, defend and hold Landlord harmless from and against any and all claims, demands, losses, damages, costs, charges, liabilities and reasonable attorneys' fees arising from damage or injury, actual or claimed, of whatsoever kind or character, to persons or property occurring in, on or about the Land, Premises or the Improvements, arising from the negligence or intentional misconduct of Tenant or Tenant's agents or employees, provided, however, that nothing herein shall require Tenant to indemnify, protect, defend or save Landlord harmless from the consequences of Landlord's negligence or willful misconduct or the negligence or willful misconduct of any of Landlord's agents or employees.

11.2 By Landlord. Landlord covenants and agrees that it will at all times during the Term indemnify, protect, defend and hold Tenant harmless from and against any and all claims, demands, losses, damages, costs, charges, liabilities and reasonable attorneys' fees arising from damage or injury, actual or claimed, of whatsoever kind or character, to persons or property occurring in, on or about the Land or Premises arising from the negligence or intentional misconduct of Landlord or Landlord's agents or employees or any default by Landlord under the Energy Sales Agreement or Interconnection Agreement, provided, however, that nothing herein shall require Landlord to indemnify, protect, defend or save Tenant harmless from the consequences of Tenant's negligence or willful misconduct or the negligence or willful misconduct of any of Tenant's agents or employees.

12. Damage or Destruction.

12.1 During the Operations Term. In the event of damage to or destruction of the System or Improvements, by fire or any other casualty, during the Operations Term, Tenant shall, at its sole cost and expense, restore, repair, replace, rebuild, modify or alter the same as promptly as practicable to substantially their condition prior to said damage or destruction. Tenant shall diligently carry out such repair, replacement, reconstruction and rebuilding to full completion as soon as practical. All Insurance Proceeds shall be held in trust and applied to the payment of such restoration as such restoration progresses; provided, however, if Tenant determines, in its sole discretion, that restoration is not economically feasible then Tenant shall have the right to terminate this Lease and shall have no further obligations hereunder provided Tenant assigns the Insurance Proceeds to Landlord.

12.2 During the Service Term. In the event of damage to or destruction of the System or Improvements, by fire or any other casualty, during the Service Term, Landlord shall, at its sole cost and expense, instruct Tenant restore, repair, replace, rebuild, modify or alter the same as promptly as practicable to substantially their condition prior to said damage or destruction. Tenant shall diligently carry out such repair, replacement, reconstruction and rebuilding to full completion as soon as practical. All Insurance Proceeds shall be held in trust and applied to the payment of such restoration as such restoration progresses; provided, however, if Landlord determines, in its sole discretion, that restoration is not economically feasible then Landlord shall have the right to terminate this Lease and shall have no further obligations hereunder and shall be entitled to retain any Insurance Proceeds.

13. Condemnation. If all or any portion of the Land, System or Premises are taken or condemned after the expiration of the Operations Term, Landlord shall be entitled to all the proceeds from a taking or condemnation. If all or any portion of the Land, System or Premises are taken or condemned during the Construction or Operations Term, the following subsections shall apply:

13.1 Total Taking.

(a) If all of the Land, the Premises or the System is taken or condemned, by right of eminent domain or by purchase in lieu of condemnation, or, if such portion of the Land, the Premises, the System shall be so taken or condemned that the portion remaining is not sufficient and suitable, in Tenant's reasonable commercial business judgment, to permit the restoration of the System and/or Improvements following such taking or condemnation as a viable and functional economic unit, then this Lease, at Tenant's option, shall cease and terminate as of the date on which the condemning authority takes possession (any taking or condemnation of the land described in this Section being called a "**Total Taking**"). Rent and accrued Assigned Payments shall be paid to the date of such Total Taking.

(b) If this Lease expires and terminates as a result of a Total Taking, the total award or awards for the Total Taking shall be apportioned and paid in the following order of priority:

(i) Landlord shall have the right to and shall be entitled to receive directly from the condemning authority that portion of the award which is hereinafter defined as the "**Land Award**," and Tenant shall not be entitled to receive any part of the Land Award. The term Land Award shall mean that portion of the award in condemnation that represents the fair market value of the Land as of the date of the taking, considered as vacant and unimproved but encumbered by this Lease.

(ii) For any total taking during the Operations Term, Tenant shall have the right to and shall be entitled to receive directly from the condemning authority, that portion of the award which reflects the value of Tenant's interest in the System as provided in this Lease and in the leasehold estate, which is hereinafter defined as the "**Tenant's Leasehold Award**."

(iii) It is the intent of the parties that the Land Award and the Tenant's Leasehold Award will equal the total amount of the awards respecting a Total Taking.

(iv) If the court or such other lawful authority as may be authorized to fix and determine the awards fails to fix and determine, separately and apart, the Land Award and the Tenant's Leasehold Award, such awards shall be determined and fixed by written agreement mutually entered into by and among Landlord and Tenant, and if an agreement is not reached within twenty (20) days after the judgment or decree is entered in the proceedings, the controversy shall be resolved by application to a court of competent jurisdiction.

13.2 Partial Taking. If there is a taking or condemnation that is not a Total Taking and not a temporary taking of the kind described below in Section 13.3, this Lease and the Term shall not cease or terminate but shall remain in full force and effect with respect to the portion of the Land and of the Improvements not taken or condemned (any taking or condemnation of the kind described in this Section being referred to as a “**Partial Taking**”), and in such event:

(a) The total award or awards for the Partial Taking shall be apportioned and paid in the following order of priority:

(i) Landlord shall have the right to and shall be entitled to receive directly from the condemning authority, in its entirety and not subject to any trust, that portion of the award that equals the Land Award with respect to the portion of the Land that is taken, and Tenant shall not be entitled to receive any part of the Land Award; and

(ii) Tenant shall have the right to and shall be entitled to receive directly from the condemning authority the balance of the award.

(b) Rent payable during the remainder of the Operations Term after taking of possession by said condemning authority shall be reduced on a just and proportionate basis considering the relative value and square footage of the portion of the Land thus taken or condemned as compared to the remainder thereof and taking into consideration the extent, if any, to which Tenant’s use of the remainder of the Premises shall have been impaired or interfered with by reason of such partial taking or condemnation.

13.3 Temporary Taking. If the temporary use (but not leasehold title) of the whole or any part of the Land shall be taken as aforesaid, this Lease shall not be affected in any way and Tenant shall continue to pay all Rent and Landlord shall pay all Assigned Payments due hereunder. The entire award paid as a result of such temporary use shall be paid to Tenant.

13.4 Proceedings. In any condemnation proceeding affecting the Land which may affect the Landlord’s Estate and Tenant’s Estate, both parties shall have the right to appear in and defend against such action as they deem proper in accordance with their own interests. To the extent possible, the parties shall cooperate to maximize the award payable by reason of the condemnation. Issues between Landlord and Tenant required to be resolved pursuant to this Section 13 shall be joined in any such condemnation proceeding to the extent permissible under then applicable procedural rules of such court of law or equity for the purpose of avoiding multiplicity of actions and minimizing the expenses of the parties.

14. Assignment by Tenant. Tenant may assign all or any part of this Lease without Landlord’ consent.

15. Default and Remedies.

15.1 Tenant Events of Default. Upon the occurrence of any of the following events (each, a “**Tenant Event of Default**”), Landlord shall have the remedies set forth hereunder:

(a) Tenant fails to pay any Rent when due.

(b) Tenant fails to perform any other term, condition or covenant to be performed by it pursuant to this Lease within thirty (30) days after receipt of written notice of such failure from Landlord or, if cure would reasonably require more than thirty (30) days to complete, Tenant fails to commence performance within the thirty (30) day period or fails thereafter to diligently and continuously pursue such cure to completion.

(c) Tenant shall become bankrupt or insolvent or file any debtor proceedings or have taken against such party in any court pursuant to state or federal statute, a petition in bankruptcy or insolvency, reorganization or appointment of a receiver or trustee, unless such filings are dismissed within sixty (60) days of filing; or Tenant petitions for or enters into an arrangement for the benefit of creditors; or suffers this Lease to be taken under a writ of execution.

15.2 Landlord Event of Default. Upon the occurrence of any of the following events (each, a “**Landlord Event of Default**”), Tenant shall have the remedies set forth hereunder:

(a) Landlord fails to pay any Assigned Payments when due.

(b) Landlord fails to perform any other term, condition or covenant to be performed by it pursuant to this Lease within thirty (30) days after receipt of written notice of such failure from Tenant or, if cure would reasonably require more than thirty (30) days to complete, Landlord fails to commence performance within the thirty (30) day period or fails thereafter to diligently and continuously pursue such cure to completion.

(c) Landlord is in default under the terms of the Energy Sales Agreement, Interconnection Agreement or any other agreement with Idaho Power regarding the ownership, operation, maintenance or any other matter related to the System.

15.3 Remedies. In the Event of Default, the non-defaulting party shall have all rights and remedies available under law or at equity, including, without limitation, the right of specific performance.

16. Removal of Property. Upon expiration or sooner termination of this Lease, Tenant shall remove all personal property not necessary for the operation of the System (whether or not the System has been previously transferred to Landlord pursuant to the terms contained herein) not attached to or made part of the Premises. The System and other personal property affixed to the Premises shall become the property of Landlord and shall remain upon and be surrendered with the Premises.

17. Hazardous Substances.

(a) Tenant shall not permit or engage in any conduct or activity on, about or as to the Premises which involves or results in the handling, generation, emission, release, storage, treatment, processing, discharge, use, transportation, management or disposal (hereinafter collectively referred to as “**Hazardous Substances Activities**”) of any Hazardous

Substances, except in accordance with all applicable Environmental Laws. Tenant further represents, warrants and covenants that it shall not allow any such Hazardous Substances (other than Hazardous Substances currently existing on the Premises and normal office supplies, paints, lubricants, water treatment chemicals, cleaning and other activities typical to its business operations) on or about the Premises unless Tenant obtains any required permits and licenses from all appropriate agencies. In the event any Hazardous Substances shall come on or about the Premises under any circumstances caused by the gross negligence or willful misconduct, Tenant, its employees, officers, authorized representatives, agents or contractors, Tenant shall be responsible for managing such Hazardous Substances in compliance with all applicable Legal Requirements at all times such Hazardous Substances exist on or about the Premises during the Term of this Lease and for such other times as the existence of such Hazardous Substances may later be discovered.

(b) Landlord shall not permit or engage in any conduct or activity on, about or as to the Land permit or engage in Hazardous Substances Activities of any Hazardous Substances, except in accordance with all applicable Environmental Laws. Landlord further represents, warrants and covenants that it shall not allow any such Hazardous Substances (other than Hazardous Substances currently existing on the Premises and normal office supplies, paints, lubricants, water treatment chemicals, cleaning and other activities typical to its business operations) on or about the Land unless Landlord obtains any required permits and licenses from all appropriate agencies. In the event any Hazardous Substances shall come on or about the Land under any circumstances caused by the gross negligence or willful misconduct, Landlord, its employees, officers, authorized representatives, agents or contractors, Landlord shall be responsible for managing such Hazardous Substances in compliance with all applicable Legal Requirements at all times such Hazardous Substances exist on or about the Land during the Term of this Lease and for such other times as the existence of such Hazardous Substances may later be discovered.

(c) Tenant shall indemnify, defend and hold Landlord harmless from and against all obligations, claims, administrative proceedings, judgments, demands, causes of action, losses, damages, liabilities, costs and expenses (including reasonable attorneys', consultants' and experts' fees) asserted against or incurred by Landlord arising out of Tenant's failure to comply with or perform any covenant, agreement or obligation set forth in this Section; provided, however, that Tenant shall not indemnify, defend, or hold Landlord harmless against Hazardous Substances placed or coming on or about the Land under any circumstances caused by the act or omissions of Landlord, its employees, officers, authorized representatives, agents or contractors.

(d) Landlord shall indemnify, defend and hold Tenant harmless from and against all obligations, claims, administrative proceedings, judgments, demands, causes of action, losses, damages, liabilities, costs and expenses (including reasonable attorneys', consultants' and experts' fees) asserted against or incurred by Tenant arising out of Landlord's failure to comply with or perform any covenant, agreement or obligation set forth in this Section; provided, however, that Landlord shall not indemnify, defend, or hold Tenant harmless against Hazardous Substances placed or coming on or about the Land under any circumstances caused by the act or omissions of Tenant, its employees, officers, authorized representatives, agents or contractors.

18. Quiet Enjoyment. Subject to Tenant's performance of its duties and obligations hereunder, Landlord (and all successors and assigns of Landlord) covenants and warrants that Tenant shall and may peaceably and quietly have, hold, occupy, use and enjoy all of the Premises during the Term, free from claims of others arising by, through or under Landlord.

19. Estoppel Statements.

(a) Landlord shall at any time and from time to time, upon not less than thirty (30) Business Days prior written notice from Tenant, execute, acknowledge and deliver to Tenant a statement in writing: (i) certifying that this Lease is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying that this Lease as so modified is in full force and effect), and the date to which the rental and other charges are paid in advance, if any, (ii) acknowledging that there are not, to Landlord's knowledge, any uncured defaults on the part of Tenant hereunder, or specifying such defaults if any are claimed, and (iii) setting forth the date of commencement of rents and expiration of the term hereof. Any such statement may be relied upon by the prospective purchaser, assignee or encumbrancer of all or any portion of the System or Lease.

(b) Tenant shall at any time and from time to time, upon not less than thirty (30) Business Days prior written notice from Landlord, execute, acknowledge and deliver to Landlord a statement in writing: (i) certifying that this Lease is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying that this Lease as so modified is in full force and effect), and the date to which the rental and other charges are paid in advance, if any, (ii) acknowledging that there are not, to Tenant's knowledge, any uncured defaults on the part of Landlord hereunder, or specifying such defaults if any are claimed, and (iii) setting forth the date of commencement of rents and expiration of the term hereof. Any such statement may be relied upon by the prospective purchaser, assignee or encumbrancer of all or any portion of the real property of which the Land are a part.

20. General.

20.1 Successors. Subject to the provisions hereof pertaining to assignment and subletting, the covenants and agreements of this Lease shall be binding upon the successors and assigns of the parties hereto.

20.2 Notices. To be effective, all notices given or other communications made under this Lease shall be in writing and shall be sent by (a) first class United States mail, postage prepaid, registered or certified, (b) an overnight courier service that retains evidence of delivery or (c) personal delivery, in each case addressed as follows:

To Landlord:	City of Ontario 44 Southwest Fourth Street Ontario, Oregon 97914 Attention: Yorick De Tassigny
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To Tenant: SBE Oregon LLC
21 Comet Lane
Hailey, Idaho 83333
Attention: Paul Conrad

With a copy to, which
shall not constitute notice: Givens Pursley LLP
601 West Bannock Street
Boise, Idaho 83702
Attention: Franklin G. Lee and Kelsey J. Nunez

A party may change its address for notice by giving written notice to the other party of such change. A notice shall be deemed given when received or upon the refusal of an otherwise proper delivery.

20.3 Holdover. If Tenant shall continue to occupy the Premises after the termination of the Lease, Tenant shall be deemed to be occupying the Premises on a month-to-month tenancy on the terms hereof in accordance with the laws of the State of Oregon.

20.4 Captions. The captions to sections of this Lease are not a part of this Lease and shall have no effect upon the construction or interpretation of any part hereof.

20.5 No Partnership. Nothing contained herein shall be construed as creating a partnership or joint venture between Landlord and Tenant or cause either party to be responsible in any way for debts or obligations of the other party hereto.

20.6 Commissions. Landlord and Tenant represent and warrant that they have not engaged any broker, finder or other person who would be entitled to any commission or fee in respect of the negotiation, execution or delivery of this Lease and each party shall indemnify and hold harmless the other party against any loss, cost, liability or expense incurred by the other party as a result of any claim asserted by any such broker, finder or other person on the basis of any arrangements or agreements made or alleged to have been made by or on behalf of such party.

