

AGENDA
CITY COUNCIL - CITY OF ONTARIO, OREGON
Monday, July 9, 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, June 27, 2012, and a study session was held on Thursday, June 28, 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 06/18/2012 1-8
- B) Liquor License Application: Spuds & Suds Change of Ownership 9
- C) Ordinance #2668-2012: Amend OMC 7-1 re: Nuisance and Health Regulations (Final Reading) 10-15
- D) Approval of the Bills

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

6) New Business:

- A) Accept Warranty Deed - Riley Hill re: NW Washington Relocation Project 16-25
- B) Bid Award: North Park Boulevard Sewer and Water (11WAT-10) 26-30
- C) Industrial Lands Committee Proposal 31-37
- D) IGA w/TVCC for Maintenance of Landscape Triangle at SW 4th Street 38-43

7) Discussion Item(s)

- A) Community in Action - Residential Rehabilitation Program

8) Correspondence, Comments and Ex-Officio Reports

9) Executive Sessions:

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

10) Adjourn

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

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COUNCIL MEETING MINUTES

June 18, 2012

The regular meeting of the Ontario City Council was called to order by Mayor Joe Dominick at 7:00 p.m. on Monday, June 18, 2012, in the Council Chambers of City Hall. Council members present were Norm Crume, Joe Dominick, Jackson Fox, Charlotte Fugate and David Sullivan. Dan Jones and Ronald Verini participated by telephone.

Members of staff present were Chuck Mickelson, Tori Barnett, Larry Sullivan, Bob Walker, and Mark Alexander. The meeting was recorded on tape, and the tapes are available at City Hall.

Jackson Fox led everyone in the Pledge of Allegiance.

AGENDA

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

LOCAL CONTRACTORS REVIEW BOARD

Chuck Mickelson stated the purpose of this agenda item was for the Council to consider hiring Oster Professional Group, PC as the City of Ontario audit firm for a three-year contract to audit fiscal years beginning July 1, 2011 and ending June 30, 2014. In August, 2011, the Council approved a one-year contract with Oster Professional Group, PC for fiscal year 2010/2011 for the amount of \$19,965.

For a number of years the City of Ontario had been audited by the firm of Dickey Tremper from Pendleton. Although the firm had continued to serve the City well, it was good practice to occasionally change to another firm to avoid having the relationship between the staff and auditors become too familiar and routine.

Due to the change of Finance Directors in August, 2011 there was no time to request proposals and expect to be successful in being able to schedule an audit firm's staff during the height of the audit season. Since Oster Professional Group, PC was currently the auditor for 8C School District and TVCC, they were asked to provide an audit proposal for one-year for the City.

Section 7.1 of the Ontario Financial Policies Manual stated the City's Purchasing Policy would not apply to professional services and the requirements would not be mandatory in the employment of professional services such as Certified Public Accountants/Auditors if it sat as a local contract review board and declared the particular contract to be a personal services contract and waived the City's solicitation requirements for the contract.

Charlotte Fugate moved, seconded by David Sullivan, that the Mayor and Ontario City Council, sitting as a Local Contract Review Board, declare the Oster Professional Group, PC contract letter of June 1, 2012 is a personal services contract under Section 7.1 of the Ontario Financial Policies Manual. Roll call vote: Crume-yes; Fox-yes; Fugate-yes; Jones-yes; Sullivan-yes; Verini-yes; Dominick-yes. Motion carried 7/0/0.

David Sullivan moved, seconded by Jackson Fox, that the Mayor and Ontario City Council, sitting as a Local Contract Review Board, approve the personal services contract for three years with Oster Professional Group, PC without soliciting proposals from other auditing firms. 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 recused himself due to a conflict, as his corporation had an invoice on the bills.

Charlotte Fugate moved, seconded by Norm Crume, to approve Consent Agenda Item A: Approval of the Regular Minutes of 06/04/2012; and Item B: Approval of the Bills. Roll call vote: Crume-yes; Fox-yes; Fugate-yes; Jones-yes; Sullivan-yes; Verini-yes; Dominick-abstain. Motion carried 6/0/0/1.

NEW BUSINESSResolution #2012-112: Reclass Projects Inadvertently Charged to Operating Contingency

Chuck Mickelson, City Manager, stated the Budget Committee entertained two motions in regards to funding the transit system. Ron Verini moved and Bruce Hunter seconded to fund the transit system for the biennium budget, but the budget committee voted 6 yes and 8 no, so the motion failed. However, following that action, a motion was made by Norm Crume and seconded by Amanda Anderson to decline funding the transit system and the budget committee voted 8 yes and 6 no and the motion passed.

On June 20, 2011 at the City Council meeting, the transit system was the primary topic being discussed during the budget hearing portion of the meeting. There was an extensive discussion by the public at that time. David Sullivan moved and Ron Verini seconded to reallocate expenditures, reduce contingency by \$30,000, and increase materials and supplies by \$30,000 to provide funding for Treasure Valley Transit. The voting was 4/3/0 with Crume no, Fox no, Fugate yes, Jones no, Sullivan yes, Verini yes, Dominick yes, so the motion passed.

The city requested additional financial information from the Malheur Council on Aging and Community Services to ensure the city's contribution was only being used to benefit the City of Ontario citizens before considering additional funding for the Ontario bus route for the second year of the biennium. This information has since been received and reviewed.

Since the \$30,000 proposed additional expense was less than 10% of the General Fund Budget, this request could be handled by a resolution approved by the Council.

The proposed resolution would reduce the General Fund Operating Contingency by \$30,000 and increase the Transit Program Contribution by \$30,000 summarized as follows:

Account Number	Account Name	Adopted FY 11-13 Budget	Proposed Change	Revised FY 11-13 Budget
GENERAL FUND				
ADMINISTRATIVE OVERHEAD EXPENSE				
001-004-615553	TRANSIT PROGRAM CONTRIBUTION	\$30,000	\$30,000	\$60,000
001-004-871000	OPERATING CONTINGENCY	\$1,529,651	\$(30,000)	\$1,499,651

Following was a history of the use of the Operating Contingency 001-004-871000 if Resolution #2012-109 is approved:

Original approved budget for the 2011-2013 biennium:	\$1,538,401
Demo – Goodman Oil	\$ (8,750)
2012-2013 Transit Program Contribution	\$ (30,000)
Balance Remaining Operating Contingency	\$1,499,651

David Sullivan moved, seconded by Charlotte Fugate, that the Ontario City Council adopt Resolution #2012-112: A RESOLUTION AUTHORIZING AN ALLOCATION OF EXPENDITURES FOR THE SECOND YEAR OF THE BIENNIUM BUDGET FOR THE TRANSIT PROGRAM. Roll call vote: Crume-yes; Fox-yes; Fugate-yes; Jones-yes; Sullivan-yes; Verini-yes; Dominick-yes. Motion carried 7/0/0.

Resolution 2012-109: Transfer Funds for Transit Program Contribution

Mayor Ken Bishop, Fruitland, Chair, Snake River Transit Advisory Committee, stated the program had been running for a number of years, and they were seeing increased ridership, and positive effects on all the communities. The money given by Ontario went to match programs that brought back 3x times the amount provided to the program. It was positive from a financial standpoint, as well as a number of different aspects in the community. It supported the downtown revitalization project grant application, as a letter of support was included in that application. There were a number of facets this program supported, and he encouraged the Council to continue their support.

Mayor Dominick stated the Budget Committee voted 8-6 to NOT fund the bus system. However, in June the Council voted 2-3 to fund the bus system for one year at \$30K. The city's contingency was close to the \$1.5M mark, a number the Budget Committee didn't want to see go any lower. The operating contingency was the city's emergency fund, for expenses such as the need for a new roof on City Hall, or emergency services vehicle replacement. The city has a Revolving Loan Fund, which was established 15-20 years ago with a \$500K grant from the State of Oregon, to make small loans to businesses to help keep them

in operation. The basic rules of that loan had to maintain that \$500K balance to keep it as a revolving loan fund. Currently, the loan fund had \$30 short of \$800K. The interest from the BLF payments could be used for Community Enhancement projects, as a grant. Item #13 of the BLF terms read that first, the interest on the principal must first replace any principal amounts lost from uncollectable loans on any outstanding loans granted through the city. The remainder of the dollars shall go to the Ontario Economic and Community Enhancement Small Grant Fund, which shall be available for distribution set for by resolution of the Ontario City Council for public facility projects which enhance the economic stability or general quality of life within the community. He believed the bus system fell within that program, and asked that they consider a grant for the Snake River Transit, rather than taking money out of the city's contingency.

Councilor Verini stated it was a great idea, and solved the problem of going below the \$1.5M threshold in the contingency. On the approximate \$800K in the BLF, how much of that was interest? Was that in a bank, or was that loaned funds the city was receiving interest on?

Mr. Mickelson stated according to the balance sheet prepared on June 15, 2012 by Finance Director Lisa Hansen, the city had cash in the bank of \$403,888, and outstanding loans of \$395,639. There was about \$400K cash in the bank.

Councilor Verini asked if they were using interest from the bank, or the interest coming in from the outstanding loans.

Councilor Sullivan stated it would be the interest from the bank. It wasn't recognizing future earnings of interest. It was looking at retained earnings. To keep it at the \$500K level, it would put them at about \$300K available for this type of purpose.

Councilor Crume asked about the verbiage on the resolution done in 2004, and wanted to know the legal ramifications of the wording. It read "...for eligibility, any public facility, project, or piece of equipment, meeting the criteria set forth, shall be eligible to receive funds from the grant fund. For the purpose herein, "public" shall mean a facility or project owned and sponsored by the City of Ontario, Malheur County, State of Oregon, 8-C, or Treasure Valley Community College. He wanted clarification on the "owned and sponsored by".

Larry Sullivan, City Attorney, agreed that in order to meet the definition of public, it would have to be a facility or project that was both owned and sponsored by the city. That's the way it was written.

Councilor Sullivan stated it was odd language, to have owned and sponsored by.

Mr. Sullivan agreed. It was obviously redundant. If the city owned it, it wouldn't need to be sponsored. All of the criteria had been adopted by resolution by the Council, and they could be modified by resolution.

Councilor Crume asked if it was correct in what it said.

Mr. Sullivan agreed that as written, owned and sponsored, those were conjunctive words meaning both had to be satisfied in order to fall within the definition. Whether that was what was intended or not, that was how it was written. It would make more sense to be owned OR sponsored. In order to have it fall within the terms of the resolution, there would need to be some modification of the resolution to correct that language. There was not a formal resolution prepared for that evening, and there would have to be a numbering for it. The Council could take action to have that prepared for the Council to act upon.

Tori Barnett, City Recorder, stated if the Council wanted to resolve the issue at the current meeting, because they had the ability to modify the agenda to add action items to it. That particular piece of the resolution could be modified that evening. She could provide a resolution number, and Larry [Sullivan] could provide the language necessary to make the modification. That could be adopted that evening.

Mr. Sullivan agreed. The Council did not have to have a written resolution in front of them to adopt it, as long as they had the language ready for what they were approving.

Councilor Fox stated the Budget Committee said no to funding the bus, and he would stand by that.

Councilor Sullivan stated they had advisory committees make recommendations to the Council all the time, but that didn't mean they had to follow the recommendations.

Councilor Jones asked if there was an accurate number on interest earned over the past years. He was having a small problem with \$500K or \$800K, as there were two loans that he was aware of that were in default. He also asked if the city's auditors had reviewed the bank statement.

Mr. Mickelson stated it appeared they were comfortable with the balance sheet that was prepared by Finance. He had located a previous memo about the history of the BLF. It was established in 1987, and over the years, total loans issued was \$2,104; principal loan amounts paid in full \$1,164,000; principal loan amounts defaulted \$189,000, and principal receivables at the time was \$750,000. Today's number – cash in the bank - \$403,000, and accounts receivable for existing loans \$395,000. There were two defaults: 2009 for \$140,000, and 2007 for \$48,000. How much interest, specifically, had been paid in, he did not know.

Councilor Fox requested an accounting of the interest, as well as copies of the resolutions they were discussing.

Mr. Sullivan stated if the beginning balance was \$500,000, and that was all principal, anything in excess of that, today, would have had to been interest.

Councilor Jones questioned the \$200,000 write-off. To still have that balance, he questioned if some money had inadvertently been placed in that account. The balance just seemed high.

Councilor Sullivan stated this program had been running since 1987. Every penny of interest earned not only had been earned, but had earned interest on that as well.

Mayor Dominick stated the only two grants he was aware had been given was for a roof replacement at the golf course, and maybe some new flooring out there, and then some recording equipment in the 9-1-1 center. There hadn't been a lot of money spent on grants from that interest. Even with a total asset of a little less than \$800,000, just to be safe, in subtracting that \$200,000, that still left \$600,000 in the account, which was \$100,000 over the requirement set by the state.

Councilor Jones just wanted verification that the numbers they were discussing were correct.

Mayor Dominick stated he was confident with the report submitted by the Finance Director and the City Manager.

Councilor Sullivan stated it would have also been part of the audit Oster just completed, and there was nothing in the audit that showed any concern with this.

Mayor Dominick stated the question before them was whether or not to reallocate funding for Snake River Transit through the Operating Contingency or through the Ontario Economic and Community Enhancement Grant. The community had let them know they wanted the service.

Mr. Sullivan stated a modification to the resolution would be necessary, to change the word "and" to "or", and he would also suggest adding a paragraph reading the new resolution would supersede Resolution #2004-101.

Councilor Sullivan stated he believed in the program, and it helped a lot of folks around town, and it was a benefit to the city. He liked that the city's contribution was matched by grant funds, and the city received a good return for what was paid in. The surrounding communities also participated, and it was nice to get a good community partnership. He was in total support of the program.

