

**AGENDA**  
**CITY COUNCIL - CITY OF ONTARIO, OREGON**  
 Tuesday, September 7, 2010, 7:00 p.m., M.T.

**1) Call to order**

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

**2) Pledge of Allegiance**

This Agenda was posted on Wednesday, September 1, 2010, and a study session was held on Thursday, September 2, 2010. Copies of the Agenda are available at the City Hall Customer Service Counter and on the city's website at [www.ontariooregon.org](http://www.ontariooregon.org).

**3) Motion to adopt the entire agenda**

**4) Consent Agenda: Motion Action Approving Consent Agenda Items**

A) Approval of Minutes of Regular Meeting of 08/16/10 ..... 1-4  
 B) Proclamation: National Alcohol and Drug Recovery Month - September 2010 ..... 5  
 C) Resolutions #2010-110C and #2010-111C: Correct #2010-110 and #2010-111 ..... 6-10  
 D) Approval of the Bills

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

**6) New Business**

A) Resolution #2010-139: Approve Agreement w/ODOT for East Idaho Railroad Underpass Rehabilitation and Reconstruction Planning and Preliminary Engineering ..... 11-41  
 B) Resolution #2010-140: Approval of Water Distribution Master Plan Update Addendum #1 and Sanitary Sewer Master Plan Update Addendum #1 (Plus Hand-Outs) ..... 42-45  
 C) Resolution #2010-141: FAA Grant #3-41-0044-009 Part 1: Runway, Taxiway, and Apron Rehabilitation and Runway Lighting for Ontario Airport ..... 46-55  
 D) Resolution #2010-147: Accept FAA Grant #3-41-0044-009 for Airport Improvements .... 56-58  
 E) Ordinance #2648-2010: Amend OMC 7-1 re: Nuisance Provisions (1<sup>st</sup> Reading) ..... 59-64  
 F) Ordinance #2649-2010: Amend OMC 7-4-8 re: Graffiti Provisions (1<sup>st</sup> Reading) ..... 65-67

**7) Public Hearing:**

A) Resolution #2010-142: Golf Course Supplemental Budget ..... 68-72

**8) Discussion Item(s): Thursday**

A) Letter from Pastor Frank Maloney, First Christian Church ..... 73-75  
 B) Lawn Parking Prohibition Ordinance Review  
 C) East Idaho Presentation: Widening from Freeway - Snake River Bridge  
 D) STIP Project List: 2012-2015

**9) Executive Session: Thursday**

A) ORS 192.660(2)(e) ..... 76-87

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

**11) Adjourn**

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

**COUNCIL MEETING MINUTES  
August 16, 2010**

The regular meeting of the Ontario City Council was called to order by Council President Susann Mills at 7:00 p.m. on Monday, August 16, 2010, in the Council Chambers of City Hall. Council members present were Norm Crume, Charlotte Fugate, John Gaskill, Susann Mills, David Sullivan and Ronald Verini. Mayor Joe Dominick was excused.

Members of staff present were Henry Lawrence, Tori Barnett, Larry Sullivan, Mike Kee, Chuck Mickelson, and camera operator Hailey Skinner.

Ronald Verini led everyone in the Pledge of Allegiance.

**AGENDA**

David Sullivan moved, seconded by Charlotte Fugate, to adopt the Agenda as presented. Roll call vote: Crume-yes; Fugate-yes; Gaskill-yes; Mills-yes; Sullivan-yes; Verini-yes; Dominick-out. Motion carried 6/0/1.

**CONSENT AGENDA**

Ronald Verini moved, seconded by Norm Crume, to approve Consent Agenda Item A: Approval of Minutes of regular meeting of 08/02/2010; Item B: Proclamation: American Legion Month, September, 2010; and Item C: Approval of the Bills. Roll call vote: Crume-yes; Fugate-yes; Gaskill-yes; Mills-yes; Sullivan-yes; Verini-yes; Dominick-out. Motion carried 6/0/1.

Council President Mills read the Proclamation into the record:

- Whereas,** The American Legion was chartered by The Congress of The United States of America on September 16, 1919; and
- Whereas,** Since its founding the American Legion and its nearly three million members have continually exhibited a deep sense of pride in community and ensured a strong America by serving veterans, their families and the children of our nation; and
- Whereas,** The American Legion was responsible for the creation of the original GI Bill, enabling millions of veterans to obtain assistance in education and home loans; and
- Whereas,** The American Legion was instrumental in the passage of legislation creating the Department of Veterans Affairs; and
- Whereas,** The American Legion continues to work for a constitutional amendment to protect the American flag from desecration; securing mandatory funding for adequate operation of the Veterans Affairs Medical facilities; and operates a Family Support Network for families of active duty military personnel and members of the National Guard and Reserves; and
- Whereas,** The more than 25,000 Legionnaires belonging to the 120 Posts across Oregon, along with the 10,000 members of the Sons of The American Legion and American Legion Auxiliary statewide, collectively volunteer thousands of hours to assist our veterans and their communities; and
- Whereas,** Ontario American Legion Post 67 strongly supports veterans, their families and our community at large.

