

**CONSENT AGENDA**  
JULY 6, 2010

TO: Mayor and City Council

FROM: Mike Kee, Police Chief

THROUGH: Henry Lawrence, City Manager

**SUBJECT: LIQUOR LICENSE APPLICATION – NEW OUTLET  
Limited On-Premises / Off-Premises Sales**

DATE: June 28, 2010

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**SUMMARY:**

Jolts And Juice Company has completed the “New Outlet” application process for “Limited On-Premises Sales and Off-Premises Sales” liquor license privileges through the Oregon Liquor Control Commission for their business located at 298 South Oregon Street, Ontario, Oregon.

All necessary paperwork has been approved through OLCC office and is awaiting approval through the Ontario City Council.

**BACKGROUND:**

Criminal Record process was completed on Jolts & Juice Company owners/managers. All records returned clear. The application forms have been filled out appropriately and required fees have been paid. All Permit requirements have been met.

Approval of this license will allow Jolts & Juice Company to sell beer and wine with meals in their new deli area addition. It will also allow them to display and sell bottles of wine in that area.

**RECOMMENDATION:**

I have completed a review of this application information in accordance with the City of Ontario’s ordinance regulating this license. I recommend that we approve the application for New Outlet Limited On-Premises Sales and Off-Premises Sales liquor license for Jolts & Juice Company.

## AGENDA REPORT

July 6, 2010

TO: Mayor and City Council

FROM: Larry Sullivan, City Attorney

THROUGH: Henry Lawrence, City Manager

**SUBJECT: DOG SHELTER CONTRACT WITH ANI-CARE SHELTER, LLC**

DATE: June 28, 2010

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### **SUMMARY:**

Attached are the following documents:

- Dog Shelter Contract with Ani-Care Animal Shelter, LLC
- Email from Ani-Care's attorney requesting changes.

This is a revision of the Contract with the changes requested by Ani-Care's attorney.

### **PREVIOUS COUNCIL ACTION:**

June 7, 2010	The Council discussed the initial draft of the Contract prepared by Ani-Care and directed City attorney Larry Sullivan to redraft the Contract in light of issues raised by the Council.
June 19, 2010	The Council tabled review of the revised Contract until Ani-Care's attorney had an opportunity to review and comment on the revisions.

### **BACKGROUND:**

Ani-Care's attorney, Charles Oakes, has reviewed the draft of the Contract prepared by the City attorney and has requested changes in that draft, as set forth in the attached email. The City attorney has made the requested changes, and the latest draft is attached.

### **RECOMMENDATION:**

Staff recommends the Council approve the Dog Shelter Contract with Ani-Care Animal Shelter, LLC.

### **PROPOSED MOTIONS:**

"I move that the Mayor and City Council approve the Dog Shelter Contract with Ani-Care Animal Shelter, LLC."

## DOG SHELTER CONTRACT

This Dog Shelter Contract effective this 1<sup>st</sup> day of July, 2010, between Ani-care Animal Shelter, LLC, an Oregon limited liability company ("the Shelter"), whose address is 3616 Hwy 201, Ontario, OR 97914, and the City of Ontario, an Oregon municipal corporation ("The City"), whose address is 444 SW 4<sup>th</sup> Ave, Ontario, OR 97914.

- 1) The Shelter shall provide the following services to the City pursuant to this Contract:
  - a) The Shelter shall provide at least eighteen (18) pens having a maximum capacity of thirty-six (36) compatible dogs, for the maintenance, care, and disposal according to law, of abandoned or stray dogs originally located within the confines of Malheur County.
  - b) The Shelter shall comply with Oregon standards for indoor and outdoor facilities and health and husbandry practices for commercial kennels, including those specified in Division 15 of Chapter 603 of the Oregon Administrative Rules.
  - c) The Shelter shall be open to the public a minimum of 6 hours per day, five days per week, excluding holidays.
  - d) The Shelter shall allow the City to have after-hours access by providing the City with a key and access to empty pens after hours. The City shall give the Shelter notice of its delivery of a dog outside of regular business hours by leaving a telephone message for the Shelter. Thereafter the Shelter shall be responsible for any dogs delivered after hours.
  - e) The Shelter shall accept delivery, custody, and responsibility for the care and disposition of dogs transported to the Shelter by any person, whether acting privately or as an agent or representative of the City. This provision does not impose liability on the Shelter for the initial capture and transportation of abandoned or stray dogs.
  - f) The Shelter shall keep records relating to dogs taken into custody and disposed of, open and available for inspection at reasonable times by the City. In addition, the Shelter shall provide the City with an annual accounting of the number of dogs taken into custody and disposed of and the manner of such disposal during the previous fiscal year, including the number of dogs delivered by representatives of the City, which accounting will be due on or before August 5th of each subsequent year.
- 2) As compensation for the services provided by the Shelter, the City shall pay the following fees to the Shelter:
  - a) The sum of \$1,170.00 per month, due on or before the 15<sup>th</sup> day of each month commencing in July, 2010.
  - b) The sum of \$50.00 per dog delivered by City representatives for each emergency euthanasia during business hours.
  - c) The sum of \$10.00 per dog per day for each day or portion of a day a dog is impounded pursuant to a hold placed on the dog by the City, such as an impound for biting a person or an impound in which the dog is being held for evidence.

- 3) In the event of a default in the performance of this Contract by either party, the nondefaulting party may terminate this Contract for cause.
- 4) The initial term of this Contract shall be from July 1, 2010, to June 30, 2011. Unless terminated for cause, this Contract shall renew automatically on an annual basis unless a written notice of termination is mailed to the other party by no later than June 1 of any year.
- 5) The City budgets expenses on a two year budget cycle, with its current budget expiring on June 30, 2011. If the Shelter requests a fee increase from the City for any future budget cycle, the Shelter shall give the City notice of any proposed increase at least 90 days prior to the beginning of the next budget cycle. If the parties are unable to reach a fee agreement before June 30 of any year, this Contract shall terminate on July 1 of that year.
- 6) Neither party may assign or transfer its rights under this Contract to a third person without the other party's written consent in advance.
- 7) Nothing contained in this Contract shall give or allow any third person a claim or right of action. It is the express intention of the parties that any person other than the City and the Shelter receiving services or benefits under this Contract shall be deemed to be an incidental beneficiary only.

IN WITNESS WHEREOF, the parties herein have signed this Dog Shelter Contract on the dates listed below.

ANI-CARE ANIMAL SHELTER, LLC

By:

\_\_\_\_\_  
Kim Henricks, Member

Date: \_\_\_\_\_

\_\_\_\_\_  
Ross Henricks, Member

Date: \_\_\_\_\_

CITY OF ONTARIO

By:

\_\_\_\_\_  
Henry Lawrence, City Manager

Date: \_\_\_\_\_

Attest:

\_\_\_\_\_  
Tori Barnett MMC, City Recorder

Date: \_\_\_\_\_

## Larry Sullivan

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**From:** Charles S. Oakes, Attorney [oakeslaw@fmtc.com]  
**Sent:** Monday, June 28, 2010 2:19 PM  
**To:** Larry Sullivan  
**Cc:** Vandermoorhond@yahoo.com  
**Subject:** Dog Shelter Contract

Larry,

I have discussed the contract changes with Kim Hendricks. We will use the revised contract you forwarded, with the following changes (language in contract is underlined):

1. Paragraph 1(c) is to be deleted. The OARs referenced in the prior paragraph deal with this in OAR 603-015-0040. We need not contract to go beyond the OARs and I believe the winter condition of the dogs will improve substantially, in keeping with the OARs.
2. Paragraph 1(d) is to be revised to read as follows: "The Shelter shall be open to the public a minimum of 6 hours per day, five days per week, excluding holidays." This being a new business, they need flexibility in determining night and weekend hours as meets the business needs. It is in their best interests to be available to the public and the above language allows them to best meet those needs without the contract micromanaging the business.
3. Paragraph 2(b) is to be revised to read as follows: "The sum of \$50.00 per dog delivered by City representatives for each emergency euthanasia during business hours." This change merely removes the after hours euthanasias.