Councilor Verini stated he had submitted a letter to the editor, and it was also distributed to the Council. Funding the \$30,000 to the program was morally, socially, and fiscally responsible. He was in support of the entire \$30,000 commitment. How it was funded, whether through the BLF or contingency, was immaterial. He liked the idea of taking the funds from the BLF account.

Councilor Fugate stated she supported the program, as it was important to the community. Next time, maybe some businesses could put funds towards the bus program, as the businesses have really benefited from the bus.

Councilor Jones stated according to the article in the newspaper, what he had to say was irrelevant, so he'd just hold off.

Councilor Crume stated most knew he had been against the bus from the beginning. He has stated his reasons. He believed the bus system should be privately run. He supported the dial-a-ride system. He was very intrigued by the thought process on the funding options before them that night, to get it out of the taxpayer's hands. One thing he was still concerned about was that the city's contribution allowed Nyssa and Vale to ride the city's coattails on the 5311 grant. He believed they were subsidizing those two cities, and if he wasn't mistaken, Nyssa and Vale hadn't even been asked to contribute funds. All the other communities contributed, but Nyssa and Vale hadn't, but were still receiving the service. Ontario was contributing the largest amount. He suggested the City of Ontario only contribute \$20,000, and ask Malheur Council on Aging to get with Nyssa and Vale, and ask them to put in \$5,000 each to help support the system. Also, the press in this area uses selective reporting. He had discussed where the city was on the contingency balance. The Budget Committee and the Council agreed to not let the amount go below \$1.5M, to keep the funds available for emergencies. What wasn't well known was that virtually every Council

meeting had a request for some type of emergency that needs funding. If they dropped too low, what would happen when another emergency happened, or they had to settle negotiations? It was not written how close the city was to dropping below the threshold. The paper was doing a poor job of following what was happening. The comment in the paper about for the size of Ontario's budget, \$30K was a mere pittance, that was correct; but it was still \$30K less than they would have.

Charlotte Fugate moved, seconded by David Sullivan, to amend the Agenda to add Resolution #2012-115.

Councilor Fox disagreed. He believed the intent of the word "and" showed the intent of the Council at that time, to spend the interest money only on Ontario's projects.

(Repeat motion) Charlotte Fugate moved, seconded by David Sullivan, to amend the Agenda to add Resolution #2012-115. Roll call vote: Crume-yes; Fox-no; Fugate-yes; Jones-no; Sullivan-yes; Verini-yes; Dominick-yes. Motion carried 5/2/0.

Mayor Dominick stated the change to Resolution #2004-101, to paragraph 2, Eligibility, change the word "and" to "or".

Mr. Sullivan stated it should read "The purpose herein public shall mean a facility or project owned "OR" sponsored by the City of Ontario, Malheur County, State of Oregon, Ontario 8-C School District, or Treasure Valley Community College".

Mayor Dominick stated they also needed to add the paragraph "Resolution #2012-115 supersedes Resolution #2004-101".

Mr. Sullivan agreed; that would ensure there were not two resolutions on the books.

Mayor Dominick moved, seconded by Ron Verini, to adopt Resolution #2012-115, A RESOLUTION AMENDING RESOLUTION #2004-101, MODIFYING PARAGRAPH 2, LINE 6, TO READ "THE PURPOSE HEREIN PUBLIC SHALL MEAN A FACILITY OR PROJECT OWNED OR SPONSORED BY THE CITY OF ONTARIO, MALHEUR COUNTY, STATE OF OREGON, ONTARIO 8-C SCHOOL DISTRICT, OR TREASURE VALLEY COMMUNITY COLLEGE"; AND TO ADD IN A FINAL PARAGRAPH STATING RESOLUTION #2012-115 WOULD SUPERSEDE RESOLUTION #2004-101. Roll call vote: Crume-yes; Fox-no; Fugate-yes; Jones-no; Sullivan-yes; Verini-yes; Dominick-yes. Motion carried 5/2/0.

Norm Crume moved, seconded by Dan Jones, that the City Council utilize funds through the Ontario Economic and Community Enhancement Small Grant Fund, in the amount of \$20,000, for the City of Ontario's transit payment to Snake River Transit.

Councilor Sullivan asked if it wasn't maybe too late to collect money from Nyssa and Vale?

Councilor Crume stated he was perplexed that that could happen. Vale and Nyssa should have been asked to contribute to this.

Councilor Sullivan didn't disagree, but maybe they could deal with this for this year, and put in a stipulation for future funding.

Councilor Crume stood by his motion; and maybe that would be a push to MCOA to get things done in a more timely manner. The advertising for benches and for on the busses, had been talked about for well over a year, and no progress had been done on it. They all expected that to be done by now. His motion was an effort to get that moving.

Councilor Verini stated they might not like the accounting practices, and they definitely had a difficult situation, but the reality was that they got more than the \$30K they were spending for the service. To bring a system into our community, it would cost much more than that just for one bus driver. They system itself brought in a lot of revenue, maybe over \$200K in this area. This community needed to realize the benefits of the riders coming into the community and spending their money. They shouldn't be short-changed by \$10K. That would cause a chain reaction. For the \$10K that Councilor Crume wanted to short them, it wouldn't be beneficial for the community to not fund the full \$30K.

Councilor Crume didn't want to short them \$10K; he wanted that to come from Nyssa and Vale – their fair share.

Mayor Dominick stated he wouldn't put as much pressure on Nyssa and Vale as he would the business community, and the government agencies that benefited from the usage.

(Repeat motion) Norm Crume moved, seconded by Dan Jones, that the City Council utilize funds through the Ontario Economic and Community Enhancement Small Grant Fund, in the amount of \$20,000, for the City of Ontario's transit payment to Snake River Transit. Roll call vote: Crume-yes; Fox-yes; Fugate-no; Jones-yes; Sullivan-no; Verini-no; Dominick-yes. Motion carried 4/3/0.

David Sullivan moved, seconded by Ron Verini, to recognize \$10K over and above the previously allocated \$20K to come from the funds allocated in Resolution #2012-115.

Councilor Jones stated this system was funded by taxpayer's funds, not just \$30K from Ontario. The only way he could support the bus, and he wanted to support it, but during the past one to two years, they had continued to ask what adjustments could be made, and there had never been an attempt to make an adjustment. In businesses, in the city, in the city budget, every department had adjusted their operating budgets. Everyone had reduced expenses, their budgets, they had all made do. The citizens were continually readjusting. Yes, it would scramble MCOA a bit, but by allocating \$20K to them, and allowing them to readjust their routes, it would also set the procedure in their operations for the next budget process. That might just gain some faith with the Budget Committee and the City Council, to continue to support the system. He challenged the Council to support the \$20K, and he challenged the bus company to readjust their budget and their schedules, to show they could reduce and adjust and still provide a service that everyone could support.

(Repeat motion) David Sullivan moved, seconded by Ron Verini, to recognize \$10K over and above the previously allocated \$20K to come from the funds allocated in Resolution #2012-115, and for all \$30K to come from the Economic and Community Enhancement Small Grant Fund. Roll call vote: Crume-no; Fox-no; Fugate-yes; Jones-no; Sullivan-yes; Verini-yes; Dominick-no. Motion failed 3/4/0.

Mayor Dominick stated his no vote was based on his agreement with Councilor Jones's comments, that some changes needed to be made, and a more aggressive advertising campaign needed to be one. He would work with Mayor Bishop to get that moving.

Councilors Dan Jones and Ronald Verini departed the Council Meeting at 8:10 pm.

Resolution #2012-113: Transfer Funds for Pivot and Fence Repair and Additional Operating Expenses at Skyline Farms

Bob Walker, Public Works Director, stated through a combination of effluent water quality and unsatisfactory farming practices, the city's Skyline Farm needed a lot of attention in order to make it a viable site for disposal of the wastewater effluent from May 1st thru October 31st every year as required by the city's ODEQ permit. The City Manager and city staff negotiated a new farm lease with Sage Farms and developed a cost estimate based upon bids to determine cost consequences to the city. This was discussed with the City Council on June 4, 2012.

The City of Ontario undertook a project in 1996 – 1997 to expand the capabilities for the wastewater disposal system. It was decided to send the treated effluent water from the Wastewater Treatment Plant to Skyline Farm for storage and disposal of the water during summer months. The pipelines, pumps, reservoir, and irrigation pivots were built, a 50-year farm lease contract was signed with Farrell Larson, and the effluent water was pumped up to the farm for the farmer's irrigation use.

A combination of the effluent water quality and poor farming practices has now resulted in a quality of soil that was not conducive to good crop production. If the farm was operated as it had been during the past several years, the soils would basically be unsuitable for farming within eight to ten years. Therefore, under the direction of the City Council and the assistance of two Council members and several staff members, a new 10-year farm lease contract was developed with Sage Farms and cost estimates developed to determine consequence to the city for making the farm a viable operation.

On May 21, 2012, staff reviewed conditions at Skyline Farm with the Council, estimated costs for repairs and soil conditioning, and informed them that the existing farmer had defaulted on his contract with the city. The Council recommended that city staff negotiate with several local farmers to develop a new farm lease and refine the costs needed for repairs and soil conditioning. On June 4, 2012, staff reviewed the farm lease contract that was negotiated with Sage Farms, along with the cost consequences to City.

If Resolution #2012-113 was approved, the Operating Contingency (110-165-871000) for the Public Works Sewer Fund would be reduced by \$121,200 for the 2011-2013 budget period, as detailed below:

Original approved budget for the 2011-2013 biennium	\$1,906,089
Skyline Farm repairs and operating expenses	<u>\$ (121,200)</u>
Balance Remaining Operating Contingency	\$1,784,889

David Sullivan moved, seconded by Jackson Fox, that the City Council adopt Resolution # 2012-113: A RESOLUTION AUTHORIZING A REALLOCATION OF EXPENDITURES WITHIN THE SEWER FUND FOR PIVOT AND FENCING REPAIRS AND ADDITIONAL OPERATING EXPENSES FOR SKYLINE FARM. Roll call vote: Crume-yes; Fox-yes; Fugate-yes; Jones-out; Sullivan-yes; Verini-out; Dominick-yes. Motion carried 5/0/2.

Ordinance #2668-2012: Amend OMC 7-1 re: Nuisance and Health Regulations (First Reading)

Mark Alexander, Police Chief, stated the Police Department would like to amend Municipal Code Title 7, Chapter 1 relating to Nuisances and Health Regulations in order to be more effective.

Ontario Municipal Code Title 7, Chapter 1 defined nuisances such as weeds, garbage and junk vehicles. The Code provided a process to abate those nuisances when property owners failed to do so and allowed the city to lien properties when billing for abatements were not addressed.

Other jurisdictions were sending unpaid abatement billings to collections in lieu of placing a lien on properties. The Police Department learned from those jurisdictions that this process had been effective in collecting a higher percentage of their costs in a timelier manner.

Violations of Title 7, Chapter 1 were Unclassified, resulting in a \$300 fine. Many people violating this Code were not in a financially stable position to pay such a fine, which created further burdens and did not always prevent future violations.

The Police Department would like to change language in Title 7, Chapter 1 to give the city the option of turning unpaid bills from nuisance abatements to collections and classifying violations as a Class D Violation. The city should realize an increase in revenue from unpaid nuisance abatement bills.

Norm Crume moved, seconded by David Sullivan, that the Council adopt Ordinance #2668-2012, AN ORDINANCE AMENDING ONTARIO MUNICIPAL CODE TITLE 7, CHAPTER 1, on First Reading by Title Only. Roll call vote: Crume-yes; Fox-yes; Fugate-yes; Jones-out; Sullivan-yes; Verini-out; Dominick-yes. Motion carried 5/0/2.

Accept Quitclaim Deed, Subordination Agreement, Bargain & Sale Deed and Easement – Max Mills – re: NW Washington Relocation Project

Councilor Fox recused himself from the action due to a potential conflict of interest.

Chuck Mickelson, City Manager, stated ODOT staff had prepared appraisals and conducted negotiations on many of the parcels that must be acquired for this roadway project. Those Deeds needed to be accepted by the city prior to recording or closing on the property.

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

David Sullivan moved, seconded by Norm Crume, that the City Council authorize the City Manager to sign the Quitclaim Deed, Subordination Agreement, Bargain and Sale Deed, and Easements from Max Mills accepting the property for the NW Washington roadway project. Roll call vote: Crume-yes; Fox-recuse; Fugate-yes; Jones-out; Sullivan-yes; Verini-out; Dominick-yes. Motion carried 4/0/2/1.

Accept Relinquishment Deed from ODOT Transferring Tapadera Avenue, a Part of Goodfellow, and a Part of East Lane to the City of Ontario (C&A #27785)

Chuck Mickelson, City Manager, stated the State of Oregon (ODOT) relinquished some right of way to the City of Ontario. The relinquishment deed pertained to specific pieces of right of way acquired in 1996 – 1998 for the East Idaho Avenue project on the Olds Ferry-Ontario Highway. The relinquishment was in accordance with C&A #27785.

In 2003/04, Meyer Mohaddes Associates was hired to prepare a traffic study for the "East Ontario Commercial Area." This study resulted in the recommendations for improvements to the roadway and intersections, as well as establishing fees per vehicle trip. The city then passed an ordinance requiring the payment of traffic impact fees from the various developers in the area. In 2008/09, ODOT requested that the city take responsibility for maintenance of East Idaho Avenue from the Snake River to NE 4th Street. The city rejected this proposal and ODOT remained responsible for the structural integrity of this section of State Highway 30. In 2009, the Council adopted a two-year budget that included upgrades to East Idaho intersections in the amount of \$750,000. On November 15, 2011, the Council approved Resolutions #2010-153 and #2010-154, which reallocated funding and modified the project budget from \$750,000 to \$800,000; they also approved Agreement #26638 with ODOT for this project. On July 18, 2011, the Council approved Revised Agreement #27785, which replaced Agreement #26638.

