

AGENDA
CITY COUNCIL - CITY OF ONTARIO, OREGON
Monday, August 6, 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, August 1, 2012, and a study session was held on Thursday, August 2, 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) Local Contract Review Board Action:

A) Resolution #2012-114: Declare HD Supply Waterworks as City's Sole Source Provider for Neptune/Schlumberger Radio Read Meter System 1-5

5) Consent Agenda: Motion Action Approving Consent Agenda Items

A) Approval of Minutes of Regular Meeting of 07/09/2012 6-10
B) Water Line Easement Request: Ontario Eye Associates 11-16
C) Approval of the Bills

6) 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.

7) New Business:

A) Resolution #2012-116: Add to List of Child Protection Zones 17-19
B) Ratification of City Manager Contract w/Jay Henry 20-28
C) Request to Proceed: SRO Contract with Ontario 8C School District 29-33
D) Acceptance of Warranty Deed: FM Idaho, Co, LLC (NW WA Realignment Project) 34-40
E) Lease Agreement w/South Georgia Equipment (Old City Shop) 41-61
F) Washington Street Project Property Purchase: ODOT - Hand-Out

8) Discussion Item(s)

A) Industrial Lands Expansion for Ontario: Winterbrook Planning
B) SREDA Update - Kit Kamo
C) Golf Course Update - Kenny Gather
D) Land Exchange: Old City Dump for Moore Park

9) Correspondence, Comments and Ex-Officio Reports

10) Executive Sessions:

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

11) Adjourn

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

AGENDA REPORT

August 6, 2012

TO: Mayor and City Council

FROM: Bob Walker, Public Works Director

THROUGH: Jay Henry, City Manager

**SUBJECT: RESOLUTION 2012-114
A RESOLUTION AUTHORIZING HD SUPPLY WATERWORKS AS THE CITY'S SOLE SOURCE
PROVIDER OF NEPTUNE/SCHLUMBERGER RADIO READ METER SYSTEM**

DATE: August 2, 2012

SUMMARY:

Attached are the following documents:

- Resolution 2012-114
- Memo from Neptune Technology Group

Ontario City Council, acting in their capacity of the Local Contract Review Board, approved Resolution 2007-102 on January 16, 2007 authorizing Ferguson Waterworks as the sole-source Neptune/Schlumberger water meter provider in the Northwest. Since that time, HD Supply Waterworks has taken over the Neptune/Schlumberger sales in this area. By state law, the Local Contract Review Board must declare sole-source status to HD Supply Waterworks for the Neptune/Schlumberger radio read meter system.

PREVIOUS COUNCIL ACTION:

February 19, 2002 City Council authorized staff to sole source with Neptune/Schlumberger for an automated Radio Read System

January 16, 2007 City Council, as the Local Contractor Review Board, adopted Resolution #2007-102, A RESOLUTION AUTHORIZING FERGUSON WATERWORKS AS THE CITY'S SOLE SOURCE PROVIDER OF NEPTUNE/SCHLUMBERGER RADIO READ METER SYSTEM.

BACKGROUND:

The Public Works Operations Division began upgrading the City's meter reading system in 2002 by purchasing the Neptune/Schlumberger Radio Read Meter System. National Waterworks, Inc. was authorized as the only vendor for Neptune/Schlumberger radio read meters in the Northwestern United States on September 6, 2005. As of December 2006, the sole-source provider of Neptune/Schlumberger meters switched from National Waterworks to Ferguson Waterworks, and in December 2010 HD Supply Waterworks was awarded the Neptune Sole Source distributorship. The City is now in need of purchasing more meters; therefore, City Council, as the Local Contractor Review Board, must authorize sole-source status to HD Supply Waterworks for the Neptune/Schlumberger radio read meter system.

FINANCIAL IMPLICATIONS:

The number of meters installed each year is dependent on the economy which affects the number of new homes built, the number of new businesses coming to Ontario. The weather may also play a role in the amount of meters needing to be replaced, as severe cold weather creates frozen and damaged meters. The majority of meters purchased will be ¾" and 1" meters at a cost of \$284.47 and \$383.00 per meter respectively. We will spend an estimated \$50,000 annually for the purchase of meters, meter reading equipment and maintenance agreement for the meter reading system.

RECOMMENDATION:

Staff recommends that the Local Contractor Review Board (City Council) adopt Resolution 2012-114.

PROPOSED MOTION:

I move that the Local Contractor Review Board adopt Resolution 2012-114, **A RESOLUTION AUTHORIZING HD SUPPLY WATERWORKS AS THE CITY'S SOLE SOURCE PROVIDER OF NEPTUNE/SCHLUMBERGER RADIO READ METER SYSTEM.**

RESOLUTION 2012-114

A RESOLUTION AUTHORIZING HD SUPPLY WATERWORKS AS THE CITY'S SOLE SOURCE PROVIDER OF NEPTUNE/SCHLUMBERGER RADIO READ METER SYSTEM

- Whereas,** the City has been upgrading the City's meter reading system for compatibility with the Water Billing System (Springbrook) in an effort to eliminate billing errors; and
- Whereas,** the System most compatible with the Springbrook software is Neptune/Schlumberger Radio Read System; and
- Whereas,** the Ontario City Council previously passed Resolution 2007-102 authorizing Ferguson Enterprises, Inc. as sole source for Neptune/Schlumberger meters; and
- Whereas,** the only Vendor in the Northwestern U.S. for Neptune/Schlumberger meters and parts has switched companies from Ferguson Enterprises, Inc. to HD Supply Waterworks; and
- Whereas,** the City Council recognizes the need to continue the installation of all new meters to this Radio Read System;

NOW THEREFORE, BE IT RESOLVED by the Ontario City Council, acting in their capacity as Local Contractor Review Board, to authorize HD Supply Waterworks as Sole Source distributor for the purchase of Neptune/Schlumberger Radio Read System.

EFFECTIVE DATE: Effective immediately upon passage.

Passed and adopted by the Ontario City Council, acting in their capacity as Local Contractor Review Board, this _____ day of _____, 2012 by the following vote.

Ayes:

Nays:

Absent:

APPROVED BY THE Mayor this _____ day of _____, 2012.

Joe Dominick, Mayor

Attest:

Tori Barnett, City Recorder



HD SUPPLY WATERWORKS – BOISE, ID.
PH (208) 888-5656 FAX: (208) 888-9799

"Local Service, Nationwide"

ATTN: Casey Mordhorst

From: Dan Hawkins

Fax: (541) 889-3488

Pages: 1 of 2

Phone: (541) 889-8572

Date: July 16, 2012

Re: Neptune Meters

CC:

Urgent For Review Please Comment Please Reply Please Recycle

Hello Casey

Here is the letter from Neptune stating that we are now the new Neptune Distributer that was sent out to all of there Municipals back on December 15th 2010.

Let me know if you need anything else.

Thank you

Dan Hawkins
Sales Representative
PH 208-888-5656
FX 208-888-9799
CL 208-546-1478

7/16/2012

**Neptune is Proud to Announce
Our New Distributor for Oregon and Idaho
is HD Supply Waterworks**

Neptune and HD Supply Waterworks are committed to providing the high level of customer service that our customers in Washington and now Oregon and Idaho have come to expect and deserve.

The contact details for the key members of our team are as follows:



Mike Dochow	Northwest Territory Manager	(253) 508-3033
Brad Dreier	Western Regional Manager	(770) 329-5960



Joe Birch	Eastern WA, Northern ID, and Oregon District Manager	(503) 620-9123
Brandon Oswald	Southern Idaho District Manager	(208) 523-3335
Mike Nelson	Puget Sound Area District Manager	(253) 405-6117

HD Supply WW Branch Locations and Contact Information:

LAKE OSWEGO - 6720 SW McEwan Rd, Lake Oswego, OR 97035	(503) 620-9123
VANCOUVER - 9115A NE 117 th Ave, Vancouver, WA 98662	(360) 256-6151
HILLSBORO - 21520 NW Cherry Lane, Hillsboro, OR 97124	(503) 690-4801
PASCO - 645 Lockheed Street, Pasco, WA 99301	(509) 547-2410
SPOKANE - 1215 N Bradley Rd, Spokane, WA 99212	(509) 893-1055
IDAHO FALLS - 1966 W Heyrend Way, Idaho Falls, ID 83402	(208) 523-3335
BOISE - 3338 Commercial Ct, Meridian, ID 83642	(208) 888-6656
SEATTLE - 10013 MLK Way South, Seattle, WA 98178	(206) 722-4800
PUYALLUP - 602 Valley Ave NE, Puyallup, WA 98372	(253) 840-8558
WOODINVILLE - 5823 238 th SE, Woodinville, WA 98072	(425) 483-2724
MARYSVILLE - 4106 134 th St NE, Marysville, WA 98271	(360) 651-1147
BELLINGHAM - 3735 Irongate Road, Bellingham, WA 98226	(360) 734-4210

Please note that this change is effective immediately.

NEPTUNE
TECHNOLOGY GROUP INC.

1500 Alabama Highway 229, Tallapoosa, AL 36078 • 334.283.8555 • www.neptunetg.com

COUNCIL MEETING MINUTES

July 9, 2012

The regular meeting of the Ontario City Council was called to order by Mayor Joe Dominick at 7:00 p.m. on Monday, July 9, 2012, in the Council Chambers of City Hall. Council members present were Norm Crume, Joe Dominick, Jackson Fox, Charlotte Fugate, Dan Jones, David Sullivan and Ronald Verini.

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

Charlotte Fugate led everyone in the Pledge of Allegiance.

AGENDA

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

COUNCILOR COMMENT

Councilor Jones stated a few weeks back, Riley Hill was putting together a fund-raiser for Representative Cliff Bentz, and he contacted Councilor Jones because he knew there was going to be leftover food and beverage from the event. Mr. Hill suggested having a fund-raiser for Dusty Simpson. They put the word out, and on Saturday night they gathered at Mr. Hill's residence, where they ate, drank, and got out their checkbooks. Dusty's mother, Debbie, made the comment "*thank God he's alive*", and being a parent and grandparent, that stuck with him. He wanted Dusty to know that he was a very important part of the volunteer fire department, they needed him to get well, and they needed him to get back to work. Councilor Jones presented Dusty with a check for \$2,830, to help with his recovery costs.

CONSENT AGENDA

Charlotte Fugate moved, seconded by Ronald Verini, to approve Consent Agenda Item A: Approval of the Regular Minutes of 06/18/2012; Item B: Liquor License Application: Spuds & Suds Change of Ownership; Item C: Ordinance #2668-2012: Amend OMC 7-1 re: Nuisance and Health Regulations (Final Reading); Item E: Funding Recommendation: Industrial Lands Study; Item F: Funding Recommendation: Transit 2012/13; and Item G: Approval of the Bills. Roll call vote: Crume-yes; Fox-yes; Fugate-yes; Jones-yes; Sullivan-yes; Verini-yes; Dominick-yes. Motion carried 7/0/0.

PUBLIC COMMENT

Debbie Blackaby, Chair, Project Dove/The Unique Boutique, stated they had found another way to do some fundraising, as 99.9% of their needs were met through donations. They currently had two stores, and in an effort to cut expenses, nearly \$15K, they were going to consolidate their two stores into one, keeping the site at 189 South Oregon (beside Four Rivers Heating and Cooling). The problem they were faced with was that large amounts of donations needed to be dropped off behind the building, along an alley that only allowed a one-way flow, which caused a potential traffic hazard. They wanted the alley vacated to allow the drop off of donations, without causing traffic issues.

Councilor Verini asked if the problem was the telephone pole at the end of the alley.