The contract shall remain a one year contract with an automatic renewal and notice of termination required to be mailed by June 1 of each year. Notice of changes in fees must be given to the City by April 2, 2011, for the July 1, 2011 contract year and the changes must be agreed upon by June 30, 2011.

I currently do not plan to attend the Work Session on July 1, 2010.

If you have any questions, please do not hesitate to contact me.

CSO

# AGENDA REPORT

July 6, 2010

TO: Honorable Mayor and City Council Members

THRU: Henry Lawrence, City Manager

FROM: Captain Mark Alexander

**SUBJECT: ORDINANCE #2647-2010: AN ORDINANCE AMENDING ONTARIO MUNICIPAL CODE TITLE 3, CHAPTER 16 REGARDING DEALERS OF REGULATED PROPERTY (1<sup>st</sup> Reading)**

DATE: June 21, 2010

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## **SUMMARY:**

Attached is the following document:

- Ordinance #2647-2010

Title 3, Chapter 16, of the Ontario Municipal Code establishes regulations for dealers of regulated property. The police department desires to amend the ordinance to add desired language and new procedures.

## **PREVIOUS COUNCIL ACTION:**

- 10-06-2003 Council adopted Ordinance #2515-2003, amending Ontario Municipal Code 3-16, Establishing Pawn Broker and Second-Hand Dealer Licensing standards and requirements.
- 06-16-2010 Ordinance 2647-2010 was brought before the Council during a Work session for a 1<sup>st</sup> Reading. Council directed staff to make changes in the Ordinance.

## **BACKGROUND:**

Ontario Municipal Code Title 3, Chapter 16, establishes regulations for dealers of regulated property within the City of Ontario.

Dealers of regulated property purchase various types of property from the general public, which is later sold back to the general public.

Criminals involved with stolen property will seek these types of businesses in order to dispose of the property for cash. Criminals are less apt to use businesses that employ good practices such as video surveillance, customer identification and property documentation. It is common for criminals involving stolen property to travel to neighboring cities or even neighboring states to sell stolen property to these types of businesses.

Dealers of regulated property are required to submit reports of transactions to the police department. Reports are required to contain information such as the date of transaction,

identity of the person making the transaction and a full description of property that was purchased by the business.

Police department staff compares transaction reports to reports by crime victims of stolen property. Staff assigned to these duties are Telecommunicators from the 9-1-1 Center. Ontario Municipal Code requires dealers of regulated property hold property from transactions for a ten-day period in order to get comparisons complete. Police department staff has recently been inundated by the amount of transaction reports received and it has been impossible to complete the comparisons within the 10-day period.

Several Idaho cities have pawnshops, which also take in property from the general public. Similar ordinances exist to regulate these businesses and are also considered dealers of regulated property. The number of records they are tasked in reviewing has also inundated other law enforcement agencies.

Due to the popularity of these types of businesses across the nation, there has been the evolution of businesses that will assist police agencies with the receipt, storage and comparison of property transactions. These are subscription-based services that police agencies initiate and in turn, then provide to dealers of regulated property within their jurisdiction. Dealers of regulated property are able to submit their transactions on-line immediately following the transaction. Subscribing police agencies are then able to search property and suspects within a database in order to solve crimes. There have been cases of recovered property and arrests made within hours of a theft due to these types of services.

The police department desires to modify language in Ontario Municipal Code Title 3, Chapter 16 to help address issues involving Dealers of Regulated Property concerning employee requirements, business and record keeping practices and violations of the ordinance.

The two primary changes are that instead keeping written records, Dealers of Regulated Property would submit electronic records of transactions and going from 10 days to 14 days for holding property to allow the police department to review stolen property records.

Changes to the Ordinance from the work session on 06-16-10 were made. There are now provisions to revert to written records if the Dealer of Regulated Property cannot make electronic submissions. An increase in the value of property required for reporting was changed from ten dollars (\$10.00) to twenty dollars (\$20.00). Time required for electronic submissions was changed from "noon the next day of the transaction" to "within 24 hours from the time of the transaction" and the requirement to report the weight of jewelry was removed.

**PROBLEM DISCUSSION:**

These proposed changes further direct how a private business operates. The proposed changes will require new procedures by the dealer of regulated property to complete electronic transaction submissions. The proposed changes increase the time property is taken in until that property can be put out for sale for the dealer of regulated property to gain a profit.

**FINANCIAL IMPLICATIONS:**

The desired subscription for services that will assist with the receipt, storage and comparison of property transactions will cost approximately \$1400 per year.

**RECOMMENDATION:**

Staff recommends that the Council adopt Ordinance #2647-2010.

**PROPOSED MOTION:**

I move that the Council adopt Ordinance #2647-2010, AN ORDINANCE AMENDING ONTARIO MUNICIPAL CODE 3-16 REGARDING DEALERS OF REGULATED PROPERTY WITHIN THE CITY OF ONTARIO on First Reading by Title Only.

**AN ORDINANCE AMENDING VARIOUS PROVISIONS  
OF ONTARIO MUNICIPAL CODE TITLE 3, CHAPTER 16  
CONCERNING CHANGES FOR DEALERS OF REGULATED PROPERTY**

**WHEREAS,** the Ontario Police Department is charged with enforcing the laws of Ontario Code Title 3, Chapter 16, which addresses Dealers of Regulated Property, and;

**WHEREAS,** the sale of regulated property is commonly associated with criminal activity; and

**WHEREAS,** regulations and procedures need to be updated for dealers of regulated property.

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

Ontario City Code Section 3-16-4 is amended by adding the following underlined subsection (C):

License qualifications.

**(C) Applicant Qualifications.**

**The applicant and the person who will be principally in charge of the business must be (18) years of age or older.**

**The applicant must not have been convicted of a felony or theft related offense within the five (5) years prior to the application date.**

**No dealer of regulated property shall employ a person under the age of eighteen (18) to conduct transactions regulated by this Chapter.**

Ontario City Code Section 3-16-5 is amended by adding the underlined and eliminating the strikethrough language:

Records required.

(A) Required Information.

On reporting forms furnished by the Ontario Police Department, every person who shall be engaged in the business of a dealer of regulated property shall maintain a records system. The records shall be written, in the English language **and legible** at the time of each loan or purchase.

The records shall contain an accurate account or description of the goods, article or other thing pawned, pledged, or purchased, the time of the receipt, and a description of the person, verified by identification, pawning, pledging, or selling the property.

The record shall be made immediately upon taking the item or article into possession. The description of any item of personal property shall include ~~serial numbers, make, model, year or such other identification numbers if available.~~ **as applicable: brand name, make, model, serial number, and owner applied number or other identifying marks. Jewelry shall be described with the type, color, number and description of stones, style, size or length, any engraving, and whether it is considered a man's woman's or child's piece. CDs, DVDs, videos, tapes, records, etc., shall be described with any owner identification marks and the category of movie or music to which it belongs. The title and artist should also be documented if practicable.**

Purchases by a dealer of regulated property of individual goods or items priced at less than a ~~ten dollars (\$10.00)~~ **twenty dollar (\$20.00)** value are exempt from the above reporting requirements, but shall be reported at such times when the cumulative total of all such sales exceeds fifty dollars (\$50.00).