20.7 Entire Agreement; Severability. This Lease contains all covenants and agreements between Landlord and Tenant relating in any manner to the rental, use and occupancy of the Premises and Land and other matters set forth in this Lease. No prior agreements or understanding pertaining to the same shall be valid or of any force or effect and the covenants and agreements of this Lease shall not be altered, modified or added to except in a written agreement signed by Landlord and Tenant. If any provision of this Lease or the application thereof to any person or circumstance shall prove to any extent invalid or unenforceable, the remaining provisions hereof or the application of such provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

20.8 Time of the Essence. Time is of the essence with respect to each of the provisions of this Lease.

20.9 Governing Law. This Lease shall be governed by, and interpreted in accordance with, the laws of the State of Oregon as they shall exist from time to time. If either Landlord or Tenant shall commence any legal proceedings against the other with respect to any of the terms and conditions of this Lease, the substantially prevailing party, as determined by the court having jurisdiction over the matter, shall be entitled to recover from the other reasonable costs and expenses of such proceedings, including attorneys' fees, as may be fixed by the court.

20.10 Counterparts. This Lease may be executed in counterparts, each of which shall be an original, and all of which shall together constitute one and the same instrument.

20.11 Nonwaiver of Breach. The failure of either party to insist upon strict performance of any of the covenants and agreements of this Lease, or to exercise any option herein conferred in any one or more instances, shall not be construed to be a waiver or relinquishment of any such covenants and agreements, or any other covenants or agreements, but the same shall be and remain in full force and effect. Any acceptance by either of a partial payment of any amounts due to such party shall not constitute a waiver of any remaining unpaid amounts which may have accrued at that time or which may accrue thereafter.

[The remainder of this page is intentionally left blank.]

IN WITNESS WHEREOF the parties hereto have executed this Lease the day and year first above written.

Landlord:

By: _____

Its: _____

Tenant:

By: _____

Its: _____

**EXHIBIT A
LEGAL DESCRIPTION OF LAND**

City to review attached legal description of LAND for each location and confirm it includes an accurate description of the LAND for each location.

Waste Water Treatment Plant Property

The Land:

COUNTY, OREGON, a municipal corporation, Grantee, the following described real property free of encumbrances except as specifically set forth herein:

Land in Malheur County, Oregon, as follows:

In Twp. 17 S., R. 47 E., W.M.:

Sec. 31: S½SE¼ and all that portion of the N½SE¼ lying South and East of the Malheur River.

EXCEPTING THEREFROM the following parcel:

Beginning at a point located N. 0°11' E., 25 feet from the Southeast corner of said Sec. 31;

thence N. 0°11' E., 1448 feet;

thence N. 84°54' W., 417.5 feet;

thence S. 29°43' W., 310.5 feet;

thence S. 89°45' W., 521.9 feet;

thence S. 1°16' W., 212 feet;

thence S. 30°19' W., 175 feet;

thence S. 5°07' W., 304 feet;

thence S. 1°53' W., 509.5 feet;

thence East 1203.7 feet to the Point of Beginning.

1901
718

Tax Ref. No. Code 15, Tax Lot No. 1901, Map No. 174731, Computer No. 07229

SUBJECT TO and TOGETHER WITH

Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records; proceedings by a public agency which may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the public records.

Any facts, rights, interest, or claims which are not shown by the public records but which could be ascertained by an inspection of said land or by making inquiry of persons in possession thereof.

Easements, liens or encumbrances, or claims thereof, which are not shown by the public records; unpatented mining claims; reservations or exceptions in patents or in Acts authorizing the issuance thereof; water rights, claims or title to water.

Discrepancies, conflicts in boundary lines, shortage in area, encroachments or any other facts which a correct survey would disclose.

IS DISCLOSED by the tax roll the premises herein described have been zoned or classified for farm use. At any time that said land is disqualified for such use, the property will

be subject to additional taxes or penalties and interest.
CHARGES AND ASSESSMENTS of the Warm Springs Irrigation District and any and all matters pertaining thereto, if any.
RIGHTS OF THE PUBLIC in and to existing County road rights-of-way.
SUCH RIGHTS and easements for navigation and fishing as may exist over that portion of the property lying beneath the waters of the Malheur River.

Grantee, the following described real property free of encumbrances except as specifically set forth herein:

Land in the E½SE¼ of Township 17 South, Range 47 East of the Willamette Meridian, Malheur County, Oregon, as follows:

See attached Exhibit A

17-47-31
2000

Tax Map No. 17 47 B, Tax Lot No. 2000

SUBJECT TO and TOGETHER WITH

Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records; proceedings by a public agency which may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the public records.

EXHIBIT "A"
TO WARRANTY DEED

A parcel of land in Malheur County, Oregon more particularly described as follows:

In Twp. 17 S., R. 47 E., W.M.:

Sec. 31: A parcel of land in the E $\frac{1}{2}$ SE $\frac{1}{4}$ more particularly described as follows, to-wit:
Beginning at a point located N. 0° 11' E., 25 feet from the Southeast corner of said
Sec. 31;

thence N. 0° 11' E.,	1448.0 feet;
thence N. 84° 54' W.,	417.5 feet;
thence S. 29° 43' W.,	310.8 feet;
thence S. 89° 46' W.,	521.9 feet;
thence S. 1° 16' W.,	212.0 feet;
thence S. 30° 19' W.,	173.0 feet;
thence S. 5° 07' W.,	304.0 feet;
thence S. 1° 53' W.,	509.8 feet;
thence E. 1203.7 feet to the Point of Beginning.	

which has the address of 3203 Malheur Drive, Ontario, Oregon 97914.

Together with all the improvements now or hereafter erected on the property, and all easements, rights, appurtenances, rents, royalties, mineral, oil and gas rights and profits, water rights and stock and all fixtures now or hereafter a part of the property.

encumbrances except as specifically set forth herein:

A parcel of land in Malheur County, Oregon more particularly described as follows:

In Twp. 17 s., R. 47 E., W.M.: W $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 32

Tax Map No. 17 47 C, Tax Lot No. pt6701 Computer No. 07039

Together with all the improvements now or hereafter erected on the property, and all easements, rights, appurtenances, rents, royalties, mineral, oil and gas rights and profits, water rights and stock and all fixtures now or hereafter a part of the property.

SUBJECT TO and TOGETHER WITH

Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records; proceedings by a public agency which may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the public records.

WARRANTY DEED

DON LEWIS and LARENA LEWIS, husband and wife, Grantors, convey and warrant to the CITY OF ONTARIO, OREGON, Grantee, for public use, the following described real property free of encumbrances except as specifically set forth herein:

SEE EXHIBIT A ATTACHED HERETO

SUBJECT TO and TOGETHER WITH

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records; proceedings by a public agency which may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the public records.
2. Any facts, rights, interests, or claims which are not shown by the public records but which could be ascertained by an inspection of said land or by making inquiry of persons in possession thereof.
3. Easements, liens or encumbrances, or claims thereof, which are not shown by the public records unpatented mining claims; reservations or exceptions in patents or in Acts authorizing the issuance thereof; water rights, claims or title to water.
4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments or any other facts which a correct survey would disclose.

A parcel of land in Malheur County, Oregon more particularly described as follows:

In Twp. 17 s., R. 47 E., W.M.:

Section 29: SW $\frac{1}{4}$ SE $\frac{1}{4}$ and SE $\frac{1}{4}$ SW $\frac{1}{4}$,

EXCEPTING THEREFROM road right of way, and

A parcel of land in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ as follows:

Beginning at the Southeast corner of the SW $\frac{1}{4}$ SW $\frac{1}{4}$

THENCE West along the South section line, a distance of 700 feet;

THENCE in a Northeasterly direction to the Northeast corner of the SW $\frac{1}{4}$ SW $\frac{1}{4}$;

THENCE South, along the East sideline of the SW $\frac{1}{4}$ SW $\frac{1}{4}$ to the POINT of BEGINNING, being that part of the SW $\frac{1}{4}$ SW $\frac{1}{4}$ lying South and East of the County road; and

SE $\frac{1}{4}$ SE $\frac{1}{4}$,

EXCEPTING THEREFROM highway right of way as taken by the State of Oregon, by and through its State Highway Commission, under Final Judgment in that certain Condemnation Proceeding entitled "State of Oregon, by and through its State Highway Commission, Plt. -vs- Glen E. Thayer, et al, Defs.", being File No. 7535-L in the Circuit Court of the State of Oregon, for the County of Malheur, entered Oct. 3, 1957.

AND FURTHER EXCEPTING two (2) parcels as more particularly described in Final Judgment in that certain Action No. 12,269-L entitled "State of Oregon, by and through its State Highway Commission -vs- Glenn E. Thayer, also known as Glen E. Thayer, et al", in the Circuit Court of the State of Oregon for the County of Malheur, entered Feb. 8, 1972.

Section 32: NE $\frac{1}{4}$ NW $\frac{1}{4}$, NW $\frac{1}{4}$ NE $\frac{1}{4}$ and that portion of the SW $\frac{1}{4}$ NE $\frac{1}{4}$ lying North of the Malheur River.

Together with all the improvements now or hereafter erected on the property, and all easements, rights, appurtenances, rents, royalties, mineral, oil and gas rights and profits, water rights and stock and all fixtures now or hereafter a part of the property.

EXHIBIT B

5. **RIGHTS OF THE PUBLIC** in and to existing County road rights-of-way.
6. Any Adverse Claim based upon the assertion that:
 - a. Some portion of said land has been created by artificial means or has accreted to such portion so created.
 - b. Some portion of said land has been brought within the boundaries thereof by an avulsive movement of the Malheur River, or has been formed by accretion to any such portion.
7. **RIGHTS OF THE PUBLIC** and governmental bodies in and to any portion of the premises herein described lying below high water mark of the Malheur River, including any ownership rights which may be claimed by the State of Oregon below high water mark as it now exists or at any time has existed.
8. **EASEMENT**, including the terms and provisions thereof, in favor of Idaho Power Company, a corporation, recorded May 21, 1951, Book 86, Page 300, Deed Records, across the NE¼NW¼ of and NW¼NE¼ Sec. 32.
9. **EASEMENT**, including terms and provisions thereof, in favor of Idaho Power Company, a corporation, recorded October 6, 1947, Book 71, Page 342, Deed Records, across the SW¼SW¼ of Sec. 29.
10. **EASEMENT**, including terms and provisions thereof, in favor of Idaho Power Company, a corporation, recorded December 22, 1947, Book 72, Page 324, Deed Records, across the South 300 feet of the SW¼SW¼ of Sec. 29.
11. **EASEMENT**, including terms and provisions thereof, in favor of Idaho Power Company, a corporation, recorded December 22, 1947, Book 72, Page 325, Deed Records, across the South 300 feet of the NE¼SE¼ of Sec. 29.
12. **EASEMENT**, including terms and provisions thereof, in favor of Idaho Power Company, a corporation, recorded May 21, 1951, Book 86, Page 298, Deed Records, across the South 300 feet of the SE¼SE¼ of Sec. 29.
13. **EASEMENT**, including terms and provisions thereof, in favor of Idaho Power Company, a corporation, recorded August 6, 1974, Instrument No. 160213, Deed Records, across the West 50 feet of the SE¼SW¼ and the West 50 feet of the NE¼NW¼, and East 50 feet of the SW¼SW¼, all in Sec. 29, Twp. 17 S., R. 47 E., W.M.
14. **RESERVATIONS AND ACCESS RESTRICTIONS** contained in Final Judgment in Action No. 7535-L entitled "State of Oregon, by and through its State Highway Commission -vs- Glen E. Thayer and Jan Doe, husband and wife, if married", in the Circuit Court of the State of Oregon, for Malheur County, Final Judgment filed October 3, 1957.
15. **ACCESS RESTRICTIONS** contained in the Final Judgment in Action No. 12,269-L, entitled "State of Oregon, by and through its State Highway Commission -vs- Glenn E. Thayer, aka Glen E. Thayer, et al", in the circuit Court of the State of Oregon, for Malheur County, entered February 8, 1972.

16. **RIGHT-OF-WAY CONTRACT**, including the terms and provisions thereof, between Grigg Anderson Farms and Cascade Natural Gas Corporation, recorded August 4, 1965, Book 38, Instrument No. 66574, Leases and Agreements, for pipe line across lands in Sec. 29 and 32.
17. **UNRECORDED LEASE AGREEMENT**, including the terms and provisions thereof, between A. Marguerite Decker, Lessor, and Ore-Ida Foods, Inc., a Delaware corporation, Lessee, as disclosed by Memorandum of Lease dated February 10, 1978, recorded April 7, 1978, Instrument No. 43569, Leases and Agreements, covering a portion of the lands and affecting hot water, steam, minerals, oil and gas.

grantor except as specifically set forth herein.

SEE EXHIBIT A ATTACHED HERETO

SUBJECT TO and TOGETHER WITH

1. Any facts, rights, interest, or claims which are not shown by the public records but which could be ascertained by an inspection of said land or by making inquiry of persons in possession thereof.
2. Easements, liens or encumbrances, or claims thereof, which are not shown by the public records; unpatented mining claims; reservations or exceptions in patents or in Acts authorizing the issuance thereof; water rights, claims or title to water.
3. Discrepancies, conflicts in boundary lines, shortage in area, encroachments or any other facts which a correct survey would disclose.

SEE EXHIBIT B ATTACHED HERETO FOR CONTINUATION OF EXCEPTIONS.

Land in Malheur County, Oregon, as follows:

In Twp. 17 S., R. 47 E., W.M.:

Sec. 32: NW $\frac{1}{4}$ NW $\frac{1}{4}$,

EXCEPTING THEREFROM the following 2 parcels:

PARCEL NO. 1: Commencing at the Northeast corner of the NW $\frac{1}{4}$ NW $\frac{1}{4}$;

thence N. 89° 51' W., along the North boundary thereof, 555.82 feet to the POINT OF BEGINNING;

thence S. 26° 04' 55" W., 168.81 feet;

thence N. 86° 06' 52" W., 156.80 feet;

thence N. 27° 44' 50" E., to a point on the North boundary of the NW $\frac{1}{4}$ NW $\frac{1}{4}$, 159.77 feet;

thence S. 89° 51' E., along the said North boundary 156.27 feet to the Point of Beginning.

PARCEL NO. 2: Beginning at a point 419.02 feet East and 203.12 feet South of the Northwest corner of the NW $\frac{1}{4}$ NW $\frac{1}{4}$;

thence S. 10° 13' E., 168.0 feet;

thence S. 76° 02' W., 179.1 feet;

thence S. 85° 41' W., 87.6 feet;

thence N. 16° 01' W., 39.5 feet;

thence N. 53° 49' E., 300.1 feet to the Point of Beginning.

ALSO the SW $\frac{1}{4}$ NW $\frac{1}{4}$ and all that portion of the NW $\frac{1}{4}$ SW $\frac{1}{4}$ lying North of the Malheur River.

* * * *

4. AS DISCLOSED by the tax roll the premises herein described have been zoned or classified for farm use. At any time that said land is disqualified for such use, the property will be subject to additional taxes or penalties and interest.
5. CHARGES AND ASSESSMENTS of the Owyhee Irrigation District and any and all matters pertaining thereto.
6. EASEMENT, including the terms and provisions thereof, in favor of Idaho Power Company, a corporation, recorded September 22, 1943, Book 58, Page 320, Deed Records, over and across the NW¼NW¼.
7. EASEMENT, including the terms and provisions thereof, in favor of Idaho Power Company, a corporation, recorded June 13, 1947, Book 71, Page 20, Deed Records, across the NW¼SW¼ of Sec. 32.
8. EASEMENT, including the terms and provisions thereof, in favor of Idaho Power Company, a corporation, recorded May 21, 1951, Book 86, Page 288, Deed Records, over and across the NW¼NW¼.
9. RIGHTS OF THE PUBLIC in and to existing County road rights-of-way.
10. ANY ADVERSE CLAIM based upon the assertion that:
 - a. Some portion of said land has been created by artificial means or has accreted to such portion so created.
 - b. Some portion of said land has been brought within the boundaries thereof by an avulsive movement of the Malheur River, or has been formed by accretion to any such portion.
11. RIGHTS OF THE PUBLIC and governmental bodies in and to any portion of the premises herein described lying below high water mark of the Malheur River, including any ownership rights which may be claimed by the State of Oregon below high water mark as it now exists or at any time has existed.

the State of Oregon, Grantee, the following described real property in Malheur County, Oregon:

In T. 17 S., R. 47 E., W.M., Section 32:

Those parts of the E½SE¼NW¼ lying easterly and northerly of the Malheur River; and

Those parts of the W½SE¼NW¼ lying westerly and northerly of the Malheur River.