**Therefore, be it resolved** that the Ontario City Council hereby proclaims **SEPTEMBER 2010 AMERICAN LEGION MONTH** throughout the City of Ontario and encourages citizens to celebrate the many contributions made by members of the American Legion, Department of Oregon over the past 91 years.

**NEW BUSINESS**

**Liquor License Application: New Outlet (Limited On-Premises Sales) Anderson**

Councilor Sullivan recused himself from the action, declaring a conflict of interest.

Mike Kee, Police Chief, stated Ellen and Richard Anderson, under the trade name of A-Lot-A-Beers, completed the "New Outlet" application process for "Limited On-Premises Sales" liquor license privileges through the Oregon Liquor Control Commission for their business located at 105 SE 2<sup>nd</sup> Street, Ontario, Oregon. Initially, the applications had been approved and forwarded back to the city by the OLCC. Prior to bringing the matter to the City Council, Richard Anderson was arrested by the Oregon State Police for Driving Under the Influence of Intoxicants. That matter has not been adjudicated. If convicted this could have a very serious impact on the holder of an Oregon Liquor License. The OLCC also did not consider a liquor license violation, which was reported to them in 2007 by the Ontario Police Department concerning Ellen and Richard Anderson's current business. The OLCC now will be looking into both matters. If the city denies support for the license, the matter will go back to the Liquor Commission and they will look at the entire application again. In the end, the OLCC may issue a license whether or not the city supports it. Staff's recommendation, based on the above information, was to deny the application at this time, pending further investigation by OLCC.

Larry Sullivan, City Attorney, stated the city had run up against the time allowed for responding to the application. Further, the OLCC could move forward without a recommendation by the Council.

Bob Moon, attorney for the Andersons, provided a background on the Andersons, and indicated that Mr. Anderson would be asking for a diversion on the DUII, and if granted, and Mr. Anderson complied and completed the requirements of the diversion, the issue would not show on his record.

Mr. Sullivan stated the Council could write a letter to OLCC indicating there was no recommendation for approval or denial by the Council for the application; however, by statute, OLCC would have to treat that as a favorable recommendation.

Ronald Verini moved, seconded by Charlotte Fugate, that based on the information the Council had received that evening, the Council neither deny nor approve the City's support for the application at this time. Roll call vote: Crume-yes; Fugate-yes; Gaskill-yes; Mills-yes; Sullivan-abstained; Verini-yes; Dominick-out. Motion carried 5/0/1/1.

Councilor Gaskill recommended that when the notice was returned to OLCC, a letter outlining the reasons why the Council took the action they did.

**Bid Award: SW 4<sup>th</sup> Avenue Sanitary Sewer Extension Project**

Chuck Mickelson, Public Works Director, stated a new Fire Station Storage Building was to be built on city property near the intersection of SW 4<sup>th</sup> Avenue and SW 33<sup>rd</sup> Street. The building would be used for storage of fire trucks, hazardous materials response vehicles with trailers, and various other pieces of fire equipment. The design-build contract was awarded to MVCI, LLC and the project was currently under construction. The project provided for the approximate 805 feet of 8-inch sanitary sewer line that was needed to accommodate and provide sewer service to the building. On June 7, 2010, the Council approved Resolution #2010-118, authorizing the reallocation of \$90K within the Sewer Fund to extend sewer services on SW 4<sup>th</sup> Avenue and SW 33<sup>rd</sup> Street.

On August 4, 2010, bids were opened for the extension project. Eastern Oregon Construction, Ontario, was the apparent lowest responsive and responsible bidder at \$55,046.00 for the project, which consisted of construction of approximately 805 lineal feet of 8-inch diameter sanitary sewer main including pipe, manholes, services, and surface restoration. Eastern Oregon Construction's bid came in under the engineer's estimate of \$90,000.

| Southwest 4 <sup>th</sup> Avenue Sanitary Sewer Extension Bid Results |                    |
|---|--------------------|
| COMPANY   | TOTALS             |
| MVCI, LLC   | \$65,984.05        |
| CASCADE PIPELINE CORPORATION  | \$78,295.00        |
| LURRE CONSTRUCTION  | \$84,255.00        |
| <b>EASTERN OREGON CONSTRUCTION</b>                                    | <b>\$55,046.00</b> |
| WARRINGTON CONSTRUCTION   | \$88,769.00        |
| G. LOWELL LEWIS CONSTRUCTION INC                                      | \$98,519.00        |
| ENGINEERS ESTIMATE  | \$90,000.00        |