**(B) Records Transmittal**

**All records described in this Chapter shall be electronically stored as long as the process to do so has been provided by the City of Ontario. These electronic records shall be transmitted within 24 hours from the time of the transaction to the Ontario Police Department in a method and fashion approved by the Chief of Police or his designee. Dealers of Regulated Property shall prepare a legible and correct written copy of records when electronic copies cannot be submitted or the process has not been made available by the Ontario Police Department.**

~~(B) Reports to Police Chief.~~

~~Every dealer of regulated property shall make available to the Police Chief, daily, a legible and correct copy of the records required by subsection (A) of this Section. The Police Department will then be responsible for acquiring those records.~~

Ontario City Code Section 3-16-6 is amended adding the underlined and eliminating the strikethrough language:

Condition of property not to be changed.

All property purchased or received by a dealer of regulated property, incident to such business, and valued by the merchant for sale at ten dollars (\$10.00) or more, shall be held without alteration, change or subsequent sale for a period of ~~ten (10)~~ **fourteen (14)** days after the property is received by the merchant and the record has been completed.

Ontario City Code Section 3-16-7 is amended by adding the following underlined:

Stolen property--Return to true owner.

**Every dealer of regulated property receiving property that the dealer has reason to suspect has been lost or stolen shall promptly notify the police.**

If in the course of a specific criminal investigation, the Chief has probable cause to believe that property received by a dealer of regulated property was not lawfully obtained by the seller or borrower or is evidence of a criminal offense, the Chief may issue a written or oral order requiring the dealer of regulated property to hold said property without alteration or change, and not allow it to be sold or redeemed for a specific period, not to exceed ninety (90) days from the date of the order. If such order is given orally, the Chief shall confirm it in writing within seventy-two (72) hours.

Ontario City Code Section 3-16-8 is amended by adding the following underlined to subsection (C) 6 through 9:

Unlawful acts.

**6. Enter into any regulated transaction in which the property at interest is such property that is manufactured or produced with a serial or identification number, and the said number has been removed, altered or rendered unreadable.**

**7. Fail to report the possession of property that is suspected to be lost or stolen.**

**8. Failure to make a record of any transaction as described in this Chapter.**

**9. Falsifying, obliterating or destroying any records required to be kept pursuant to this Chapter.**

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

AYES:

NAYES:

ABSENT:

ABSTAIN:

APPROVED by the Mayor this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

ATTEST:

\_\_\_\_\_  
Joe Dominick, Mayor

\_\_\_\_\_  
Tori Barnett, MMC, City Recorder

## AGENDA REPORT

July 6, 2010

TO: Mayor and City Council

FROM: Chuck Mickelson, Public Works Director

THROUGH: Henry Lawrence, City Manager

**SUBJECT: RESOLUTION #2010-136: A RESOLUTION APPROVING A LOCAL AGENCY AGREEMENT FOR FUND DISTRIBUTION FOR THE NORTHWEST WASHINGTON AVENUE REALIGNMENT BETWEEN THE CITY OF ONTARIO AND THE STATE OF OREGON, ACTING BY AND THROUGH ITS DEPARTMENT OF TRANSPORTATION, AND AS AUTHORIZED BY THE OREGON JOBS AND TRANSPORTATION ACT OF 2009, ALSO KNOWN AS HOUSE BILL 2001**

DATE: June 14, 2010

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### SUMMARY:

Attached is the following document:

- Resolution 2010-136
- Agreement Number 26720

The Oregon Jobs and Transportation Act of 2009 provides funding for preservation and modernization projects chosen by the Oregon Transportation Commission. During the planning for the Yturri Beltline and the North Ontario Interchange, discussion was held on the realignment of Northwest Washington Avenue. This agreement provides \$4.5 million for the completion of design, acquisition of right of way and construction of a realigned Northwest Washington to North Oregon and the extension of Park Boulevard to the recently acquired city property.

There is one clause in this agreement that will control the schedule on this project. Paragraph 5 on Page 2 reads as follows:

*"5. The Agreement is contingent upon issuance and sale by the State Treasurer, of the bonds authorized by Section 61 of House Bill 2001, 2009 Legislative Assembly (Oregon Laws 2009, Chapter 865) in an amount sufficient to fund this Project. The Agreement is effective and work may begin upon execution of this Agreement, but ODOT's obligation to make Project payments is contingent upon the issuance and sale of such bonds. ODOT will notify Agency when such sale has occurred and the JTA funds are available."*

The City did budget for sewer and water extension to the new city property on Park Boulevard, and that construction is anticipated to be this summer once right of way/easement issues are resolved.

**PREVIOUS COUNCIL ACTION:**

- 2001 ODOT and Ontario entered into agreement No. 697 where Ontario accepted maintenance responsibility for West Idaho, including the underpass, SW 2<sup>nd</sup> Street, SW 4<sup>th</sup> Avenue and North Oregon Street. ODOT agreed to pay the City \$490,000 for future maintenance of these facilities, and the agreement superseded prior agreements made in 1975 and 1979. All right, title and interest in the above mentioned streets would be transferred to Ontario upon completion of the Yturri Beltline. The agreement addressed various other elements including underpass lighting system maintenance, traffic signal maintenance, signage, snow removal and power costs for signals.
- 2006-07 Ontario City Council approved a project to realign Northwest Washington to North Oregon.
- 2007 Ontario hired the firm of CH2M Hill to prepare plans and specifications for this project. Funding for the acquisition of right of way and construction of the realignment was not clearly identified at that time.
- Oct 2009 Resolution 2009-126 approved Amendment No. 1 with ODOT to the Miscellaneous Agreement No. 23255 also known as Cooperative Agreement OR 201 North Ontario Interchange Bridge # 08635, an agreement transferring Northwest Washington to the City of Ontario. In return, ODOT paid the City of Ontario \$375,200 for the realignment of the intersection of Northwest Washington and North Oregon and the construction of curb, gutter and sidewalks along Northwest Washington.

**BACKGROUND:**

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

As noted above, in 2001 Ontario formally agreed to take maintenance and operational responsibility for West Idaho, the railroad underpass, SW 2<sup>nd</sup> Street, SW 4<sup>th</sup> Avenue, and North Oregon Street.

Resolution 2009-126 provided for Ontario to take responsibility for Northwest Washington Street from North Oregon to the Yturri Beltline, which is about 1,500 feet in length. The following significant issues were addressed in the amendment:

- ODOT contributed \$375,200 to the City for improvements or realignment. Should the City not use these funds for the Northwest Washington improvements or realignment, they must be returned to ODOT.
- City accepts responsibility for all maintenance, power costs and repair responsibilities over this section of roadway.
- ODOT retains access control on the transferred right of way.

This current agreement provides \$4.5 million to the City of Ontario for finalizing the design, acquisition of right of way and construction of the realignment of Northwest Washington and construction of Park Boulevard to the city property. In addition, the City can use the \$375,200 as part of the project.

**ALTERNATIVE:**

The City could not approve this agreement and the project will not go forward.

**FINANCIAL IMPLICATIONS:**

This agreement provides \$4,875,200 for the realignment of Northwest Washington. Primary expenses for the City include the costs for new sewer and water lines that are necessary to serve the area, and ongoing maintenance of the newly constructed infrastructure.

**RECOMMENDATION:**

Staff recommends the City Council adopt Resolution #2010-136.