Tax lots	Reference Nos.	Map No.	17S47	Code 15
1400	17859			
1600	17858			
1800	17857			
1900	17860			

The true consideration for this conveyance is: \$0.00 and other valuable consideration in the way of public work services or labor valued at \$1900.

Conveyance of fee simple determinable. This conveyance is being made pursuant to ORS 271.330 (1) and so long as the Property is used by Grantee for a public purpose for not less than 20 years. If at anytime prior to 20 years from the date this deed is signed by Grantor, the Property is not used by Grantee for a public purpose, the estate created in this deed shall terminate and the Property shall automatically revert to the Grantor, its successors or assigns. If the Property is used by Grantee for a public purpose for at least 20 years from the date this deed is signed by Grantor, this fee simple determinable shall automatically expire.

Note the conveyance is dependent on the public purpose. The City will probably need to make that determination at some point to ensure compliance

Property in Malheur County, Oregon, more particularly described as follows.

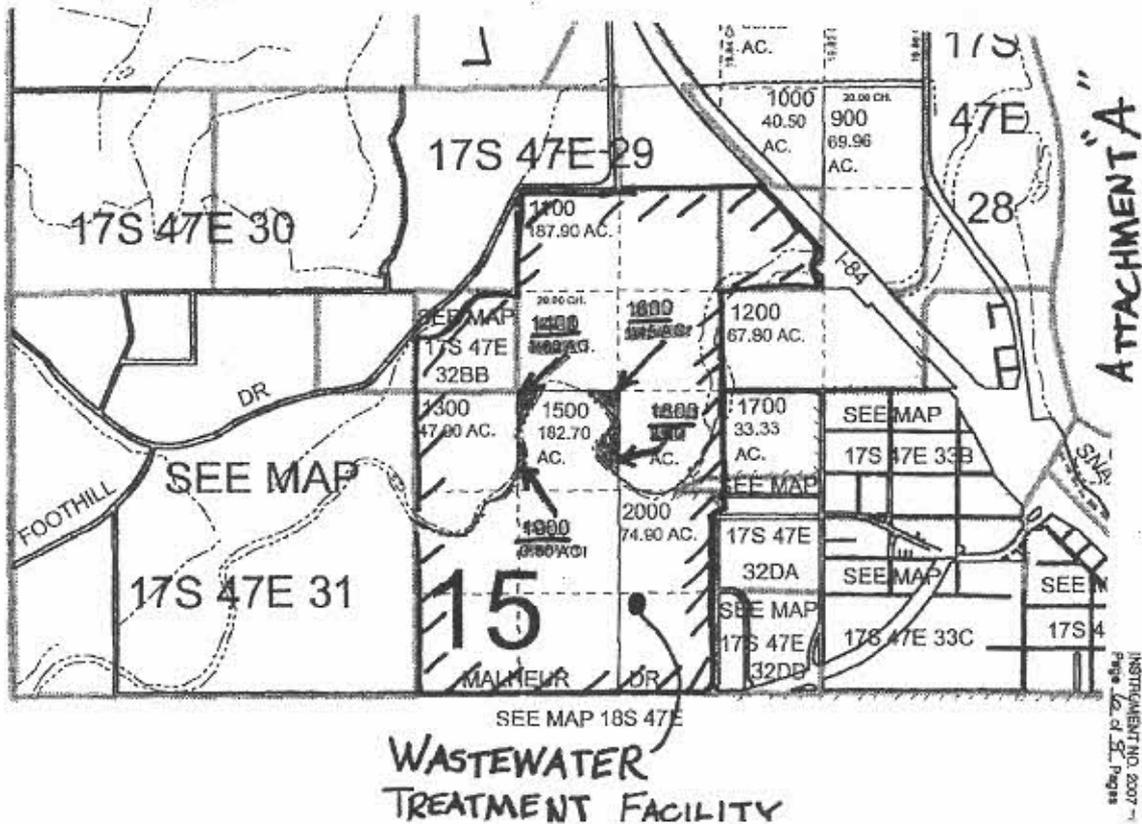
In T. 17 S., R. 47 E., W.M., Section 32:

Those parts of the E $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ lying easterly and northerly of the Malheur River, and

Those parts of the W $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ lying westerly and northerly of the Malheur River.

Map 17S47	Tax Lots	Ref. # s	Code 15
	1400	17859	
	1600	17858	
	1800	17857	
	1900	17860	

(Property); and



City deed to Malheur County: (Is this to be excluded from the LAND? Will any of our projects be on this property? We hope not.)

1747C
6701

INSTRUMENT NO. 2002-4079
Page 1 of 5 Pages

WUTP
ODOT
File 6822-120
10B-14-4

DONATION DEED

CITY OF ONTARIO, a municipal corporation of the State of Oregon, Grantor, for no monetary consideration does convey unto Malheur County, a political subdivision of the State of Oregon, Grantee, fee title to the following described property.

PARCEL 1 - Fee

A parcel of land lying in the W½SE¼ of Section 32, Township 17 South, Range 47 East, W.M., Malheur County, Oregon and being a portion of that property described in that Warranty Deed to the City of Ontario, Oregon, recorded April 26, 1993 Instrument No. 93-2552, Malheur County Deed Records; the said parcel being that portion of said property lying between lines at right angles to the "J" center line at Engineer's Stations "J" 2+100 and "J" 2+875 and included in a strip of land 18.288 meters in width, 9.144 meters on each side of said center line which center line is described as follows.

Beginning at Engineer's center line Station "J" 2+100, said station being 19.351 meters South and 504.417 meters West of the Southeast corner of Section 32, Township 17 South, Range 47 East, W.M.; thence North 87° 46' 36" East 42.265 meters; thence on a 50 meter radius curve left (the long chord of which bears North 43° 00' 27.5" East 70.425 meters) 78.137 meters; thence North 1° 45' 41" West 747.685 meters to Engineer's center line Station "J" 2+968.067.

Bearings are based upon the Oregon Coordinate System of 1963(91), south zone.

The parcel of land to which this description applies contains 1.266 hectares, more or less, outside of the existing right of way.

PARCEL 2 - Fee

A parcel of land lying in the W½SE¼ of Section 32, Township 17 South, Range 47 East, W.M., Malheur County, Oregon and being a portion of that property described in that Warranty Deed to the City of Ontario, Oregon, recorded April 26, 1993 Instrument No. 93-2552, Malheur County Deed Records; the

Filed at Malheur County
RETURN TO AND TAX STATEMENT TO
OREGON DEPARTMENT OF TRANSPORTATION
RIGHT OF WAY SECTION
355 CAPITOL STREET NE, ROOM 420
SALEM OR 97301-3871

Account No.: 1747C, 6701
17
Property Address:

Inst. No. 2002-4079

I certify that the within Instrument or writing was received for record on the 29 day of May, 2002 at 11:17 O'clock A.M. FEE

STATE OF OREGON, County of Malheur
DEBORAH R. DeLONG
County Clerk

By: *Steph V. Scatter* Deputy

DB/10/01
Page 1 of 5
gmh

said parcel being that portion of said property lying Easterly of Parcel 1 and included in a strip of land 18.288 meters in width, 9.144 meters on each side of the "E" center line which center line is described as follows:

Beginning at Engineer's center line Station "E" 10+000, said station being 11.167 meters South and 292.015 meters West of the Southeast corner of Section 32, Township 17 South, Range 47 East, W.M.; thence North 1° 45' 40" West 328.098 meters; thence on a 70 meter radius curve left (the long chord of which bears North 47° 00' 14" West 99.414 meters) 110.549 meters; thence South 87° 45' 11" West 50.105 meters to Engineer's center line Station "E" 10+488.752.

Bearings are based upon the Oregon Coordinate System of 1983(91), south zone.

The parcel of land to which this description applies contains 65 square meters, more or less.

PARCEL 3 - Fee

A parcel of land lying in the W½SE¼ of Section 32, Township 17 South, Range 47 East, W.M., Malheur County, Oregon and being a portion of that property described in that Warranty Deed to the City of Ontario, Oregon, recorded April 25, 1993 Instrument No. 93-2552, Malheur County Deed Records, the said parcel being that portion of said property lying Easterly of Parcel 1 and included in a strip of land 18.288 meters in width, 9.144 meters on each side of the "T" center line which center line is described as follows:

Beginning at Engineer's center line Station "T" 2+859.293, said station being 124.703 meters South and 410.842 meters West of the East ¼ corner of Section 32, Township 17 South, Range 47 East, W.M.; thence North 87° 47' 40" East 384.132 meters to Engineer's center line Station "T" 3+243.425.

Bearings are based upon the Oregon Coordinate System of 1983(91), south zone.

The parcel of land to which this description applies contains 65 square meters, more or less.

Grantor also grants to Grantee, its successors and assigns, a permanent easement to construct and maintain slopes, upon the following described property:

PARCEL 4 - Permanent Easement For Slopes

A parcel of land lying in the W½SE¼ of Section 32, Township 17 South, Range 47 East, W.M., Malheur County, Oregon and being a portion of that property described in that Warranty Deed to the City of Ontario, Oregon, recorded April 25, 1993 Instrument No. 93-2552, Malheur County Deed Records, the said parcel being that portion of said property lying between lines at right angles to the "J" center line at Engineer's Station "J" 2+100 and "J" 2+880 and included in a strip of land variable in width, lying on the Northerly and Westerly side of said center line which center line is described in Parcel 1.

The widths in meters of the strip of land above referred to are as follows:

Station to	Station	Width on Northerly and Westerly Side of Center Line
"J" 2+100	"J" 2+260	12
"J" 2+260	"J" 2+560	12 in a straight line to 15
"J" 2+560	"J" 2+880	15 in a straight line to 14

EXCEPT therefrom Parcel 1.

The parcel of land to which this description applies contains 1476 square meters, more or less.

IT IS UNDERSTOOD that the easement herein granted does not convey any right or interest in the above-described Parcel 4, except as stated herein, nor prevent Grantor from the use of said property, provided, however, that such use shall not be permitted to interfere with the rights herein granted or endanger the lateral support of the public way, that Grantee shall never be required to remove the slope materials placed by it upon said property, nor shall Grantee be subject to any damages to Grantor, and grantor's heirs, successors and assigns, by reason thereof or by reason of any change of grade of the public way abutting on said property.

Grantor also grants to Grantee, its successors and assigns, a permanent easement to construct and maintain slopes, upon the following described property:

PARCEL 5 - Permanent Easement For Slopes

A parcel of land lying in the W½SE¼ of Section 32, Township 17 South, Range 47 East, W.M., Malheur County, Oregon and being a portion of that property described in that Warranty Deed to the City of Ontario, Oregon, recorded April 26, 1993 Instrument No. 93-2552, Malheur County Deed Records, the said parcel being that portion of said property lying Easterly of Parcel 1; between lines at right angles to the "J" center line at Engineer's Stations "J" 2+160 and "J" 2+880 and included in a strip of land variable in width, lying on the Easterly side of said center line which center line is described in Parcel 1.

The widths in meters of the strip of land above referred to are as follows:

Station to	Station	Width on Easterly Side of Center Line
"J" 2+160	"J" 2+ 210	13
"J" 2+210	"J" 2+ 460	13 in a straight line to 13
"J" 2+460	"J" 2+ 470	13 in a straight line to 14
"J" 2+470	"J" 2+ 520	14
"J" 2+520	"J" 2+ 580	14 in a straight line to 13
"J" 2+580	"J" 2+ 512	13 in a straight line to 15
"J" 2+612	"J" 2+ 620	15 in a straight line to 13
"J" 2+620	"J" 2+ 880	13

EXCEPT therefrom Parcels 2 and 3

The parcel of land to which this description applies contains 2332 square meters, more or less.

IT IS UNDERSTOOD that the easement herein granted does not convey any right or interest in the above-described Parcel 5, except as stated herein, nor prevent Grantor from the use of said property; provided, however, that such use shall not be permitted to interfere with the rights herein granted or endanger the lateral support of the public way, that Grantee shall never be required to remove the slope materials placed by it upon said property, nor shall Grantee be subject to any

08/10/01
Page 3 of 5
gmh

damages to Grantor and grantor's heirs, successors and assigns, by reason thereof or by reason of any change of grade of the public way abutting on said property.

Grantor also grants to Grantee, its successors and assigns, a permanent easement for the construction, operation and maintenance of drainage facilities over, under, and across the following described property

PARCEL 6 - Permanent Easement For Drainage Facilities

A parcel of land lying in the W½SE¼ of Section 32, Township 17 South, Range 47 East, W.M., Malheur County, Oregon and being a portion of that property described in that Warranty Deed to the City of Ontario, Oregon, recorded April 26, 1993 Instrument No. 93-2552, Malheur County Deed Records, the said parcel being that portion of said property lying Easterly of Parcel 1 between lines at right angles to the "J" center line at Engineer's Station "J" 2+835 and "J" 2+875 and included in a strip of land 18 meters in width, lying on the Easterly side of said center line which center line is described in Parcel 1.

EXCEPT therefrom Parcels 1 and 3.

The parcel of land to which this description applies contains 77 square meters, more or less.

IT IS UNDERSTOOD that the easement herein granted does not convey any right or interest in the above-described Parcel 6, except for the purposes herein above stated, nor prevent Grantor from the use of said property, provided, however, that such use does not interfere with the rights herein granted.

In construing this document, where the context so requires, the singular includes the plural and all grammatical changes shall be made so that this document shall apply equally to corporations and to individuals.

THIS INSTRUMENT WILL 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 APPROVED USES AND TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930.

It is understood and agreed that the delivery of this document is hereby tendered and that terms and obligations hereof shall not become binding upon the Malheur County, Oregon, unless and until accepted and approved by the recording of this document

Dated this 19 day of November, 2001

APPROVED AS TO FORM:

CITY OF ONTARIO, a municipal corporation
of the State of Oregon

By _____

By LeRoy Cassinich
Mayor

By Don Anderson
City Recorder

STATE OF OREGON, County of Malheur

Dated November 21, 2001 Personally appeared Le Roy Cammack
and Tori Ankrum, who, being sworn, stated that they are the Mayor and ~~Recorder~~ Recorder of the City of
Ontario, Oregon, a municipal corporation, and that this instrument was voluntarily signed in behalf of said municipal
corporation by authority of its Ordinance No. _____ passed by the Council of said City on this _____ day of
_____ 20_____



Shannon C. Aquino
Notary Public for Oregon
My Commission expires 2/26/04

Accepted on behalf of the Malheur County, Oregon:

Dan P. Joyce
Commissioner

**EXHIBIT B
DESCRIPTION OR DEPICTION OF PREMISES**

City & SBE to review locations and confirm projects

EXHIBIT B
WWTP MAIN BUILDING

PROPOSED PV PANELS ON RECTANGULAR AREA DIRECTLY SOUTH OF WASTEWATER TREATMENT FACILITY BUILDING ADJUTED TO THE EXISTING CHAINLINK FENCE.

ARRAY IS COMPOSED OF PV PANELS ARRANGED IN TWO SEPARATE POLE MOUNTED ARRAYS. EACH WITH A CONCRETE FOUNDATION APPROXIMATELY 10' X 10' AND SUPPORTING A PV ARRAY OF 22 PANELS ORIENTED IN 6 X 4 CONFIGURATION.

PV ARRAY FOOTPRINT (CONCRETE FOUNDATION) IS MARKED BY YELLOW CROSSHATCHED AREA. RED DASHED OUTLINE MARKS APPROXIMATE OUTLINE OF PV PANELS ELEVATED OFF THE GROUND.