Ms. Blackaby stated both the power pole at the end, and some cement blocks. Around the pole, when Salon Salon was there, their cars were parking in the drive through. With Salon Salon now gone, it was open, and they were able to use it. It was definitely hard to maneuver. As soon as a new business came in, they'd be blocked again.

Councilor Fugate asked if that was the park owed by Mr. Hill.

Mayor Dominick stated yes, and it was leased by the city.

Councilor Fox stated that piece was vacated and was an alley. The surrounding properties just "used" it.

Ms. Blackaby stated the plat map she had obtained showed it was an alley once, but wasn't anymore.

Councilor Sullivan stated it had been vacated in 1997.

Larry Sullivan, City Attorney, stated when that piece was vacated, the title in the land became owned by adjoining property owners. The city didn't have the ability to vacate. The land owners could rededicate that alley back to the city, and the city would have to accept. The other option for the city was that they could condemn that piece of land.

Councilor Jones stated with regard to the grass line of the park, didn't that gravel belong to the park?

Mr. Mickelson stated yes. When that alley was vacated, there was about 40 more feet to the edge of the gravel that belonged to Mr. Hill. Without significantly affecting park, they could come down and turn a bit into the gravel and exit out onto SW 1st Street. A deal had to be made with Mr. Hill to make that happen. The vacated piece was currently grass.

Mr. Sullivan stated they could discuss in executive session the proposal by Mr. Hill in respect of ownership of the park. That would be discussed later in Executive Session.

NEW BUSINESS

Accept Warranty Deed: Riley Hill re: NW Washington Relocation Project

Chuck Mickelson, City Manager, stated ODOT staff prepared appraisals and conducted negotiations on many of the parcels that needed to be acquired for this roadway project. The Warranty Deed for the Riley Hill property 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, 2012, 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, the 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. On July 18, 2011, the 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.

Jackson Fox recused himself from the action, based on a potential conflict of interest.

David Sullivan moved, seconded Ron Verini, that the Ontario City Council authorize the City Manager to sign the Warranty Deed from Riley Hill accepting the property for the NW Washington roadway project. Roll call vote: Crume=yes; Fox-recuse; Fugate=yes; Jones=yes; Sullivan=yes; Verini=yes; Dominick=no. Motion carried 5/1/0/1.

Bid Award: North Park Boulevard Sewer and Water (11WAT-10)

Chuck Mickelson, City Manager, stated as 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 would be in place for future development of the area. Another reason for the proposed improvements was to accommodate water and sewer systems for the new city shop. Currently the city shop was on a well for water and a septic system for the sanitary sewer. When this project was completed, the city shop would 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)

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

Councilor Jones asked where the funding would come from.

Mr. Mickelson stated it was a budgeted item, coming out of the sewer and water fund.

Charlotte Fugate moved, seconded by Ron Verini, 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. Roll call vote: Crume-yes; Fox-yes; Fugate-yes; Jones-yes; Sullivan-yes; Verini-yes; Dominick-yes. Motion carried 7/0/0.

Industrial Lands Committee Proposal

Chuck Mickelson, City Manager, stated the cities of Ontario, Nyssa, Vale, as well as Malheur County, passed resolutions indicating support for more industrial land in the county. An ad hoc "Industrial Lands Committee" had met several times, and had 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 was nearly impossible for a small community such as Ontario to accomplish a change such as this without outside professional help. Estimates had been made that the cost of a consultant could range from \$75,000 to \$100,000.

It had been suggested that the city 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 was familiar with the Ontario area having 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 were not willing sellers and willing to participate. Contacts had been made with several of the major property owners and they had indicated a willingness to participate in the process. However, none were willing to give a firm commitment on a sale until an offer was made; the correct zoning was in place, etc.

Comments were also made by the Council that residential land needed to be made available for future housing stock. There was substantial available residential zoned land currently in the city and urban growth boundary. As this study went forward, additional residential lands needed to be considered. This this was not a budgeted project, funds would have to be allocated by the City Council from one of the city's contingency accounts. Three possible sources of funding were:

- 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

Dan Jones moved, seconded by Jackson Fox, 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 the Ontario Economic and Community Enhancement Small Grant. Roll call vote: Crume-yes; Fox-yes; Fugate-yes; Jones-yes; Sullivan-yes; Verini-yes; Dominick-yes. Motion carried 7/0/0.

IGA w/TVCC for Maintenance of Landscape Triangle at SW 4th Street

Chuck Mickelson, City Manager, stated 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 had taken a great deal of pride in maintaining the site. TVCC would like to take over the responsibility of maintenance as it provided 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 was through June 30, 2015 with automatic renewals outlined in the agreement.

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

Mayor Dominick wanted verification that the flag pole would remain.

Mr. Mickelson stated he would confirm that. Also, he recommended removing Section 5.5 of the agreement in its entirety.

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

CORRESPONDENCE, COMMENTS, AND EX-OFFICIO REPORTS

- Chuck stated Bob Walker had an operation last week, but everything went well and he was now home.
- Jackson Fox gave kudos to Riley Hill and Dan Jones for putting together a fund-raiser to assist Dusty Simpson with his medical costs.

Mayor Dominick also thanked them for the fund-raiser done on behalf of Representative Cliff Bentz.

- Norm Crume voiced his appreciation for the 4th of July fireworks.
- Charlotte Fugate congratulated the transit system for their award.

EXECUTIVE SESSION(S)

Executive Session: ORS 192.660(2)(a)

An executive session was called at 7:32 p.m. under provisions of ORS 192.660(1)(a) to consider employment of an officer, employee, staff member, or agent. The Council reconvened into regular session at 7: 45 p.m.

Executive Session: ORS 192.660(2)(e)

An executive session was called at 7:46 p.m. under provisions of ORS 192.660(1)(e) to discuss real property. The Council reconvened into regular session at 8:01 p.m.

Executive Session: ORS 192.660(2)(h)

An executive session was called at 8:02 p.m. under provisions of ORS 192.660(1)(h) to discuss potential or current litigation. The Council reconvened into regular session at 8: 32 p.m.

ADJOURN

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

APPROVED:

ATTEST:

Joe Dominick, Mayor

Tori Barnett, MMC, City Recorder

CONSENT AGENDA
August 6, 2012

TO: Mayor and City Council

FROM: Dan Shepard, Engineering Technician III

THROUGH: Robert Walker, Public Works Director

SUBJECT: WATER LINE EASEMENTS

DATE: July 30, 2012

SUMMARY:

Attached are the following documents:

- Water Line Easement: Moore Family Trust
- Water Line Easement: Paul T. Moore and Phillis J. Moore Revocable Trust
- Location Map

Ontario Eye Associates has remodeled a building at SW 4th Avenue on property owned by the Moore Family Trust. A fire hydrant was installed to meet current standards for hydrant spacing. To keep the fire hydrant out of the collapse zone of the remodeled building and to minimize development impact on adjoining lots, the hydrant was placed on the back property line of the Moore Revocable Trust property. An alley used to run east and west behind the remodeled building had been vacated in 1947 but no easement was provided for the existing water line. Water mains, meters and fire hydrants are to remain under control and jurisdiction of the city and need to be either in a public right of way or easement. The Moore Family Trust has signed an easement for the portion of the vacated alley on their property. The Moore Revocable Trust has signed an easement for the fire hydrant and the portion of the vacated alley on their property. Staff is requesting the Mayor be authorized to sign an easement for an existing water main and a fire hydrant. The easement gives the City of Ontario the authority to maintain and repair this water main, meters and fire hydrant as necessary.

BACKGROUND:

Utility easements are very common for business development. Having these easements in place also provides the business with adequate utility and fire service.

FINANCIAL IMPLICATIONS:

None.

RECOMMENDED MOTION:

Staff has reviewed these easements and recommends that the Council authorize the Mayor to be signatory to the attached Permanent Utility Easement for a Water Main and the City Recorder attest the Mayor's signature.

After Recording Return to:
City of Ontario
444 SW 4th Street
Ontario, OR 97914

PUBLIC UTILITY EASEMENT

FOR VALUE RECEIVED, **WILLIAM T. MOORE, TRUSTEE OF THE MOORE FAMILY TRUST**, U/A/D 06/20/94, whose current address is P.O. Box 132, Unity, OR 97884, ("Grantor"), in consideration of the sum of zero dollars, the receipt of which is hereby acknowledged, does hereby grant a Public Utility Easement to the **CITY OF ONTARIO**, ("Grantee"), whose address is 444 SW 4TH Street, Ontario, Oregon, 97914, together with the right to erect, construct, install, and lay and thereafter use, operate, inspect, repair, maintain, replace, and remove under ground public utilities, including, but not limited to water lines, sanitary sewer lines, and storm drain lines, along with underground public utility lines such as but not limited to gas, power and communication lines and facilities over, across, and through the following described real property located in the City of Ontario, Malheur County, Oregon (the "Property"), to wit:

Land in the Villa Park Addition to the City of Ontario, Malheur County Oregon, according to the Official Plat thereof as follows:

In Block 7: All that portion of the South half (S1/2) of the alley within said Block 7, that was vacated under city Ordinance No. 962, lying between lots 20, 21 22 and 23.

Further, it is agreed, and made a condition herein, that the above described easement is for underground public utilities and all such utilities and surface facilities shall not obstruct the use of the land for vehicle traffic as now being used and used in the future and in the event the Grantee fails to use or ceases to use the Property exclusively for said use, this easement shall be terminated.

GRANTEE, by signing this Instrument, accepts the conveyance of the easement described herein for public utilities and agrees to the terms of Grantor's Reversion and all other covenants, terms and conditions of this instrument.

IN WITNESS WHEREOF, the Grantor has executed this instrument on this 12 day of June, 2012.

GRANTOR: **THE MOORE FAMILY TRUST, U/A/D/ 06/20/94**



William T. Moore, Trustee

After Recording Return to:
City of Ontario
444 SW 4th Street
Ontario, OR 97914

PUBLIC UTILITY EASEMENT

FOR VALUE RECEIVED, PAUL T. MORRE, and PHILLIS J. MOORE, TRUSTEES OF THE PAUL T. MOORE & PHILLIS J. MOORE REVOCABLE TRUST dated 11-29-82, AND DOUGLAS J. DONAHUE and DEE M. DONAHUE, TRUSTEES OF THE DOUGLAS J. DONAHUE and DEE M. DONAHUE REVOCABLE TRUST dated June 9, 1988, whose address is 33 Wimbledon Dr., Rancho Mirage, CA 92270, ("Grantor"), in consideration of the sum of zero dollars, the receipt of which is hereby acknowledged, does hereby grant a Public Utility Easement to the CITY OF ONTARIO, ("Grantee"), whose address is 444 SW 4TH Street, Ontario, Oregon, 97914, together with the right to erect, construct, install, and lay and thereafter use, operate, inspect, repair, maintain, replace, and remove under ground public utilities, including, but not limited to water lines, sanitary sewer lines, and storm drain lines, along with underground public utility lines such as but not limited to gas, power and communication lines and facilities over, across, and through the following described real property located in the City of Ontario, Malheur County, Oregon (the "Property"), to wit:

Land in the Villa Park Addition to the City of Ontario, Malheur County Oregon, according to the Official Plat thereof as follows:

In Block 7: All that portion of the South half (S1/2) of the alley within said Block 7, that was vacated under city Ordinance No. 962, lying between the West 15 feet of Lot 15 and lots 16 through 19 and the North half (N1/2) of said vacated alley lying between Lots 54 through 61 and the West 22.5 feet of Lot 62.
ALSO the West 15 feet of the South 40 of Lot 54.