**PROPOSED MOTION:**

I move the City Council adopt Resolution #2010-136: **A RESOLUTION APPROVING A LOCAL AGENCY AGREEMENT FOR FUND DISTRIBUTION FOR THE NORTHWEST WASHINGTON AVENUE REALIGNMENT BETWEEN THE CITY OF ONTARIO AND THE STATE OF OREGON, ACTING BY AND THROUGH ITS DEPARTMENT OF TRANSPORTATION, AND AS AUTHORIZED BY THE OREGON JOBS AND TRANSPORTATION ACT OF 2009, ALSO KNOWN AS HOUSE BILL 2001.**

**RESOLUTION #2010-136**

**A RESOLUTION APPROVING A LOCAL AGENCY AGREEMENT FOR FUND DISTRIBUTION FOR THE N.W. WASHINGTON AVENUE REALIGNMENT BETWEEN THE CITY OF ONTARIO AND THE STATE OF OREGON, ACTING BY AND THROUGH ITS DEPARTMENT OF TRANSPORTATION, AND AS AUTHORIZED BY THE OREGON JOBS AND TRANSPORTATION ACT OF 2009, ALSO KNOWN AS HOUSE BILL 2001**

- WHEREAS,** The Oregon Jobs and Transportation Act of 2009 provides funding for preservation and modernization projects chosen by the Oregon Transportation Commission; and
- WHEREAS,** This agreement provides \$4.5 million for the completion of design, acquisition of right of way and construction of a realigned NW Washington to North Oregon, and the extension of Park Boulevard to the recently acquired city property; and
- WHEREAS,** The City did budget for sewer and water extension to the new city property on Park Boulevard; and
- WHEREAS,** In 2006-2007 the Ontario City Council approved a project to realign NW Washington to North Oregon, and hired the firm of CH2M Hill to prepare plans and specifications for this project. Funding for the acquisition of right of way and construction of the realignment was not clearly identified at that time; and
- WHEREAS,** In October 2009 Resolution 2009-126 provided for Ontario to take responsibility for NW Washington Street from North Oregon to the Yturri Beltline. In return ODOT contributed \$375,200 to the City for improvements or realignment. Should the City not use these funds for the NW Washington improvements or realignment, they must be returned to ODOT.

**NOW THEREFORE, BE IT HEREBY RESOLVED** by the Ontario City Council, to approve Resolution 2010-136: A resolution approving a local agency agreement for fund distribution for the Northwest Washington Avenue realignment between the City of Ontario and the State of Oregon, acting by and through its Department of Transportation, and as authorized by the Oregon Jobs and Transportation Act of 2009, also known as House Bill 2001.

**EFFECTIVE DATE:** Effective immediately upon passage.

**PASSED AND ADOPTED** by the City Council of the City of Ontario this 6th day of July 2010, by the following vote:

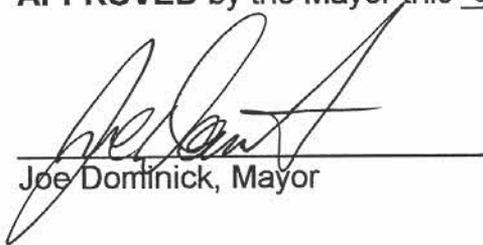
**AYES:** Fugate, Sullivan, Mills, Dominičk, Gaskill, Verini, Crume

**NAYES:** None

**ABSENT:** None

**ABSTAIN:** None

**APPROVED** by the Mayor this 6th day of July, 2010.



\_\_\_\_\_  
Joe Dominick, Mayor

**ATTEST:**



\_\_\_\_\_  
Tori Barnett, MMC, City Recorder

**Oregon Jobs and Transportation Act of 2009  
Local Agency Agreement for Fund Distribution  
NW Washington Avenue Realignment**

THIS AGREEMENT is made and entered into by and between THE STATE OF OREGON, acting by and through its Department of Transportation, hereinafter referred to as "State"; and the City of Ontario, acting by and through its elected officials, hereinafter referred to as "Agency", both herein referred to individually or collectively as "Party" or "Parties."

**RECITALS**

1. Oregon Jobs and Transportation Act of 2009 (JTA) Program, hereinafter referred to as the "JTA of 2009 Program", provides funding for preservation and modernization projects chosen by the Oregon Transportation Commission (OTC).
2. Projects named in Section 64 of 2009 Legislative Assembly, Oregon House Bill 2001, as well as projects approved by the OTC as of October 21, 2009 pursuant to Section 64(3), were amended into the Statewide Transportation Improvement Program (STIP), including the project identified below.
3. By the authority granted in ORS 190.110, 366.572 and 366.576, state agencies may enter into cooperative agreements with counties, cities, and units of local government for the performance of any or all functions and activities that a party to the Agreement, its officers, or agents have the authority to perform.
4. By the authority granted in ORS 366.425, State may accept deposits of money or an irrevocable letter of credit from any county, city, road district, person, firm, or corporation for the performance of work on any public highway within the State. When said money or a letter of credit is deposited, State shall proceed with the Project. Money so deposited shall be disbursed for the purpose for which it was deposited.
5. A portion of NW Washington Avenue is a part of the state highway system under the jurisdiction and control of the Oregon Transportation Commission (OTC). North Park Boulevard, North Oregon Street and a portion of NW Washington Avenue are a part of the City street system under the jurisdiction and control of City.

**NOW THEREFORE**, the premises being in general as stated in the foregoing Recitals, it is agreed by and between the Parties hereto as follows:

## **TERMS OF AGREEMENT**

1. Agency shall reconstruct and realign NW Washington Avenue, North Park Boulevard, and North Oregon Street, hereinafter referred to as "Project". A project description, budget, and map showing the location and approximate limits of the Project are shown on Exhibit "A", attached hereto and by this reference made a part hereof.
2. The total Project cost is estimated at \$4,500,000, which is subject to change. The JTA of 2009 Program funds are limited to \$4,500,000. State shall reimburse Agency 100 percent of eligible, actual costs incurred up to the maximum amount of JTA funds committed for the Project. Agency shall be responsible for all costs in excess of the JTA of 2009 Program funded amount for this Project.
3. This Agreement shall become effective on the date all required signatures are obtained and shall terminate on December 31, 2014. Only work begun after the effective date of this Agreement is eligible for reimbursement with funds available under the JTA of 2009 Program.
4. The funds available under the JTA of 2009 Program are State Highway Funds. To be eligible for reimbursement under the JTA of 2009 Program, expenditures must comply with the requirements of Article IX, Section 3a of the Oregon Constitution.
5. The Agreement is contingent upon issuance and sale by the State Treasurer, of the bonds authorized by Section 61 of House Bill 2001, 2009 Legislative Assembly (Oregon Laws 2009, Chapter 865) in an amount sufficient to fund this Project. The Agreement is effective and work may begin upon execution of this Agreement, but ODOT's obligation to make Project payments is contingent upon the issuance and sale of such bonds. ODOT will notify Agency when such sale has occurred and the JTA funds are available.
6. Agency and State have a joint obligation to ensure timely expenditure of the JTA of 2009 Program funds and to comply with the provisions of the bonds that finance the JTA of 2009 Program.

## **AGENCY OBLIGATIONS**

1. Agency shall perform the work described in Exhibit A.
2. Agency shall present invoices for the eligible, actual costs incurred by Agency on behalf of the Project directly to State's Project Liaison for review and approval. Such invoices shall be submitted in the form as shown on Exhibit "B", JTA of 2009 Program fund Progress Billing, attached hereto and by this reference made a part

Agency/State  
Agreement No. 26720

hereof. Invoices will identify the Project and Agreement number, and shall itemize and explain all expenses for which reimbursement is claimed. Invoices shall be presented for periods of not greater than one month, based on actual expenses incurred, and must clearly specify the percentage of completion of the Project. Upon completion of the Project, Agency shall submit a final invoice and letter indicating that the Project is complete.