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David Sullivan moved, seconded by John Gaskill, to award the SW 4<sup>th</sup> Avenue Sanitary Sewer Extension Project to Eastern Oregon Construction, the lowest responsive and responsible bidder, in the amount of \$55,046.00 and authorize the City Manager to be signatory to an agreement with Eastern Oregon Construction. Roll call vote: Crume-yes; Fugate-yes; Gaskill-yes; Mills-yes; Sullivan-yes; Verini-yes; Dominick-out. Motion carried 6/0/1.

**Resolution #2010-131: Approve Fund Exchange Agreement #27023 between Ontario and ODOT for Fund Distribution for Phases of Chip Sealing and Landscaping on Various City Streets**

Chuck Mickelson, Public Works Director, stated the State of Oregon offered Fund Exchange Programs acting by and through its Department of Transportation, in which federal funds were exchanged for state funds at a ratio of \$94 state dollars for \$100 federal dollars. That gave the city the ability to build projects under local control instead of federal control. The City of Ontario had been granted the opportunity to exchange \$110,185 state dollars for \$117,218 federal dollars. On April 4, 2005, the City Council authorized the Mayor to sign Fund Exchange Agreement #22,388, which allowed staff to construct and complete the SW 4<sup>th</sup> Avenue and SW 4<sup>th</sup> Street Signal Project. On March 16, 2009, the City Council adopted Resolution #2009-108 approving Fund Exchange #25,415, which authorized the Mayor to sign the agreement for the design and construction of North Oregon Street and rehabilitation between Idaho Street and NW 1<sup>st</sup> Street.

Charlotte Fugate moved, seconded by John Gaskill, to adopt Resolution #2010-131, A RESOLUTION APPROVING FUND EXCHANGE AGREEMENT #27023 BETWEEN THE CITY OF ONTARIO AND THE STATE OF OREGON, ACTING BY AND THROUGH ITS DEPARTMENT OF TRANSPORTATION FOR FUND DISTRIBUTION FOR ALL PHASES OF THE CHIP SEALING AND LANDSCAPING ON VARIOUS CITY STREETS. Roll call vote: Crume-yes; Fugate-yes; Gaskill-yes; Mills-yes; Sullivan-yes; Verini-yes; Dominick-out. Motion carried 6/0/1.

**Resolution #2010-138: Intent to Construct a Sanitary Sewer Main on Alameda Drive from SW 16<sup>th</sup> Avenue to SW 18<sup>th</sup> Avenue and on Nadine Drive from Alameda Drive to the West Terminus of Nadine Drive and to Create a Local Improvement District**

Chuck Mickelson, Public Works Director, stated following discussion at the work session, Council believed it appropriate to have a further discussion with the neighborhood to discuss the extension of water, along with the sanitary sewer and any other improvements the Council considered for the area. It had been decided to set a public meeting so the Council could discuss the extension of utilities into their neighborhood. He had drafted a letter to the owners in the neighborhood, and once a date had been established by Council, they would move forward on that.

Mr. Sullivan stated he had provided a supplemental staff report to the Council and at the end of the report was a proposed motion based on the discussion at the work session.

David Sullivan moved, seconded by Charlotte Fugate, to table the adoption of Resolution #2010-138 until after the Council has an informational meeting with the residents of the local improvement district identified in the proposed resolution. Roll call vote: Crume-yes; Fugate-yes; Gaskill-yes; Mills-yes; Sullivan-yes; Verini-yes; Dominick-out. Motion carried 6/0/1.

Council consensus to hold a neighborhood meeting for the residents of the proposed LID site on Thursday, September 9<sup>th</sup>, beginning at 7:00 p.m.

**CORRESPONDENCE, COMMENTS, AND EX-OFFICIO REPORTS**

- Henry Lawrence reminded everyone that Chief Mike Kee had resigned as Chief, and would be taking on the position of City Manager in Baker City. His last day with Ontario would be Tuesday, August 31<sup>st</sup>.
- Councilor Sullivan stated he had attended the Golf Course Committee meeting last week, and everything was going well. They were still looking for a concessionaire. On Friday, Steve's Hometown Dealership was hosting a wine tasting and silent auction at the course, beginning at 6:00 p.m. The money raised would all go towards various charities. Following that, on Saturday, they would be hosting a golf tournament.
- Chuck Mickelson stated with regard to the Fire Station Storage Building, the concrete had been poured, and the building was laid out. The footings and foundation had been poured, and the plumber had been out to the site, starting to put the pipes in. The slab would be prepared for pouring later in the week, and the interior slab poured next week. The structure was supposed to be delivered on site on the 23<sup>rd</sup> or 24<sup>th</sup>.
- Chuck Mickelson gave an update on the damage to the underpass produced by last week's storm.
- Councilor Mills informed everyone that she had decided not to run for re-election, and thanked everyone for all their assistance over the last four years.