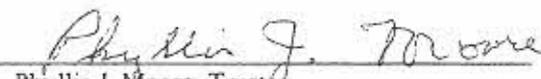
Further, it is agreed, and made a condition herein, that the above described easement is for underground public utilities and all such utilities and surface facilities shall not obstruct the use of the land for vehicle traffic as now being used and used in the future and in the event the Grantee fails to use or ceases to use the Property exclusively for said use, this easement shall be terminated.

GRANTEE, by signing this Instrument, accepts the conveyance of the easement described herein for public utilities and agrees to the terms of Grantor's Reversion and all other covenants, terms and conditions of this instrument.

IN WITNESS WHEREOF, the Grantors have executed this instrument on the dates noted in the notary's below:

GRANTOR: PAUL T. MOORE and PHYLLIS J. MOORE REVOCABLE TRUST


Paul T. Moore, Trustee


Phyllis J. Moore, Trustee

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Riverside

On 5/21/12 before me, Lorraine M. Urias notary public

personally appeared Paul T Moore and Phyllis J. Moore

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Lorraine M. Urias



Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: public utility Easement

Document Date: 5/21/12 Number of Pages: 1

Signer(s) Other Than Named Above: n/a

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____



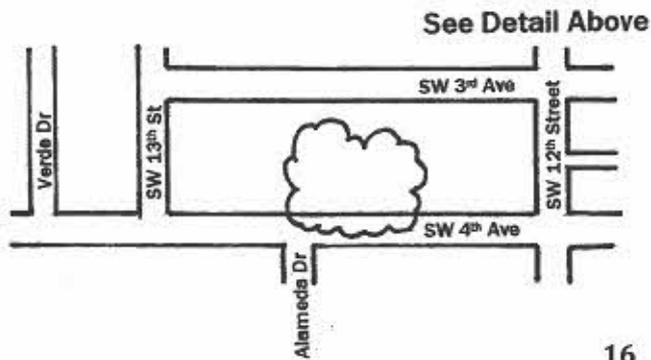
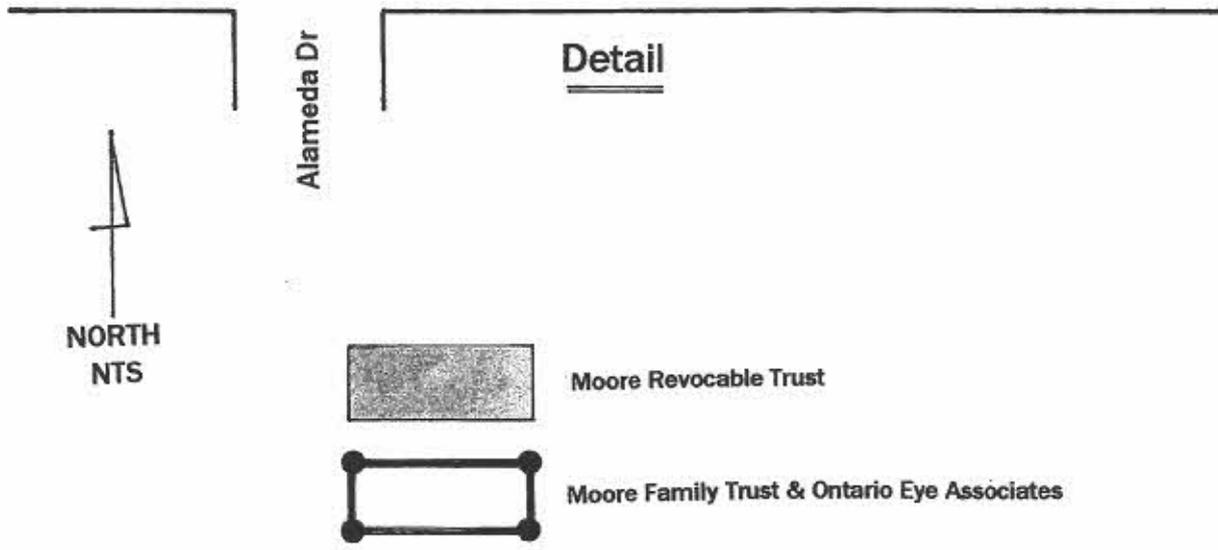
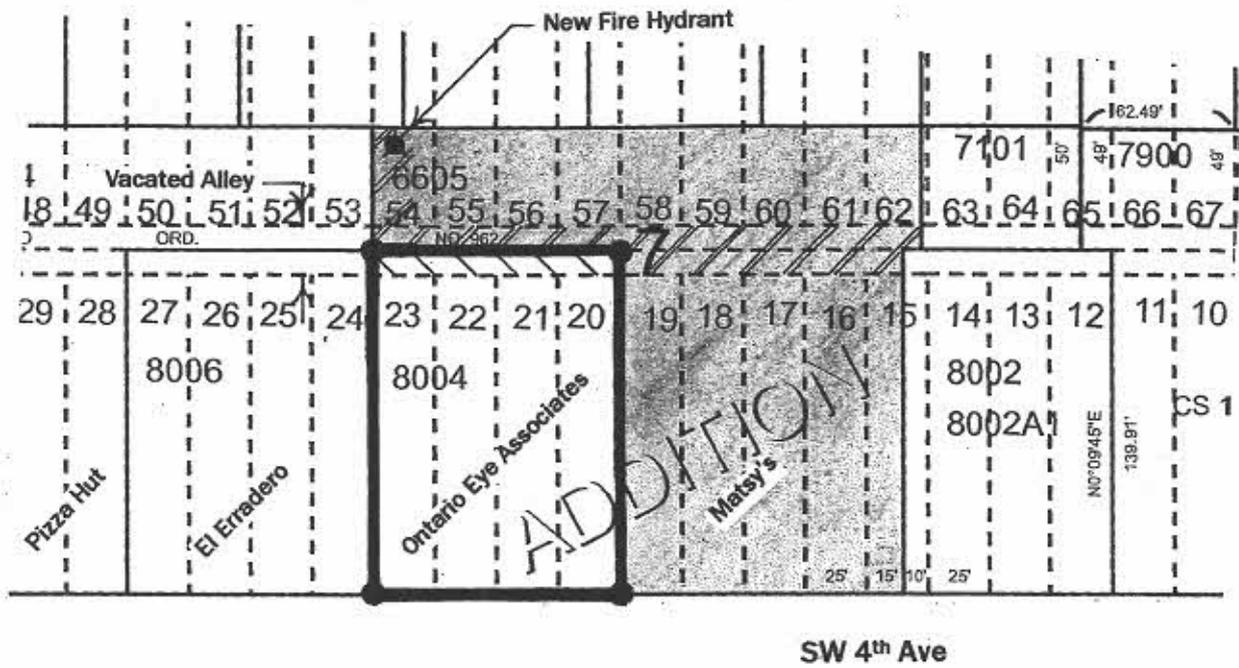
Signer Is Representing: _____

Signer's Name: _____

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer Is Representing: _____



Location Map

AGENDA REPORT

August 6, 2012

TO: Mayor and City Council

FROM: Mark Alexander, Police Chief

THROUGH: Jay Henry, City Manager

SUBJECT: RESOLUTION 2012-116: A RESOLUTION MODIFYING AND ADDING TO THE LIST OF CHILD PROTECTION ZONES

DATE: July 23, 2012

SUMMARY:

Attached is the following document:

- Resolution #2012-116

This is a resolution modifying and adding to the list of Child Protection Zones established under Ordinance #2665-2012. Section 2 (A) of this ordinance allows additional protection zones to be added by resolution.

PREVIOUS COUNCIL ACTION:

June 4, 2012 City Council passed Ordinance #2665-2012, which modified and renewed Municipal Code Title 7, Chapter 6, Sections 1 and 2 relating to Child Protection Zones.

DISCUSSION

Current language describing Child Protection Zones is problematic to enforce. Some of the zone descriptions encroach onto neighboring properties where the City has no right to control.

The Boys and Girls Club of Western Treasure Valley desires to be an identified zone. The club serves children under the age of 14 and would qualify as a Child Protection Zone.

Resolution 2012-116 updates the description of protection zones to be limited to the property boundaries of the identified location. It also adds the Boys and Girls Club of Western Treasure Valley as a Child Protection Zone.

STAFF RECOMMENDATION:

Staff recommends the Council approve Resolution 2012-116.

PROPOSED MOTION:

I move that the Mayor and City Council approve Resolution 2012-116, A RESOLUTION MODIFYING AND ADDING TO THE LIST OF CHILD PROTECTION ZONES.

RESOLUTION NO. 2012- 116

A RESOLUTION ESTABLISHING THIRTEEN CHILD PROTECTION ZONES WITHIN THE CITY OF ONTARIO

WHEREAS, the Ontario City Council has passed an Ordinance authorizing the establishment of protection zones for children and restricting the access of convicted sex offenders; and

WHEREAS, the Ontario City Council must now establish those locations in which children will be protected and the access of certain convicted sex offenders will be restricted.

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

- Any location upon the school grounds, including all playgrounds within and eighty (80) feet from all property boundaries of George K Aiken School, 1297 West Idaho Avenue, Ontario Oregon, between the hours of 7:00am and 9:00pm.
- Any location upon the school grounds, including all playgrounds within and eighty (80) feet from all property boundaries of Alameda School, 1252 Alameda Drive, Ontario Oregon, between the hours of 7:00am and 9:00pm.
- Any location upon the school grounds, including all playgrounds within and eighty (80) feet from all property boundaries of May Roberts School, 590 NW 8th Street, Ontario Oregon, between the hours of 7:00am and 9:00pm.
- Any location upon the school grounds, including all play areas within and eighty (80) feet from all property boundaries of Ontario Middle School, 573 SW 2nd Avenue, Ontario Oregon, between the hours of 7:00am and 9:00pm.
- Any location upon the school grounds, including all play areas within and eighty (80) feet from all property boundaries of Ontario High School, 1115 West Idaho Avenue, Ontario Oregon, between the hours of 7:00am and 9:00pm.
- Within the property boundaries of the City of Ontario Aquatic Center and ~~three hundred (300) feet from all exterior walls of the Ontario Aquatic Center,~~ 790 SW 3rd Avenue, Ontario, Oregon, during any open swim or scheduled swimming lesson. Additionally the Ontario Aquatic Center will be protected thirty (30) minutes prior to and thirty (30) minutes following any open swim or scheduled swimming lesson.
- Wayne King Memorial Skate Park, located between the Northwest corner of the intersection at SW 7th Street and SW 4th Avenue and the Ontario Aquatic Center. ~~The Wayne King Memorial Skate Park will be protected for three hundred feet in all directions from the cement surface within.~~
- Lions Park, which is the green space that extends from SW 4th Avenue to SW 2nd Avenue and from SW 9th Street to SW 7th Street. The portion of the park protected will be either three hundred (300) feet in all directions from any piece of playground equipment located in the park or the boundaries of the park, whichever distance is less.
- Beck Kiwanis Park, which is the green space that extends from NW 8th Avenue, North, to Beck Kiwanis Pond, and from Beck Park Lane, East to NW 4th Street. The portion of the park protected will be either three hundred (300) feet in all directions from any piece of playground equipment located in the park or the boundaries of the park, whichever distance is less.

- Laxson Rotary Park, which is the green space between NW 3rd Avenue and NW 4th Avenue, and from NW 5th Street to NW 4th Street. The portion of the park protected will be either three hundred (300) feet in all directions from any piece of playground equipment located in the park or the boundaries of the park, whichever distance is less.
- Within the Albertsons Center, 650 College Boulevard, Ontario Oregon. In addition to housing the Treasure Valley Community College Child Care Center, there is playground equipment located adjacent to the building. The playground equipment adjacent to the building will be protected in all directions for a distance of either three hundred (300) feet or the boundaries of the property, whichever distance is less.
- Treasure Valley Community College Sports Complex and Student Housing Facilities, 650 College Boulevard, Ontario Oregon. The protected area is within the property boundaries south from SW 11th Avenue, North from SW 14th Avenue, West from SW 4th Street and East from South Park Boulevard.
- Within the property boundaries of the Treasure Valley Community Student Housing Facilities, 650 College Boulevard, Ontario Oregon.
- Within the property boundaries of the Boys and Girls Club of Western Treasure Valley, 2441 SW 4TH Ave, Ontario Oregon.