David Sullivan moved, seconded by Norm Crume, that the City Council authorize the City Manager to sign the Relinquishment Deed from the State of Oregon by and through its Department of Transportation, transferring Tapadera Avenue, part of Goodfellow, and part of East Lane to the City of Ontario. Roll call vote: Crume-yes; Fox-yes; Fugate-yes; Jones-out; Sullivan-yes; Verini-out; Dominick-yes. Motion carried 5/0/2.

CORRESPONDENCE, COMMENTS, AND EX-OFFICIO REPORTS

- Councilor Fugate stated she had received an email regarding the Transient Occupancy Tax possibly being threatened by companies like Expedia that provide discounted rooms in hotels. She discussed her concerns with Representative Cliff Bentz, and hotel owner Bob Quinn. Representative Bentz indicated the issue was complicated, and had been discussing the pros and cons of the issue, and he was staying in the loop.

Mayor Dominick said when companies bought a block of rooms, they paid the discounted rate. When the rooms didn't sell, they would be sold later at a higher price, and that's where the loss would be seen, as the TOT would only be collected on the lesser cost, even if sold later at a higher rate.

- Mayor Dominick stated he had been out to the Airport on Saturday to check out the antique airplane show, and there had been a good turn-out. He noted that the Fixed Base Operator area was looking nice, and he had provided around 65-70 pilots with food and beverage for the event.
- Mayor Dominick reminded the Council that they had been asked to be cooks for the annual pancake breakfast at the upcoming Airshow; however, he would be out of town during the event.

ADJOURN

Joe Dominick moved, seconded by Norm Crume, that the meeting be adjourned. Roll call vote: Crume-yes; Fox-yes; Fugate-yes; Jones-out; Sullivan-yes; Verini-out; Dominick-yes. Motion carried 5/0/2.

APPROVED:

ATTEST:

Joe Dominick, Mayor

Tori Barnett, MMC, City Recorder

CONSENT AGENDA

July 9, 2012

TO: Mayor and City Council

FROM: Mark Alexander, Police Chief

THROUGH: Chuck Mickelson, Interim City Manager

**SUBJECT: LIQUOR LICENSE APPLICATION – Change Ownership
Spuds & Suds (Full On-Premises Commercial Establishment & Off-Premises Sales)**

DATE: June 25, 2012

SUMMARY:

Little Palomino LLC, new owner of Spuds & Suds located at 227 S. Oregon Street, Ontario, Oregon has completed the “Change Ownership” application process for “Full On-Premises Sales for Commercial Establishment and Off-Premises Sales” liquor license privileges through the Oregon Liquor Control Commission.

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 new manager R. Heather Holtry. All records returned clear. The application forms have been filled out appropriately and required fees have been paid. All Permit requirements have been met.

Little Palomino LLC purchased the business Spuds & Suds and will continue to operate the establishment under the same name.

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 Change Ownership / Full On-Premises Sales Commercial Establishment and Off-Premises Sales liquor licenses for Little Palomino LLC operating under the trade name, Spuds & Suds.

CONSENT AGENDA REPORT

July 9, 2012

TO: Mayor and City Council

FROM: Mark Alexander, Chief of Police

Through: Chuck Mickelson, Interim City Manager

SUBJECT: ORDINANCE #2668-2012: AMENDING ONTARIO MUNICIPAL CODE TITLE 7, CHAPTER 1, RELATING TO NUISANCES AND HEALTH REGULATIONS (Final Reading)

DATE: June 25, 2012

SUMMARY:

Attached is the following document:

- Ordinance #2668-2012

The Police Department would like to amend Municipal Code Title 7, Chapter 1 relating to Nuisances and Health Regulations in order to be more effective.

PREVIOUS COUNCIL ACTION:

Ontario City Council approved first reading of Ordinance 2668-2012 on June 18, 2012

BACKGROUND:

Ontario Municipal Code Title 7, Chapter 1 defines nuisances such as weeds, garbage and junk vehicles. The Code provides a process to abate those nuisances when property owners fail to do so and allows the City to lien properties when billing for abatements are not addressed.

Other jurisdictions are sending unpaid abatement billings to collections in lieu of placing a lien on properties. The Police Department has learned from those jurisdictions that this process has been effective in collecting a higher percentage of their costs in a much more timely manner.

Violations of Title 7, Chapter 1 are Unclassified, therefore resulting in a \$300 fine. Many people violating this Code are not in a financially stable position to pay such a fine, which creates further burdens and does not always prevent future violations.

The Police Department would like to change language in Title 7, Chapter 1 to give the City the option of turning unpaid bills from nuisance abatements to collections and classifying violations as a Class D Violation.

FINANCIAL IMPLICATIONS:

The City should realize an increase in revenue from unpaid nuisance abatement bills.

RECOMMENDATION:

Staff recommends the City Council adopt Ordinance #2668-2012 on Second and Final Reading by Title Only.

ORDINANCE NO. 2668-2012

**AN ORDINANCE AMENDING ONTARIO MUNICIPAL CODE
TITLE 7, CHAPTER 1, SECTION 4 AND ADDING SECTION 7**

- WHEREAS,** there are times when nuisances such as weeds and garbage accumulation go unattended by property owners; and,
- WHEREAS,** those nuisances become eligible for abatement by the City; and,
- WHEREAS,** property owners are also subject to a civil citation for violating City Code relating to nuisance properties; and
- WHEREAS,** regulations relating to nuisance properties in City Code Title 7, Chapter 4 need to be changed in order to be more effective.

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

Section 7-1-4 of the Ontario City Code is hereby amended by adding those portions, which are underlined:

7-1-4 - Abatement procedure.

(A) Notice to Abate.

1. For an initial violation of the nuisance provisions of the City Code, the City Manager or the City Manager's designee shall cause a written notice to be served either personally on the property owner or the person responsible, or by registered or certified mail to the address of the property owner noted in the Malheur County Tax Assessor's office for tax notices to be sent. If the property has a structure on it, notice may also be posted on the property. For service by mail, service shall be complete upon deposit in the mail. Notice shall be deemed sufficient if it complies with the procedure set forth herein, whether or not the property owner or person responsible receives actual notice.

2. For any additional violations of the same nuisance prohibition on the same property caused by the same person responsible within twelve (12) months of the date of the initial notice, the City shall not be required to personally serve or mail a written notice against the person responsible. Service of a notice of a second or subsequent violation may be done by posting notice on the property.

3. The initial notice to abate shall contain:

- (a) A description of the real property, by street address or otherwise, on which the nuisance exists.
- (b) A direction to abate the nuisance within ten (10) days from the date of the notice.
- (c) A description of the nuisance, a citation to the section(s) of the City Code which are violated, and a description of the corrective action required.
- (d) A statement that unless the nuisance is removed, the City may abate the nuisance and the cost of abatement will be charged to the person responsible and assessed as a lien on the property.
- (e) A statement that failure to abate a nuisance may result in a fine.
- (f) A statement that the person responsible may appeal from the notice to abate by giving notice to the City Manager or his designee within ten (10) days from the date of the notice.
- (g) A statement that the City is not required to provide a written notice of a second or subsequent nuisance violation within a twelve (12) month period, and that notice of a second or subsequent violation may be done by posting notice on the property.

4. Upon completion of service of an abatement notice as provided herein, the persons serving the notice shall execute and file certificates stating the date and place of service.

(B) Abatement by Person Responsible.

1. Within ten (10) days of the date of the notice, the person responsible shall remove the nuisance or show that no nuisance exists, or deliver a written notice of appeal to the City Manager. A written notice of appeal shall specify the basis for the appeal.
2. The Ontario Municipal Court shall conduct a hearing on the appeal of the abatement notice at which the City's designee and the appellant may call witnesses and present evidence. The City shall have the burden of proof to demonstrate by a preponderance of the evidence that a violation has occurred and that the required corrective action is reasonable. The Ontario Municipal Court shall affirm, vacate, or modify the City's decisions regarding the alleged violation and/or the required corrective action, with or without written conditions.

(C) Abatement by City.

1. If within the time allowed, the nuisance has not been abated by the person responsible, the City may cause the nuisance to be abated.
2. The officer charged with abatement of the nuisance shall have the right, at reasonable times, to enter into or upon property, in accordance with law, to investigate or cause the removal of a nuisance.
3. The City Manager or his designee shall keep an accurate record of the expense incurred by the City in physically abating the nuisance, including incidental expenses set forth in subsection (E) below.

(D) Joint Responsibility. If more than one person is responsible, they shall be jointly and severally liable for abating the nuisance or for the costs incurred by the City in abating the nuisance.

(E) Assessment of Costs.

1. The cost, including incidental expenses, of correcting the violation shall be billed to the person responsible for the violation and/or the owner, lessor, tenant or other person entitled to control, use and/or occupancy of the property and shall become due and payable to the City of Ontario within ten (10) calendar days of the bill being issued. A minimum administrative fee of not less than one hundred dollars (\$100.00) shall be imposed for each abatement notice issued. The City Council may by resolution change the minimum fee from time to time. The term "incidental expense" shall include, but not be limited to personnel costs, both direct and indirect; attorney's fees; costs incurred in documenting the violation; hauling, storage and disposal expenses; and actual expenses and costs of the City in preparing notices, specifications and contracts, and in accomplishing and/or contracting and inspecting the work, and the costs of any required printing and mailing. The City Manager or his designee, by registered or certified mail, postage prepaid, shall forward to the person responsible a notice stating:

- (a) The total cost of abatement, including incidental expenses.
- (b) That the cost as indicated will be *either referred to collection or be assessed* to and become a lien against the property unless paid within thirty (30) days from the date of the notice.
- (c) That if the person, responsible objects to the cost of the abatement as indicated, he may file a notice of objection with the City Manager or his designee not more than ten (10) days from the date of the notice. Objections shall be heard by the Ontario Municipal Court and shall be limited to the question of whether the amount of the abatement assessment is reasonable.

2. If the costs of the abatement are not paid within thirty (30) days from the date of the notice or thirty (30) days from the date of the Ontario Municipal Court's decision on objections, the City may cause the assessment to be filed as a lien in the Malheur County Deed records against the property of any property owner who was served with the initial notice of abatement pursuant to Section 7-1-4(A)1. set forth above.

3. The lien shall be enforced in the same manner as liens for street improvements and shall bear interest at the rate of six percent (6%) per annum, or at such other rate as may be fixed by resolution of the City Council. The interest shall commence thirty (30) days from the date of the notice.

4. An error in the name of the person responsible or property owner shall not void the assessment nor will a failure to receive the notice of the proposed assessment render the assessment void, but it shall remain a valid lien against the property.

5. In lieu of a lien against the property, the city may refer the account to Collections once the account is more than sixty (60) days past due. In addition, a late fee set by Fee Resolution to offset the administrative expenses incurred due to the late payment, shall be due and owing on any payment received after the due date and in coordination with the completion of the payment processing grace period.

(F) Separate Violations. The requirements to abate a nuisance are not a penalty for violating the Code but are an additional remedy. The imposition of a penalty does not relieve a person of the duty to abate the nuisance; however, abatement by the person responsible of a nuisance within ten (10) days of the date of notice to abate, or within ten (10) days of the determination by the Ontario Municipal Court upon an appeal therefrom, will excuse the person responsible from the imposition of any fine.

(G) Summary Abatement. The procedure provided by subsections (A) through (F) is not exclusive but is in addition to procedure provided by other law and the City Manager, or other officer delegated responsibilities therefor, may proceed summarily to abate a health or other nuisance which unmistakably exists and which imminently endangers human life, health or property.

Section 7-1-4 of the Ontario City Code is hereby created by adding those portions that are underlined:

7-1-7 - Penalty.

Except where penalty provisions have been provided otherwise in this Chapter, any person violating any provision of this Chapter commits a Class D civil violation.

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

AYES:

NAYS:

ABSENT:

ABSTAIN:

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

ATTEST:

Joe Dominick, Mayor

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Tori Barnett, MMC, City Recorder

AGENDA REPORT

July 9, 2012

TO: Mayor and City Council

FROM: Chuck Mickelson, City Manager Pro-Tem

SUBJECT: **ACCEPTANCE OF WARRANTY DEED FROM RILEY HILL
NW WASHINGTON ROADWAY RELOCATION PROJECT**

DATE: June 25, 2012

SUMMARY:

Attached is the following document:

- Signed Warranty Deed: Riley Hill 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. The Warranty Deed for the above property 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 City Manager to sign the Warranty Deed.

PROPOSED MOTION:

I move the City Council authorize the City Manager to sign the Warranty Deed from Riley Hill accepting the property for the NW Washington roadway project.

WARRANTY DEED

RILEY J. HILL, Grantor, for the true and actual consideration of \$1,500.00, 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 9/29/11, 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 9/29/11, 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
TAXES TO: CITY OF ONTARIO
444 SW 4TH STREET, ONTARIO, OR 97914
GRANTOR'S ADDRESS: P O BOX 428
ONTARIO OR 97914

Map and Tax Lot #: 17S4733D 2500 and 2600
Property Address: 1888 Park
Ontario, OR 97914

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).

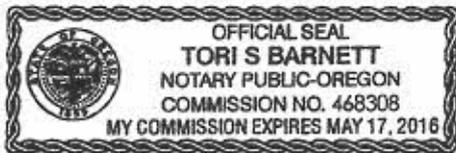
It is understood and agreed that the delivery of this document is hereby tendered and that terms and obligations hereof shall not become binding upon the City of Ontario, a municipal corporation of the State of Oregon, unless and until accepted and approved by the recording of this document.