3. In the event the bonds authorized by HB 2001, Section 61, are not sold, for whatever reason, then Agency shall be responsible for any and all costs incurred on such project.
4. Agency shall be responsible for any and all costs of Project which are not covered by the JTA of 2009 Program funds, including costs of the Project when the maximum amount of the JTA of 2009 Program funds obligated under this Agreement have been expended.
5. Agency or its consultant shall acquire all necessary rights of way according to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, ORS Chapter 35 and the State Right of Way Manual. Certification of right of way acquisition work must be made by the Agency (or on behalf of its consultant) doing the work. If Agency acquires the right of way, they shall provide a letter from Agency's legal counsel certifying that 1) the right of way needed for the Project has been obtained and 2) right of way acquisition has been completed in accordance with the right of way requirements contained in this Agreement. The certification form shall be routed through the State Region 5 Right of Way Office for co-signature and possible audit. If Agency elects to have State perform right of way functions, a separate agreement shall be executed between Agency and State right of way, referencing this Agreement number.
6. The Project shall be developed in conformance with Agency's standards. If Agency has not adopted standards of its own, the Project shall be developed in conformance with the current edition of A Policy on Geometric Design of Highways and Streets by the American Association of State Highway and Transportation Officials (AASHTO). Agency shall provide State with sufficient information to complete a project prospectus.
7. Agency shall comply with all federal, state, and local laws, regulations, executive orders and ordinances applicable to the work under this Agreement, including, without limitation, the provisions of ORS 279C.505, 279C.515, 279C.520, 279C.530 and 279B.270 incorporated herein by reference and made a part hereof. Without limiting the generality of the foregoing, Agency expressly agrees to comply with (i) Title VI of Civil Rights Act of 1964; (ii) Title V and Section 504 of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659A.142; (iv)

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all regulations and administrative rules established pursuant to the foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.

8. Agency shall perform the service under this Agreement as an independent contractor and shall be exclusively responsible for all costs and expenses related to its employment of individuals to perform the work under this Agreement including, but not limited to, retirement contributions, workers compensation, unemployment taxes, and state and federal income tax withholdings.
9. All employers, including Agency, that employ subject workers who work under this Agreement in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage unless such employers are exempt under ORS 656.126. Agency shall ensure that each of its subcontractors complies with these requirements.
10. Agency will maintain the improvements made as a result of the Project at the same level as other similar facilities owned by Agency.
11. Agency agrees that the Project will be on the public right of way and will serve general transportation needs.
12. Utility relocation or reconstruction may or may not be an eligible Project expense according to the following standard:
  - a. The expense is an eligible expense if the owner of the utility facility possesses a property right for its location on the public right of way.
  - b. The expense is not an eligible expense if the owner of the utility facility does not possess a property right for its location, but the facility exists on the public right of way solely under the permission of the Agency or other road authority, whether that permission is expressed or implied, and whether written or oral.
13. Agency certifies, at the time this Agreement is executed, that sufficient funds are available and authorized for expenditure to finance costs of this Agreement within Agency's current appropriation or limitation of the current budget. Agency further agrees that they will only submit invoices to State for reimbursement on work that has been performed and paid for by Agency.
14. Agency shall, to the extent permitted by the Oregon Constitution and the Oregon Tort Claims Act, indemnify, defend, save, and hold harmless the State of Oregon, OTC and its members, Department of Transportation, its officers and employees from any and all claims, suits, and liabilities which may occur in the performance of

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this Project. Agency's total liability shall not exceed the tort claims limits provided in Oregon Tort Claims Act, ORS 30.260 to 30.300, for "local public bodies".

15. Notwithstanding the foregoing defense obligations under the paragraph above, neither Agency nor any attorney engaged by Agency shall defend any claim in the name of the State of Oregon or any agency of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without the prior written consent of the Oregon Attorney General. The State of Oregon may, at anytime at its election assume its own defense and settlement in the event that it determines that Agency is prohibited from defending the State of Oregon, or that Agency is not adequately defending the State of Oregon's interests, or that an important governmental principle is at issue or that it is in the best interests of the State of Oregon to do so. The State of Oregon reserves all rights to pursue any claims it may have against Agency if the State of Oregon elects to assume its own defense.
16. Agency shall place signs that identify Project as "Oregon Jobs and Transportation Act" (State approved design). Agency may affix additional signage that identifies local funds used for the Project.
17. Agency shall provide progress information, appropriate links from Agency's web sites related to their JTA of 2009 Projects, and photographs in a suitable format directly to the State's Project Liaison for posting on the State's JTA of 2009 Program web site.
18. Agency agrees to provide State with name of the contractor and subcontractors doing work on the Project along with total dollars contracted to those listed.
19. The Special Provisions for the construction contract (Contract) work between Agency and its construction contractor(s) for this Project shall include the following stipulations:
  - a. Contractor shall name State and Agency as third Party beneficiaries of the resulting Contract.
  - b. Contractor shall indemnify, defend and hold harmless Agency, State and their officers, employees and agents from and against all claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature whatsoever resulting from, arising out of, or relating to the activities of Contractor or its officers, employees, sub-contractors, or agents under this Contract.
  - c. Commercial General Liability. Contractor shall obtain, at Contractor's expense, and keep in effect during the term of this Contract, Commercial General Liability

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Insurance covering bodily injury and property damage in a form and with coverages that are satisfactory to State and Agency. This insurance shall include personal and advertising injury liability, products and completed operations. Coverage may be written in combination with Automobile Liability Insurance (with separate limits). Coverage shall be written on an occurrence basis. If written in conjunction with Automobile Liability the combined single limit per occurrence shall not be less than \$ 1,000,000 for each job site or location. Each annual aggregate limit shall not be less than \$ 2,000,000.

- d. Automobile Liability. Contractor shall obtain, at Contractor's expense, and keep in effect during the term of this Contract, Commercial Business Automobile Liability Insurance covering all owned, non-owned, or hired vehicles. This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits). Combined single limit per occurrence shall not be less than \$1,000,000.
- e. Additional Insured. The liability insurance coverage, except Professional Liability, Errors and Omissions, or Workers' Compensation, if included, required for performance of the Contract shall include State and Agency and its divisions, officers and employees as Additional Insured but only with respect to the Contractor's activities to be performed under this Contract. Coverage shall be primary and non-contributory with any other insurance and self-insurance.
- f. Notice of Cancellation or Change. There shall be no cancellation, material change, potential exhaustion of aggregate limits or non-renewal of insurance coverage(s) without thirty (30) days written notice from the Contractor or its insurer(s) to State and Agency. Any failure to comply with the reporting provisions of this clause shall constitute a material breach of Contract and shall be grounds for immediate termination of this Contract.

20. Agency certifies and represents that the individual(s) signing this Agreement has been authorized to enter into and execute this Agreement on behalf of Agency, under the direction or approval of its governing body, commission, board, officers, members or representatives, and to legally bind Agency.

21. Agency's Project Manager for this Project is Chuck Mickelson, Public Works Director, City of Ontario, 444 S.W. 4<sup>th</sup> St., Ontario, Oregon, 97912, 541-881-3231, chuck.mickelson@ontariooregon.org, or assigned designee upon individual's absence. State's Project Manager shall be notified in writing of any contact information changes during the term of this Agreement.

## **STATE OBLIGATIONS**

1. In consideration for the services performed, State agrees to pay Agency within forty-five (45) days of receipt by State of the Project invoice and Progress Billing Form. State shall reimburse Agency 100 percent of eligible, actual costs incurred up to the maximum amount of JTA funds committed for the Project specified in Terms of Agreement, Paragraph two (2). Under no conditions shall State's total obligation exceed \$4,500,000, in JTA of 2009 Program funds, including all expenses. When reimbursement is requested, Agency shall submit Exhibit B.
2. State shall review the documentation provided by Agency to ensure that the Project undertaken by Agency is the Project approved by the OTC at the October 21, 2009 meeting.
3. State grants authority to Agency to enter upon State right of way for the construction of this Project as provided for in miscellaneous permit to be issued by State District 14 Office.
4. State shall not be required to approve Agency's selection of contractors, right of way purchase, or engineering design documents, except as the Project design affects the state highway system or as required by the conditions of approval adopted by the OTC.
5. State's Project Manager for this Project is Sean P. Maloney, Project Leader, Oregon Department of Transportation, 1390 SE 1<sup>st</sup> Ave., Ontario, Oregon, 97914, 541-889-8558 ext 235, sean.maloney@odot.state.or.us, or assigned designee upon individual's absence. Agency's Project Manager shall be notified in writing of any contact information changes during the term of this Agreement.