Effective Date: Upon adoption

Passed and adopted by the Ontario City Council this ____ day of _____ 2012.

Ayes:

Nays:

Absent:

Approved by the Mayor this _____ day of _____ 2012.

Joe Dominick, Mayor

ATTEST:

Tori Barnett, MMC, City Recorder

AGENDA REPORT
August 6, 2012

TO: Mayor and City Council

FROM: Larry Sullivan, City Attorney

SUBJECT: RATIFICATION OF CITY MANAGER EMPLOYMENT AGREEMENT WITH JAY HENRY

DATE: July 30, 2012

SUMMARY:

Attached is the following document:

- Executed Ontario City Manager Employment Agreement

BACKGROUND:

The City Council has not formally ratified the Ontario City Manager Employment Agreement with Jay Henry. Both the Mayor and Mr. Henry have signed the agreement, effective July 12, 2012, and Mr. Henry started work on July 23, 2012.

RECOMMENDATION:

Staff recommends that the City Council formally ratify the Mayor's signature on the agreement.

PROPOSED MOTION:

I move that the City Council formally ratify the Mayor's signing of the Ontario City Manager Employment Agreement with Jay Henry, effective July 12, 2012.

**ONTARIO CITY MANAGER
EMPLOYMENT AGREEMENT**

THIS AGREEMENT, made and entered into this 12th day of July, 2012, by and between the CITY OF ONTARIO, a municipal corporation of the State of Oregon (the "City"), JAY HENRY, an individual (the "Manager"), both of whom understand as follows:

WHEREAS, City desires to employ the services of Manager as the city manager of the City of Ontario, and Manager desires to accept said employment on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties agree as follows:

SECTION 1. TERM

1.1 Manager's employment shall commence on July 23rd, 2012, and shall continue for a minimum of one year, subject to termination for good cause under Section 8.2 .

1.2 After the minimum one year contract term provided in Section 1.1, nothing in this Agreement shall prevent, limit, or otherwise interfere with the right of Manager to resign at any time from his position with City, subject only to the provisions set forth in Section 8.1 of this Agreement.

1.3 After the one year minimum contract term set forth in Section 1.1, nothing in this Agreement shall prevent, limit, or otherwise interfere with the right of the City Council to terminate the services of Manager at any time as an "at will" employee, with or without good cause.

1.4 Except as otherwise specified herein, Manager agrees to remain in the exclusive employment of City and not become employed by any other employer until a termination date is effected as hereinafter provided.



SECTION 2. DUTIES

2.1 Manager is employed as city manager to perform the functions and duties specified in the Ontario Charter of 1985, Ontario Municipal Code, Ontario City resolutions and job descriptions approved by the City Council, and as provided by State and Federal law, and to perform other legally permissible and proper duties and functions as the City Council from time to time assign.

2.2 Notwithstanding Section 2.1 of this Agreement, Manager shall exercise the following authority only with the approval of the City Council:

(a) To increase the compensation of any employee except in accordance with a collective bargaining agreement or employment contract approved by the City.

(b) To hire any new employee, to advertise to hire any new employee, or authorize a department head to hire any new employee, for a wage or for benefits greater than those paid to a current employee in the same position.

2.3 Before the Manager hires any department head, full or part-time, the Manager shall give council the opportunity to review information about and comment on all department head candidates in a public meeting only, as permitted by Section 4.5 of the Ontario Charter.

SECTION 3. HOURS

Manager is paid a salary and not on an hourly wage. Manager shall not be entitled to receive overtime compensation or compensatory vacation or leave time for providing service to the City outside of what may be considered to be the normal hours of employment. Manager acknowledges that Manager is employed as a supervisory employee and is exempt from the receipt of overtime pay under state and federal law. Manager shall not be required to account for specific hours worked, and compensation shall not be reduced on those occasions when Manager may work fewer than eight hours in a day or fewer than forty hours in a week. If Manager works fewer than four hours on a regular work day, Manager shall charge the absence to sick or vacation leave. Sick leave may be used only for illness and medical appointments. Notwithstanding anything in this section, Manager is expected to work on a full time basis. When Manager is temporarily unavailable because of vacation, illness or other absence, Manager shall delegate a person to be responsible for exercising the authority and responsibilities of the city manager.



SECTION 4. AGREEMENT PREVAILS

The terms of this agreement prevail over any inconsistent provision of the City's personnel policies. The personnel policies shall apply to the extent not inconsistent with this Agreement.

SECTION 5. SALARY COMPENSATION

5.1 Beginning July 23, 2012, Manager shall be paid for his services a gross monthly salary of \$7,916.67, or a prorated portion thereof for any partial months employed, payable at the same time as other employees of City are paid.

5.2 City will negotiate with Manager for cost-of-living increases in Manager's base salary and benefits not to exceed the cost-of-living increases which City determines to give to its other non-union City employees.

SECTION 6. BENEFIT COMPENSATION

6.1 Relocation Expense. City will reimburse Manager for an amount not to exceed Two Thousand Dollars (\$2,000.00) for documented expenses incurred by Manager in relocating to Ontario, Oregon.

6.2 Sick Leave. Manager is allowed sick leave for a non-occupational disability with full pay for the hours provided herein. Manager shall earn eight (8) hours per month, up to a maximum of nine hundred sixty (960) hours. Manager shall be entitled to an opening balance of 40 hours for sick leave at the commencement of this Agreement. If Manager, because of catastrophic illness or injury, has extinguished his accumulated sick leave and requests an extension of sick leave, the request will be submitted to the City Council at their next regular meeting for approval of an extension not to exceed a maximum of one hundred sixty (160) hours. Unused accumulated sick leave during a calendar year shall be carried to the credit of the Manager the next year, provided that such accumulation does not at any time exceed nine hundred (960) hours.

6.3 Holidays. Manager shall be entitled to holidays in the same manner as other City department heads.



6.4 Professional Dues and Expenses. The City shall reimburse Manager for, or pay directly on behalf of Manager, all reasonable professional expenses incurred by Manager in carrying out his duties hereunder, including expenditures for memberships, subscriptions, conferences and educational activities of professional associations such as ICMA, including ICMA's annual state conferences, the League of Oregon Cities and other similar organizations; provided however, that such expenditure or reimbursement shall be allowed only if it has been included within an existing or subsequently approved budget of the City and if Manager furnishes to City adequate records and other documentary evidence to substantiate the expenditures as a budgeted item. Except in emergencies, Manager shall inform the City Council at least one week in advance when he will be out of the County for more than twenty four (24) hours on city business.

6.5 PERS Retirement. The City participates in the Oregon Public Employee Retirement System (PERS) and/or its successor for all non-union employees.

6.6 Deferred Compensation Plan. The City shall make an annual contribution of \$2,500, to be paid in monthly installments, to an ICMA 457 deferred compensation plan on Manager's behalf.

6.7 Health, Dental and Vision Insurance Coverage. The City will pay the cost of premiums for family coverage for Manager for the same group health, dental and vision plans provided by the City to other non-union employees. Manager will be responsible for payment of any insurance deductibles, copayments and other uninsured expenses. The City Council reserves the right to modify the insurance coverage at any time.

6.8 Term Life Insurance. The city shall provide Manager with a term life insurance policy in the amount of \$20,000 which shall be issued after a three month waiting period from the date Manager commences work. Manager shall have the option of obtaining additional term life insurance at Manager's cost.

6.9 Annual Leave. Manager shall be subject to the "Annual Leave" provisions of the City Personnel Regulations, with the following modifications: Manager shall accrue vacation time at the rate of 10 work days per year, accruing on a monthly basis at the rate of 0.833 days per month with a starting balance of five work days at the commencement of this Agreement. Manager shall



take not less than fifty percent (50%) of his annual earned leave during each year of employment. Manager may carry over the unused vacation up to a maximum number of hours equal to 1.5 times the annual accrual. To the extent accrued vacation time exceeds 1.5 times the annual accrual on Manager's anniversary date, unless excess accrual is approved by the City Council, Manager shall forfeit any additional vacation accrual until such time as the accrued vacation is reduced to a number of hours below an equivalent of two year's accrual. Manager may request paid compensation each year for up to fifty percent (50%) of the annual accrual of vacation hours. At the time of separation, all unused vacation shall be paid in the form of payroll.

SECTION 7. PERFORMANCE EVALUATION

City will negotiate any increases in Manager's base salary and/or other benefits not specified in this Agreement in such amount and to such extent as the City Council may determine that it is desirable to do so on the basis of an annual performance evaluation. Performance evaluations shall be held annually within forty five days of the anniversary of the date Manager commences work. The Manager's base salary and other benefits may be adjusted by mutual agreement of the parties during the annual evaluation process. The annual performance evaluation shall be in accordance with specific criteria developed by the City Council. Such criteria may be added to or deleted as the City Council may from time to time determine in consultation with Manager.

SECTION 8. RESIGNATION AND TERMINATION

8.1 Manager shall continue his employment for at least the minimum contract term provided in Section 1.1. After the expiration of that term, if Manager voluntarily resigns his position with City, Manager shall give the City forty-five (45) days written notice in advance, unless the parties otherwise agree.

8.2 During the first year of Manager's contract, as provided in Section 1.1, Manager may be terminated only for good cause. For the purpose of this Agreement, "good cause" shall include, but not necessarily be limited to, any of the following:

- (a) A material breach of the terms of this Agreement;
- (b) Misfeasance;
- (c) Malfeasance;



(d) A failure to perform his duties in a professional and responsible manner consistent with generally accepted standards of the profession;

(e) Conduct unbecoming the position of City manager or likely to bring discredit or embarrassment to the City.

(f) Manager is found by the City Council to be guilty of fraud, dishonesty, misappropriation of funds, embezzlement, or other similar acts of misconduct which reflect poorly on the Manager's character and/or ability to perform the functions of City Manager.

(g) Conviction of any felony crime or any offense involving moral turpitude.

(h) Refusal of Manager to comply with City's lawful instructions, policies, or rules, or the directives of the City Council.

(i) Continuing or repeated problems with Manager's performance or conduct, or Manager's continuing or repeated inattention to duties, after City has brought to Manager's attention Manager's deficient performance of duties.

SECTION 9. OUTSIDE PROFESSIONAL ACTIVITIES

Manager, with prior written approval of the City Council, may undertake outside professional activities for compensation, including consulting, teaching, speaking, and writing provided such activities do not interfere with Manager's normal duties and are not done with any existing vendors or contractors of City. Under no circumstances shall such outside activities create a conflict of interest or interfere with the duties of Manager and the interests of City.

SECTION 10. SUSPENSIONS

City may suspend Manager with full pay and benefits at any time during the term of this Agreement.

SECTION 11. RESIDENCE WITHIN CITY OF ONTARIO

As soon as practicable, but not later than one year after Manager commences work, Manager shall reside on a permanent, full-time basis within the city limits of the City of Ontario.

SECTION 12. OTHER TERMS AND CONDITIONS OF EMPLOYMENT

City, in consultation with Manager, shall fix, in writing, any other terms and conditions of employment, as it may determine from time to time, relating to the performance of Manager, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Agreement, the Ontario Charter of 1985, the Ontario Municipal Code, or any applicable state or federal law.