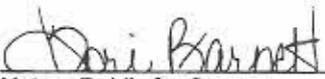
Dated this 15th day of June, 2012.


Riley J. Hill

STATE OF OREGON, County of Malheur

Dated June 15, 2012. Personally appeared, and signed before me by, the above named Riley J. Hill, who acknowledged the foregoing instrument to be his/her voluntary act. Before me:




Notary Public for Oregon
My Commission expires 05-17-2016

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

FEE & EASEMENTS

RILEY J. HILL
 P.O. Box 428
 Ontario, OR 97914-3544

Reference Numbers: 7430 and 7431
 Map & Tax Lot Numbers: 17S4733D 2500 and 2600
 Deeds: 2006-4851

PARCEL 1 (2500 & 2600) – FEE (RH1)

A parcel of land lying in Lot 25, Block 5, 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 June 30, 2006, Instrument No. 2006-4851, 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 East side of the "P" center line of the North Park Boulevard which center line is described as follows:

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 East Side of Center Line
"P" 401+24		"P" 401+70	30

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

The Parcel of land to which this description applies contains 172 square feet, more or less

PARCEL 2 (2500 & 2600) – Permanent Easement for Slopes, Sewers, Water, Gas, Electric and Communication services lines, Fixtures and Facilities. (RH2)

A parcel of land lying in Lot 25, Block 5, 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 June 30, 2006, Instrument No. 2006-4851, 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 East side of the "P" center line of the North Park Boulevard which center line is described in Parcel 1.

**Request for Taxpayer
 Identification Number and Certification**

Give Form to the requester. Do not send to the IRS.

Name (as shown on your income tax return)
Riley J. Hill

Business name/disregarded entity name, if different from above
P.O. Box 428

Check appropriate box for federal tax classification:
 Individual/sole proprietor C Corporation S Corporation Partnership Trust/estate
 Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=partnership) ▶ _____
 Other (see instructions) ▶ _____

Address (number, street, and apt. or suite no.)
P.O. Box 428

City, state, and ZIP code
Ontario OR 97914

List account number(s) here (optional)

Requester's name and address (optional)

Print or type
See Specific Instructions on page 2.

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on the "Name" line to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

Social security number

5	3	7	-	5	0	-	2	0	5	1
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Employer identification number

		-							
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Note. If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.

Part II Certification

Under penalties of perjury, I certify that:

- The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
- I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
- I am a U.S. citizen or other U.S. person (defined below).

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions on page 4.

Signature Here Signature of U.S. person ▶ *Riley Hill* Date ▶ *6/15/12*

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Purpose of Form

A person who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

- Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
- Certify that you are not subject to backup withholding, or
- Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income.

Note. If a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

Definition of a U.S. person. For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien,
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States,
- An estate (other than a foreign estate), or
- A domestic trust (as defined in Regulations section 301.7701-7).

Special rules for partnerships. Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax on any foreign partners' share of income from such business. Further, in certain cases where a Form W-9 has not been received, a partnership is required to presume that a partner is a foreign person, and pay the withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid withholding on your share of partnership income.

The person who gives Form W-9 to the partnership for purposes of establishing its U.S. status and avoiding withholding on its allocable share of net income from the partnership conducting a trade or business in the United States is in the following cases:

- The U.S. owner of a disregarded entity and not the entity,
- The U.S. grantor or other owner of a grantor trust and not the trust, and
- The U.S. trust (other than a grantor trust) and not the beneficiaries of the trust.

Foreign person. If you are a foreign person, do not use Form W-9. Instead, use the appropriate Form W-8 (see Publication 515, Withholding of Tax on Nonresident Aliens and Foreign Entities).

Nonresident alien who becomes a resident alien. Generally, only a nonresident alien individual may use the terms of a tax treaty to reduce or eliminate U.S. tax on certain types of income. However, most tax treaties contain a provision known as a "saving clause." Exceptions specified in the saving clause may permit an exemption from tax to continue for certain types of income even after the payee has otherwise become a U.S. resident alien for tax purposes.

If you are a U.S. resident alien who is relying on an exception contained in the saving clause of a tax treaty to claim an exemption from U.S. tax on certain types of income, you must attach a statement to Form W-9 that specifies the following five items:

1. The treaty country. Generally, this must be the same treaty under which you claimed exemption from tax as a nonresident alien.
2. The treaty article addressing the income.
3. The article number (or location) in the tax treaty that contains the saving clause and its exceptions.
4. The type and amount of income that qualifies for the exemption from tax.
5. Sufficient facts to justify the exemption from tax under the terms of the treaty article.

Example. Article 20 of the U.S.-China income tax treaty allows an exemption from tax for scholarship income received by a Chinese student temporarily present in the United States. Under U.S. law, this student will become a resident alien for tax purposes if his or her stay in the United States exceeds 5 calendar years. However, paragraph 2 of the first Protocol to the U.S.-China treaty (dated April 30, 1984) allows the provisions of Article 20 to continue to apply even after the Chinese student becomes a resident alien of the United States. A Chinese student who qualifies for this exception (under paragraph 2 of the first protocol) and is relying on this exception to claim an exemption from tax on his or her scholarship or fellowship income would attach to Form W-9 a statement that includes the information described above to support that exemption.

If you are a nonresident alien or a foreign entity not subject to backup withholding, give the requester the appropriate completed Form W-8.

What is backup withholding? Persons making certain payments to you must under certain conditions withhold and pay to the IRS a percentage of such payments. This is called "backup withholding." Payments that may be subject to backup withholding include interest, tax-exempt interest, dividends, broker and barter exchange transactions, rents, royalties, nonemployee pay, and certain payments from fishing boat operators. Real estate transactions are not subject to backup withholding.

You will not be subject to backup withholding on payments you receive if you give the requester your correct TIN, make the proper certifications, and report all your taxable interest and dividends on your tax return.

Payments you receive will be subject to backup withholding if:

1. You do not furnish your TIN to the requester,
2. You do not certify your TIN when required (see the Part II instructions on page 3 for details),
3. The IRS tells the requester that you furnished an incorrect TIN,
4. The IRS tells you that you are subject to backup withholding because you did not report all your interest and dividends on your tax return (for reportable interest and dividends only), or
5. You do not certify to the requester that you are not subject to backup withholding under 4 above (for reportable interest and dividend accounts opened after 1983 only).

Certain payees and payments are exempt from backup withholding. See the instructions below and the separate instructions for the Requester of Form W-9.

Also see *Special rules for partnerships* on page 1.

Updating Your Information

You must provide updated information to any person to whom you claimed to be an exempt payee if you are no longer an exempt payee and anticipate receiving reportable payments in the future from this person. For example, you may need to provide updated information if you are a C corporation that elects to be an S corporation, or if you no longer are tax exempt. In addition, you must furnish a new Form W-9 if the name or TIN changes for the account, for example, if the grantor of a grantor trust dies.

Penalties

Failure to furnish TIN. If you fail to furnish your correct TIN to a requester, you are subject to a penalty of \$50 for each such failure unless your failure is due to reasonable cause and not to willful neglect.

Civil penalty for false information with respect to withholding. If you make a false statement with no reasonable basis that results in no backup withholding, you are subject to a \$500 penalty.

Criminal penalty for falsifying information. Willfully falsifying certifications or affirmations may subject you to criminal penalties including fines and/or imprisonment.

Misuse of TINs. If the requester discloses or uses TINs in violation of federal law, the requester may be subject to civil and criminal penalties.

Specific Instructions

Name

If you are an individual, you must generally enter the name shown on your income tax return. However, if you have changed your last name, for instance, due to marriage without informing the Social Security Administration of the name change, enter your first name, the last name shown on your social security card, and your new last name.

If the account is in joint names, list first, and then circle, the name of the person or entity whose number you entered in Part I of the form.

Sole proprietor. Enter your individual name as shown on your income tax return on the "Name" line. You may enter your business, trade, or "doing business as (DBA)" name on the "Business name/disregarded entity name" line.

Partnership, C Corporation, or S Corporation. Enter the entity's name on the "Name" line and any business, trade, or "doing business as (DBA) name" on the "Business name/disregarded entity name" line.

Disregarded entity. Enter the owner's name on the "Name" line. The name of the entity entered on the "Name" line should never be a disregarded entity. The name on the "Name" line must be the name shown on the income tax return on which the income will be reported. For example, if a foreign LLC that is treated as a disregarded entity for U.S. federal tax purposes has a domestic owner, the domestic owner's name is required to be provided on the "Name" line. If the direct owner of the entity is also a disregarded entity, enter the first owner that is not disregarded for federal tax purposes. Enter the disregarded entity's name on the "Business name/disregarded entity name" line. If the owner of the disregarded entity is a foreign person, you must complete an appropriate Form W-8.

Note. Check the appropriate box for the federal tax classification of the person whose name is entered on the "Name" line (Individual/sole proprietor, Partnership, C Corporation, S Corporation, Trust/estate).

Limited Liability Company (LLC). If the person identified on the "Name" line is an LLC, check the "Limited liability company" box only and enter the appropriate code for the tax classification in the space provided. If you are an LLC that is treated as a partnership for federal tax purposes, enter "P" for partnership. If you are an LLC that has filed a Form 8832 or a Form 2553 to be taxed as a corporation, enter "C" for C corporation or "S" for S corporation. If you are an LLC that is disregarded as an entity separate from its owner under Regulation section 301.7701-3 (except for employment and excise tax), do not check the LLC box unless the owner of the LLC (required to be identified on the "Name" line) is another LLC that is not disregarded for federal tax purposes. If the LLC is disregarded as an entity separate from its owner, enter the appropriate tax classification of the owner identified on the "Name" line.

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

Station	to	Station	Width on Easterly Side of Center Line
"P" 401+22		"P" 401+84.04	41.12 in a straight line to 37.05
"P" 401+84.04		"P" 401+97	37.05 in a straight line to 37.04
"P" 401+97		"P" 402+57.39	37.04 in a straight line to 37.07
"P" 402+57.39		"P" 402+70.7	37.07 in a straight line to 40.04
"P" 402+70.7		"P" 402+82.25	40.04 in a straight line to 36.94

EXCEPTING THEREFROM: Parcel 1 described above, and the Existing right of way of Park Boulevard as per the said Corrected Plat of Oregon and Western Colonization Co. Subdivision Second Addition.

The Parcel of land to which this description applies contains 842 square feet, more or less.

Other entities. Enter your business name as shown on required federal tax documents on the "Name" line. This name should match the name shown on the charter or other legal document creating the entity. You may enter any business, trade, or DBA name on the "Business name/disregarded entity name" line.

Exempt Payee

If you are exempt from backup withholding, enter your name as described above and check the appropriate box for your status, then check the "Exempt payee" box in the line following the "Business name/disregarded entity name," sign and date the form.

Generally, individuals (including sole proprietors) are not exempt from backup withholding. Corporations are exempt from backup withholding for certain payments, such as interest and dividends.

Note. If you are exempt from backup withholding, you should still complete this form to avoid possible erroneous backup withholding.

The following payees are exempt from backup withholding:

1. An organization exempt from tax under section 501(a), any IRA, or a custodial account under section 403(b)(7) if the account satisfies the requirements of section 401(f)(2),
 2. The United States or any of its agencies or instrumentalities,
 3. A state, the District of Columbia, a possession of the United States, or any of their political subdivisions or instrumentalities,
 4. A foreign government or any of its political subdivisions, agencies, or instrumentalities, or
 5. An international organization or any of its agencies or instrumentalities.
- Other payees that may be exempt from backup withholding include:
6. A corporation,
 7. A foreign central bank of issue,
 8. A dealer in securities or commodities required to register in the United States, the District of Columbia, or a possession of the United States,
 9. A futures commission merchant registered with the Commodity Futures Trading Commission,
 10. A real estate investment trust,
 11. An entity registered at all times during the tax year under the Investment Company Act of 1940,
 12. A common trust fund operated by a bank under section 584(a),
 13. A financial institution,
 14. A middleman known in the investment community as a nominee or custodian, or
 15. A trust exempt from tax under section 664 or described in section 4947.

The following chart shows types of payments that may be exempt from backup withholding. The chart applies to the exempt payees listed above, 1 through 15.

IF the payment is for . . .	THEN the payment is exempt for . . .
Interest and dividend payments	All exempt payees except for 9
Broker transactions	Exempt payees 1 through 5 and 7 through 13. Also, C corporations.
Barter exchange transactions and patronage dividends	Exempt payees 1 through 5
Payments over \$600 required to be reported and direct sales over \$5,000 ¹	Generally, exempt payees 1 through 7 ²

¹ See Form 1099-MISC, Miscellaneous Income, and its instructions.

² However, the following payments made to a corporation and reportable on Form 1099-MISC are not exempt from backup withholding: medical and health care payments, attorneys' fees, gross proceeds paid to an attorney, and payments for services paid by a federal executive agency.

Part I. Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. If you are a resident alien and you do not have and are not eligible to get an SSN, your TIN is your IRS individual taxpayer identification number (ITIN). Enter it in the social security number box. If you do not have an ITIN, see *How to get a TIN* below.

If you are a sole proprietor and you have an EIN, you may enter either your SSN or EIN. However, the IRS prefers that you use your SSN.

If you are a single-member LLC that is disregarded as an entity separate from its owner (see *Limited Liability Company (LLC)* on page 2), enter the owner's SSN (or EIN, if the owner has one). Do not enter the disregarded entity's EIN. If the LLC is classified as a corporation or partnership, enter the entity's EIN.

Note. See the chart on page 4 for further clarification of name and TIN combinations.