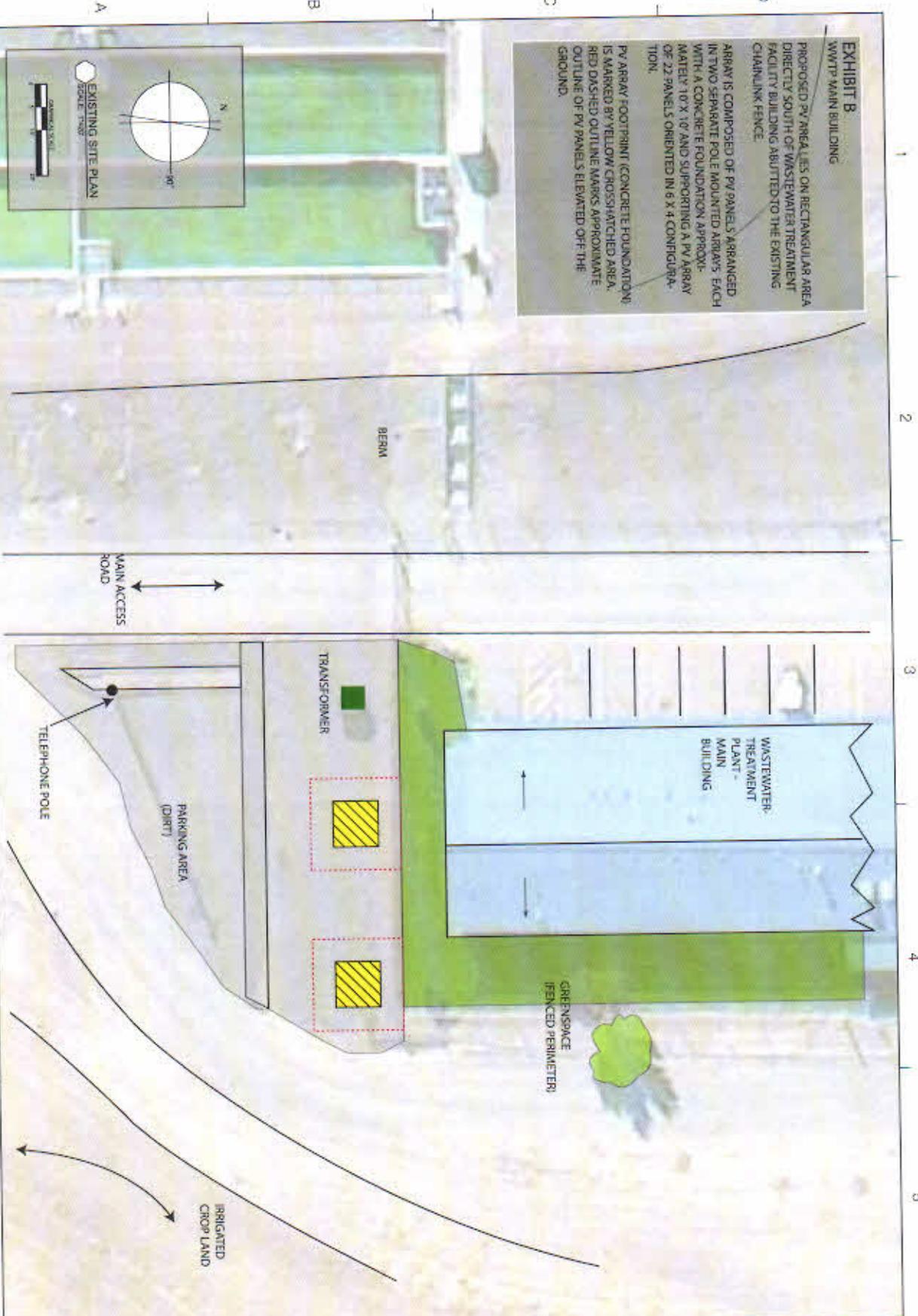


EXHIBIT B	
<p>68</p>	
<p>CITY OF ONTARIO - SITE 2 WWTP CITY OF ONTARIO - WWTP BUILDING SOLAR ELECTRIC PROJECT 9.9 kW DC STC RATING EXISTING SITE PLAN</p>	
<p>DATE: 01/11/2011</p> <p>PROJECT NO: 10000000000000000000</p> <p>SCALE: 1" = 20'</p>	<p>SITE: 10000000000000000000</p> <p>PROJECT NO: 10000000000000000000</p> <p>DATE: 01/11/2011</p>

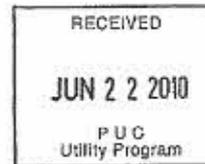
EXHIBIT C PROGRAM REQUIREMENTS

IDAHO POWER COMPANY

P.U.C. ORE. NO. E-27

ORIGINAL SHEET NO. 88-2

SCHEDULE 88
SOLAR PHOTOVOLTAIC PILOT PROGRAM
(Continued)



DEFINITIONS (Continued)

Qualifying Assignee or Assignee means a person to whom a Customer may assign Volumetric Incentive Payments under the Oregon Solar Photovoltaic Pilot Program Energy Sales Agreement. The Company or its affiliate or any other regulated utility is not a Qualifying Assignee. Qualifying Assignees include, but are not limited to:

1. A lender providing up front financing to a Customer,
2. A company or individual who enters into a financial agreement with a Customer to own and operate a solar photovoltaic energy system on behalf of the Customer in return for compensation,
3. A company or individual who contracts with the Customer to locate a solar photovoltaic system on property owned by the Customer, or
4. Any party identified by the Customer to receive payments that the Company is obligated to pay to the Customer.

Reservation Start Date means the date the Customer is notified of securing capacity through a capacity reservation process and of the start and expiration dates for that capacity reservation. The Reservation Start Date initiates the Time To Complete Interconnection.

Time To Complete Interconnection means the time between the Reservation Start Date and the date an Eligible Participant completes interconnection.

Volumetric Incentive Payments or Payments means the monthly amount that the Company pays to an Eligible Participant or Assignee in the Solar Photovoltaic Pilot Program for payable energy generated by a Contracted System.

Volumetric Incentive Rate means the rate per kilowatt-hour paid by the Company to a Customer or Assignee for Payable Generation.

INTERCONNECTION PROCESS

Solar photovoltaic projects physically interconnecting to the Company's electrical system must meet all criteria under OAR Division 084 – Solar Photovoltaic Programs and successfully complete the Interconnection Process prior to the project delivering energy to the Company. A complete description of the application procedures for the Solar Photovoltaic Pilot Program, including all required applications and Company contact information, is maintained on the Idaho Power Web site at www.idahopower.com/oregonsolar, or the Customer may contact the Company at 1-208-388-5933 for further information.

Capacity Reservation

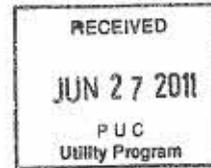
A capacity reservation starts when an application meeting the requirements of OAR 860-084-0230 (2) is received by the Company on-line as part of the Solar Photovoltaic Pilot Program procedures. This on-line application will secure a pending capacity reservation for the project.

Issued by IDAHO POWER COMPANY
By Gregory W. Said, General Manager, Regulatory Affairs
1221 West Idaho Street, Boise, Idaho

Advice No. 10-11

OREGON
Issued: June 21, 2010
Effective with Service
Rendered on and after:
July 1, 2010

SCHEDULE 86
SOLAR PHOTOVOLTAIC PILOT PROGRAM
(Continued)



INTERCONNECTION PROCESS (Continued)

Capacity Reservation (Continued)

To finalize the capacity reservation, Customers must submit the following documentation to the Company:

1. A signed copy of the Idaho Power Company email confirmation acknowledging receipt of the Capacity Reservation Application.
2. A capacity reservation deposit of \$20 per kW DC of the proposed system capacity.
3. The completed Oregon Solar Photovoltaic (SPV) Pilot Program Interconnection Application – Part A.

A capacity reservation expires (1) one year from the Reservation Start Date if the system has not been installed; or, (2) if the interconnection process is not executed, two months from the Reservation Start Date. Once the capacity reservation expires, the Customer must newly apply for a capacity reservation and will not be given preferential treatment. See OAR's 860-084-0195 through 860-084-0230 for a complete description of capacity reservation rules.

The capacity reservation deposit will be refunded if the capacity reservation is not accepted by the Company or when the Customer's solar photovoltaic energy system comes On-Line. The capacity reservation deposit will not be refunded if the Customer's capacity reservation expires before their solar photovoltaic energy system comes On-Line.

Capacity Reservation Limits

The Company will enter into solar photovoltaic interconnection agreements from new Eligible Systems, up to the periodic available capacity of 200 kW AC until the cumulative generation capacity participating in the Program is 400 kW AC. Capacity is reserved on a first come, first served basis. The first capacity reservation allotment of 200 kW AC will be offered beginning 8:00 A.M. Mountain Daylight Time on July 1, 2010 and a subsequent allotment of 200 kW AC will be offered beginning 8:00 A.M. Mountain Daylight Time on October 3, 2011. Any capacity allotment that is not awarded during the first period will be made available during the second allotment period. (C)

Interconnection Procedure

The Reservation Start Date will be assigned when a capacity reservation is secured, after which the Customer is required to complete the Oregon Solar Photovoltaic (SPV) Pilot Program Interconnection Application – Part B. The Time To Complete Interconnection is the period of time from the Reservation Start Date to the date an Eligible Participant completes interconnection. The Customer will be required to sign an Oregon Solar Photovoltaic Pilot Program Energy Sales Agreement no later than 30 days prior to the Eligible System coming On-Line.

METERING REQUIREMENTS

Customers served on this schedule must have a second, Company owned, meter that measures only the Eligible System's net solar photovoltaic generation. The meter must be placed at a location designated by the Company on the Customer load side of the retail meter and on the AC side of the inverter. The second meter does not alter or affect the Customer's Point of Delivery.

Issued by IDAHO POWER COMPANY
By Gregory W. Said, Vice President, Regulatory Affairs
1221 West Idaho Street, Boise, Idaho

Advice No. 11-07

OREGON
Issued: June 20, 2011
Effective with Service
Rendered on and after:
July 27, 2011

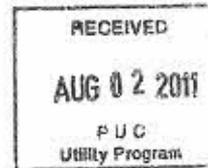
IDAHO POWER COMPANY

THIRD REVISED SHEET NO 88-4

CANCELS

P.U.C. ORE. NO. E-27

SECOND REVISED SHEET NO. 88-4



SCHEDULE 88
SOLAR PHOTOVOLTAIC PILOT PROGRAM
(Continued)

VOLUMETRIC INCENTIVE RATE

As established by Commission order, the Volumetric Incentive Rate is \$0.317/kWh. The rate in place at the time of the capacity Reservation Start Date applies to the entire 15 year life of the agreement (D)

Rate-Adjustment Mechanism

The Rate-Adjustment mechanism is applied to the Volumetric Incentive Rate annually. If less than 100 kW AC of the 200 kW AC allotment is reserved before February 28, 2011, then the Volumetric Incentive Rate will increase by 10 percent beginning October 3, 2011. If 100 kW AC or more but less than 150 kW AC of the 200 kW AC allotment is reserved before February 28, 2011, then the Volumetric Incentive Rate will increase by 5 percent beginning October 3, 2011. If 150 kW AC or more but less than 200 kW AC of the 200 kW AC allotment is reserved before February 28, 2011, then the Volumetric Incentive Rate will not change.

If all 200 kW AC is reserved before February 28, 2011, the Volumetric Incentive Rate will decrease beginning October 3, 2011 depending on how quickly the full subscription level was achieved. If full subscription was received before November 15, 2010, the Volumetric Incentive Rate will decrease by 10 percent. If full subscription was received between November 15, 2010 and February 28, 2011, the Volumetric Incentive Rate will decrease 5 percent. No Volumetric Incentive Rate adjustment would occur if the 200 kW allotment was fully subscribed during the month of March, 2011.

VOLUMETRIC INCENTIVE PAYMENT

The Volumetric Incentive Payment applies to the Eligible System's generation up to the monthly retail kWh use. Excess Generation will be carried forward to the next month. At the end of the last monthly billing period ending on or before March 31 of each year, any Excess Generation will be transferred to the Company's low income assistance programs at the Average Monthly Retail Rate in effect at the time of the transfer, or, if the Customer has the required market rate authority from the Federal Energy Regulatory Commission, sold to the Company at market rates. The Customer's Excess Generation is set to zero for the beginning of the subsequent annual billing cycle.

Volumetric Incentive Payments under this pilot will be made no later than 45 days from the last day of the Customer's billing period. The Customer may choose among three payment options for the Volumetric Incentive Payment: (1) receive a direct payment, (2) have payments netted against the Customer's retail bill, or (3) assign 100% of the payment each month to a single Assignee. A one-time assignment fee of \$25 applies for each payment assignment or reassignment. A Customer may request to change their payment option once every 12 consecutive Billing Periods. The new payment option will become effective on the Customer's next regularly scheduled billing cycle.

MONTHLY RATE

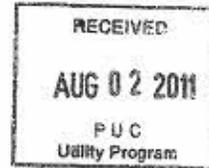
The monthly rate is the net of the Meter Charge and the Volumetric Incentive Payment. Notwithstanding the Volumetric Incentive Payment, the Customer is responsible for the minimum monthly charge and the Power Supply Adjustment related to the retail electricity rate schedule and, where applicable, charges set forth in Schedule 55 (Annual Power Cost Update), Schedule 56 (Power Cost Adjustment Mechanism), Schedule 91 (Energy Efficiency Rider), Schedule 93 (Solar Photovoltaic Pilot Program Rider), Schedule 95 (Adjustment for Municipal Exactions), and Schedule 98 (Residential and Small Farm Energy Credit). Volumetric charges related to retail electricity rate schedules are calculated using the actual usage of the Customer for that month.