SECTION 13. INDEMNIFICATION

The City shall defend, hold harmless and indemnify Manager against any claim, demand or other legal action arising out of any alleged act or omission occurring in the performance of his duties as the City Manager. The City shall pay the amount of any settlement or judgment thereon, provided that Manager cooperates in the defense of the claim, demand or action; in this regard, the City shall have the discretion to compromise or settle any such claim, demand or action and pay the amount of any settlement or judgment rendered thereon. Notwithstanding the foregoing, the City shall have no duty to indemnify, defend, or hold Manager harmless from any criminal proceeding, or with regard to any civil, criminal or administrative proceeding initiated by Manager.

SECTION 14. NOTICES

Notices pursuant to this Agreement shall be given by deposit in the custody of the United States Postal Service, postage prepaid, addressed as follows:

EMPLOYER: City of Ontario	CITY MANAGER: Jay Henry
444 SW 4 th Street	_____
Ontario, OR 97914	_____

Alternatively, notices required pursuant to this Agreement may be personally served in the same manner as is applicable to civil judicial practice. Notice shall be deemed given as of the date of personal service or as the date of deposit of such written notices in the course of transmission in the United States Postal Service.

SECTION 15. EXECUTION OF FINAL AGREEMENT

Upon execution of this Agreement by City and Manager, the parties shall be bound by the terms and provisions of this agreement.

SECTION 16. GENERAL PROVISIONS

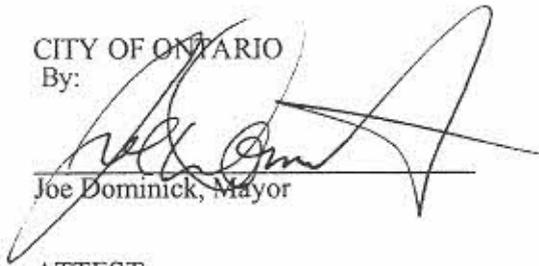
This Agreement constitutes the entire agreement between the parties. Any amendments to this Agreement must be in writing and executed by both parties. This Agreement shall be binding upon and inure to the benefit of the heirs at law and executors of Manager. If any provision, or any portion thereof, contained in this Agreement is held unconstitutional, invalid, or unenforceable, the remainder of this Agreement, or portion thereof, shall be deemed severable, shall not be affected, and shall remain in full force and effect.

IN WITNESS WHEREOF, the City of Ontario has caused this Agreement to be signed and executed in its behalf by its Mayor, and duly attested by its City Recorder; and Manager has signed and executed this Agreement, both in duplicate, the day and year first above written.

MANAGER:


Jay Henry

CITY OF ONTARIO
By:


Joe Dominick, Mayor

ATTEST:


Tori Barnett, MMC, City Recorder

AGENDA REPORT
August 6, 2012

TO: Mayor and City Council
FROM: Mark Alexander, Chief of Police
Through: Jay Henry, City Manager
SUBJECT: REQUEST TO PROCEED- SRO CONTRACT WITH ONTARIO 8C SCHOOL DISTRICT
DATE: July 16, 2012

SUMMARY:

Attached is the following document:

- Proposed School Resource Officer (SRO) contract with Ontario 8C School District

The Police Department would like to enter into a contract with the Ontario 8C School District to provide two SRO's for the 2012-2013 school year.

PREVIOUS COUNCIL ACTION:

11/07/11 Council approved the same contract for the 2011-12 school year.

BACKGROUND:

The Police Department has partnered with the Ontario 8C School District to provide SRO's for several years. The level of service and associated costs has fluctuated, depending upon budget conditions.

The School District has budgeted money to fund two SRO's for the 2012-2013 school year. The Police Department has prepared a contract outlining the services and associated costs.

FINANCIAL IMPLICATIONS:

Ontario 8C School District will pay the City fully burdened wages for actual hours performed by SRO's, up to \$125,000. The City will provide equipment and training for the officers. The City will provide payroll costs that exceed \$125,000.

RECOMMENDATION:

Staff recommends approval of the contract.

PROPOSED MOTION:

I move the Council authorize the City Manager and Police Chief to sign a contract with 8C School District to provide two School Resource Officers for the 2012-2013 school year.

**LAW ENFORCEMENT SERVICES AGREEMENT
ONTARIO SCHOOL DISTRICT/CITY OF ONTARIO**

THIS AGREEMENT commencing on the _____ day of _____, 2012 by and between the ONTARIO SCHOOL DISTRICT, a unit of local government, hereinafter referred to as "District" and ONTARIO CITY, a unit of local government, hereinafter referred to as "City".

WITNESSETH:

WHEREAS, District desires to enter into a contract with City for the performance of law enforcement services at schools within the District and at after-school events, and

WHEREAS, the Ontario Police Department, hereinafter referred to as "OPD" has personnel qualified and capable to provide law enforcement protection and services within the City of Ontario and is agreeable to rendering such law enforcement services and protection on the terms and conditions set forth in this Agreement, and

WHEREAS, the parties to this Agreement are authorized by the laws of the State of Oregon to enter into such an agreement pursuant to ORS 190.003 through 190.085.

NOW, THEREFORE, the parties hereto agree as follows:

1. The City agrees to employ, furnish and supply police officers referred to herein as School Resource Officers ("SROs") together with equipment, supplies, vehicle, supervision and such other items that are reasonably necessary to provide law enforcement services to District, under the following terms and conditions:
 - a. OPD will provide two (2) officers as SROs who will work with the District an average of 40 hours per week while school is in session.
 - b. OPD agrees to provide a SRO for certain after-school activities. Any hours worked by the SRO at an after-school activity shall be counted in the hours worked by the SRO in that week as mentioned in subsection (a) above unless such hours qualify for overtime under the Ontario Police Officers Collective Bargaining Agreement. It shall be the responsibility of the Principal or designee to request the presence of the SRO for any after school activity. The Principal shall by mutual agreement with the SRO determine the date and hours to start and end for each after school activity at which the SRO's presence is requested. The Principal shall coordinate with the SRO concerning the number and attire of school security guards required, if any, at such after school activities.

- c. The personnel used by OPD to perform the law enforcement services shall remain under the jurisdiction and control of OPD while rendering the services, and OPD shall maintain the standard of performance of such personnel. Although SROs will operate within a formal educational environment, they are not relieved of their official duties as law enforcement officers. Decisions to intervene formally will be made when it is necessary to prevent any criminal act. Citations will be issued and arrests made when appropriate and in accordance with OPD's standard operating procedure.
 - d. If, at any time the SRO is called to respond to an emergency by other OPD personnel during the course of providing law enforcement services to the district, the emergency shall take precedence and the SRO shall respond accordingly.
 - e. Except as otherwise specifically set forth in this Agreement, such law enforcement services shall only encompass duties and functions of the type coming within the jurisdiction of and customarily rendered by a police officer of a city in the State of Oregon under the statutes of the State of Oregon and the ordinances of the City.
 - f. The law enforcement services to be rendered by OPD are services of an independent contractor with District and the standards of performance, the discipline of officers, patrol of personnel rendering such services, and other matters incident to the performance of such services shall be the responsibility of OPD.
2. The District shall pay the City for law enforcement services to be rendered pursuant to this Agreement. Said sum shall be paid to the City upon receipt of invoices that will be submitted in the following manner:
 - a. The District shall pay the fully burdened cost for two SROs for hours worked for the District during the school year at a rate of \$49.87/hour/SRO, not to exceed \$125,000.
 - b. The District shall pay the fully burdened cost for overtime worked by officers during after-school activities when those hours are after the completion of a workday or workweek as defined in the Ontario Police Association bargaining agreement at a rate of \$68.39/hour/SRO. Billing for overtime hours shall be included in the above listed cap of \$125,000.
 - c. Invoices will be submitted by the City on a monthly basis. The City shall provide copies of payroll records for verification purposes of hours worked at the request of the District.
 3. To further facilitate the performance of services, the District agrees to set aside a workspace and make facilities at the District available to the SROs performing services under this Agreement so they may write reports, conduct interviews, make phone calls, and complete other administrative tasks without leaving the area.
 4. It is agreed that all employees of OPD shall remain employees of the City for all purposes including the payment of wages and benefits, withholding or deductions from wages and/or salaries, retirement benefits, insurance, worker's compensation, and unemployment or other compensation to any City personnel performing services pursuant to this Agreement.

5. Nothing herein shall be deemed to create a joint venture or principal-agent relationship between the parties, and neither party is authorized to, nor shall either party act toward third persons or the public in a manner that would indicate any such relationship with each other.
6. Each party shall indemnify and hold the other harmless for any acts of that party and that party's employees and agents, to the extent of the limits set forth in the Oregon Tort Claims Act, ORS 30.260-30.300.
7. This Agreement shall be effective commencing on the date of execution of this Agreement by the parties and shall continue in full force and effect to the end of 2012-2013 school year.
8. This Agreement may be renewed by a mutual agreement of the parties for additional one (1) year periods under the terms and conditions terms as the parties agree. Funds under a renewed contract shall be paid to the City within thirty (30) days of renewal or execution of the contract.
9. Each of the parties has designated an employee to be its administrator of this Agreement for the purpose of coordinating the efforts of employees of the District and the employees of OPD. The District designates the Ontario School District Superintendent as its administrator and OPD designates the Police Chief as its administrator. Communications between the parties concerning this Agreement shall be made between the Administrator or their designee.
10. Any notice to be given pursuant to the terms of this Agreement shall be sufficiently given for all purposes if delivered personally or if sent by U.S. Certified Mail, Return Receipt Requested, addressed to the party in question at the address as hereinafter set forth:

Superintendent
Ontario School District
195 SW 3rd Avenue
Ontario, OR 97914

Chief of Police
Ontario Police Department
444 SW 4th Street
Ontario, OR 97914

For purposes of this Agreement, a notice served by mail shall be deemed to have been delivered three (3) days after the date mailed as indicated by the postal service postmark on the certified mail receipt or on the envelope containing the notice. Either party shall be entitled to change the address for service of notice hereunder by notifying the other party, in writing, of the new address.

11. This Agreement encompasses the entire agreement of the parties and may not be modified or changed in any way except by written document signed by all the parties hereto.

12. Any provision of this Agreement which is found by a court of competent jurisdiction to be invalid or illegal shall in no way affect or invalidate any other provision of this Agreement, and the remaining provisions of this Agreement shall remain in full force and effect.
13. This Contract shall be executed in two (2) originals with each party retaining an original.

IN WITNESS WHEREOF, the parties have adopted this Agreement by its governing bodies and this Agreement has been signed and attested by the authorized officials of each party.

DATED this _____ day of _____, 2012.

Ontario Police Chief

Ontario City Mayor

Mark Alexander

Joe Dominick

Attest:

Tori Barnett, MMC, City Recorder

Ontario School District Superintendent

Nicole Albisu

Date

AGENDA REPORT

August 6, 2012

TO: Mayor and City Council

FROM: Bob Walker, Public Works Director

THROUGH: Jay Henry, City Manager

**SUBJECT: ACCEPTANCE OF WARRANTY DEED FROM FM IDAHO CO., LLC
NW WASHINGTON ROADWAY RELOCATION PROJECT**

DATE: July 25, 2012

SUMMARY:

Attached are the following documents:

- Signed Warranty Deed: FM Idaho Co., LLC to City of Ontario
- Obligations Agreement: FM Idaho Co., LLC 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 FM Idaho Co., LLC accepting the property for the NW Washington roadway project.