How to get a TIN. If you do not have a TIN, apply for one immediately. To apply for an SSN, get Form SS-5, Application for a Social Security Card, from your local Social Security Administration office or get this form online at www.ssa.gov. You may also get this form by calling 1-800-772-1213. Use Form W-7, Application for IRS Individual Taxpayer Identification Number, to apply for an ITIN, or Form SS-4, Application for Employer Identification Number, to apply for an EIN. You can apply for an EIN online by accessing the IRS website at www.irs.gov/businesses and clicking on Employer Identification Number (EIN) under Starting a Business. You can get Forms W-7 and SS-4 from the IRS by visiting IRS.gov or by calling 1-800-TAX-FORM (1-800-829-3676).

If you are asked to complete Form W-9 but do not have a TIN, write "Applied For" in the space for the TIN, sign and date the form, and give it to the requester. For interest and dividend payments, and certain payments made with respect to readily tradable instruments, generally you will have 60 days to get a TIN and give it to the requester before you are subject to backup withholding on payments. The 60-day rule does not apply to other types of payments. You will be subject to backup withholding on all such payments until you provide your TIN to the requester.

Note. Entering "Applied For" means that you have already applied for a TIN or that you intend to apply for one soon.

Caution: A disregarded domestic entity that has a foreign owner must use the appropriate Form W-8.

Part II. Certification

To establish to the withholding agent that you are a U.S. person, or resident alien, sign Form W-9. You may be requested to sign by the withholding agent even if item 1, below, and items 4 and 5 on page 4 indicate otherwise.

For a joint account, only the person whose TIN is shown in Part I should sign (when required). In the case of a disregarded entity, the person identified on the "Name" line must sign. Exempt payees, see *Exempt Payee* on page 3.

Signature requirements. Complete the certification as indicated in items 1 through 3, below, and items 4 and 5 on page 4.

1. Interest, dividend, and barter exchange accounts opened before 1984 and broker accounts considered active during 1983. You must give your correct TIN, but you do not have to sign the certification.

2. Interest, dividend, broker, and barter exchange accounts opened after 1983 and broker accounts considered inactive during 1983. You must sign the certification or backup withholding will apply. If you are subject to backup withholding and you are merely providing your correct TIN to the requester, you must cross out item 2 in the certification before signing the form.

3. Real estate transactions. You must sign the certification. You may cross out item 2 of the certification.

4. Other payments. You must give your correct TIN, but you do not have to sign the certification unless you have been notified that you have previously given an incorrect TIN. "Other payments" include payments made in the course of the requester's trade or business for rents, royalties, goods (other than bills for merchandise), medical and health care services (including payments to corporations), payments to a nonemployee for services, payments to certain fishing boat crew members and fishermen, and gross proceeds paid to attorneys (including payments to corporations).

5. Mortgage interest paid by you, acquisition or abandonment of secured property, cancellation of debt, qualified tuition program payments (under section 529), IRA, Coverdell ESA, Archer MSA or HSA contributions or distributions, and pension distributions. You must give your correct TIN, but you do not have to sign the certification.

Note. If no name is circled when more than one name is listed, the number will be considered to be that of the first name listed.

Secure Your Tax Records from Identity Theft

Identity theft occurs when someone uses your personal information such as your name, social security number (SSN), or other identifying information, without your permission, to commit fraud or other crimes. An identity thief may use your SSN to get a job or may file a tax return using your SSN to receive a refund.

To reduce your risk:

- Protect your SSN,
- Ensure your employer is protecting your SSN, and
- Be careful when choosing a tax preparer.

If your tax records are affected by identity theft and you receive a notice from the IRS, respond right away to the name and phone number printed on the IRS notice or letter.

If your tax records are not currently affected by identity theft but you think you are at risk due to a lost or stolen purse or wallet, questionable credit card activity or credit report, contact the IRS Identity Theft Hotline at 1-800-908-4490 or submit Form 14039.

For more information, see Publication 4535, Identity Theft Prevention and Victim Assistance.

Victims of identity theft who are experiencing economic harm or a system problem, or are seeking help in resolving tax problems that have not been resolved through normal channels, may be eligible for Taxpayer Advocate Service (TAS) assistance. You can reach TAS by calling the TAS toll-free case intake line at 1-877-777-4778 or TTY/TDD 1-800-829-4059.

Protect yourself from suspicious emails or phishing schemes. Phishing is the creation and use of email and websites designed to mimic legitimate business emails and websites. The most common act is sending an email to a user falsely claiming to be an established legitimate enterprise in an attempt to scam the user into surrendering private information that will be used for identity theft.

The IRS does not initiate contacts with taxpayers via emails. Also, the IRS does not request personal detailed information through email or ask taxpayers for the PIN numbers, passwords, or similar secret access information for their credit card, bank, or other financial accounts.

If you receive an unsolicited email claiming to be from the IRS, forward this message to phishing@irs.gov. You may also report misuse of the IRS name, logo, or other IRS property to the Treasury Inspector General for Tax Administration at 1-800-366-4484. You can forward suspicious emails to the Federal Trade Commission at: spam@uce.gov or contact them at www.ftc.gov/idtheft or 1-877-IDTHEFT (1-877-438-4338).

Visit IRS.gov to learn more about identity theft and how to reduce your risk.

What Name and Number To Give the Requester

For this type of account:	Give name and SSN of:
1. Individual	The individual
2. Two or more individuals (joint account)	The actual owner of the account or, if combined funds, the first individual on the account ¹
3. Custodian account of a minor (Uniform Gift to Minors Act)	The minor ²
4. a. The usual revocable savings trust (grantor is also trustee) b. So-called trust account that is not a legal or valid trust under state law	The grantor-trustee ³ The actual owner ¹
5. Sole proprietorship or disregarded entity owned by an individual	The owner ¹
6. Grantor trust filing under Optional Form 1099 Filing Method 1 (see Regulation section 1.671-4(b)(2)(i)(A))	The grantor ⁴
For this type of account:	Give name and EIN of:
7. Disregarded entity not owned by an individual	The owner
8. A valid trust, estate, or pension trust	Legal entity ⁴
9. Corporation or LLC electing corporate status on Form 8832 or Form 2553	The corporation
10. Association, club, religious, charitable, educational, or other tax-exempt organization	The organization
11. Partnership or multi-member LLC	The partnership
12. A broker or registered nominee	The broker or nominee
13. Account with the Department of Agriculture in the name of a public entity (such as a state or local government, school district, or prison) that receives agricultural program payments	The public entity
14. Grantor trust filing under the Form 1041 Filing Method or the Optional Form 1099 Filing Method 2 (see Regulation section 1.671-4(b)(2)(i)(B))	The trust

¹ List first and circle the name of the person whose number you furnish. If only one person on a joint account has an SSN, that person's number must be furnished.

² Circle the minor's name and furnish the minor's SSN.

³ You must show your individual name and you may also enter your business or "DBA" name on the "Business name/disregarded entity" name line. You may use either your SSN or EIN (if you have one), but the IRS encourages you to use your SSN.

⁴ List first and circle the name of the trust, estate, or pension trust. (Do not furnish the TIN of the personal representative or trustee unless the legal entity itself is not designated in the account title.) Also see *Special rules for partnerships* on page 1.

*Note. Grantor also must provide a Form W-9 to trustee of trust.

Privacy Act Notice

Section 6109 of the Internal Revenue Code requires you to provide your correct TIN to persons (including federal agencies) who are required to file information returns with the IRS to report interest, dividends, or certain other income paid to you; mortgage interest you paid; the acquisition or abandonment of secured property; the cancellation of debt; or contributions you made to an IRA, Archer MSA, or HSA. The person collecting this form uses the information on the form to file information returns with the IRS, reporting the above information. Routine uses of this information include giving it to the Department of Justice for civil and criminal litigation and to cities, states, the District of Columbia, and U.S. possessions for use in administering their laws. The information also may be disclosed to other countries under a treaty, to federal and state agencies to enforce civil and criminal laws, or to federal law enforcement and intelligence agencies to combat terrorism. You must provide your TIN whether or not you are required to file a tax return. Under section 3406, payers must generally withhold a percentage of taxable interest, dividend, and certain other payments to a payee who does not give a TIN to the payer. Certain penalties may also apply for providing false or fraudulent information.

AGENDA REPORT

July 9, 2012

TO: Mayor and City Council

FROM: Bob Walker, Public Works Director
Bret Turner, Public Works Project Manager

THROUGH: Charles R Mickelson, City Manager, Pro-Tem

SUBJECT: **NORTH PARK BOULEVARD SEWER AND WATER BID AWARD
(11WAT-10) NORTH PARK BOULEVARD INFRASTRUCTURE IMPROVEMENTS**

DATE: June 25, 2012

SUMMARY:

Attached are the following documents:

- North Park Boulevard Sewer & Water Bid Tabulation
- Contract Agreement: Schmidt Construction Company, Inc.

Bids were opened on June 20, 2012, for the North Park Boulevard Sewer and Water project. The bid amounts were as follows:

CONTRACTOR	TOTAL
SCHMIDT CONSTRUCTION COMPANY, INC.	179,232.50
EASTERN OREGON CONSTRUCTION	232,044.00

BACKGROUND:

While the design of the NW Washington Avenue project progressed it was discovered that there needed to be water and sewer systems installed to accommodate the development and expansion of the North Interchange area. By completing the North Park Boulevard Sewer and Water project the backbone of the underground infrastructure will be in place for the future development of the area. Another reason for the proposed improvements is to accommodate water and sewer systems for the new city shop. Currently the city shop is on a well for water and a septic system for the sanitary sewer. When this project is completed the city shop will be able to connect to the city's sewer and water system.

FINANCIAL IMPLICATIONS:

CIP Project	2012 Bid Amount	FY 11-13 Budget
11WAT-10 N. Park Blvd Infrastructure Improvement 030-087-719130	\$179,232.50	\$325,000 \$288,925 (Avail)

RECOMMENDATION:

Staff recommends the award of the contract to Schmidt Construction Company.

PROPOSED MOTION:

I move that the City Council award the contract for the North Park Boulevard Sewer and Water Project to Schmidt Construction Company, and to authorize the City Manager to be signatory to the Contract Agreement.

N. Park Blvd Sewer and Water Bid Verification

Bid Item	Description	Unit	Amount	Schmidt Const Unit Price	Schmidt Const Extended Total	EOC Unit Price	EOC Extended Total
201.4.1.B.1	CLEARING AND GRUBBING	LS	1	\$13,000.00	\$13,000.00	\$5,000.00	\$5,000.00
202.4.5.A.1	UNSUITABLE MATERIAL EXCAVATION (contingency)	CY	25	\$6.00	\$150.00	\$10.00	\$250.00
205.4.1.B.1	DEWATERING	LS	1	\$11,000.00	\$11,000.00	\$5,000.00	\$5,000.00
301.4.1.A.1	TRENCH EXCAVATION	LF	2413	\$5.00	\$12,065.00	\$10.00	\$24,130.00
305.4.1.A.1.a	CLASS A-1 PIPE BEDDING FOR 12 INCH DIAMETER PIPE (Sanitary Sewer and Water)	LF	1968	\$5.00	\$9,840.00	\$10.00	\$19,680.00
305.4.1.A.1.b	CLASS A-1 PIPE BEDDING FOR 10 INCH DIAMETER PIPE (Sewer)	LF	50	\$5.00	\$250.00	\$10.00	\$500.00
305.4.1.A.1.c	CLASS A-1 PIPE BEDDING FOR 8-INCH DIAMETER PIPE (Water)	LF	397	\$3.00	\$1,191.00	\$10.00	\$3,970.00
306.4.1.A.1	TYPE "A" TRENCH BACKFILL (Sanitary Sewer + Water)	LF	2413	\$2.00	\$4,826.00	\$5.00	\$12,065.00
306.4.1.D.1	IMPORTED TRENCH BACKFILL (contingency)	TON	50	\$14.00	\$700.00	\$12.00	\$600.00
307.4.1.A.7	NATURAL GROUND SURFACE RESTORATION	LF	2413	\$2.00	\$4,826.00	\$3.00	\$7,239.00
308.4.1.A.1	STEEL CASING PIPE BORING AND JACKING, 21-INCH DIAMETER	LF	100	\$288.00	\$28,800.00	\$320.00	\$32,000.00
401.4.1.A.1.a	WATER MAIN PIPE - 8-INCH AWWA C-900 PVC PIPE	LF	397	\$17.00	\$6,749.00	\$20.00	\$7,940.00
401.4.1.A.1.b	WATER MAIN PIPE - 12-INCH AWWA C-900 PVC PIPE	LF	512	\$31.00	\$15,872.00	\$30.00	\$15,360.00
401.4.1.A.1.c	WATER MAIN PIPE - 12-INCH HDPE DR11 PIPE	LF	40	\$44.00	\$1,760.00	\$60.00	\$2,400.00
401.4.1.B.1.a	WATER MAIN FITTING - 8"x8"x6" DUCTILE IRON TEE, MJxMJxFL	EA	1	\$550.00	\$550.00	\$800.00	\$800.00
401.4.1.B.1.b	WATER MAIN FITTING - 12"x12"x6" DUCTILE IRON TEE, MJxMJxFL	EA	2	\$485.00	\$970.00	\$800.00	\$1,600.00
401.4.1.B.1.c	WATER MAIN FITTING - 12"x12"x12" DUCTILE IRON TEE, MJxFLxFL	EA	1	\$1,010.00	\$1,010.00	\$1,000.00	\$1,000.00
401.4.1.B.1.d	WATER MAIN FITTING - 8-INCH MJ CAP	EA	1	\$110.00	\$110.00	\$800.00	\$800.00
401.4.1.B.1.e	WATER MAIN FITTING - 12-INCH MJ CAP	EA	1	\$155.00	\$155.00	\$800.00	\$800.00
401.4.1.B.1.f	WATER MAIN FITTING - 12-INCH 45 DEGREE ELBOW, MJxMJ	EA	4	\$310.00	\$1,240.00	\$800.00	\$3,200.00
401.4.1.B.1.g	WATER MAIN FITTING - 12-INCH MEGALUG MECHANICAL RESTRAINT	EA	1	\$100.00	\$100.00	\$200.00	\$200.00
401.4.1.B.1.h	WATER MAIN FITTING - 8-INCH MEGALUG MECHANICAL RESTRAINT	EA	1	\$50.00	\$50.00	\$150.00	\$150.00
401.4.1.B.1.i	WATER MAIN FITTING - 12"x8" REDUCER, FLxFL	EA	1	\$365.00	\$365.00	\$800.00	\$800.00
402.4.1.A.1.a	VALVE - 8-INCH GATE VALVE, MJxFL	EA	2	\$950.00	\$1,900.00	\$1,000.00	\$2,000.00
402.4.1.A.1.b	VALVE - 12-INCH BUTTERFLY VALVE, MJxFL	EA	1	\$1,355.00	\$1,355.00	\$1,500.00	\$1,500.00
403.4.1.A.1	HYDRANT	EA	2	\$3,250.00	\$6,500.00	\$3,000.00	\$6,000.00
501.4.1.A.1.a	GRAVITY SEWER PIPE - 10-INCH PVC (SDR 35)	LF	50	\$24.57	\$1,228.50	\$30.00	\$1,500.00
501.4.1.A.1.b	GRAVITY SEWER PIPE - 12 - INCH PVC (SDR 35)	LF	1416	\$25.00	\$35,400.00	\$35.00	\$49,560.00
502.4.1.A.1	SANITARY SEWER MANHOLE - TYPE A (48")	EA	5	\$2,255.00	\$11,275.00	\$3,500.00	\$17,500.00
504.4.1.B.1	6" SANITARY SEWER SERVICE	EA	7	\$695.00	\$4,865.00	\$900.00	\$6,300.00
507.4.1.I.3	RECHANNEL MANHOLE (NEW CONNECTION)	EA	1	\$650.00	\$650.00	\$1,500.00	\$1,500.00
702.4.2.A.1	REINFORCING STEEL	LB	40	\$2.00	\$80.00	\$10.00	\$400.00
703.4.1.A.1	CONCRETE (CAST IN PLACE) - CLASS 3000	28	1	\$400.00	\$400.00	\$300.00	\$300.00