Issued by IDAHO POWER COMPANY
By Gregory W. Said, Vice President, Regulatory Affairs
1221 West Idaho Street, Boise, Idaho

OREGON
Issued: August 2, 2011
Effective with Service
Rendered on and after
August 3, 2011

Advice No. 11-11

SCHEDULE 88
SOLAR PHOTOVOLTAIC PILOT PROGRAM
 (Continued)

MONTHLY RATE (Continued)Meter Charge

Meter Charge, \$10.00 per month for each separately metered Residential Qualifying System

Volumetric Incentive Payment

Volumetric Incentive Rate Payment \$0.317/kWh multiplied by the Payable Generation, up to the monthly retail kWh use. (D)

Solar Retail Credit: Payable Generation multiplied by the Average Monthly Retail Rate

TERMS AND CONDITIONS

Division 084 of the Oregon Administrative Rules (OAR) contains additional details that apply to this pilot. The terms and conditions listed below shall apply to all solar photovoltaic systems under this schedule:

- 1 Each Solar Photovoltaic Interconnection agreement shall have a term of 15 years at the applicable Volumetric Incentive Rate.
- 2 The Solar Photovoltaic Pilot Program will close to new enrollments the earlier of March 15, 2015 or when the cumulative capacity of Contracted Systems in the pilot reaches 25 MW AC statewide per OAR 860-084-0150
- 3 Qualifying systems must be installed on the customer side of the service meter.
- 4 Qualifying Systems must be constructed from new components and be first operational and On-Line no sooner than July 1, 2010
- 5 The Customer is responsible for obtaining all necessary government approvals relating to its Eligible System and must meet all applicable building codes and standards including standards specified in OAR 860-084-0260
- 6 The Customer is responsible for all costs associated with its Eligible System, including interconnection costs incurred by the Company, and is also responsible for all costs related to any modifications to the facility that may be required by the Company resulting from the reviews as provided for in OAR 860-084-0310
- 7 As provided in OAR 860-084-0340 where applicable, a manual disconnect switch capable of isolating the Eligible System facility from the Company's system must be provided by the Customer and will be accessible to the Company at all times.
- 8 The capacity of the qualifying systems must not exceed 90 percent of the three-year (or less) rolling average of the usage at the premises at which the qualifying system will be installed, consistent with OAR 860-084-0100. If less than one year of usage history is available, three years usage of a similarly situated Customer may be used. The Customer is responsible to determine the appropriate size of the qualifying system
- 9 For each separately metered account, a Customer is not eligible for service under both this schedule and Schedule 84, Customer Energy Production for Net Metering

Issued by IDAHO POWER COMPANY
 By Gregory W. Said, Vice President, Regulatory Affairs
 1221 West Idaho Street, Boise, Idaho

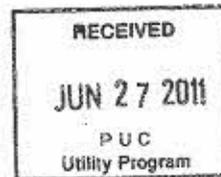
Advice No 11-11

OREGON
 Issued: August 2, 2011
 Effective with Service
 Rendered on and after
 August 3, 2011

IDAHO POWER COMPANY
P.U.C. ORE. NO. E-27

FIRST REVISED SHEET NO 88-6
CANCELS
ORIGINAL SHEET NO. 88-6

SCHEDULE 88
SOLAR PHOTOVOLTAIC PILOT PROGRAM
(Continued)



TERMS AND CONDITIONS (Continued)

10. A Customer who has a Contracted System under this schedule is not eligible to interconnect additional solar photovoltaic systems for service under this schedule.
11. All Renewable Energy Credits (RECs) or other benefits or allowances for which the Solar Photovoltaic Pilot Program project qualifies under current or future law relating to the renewable energy are property of the Company
12. The Company maintains the right to inspect the facilities with reasonable prior notice and at a reasonable time of day.
13. The Company maintains the right to disconnect, without liability, the Customer's Eligible System for issues relating to safety and reliability.
14. The Customer shall secure and continuously carry Comprehensive General Liability Insurance for both bodily injury and property damage with limits equal to \$1,000,000, each occurrence, combined single limit. The insurance coverage shall be placed with an insurance company with an A.M Best Company rating of A- or better and shall include a provision stating that such policy shall not be cancelled or the limits of the liability reduced without sixty days prior written notice to Idaho Power (D)
(D)

Issued by IDAHO POWER COMPANY
By Gregory W Said, Vice President, Regulatory Affairs
1221 West Idaho Street, Boise, Idaho

Advice No 11-07

OREGON
Issued June 20, 2011
Effective with Service
Rendered on and after
July 27, 2011

EXHIBIT D
FORM OF ENERGY SALES AGREEMENT

EXHIBIT E
CONSENT FORM

Landlord to insert signed consent form they received from Idaho Power here

SCHEDULE A

As used in this Lease, the capitalized terms set forth in the Lease shall have the following meanings:

1. "Business Day" shall mean a day other than a Saturday, Sunday or national holiday in the United States.

2. "Effective Date" shall have the meaning given to such term in the opening paragraph above.

3. "Environmental Laws" shall mean all federal, state and local statutes, ordinances, codes, rules, regulations, guidelines, orders and decrees regulating, relating to or imposing liability or standards concerning or in connection with Hazardous Substances, underground or above-ground storage tanks or the protection of human health or the environment, as any of the same may be amended from time to time, and any equivalent state or local laws or ordinances.

4. "Event of Default" shall have the meaning given to such term in Section 15.1 above.

5. "Hazardous Substances" shall mean any substance, material, waste, gas or particulate matter: (a) that is regulated by the United States government or any state or local governmental authority with jurisdiction over the Land, or (b) the exposure to which, or manufacture, possession, presence, use, generation, storage, transportation, treatment, release, disposal, abatement, cleanup, removal, remediation or handling of which, is prohibited, controlled or regulated by any Environmental Laws, or (c) that requires investigation or remediation under any Environmental Laws or common law, or (d) that is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic or otherwise hazardous.

6. "Initial Development Costs" shall mean costs and fees associated with, but not limited to, the design, purchase, construction, and installation of the System; bridge loan financing; equipment storage; construction loan financing; operations and maintenance; equipment replacement; financing reserve requirements; financing; accounting services; attorney services; and project management.

7. "Insurance Proceeds" shall mean any amount paid by an insurance carrier under any of the policies of casualty insurance that Tenant is required by the Lease to carry, after deducting therefrom the reasonable out-of-pocket costs and expenses of collection, including but not limited to reasonable attorneys' fees and experts' fees.

8. "Land" shall have the meaning set forth in the Recitals.

9. "Landlord" shall mean City of Ontario.

10. "Landlord's Estate" shall mean all of Landlord's right, title and interest in its fee estate in the Land, their reversionary interest in the Improvements pursuant hereto, and all Rent and benefits due Landlord hereunder.

11. "Lease" shall mean this Solar Project Ground Lease, as it may from time to time be amended, modified, restated, supplemented or replaced.

12. "Lease Year" shall mean: (a) the twelve (12)-month period commencing on the Effective Date and ending at midnight on the day immediately preceding the first annual anniversary of the Effective Date and (b) each successive period of twelve (12) months that begins on an annual anniversary of the Effective Date, with the last such period ending on the expiration of the Term.

13. "Legal Requirements" shall mean all present and future laws, statutes, requirements, ordinances, orders, judgments, regulations, administrative or judicial determinations of every governmental or quasi-governmental authority, court or agency claiming jurisdiction over the Land, Improvements, Tenant or Landlord now or hereafter enacted or in effect (including, but not limited to, Environmental Laws and those relating to accessibility to, usability by, and discrimination against, disabled individuals), and all covenants, restrictions and conditions now or hereafter of record which may be applicable to Tenant or Landlord or to all or any portion of the Land or Improvements, or to the use, occupancy, possession, operation, maintenance, alteration, repair or restoration of the Land or Improvements, even if compliance therewith necessitates structural changes to the Improvements or the making of Improvements, or results in interference with the use or enjoyment of any of the Land.

14. "Permits" shall mean all applicable permits, certificates, licenses, consents, variances, authorizations and approvals of governmental authorities.

15. "Rent" shall have the meaning given to such term in Section 3.1 above.

16. "System" shall have that meaning set forth in the Recitals.

17. "Tenant" shall mean SBE Oregon LLC, an Idaho limited liability company, and its permitted successors and assigns.

18. "Tenant's Estate" shall mean all of Tenant's right, title and interest in its leasehold estate in the Land and its fee estate in the Improvements during the Term.

19. "Term" shall have the meaning given to such term in Section 2 above.

OREGON SOLAR PHOTOVOLTAIC
PILOT PROGRAM
ENERGY SALES AGREEMENT
BETWEEN
IDAHO POWER COMPANY
AND

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5	Volumetric Incentive Rates
6	Renewable Energy Certificates
7	Interconnection
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9	Participant's Additional Cooperation
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19	Entire Agreement
20	Notices
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OREGON SOLAR PHOTOVOLTAIC
PILOT PROGRAM
ENERGY SALES AGREEMENT

Project Name: _____

Project Number: _____

THIS AGREEMENT is entered into on this ____ day of _____ 20__ between _____ (Participant), and IDAHO POWER COMPANY, an Idaho corporation (Idaho Power), hereinafter sometimes referred to collectively as "Parties" or individually as "Party."

RECITALS:

WHEREAS, the Participant intends to maintain at their premises a solar photovoltaic energy system that meets the eligibility requirements of Oregon Administrative Rule ("OAR") 860-084-120. ("Eligible System")

WHEREAS, the specific location and additional details of the Eligible System are specified in Exhibit A.

WHEREAS, Participant certifies:

- a. The Eligible System will be permanently installed at the Participant's address, in the State of Oregon, at which the Participant receives retail electric service from Idaho Power.
- b. No investor in the Eligible System has accepted or will accept incentives from the Energy Trust of Oregon or Oregon state residential or business tax credits for the Qualifying System covered by this Agreement.
- c. The Eligible System and its individual components are new and have not been previously installed, and meet quality, reliability, and installation criteria approved by the Commission.

- d. The Eligible System is the only solar photovoltaic system on the Participant's premises that is being used to offset the Participant's electrical energy consumption and/or delivering energy to Idaho Power.
- e. The sum of the Nameplate Capacity of all solar panels comprising the Eligible System shall be less than or equal to 10 kW, and in compliance with OAR 860-084-0100 (2) (e), the Eligible System will be sized so that the estimated annual energy generation (kWh) shall not exceed 90 percent of the three year (or less) rolling average of the usage at the premises at which the Eligible System will be installed. If less than one year of usage history is available, three year's usage of a similarly situated customer may be used, as determined by Idaho Power.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth, the Parties agree as follows:

ARTICLE I: DEFINITIONS

As used in this Agreement and the appendices attached hereto, the following terms shall have the following meanings:

- 1.1 **"Applicant"** means an Idaho Power customer that has submitted an application to participate in the Idaho Power Oregon Solar Photovoltaic Pilot Program but has not yet executed an Energy Sales Agreement.
- 1.2 **"Contract Year"** means the period commencing each calendar year on the same calendar date as the Operation Date and for one calendar year thereafter.
- 1.3 **"Commission"** means the Public Utility Commission of Oregon.
- 1.4 **"Effective Date"** shall have the meaning set forth in Section 2.1.
- 1.5 **"Eligible Generation"** means the Eligible System's metered generation, net of system requirements that was generated during the applicable customer billing period.
- 1.6 **"Eligible System"** shall have the meaning set forth in the Recitals.

- 1.7 "Excess Generation" (kWh) means the Eligible Generation in excess of the Participant's retail electricity consumption at the same location during the same billing period. Excess Generation calculated in one billing period shall be carried forward to the next billing period and will be available for use in calculating the Eligible Generation for the next billing period but only during that Generation Year.
- 1.8 "Expiration Date" shall have the meaning set forth in Section 2.3.
- 1.9 "Generation Interconnection Process" means Idaho Power's generation interconnection application and engineering review process developed to ensure a safe and reliable generation interconnection in compliance with all applicable regulatory requirements, Prudent Electrical Practices and national safety standards.
- 1.10 "Generation Year" means the period ending _____ (*month end calendar date*) or each year of the term of this Agreement. By default this date shall be March 31 unless another date is provided by the Participant at the time this Agreement is executed.
- 1.11 "Interconnection Facilities" means facilities and equipment installed in order to accommodate the interconnection of the Eligible System.
- 1.12 "Nameplate Capacity" means the DC capacity rating of a specific piece of equipment as specified by the manufacturer (measured in watts) or if the manufacturer's specification is not readily available it shall be the maximum rated output of a solar photovoltaic system, measured at an irradiance level of 1,000 watts per square meter (W/m^2), with reference air mass 1.5 solar spectral irradiance distribution and cell or module junction temperature of 25°C.
- 1.13 "Nameplate Capacity_{AC}" means 85% of the Nameplate Capacity.
- 1.14 "Operation Date" means the date that the Eligible System and the Interconnection Facilities are deemed by Idaho Power to be fully operational and able to begin

operations in a safe and reliable manner. The Operation Date shall be established as specified in Section 2.3

- 1.15 **"Payable Generation"** means Eligible Generation (kWh) during a billing period plus any previous month's Excess Generation (if any), up to Participant's actual retail usage (kWh) for the same billing period.
- 1.16 **"Program Year"** means the period ending March 31 or each year of the term of this Agreement.
- 1.17 **"Qualified Assignee"** means a person to whom Participant may assign Volumetric Incentive Rate payments. Idaho Power or its affiliate or any other regulated utility is not a qualifying assignee. Qualifying Assignees include, but are not limited to:
- (a) A lender providing up front financing to Participant,
 - (b) A company or individual who enters into a financial agreement with Participant to own and operate the Eligible System on behalf of Participant in return for compensation,
 - (c) A company or individual who contracts with Participant to locate the Eligible System on property owned by Participant, or
 - (d) Any entity identified by Participant to receive payments that Idaho Power is obligated to pay to Participant.
- 1.18 **"Renewable Energy Certificates"** is defined in Section 6.
- 1.19 **"Reservation Start Date"** means the date customer secured a capacity reservation under Idaho Power's Oregon Solar Photovoltaic Pilot Program.
- 1.20 **"Solar Photovoltaic Pilot Program"** or **"Pilot"** means the Commission's implementation of ORS 757.365 (2009) (as amended by House Bill 3690(2010)) via the Solar Photovoltaic Pilot Program Rules, including any subsequent revisions thereto.
- 1.21 **"Solar Photovoltaic Pilot Program Rules"**, or **"Rules"**, means Oregon Administrative Rules ("OAR") Chapter 860, Division 84 and related Commission orders interpreting or augmenting the Rules.

- 1.22 **"Solar Photovoltaic Pilot Program Application"** means the application form to be completed by Participant. This application will be available on the Idaho Power website at www.idahopower.com and must be completed and submitted online to establish a position in the capacity reservation allocation process.
- 1.23 **"Volumetric Incentive Rate"** means the incentive price paid by Idaho Power for Eligible Generation set forth in Schedule 88 in effect as of the Reservation Start Date so long as the Participant completes all requirements to maintain the Reservation Start Date.

ARTICLE II: TERM AND OPERATION DATE

- 2.1 This Agreement shall become effective after execution by both Parties ("Effective Date").
- 2.2 Except as otherwise provided herein, this Agreement shall expire at midnight exactly 15 years after the Operation Date ("Expiration Date").
- 2.3 Operation Date – Upon completion of the Interconnection Process as specified in Article VII and completion of construction and installation of the Eligible System, the Participant shall supply Idaho Power written confirmation that all permits, inspections and information as required by this Agreement, the Generation Interconnection Process, Schedule 88 and any other agencies having jurisdiction over the Eligible System have been completed and is therefore requesting an Operation Date be granted by Idaho Power. Upon receiving this request, Idaho Power will review the provided documentation and will provide written confirmation to the Participant either establishing the Operation Date or providing details as to why an Operation Date cannot be established.

ARTICLE III: CERTIFICATIONS AND WARRANTIES

Participant certifies and warrants to Idaho Power that:

- 3.1 The information provided by the Participant in the Participant's Idaho Power Oregon Solar Photovoltaic Pilot Program Application, the Interconnection Application (Part A and

- Part B) is accurate, to the best of Participant's knowledge.
- 3.2 Participant's Eligible System is and shall for the term of this Agreement continue to be an Eligible System under OAR 860-084-120.
- 3.3 The Eligible System complies with siting, design, interconnection, installation, and electric output standards and codes required by the laws of Oregon, to the best of Participant's knowledge.
- 3.4 The Eligible System meets quality, reliability, and system installation requirements established by the Commission. (See OAR 860-084-0240(2) (e) (B); OAR 860-084-0120).
- 3.5 Participant (and any subsequent owner of the Eligible System) will have a retail electricity customer account with Idaho Power at the same location of this Eligible System during the full term of this Agreement.
- 3.6 Participant will notify Idaho Power within 30 days of any material changes to the Eligible System.

ARTICLE IV: OBLIGATIONS OF THE PARTIES

- 4.1 The Parties' performance of this Agreement is subject to the requirements set forth herein and subject to the requirements of Idaho Power's Schedule 88 tariff, as may be amended from time to time. In the event that the provisions of this Agreement conflict with the Oregon Solar Photovoltaic Pilot Program Rules or the Idaho Power tariff, the Commission's rules and Idaho Power's tariffs shall take precedence in that order.
- 4.2 Payable Generation. Commencing on the Operation Date, unless otherwise provided herein, Idaho Power will pay the Participant for Payable Generation from the Eligible System based upon the rates and calculations contained within this Agreement.
- 4.3 Excess Generation. At the end of each Generation Year, Participant shall forfeit accumulated Excess Generation, if any, and Idaho Power shall make a corresponding donation to Idaho Power's low-income energy assistance program at the Average

Monthly Retail Rate in effect at the time of the transfer. Idaho Power may retain for its benefit any Renewable Energy Certificates associated with Excess Generation.

ARTICLE V: VOLUMETRIC INCENTIVE RATES

- 5.1 Idaho Power shall pay Participant the Participant's Volumetric Incentive Rate ("VIR") as set forth in Idaho Power's Schedule 88 tariff for all Payable Generation. The Participant will continue to be responsible for full payment of all retail customer charges.