## **GENERAL PROVISIONS**

1. This Agreement may be terminated by mutual consent of both Parties.
2. State may terminate this Agreement effective upon delivery of written notice to Agency, or at such later date as may be established by State, under any of the following conditions:
  - a. If Agency fails to provide services called for by this Agreement within the time specified herein or any extension thereof.
  - b. If Agency fails to perform any of the other provisions of this Agreement or so fails to pursue the work as to endanger performance of this Agreement in accordance with its terms, and after receipt of written notice from State fails to correct such failures within ten (10) days or such longer period as State may authorize.

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- c. Because of legislative or other legal action, including but not limited to initiative petitions, there is failure to approve, reduction, elimination, or other interference with appropriations of state expenditure limitation to the extent that legal authority is insufficient to enable State, in its reasonable discretion, to continue making payments under this Agreement.
  - d. State, the Department of Justice, or a court of competent jurisdiction determines that state law, rules, regulation or guidelines are modified, changed, repealed or interpreted in such a way that the activities described in this Agreement are no longer allowable or no longer eligible for funding proposed by this Agreement.
  - e. If State fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow State, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement.
  - f. If federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the work under this Agreement is prohibited or if State is prohibited from paying for such work from the planned funding source.
3. If State terminates this Agreement for the reasons described in General Provisions 2. "a" or "b" above, Agency must reimburse State for all JTA of 2009 Program funds expended. If Agency fails to reimburse State, State may withhold Agency's proportional share of State Highway Fund distribution necessary to reimburse State for costs incurred by such Agency breach.
4. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
5. State and Agency are the only Parties to this Agreement and, as such, are the only Parties entitled to enforce its terms. Nothing in this Agreement gives or shall be construed to give or provide any benefit, direct, indirect or otherwise to third persons unless such third persons are expressly identified by name and specifically described as intended to be beneficiaries of its terms.
6. Agency acknowledges and agrees that State, the Oregon Secretary of State's Office, and their duly authorized representatives shall have access to the books, documents, papers, and records of Agency which are directly pertinent to the specific Agreement for the purpose of making audit, examination, excerpts, and transcripts during the course of the Project and for a period of six (6) years after final payment. Copies of applicable records shall be made available upon request. Payment for costs of copies is reimbursable by State.
7. This Agreement may be executed in several counterparts (facsimile or otherwise) all

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of which when taken together shall constitute one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of this Agreement so executed shall constitute an original.

8. This Agreement and attached exhibits constitute the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of either Party to enforce any provision of this Agreement shall not constitute a waiver by that Party of that or any other provision.

**THE PARTIES**, by execution of this Agreement, hereby acknowledges that its signing representatives have read this Agreement, understand it, and agree to be bound by its terms and conditions.

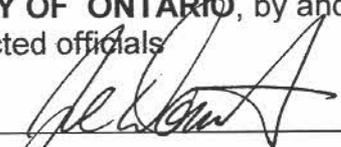
This Project is in the 2008-2011 Statewide Transportation Improvement Program, (Key # 16783) that was approved by the Oregon Transportation Commission on November 14, 2007.

The Oregon Transportation Commission on December 29, 2008, approved Delegation Order No. 2, which authorizes the Director to approve and execute agreements for day-to-day operations. Day-to-day operations include those activities required to implement the biennial budget approved by the Legislature, including activities to execute a project in the Statewide Transportation Improvement Program.

On September 15, 2006, the Director of the Oregon Department of Transportation approved Subdelegation Order No. 2, Paragraph 1, in which authority is delegated to the Deputy Director, Highways to approve and sign agreements over \$75,000 when the work is related to a project included in the Statewide Transportation Improvement Program.

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**CITY OF ONTARIO**, by and through its  
elected officials

By 

Date July 6, 2010

By \_\_\_\_\_

Date \_\_\_\_\_

**APPROVED AS TO LEGAL  
SUFFICIENCY**

By \_\_\_\_\_  
Agency Counsel

Date \_\_\_\_\_

**Agency Contact:**  
Chuck Mickelson, Public Works Director  
City of Ontario  
444 S.W. 4<sup>th</sup> St.  
Ontario, Oregon, 97912  
541-881-3231  
Chuck.mickelson@ontariooregon.org

**State Contact:**  
Sean P. Maloney, Project Leader  
Oregon Department of Transportation  
1390 SE 1<sup>st</sup> Ave., Ontario, Oregon 97914  
541-889-8558 ext. 235  
Sean.maloney@odot.state.or.us

**STATE OF OREGON**, by and through  
its Department of Transportation

By \_\_\_\_\_  
Deputy Director, Highways

Date \_\_\_\_\_

**APPROVAL RECOMMENDED**

By \_\_\_\_\_  
Local Government Section Manager

Date \_\_\_\_\_

By \_\_\_\_\_  
Region 5 Manager

Date \_\_\_\_\_

By \_\_\_\_\_  
District 14 Manager

Date \_\_\_\_\_

**APPROVED AS TO LEGAL  
SUFFICIENCY**

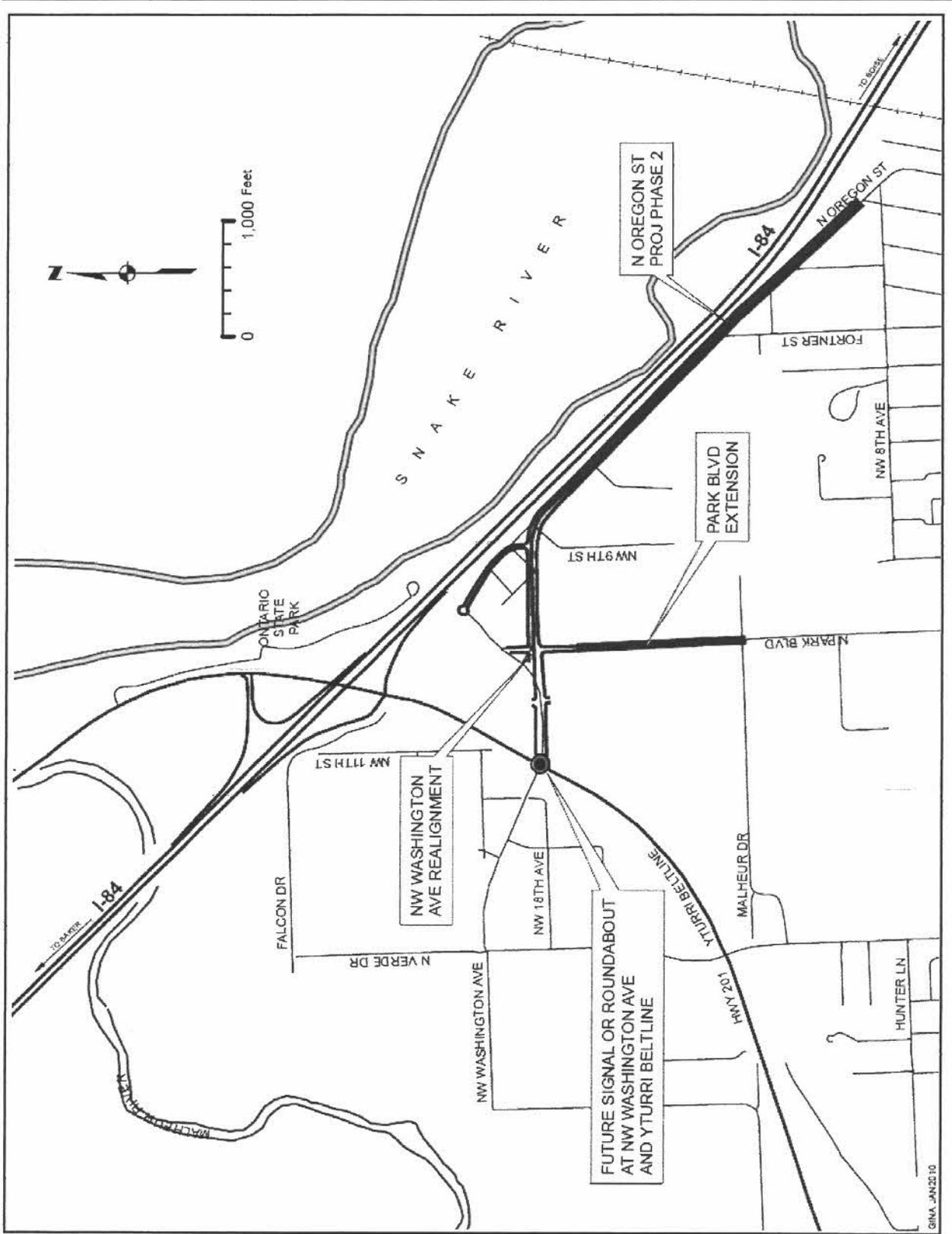
By \_\_\_\_\_  
Assistant Attorney General