ADJOURN

David Sullivan moved, seconded by Ron Verini, that the meeting be adjourned. Roll call vote: Crume-yes; Fugate-yes; Gaskill-yes; Mills-yes; Sullivan-yes; Verini-yes; Dominick-out. Motion carried 6/0/1.

ATTEST:

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

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

## PROCLAMATION

**WHEREAS,** recovery from substance use disorders is possible through a variety of treatment resources and recovery support programs; and

**WHEREAS,** thousands of people across the United States are living happy, healthy, and productive lives in recovery; and

**WHEREAS,** stress can contribute to substance use disorders, and finding a positive outlet for dealing with stress is crucial as people continue to face stressful situations in their lives. Nearly half of Americans reported that their stress levels had increased over the past year in 2008, with as many as 30% rating their stress levels as extreme; and

**WHEREAS,** in 2008, an estimated 23.1 million people of every age, race, ethnicity, and socioeconomic status needed treatment for substance dependence or abuse in the United States; and

**WHEREAS,** substance use disorders are a treatable, yet serious health care problem, and our community must take steps to address it; and

**WHEREAS,** educating our community about how substance use disorders affect all people in the community, including public safety officials, the workforce, older adults and families, is essential to combat misconceptions associated with addiction.

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

### **National Alcohol and Drug Recovery Month**

and encourage the citizens of Ontario to join in this observance with appropriate programs, activities, and ceremonies supporting this year's theme "Join Voices for Recovery: Now More Than Ever!"

Joe Dominick, Mayor of Ontario

**CONSENT AGENDA**  
September 7, 2010

TO: Mayor and City Council

FROM: Rachel Hopper, Finance Director

THROUGH: Henry Lawrence, City Manager

**SUBJECT: CORRECTED RESOLUTIONS 2010-110 AND 2010-111**

DATE: August 26, 2010

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**SUMMARY:**

Attached are the following documents:

- Resolution 2010-110C
- Resolution 2010-111C

The Resolution form presented to Council included an error in the beginning and resulting ending balances in the Sewer Fund Contingency. These corrected Resolutions identify a beginning contingency balance that takes into account the changes made by previously adopted Resolution 2009-123, which reduced the contingency by \$19,075.

This corrected resolutions are required as the ending Contingency Budget amounts in the original resolutions were in error.

Resolutions adopted in April 2010 had the correct beginning contingency balances and no further corrections were required.

**PREVIOUS COUNCIL ACTION:**

Feb 2010 Council adopted Resolution 2010-110

Feb 2010 Council adopted Resolution 2010-111

**STAFF RECOMMENDATION:**

Staff recommends the Council adopt Resolutions 2010-110C and 2010-111C, correcting the beginning and ending Contingency line item balance in both cases.

**RESOLUTION 2010-110C**

**A RESOLUTION AUTHORIZING A REALLOCATION OF EXPENDITURES WITHIN  
THE SEWER FUND FOR ELIMINATING STORM DISCHARGE INTO THE SANITARY  
SEWER SYSTEM IN SOUTHWEST ONTARIO**

**WHEREAS,** the City of Ontario adopted the 2009-2011 budget document based upon known or anticipated revenues and expenditures; and

**WHEREAS,** the City, in preparation for the 2010 Chip Seal Project, reviewed the improvement area in Southwest Ontario, and noted a situation in which storm water was being collected thru the sewer collection system, and following further review of the City’s Sanitary Sewer Master Plan, found that the Master Plan called for a separation of the storm and sewer systems; and

**WHEREAS,** the City, in an effort to fix the system prior to chip sealing the streets over the affected area, as well as in an attempt to eliminate the expense of treating storm water as part of the City’s sewer system, determined that improvements were needed to remove storm drainage from the City’s sewer collection system; and

**WHEREAS,** the City proposes to complete the work of separating storm drains from the City’s sewer system with existing staff, requiring a reallocation of expenditure funds in order to purchase materials to complete the project; and

**WHEREAS,** the City Council has determined the work of separating storm and sewer collection systems prior to the chip sealing work in the project area is necessary and desires now to formally modify the 2009-2011 Sewer Fund budget by reducing Operating Contingency expense and increasing the Capital Project expense to complete the project.