ARTICLE VI: RENEWABLE ENERGY CERTIFICATES

- 6.1 Idaho Power shall own all the Renewable Energy Certificates associated with the Eligible System and Participant shall reasonably cooperate as needed to help Idaho Power perfect its ownership thereof. Renewable Energy Certificates or "RECs" mean all right, title and interest in and to Environmental Attributes, plus the REC Reporting Rights. "Environmental Attributes" means any and all credits, benefits, claims, emissions reductions, environmental air quality credits, and emissions reduction credits, offsets, and allowances, howsoever entitled, resulting from the avoidance of the emission of any gas, chemical, or other substance attributable to the generation of the Specified Energy by the Resource and the delivery of the Specified Energy to the electricity grid, and include without limitation any of the same arising out of legislation or regulation concerned with oxides of nitrogen, sulfur, or carbon, with particulate matter, soot, or mercury, or implementing the United Nations Framework Convention on Climate Change (the "UNFCCC") or the Kyoto Protocol to the UNFCCC or crediting "early action" with a view thereto, or laws or regulations involving or administered by the Clean Air Markets Division of the Environmental Protection Agency or successor administrator (collectively with any state or federal entity given jurisdiction over a program involving transferability of Environmental Attributes, the "CAMD"), but specifically excluding only (i) the wind production tax credits, if any, and (ii) matters designated by Idaho Power as sources of

liability or adverse wildlife or environmental impacts. "REC Reporting Rights" means the right to report to any agency, authority or other party, including without limitation under Section 1605(b) of the Energy Policy Act of 1992, or under any present or future domestic, international or foreign emissions trading program, exclusive ownership of the Environmental Attributes. "Specified Energy" means the number of megawatt-hours of electrical energy generated or to be generated by the Eligible System within the vintage period. One REC represents the Environmental Attributes attributable to the generation of 1 MWh of Specified Energy by the Eligible System and the delivery thereof to the electricity grid (except as otherwise allowed by state law or Commission rule, e.g. under Oregon HB 3690).

ARTICLE VII: INTERCONNECTION

- 7.1 At the time the Applicant submits an application requesting a capacity reservation in the Idaho Power Oregon Solar Pilot Program, the Applicant must also submit a complete Interconnection Application - Part A.
- 7.2 Within two months of the Reservation Start Date, the Applicant must submit a complete Interconnection Application - Part B to Idaho Power.
- 7.3 Failure to submit either parts of the Interconnection Application within the time frames specified above will result in either a capacity reservation not being granted to the Applicant and/or a previously granted capacity allocation being terminated.
- 7.4 Upon receipt, Idaho Power will evaluate the complete Interconnection Application (Part A and Part B) in accordance with OAR 860-084-0260, 860-084-0270 and 860-084-0280 and the Idaho Power established Generation Interconnection Process.
- 7.5 The Participant shall be responsible for all interconnection costs (if any) identified in this Generation Interconnection Process, except for the cost of the additional meter and automated telemetry system required under this program. These interconnection costs must be paid by the Participant as specified in the Generation Interconnection Process.

- 7.6 If, upon receipt and review of the Generation Interconnection Process results (i.e. required equipment and costs) the Participant elects not to move forward with the completion of this Eligible System, this Agreement may be terminated upon written notice from the Participant. This option to terminate shall expire at the time the Participant accepts the interconnection results and elects to continue development of this Eligible System.
- 7.7 Access. As provided in the Solar Photovoltaic Pilot Program Rules, Participant shall provide Idaho Power access to any required disconnect switch at the Eligible System at all times. Idaho Power will provide reasonable notice to Participant when possible prior to using its right of access. Additionally, both the retail meter and the Eligible System metering shall be located as specified by Idaho Power and Idaho Power shall have access to these meters at any time.

ARTICLE VIII: TEMPORARY DISCONNECTION

- 8.1 Idaho Power or Participant may temporarily disconnect the Eligible System from Idaho Power's system for so long as reasonably necessary in the event one or more of the following conditions or events occurs:
- 8.1.1 Emergency conditions. Idaho Power or Participant may immediately and temporarily disconnect the Eligible System in the event of an emergency.
 - 8.1.2 Scheduled maintenance, repair or construction. Idaho Power or the Participant may disconnect the Eligible System during maintenance of the Eligible System or Idaho Power's electrical system.
 - 8.1.3 Likelihood of harm to other customers. Idaho Power may disconnect the Eligible Facility if it will likely cause disruption or deterioration of service to other customers, or if operating the Eligible System could cause damage to Idaho Power's electrical system. In such event, Idaho Power shall

provide the Participant supporting documentation used to reach the decision to disconnect the Eligible Facility upon the Participant's request.

8.1.4 Unauthorized modifications. Idaho Power may disconnect the Eligible Facility if the Participant makes any change to the Eligible System, other than minor equipment modifications, without prior written authorization of Idaho Power.

8.1.5 Nonconformance with this Agreement. Idaho Power may disconnect the Eligible System if it determines that the Eligible System is noncompliant with this Agreement, the Rules or its tariffs.

8.2 If the Eligible System must be physically disconnected for any reason, and Idaho Power is unable to operate the manual disconnect dedicated to the Eligible System, Idaho Power may disconnect all electrical services to the premises where the Eligible System is located.

8.3 The Parties shall cooperate with each other to restore the Eligible System, Interconnection Facilities, and Idaho Power's system to their normal operating state as soon as reasonably practicable following any disconnection pursuant to this Section 8.

ARTICLE IX: PARTICIPANT'S ADDITIONAL COOPERATION

9.1 Agreement to Release Information. Participant hereby agrees to allow Idaho Power to release information concerning its participation in the Solar Photovoltaic Pilot Program, including lists of all Participants in the Pilot to the Oregon Department of Revenue, the Oregon Department of Energy, the Commission and the Energy Trust of Oregon ("ETO"). Idaho Power shall use reasonable efforts to pursue appropriate confidentiality terms with the above agencies and organizations. As required by OAR 860-084-0240 (1) (f), Idaho Power shall provide descriptions of the confidentiality requirements that those receiving this information must follow.

9.2 Agreement to Participate in Surveys. Participant hereby agrees to complete up to three

surveys on the effectiveness of the Pilot program in order to remain eligible for participation in the Pilot. Information to be provided may include, but is not limited to: understanding the various factors contributing to participation in the program; understanding decision processes used to choose between the volumetric incentive rate solar program and the existing net-metering solar program; and satisfaction with and recommendations for improving the Pilot program processes. Participant agrees that Idaho Power may release information concerning Participant obtained from the surveys to the Commission and the ETO. If Participant does not participate in surveys as required hereby, Idaho Power may cease making payments hereunder until such time as such surveys are completed.

ARTICLE X: METERING

- 10.1 Idaho Power shall install, own and maintain, at its sole expense but subject to Section 10.4, a meter in addition to the Participant's existing consumption meter. This additional meter will be dedicated to record the generation from the Eligible System in accordance with OAR 860-084-0280.
- 10.2 Participant shall provide, at its sole expense, adequate facilities, including, but not limited to, a current transformer enclosure (if required), meter socket(s) and junction box, for the installation of the meter and associated equipment. Participant hereby consents to the installation and operation by Idaho Power and at Idaho Power's expense, of one or more additional meters to monitor the flow of electricity in each direction. Such meters shall be located on the premises of Participant and at a location specified by Idaho Power.
- 10.3 Idaho Power may periodically inspect, test, repair and replace its metering equipment. If any of the inspections or tests discloses an error exceeding two percent (2%), either fast or slow, proper correction, based upon the inaccuracy found, shall be made of previous readings for the actual period during which the metering equipment rendered inaccurate

measurements if that period can be ascertained. If the actual period cannot be ascertained, the proper correction shall be made to the measurements taken during the time the metering equipment was in service since last tested, but not exceeding three (3) billing periods, in the amount the metering equipment shall have been shown to be in error by such test. Any correction in billings or payments resulting from a correction in the meter records shall be made in the next monthly billing or payment rendered following the repair of the meter.

- 10.4 Monthly Meter Charge. In accordance with Commission Order No. 10-198, Participant shall pay a \$10 monthly meter fee for the term of this Agreement.

ARTICLE XI: BILLINGS, COMPUTATIONS AND PAYMENTS

- 11.1 On or before the forty-fifth (45th) day following the end of the Participant's billing period, Idaho Power shall send to the Participant or a Qualifying Assignee payment for Participant's Payable Generation, together with computations supporting such payment. The Participant shall elect one of the following payment options upon execution of this Agreement and may change this payment option only within 5 business days of the end of each Contract Year and only after written notice is received by Idaho Power.

- Option 1 - Payments will be paid directly to the Participant or a Qualifying Assignee as designated by the Participant and the Participant will continue to receive a standard monthly bill for electricity purchased and other standard charges as specified by the applicable tariff.
- Option 2 - Payments under this Agreement will be netted against the Participant's standard monthly bill for electricity purchased and other standard charges as specified by the applicable tariff and the Participant shall be responsible to pay any resulting amounts due as indicated on the billing.

A sample of these payment calculations is attached in Exhibit C.

- 11.2 The Participant may assign the Payment as calculated in Option 1 to a single Qualifying

Assignee and this assignee may be changed by the Participant at any time. Idaho Power shall charge the Participant a \$25 fee to process the Participant's requested change in assignees.

- 11.3 Prior to Idaho Power making any payments as specified within this Agreement the Participant must provide the payment information as specified within Exhibit B and a completed IRS Form W-9.

11.3.1 This information must be provided no later than 30 days prior to the Participant's Eligible System being assigned an Operation Date, and;

11.3.2 At any time the Participant assigns the payments to a different party than the party currently receiving the payments, and;

11.3.3 At any time the Participant wishes to revise any payee information previously provided.

Upon receipt of the payee information specified in Exhibit B, Idaho Power will provide the Participant with the IRS Form W-9 or its successor.

- 11.4 Idaho Power may deduct from any Participant's Payable Generation payment, amounts owing and delinquent more than 45 days on Participant's monthly utility bill or owing under this Agreement.

- 11.5 Corrections. Idaho Power shall have the right to adjust any payment made pursuant to Section 11.1. If Idaho Power determines an adjustment is required, Idaho Power shall provide written documentation to the Participant.

ARTICLE XII: DEFAULTS AND REMEDIES

- 12.1 Events of Default. The following events shall constitute defaults under this Agreement:

12.1.1 Breach of Material Term. Failure of a Party to perform any material obligation imposed upon that Party by this Agreement or breach by a Party of a representation or warranty set forth in this Agreement.

12.1.2 Non-delivery. The Eligible System's failure to generate any energy during any

12-month period shall constitute a default.

12.1.3 Participant is found by the Commission to have made a false certification hereunder.

12.2 Notice; Opportunity to Cure. For a default under Section 12.1.1, a defaulting Party shall have sixty (60) days to cure after receipt of written notice from the non-defaulting Party. If the default is not capable of cure within the 60-day period, the defaulting Party must begin to cure the default within twenty (20) calendar days after receipt of the written default notice, and must continuously and diligently complete the cure within six (6) months of the receipt of the notice.

12.3 Termination. If a default described herein has not been cured within the prescribed time, above, the non-defaulting Party may terminate this Agreement at its sole discretion by delivering written notice to the other Party. Upon termination, the Eligible System will be disconnected at Participant's expense. The termination of this Agreement will not relieve either Party of its liabilities and obligations, owed or continuing at the time of termination. In the event this Agreement is terminated because of Participant's default, neither Participant nor the Eligible System shall be eligible, at any location in Oregon, for subsequent volumetric incentive rates, other feed-in tariffs, or pilot programs prior to the Expiration Date. The non-defaulting Party may contest a termination by seeking dispute resolution with the Commission within 30 days of termination, else termination shall be final. The provisions of this Section 12.3 shall survive termination or expiration of this Agreement.

12.4 This Agreement shall terminate automatically if the Eligible System has not achieved an Operation Date within twelve (12) months of the Reservation Start Date.

ARTICLE XIII: INDEMNIFICATION AND LIABILITY

13.1 Indemnities

13.1.1 Indemnity by Participant - Participant shall release, indemnify and hold harmless

Idaho Power, its directors, officers, agents, and representatives against and from any and all loss, fines, penalties, claims, actions or suits, including costs and attorney's fees, both at trial and on appeal, resulting from, or arising out of or in any way connected with (a) the energy generated by the Participant's Eligible System under this Agreement, (b) any facilities on Participant's side of the Participant's retail consumption meter, (c) Participant's operation and/or maintenance of the Eligible System, or (d) arising from this Agreement, including without limitation any loss, claim, action or suit, for or on account of injury, bodily or otherwise, to, or death of, persons, or for damage to, or destruction or economic loss of property belonging to Idaho Power, Participant or others, excepting only such loss, claim, action or suit as may be caused solely by the fault or gross negligence of Idaho Power, its directors, officers, employees, agents or representatives.

- 13.2 No Dedication. Nothing in this Agreement shall be construed to create any duty to, any standard of care with reference to, or any liability to any person not a Party to this Agreement. No undertaking by one Party to the other under any provision of this Agreement shall constitute the dedication of that Party's system or any portion thereof to the other Party or to the public, nor affect the status of Idaho Power as an independent public utility corporation or Participant as an independent individual or entity.
- 13.3 No Consequential Damages. EXCEPT TO THE EXTENT SUCH DAMAGES ARE INCLUDED IN THE LIQUIDATED DAMAGES, DELAY DAMAGES, COST TO COVER DAMAGES OR OTHER SPECIFIED MEASURE OF DAMAGES EXPRESSLY PROVIDED FOR IN THIS AGREEMENT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR SPECIAL, PUNITIVE, INDIRECT, EXEMPLARY OR CONSEQUENTIAL DAMAGES, WHETHER SUCH DAMAGES ARE ALLOWED OR PROVIDED BY CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY,

STATUTE OR OTHERWISE.

ARTICLE XIV: INSURANCE

- 14.1 Certificates. Prior to connection of the Eligible System to Idaho Power's electric system, Participant shall secure and continuously carry insurance in compliance with the requirements of this Section 14. Participant shall provide Idaho Power insurance certificate(s) (of "ACORD Form" or the equivalent) certifying Participant's compliance with the insurance requirements hereunder.
- 14.2 Required Policies and Coverages. During the term of this Agreement, the Participant shall secure and continuously carry the following insurance coverage:
- 14.2.1 Comprehensive General Liability Insurance for both bodily injury and property damage with limits equal to \$1,000,000, each occurrence, combined single limit.
- 14.2.2 The above insurance coverage shall be placed with an insurance company with an A.M. Best Company rating of A- or better and shall include a provision stating that such policy shall not be canceled or the limits of liability reduced without sixty (60) days' prior written notice to Idaho Power.

ARTICLE XV: FORCE MAJEURE

- 15.1 As used in this Agreement, a Force Majeure Event shall mean "any act of God, labor disturbance, act of the public enemy, war, acts of terrorism, insurrection, riot, fire, storm or flood, explosion, breakage or accident to machinery or equipment through no direct, indirect, or contributory act of a Party, any order, regulation, or restriction imposed by governmental, military or lawfully established civilian authorities, or any other cause beyond a Party's control. A Force Majeure Event does not include an act of negligence or wrongdoing.
- 15.2 If a Force Majeure Event prevents a Party from fulfilling any obligations under this Agreement, the Party affected by the Force Majeure Event ("Affected Party") shall

promptly notify the other Party of the existence of the Force Majeure Event. The notification must specify in reasonable detail the circumstances of the Force Majeure Event, the expected duration, and the steps that the Affected Party is taking to mitigate the effects of the event on its performance, and if the initial notification was verbal, it should be promptly followed up with a written notification. The Affected Party shall keep the other Party informed on a continuing basis of developments relating to the Force Majeure Event until the event ends. The Affected Party will be entitled to suspend or modify its performance of obligations under this Interconnection Appendix (other than the obligation to make payments) only to the extent that the effect of the Force Majeure Event cannot be reasonably mitigated. The Affected Party will use reasonable efforts to resume its performance as soon as possible. The Parties shall immediately report to the Commission should a Force Majeure Event prevent performance of any non-waivable obligations required by Commission rules.