Date: \_\_\_\_\_

PROJECT DESCRIPTION  
City of Ontario  
NW Washington Avenue Realignment

Agency shall reconstruct and realign NW Washington Avenue, North Park Boulevard, and North Oregon Street.

Project Cost Estimate		Project Financing	
Preliminary engineering & design	\$50,000	Agency Contribution	
Right-of-way purchase	\$1,000,000	JTA of 2009 Program	\$4,500,000
Construction	\$3,450,000	<b>Total Funds</b>	<b>\$4,500,000</b>
<b>Total Project Cost</b>	<b>\$4,500,000</b>		



**Oregon Jobs and Transportation Act of 2009  
 Progress Billing Form**

Agency: \_\_\_\_\_  
 Project: \_\_\_\_\_  
 Agreement No: \_\_\_\_\_  
 Billing Period: \_\_\_\_\_ to \_\_\_\_\_

	Costs Incurred This Period	Costs Billed Previously	Total Cost To Date	Participation Rate	Total Amount Claimed	Prior Total Claimed	Amount Claimed This Period	Percent Complete This Phase
Planning								
Engineering Design								
Right of Way								
Construction								
Total								

Submission of this request certifies that, in accordance with the laws of the State of Oregon and under the conditions of approval for the Project identified above, actual costs claimed have been incurred and are eligible pursuant to the Intergovernmental Agreement between Agency and State. Also, no other claims have been presented to, or payment made by, the State of Oregon for those costs claimed for reimbursement.

\_\_\_\_\_  
 Agency Project Liaison

\_\_\_\_\_  
 Date

-----  
 (for State use)

I have reviewed the above Project and related costs and, in my opinion, subject to audit, the costs reflect the progress to date and are eligible for reimbursement in the amount of \$\_\_\_\_\_.

\_\_\_\_\_  
 State Project Liaison

\_\_\_\_\_  
 Date

## AGENDA REPORT

July 6, 2010

TO: Mayor and City Council

FROM: Chuck Mickelson, Public Works Director

THROUGH: Henry Lawrence, City Manager

**SUBJECT: RESOLUTION #2010-137: A RESOLUTION ACKNOWLEDGING RECEIPT AND AUTHORIZING EXPENDITURE OF ODOT PROJECT FUNDING FOR THE NORTHWEST WASHINGTON AVENUE REALIGNMENT PROJECT WITHIN THE CITY'S GRANT FUND**

DATE: June 28, 2010

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### SUMMARY:

Attached is the following document:

- Resolution #2010-137

### PREVIOUS COUNCIL ACTION:

- 2001 ODOT and Ontario entered into agreement No. 697 where Ontario accepted maintenance responsibility for West Idaho, including the underpass, SW 2<sup>nd</sup> Street, SW 4<sup>th</sup> Avenue and North Oregon Street. ODOT agreed to pay the City \$490,000 for future maintenance of these facilities, and the agreement superseded prior agreements made in 1975 and 1979. All right, title and interest in the above mentioned streets would be transferred to Ontario upon completion of the Yturri Beltline. The agreement addressed various other elements including underpass lighting system maintenance, traffic signal maintenance, signage, snow removal and power costs for signals
- 2006-
- 2007 Ontario City Council approved a project to realign Northwest Washington to North Oregon.
- 2007 Ontario hired the firm of CH2M Hill to prepare plans and specifications for this project. Funding for the acquisition of right of way and construction of the realignment was not clearly identified at that time.
- 2009 Resolution 2009-126 approved Amendment No. 1 with ODOT to the Miscellaneous Agreement No. 23255 also known as Cooperative Agreement OR 201 North Ontario Interchange Bridge # 08635, an agreement transferring Northwest Washington to the City of Ontario. In return, ODOT paid the City of Ontario \$375,200 for the realignment of the intersection of Northwest Washington and North Oregon and the construction of curb, gutter and sidewalks along Northwest Washington.

**BACKGROUND:**

The City of Ontario formally agreed to take maintenance and operational responsibility for West Idaho, the railroad underpass, SW 2<sup>nd</sup> Street, SW 4<sup>th</sup> Avenue, and North Oregon Street in 2001.

Resolution 2009-126 authorized the City of Ontario to also take responsibility for Northwest Washington Street from North Oregon to the Yturri Beltline. The following significant issues were addressed in the amendment:

- ODOT contributed \$375,200 to the City for improvements or realignment. Should the City not use these funds for the NW Washington improvements or realignment, they must be returned to ODOT.
- City accepts responsibility for all maintenance, power costs and repair responsibilities over this section of roadway.
- ODOT retains access control on the transferred right of way.

This current agreement provides \$4.5 million to the City of Ontario for finalizing the design, acquisition of right of way and construction of the realignment of NW Washington and construction of Park Boulevard to the city property. In addition, the City can use the \$375,200 as part of the project.

**ALTERNATIVE:**

Should the City not accept the \$4.5 million from the State of Oregon, the project would not move forward and the City would have to return the \$375,200 to ODOT.

**FINANCIAL IMPLICATIONS:**

The proposed Resolution identifies new project-specific grant funds from ODOT with 100% funding, no match required. The agreement states that any project costs over and above the \$4.5 Million are to be paid by the City.

The City's Grant Fund budget needs to be adjusted to reflect the ODOT grant revenues and identify the project expenditures. This will not result in any change in contingency balances.

**RECOMMENDATION:**

Staff recommends the Council adopt Resolution #2010-137.

**PROPOSED MOTION:**

I move the City Council adopt RESOLUTION #2010-137: **A RESOLUTION ACKNOWLEDGING RECEIPT AND AUTHORIZING EXPENDITURE OF ODOT PROJECT FUNDING FOR THE NORTHWEST WASHINGTON AVENUE REALIGNMENT PROJECT WITHIN THE CITY'S GRANT FUND.**

RESOLUTION #2010-137

A RESOLUTION ACKNOWLEDGING RECEIPT AND AUTHORIZING EXPENDITURE OF  
ODOT PROJECT FUNDING FOR THE NORTHWEST WASHINGTON AVENUE  
REALIGNMENT PROJECT WITHIN THE CITY'S GRANT FUND

- WHEREAS,** The 2009-2011 Biennial Budget was adopted based on known or anticipated revenues and expenses; and
- WHEREAS,** The City and State wish to enter into an agreement that provides \$4.5 million for the completion of design, acquisition of right of way and construction of a realigned Northwest Washington to North Oregon, and the extension of Park Boulevard to the recently acquired city property; and
- WHEREAS,** The City Council desires to accept the funds and formally modify the 2009-2011 Biennial Budget by identifying the revenues and total project expenses to complete the project.