WARRANTY DEED

FM IDAHO CO., LLC, an Idaho limited liability company; and KSRV AM-FM, Grantor, for the true and actual consideration of \$165,613.00, does convey unto the CITY OF ONTARIO, a municipal corporation of the State of Oregon, Grantee, fee title to the property described as Parcels 1 and 2 on Exhibit "A" dated 10/14/11, attached hereto and by this reference made a part hereof.

Grantor also grants to Grantee, its successors and assigns, a permanent easement to construct and maintain slopes, to construct, reconstruct, operate, maintain, inspect and repair drainage facilities and/or underground sewer line facilities and appurtenances, and to relocate, construct and maintain water, gas, electric and communication service lines, fixtures and facilities, and appurtenances upon, over, under, and across the property described as Parcel 3 on Exhibit "A" dated 10/14/11, attached hereto and by this reference made a part hereof.

IT IS UNDERSTOOD that the easement herein granted does not convey any right, or interest in the above-described Parcel 3, 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.

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

Map and Tax Lot #: 17S4733D 1400 and 2900

Property Address: 1725 N. Oregon Street
Ontario, OR 97914

GRANTEE and TAX STATEMENTS TO:
CITY OF ONTARIO
444 SW 4TH Street
Ontario, OR 97914

GRANTOR: FM IDAHO CO., LLC
ADDRESS: 5660 Franklin Rd, Ste 200
Nampa, ID 83687-5133

GRANTOR: KSRV AM-FM
ADDRESS: 4038 Chestatee Road
Gainesville, GA 30506

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.

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 11th day of July, 2012

FM IDAHO CO., LLC, an Idaho limited liability company

Wendell M. Starke
Member / Manager

As Sole Manager of FM Idaho Co.
Member / Manager

KSRV AM-FM

By Wendell M. Starke
for KSRV AM-FM
By FM Idaho Co. LLC, Sole
owner of KSRV AM-FM.

STATE OF Georgia OREGON, County of Hall

Dated July 11, 2012. Personally appeared the above named Wendell M. Starte
and _____, Member(s) / Manager(s) of FM Idaho Co., LLC, an Idaho limited liability
company, who acknowledged the foregoing instrument to be their voluntary act. Before me:



Notary Public for ~~Oregon~~ Georgia
My Commission expires _____

BRENDA J. BAHTEL
NOTARY PUBLIC
HALL COUNTY, GA
My Comm. Exp. July 13, 2013

STATE OF OREGON, County of _____

Dated _____, 20____. Personally appeared _____
and _____, who, being sworn, stated that they are the _____ and
_____ of KSRV AM-FM, who acknowledged the foregoing instrument to be their
voluntary act. Before me:

Notary Public for Oregon
My Commission expires _____

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

OBLIGATION(S) AGREEMENT

File No.: 7546009

Date: July 5, 2012

The City of Ontario is to:

- Make every effort to preserve and protect the existing buried underground power line located in NW 9th Street. Said underground power line feeds the radio towers from the FM Idaho office building. If during construction, this buried underground power line within NW 9th Street is impacted, the City of Ontario shall be responsible for all costs associated with such impact, and shall indemnify the Grantor herein subject to the limitations of the Oregon Constitution and the Tort Claims Act, for any costs or damages.

The City of Ontario has long term plans that include extending water and sewer down NW 9th Street. It is anticipated that at that time those water and sewer extension will be installed under the said existing buried underground power line. Said City of Ontario liability responsibility will extend to those future projects.

FM Idaho agrees to provide a utility locate for said buried underground power line prior to construction of the Northwest Washington Avenue Realignment.

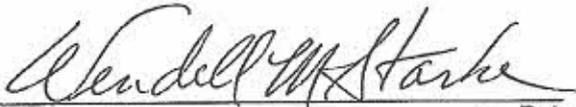
- The City of Ontario agrees to employ the services of James Boyd of Boyd Broadcast Technical Services for the supervision and work during the Park Avenue construction as outlined in KSRV, Ontario, Ground System Repair and Proof of Performance.
- The City of Ontario agrees to pay \$208 per hour for time off the air, if applicable, should the radio transmission be interrupted through fault of the Park Avenue construction project.
- The City of Ontario agrees to vacate the unused portions of B Place Street following completion of the NW Washington Avenue construction project subject to any interest of utilities lying within the vacated street.
- The City of Ontario agrees to declare surplus the unused portion of land lying southeasterly of the new intersection of NW 9th Street and NW Washington Avenue. As required, the property shall be appraised and the appraised value applied as a debit against the settlement amount as agreed between the City of Ontario and FM Idaho Co., Inc. The City of Ontario will execute a Deed for the value established by appraisal of said surplus property and place it into escrow until such time as B Place Street can be vacated and a Property Line Adjustment completed. The cost of escrow and Property Line Adjustment to be paid by the City of Ontario.
- FM Idaho agrees to remove VFW Monument/Flagpole and all trees and shrubs on northeast and south side of building prior to the commencement of the road improvement construction as per Duane L. Bellows Construction, Inc. Bid Proposal of May 22, 2012.
- City of Ontario agrees to remove existing chain-link fencing and electric business sign. City of Ontario to retain ownership of sign and fencing.

Any construction lying outside of the traveled portion and shoulders but within the right of way of the highway which is made for the use and benefit of the remaining property, either under the terms of this agreement or the construction plans, shall be completed in conformance with normal engineering construction practices and hereafter shall be maintained or reconstructed by the property owner in

accordance with ORS 374.305, et seq. and OAR 734-051-0010 to 051-0400, OAR 734-055-0050 to 055-0600 and other applicable statutes and regulations.

If any of the construction under the terms of this agreement is outside of the highway right of way, Grantors hereby grant City, its employees or contractors, permission to enter upon their remaining property for the purpose of performing any of said construction work.

It is understood and agreed that City's performance of this agreement shall be a portion of the consideration for the concurrent real property transaction evidenced by deed between Grantors and City. This agreement shall not be effective or binding until Grantors receive notice from the City accepting the conveyance of the real property interests.


FM Idaho, Inc. ^{Date} *Sole Manager of FM Idaho, LLC*

City of Ontario Date

AGENDA REPORT
August 6, 2012

TO: Mayor and City Council

FROM: Larry Sullivan, City Attorney

THROUGH: Jay Henry, City Manager

SUBJECT: SGE LEASE OF OLD CITY SHOP PROPERTY

DATE: July 30, 2012

SUMMARY:

Attached is the following document:

- Lease Agreement

BACKGROUND:

The old City shop property has been vacant since the shop was moved to its new location. The City has no use for the property at the present time. Pam Hinnant, Inc., a Georgia company doing business as South Georgia Equipment (SGE) has requested a lease of the property through July 31, 2013, starting on August 10, 2012, for \$1,000 per month. The property will be used to sell onion processing equipment to local onion processors and to service the equipment.

FINANCIAL IMPLICATIONS:

The City will receive \$1,000 per month from the lease (except for August, 2012, because it is a short month), for a total of \$11,667. As landlord, the City will have the responsibility to make major structural repairs to the property if those become necessary. Staff is unaware of any structural problems with the building. Leasing the property commercially will cause the property to go back on the County property tax rolls in the 2013-2014 tax year, and the property taxes are estimated to be approximately \$7,000, which will be due on November 15, 2013, whether or not the lease is renewed. If the tenant desires to renew the lease, the property tax issue is one that should be discussed as part of any lease renewal.

RECOMMENDATION:

Staff recommends approval of the lease by the City Council.

PROPOSED MOTION:

I move that the Mayor and City Council approve the lease of the old City shop property to South Georgia Equipment for starting on August 10, 2012 and ending on July 31, 2013, for the sum of \$1,000 per month.

LEASE AGREEMENT

This Lease Agreement, entered into on this _____ day of _____, 2012, by and between the CITY OF ONTARIO, an Oregon municipal corporation ("Landlord"), and PAM HINNANT, INC., a Georgia corporation doing business as South Georgia Equipment ("Tenant").

Subject to the terms and conditions of this Lease, Landlord hereby leases to Tenant and Tenant hereby leases from Landlord the real property and improvements commonly known as the Old City Shop and more particularly described in Exhibit "1" attached hereto ("the Premises").

Section 1. Lease Term. The term of the Lease shall commence on August 10, 2012, and terminate on July 31, 2013.

Section 2. Rent

2.1 **Base Rent.** During the Lease term Tenant shall pay to Landlord as base rent the sum of \$11,667, of which the sum of \$667 shall be payable upon the execution of this Lease for the first month of the Lease, and the balance payable in eleven equal monthly installments of \$1,000, commencing on September 1, 2012. Rent shall be payable on the first day of each month in advance at Ontario City Hall, 444 SW 4th Avenue, Ontario, Oregon.

2.2 **Prepaid Rent.** Concurrently with the execution of this Lease by Tenant, Tenant will pay \$1,667 for the first and last months of the Lease Term.

2.3 **Additional Rent.** All insurance costs, utility charges and maintenance and repair expenses that Tenant is required to pay by this lease, and any other sum that Tenant is required to pay to Landlord or third parties shall be additional rent.

Section 3. Security Deposit. Concurrently with the execution of this Lease by Landlord and Tenant, Tenant will deliver to Landlord the Security Deposit in the amount of \$1,000. Landlord may

apply the Security Deposit to pay the cost of performing any obligation that Tenant fails to perform within the time required by this Lease, but such application by Landlord will not waive Landlord's other remedies nor be the exclusive remedy for Tenant's default. If Landlord applies the Security Deposit as set forth herein, Tenant will pay Landlord, on demand, all sums necessary to restore the Security Deposit to its original amount. Tenant will not have the right to apply the Security Deposit or any part thereof to any Rent or other sums due under this Lease.

If Tenant is not in default of this Lease at the expiration or termination hereof, Landlord will return the unapplied portion of the Security Deposit to Tenant, except for any amount necessary to return the Premises to the condition set forth in Section 14. Landlord will not be obligated to pay interest on the Security Deposit.

Section 4. Use of the Premises

4.1 **Permitted Use.** The Premises shall be used for the purpose of selling and servicing parts and equipment for onion processing and other agricultural uses and for no other purpose without the consent of Landlord.

4.2 **Restrictions on Use.** In connection with the use of the Premises, Tenant shall:

(a) Conform to all applicable laws and regulations of any public authority affecting the premises and the use, and correct at Tenant's own expense any failure of compliance created through Tenant's fault or by reason of Tenant's use, but Tenant shall not be required to make any structural changes to effect such compliance unless such changes are required because of Tenant's specific use.

(b) Refrain from any activity that would make it impossible to insure the

Premises against casualty or would increase the insurance rate, unless Tenant pays the additional cost of the insurance.

(c) Refrain from any use that would be reasonably offensive to other tenants or owners or users of neighboring premises or that would tend to create a nuisance or damage the reputation of the premises.

(d) Refrain from loading the electrical system or floors beyond the point considered safe by a competent engineer or architect selected by Landlord.

(e) Refrain from making any marks on or attaching any sign, insignia, antenna, aerial, or other device to the exterior or interior walls, windows, or roof of the Premises without the written consent of Landlord. Tenant shall obtain Owner's consent to the size, design and location of any additional signs, which consent shall not be unreasonably withheld.

(f) Tenant shall not cause or permit any Hazardous Substance to be spilled, leaked, disposed of, or otherwise released on or under the Premises. The term Hazardous Substance shall mean any hazardous, toxic, infectious or radioactive substance, waste, and material as defined or listed by any Environmental Law and shall include, without limitation, petroleum oil and its fractions. The term Environmental Law shall mean any federal, state, or local statute, regulation, or ordinance or any judicial or other governmental order pertaining to the protection of health, safety or the environment.