TOTAL : \$179,232.50

\$232,044.00

CONTRACT AGREEMENT

THIS AGREEMENT made and entered into this _____ day of _____, **2012**, by and between **Schmidt Construction Company, Inc.** hereinafter called the "Contractor" and **City of Ontario, Oregon** hereinafter called the "Owner".

WITNESSETH THAT:

WHEREAS, pursuant to the invitation of the Owner, extended through an officially published "Advertisement for Bids", the Contractor did in accordance therewith file with the Owner a proposal containing an offer which was invited by said notice; and

WHEREAS, the Owner has heretofore determined that said offer was the lowest responsive submitted:

NOW, THEREFORE, IT IS AGREED:

First: That the Contractor shall comply in every way with the requirements of those certain contract documents entitled: **City of Ontario, N. Park Blvd Sewer and Water 2012-1.**

Second: That in consideration of faithful compliance with the terms and conditions of this agreement the Owner shall pay to the Contractor at the times and in the manner provided in said documents an amount based upon the actual quantities of work performed at the contract unit prices with any cost increases or decreases resulting from approved contract change orders.

Third: That the date of substantial completion is **Ninety Days (90)** days after the start date listed on the Notice to Proceed, and the date of Final Completion is **One Hundred Five Days (105)** days from the start date listed on the Notice to Proceed. Work to be performed under this contract shall commence within five (5) calendar days after the start date listed in the Notice to Proceed as issued by the Owner.

Fourth: That the contract documents which are hereby made a part of this Agreement are as follows:

1. Advertisement for Bids
2. Instruction to Bidders
3. Proposal
4. Bid Bond
5. Payment Bond
6. Performance Bond
7. Special Provisions
8. General Conditions
9. Plans

Fifth: That the contract amount at the time of award is:

One Hundred Seventy-Nine Thousand Two Hundred Thirty-Two and 50/100 Dollars

(Spelled out in words)

(\$ 179,232.50)

Sixth: That in the event the Contractor fails to complete the work within the time specified above, liquidated damages shall be paid to the Owner by the Contractor at the rates as follows. The entire project shall be completed and ready for final payment by 105 days after the issuance of the Notice to Proceed. In the event that the Contractor fails to complete the project by that date, liquidated damages shall be paid to the Owner at the rate of **Two hundred dollars (\$200.00)** per day that the final completion of the project is delayed.

IN WITNESS WHEREOF, said Contractor and said Owner have caused this Agreement to be executed on the day and year first above written.

City of Ontario, Oregon
(Owner)

(Contractor)

By: _____
(City Manager)

By: _____
Contractor (Print Name)

Date: _____

Title: _____

Date: _____

Attest: _____
(City Recorder)

Attest: _____
(Secretary)

Date: _____

Date: _____

(Corporate Seal)

(Corporate Seal)

Address for giving notices:

Address for giving notices:

City of Ontario, Public Works Department
444 SW 4th Street
Ontario, OR 97914

License No. _____

AGENDA REPORT

July 9, 2012

TO: Mayor and City Council

FROM: Charles R. Mickelson, Interim City Manager

SUBJECT: INDUSTRIAL LANDS COMMITTEE PROPOSAL

DATE: June 26, 2012

SUMMARY:

Attached are the following documents:

- Winterbrook Proposal
- Resolution #2012-107
- Resolution #2012-115

BACKGROUND:

The cities of Ontario, Nyssa, Vale, as well as Malheur County, have all passed resolutions indicating support for more industrial land in the county. An ad hoc "Industrial Lands Committee" has met several times, and has identified possible additional lands south and west of Ontario that could be considered for inclusion in Ontario's city limits and Urban Growth Area. Due to the complexities of Oregon's land use laws and policies, it is nearly impossible for a small community such as Ontario to accomplish a change such as this without outside professional help. Estimates have been made that the cost of a consultant could range from \$75,000 to \$100,000.

It has been suggested that we initially contract with Greg Winterowd of Winterbrook Planning to assist Ontario in developing the scope of the project before going out for a formal Request for Proposal. Mr. Winterowd is familiar with the Ontario area having recently successfully brought the Wada property into the Ontario city limits.

In a previous meeting with the City Council, the concern was expressed by Councilman Sullivan that the city was wasting time with this effort if the property owners affected are not willing sellers and willing to participate. Contacts have been made with several of the major property owners and they have indicated a willingness to participate in the process. However, none are willing to give a firm commitment on a sale until an offer is made; the correct zoning is in place, etc.

Comments were also made by the Council that residential land needs to be made available for future housing stock. There is substantial available residential zoned land currently in the city and urban growth boundary. As this study goes forward, additional residential lands need to be considered.

FINANCIAL IMPLICATIONS:

As this is not a budgeted project, funds will have to be allocated by the City Council from one of the city's contingency accounts. Three possible sources of funding are:

- General Fund Contingency-available balance \$1,529,651
- Stelling Property Fees paid by CDH Consulting \$75,000
- Ontario Economic and Community Enhancement Small Grant Fund. Balance sheet dated 6/15/12 \$299,970 less \$20,000 for transit funding = \$279,970

RECOMMENDATION:

Staff recommends approval of the Winterbrook Agreement.

PROPOSED MOTION:

I move that the City Council authorize the City Manager to sign an agreement with Winterbrook Planning for no more than \$6,500 to develop the scope and work plan for adding industrial lands to the City of Ontario to be funded from (pick one: General Fund Contingency, Stelling property fee or the Ontario Economic and Community Enhancement Small Grant).



June 25, 2012

Alan Daniels, Economic Development Director
alan.daniels@ontariooregon.org

Chuck Mickelson, Acting City Manager
Chuck.mickelson@ontariooregon.org

City of Ontario
444 SW 4th Street
Ontario, OR 97914

Re: Proposal of Industrial Lands Scoping Services

Gentlemen:

Thank you for the opportunity to present Winterbrook's proposal to assist the city in preparing an effective industrial lands work program – which can then be used as the basis for a request for proposals from qualified consultants.

Background

Based on our discussions with you and Grant Young of DLCD, and what we have read in the *Argus Observer*, it is our understanding that the City would like to include three types of land within its urban growth area (UGA):

1. Land to meet the siting requirements of large data centers (such as those that have recently located in The Dalles, Prineville and Boardman); and
2. Land to meet the siting requirements of a large rail transshipment facility.
3. Land to meet general industrial needs.

Ontario has a number of comparative advantages (its I-84 location, a regional airport, excellent rail access, availability of services, support from Oregon Business Development, and a positive attitude towards growth) – but lacks sites of sufficient size to be competitive with the state of Idaho and other Oregon cities in attracting targeted economic development opportunities.

As you know, expansion of a UGA is a complex process that requires coordination with several state agencies and compliance with demanding statutes and administrative rules. Nevertheless, Ontario has been successful in establishing an Urban Reserve (2007) and in

expanding its UGA (2009) based in large part on the Ontario Economic Opportunities Analysis (2006).

The City has limited funds to prepare another successful UGA amendment. Therefore, it is critical that the City (a) develop an effective work program to achieve its economic development objectives and (b) hire a team of consultants that can get the job done in a timely and efficient manner.

Proposal

To develop a work program that meets the City's needs, Winterbrook will:

- a. Review background economic development, public facilities, transportation, and UGA alternatives documents prepared by ECONorthwest, Winterbrook and others from 2006-2009;
- b. Conduct interviews with Oregon Business Development, Representative Cliff Bentz, Economic Development Committee members, City and County staff (including Economic Development Director Jim Jensen), the Mayor and identified Council members and local business representatives;
- c. Prepare a detailed but readable work program, budget and schedule that maximize the chances of a successful industrial lands UGA amendment.

Product

The work program will identify and describe:

1. City and County economic development objectives;
2. Applicable statutes, goals and administrative rules that must be addressed in the UGA amendment process;
3. Identification of key issues that must be addressed and suggestions for how to address them;
4. Consultant services necessary to meeting local objectives and address applicable state requirements; and
5. A reasonable schedule for preparation and local review of studies and maps, coordination with affected state agencies (DLCD, ODOT, OBD), the local adoption process necessary for a successful UGA amendment.

We will prepare one review draft for City staff and Economic Development Committee consideration and a final draft for Council review and approval.

Fees

Winterbrook will prepare the work program, in concert with City and County staff, for \$5,500 (if we do the work from our office) or \$6,500 (if I travel to Ontario for interviews, meetings and perhaps a work session). We anticipate that it will take from 50-60 hours to complete these tasks – depending on whether a visit to Ontario is included.

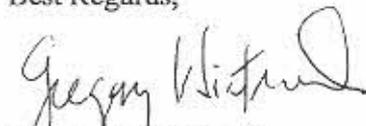
City of Ontario
June 25, 2012
Page 3

Time of Performance

Winterbrook will complete the work program within three weeks following authorization to proceed.

In conclusion, we look forward to working with Ontario and Malheur County citizens, staff, and appointed and elected officials on this critically important project.

Best Regards,



Gregory Winterowd
Principal

RESOLUTION NO. 2012-107

**A RESOLUTION SUPPORTING THE INDUSTRIAL LANDS COMMITTEE
EXPLORING THE ADDITION OF INDUSTRIAL LANDS TO THE URBAN
GROUTH BOUNDARIES OF VALE, NYSSA, ONTARIO,
AND POTENTIAL COUNTY SITES**

WHEREAS, This matter was explored in the Industrial Lands Committee meeting held on April 26, 2012 at the Economic Development Office, Ontario, Oregon; and

WHEREAS, The City of Ontario supports a process that is open and includes input from stakeholders, including landowners and residents residing in the area; and

WHEREAS, The Committee will identify industrial lands that will attract industry and jobs to Ontario; and

WHEREAS, The Committee will make recommendations to the City Council's of Ontario, Vale, and Nyssa, and the Malheur County Court, regarding the addition of industrial lands.

NOW THEREFORE, BE IT HEREBY RESOLVED by the City Council for the City of Ontario:

That the City of Ontario supports the process of identifying additional industrial lands in Malheur County for the purpose of attracting additional job opportunities to Ontario.

EFFECTIVE DATE: Effective immediately upon passage.

PASSED AND ADOPTED by the City Council of the City of Ontario this 7th day of May 2012, by the following vote:

AYES: Fugate, Crume, Dominick, Sullivan, Fox, Verini

NAYES: None

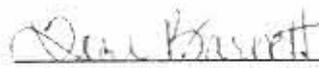
ABSENT: Jones

APPROVED by the Mayor this 7 day of May, 2012.



Joe Dominick, Mayor

ATTEST:



Tori Barnett, MMC, City Recorder

RESOLUTION #2012-115

A RESOLUTION REVISING THE CITY OF ONTARIO ECONOMIC AND COMMUNITY ENHANCEMENT
SMALL GRANT FUND AND ACCOMPANYING CRITERIA AND PROCEDURES

- WHEREAS,** The City of Ontario adopted Resolution No. 87 - 103, establishing the City of Ontario Business Loan Fund and Loan Allocation Procedures; and
- WHEREAS,** Resolution No. 00 -128 revised the Business Loan Fund and Loan Allocation Procedures to increase the availability of low interest loans for the economic improvement and enhancement of the community; and
- WHEREAS,** Resolution No. 00-128 further provides that the interest earned on the City of Ontario Business Loan Fund, which is not needed to keep the principal balance of the fund whole, shall be used to fund an Ontario Economic and Community Enhancement Small Grant Fund.