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

| Account Number    | Account Name                         | Adopted<br>09-11 Budget | Proposed<br>Change | Revised<br>09-11 Budget |
|-------------------|--------------------------------------|-------------------------|--------------------|-------------------------|
| <b>SEWER FUND</b> |                                      |                         |                    |                         |
| <b>EXPENSES</b>   |                                      |                         |                    |                         |
| 110-165-719255    | SEW-18 – Storm/Sewer Line Separation | \$ 0                    | \$ 29,000          | \$ 29,000               |
| 110-165-871000    | Operating Contingency                | \$ 1,479,542            | (\$ 29,000 )       | \$ 1,450,542            |

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

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

Ayes:

Nays:

Absent:

**APPROVED BY THE Mayor** this \_\_\_\_ day of \_\_\_\_\_ 2010.

ATTEST:

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

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

**RESOLUTION 2010-111C**

**A RESOLUTION AUTHORIZING A REALLOCATION OF EXPENDITURES WITHIN THE SEWER AND STORM SEWER FUNDS, CREATING AN INTERFUND LOAN, FOR AN EMERGENCY STORM DRAINAGE REPAIR**

**WHEREAS**, the City of Ontario adopted the 2009-2011 budget document based upon known or anticipated revenues and expenditures; and

**WHEREAS**, the City’s existing Storm Sewer Fund was reestablished as a separate Fund from the condensed Public Works Fund during the 2009-2011 Biennial Budget process and did not have sufficient reserves to create a contingency within this budget; and

**WHEREAS**, in the process of conducting storm drain maintenance work, it was discovered that the existing 24” clay pipe storm drain line North of the Four River’s Cultural Center has failed for a distance of approximately 140 feet; and

**WHEREAS**, various options were reviewed and staff determined that improvements were needed to replace the failed line, with work to be completed by existing staff although additional funding would be required for materials and equipment rental of \$12,000; and

**WHEREAS**, the City proposes to finance the required materials and equipment rental thru an interfund loan from the Sewer to the Storm Sewer Fund due to a lack of Storm Sewer contingency, and said loan is to be repaid by the close of the 2009-11 Biennial Budget; and

**WHEREAS**, the City Council has determined the emergency repair is necessary, the use of an interfund loan is the best method of financing the emergency repair, and desires now to formally modify the 2009-2011 Sewer Fund budget by reducing Operating Contingency expense and increasing the Interfund Loan expense and modify the Storm Sewer Fund budget by identifying loan proceed revenues and Capital Project expenses to complete the project.

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

| Account Number          | Account Name                        | Adopted 09-11 Budget | Proposed Change | Revised 09-11 Budget |
|-------------------------|-------------------------------------|----------------------|-----------------|----------------------|
| <b>SEWER FUND</b>       |                                     |                      |                 |                      |
| <b>EXPENSES</b>         |                                     |                      |                 |                      |
| 110-165-833900          | Transfer to Storm Sewer Fund – Loan | \$ 0                 | \$ 12,000       | \$ 12,000            |
| 110-165-871000          | Operating Contingency               | \$ 1,450,542         | (\$ 12,000 )    | \$ 1,438,542         |
| <b>STORM SEWER FUND</b> |                                     |                      |                 |                      |
| <b>REVENUES</b>         |                                     |                      |                 |                      |
| 115-000-458130          | Transfer from Sewer Fund – Loan     | \$ 0                 | \$ 12,000       | \$ 12,000            |
| <b>EXPENSES</b>         |                                     |                      |                 |                      |
| 115-170-719300          | STRM-1– Emergency Repair (FRCC)     | \$ 0                 | \$ 12,000       | \$ 12,000            |

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

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

Ayes:

Nays:

Absent:

**APPROVED BY THE Mayor** this \_\_\_\_ day of \_\_\_\_\_ 2010.

ATTEST:

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

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

**AGENDA REPORT**  
September 7, 2010

TO: Mayor and City Council

FROM: Chuck Mickelson, Public Works Director

THROUGH: Henry Lawrence, City Manager

**SUBJECT: RESOLUTION #2010-139: A RESOLUTION APPROVING A LOCAL AGENCY AGREEMENT BETWEEN THE OREGON DEPARTMENT OF TRANSPORTATION AND THE CITY OF ONTARIO FOR THE EAST IDAHO RAILROAD UNDERPASS REHABILITATION AND RECONSTRUCTION PLANNING AND PRELIMINARY ENGINEERING**

DATE: August 20, 2010

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**SUMMARY:**

Attached are the following documents:

- FY 2010 – Oregon Federal Appropriation request
- Ontario Photos
- Nampa Photos
- Resolution 2010-139
- ODOT Agreement #27037

This resolution approves an agreement with the Oregon Department of Transportation for \$292,150 of federal funding for the East Idaho underpass. The underpass was constructed in 1937 and there are a number of deficiencies including limited truck clearance, poor drainage, spalling of concrete, exposed rebar, erosion caused from runoff from adjacent properties, inadequate lighting, etc.