ARTICLE XVI: ASSIGNMENT

- 16.1 This Agreement may be assigned to an Idaho Power retail consumer that is residing at the same address where the Eligible System is installed and said consumer is eligible to participate in this program.

ARTICLE XVII: DISPUTES

- 17.1 Nothing in this Agreement shall restrict or enlarge the rights of any Party to file a complaint with the Commission under relevant provisions of the Commission's rules.

ARTICLE XVIII: MISCELLANEOUS

- 18.1 Amendment. The Parties may amend this Agreement only by a written instrument duly executed by both Parties in accordance with the provisions of the applicable Commission rules and Orders, or by the Commission for good cause shown.

- 18.2 No Third-Party Beneficiaries. This Agreement is not intended to and does not create rights, remedies, or benefits of any character whatsoever in favor of any persons, corporations, associations, or entities other than the Parties, and the obligations herein assumed are solely for the use and benefit of the Parties, or where permitted, their successors in interest or their assigns.
- 18.3 Counterparts. This Agreement may be executed in one or more counterparts, whether electronically or otherwise, and each counterpart shall have the same force and effect as an original Agreement and as if all the Parties had signed the same document.
- 18.4 No Partnership. This Agreement will not be interpreted or construed to create an association, joint venture, agency relationship, or partnership between the Parties or to impose any partnership obligation or partnership liability upon either Party. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party.
- 18.5 Severability. If any provision or portion of this Agreement shall for any reason be held or adjudged to be invalid or illegal or unenforceable by any court of competent jurisdiction or other governmental authority, (1) such portion or provision shall be deemed separate and independent, (2) the Parties shall negotiate in good faith to restore insofar as practicable the benefits to each Party that were affected by such ruling, and (3) the remainder of the Agreement shall remain in full force and effect.
- 18.6 Several Obligations. Nothing contained in this Agreement shall ever be construed to create an association, trust, partnership or joint venture or to impose a trust or partnership duty, obligation or liability between the Parties. If Participant includes two or more parties, each such party shall be jointly and severally liable for Participant's obligations under this Agreement.

18.7 Waiver. Any waiver at any time by either Party of its rights with respect to a default under this Agreement or with respect to any other matters arising in connection with this Agreement must be in writing, and such waiver shall not be deemed a waiver with respect to any subsequent default or other matter.

18.8 Subcontractors. Nothing in this Agreement shall prevent a Party from using the services of any subcontractor, or designating a third-party agent as one responsible for a specific obligation or act required in the Agreement (collectively subcontractors), as it deems appropriate to perform its obligations under the Agreement; provided, however, that each Party will require its subcontractors to comply with all applicable terms and conditions of the Agreement in providing such services and each Party will remain primarily liable to the other Party for the performance of the subcontractor.

18.8.1 The creation of any subcontract relationship shall not relieve the hiring Party of any of its obligations under this Agreement. The hiring Party shall be fully responsible to the other Party for the acts or omissions of any subcontractor the hiring Party hires as if no subcontract had been made. Any applicable obligation imposed by the Agreement upon the hiring Party shall be equally binding upon, and will be construed as having application to, any subcontractor of such Party.

18.8.2 The obligations under this Section will not be limited in any way by any limitation of a subcontractor's insurance.

ARTICLE XIX: ENTIRE AGREEMENT

19.1 This Agreement (including all Exhibits and Appendices, and attachments thereto) supersedes all prior agreements, proposals, representations, negotiations, discussions or letters, whether oral or in writing, regarding Idaho Power's purchase of Payable Generation from the Eligible System.

ARTICLE XX: NOTICES

20.1 All written notices under this Agreement shall be directed as follows and shall be considered delivered when deposited in the U. S. Mail, first-class postage prepaid, as follows:

To Participant: _____

To Idaho Power:
Oregon Solar Photovoltaic Pilot Program
Idaho Power Company
P. O. Box 70
Boise, Idaho 83707

20.2 The Parties may change the person to whom such notices are addressed, or their addresses, by providing written notices thereof in accordance with this Section 22. Payee and/or Qualified Assignee changes shall be provided as specified in Article 11 and Exhibit B and submitted to the Idaho Power notification address as specified in section 20.1 above.

IN WITNESS WHEREOF, The Parties hereto have caused this Agreement to be executed in their respective names on the dates set forth below:

Idaho Power Company _____

By _____

By _____

Date _____

Date _____

"Idaho Power"

"Participant"

EXHIBIT A

PROJECT NO. _____

Eligible System Name: _____

Eligible System Description

All information required by this Exhibit must be provided prior to Idaho Power establishing an Operation Date for this Eligible System.

A-1 DESCRIPTION OF ELIGIBLE SYSTEM

Nameplate Capacity: _____ Total Installed Cost: _____

Photovoltaic Module Cost: _____ Total Financing Cost: _____

Federal Tax Credit: _____

Financing Term: (including fees paid, loan term, and interest rate secured):

Non-photovoltaic Module Cost (including inverters, other hardware, labor, overhead and regulatory compliance cost): _____

Building Integrated, Stationary Rack mounted or Tracking System Installation:

Crystalline Silicon or Thin Film: _____

Expected In Service Date: _____

Expected Annual Energy Output: _____

Customer Retail Electrical Service Class: _____

Additional Description: _____

EXHIBIT A (Continued)

A-2 PARTICIPANT'S ADDRESS WHERE ELIGIBLE SYSTEM IS PERMANANTLY
INSTALLED:

Street: _____

Address: _____

City: _____ State: _____ Zip: _____

GPS Coordinates: _____

A-3 NAME AND ADDRESS OF SOLAR INSTALLER OR CONTRACTOR

Business Name: _____

Contact: _____

Street: _____

Address: _____

City: _____ State: _____ Zip: _____

A-4 NAME AND ADDRESS OF QUALIFING SYSTEM FINANCIER

Business Name: _____

Contact: _____

Street: _____

Address: _____

City: _____ State: _____ Zip: _____

EXHIBIT B

PROJECT NO. _____

Eligible System Name: _____

Payee and/or Assignee Information

This information must be provided prior to Idaho Power making any payments to the Participant or a Qualified Assignee identified by the Participant.

At any time during the term of this Agreement, if the Participant wishes to change the payment information as previously provided, the new payment information must be provided on this form.

Payee Name: _____

Payee Address: _____

Payee City: _____ State: _____ Zip: _____

Yes No Is the above designated Payee a party a different party then the Participant?

Yes No Is the above designated Payee a Qualifying Assignee as defined within this Agreement?

If Yes, please provide information that validates the Qualifying Assignee's qualifications:

The information provided above is true and accurate.

Participant's Name: _____
(Please print – must be the Participant to this Agreement)

Participant's Signature: _____ Date: _____

EXHIBIT C

PROJECT NO.

Eligible System Name:

Example - VIR Payment Calculation

	Customer Usage	Current Standard Customer Base Rate	Current Monthly Charge
<u>Service Charge</u>	1	\$8.00	\$8.00
<u>Energy Charge</u>			
0-300 kWh	300	\$0.057970	\$17.39
All kWh over 300	1,700	\$0.071601	\$121.72
Total	2,000 kWh		\$139.11
		Total Base Charges	\$147.11
<u>Additional Charges</u>			
EE Rider	\$147.11	3.00%	\$4.41
PSA	2,000 kWh	\$0.002848	\$5.70
APCU	2,000 kWh	\$0.004585	\$9.17
Oregon Solar Investment	\$147.11	1.50%	\$2.21
Total Customer Monthly Bill			\$168.60
Less: Volumetric Incentive Net Metering Credit			
	<u>Measured Generation</u>	<u>Average Retail Rate</u>	
	1,000 kWh	\$0.069556	(\$69.56)
Customer Billing			\$99.04

EXHIBIT C (Continued)

Average Retail Rate Calculation

Total Energy Charges	\$139.11
Total Consumption	2,000 kWh

Average Retail Rate	\$0.069556
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Volumetric Payment Calculation

	Use	Current Standard Customer Base Rate	Current Monthly Charge
<u>Meter Charge</u>	1	\$10.00	\$10.00
Volumetric Incentive Rate (VIR)		\$0.550000	(per Schedule 88)
Less: Average Retail Rate		<u>\$0.069556</u>	
Applicable VIR		\$0.480444	

Eligible System Generation Payment

Measured Generation 1,000 kWh	\$0.480444	\$480.44
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Total VIR Payment to the Customer	\$470.44
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AGENDA REPORT

April 2, 2012

TO: Mayor and City Council

FROM: Chuck Mickelson, City Manager Pro-Tem

SUBJECT: **ACCEPTANCE OF WARRANTY DEEDS FROM JEANNE BREWER AND MORRIS E. VAVOLD and DIXIE L. VAVOLD, TRUSTEES OF THE VALVOLD FAMILY TRUST
NW WASHINGTON ROADWAY RELOCATION PROJECT**

DATE: March 26, 2012

SUMMARY:

Attached are the following documents:

- Signed Warranty Deed: Jeanne Brewer to City of Ontario
- Signed Warranty Deed: Morris and Dixie Vavold to City of Ontario

PREVIOUS COUNCIL ACTION:

- July 6, 2010 Council approved Agreement No. 26720 with ODOT accepting \$4.5 million for the relocation of NW Washington and constructing Park Blvd to NW 16th Avenue.
- November 15, 2010 Council approved Agreement No. 26720-01 with ODOT which was an amendment authorizing the expenditure and reimbursement of funds for the above project.
- March 7, 2011 Council approved Agreement No. 27027 with ODOT authorizing the ODOT right of way staff to proceed with appraisals and acquisition of properties for the NW Washington and Park Blvd roadway project.
- July 18, 2011 Council approved Agreement No. 27027-01 with ODOT which was an amendment clarifying how funds will be paid by ODOT for the appraisals and acquisition costs.

BACKGROUND:

ODOT staff has prepared appraisals and conducted negotiations on many of the parcels that must be acquired for this roadway project. A Warranty Deed for the Brewer and Vavold properties is attached and must be accepted by the city prior to recording or closing on the property.

STAFF RECOMMENDATION:

Staff recommends the Council authorize the Mayor to sign the Warranty Deeds.

PROPOSED MOTION:

I move the City Council authorize the Mayor to sign the Warranty Deeds from Jeanne Brewer and Morris and Dixie Vavold accepting the property for the NW Washington roadway project.

WARRANTY DEED

JSB
\$ 5,400.00

JEANNE BREWER, Grantor, for the true and actual consideration of ~~\$1,298.00~~, does convey unto the CITY OF ONTARIO, a municipal corporation of the State of Oregon, Grantee, fee title to the property described as Parcel 1 on Exhibit "A" dated 10/14/11, attached hereto and by this reference made a part hereof.

Grantor also grants to Grantee, its successors and assigns, a permanent easement to construct and maintain slopes, to construct, reconstruct, operate, maintain, inspect and repair drainage facilities and/or underground sewer line facilities and appurtenances, and to relocate, construct and maintain water, gas, electric and communication service lines, fixtures and facilities, and appurtenances upon, over, under, and across the property described as Parcel 2 on Exhibit "A" dated 10/14/11, attached hereto and by this reference made a part hereof.

IT IS UNDERSTOOD that the easement herein granted does not convey any right, or interest in the above-described Parcel 2, except for the purposes stated herein, nor prevent Grantor from the use of said property; provided, however, that such use shall not be permitted to interfere with the rights herein granted or endanger the lateral support of the public way, or to interfere in any way with the relocation, construction, and maintenance of said utilities, and their appurtenances, as granted herein above.

IT IS ALSO UNDERSTOOD that Grantee shall never be required to remove the slope materials placed by it on said property, nor shall Grantee be subject to any damages to Grantor and grantor's heirs, successors and assigns, by reason thereof, or by reason of any change of grade of the public way abutting on said property.

RETURN TO
OREGON DEPARTMENT OF TRANSPORTATION
RIGHT OF WAY SECTION
4040 FAIRVIEW INDUSTRIAL DRIVE SE, MS#2
SALEM OR 97302-1142

Map and Tax Lot #: 17S4733C 6800

Property Address: 1083 Malheur Drive
Ontario OR 97914

TAXES TO: CITY OF ONTARIO
444 SW 4TH STREET, ONTARIO OR 97914

GRANTORS ADDRESS: P. O. BOX 5
ONTARIO OR 97914-3544

IT IS ALSO UNDERSTOOD that this easement shall be subject to the same conditions, terms and restrictions contained in the easements, licenses and/or permits granted to the owner of any facilities being relocated.

IT IS ALSO UNDERSTOOD that Grantor shall not place or erect any buildings or structures upon the easement area without the written consent of Grantee.

IT IS FURTHER UNDERSTOOD that nothing herein contained is intended to create any obligation on the part of Grantee for the maintenance of said utilities.

Grantor covenants to and with Grantee, its successors and assigns, that grantor is the owner of said property which is free from encumbrances, except for easements, conditions, and restrictions of record, and will warrant the same from all lawful claims whatsoever, except as stated herein.

Grantor agrees that the consideration recited herein is just compensation for the property or property rights conveyed, including any and all damages to Grantor's remaining property, if any, which may result from the acquisition or use of said property or property rights. However, the consideration does not include damages resulting from any use or activity by Grantee beyond or outside of those uses expressed herein, if any, or damages arising from any negligence.

In construing this document, where the context so requires, the singular includes the plural and all grammatical changes shall be made so that this document shall apply equally to corporations and to individuals.

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, AND SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009. 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, AND SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009.

The statement above is required by law to be included in this instrument. PLEASE NOTE: the property described in this instrument is not a "lot" or "parcel" as defined in ORS 92.010 or 215.010. Nevertheless, the property is a legally created unit of land as described in ORS 92.010 (9) (d) or (e).

It is understood and agreed that the delivery of this document is hereby tendered and that terms and obligations hereof shall not become binding upon the City of Ontario, a municipal corporation of the State of Oregon, unless and until accepted and approved by the recording of this document.

Dated this 3 day of MARCH, 2012.



Jeanne Brewer

STATE OF OREGON, County of Malheur

Dated March 3rd, 2012. Personally appeared, and signed before me by the above named Jeanne Brewer, who acknowledged the foregoing instrument to be her voluntary act. Before me:





Notary Public for Oregon
My Commission expires July 28, 2012

Accepted on behalf of the City of Ontario, a municipal corporation of the State of Oregon

FEE & EASEMENTS

JEANNE BREWER

P.O. Box 5
 Ontario, OR 97914-3544

Reference Numbers: 7424
 Map & Tax Lot Numbers: 17S4733C 6800
 Deeds: 87-9491

PARCEL 1 (6800) –FEE (JB1)

A parcel of land lying in Lot 5, Block 6, of the CORRECTED PLAT OF OREGON AND WESTERN COLONIZATION CO. SUBDIVISION SECOND ADDITION, Malheur County, Oregon and being a portion of that property described in that deed recorded March 26, 1987, Instrument No. 87-9491, Malheur County Deed Records; the said parcel being that portion of said property included in a strip of land variable in width, lying on the West side of the "P" center line of the North Park Boulevard which center line is described as follow:

Beginning at Engineer's center line Station "P" 392+00.00, said station being South 87° 48' 53" West 5.79 feet and North 01° 43' 02" West 942.32 feet from the South 1/4 corner of Section 33, Township 17 South, Range 47 east, W.M. (from which the SW corner of said Section 33 bears South 87° 48' 53" West 2628.06 feet from said 1/4 corner); thence North 01° 43' 02" West 800.00 feet to centerline Station "P" 400+00; thence North 11° 31' 11" West 187.24 feet to center line Station "P" PC 401+87.24; thence on a 198.00 feet radius curve to the right (the long chord of which bears North 21° 05' 26" East 213.41 feet) 225.39 feet to Engineer's center line Station "P" PT 404+12.63.