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

1. Except as otherwise specified, the language presented in Resolution No. 87-103, dated March 2, 1987, Resolution No.00-128, dated October 16, 2000, and Resolution No. 00-133, dated November 6, 2000, shall remain in full force and effect.
2. Eligibility criteria for the Economic and Community Enhancement Small Grant Fund shall be modified to read as follows:
Eligibility: Any public facility, project, or piece of equipment meeting the criteria set forth herein shall be eligible to receive funds from the Grant Fund. For the purpose herein, "public" shall mean a facility or project owned or sponsored by the City of Ontario, Malheur County, the State of Oregon, Ontario 8-C School District or Treasure Valley Community College.
3. This resolution supersedes Resolution 2004-101.

PASSED AND ADOPTED by the Ontario City Council this 18th day of June, 2012, by the following vote:

Ayes: Dominick, Fugate, Sullivan, Verini

Nays: Crume, Fox, Jones

Absent: None

APPROVED by the Mayor this 19th day of June, 2012.

Joe Dominick, Mayor

Attest:

Tori Barnett, MMC, City Recorder

AGENDA REPORT

July 9, 2012

TO: Mayor and City Council

FROM: Chuck Mickelson, Interim City Manager

SUBJECT: INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF ONTARIO AND TREASURE VALLEY COMMUNITY COLLEGE

DATE: June 26, 2012

SUMMARY:

Attached is the following document:

- Intergovernmental Agreement between the City of Ontario and Treasure Valley Community College for the Landscape Triangle located at the intersection of SW 4th Street and SW 11th Avenue.

BACKGROUND:

The landscape triangle at the intersection of SW 4th Street and SW 11th Avenue has been maintained by Mr. Dan Gray for many years. He has taken a great deal of pride in maintaining this site. TVCC would like to take over the responsibility of maintenance as it provides a key point of entry into the college's sports complex. The college intends to install two signs on the site. The term of the agreement is through June 30, 2015 with automatic renewals outlined in the agreement.

The City has been providing water to the site and will continue to do so under this agreement. The city will also provide street signage and striping as necessary.

RECOMMENDATION:

Staff recommends approval of the IGA with TVCC.

PROPOSED MOTION:

I move the City Council approve the IGA with Treasure Valley Community College for the landscaping triangle at the intersection of SW 4th Street and SW 11th Avenue and authorize the City Manager to sign the agreement.

INTERGOVERNMENTAL AGREEMENT

Between the City of Ontario and Treasure Valley Community College

This Agreement is between the City of Ontario, a Municipal Corporation of the State of Oregon (“City”) and Treasure Valley Community College, a Political Subdivision of the State of Oregon (“College”).

RECITALS

WHEREAS, ORS 190.003 to 190.030 allows units of local government to enter into agreement for performance of any or all functions and activities which such units have authority to perform; and

WHEREAS, the City desires a contractual relationship with the College for the upkeep and care of the Landscape Triangle located at the Junction of Southwest 11th Avenue and Southwest 4th Street, more particularly illustrated on Exhibits A and B attached hereto (the “Site”); and

WHEREAS, the College desires to utilize the site for signage as a key point of entry into the College’s sports complex; and

WHEREAS, the City and the College desire to provide excellent customer service to their citizens and their clientele and desire to accomplish this goal in the most effective and efficient manner.

NOW, THEREFORE, it is agreed by the two parties as follows:

1. **INCORPORATION OF RECITALS.**

The Recitals contained herein are true and accurate and incorporated herein.

2. **USE AND MAINTENANCE OF THE SITE.**

2.1 Under the terms and conditions set forth in this Agreement, the City agrees to allow the College to install two signs on the Site. The installation of said signs shall be consistent with the proposed plan and at the locations set forth on the attached Exhibits C and D respectively.

2.2 In exchange for its right to install signs at the Site, the College agrees that it shall take responsibility for certain aspects of the management, maintenance and upkeep of the Site as more particularly set forth in this Agreement.

3. **EFFECTIVE DATE AND TERM.**

3.1 The rights and obligations set forth herein shall commence upon execution of this Agreement and shall continue to June 30, 2015 (“Termination Date”).

3.2 If either party intends to terminate this Agreement on the Termination Date, said party shall provide the other party written notice of its intent to terminate this Agreement ninety (90) days prior to the Termination Date.

3.3 If the Agreement is not terminated as set forth in Section 3.2 above, it shall be automatically extended for one (1) additional one (1) year term (“Renewal Term”). During said Renewal Term, either party may terminate this Agreement at any time by giving six (6) months written notice to the other party of its intent to terminate this Agreement.

4. **RIGHTS AND RESPONSIBILITIES OF COLLEGE.**

4.1 College agrees to provide maintenance and upkeep for the Site in a manner consistent with its current landscaping initiatives and practices as reflected throughout its campuses. For reference purposes, examples of the College’s current landscaping at other locations on campus are attached hereto as Exhibits E, F, and G.

4.2 College agrees to landscape this Site in a manner that provides plantings which are low to the ground and that do not interfere with vehicular or pedestrian traffic and visibility. This responsibility shall apply to the design and maintenance of the plants, valves, irrigation lines, sprinklers, drip lines, flag poles, and/or lighting.

4.3 College shall have the right to modify the existing landscaping of the Site to accommodate the two signs it will be installing pursuant to this Agreement. College agrees that the modification of the existing landscaping shall be consistent with the proposed landscape as reflected on the attached Exhibit C.

4.4 The College will be responsible for all costs associated with the installation of the signs and the necessary modification to the landscaping to accommodate the installation of said signs. The College and the City will mutually agree upon the plan for the signs so as not to create a vision clearance issue. See Exhibit C and D.

4.5 The College shall be responsible for costs of maintenance and upkeep of the Site consistent with its current landscaping initiatives and practices reflected on campus.

4.6 The College shall, in its sole discretion, determine the amount of water necessary for the irrigation of the plants and other landscaping installed at the Site.

5. **RIGHTS AND RESPONSIBILITIES OF CITY.**

5.1 City shall be responsible for the maintenance, and costs associated therewith, of the water meter, street signage and striping at the Site.

5.2 The City shall be responsible for paying for the water necessary to irrigate the Site and the landscaping installed by the College pursuant to this Agreement at the Site.

5.3 The City shall be responsible for all expenses associated with the maintenance of the water meter, street signage, and striping.

5.4 The City shall have the right to retain its current street signage and striping as it currently exists at the Site.

5.5 All other costs associated with the maintenance of the Site not specifically the responsibility of the College shall remain the responsibility of the City.

6. **TERMINATION.**

Upon termination of this Agreement, as provided herein, the College will remove the signs/bases from the triangle.

7. **LOCAL IMPROVEMENT DISTRICT.**

The parties agree and acknowledge upon completion of a Local Improvement District on Southwest 14th Avenue, the College and the City will work mutually to vacate SW 11th Ave to the College. In such event, this Agreement shall terminate and be of no further force and effect.

8. **AMENDMENT.**

8.1 This Agreement may be amended within its current term or any successive term by the joint agreement of the parties.

8.2 To be effective, all amendments shall be in writing and signed by authorized representatives of each party.

9. **HOLD HARMLESS.**

9.1 Subject to the limitations of liability for public bodies set forth in the Oregon Tort Claims Act, ORS 30.260 to 30.300, the City shall hold harmless and indemnify the College, its officers, employees, and agents against any and all claim, damages, losses, and expenses (including all attorney fees and costs), arising out of, or resulting from the College's performance of this Agreement when the loss or claim is attributable to the acts or omissions of the City.

9.2 Subject to the limitations of liability for public bodies set forth in the Oregon Tort Claims Act, ORS 30.260 to 30.300, the College shall hold harmless and indemnify the City, its officers, employees, and, agents against any and all claim, damages, losses, and expenses (including all attorney [s] fees and costs), arising out of, or resulting from the City's performance of this agreement when the loss or claim is attributable to the acts or omissions of the College.

10. **ATTORNEY FEES.**

In the event, lawsuit or proceeding, including appeal therefrom, is brought for failure to fulfill or comply with any terms of this Agreement, each party shall be responsible for their own attorney fees, expenses, costs, and disbursements for said action, lawsuit, proceeding or appeal.

11. **SEVERABILITY.**

The City and the College agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the agreement did not contain the particular term or provision held to be invalid.

12. **MISCELLANEOUS.**

12.1 **Notices.** All notices provided herein shall be given and shall be deemed completed by sending such notice in writing by certified mail, addressed to the party to whom the notice is to be given at the address shown below, or such other addresses as may from time to time be furnished in writing by one party to the other.

To College: Randy Griffin, Dean for Administrative Services
Treasure Valley Community College
650 College Boulevard
Ontario OR 97914

To City: City Manager
City of Ontario
444 Southwest 4th Street
Ontario OR 97914

12.2 **Assignment.** Neither party will assign this Agreement, underlet, sublet or part with the possession of said Premises, or any part thereof, without first obtaining the written consent of the other party.

12.3 **Non Waiver.** Failure by either party at any time to require performance by the other of this Agreement shall in no way affect such party's right to enforce any provision; nor shall any waiver of any breach be held to be a waiver of any succeeding breach or a waiver of this non waiver clause.

12.4 **Severability.** In the event any of the provisions of this Agreement shall be deemed illegal or unenforceable, such determination shall not operate to invalidate any of the remaining provisions of this Agreement.

12.5 **Headings.** The bolded or underlined paragraph or subparagraph headings are for convenience only and are not a part of this Agreement and shall not be used in interpreting or construing this Agreement.

12.6 **Situs.** This Agreement is established under the laws of the State of Oregon, and all questions concerning its validity and construction shall be determined under such laws.

12.7 **Time of Essence.** Timely and prompt performance of each provision of this Lease is of the essence of this agreement.

IN WITNESS THEREOF, the respective parties have cause to be signed in their behalf to make and enter into this Agreement.

Date: _____

Date: _____

By: Randy R. Griffin

Title: Dean of Administrative Services

Title: City Manager

Treasure Valley Community College

City of Ontario

Chapter 12 Regional Housing Rehabilitation

General Description

Oregon Community Development Block Grant funds are used by nonentitlement cities and counties to implement Regional Housing Rehabilitation programs. To be eligible for funding the proposed service area must include a minimum of three municipalities. A city or county must partner with at least two other municipal jurisdictions to form a regional housing rehabilitation program. The lead applicant and the other partnering jurisdictions must execute an agreement specific to the proposed project. This can be in the form of an inter-Governmental Agreement or other approved document that clearly outlines the city or county that will take lead for the proposed project, the other participating municipal jurisdictions, there must be at least two, and the non-profit organization that will be administering program. The participating jurisdictions should include at least those cities or counties of the proposed project area to be served. A regional housing rehabilitation program manages a revolving loan fund for low-income homeowners to repair their houses, using local construction contractors. The single family homes assisted must be owned and occupied by low and moderate-income homeowners.

Applicants must sub-grant the funds to an eligible 501(c)(3) or (c)(4) nonprofit organization to carry out a regional program consistent with 105(a)(15) of the Housing and Community Development Act (HCDA). The income generated by the loans (repayments and interest) must be repaid to the eligible non-profit which must meet the requirements of 105(a)(15) of the HCDA. Repaid funds are used to support ongoing housing rehabilitation or other similar identified activities in accordance with the requirements of 105(a)(15) of the HCDA. The original eligible non-profit that received the CDBG sub-grant from the local government must own and administer all the loan repayments and interest earnings, associated with the CDBG funded housing rehabilitation revolving loan fund program.

Maximum Grant Amount

The maximum grant in this category is \$400,000. No more than one application from a regional housing rehabilitation program area may be submitted per quarter.

Project Timeline

All the initial loans from the CDBG funded housing rehabilitation grant must be made within 24 months after execution of the grant contract with OBDD. Any unobligated funds, in the CDBG revolving loan fund grant will be recaptured by the state after 24 months.

Matching Funds Requirement

There is no minimum match requirement. Any matching funds necessary to complete the proposed CDBG project, must be in the form of cash or debt service. All project funds necessary to complete the proposed project must be available and committed at the time the application is received by the department. Refer to the "Readiness to Proceed" definition in Chapter 5 for more details.

National Objective

All housing rehabilitation projects must meet the housing/direct benefit federal national objective as identified in 24 CFR 570.483(b)(3). One-hundred percent (100%) of the benefitted owner occupied household occupants must have incomes below the federal low- and moderate-income limit (80% of the median family income as adjusted by family size). Refer to Chapter 3 for more information.

Financial Review

During staff review of the application, if direct and clear evidence is obtained by the department that the grant funds are not needed and that the project can or will be carried out by the applicant or non-profit sub-grantee, whether or not the grant is awarded, the application will not be rated and ranked or recommended for an award.

Program Structure

Community Development Block Grant funds are regulated by 24 CFR Part 570.489(e)(2)(ii). The program requires the city or county grant recipient to enter into a sub-grant agreement with an eligible nonprofit organization meeting the requirements of the Housing and Community Development Act 105 (a) (15) to carry out the housing rehabilitation program. The (sub-grantee) non-profit organization must carry out the housing rehabilitation program on behalf of the applicant, but this does not relieve the city/county grant recipient from its CDBG grantee responsibilities. The sub-grantee must be the owner and lender of all loans against the property title and is responsible for all program decisions. All loan repayments must be received and re-conveyed by the sub-grantee certified under 105(a)(15) of the HCDA. The sub-grantee will use the funds to support housing needs in accordance with the requirements of 105(a)(15) of the HCDA.