This initial funding will identify all the issues with the existing facility, identify options for replacement or upgrade and develop cost estimates for the various alternatives to be utilized for future funding requests.

An Oregon federal appropriations request (copy attached) was submitted in February 2009 to Senators Wyden and Merkley. The application requested \$500,000 and Congress ultimately approved \$292,150.

## **PREVIOUS COUNCIL ACTION:**

- 2001 ODOT and Ontario entered into agreement No. 697 where Ontario accepted maintenance responsibility for North Oregon Street, West Idaho including the underpass, Southwest 2<sup>nd</sup> Street and Southwest 4<sup>th</sup> Avenue; ODOT agreed to pay the City \$490,000 for future maintenance of these facilities; agreement superseded prior agreements made in 1975 and 1979; all right, title and interest in the above mentioned streets shall be transferred to Ontario upon completion of the Yturri Beltline, the agreement addressed various other elements including underpass lighting system maintenance, traffic signal maintenance, signage, snow removal and power costs for signals.

## **BACKGROUND:**

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

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

The railroad underpass is the gateway or entry to Ontario. While this 1937 structure is functional for moving traffic and carrying rail cars, there are a number of deficiencies as noted above. If this agreement is accepted by the City Council, the first step will be to select an engineering firm in cooperation with ODOT to identify all the issues (structural, institutional, environmental, legal etc) associated with the underpass and the surrounding properties. The agreement with the engineering firm will be with ODOT rather than the city. This limits the administrative burden of dealing with the federal procurement and reporting process.

Once an engineering firm is selected the full scope of the project will be negotiated. There are numerous options that will need to be considered due to the limited right of way and other physical constraints. Public input and environmental reviews will be solicited in the initial phase. Options will be identified and shared with the decision makers. Following the selection of the preferred option, detailed design will commence with construction following as funding becomes available. Pictures of some of the issues regarding the Ontario underpass are attached.

The City of Nampa, Idaho had an underpass crossing under the Union Pacific Rail Road nearly identical to Ontario's although it was a two-lane facility with pedestrian pathways on both sides of the underpass similar to Ontario's. The underpass was widened a number of years ago to four lanes. A single sidewalk was constructed to replace the dual tunnel like crossings that previously existed. A pedestrian bridge was constructed to allow pedestrians to cross from north to south. A number of pictures of the Nampa underpass are also attached for your information. The Nampa project cost about \$18 million a number of years ago.

I have utilized \$22 million as the overall project cost due to inflation, complexity, etc. This type of project normally takes several years to bring it to conclusion with the planning, funding, railroad negotiations, etc.

**ALTERNATIVE:**

1. Do not accept the federal funding for this project.
2. Approve the agreement and proceed with selection of engineering consulting firm.

**FINANCIAL IMPLICATIONS:**

This phase of the project is fully funded by the federal government. There will be significant staff time involved in undertaking this project. Future costs are unknown at this time.

Failure to accept the agreement will result in the City not receiving funds for this portion of the project.

**RECOMMENDATION:**

Staff recommends the City Council adopt Resolution #2010-139.

**PROPOSED MOTION:**

I move the City Council adopt Resolution #2010-139: **A RESOLUTION APPROVING A LOCAL AGENCY AGREEMENT BETWEEN THE OREGON DEPARTMENT OF TRANSPORTATION AND THE CITY OF ONTARIO FOR THE EAST IDAHO RAILROAD UNDERPASS REHABILITATION AND RECONSTRUCTION PLANNING AND PRELIMINARY ENGINEERING.**



|  |  |
|--|--|
| <b>Email:</b>  | <u>chuck.mickelson@ontariooregon.org</u> or<br><u>bob.walker@ontariooregon.org</u> |
| <b>DC Contact (if applicable):</b>   |  |
| <b>Name:</b>   |  |
| <b>Address:</b>  |  |
| <b>City, State, Zip:</b>   |  |
| <b>Telephone:</b>  |  |
| <b>Fax:</b>  |  |
| <b>Email:</b>  |  |
| <b>Other Organizations/Community Leaders who have expressed support of this project (please provide letters as PDF attachments or via United States Postal Service):</b> |  |
| <b>Organization:</b>   |  |
| <b>Contact:</b>  |  |
| <b>Telephone:</b>  |  |
| <b>Organization:</b>   |  |
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How many jobs will be created by this project? 40 What type of jobs? Engineering and construction