**NOW THEREFORE, BE IT HEREBY RESOLVED** by the Ontario City Council, to approve the following adjustments to the 2009-2011 Biennial budget:

Account Number	Account Name	Adopted 09-11 Budget	Proposed Change	Revised 09-11 Budget
<b>GRANT FUND</b>				
REVENUES				
010-000-456172	ODOT JTA 09-NW WA PROJ	\$ -	\$ 4,500,000	\$ 4,500,000
EXPENSES				
010-038-714172	ODOT JTA 09-NW WA PROJ	\$ -	\$ 4,500,000	\$ 4,500,000

**EFFECTIVE DATE:** Effective immediately upon passage.

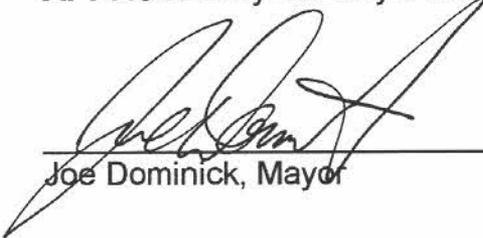
**PASSED AND ADOPTED** by the City Council of the City of Ontario this 6th day of July 2010, by the following vote:

**AYES:** Fugate, Sullivan, Mills, Dominick, Gaskill, Verini, Crume

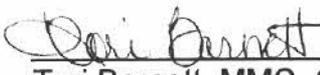
**NAYES:** None

**ABSENT:** None

**APPROVED** by the Mayor this 6th day of July, 2010.

  
\_\_\_\_\_  
Joe Dominick, Mayor

**ATTEST:**

  
\_\_\_\_\_  
Tori Barnett, MMC, City Recorder

**AN ORDINANCE AMENDING VARIOUS PROVISIONS  
OF ONTARIO MUNICIPAL CODE TITLE 3, CHAPTER 16  
CONCERNING CHANGES FOR DEALERS OF REGULATED PROPERTY**

**WHEREAS,** the Ontario Police Department is charged with enforcing the laws of Ontario Code Title 3, Chapter 16, which addresses Dealers of Regulated Property, and;

**WHEREAS,** the sale of regulated property is commonly associated with criminal activity; and

**WHEREAS,** regulations and procedures need to be updated for dealers of regulated property.

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

Ontario City Code Section 3-16-4 is amended by adding the following underlined subsection (C):

License qualifications.

**(C) Applicant Qualifications.**

**The applicant and the person who will be principally in charge of the business must be (18) years of age or older.**

**The applicant must not have been convicted of a felony or theft related offense within the five (5) years prior to the application date.**

**No dealer of regulated property shall employ a person under the age of eighteen (18) to conduct transactions regulated by this Chapter.**

Ontario City Code Section 3-16-5 is amended by adding the underlined and eliminating the strikethrough language:

Records required.

(A) Required Information.

On reporting forms furnished by the Ontario Police Department, every person who shall be engaged in the business of a dealer of regulated property shall maintain a records system. The records shall be written, in the English language **and legible** at the time of each loan or purchase.

The records shall contain an accurate account or description of the goods, article or other thing pawned, pledged, or purchased, the time of the receipt, and a description of the person, verified by identification, pawning, pledging, or selling the property.

The record shall be made immediately upon taking the item or article into possession. The description of any item of personal property shall include ~~serial numbers, make, model, year or such other identification numbers if available.~~ **as applicable: brand name, make, model, serial number, and owner applied number or other identifying marks. Jewelry shall be described with the type, color, number and description of stones, style, size or length, any engraving, and whether it is considered a man's woman's or child's piece. CDs, DVDs, videos, tapes, records, etc., shall be described with any owner identification marks and the category of movie or music to which it belongs. The title and artist should also be documented if practicable.**

Purchases by a dealer of regulated property of individual goods or items priced at less than a ten dollars ~~(\$10.00)~~ **twenty dollar (\$20.00)** value are exempt from the above reporting requirements, but shall be reported at such times when the cumulative total of all such sales exceeds fifty dollars (\$50.00).

**(B) Records Transmittal**

**All records described in this Chapter shall be electronically stored as long as the process to do so has been provided by the City of Ontario. These electronic records shall be transmitted within 48 hours from the time of the transaction to the Ontario Police Department in a method and fashion approved by the Chief of Police or his designee. Dealers of Regulated Property shall prepare a legible and correct written copy of records when electronic copies cannot be submitted for reasons beyond the dealer's control or the process has not been made available by the Ontario Police Department.**

**(B) Reports to Police Chief.**

~~Every dealer of regulated property shall make available to the Police Chief, daily, a legible and correct copy of the records required by subsection (A) of this Section. The Police Department will then be responsible for acquiring these records.~~

Ontario City Code Section 3-16-6 is amended adding the underlined and eliminating the strikethrough language:

Condition of property not to be changed.

All property purchased or received by a dealer of regulated property, incident to such business, and valued by the merchant for sale at ten ~~twenty~~ dollars (~~\$10.00~~) **(\$20.00)** or more, shall be held without alteration, change or subsequent sale for a period of ten (10) days after the property is received by the merchant and the record has been completed.

Ontario City Code Section 3-16-7 is amended by adding the following underlined:

Stolen property--Return to true owner.

**Every dealer of regulated property receiving property that the dealer has reason to suspect has been lost or stolen shall promptly notify the police.**

If in the course of a specific criminal investigation, the Chief has probable cause to believe that property received by a dealer of regulated property was not lawfully obtained by the seller or borrower or is evidence of a criminal offense, the Chief may issue a written or oral order requiring the dealer of regulated property to hold said property without alteration or change, and not allow it to be sold or redeemed for a specific period, not to exceed ninety (90) days from the date of the order. If such order is given orally, the Chief shall confirm it in writing within seventy-two (72) hours.

Ontario City Code Section 3-16-8 is amended by adding the following underlined to subsection (C) 6 through 9:

Unlawful acts.

**6. Enter into any regulated transaction in which the property at interest is such property that is manufactured or produced with a serial or identification number, and the said number has been removed, altered or rendered unreadable.**

**7. Fail to report the possession of property that the dealer has reason to suspect has been lost or stolen.**

**8. Failure to make a record of any transaction as described in this Chapter.**

**9. Falsifying, obliterating or destroying any records required to be kept pursuant to this Chapter.**

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

AYES:

NAYES:

ABSENT:

ABSTAIN:

APPROVED by the Mayor this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

ATTEST:

\_\_\_\_\_  
Joe Dominick, Mayor

\_\_\_\_\_  
Tori Barnett, MMC, City Recorder

**COUNCIL DISCUSSION ITEM**

July 6, 2010

TO: Honorable Mayor and City Council Members

THRU: Henry Lawrence, City Manager

FROM: Chief Mike Kee

SUBJECT: **2010 Justice Assistance Grant Program**

DATE: June 29, 2010

**Summary:**

The Ontario Police Department is in the process of applying for a Justice Assistance Grant in order to purchase police equipment for Malheur County Law Enforcement. The Grant requires that the Governing Body (City Council) be informed of the Grant Application.

**Previous Council Action:**

None

**Background:**

The City of Ontario has applied for a \$22,682 Justice Assistance Grant. This Grant like those in the recent past requires that the funds be shared with Malheur County.

The \$22,682 grant has been submitted for equipment that will improve the efficiency of Malheur County Law Enforcement, including vehicle stop sticks and radio equipment.

**Financial Implications:**

None at this time. No match is required.

**Alternative:**

None.

**Recommendation:**

None.