The eligible non-profit is in control of all decisions regarding the Community Development Block Grant funds. The nonprofit may undertake all activities or may utilize a professional services contract to accomplish grant administration work.

If for some reason the non-profit dissolves and an asset reversion occurs contact Oregon Business Development Department for assistance. An asset reversion could change the federal identity of these funds.

De-Federalization of Loan Repayments

Oregon's Housing Rehabilitation Program is designed such that that loan repayments are de-federalized. This allows a local entity to continue the program with loan repayment funds with reduced administrative expense. This section is meant as a guide to assist applicants in pursuing this outcome. By not following this guide an entity risks the de-federalization designation of their repayment funds resulting in the retroactive application of HUD rules on all expenditure of these repayment funds.

- An applicant must sub-grant the program to an eligible nonprofit entity.
- The nonprofit (sub-grantee) entity will manage the program with its own staff or, will contract for professional staff, or a combination of the two.
- A professional services contract, acceptable to OBDD-IFA, must be entered into for any contracted staff. This contract must:
 - ✓ Pay for eligible CDBG expenses on a reimbursement basis. This basis may be by the hour, by the number of successfully completed rehabilitation projects, or lump sum,

- ✓ Clearly define the roles and responsibilities of the professional services covered by the contract,
 - ✓ Direct the contracted staff to follow the policies and procedures set by the nonprofit (sub-grantee),
 - ✓ Clearly define the nonprofit (sub-grantee) as the final authority for all decisions pertaining to the program.
- The nonprofit (sub-grantee) must retain control of the funds, managing the bank accounts and disbursements through its Secretary/Treasurer if it has no employed staff. The nonprofit Board must have approval authority for all expenditures.
 - The composition of the nonprofit (sub-grantee) Board must be established as outlined in the By-laws and Articles of Incorporation of the nonprofit entity, cannot be comprised substantially of individuals of any one government agency and must be independent and void of any conflict of interest with any government agency.
 - Non-profit (sub-grantee) cannot relinquish its responsibility for the oversight and management of the grant funds.
 - Contracts must be approved by OBDD-IFA to determine that non-profit (sub-grantee) entity is maintaining control and will carry out the activities as the active and responsible party of the grant funds.

Eligible Homes

All of the single family, owner occupied housing units must have had a HUD, Section 8, housing quality standards evaluation that resulted in substandard conditions.

Eligible Activities

The following table summarizes the eligible activities, the maximum amount allowed for each activity in the original grant from OBDD, and the requirements for future loan repayments.

Eligible Activities	Maximum Allowed in Original Grant from OBDD	Maximum that can be budgeted for a full \$400,000 grant request	Requirements for use of "De-Federalized" Loan Re-payments
Grant Administration: Work related to overall grant management, coordination, monitoring and evaluation. Meeting the grant contract requirements and federal requirements. Refer to Chapter 5 for more details.	Maximum allowed 10% of the requested grant, but no more than \$25,000.	\$25,000	None – There will no longer be any federal requirements.
Program Management*: Work related to carrying out program activities, working directly with the LMI clients. Such as: screening applicants,	Up to 20% of the award, plus an additional \$10,000 can be used for the combined costs of	\$65,000	A maximum of 20% of the annual loan repayments and

processing loans, and loan servicing. Program management is considered direct service to clients. Refer to Chapter 5 for more details.	program management and grant administration. Of this amount no more than \$25,000 can be for grant administration, the remainder must be used for program management.	Calculated as follows: 20% x \$400,000 = \$80,000 \$80,000 + \$10,000 = \$90,000 \$90,000 - \$25,000 = \$65,000	Interest earnings.
Environmental Review - Refer to Chapter 3 of the Grant Management Handbook for more details.	\$15,000	\$15,000	None - There will no longer be any federal requirements.
<p>HRRLF: (Listed in order of Program Priority)</p> <p>PRIORITY #1 -</p> <p>Eligible health and safety activities including lead, septic tanks and private sewer lines and drainfields, private water lines and wells and asbestos tests, inspections and assessments.</p> <p>Improvements necessary to fulfill reasonable accommodation requests.</p> <p>PRIORITY #2 - Construction, rehabilitation, reconstruction, or the installations of improvements to upgrade substandard electrical, plumbing, roofing, siding, insulation, weatherization, heating systems, hot water heaters and dry rot repairs.</p> <p>PRIORITY #3 - Purchase and installation of equipment that is an integral structural fixture. (Items not normally removed from the home, light fixtures and built-in appliances.)</p>	Maximum Grant \$400,000 less the items listed above.	\$295,000	<p>The loan repayments and interest earnings less the allowance for program management can be used for either continuing the HRRLF or they can be used for other community economic development, energy conservation and/or neighborhood revitalization projects, as allowed by 105(a)(15) of the HCDA.</p> <p>Note: The non-profit is encouraged to set aside 10% of the loan receivables to cover legal remedies in pursuit of default collection.</p>

*Program management services are performed by the sub-grantee for the city or county grant recipient. Sub-grantees typically develop or prepare such items as: application procedures, process applications, verification of program eligibility, notices of loan approvals, filing of trust deeds, construction oversight, owners certification that improvements were accepted and other necessary documents.

Ineligible Activities

- No indirect costs are allowed under the program.
- Costs associated with providing Regional Housing Center services.
- Any equipment that is not fixed and structurally integral to the residence such as: washing machines, clothes dryers, freezers and window mounted air conditioners.

Joint Projects

A combination of cities and counties can be involved in a regional or joint project. However, only one jurisdiction can be the applicant. The jurisdiction that applies and receives an award incurs the responsibility for the grant funds. Joint applications submitted for review in which two or more units of local government are equally responsible will not be accepted. Either jurisdiction may take the lead and still allow the funds to be used in all jurisdictions.

Sub-Grant

The state grant recipient (city or county) enters into an agreement with an **eligible nonprofit organization** to implement and **carryout** the regional housing rehabilitation revolving loan fund. All federal CDBG compliance requirements assigned to the sub-grantee remain the obligation of the original state grant recipient (city or county) until closeout of the grant with the state. No formal procurement process is necessary by the city or county when the grant recipient sub-grants the funds to an eligible non-profit.

Eligible Nonprofit (sub-grantee)

The nonprofit must meet the following requirements of a certified sub-grantee by the department:

- Documentation from the Internal Revenue Service (IRS) that certifies the nonprofit organization is organized under 501(c)(3) or (c)4 of the IRS Code.
- Documentation that the organization must have as one of its primary purposes (as outlined in its bylaws, article of incorporation or charter) to provide affordable housing that is decent, safe and sanitary for low and moderate income Oregonians.
- Documentation that the organization serves the development needs of the communities in the non-entitlement areas of the state and is carrying out a neighborhood revitalization, community economic development, or energy conservation project in accordance with 105(a)(15) of the HCDA.
- Each sub-grantee (non-profit) must have reasonable accommodation policies.
- The sub-granted nonprofit must comply with all CDBG requirements.
- This nonprofit must be named as the lender of all loans against property titles.
- All loan repayments must be received and reconveyed by the nonprofit.

Program Implementation

- The nonprofit must carry-out the housing rehabilitation project.
- The nonprofit responsible for carrying out (implementing) the housing rehabilitation project will be the owner of all program policies and processes. The nonprofit will be responsible for these minimum activities: all final loan decisions, owner of all loan portfolios, compliance with all CDBG requirements, owner of future loans and repayments, and final accountability for all CDBG funds.
- The nonprofit must be the lender of all the loans.
- All loan repayments must be received and owned by the non-profit.
- The subsequent loan repayments are not subject to the program income requirements as long as the non-profit uses the funds to continue the housing rehabilitation revolving loan fund program or they can be used for other community economic development, energy conservation and/or neighborhood revitalization projects, as allowed by 105(a)(15) of the HCDA.
- The initial loans must be lent for projects that will meet the CDBG low and moderate housing direct national objective CFR 570.483(b)(3).

Loan Portfolio Requirements

The state is requiring that all loan portfolios will be repaid to an eligible non-profit under 105(a)(15) of the Housing and Community Development Act.

Non-Competition with Local Financing Institutions

Each sub-grantee (non-profit) HRRLF must insert into their loan policies, requirements that they only provide gap financing and will work with local financing institutions to complete the financing package, or require letters of rejection from financing institutions, and/or otherwise demonstrate that the loan amount requested is not available from any conventional banking source of funds.

Defaults

OBDD encourages the sub-grantee (non-profit) to set-aside 10 percent of the loan receivables to cover legal remedies in pursuit of default collection.

Reasonable Accommodation Policies

As federally required, each sub-grantee (non-profit) must have reasonable accommodation policies. A copy their reasonable accommodation policies must be submitted with the application.

Lead-Based Paint

All applicants must demonstrate how the rehabilitation work will be conducted in accordance with the Lead Based Paint Poisoning Prevention Act and HUD implementing regulations at 24 CFR 570.487(c) and any subsequent amendments. Effective September 15, 2000 revisions to the Lead Based Paint regulations 24 CFR Part 35 were implemented. More information about these requirements can be found in the Grant Management Handbook.

Entitlement Area Review

State Community Development Block Grant resources cannot be used to benefit entitlement counties and cities. If the geographic area served by the non-profit's (sub-grantee's) Regional Housing Rehabilitation Program contains an entitlement county or city (Entitlements include: The Counties of; Multnomah, Washington and Clackamas, and the Cities of: Ashland, Bend, Corvallis, Eugene, Gresham, Hillsboro, Medford, Portland, Salem and Springfield.) within their service area must provide documentation to satisfy the following with the application:

1. Documentation of the screening procedures, forms and policies used to determine if the beneficiaries of the Housing Rehabilitation Program are entitlement or non-entitlement residents.
2. Documentation that ensures that CDBG funds are only benefitting non-entitlement beneficiaries.

Application Criteria

Applicants for housing rehabilitation funds must provide a list of at least 25 potential homeowners to support the need within the sub-grantees jurisdiction, which must include the following: addresses, primary items of repair, date of most recent contract from the non-profit, estimated amount to be requested from the revolving loan fund, a description of any preliminary eligibility work performed and the total estimated dollar amount of the rehabilitation loans on the list.

Refer to Chapter 7 of this Method of Distribution for additional application criteria.

Outcome and Performance Measures:

Decent affordable housing as a housing program that meets individual family needs is our objective. Sustainability as a project that promotes livability by improving neighborhoods is our desired outcome. The amount of money leveraged from other sources is also a factor. Each applicant must address how their project meets the objective(s), outcome(s), indicators and performance measures identified below:

Objective	Outcome (Pick One)	Indicators	Performance Measures
Decent Affordable Housing	Sustainability/ Promoting Livable or Viable Communities	Number of owner occupied units rehabilitated or improved: <ul style="list-style-type: none"> • Number using lead safe working practices (Pre-1978 units, where \$5,000 or more of rehab work is to be completed and any lead safe practices were used.) • Number subsidized by federal, state, or local program • Number occupied by elderly (head of household or spouse age 60 or older) • Number of units made handicapped accessible 	Amount of money leveraged from other federal, state, local and private resources)
			Number of persons, households or units assisted (pick the one most appropriate to your project - pick only one)
			Number of low and moderate-income persons served by the project.
			Number of communities assisted,
			Race, ethnicity, disability (current categories for beneficiary reporting still apply)
Number of units rehabilitated			

TABLE F
Guide for Grant Administration/Activity Delivery Costs/Program Management Costs

Activity	Grant Administration Cost (yes/no)	Activity Delivery Cost (yes/no)	Program Management Cost (yes/no)	Maximum amount allowed
Preparing budgets, schedules, contract amendments	Yes	No	No	
Drafting Requests for Proposals and agreements with consultants for grant administration or other consulting work (Architect and Engineer)	Yes	No	No	
Setting up systems to assure compliance with state and federal program requirements. For example: labor standards files and a grant accounting system.	Yes	No	No	
Monitoring project progress against the grant contract scope of work and budget and reporting to elected officials.	Yes	No	No	
Preparing disbursements/cash requests, reports, and other documents for submission to the Department.	Yes	No	No	10% of the grant award but not more than \$25,000.
Participating in Department monitoring visits and responding to monitoring findings and concerns.	Yes	No	No	
Preparing a project completion report, assisting an auditor with required grant information.	Yes	No	No	
Costs of publishing the Fair Housing Resolution.	Yes	No	No	
Purchase of capital equipment, such as computers and file cabinets for grant administration.	Yes	No	No	
Training on CDBG grant administration requirements.	Yes	No	No	
Preparation of the environmental assessment or other environmental documents and publishing required notices.	No	Yes	No	
Labor Standards Compliance work related to conducting on-site employee interviews, verifying payroll data, reviewing payrolls, attending pre-construction conferences, and obtaining compliance with these requirements.	No	Yes	No	Maximum \$15,000 per project.
Attorney fees for preparing or reviewing contract documents or property acquisition activities.	No	Yes	No	No maximum - reasonable and necessary to complete the activity.
Professional appraiser fees related to property acquisition.	No	Yes	No	No maximum - reasonable and necessary to complete the activity.
Marketing Grant Activities to clients.	No	No	Yes	Up to 20% of the grant award for the combined costs associated with grant administration and program management. Grant administration is limited to \$25,000.
Collecting client applications, verifying application to determine eligibility.	No	No	Yes	
Making referrals for products or services.	No	No	Yes	
Providing education or counseling to clients.	No	No	Yes	
Site-specific environmental review, on-site inspections, bid preparation, contacting client/contractor troubleshooting, compiling cost data on individual rehabilitation homes.	No	No	Yes	Refer to Chapter 5 for more information.