Does your company or organization have any plans to move or close your facilities, reduce operations, or reduce employment in Oregon? No

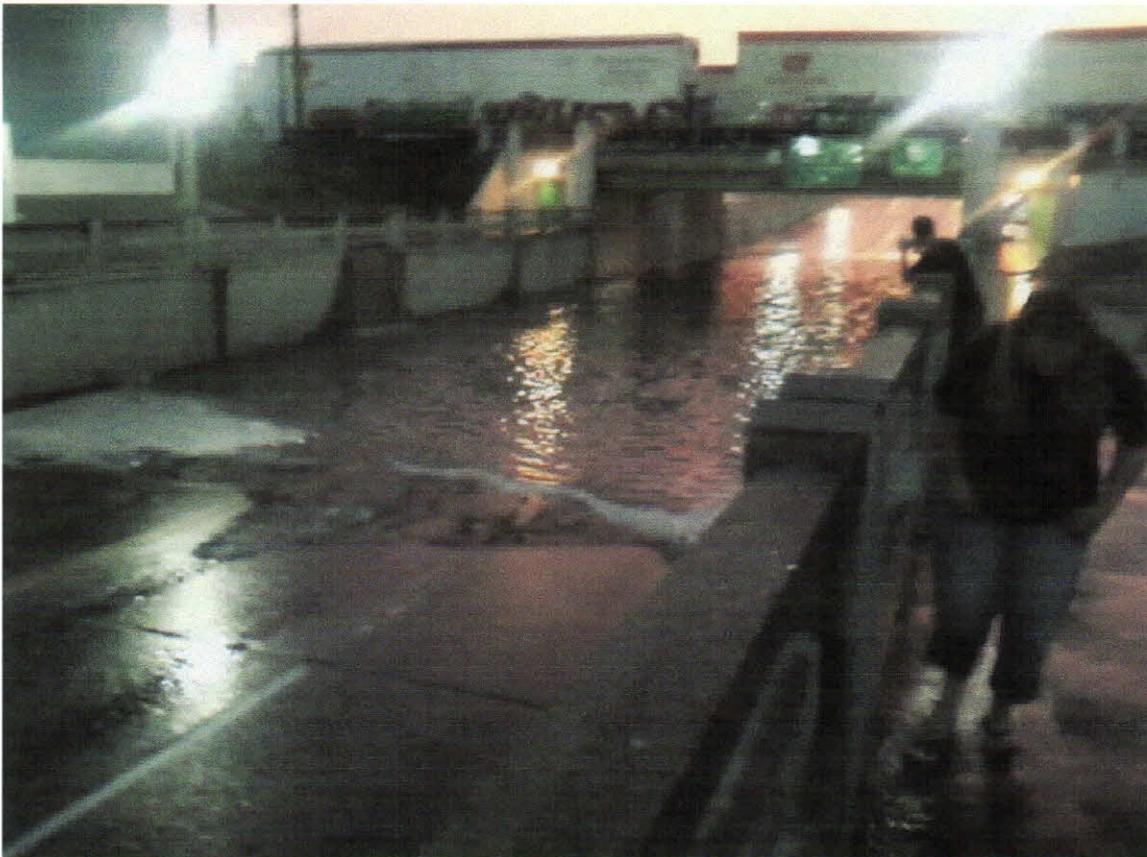
Is your company or organization currently engaged in, or does it plan to become engaged in, any merger or acquisition talks with an outside company or organization? Not applicable

**Attachments:**

- 11/17/08-Underpass condition assessment by Ontario employees Bret Turner and John Bishop
- 01/14/09-Request of funding opportunities from Ontario Mayor Joe Dominick to Bob Turner and Brock Nelson of Union Pacific Railroad
- 02/19/08-Letters from Ontario Mayor Joe Dominick to Senator Ron Wyden and Senator Jeff Merkley re: the issues regarding the E. Idaho railroad underpass



Pedestrian Railing – exposed rebar – looking east



Flooding – August 2010 (Intense Rain Storm)



Looking South



Embankment Failure due to recent storm



Ontario Underpass – North side, East of Underpass



Ontario Pedestrian Tunnel



Nampa Underpass looking west



Nampa Underpass looking east



Footbridge – Pedestrians walk south to walkway under railroad



Pedestrian walkway looking west

**RESOLUTION #2010-139**

**A RESOLUTION APPROVING A LOCAL AGENCY AGREEMENT BETWEEN THE OREGON DEPARTMENT OF TRANSPORTATION AND THE CITY OF ONTARIO FOR THE EAST IDAHO RAILROAD UNDERPASS REHABILITATION AND RECONSTRUCTION PLANNING AND PRELIMINARY ENGINEERING**