4.3 **Continuous Operation.** Tenant shall occupy the Premises continuously for the purpose stated in this lease and carry on business during the hours customary in comparable businesses similarly situated with adequate inventory and personnel. This shall not prevent Tenant from closing for vacations and holidays, or for brief periods when reasonably necessary for

inventory, repairs, remodeling (when permitted), or other legitimate purpose related to the business carried on, or when closure is the result of a labor dispute, however caused, or other factors not within Tenant's control.

Section 5. Repairs and Maintenance

5.1 **Landlord's Obligations.** Landlord will repair, maintain, and/or replace, where necessary, the roof, foundation, exterior walls, interior structural walls, all structural components, and all systems such as mechanical, electrical, HVAC, and plumbing systems of the Premises. Tenant expressly waives the benefits of any statute now or later in effect that would otherwise give Tenant the right to make repairs at Landlord's expense and deduct that cost from Rent owing to Landlord.

5.2 **Tenant's Obligations.** Except for Landlord Repairs set forth in Section 5.1 above, Tenant will:

- (a) maintain all portions of the Premises and fixtures situated within the Premises in good order and repair;
- (b) maintain, repair, and replace, if necessary, all special equipment and decorative treatments installed by or at Tenant's request and that serve the Premises only;
- (c) make all necessary repairs and replacements to all portions of the Premises and pay Landlord for the repairs or replacements to the Premises if any such repairs or replacements are needed because of Tenant's misuse or primary negligence; and
- (d) not commit waste to the Premises.

If Tenant fails to perform Tenant's obligations under this Section or under any other Section of this Lease, after ten (10) business days' prior written notice to Tenant, except in an emergency when no

notice will be required, Landlord may enter the Premises, perform the obligations on Tenant's behalf, and recover the cost of performance, together with interest at the rate of twelve percent (12%) per year, as Additional Rent payable by Tenant with the next installment of Base Rent, as long as that rate does not exceed the maximum rate then allowed by Law.

5.3 **Inspection of Premises.** Landlord shall have the right to inspect the Premises at any reasonable time or times to determine the necessity of repair.

Section 6. Alterations

6.1 **Construction of Fence; Alterations Prohibited.** Tenant is authorized to construct a fence along the northerly boundary of the Premises at the location shown on the map attached to the legal description in Exhibit "1". Tenant shall make no improvements or alterations on the Premises of any kind without first obtaining Landlord's written consent. All alterations shall be made in a good and workmanlike manner, and in compliance with applicable laws and building codes.

6.2 **Ownership and Removal of Alterations.** All improvements and alterations performed on the Premises by either Landlord or Tenant shall be the property of Landlord when installed. Improvements and alterations installed by Tenant shall, at Landlord's option, be removed by Tenant.

Section 7. Insurance

7.1 **Insurance Required.** Landlord shall keep the Premises insured at Landlord's expense against fire and other risks covered by a standard fire insurance policy with an endorsement for extended coverage, including a glass clause covering repairs to windows and other glass on the Premises. Tenant shall be responsible for maintaining any fire and property damage insurance on

its personal property located on the Premises.

7.2 **Waiver of Subrogation.** Neither party shall be liable to the other (or to the other's successors or assigns) for any loss or damage caused by fire or any of the risks enumerated in a standard fire insurance policy with an extended coverage endorsement, and in the event of insured loss, neither party's insurance company shall have a subrogated claim against the other. This waiver shall be valid only if the insurance policy in question expressly permits waiver of subrogation or if the insurance company agrees in writing that such a waiver will not affect coverage under the policies. Each party agrees to use best efforts to obtain such an agreement from its insurer if the policy does not expressly permit a waiver of subrogation.

Section 8. Taxes; Utilities

8.1 **Property Taxes.** Landlord shall pay as due all real property taxes for the Premises. Tenant shall pay as due all taxes on its personal property located on the Premises.

8.2 **Payment of Utilities Charges.** Tenant shall pay when due all charges for services and utilities incurred in connection with the use, occupancy, operation, and maintenance of the Premises, including (but not limited to) charges for fuel, gas, electricity, power, refrigeration, air conditioning, telephone, dumpster fees and janitorial services.

Section 9. Eminent Domain

9.1 **Partial Taking.** If a portion of the Premises is condemned and Section 9.2 does not apply, the lease shall continue on the following terms:

(a) Landlord shall be entitled to all of the proceeds of condemnation, and Tenant shall have no claim against Landlord as a result of the condemnation.

(b) Landlord shall proceed as soon as reasonably possible to make such

repairs and alterations to the Premises as are necessary to restore the remaining Premises to a condition as comparable as reasonably practicable to that existing at the time of the condemnation.

(c) After the date on which title vests in the condemning authority or an earlier date on which alterations or repairs are commenced by Landlord to restore the balance of the Premises in anticipation of taking, the rent shall be reduced in proportion to the reduction in value of the Premises as an economic unit on account of the partial taking. If the parties are unable to agree on the amount of the reduction of rent, the amount shall be determined by arbitration in the manner provided in Section 16.

(d) If a portion of Landlord's property not included in the Premises is taken, and severance damages are awarded on account of the Premises, or an award is made for detriment to the Premises as a result of activity by a public body not involving a physical taking of any portion of the Premises, this shall be regarded as a partial condemnation, and the rent shall be reduced to the extent of reduction in rental value of the Premises as though a portion had been physically taken.

9.2 **Total Taking.** If a condemning authority takes all of the Premises or a portion sufficient to render the remaining premises reasonably unsuitable for the use that Tenant was then making of the premises, the lease shall terminate as of the date the title vests in the condemning authorities. The parties shall be entitled to share in the condemnation proceeds in proportion to the values of their respective interests in the Premises.

9.3 **Sale in Lieu of Condemnation.** Sale of all or part of the premises to a purchaser with the power of eminent domain in the face of a threat or probability of the exercise of the power shall be treated for the purposes of this Section as a taking by condemnation.

Section 10. Liability and Indemnity

10.1 Liens

(a) Except with respect to activities for which Landlord is responsible, Tenant shall pay as due all claims for work done on and for services rendered or material furnished to the Premises, and shall keep the Premises free from any liens. If Tenant fails to pay any such claims or to discharge any lien, Landlord may do so and collect the cost as additional rent. Any amount so added shall bear interest at the rate of 18% per annum from the date expended by Landlord and shall be payable on demand. Such action by Landlord shall not constitute a waiver of any right or remedy which Landlord may have on account of Tenant's default.

(b) Tenant may withhold payment of any claim in connection with a good-faith dispute over the obligation to pay, as long as Landlord's property interests are not jeopardized. If a lien is filed as a result of nonpayment, Tenant shall, within 10 days after knowledge of the filing, secure the discharge of the lien or deposit with Landlord cash or sufficient corporate surety bond or other surety satisfactory to Landlord in an amount sufficient to discharge the lien plus any costs, attorney fees, and other charges that could accrue as a result of a foreclosure or sale under the lien.

10.2 Indemnification. Tenant shall indemnify and defend Landlord from any claim, loss, or liability arising out of or related to any activity of Tenant on the Premises or any condition of the Premises in the possession or under the control of Tenant. Landlord shall have no liability to Tenant for any injury, loss, or damage caused by third parties, or by any condition of the Premises except to the extent caused by Landlord's negligence or breach of duty under this lease.

10.3 Liability Insurance. Before going into possession of the Premises, Tenant shall procure and thereafter during the term of the lease shall continue to carry the following

insurance at Tenant's cost: comprehensive general liability insurance in a responsible company with limits of not less than \$1,000,000 for injury to one person, \$3,000,000 for injury to two or more persons in one occurrence, and \$1,000,000 for damage to property. Such insurance shall cover all risks arising directly or indirectly out of Tenant's activities on or any condition of the premises whether or not related to an occurrence caused or contributed to by Landlord's negligence. Such insurance shall protect Tenant against the claims of Landlord on account of the obligations assumed by Tenant under Section 10.2, and shall name Landlord as an additional insured. Certificates evidencing such insurance and bearing endorsements requiring 10 days' written notice to Landlord prior to any change or cancellation shall be furnished to Landlord prior to Tenant's occupancy of the property.

Section 11. Quiet Enjoyment

11.1 **Landlord's Warranty.** Landlord warrants that has the right to lease the Premises. Landlord will defend Tenant's right to quiet enjoyment of the Premises from the lawful claims of all persons during the lease term.

11.2 **Assignment and Subletting.** No part of the Premises may be assigned, mortgaged, or subleased, nor may a right of use of any portion of the property be conferred on any third person by any other means, without the prior written consent of Landlord, which consent shall not be unreasonably withheld. This provision shall apply to all transfers by operation of law. No consent in one instance shall prevent the provision from applying to a subsequent instance.

11.3 **Sale of Premises.** A sale of the Premises by Landlord shall not terminate the lease, and a third party purchaser of the Premises shall take the Premises subject to the Lease.

Section 12. Default

The following shall be events of default:

12.1 **Default in Rent.** Failure of Tenant to pay any rent or other charge by the tenth day of each month.

12.2 **Default in Other Covenants.** Failure of Tenant to comply with any term or condition or fulfill any obligation of the lease (other than the payment of rent or other charges) within 20 days after written notice by Landlord specifying the nature of the default with reasonable particularity. If the default is of such a nature that it cannot be completely remedied within the 20-day period, this provision shall be complied with if Tenant begins correction of the default within the 20-day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable.

12.3 **Insolvency.** Insolvency of Tenant; an assignment by Tenant for the benefit of creditors; the filing by Tenant of a voluntary petition in bankruptcy; an adjudication that Tenant is bankrupt or the appointment of a receiver of the properties of Tenant; the filing of any involuntary petition of bankruptcy and failure of Tenant to secure a dismissal of the petition within 30 days after filing; attachment of or the levying of execution on the leasehold interest and failure of Tenant to secure discharge of the attachment or release of the levy of execution within 10 days shall constitute a default. If Tenant consists of two or more individuals or business entities, the events of default specified in this Section shall apply to each individual unless within 10 days after an event of default occurs, the remaining individuals produce evidence satisfactory to Landlord that they have unconditionally acquired the interest of the one causing the default. If the lease has been assigned, the events of default so specified shall apply only with respect to the one then exercising the rights

of Tenant under the lease.

12.4 **Abandonment.** Failure of Tenant for 20 days or more to occupy the Premises for one or more of the purposes permitted under this lease, unless such failure is excused under other provisions of this lease.

Section 13. Remedies on Default

13.1 **Termination.** In the event of a default the lease may be terminated at the option of Landlord by written notice to Tenant. Whether or not the lease is terminated by the election of Landlord or otherwise, Landlord shall be entitled to recover damages from Tenant for the default, and Landlord may reenter, take possession of the premises, and remove any persons or property by legal action or by self-help with the use of reasonable force and without liability for damages and without having accepted a surrender.

13.2 **Reletting.** Following reentry or abandonment, Landlord may relet the Premises and in that connection may make any suitable alterations or refurbish the Premises, or both, or change the character or use of the Premises, but Landlord shall not be required to relet for any use or purpose other than that specified in the lease or which Landlord may reasonably consider injurious to the Premises, or to any tenant that Landlord may reasonably consider objectionable. Landlord may relet all or part of the Premises, alone or in conjunction with other properties, for a term longer or shorter than the term of this lease, upon any reasonable terms and conditions, including the granting of some rent-free occupancy or other rent concession.

13.3 **Damages.** In the event of termination or retaking of possession following default, Landlord shall be entitled to recover immediately, without waiting until the due date of any future rent or until the date fixed for expiration of the lease term, the following amounts as damages:

(a) The loss of rental from the date of default until a new tenant is, or with the exercise of reasonable efforts could have been, secured and paying out.