The widths in feet of the strip of land above referred to are as follows:

Station	to	Station	Width on West Side of Center Line
"P" 394+57		"P" 395+34.78	64.71 in a straight line to 30

EXCEPTING THEREFROM the existing 30 feet right of way according to the Plat of Oregon Western Colonization Co. Subdivision Second Addition.

The Parcel of land to which this description applies contains 1,349 square feet, more or less

Bearings are based upon the Oregon Coordinate System of 1983(91), south zone.

PARCEL 2 (6800) – Permanent Easement for Slopes, Sewers, Water, Gas, Electric and Communication services lines, Fixtures and Facilities (JB2)

A parcel of land lying in Lot 5, Block 6, of the CORRECTED PLAT OF OREGON AND WESTERN COLONIZATION CO. SUBDIVISION SECOND ADDITION, Malheur County, Oregon and being a portion of that property described in that deed recorded March 26, 1987, Instrument No. 87-9491, Malheur County Deed

Records; the said parcel being that portion of said property included in a strip of land variable in width, lying on the West side of the "P" center line of the North Park Boulevard which center line is described as follow:

Beginning at Engineer's center line Station "P" 392+00.00, said station being South 87° 48' 53" West 5.79 feet and North 01° 43' 02" West 942.32 feet from the South 1/4 corner of Section 33, Township 17 South, Range 47 east, W.M. (from which the SW corner of said Section 33 bears South 87° 48' 53" West 2628.06 feet from said 1/4 corner); thence North 01° 43' 02" West 800.00 feet to centerline Station "P" 400+00; thence North 11° 31' 11" West 187.24 feet to center line Station "P" PC 401+87.24; thence on a 198.00 feet radius curve to the right (the long chord of which bears North 21° 05' 26" East 213.41 feet) 225.39 feet to Engineer's center line Station "P" PT 404+12.63.

The widths in feet of the strip of land above referred to are as follows:

Station	to	Station	Width on West Side of Center Line
"P" 392+99		"P" 394+57	40

EXCEPTING THEREFROM the existing 30 feet right of way according to the Plat of Oregon Western Colonization Co. Subdivision Second Addition.

The Parcel of land to which this description applies contains 1,580 square feet, more or less

WARRANTY DEED

MORRIS E. VAVOLD, JR. and DIXIE L. VAVOLD, TRUSTEES of The Morris and Dixie Vavold Family Trust, *ult/a* dated March 8, 2002, Grantor, for the true and actual consideration of **\$62,200.00** does convey unto the **CITY OF ONTARIO, a municipal corporation of the State of Oregon**, Grantee, fee title to the property described on **Exhibit "A" dated 2/24/12**, attached hereto and by this reference made a part hereof.

Grantor covenants to and with Grantee, its successors and assigns, that grantor is the owner of said property which is free from encumbrances, except for easements, conditions, and restrictions of record, and will warrant the same from all lawful claims whatsoever, except as stated herein.

Grantor agrees that the consideration recited herein is just compensation for the property or property rights conveyed, including any and all damages to Grantor's remaining property, if any, which may result from the acquisition or use of said property or property rights. However, the consideration does not include damages resulting from any use or activity by Grantee beyond or outside of those uses expressed herein, if any, or damages arising from any negligence.

AFTER RECORDING RETURN TO:
OREGON DEPARTMENT OF TRANSPORTATION
RIGHT OF WAY SECTION
4040 FAIRVIEW INDUSTRIAL DRIVE SE, MS#2
SALEM OR 97302-1142

Map and Tax Lot #: 17S4733D 1600

Property Address:

GRANTEE and TAXES TO: CITY OF ONTARIO
444 SW 4th Street
Ontario, OR 97914

Grantor: Morris E. Vavold, Jr. and Dixie L. Vavold
Address: 24191 Ranch Rd
Caldwell, ID 83607-7622

In construing this document, where the context so requires, the singular includes the plural and all grammatical changes shall be made so that this document shall apply equally to corporations and to individuals.

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, AND SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009. 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, AND SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009.

It is understood and agreed that the delivery of this document is hereby tendered and that terms and obligations hereof shall not become binding upon the City of Ontario, a municipal corporation of the State of Oregon, unless and until accepted and approved by the recording of this document.

Dated this 9th day of MARCH, 2012.

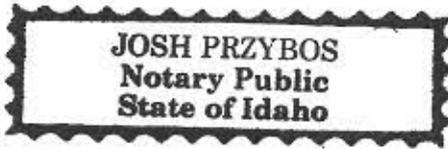
THE MORRIS and DIXIE VAVOLD FAMILY TRUST, u/a dated March 8, 2002

Morris E. Vavold, Jr.
Morris E. Vavold, Jr., Trustee

Dixie L. Vavold
Dixie L. Vavold, Trustee

STATE OF IDAHO, County of Canyon

Dated March 9th, 2012. Personally appeared the above named Morris E. Vavold, Jr., and Dixie L. Vavold, Trustees, and acknowledged the foregoing instrument to be their voluntary act. Before me:





Notary Public for Idaho
My Commission expires 2/21/2018

Accepted on behalf of the City of Ontario, a municipal corporation of the State of Oregon

FEE

THE MORRIS AND DIXIE VAVOLD FAMILY TRUST,
U/T/A/ dated March 8, 2002,
Morris E. Vavold, Jr. and Dixie L. Vavold, Trustees
24191 Ranch Road
Caldwell, ID 83607-7622

Reference Number: 19
Map & Tax Lot Number: 17S4733D 1600
Deed: 2002-2696

FEE - Land in Oregon and Western Colonization Subdivision, Second Addition, in Section 33, Township 17 South, Range 47 East, W.M., Malheur County, Oregon, according to the Corrected Plat thereof, as follows:

In Block 3: Beginning at the most Northerly corner of Lot 3; thence in a Southeasterly direction along the Northeasterly lot line 99.5 feet; thence Southwesterly and parallel to the Southeasterly lot line 250 feet; thence Northwesterly along the lot line to the most Westerly corner of said Lot 3; thence Northeasterly along the lot line 250 feet to the point of beginning.

AGENDA REPORT

April 2, 2012

TO: Mayor and City Council

FROM: Chuck Mickelson, City Manager Pro-Tem

SUBJECT: **HORNING AND CRESTWAY ANNEXATION AND PROPOSED SEWER AND WATER FEES**

DATE: March 22, 2012

SUMMARY/BACKGROUND:

Attached are the following documents:

- Public Works Committee Notes/Minutes
- Map of Proposed Area

The City Council has directed the Public Works Dept. to pursue the annexation of the property along Horning and Crest Way. There are a number of steps that must be followed before contacting the property owners about annexation. One of the first questions that will be asked by the property owners relates to the costs of connecting to the water and or sewer system.

The PWC reviewed the attached memo at their March 21st meeting and passed the following motion regarding water and sewer fees to be charged to the property owners that have not yet connected.

I move that the Public Works Committee recommend to the City Council the following:

1. That the interior property owners on Horning and Crest Way not be required to pay the assessment or the lift station fee when the remaining property owners connect to the public sewer or public water.
2. That the three lots with existing structures that abut Verde be required to pay the \$.41 per square foot for sewer when they connect to the sewer system and that the same three lots pay a water assessment when they connect to the public water system. That fee has not yet been calculated. No lift station fee would be charged for any of the existing structures in the Horning and Crest Way project.
3. That in the event the large lot that abuts Verde between Horning and Crestway is partitioned off and a new building is constructed, that the builder be required to pay the sewer and water assessment along with the lift station fee.

The motion was made by Mr. Tuttle and was seconded by Mr. Hart: Dan Cummings – abstain; Scott Wilson – yes; Larry Tuttle – yes; Bernie Babcock – yes; Riley Hill – yes; Ken Hart – yes; Motion carries; 6-0-2. (Mr. Frazier – excused).

If the City Council concurs with the PWC, then the staff will prepare a packet explaining the annexation process for the property owners and schedule a meeting. If you recall, Dan Cummings indicated that his firm has the annexation fees (approximately \$6500) in a trust fund awaiting action by the property owners and the city.

RECOMMENDATION:

Staff recommends acceptance of the public works committee recommendation.

PROPOSED MOTION:

I move that the Council accept the Public Works Committee's recommendation on fees for the Horning and Crest Way neighborhood, and to accept the funds from CK3, LLC, as full payment for the annexation fees for these properties.

March 14, 2012

To: Public Works Committee

From: Chuck Mickelson
Public Works Director

Issue: What Sewer Fees should be charged to the property owners for the Horning and Crest Way properties off of Verde Drive

Background: Sewer and water systems along with a new road were constructed by the property owners in 2004 (a privately funded construction project). At that time the gravity trunk line that served these two culdesacs was not available. Apparently, there were two properties that had failed drain fields. The city worked with the two property owners and provided a temporary system to get their effluent to an operating sewer system.

In 2007, the permanent sewer system was completed and the two properties were hooked up and the temporary system was abandoned.

The issue before the PWC relates to a recommendation to the City Council and staff as to what sewer fees should be charged to the property owners as they connect to the sewer system. Dan Cummings and his firm orchestrated the design and construction of the Horning and Crest Way water and sewer system along with the roadway design.

A condition of constructing these facilities and hooking up to sewer required the annexation of the properties. Annexation has not yet occurred and the city council has directed the staff to develop a plan to get these properties annexed. This has been come forward recently as a result of another property owner wanting to connect to the sewer. City ordinances require the City Council grant permission for properties that are outside the city limits to connect to the sewer. The council granted the permission but directed staff to get the area annexed.

Rate Issue: The City expended \$2,284,595 when they constructed sewers and a lift station that provided service to the overall area including the Horning and Crest Way properties (maps attached showing the service area). The sewer portion of the project was \$925,612. The City borrowed the funds for the construction and the general rate payers are paying the principal and interest on the loans.

When Love's applied for a building permit, no calculations had been made for recovery of costs for the sewer and water construction expenditures. I calculated the costs of the overall assessments based on the property benefitting and determined that for collection sewer purposes, properties should be assessed at the rate of \$.41/ square foot of assessable property.

Additionally, the lift station and force main had a cost of \$1,358,983. This lift station serves 441 acres of property. The calculation that was used for the lift station was cost divided by service acreage = Lift station cost per acre of property or \$3,081.17/acre of developable property. Those are the base costs for calculation that Love's paid when they received their building permit.

Horning and Crest Way Fees: Horning and Crest Way are included in the service area identified above. Currently 3 properties are connected to the existing sewer and 2 properties are connected to city water (see attached map). None of the properties that have already connected have paid either the sewer assessment (\$.41/square foot) or the lift station cost (\$3,081.17). In discussions with Dan Cummings, he indicated that this was a difficult project to complete getting everyone on board and there was no discussion as to additional assessments or lift station fees during the administration of the construction project. He has also informed me that the three lot owners that abut Verde did not participate in the construction of the water and sewer facilities on Horning or Crest Way. Since there was an arrangement for the property owners to use the temporary lift station no charge has been made for lift station construction.

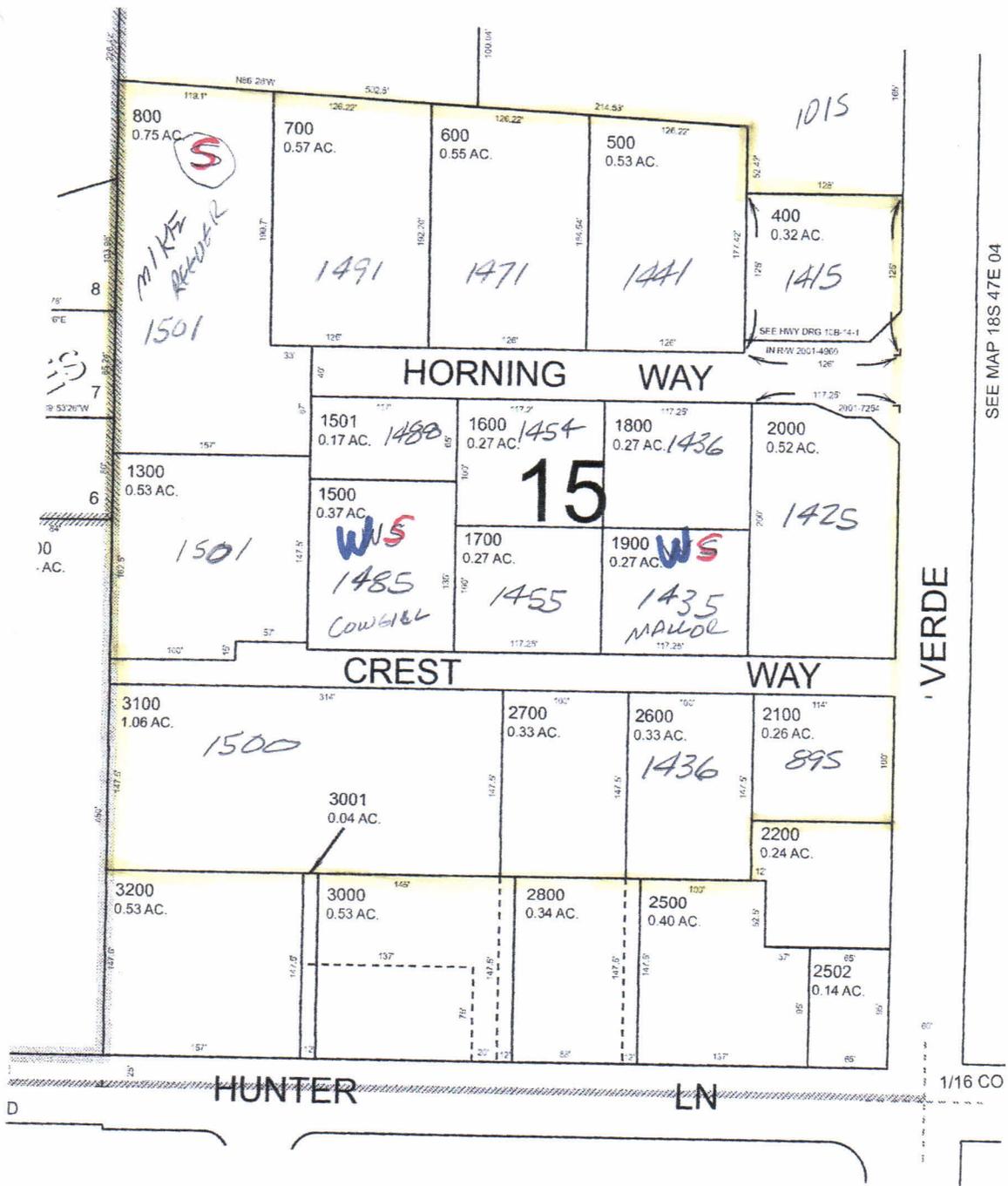
I need to have clear direction from the PWC and City Council as we proceed to meet with the property owners regarding annexation.

Recommendation:

1. I recommend that the interior property owners on Horning and Crest Way not be required to pay the assessment or the lift station fee when the remaining property owners connect to the public sewer or public water
2. I recommend that the three lots with existing structures that abut Verde be required to pay the \$.41 per square foot for sewer when they connect to the sewer system and that the same three lots pay a water assessment when they connect to the public water system. That fee has not yet been calculated. No lift station fee would be charged for any of the existing structures in the Horning and Crest Way project.
3. I recommend that in the event the large lot that abuts Verde between Horning and Crestway is partitioned off and a new building is constructed, that the builder be required to pay the sewer and water assessment along with the lift station fee.

Proposed Motion: I move that the Public Works Committee recommend to the City Council the following:

1. That the interior property owners on Horning and Crest Way not be required to pay the assessment or the lift station fee when the remaining property owners connect to the public sewer or public water
2. That the three lots with existing structures that abut Verde be required to pay the \$.41 per square foot for sewer when they connect to the sewer system and that the same three lots pay a water assessment when they connect to the public water system. That fee has not yet been calculated. No lift station fee would be charged for any of the existing structures in the Horning and Crest Way project.
3. That in the event the large lot that abuts Verde between Horning and Crestway is partitioned off and a new building is constructed, that the builder be required to pay the sewer and water assessment along with the lift station fee.



Horning and Crest Way Area