(b) The reasonable costs of reentry and reletting including without limitation the cost of any cleanup, refurbishing, removal of Tenant's property and fixtures, costs incurred under Section 13.5, or any other expense occasioned by Tenant's default including but not limited to, any remodeling or repair costs, attorney fees, court costs, broker commissions, and advertising costs.

(c) Any excess of the value of the rent and all of Tenant's other obligations under this lease over the reasonable expected return from the premises for the period commencing on the earlier of the date of trial or the date the premises are relet, and continuing through the end of the term. The present value of future amounts will be computed using a discount rate of 7%.

13.4 **Right to Sue More than Once.** Landlord may sue periodically to recover damages during the period corresponding to the remainder of the lease term, and no action for damages shall bar a later action for damages subsequently accruing.

13.5 **Landlord's Right to Cure Defaults.** If Tenant fails to perform any obligation under this lease, Landlord shall have the option to do so after 30 days' written notice to Tenant. All of Landlord's expenditures to correct the default shall be reimbursed by Tenant on demand with interest at the rate of 18% annum from the date of expenditure by Landlord. Such action by Landlord shall not waive any other remedies available to Landlord because of the default.

13.6 **Remedies Cumulative.** The foregoing remedies shall be in addition to and shall not exclude any other remedy available to Landlord under applicable law.

Section 14. Surrender at Expiration

14.1 **Condition of Premises.** Upon expiration of the lease term or earlier termination on account of default, Tenant shall deliver all keys to Landlord and surrender the Premises in first-class condition and broom clean. Alterations constructed by Tenant with permission from Landlord shall not be removed or restored to the original condition unless the terms of permission for the alteration so require. Depreciation and wear from ordinary use for the purpose for which Tenant is responsible shall be completed to the latest practical date prior to such surrender. Tenant's obligations under this section shall be subordinate to the provisions of Section ? relating to destruction.

14.2 Fixtures

(a) All fixtures placed upon the Premises during the term, except Tenant's trade fixtures, shall, at Landlord's option, become the property of Landlord. If Landlord so elects, Tenant shall remove any or all fixtures that would otherwise remain the property of Landlord, and shall repair any physical damage resulting from the removal. If Tenant fails to remove such fixtures, Landlord may do so and charge the cost to Tenant with interest at the legal rate from the date of expenditure.

(b) Prior to expiration or other termination of the lease term Tenant shall remove all furnishings, furniture, and trade fixtures that remain its property. If Tenant fails to do so, this shall be an abandonment of the property, and Landlord may retain the property and all rights of Tenant with respect to it shall cease or, by notice in writing given to Tenant within 20 days after removal was required, Landlord may elect to hold Tenant to its obligation of removal. If Landlord elects to require Tenant to remove, Landlord may effect a removal and place the property in public

storage for Tenant's account. Tenant shall be liable to Landlord for the cost of removal, transportation to storage, and storage, with interest at the legal rate on all such expenses from the date of expenditure by Landlord.

(c) Tenant shall not remove any plumbing, sinks and cabinets located on the Premises at the commencement of the lease term.

14.3 Holdover

(a) If Tenant does not vacate the Premises at the time required, Landlord shall have the option to treat Tenant as a tenant from month to month, subject to all of the provisions of this lease except the provisions for term and renewal and at a rental rate equal to 150 percent of the rent last paid by Tenant during the original term, or to eject Tenant from the Premises and recover damages caused by wrongful holdover. Failure of Tenant to remove fixtures, furniture, furnishings, or trade fixtures that Tenant is required to remove under this lease shall constitute a failure to vacate to which this section shall apply if the property not removed will substantially interfere with occupancy of the Premises by another tenant or with occupancy by Landlord for any purpose including preparation for a new tenant.

(b) If a month-to-month tenancy results from a holdover by Tenant under this Section, the tenancy shall be terminable at the end of any monthly rental period on written notice from Landlord given not less than 10 days prior to the termination date which shall be specified in the notice. Tenant waives any notice that would otherwise be provided by law with respect to a month-to-month tenancy.

Section 15. Miscellaneous

15.1 **Nonwaiver.** Waiver by either party of strict performance of any provision

of this lease shall not be a waiver of or prejudice the party's right to require strict performance of the same provision in the future or of any other provision.

15.2 **Attorney Fees.** If suit or action is instituted in connection with any controversy arising out of this lease, the prevailing party shall be entitled to recover in addition to costs such sum as the court may adjudge reasonable as attorney fees at trial, on petition for review, and on appeal.

15.3 **Notices.** Any notice required or permitted under this lease shall be given when actually delivered or 48 hours after deposited in United States mail as certified mail addressed to the address first given in this lease or to such other address as may be specified from time to time by either of the parties in writing.

15.4 **Succession.** Subject to the above-stated limitations on transfer of Tenant's interest, this lease shall be binding on and inure to the benefit of the parties and their respective successors and assigns.

15.5 **Recordation.** This lease shall not be recorded without the written consent of Landlord.

15.6 **Entry for Inspection.** Landlord shall have the right to enter upon the Premises at any time to determine Tenant's compliance with this lease, to make necessary repairs to the building or to the Premises, or to show the Premises to any prospective tenant or purchaser, and in addition shall have the right, at any time during the last two months of the term of this lease, to place and maintain upon the Premises notices for leasing or selling of the Premises.

15.7 **Interest on Rent and Other Charges.** Any rent or other payment required of Tenant by this lease shall, if not paid within 10 days after it is due, bear interest at the rate of 18%

per annum from the due date until paid. In addition, if Tenant fails to make any rent or other payment required by this lease to be paid to Landlord within five days after it is due, Landlord may elect to impose a late charge of five cents per dollar of the overdue payment to reimburse Landlord for the costs of collecting the overdue payment. Tenant shall pay the late charge upon demand by Landlord. Landlord may levy and collect a late charge in addition to all other remedies available for Tenant's default, and collection of a late charge shall not waive the breach caused by the late payment.

15.8 **Time of Essence.** Time is of the essence of the performance of each of Tenant's obligations under this lease.

Section 16. Arbitration

16.1 **Disputes to Be Arbitrated.** If any dispute arises between the parties, either party may request arbitration.

16.2 **Procedure for Arbitration.** The arbitrator shall proceed according to the Oregon statutes governing arbitration, and the award of the arbitrator shall have the effect therein provided. The arbitration shall take place in Malheur County, Oregon. The arbitrator shall award reasonable attorney fees and arbitration costs to the prevailing party.

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EXECUTED ON DUPLICATE ORIGINALS on the date first above written.

Landlord:

CITY OF ONTARIO

By:

Jay Henry, City Manager

ATTEST:

Tori Barnett, MMC, City Recorder

Reviewed:

Larry Sullivan, City Attorney

Landlord Address:

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

Tenant:

PAM HINNANT, INC.

By:

Pam Hinnant, President

Tenant Address:

South Georgia Equipment
PO Box 364
Vidalia, GA, 30475

Page 17- LEASE AGREEMENT

EXHIBIT "1"
(Ontario-SGE Lease)

Land in the CITY OF ONTARIO, Malheur County, Oregon, according to Wilson's Supplemental Plat thereof, as follows:

In Block 155: The East 1 foot of Lot 4, and all of Lots 5, 6, 7, 8, 9, 10, 11, 12 and 13.

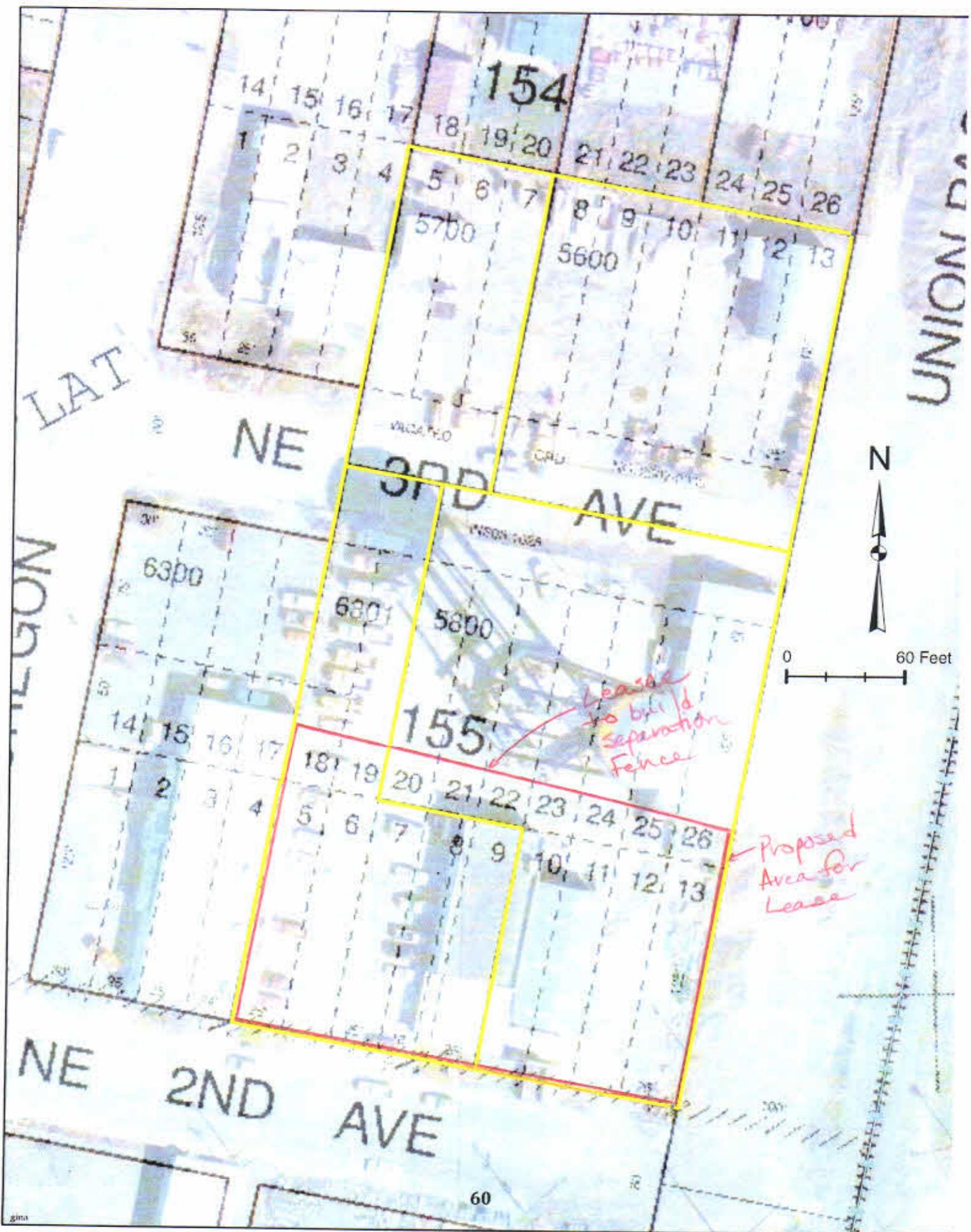
ALSO, the southerly portion of Lots 18, 19, 20, 21, 22, 23, 24, 25 and 26 to the fenceline of the fence to be constructed by Tenant as shown in the Map attached hereto.

Map: 18473CB

Tax Lot: 6301

Code No.:1

Account No.: 18463



154

155

NE

3RD

AVE

NE

2ND

60

UNION DA

LAT

NOR



0 60 Feet

Lease to build separation fence

Proposed Area for Lease

14 15 16 17 18 19 20 21 22 23 24 25 26
1 2 3 4 5 6 7 8 9 10 11 12 13

14 15 16 17 18 19 20 21 22 23 24 25 26
1 2 3 4 5 6 7 8 9 10 11 12 13

5700

5600

6300

6301

5800