- WHEREAS, in 2001 ODOT and the City of Ontario entered into agreement #697 and the City accepted maintenance responsibility for North Oregon Street, West Idaho including the underpass, Southwest 2<sup>nd</sup> Street, and Southwest 4<sup>th</sup> Avenue; and
- WHEREAS, ODOT agreed to pay the City \$490,000 for future maintenance of these facilities; and
- WHEREAS, all right, title and interest in these streets would be transferred to Ontario upon the completion of the Yturri Beltline; and
- WHEREAS, the railroad underpass is the gateway to much of Ontario, however the underpass has numerous deficiencies; and
- WHEREAS, an engineering firm could identify all the issues (structural, institutional, environmental, legal etc.) associated with the underpass and the surrounding properties; and
- WHEREAS, options to upgrade and/or replace will be evaluated and construction cost estimates will be developed.

**NOW THEREFORE, BE IT HEREBY RESOLVED** by the Ontario City Council, to adopt Resolution #2010-139: A RESOLUTION APPROVING A LOCAL AGENCY AGREEMENT BETWEEN THE OREGON DEPARTMENT OF TRANSPORTATION AND THE CITY OF ONTARIO FOR THE EAST IDAHO RAILROAD UNDERPASS REHABILITATION AND RECONSTRUCTION PLANNING AND PRELIMINARY ENGINEERING

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

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

AYES:

NAYES:

ABSENT:

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

ATTEST:

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

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

**LOCAL AGENCY AGREEMENT  
SURFACE TRANSPORTATION PROGRAM – LOCAL  
Ontario Railroad Underpass Rehabilitation and Reconstruction  
City of Ontario**

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

**RECITALS**

1. Olds Ferry – Ontario Highway (No. 455), is a part of the state highway system under the jurisdiction and control of the Oregon Transportation Commission. East Idaho Avenue is a part of the city street system under the jurisdiction and control of the City of Ontario.
2. By the authority granted in Oregon Revised Statutes (ORS) 190.110, 366.572 and 366.576, state agencies may enter into cooperative agreements with counties, cities and units of local governments for the performance of work on certain types of improvement projects with the allocation of costs on terms and conditions mutually agreeable to the contracting parties.
3. Section 119 of the Transportation, Housing And Urban Development, And Related Agencies Appropriations Act, 2010 (Surface Transportation Priorities) allocated federal earmark funds in the amount of \$292,150 to the City of Ontario for the Oregon Railroad Underpass Rehabilitation and Reconstruction project. The Earmark funds are not subject to any obligation limitation, do not require any non-federal match, and remain available until expended. The funds will be used for planning, program, and design to determine the best option for the rehabilitation and reconstruction of the underpass.
4. E. Idaho Avenue is the primary entrance to the City of Ontario and passes beneath the major Union Pacific Railroad line serving Oregon and Southern Idaho. There are about 15 trains that pass over E. Idaho Avenue on a daily basis. The roadway structure and overpass was constructed in 1937. There are a number of visible problems associated with the structure, which include but are not limited to, drainage, truck clearance, concrete spalling, exposed reinforcing steel, driving surface failures, sidewalks that have settled, erosion from adjoining properties and, inadequate lighting.
5. This Agreement will address the planning, program, and design work for the future Ontario Railroad Underpass Rehabilitation and Reconstruction work, which will

include modifying the clearances, changing the pedestrian crossing, correct the drainage issues, reconstruct the driving surface and provide for landscaping. Construction responsibilities will be addressed in a future agreement between the Parties.

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

### **TERMS OF AGREEMENT**

1. Under such authority, State and Agency agree to perform the planning, program and design work necessary to determine the best option for the rehabilitation and reconstruction of the Ontario Railroad Underpass hereinafter referred to as "Project." After best option is decided upon detailed design will commence, with construction following as funding becomes available. The location of the Ontario Railroad Underpass will be approximately as shown on the sketch map attached hereto, marked "Exhibit A," and by this reference made a part hereof.
2. The Project will be conducted as a part of the Federal-Aid Surface Transportation Program (STP) under Title 23, United States Code. The total Project cost is estimated at \$300,000, which is subject to change. Surface Transportation Priorities funds for this Project will be limited to \$292,150. The Project will be financed with STP funds at the maximum allowable federal participating amount, The provided funds are not subject to any obligation limitation, do not require any non-federal match and remain available until expended.
3. The federal funding for this Project is contingent upon approval by the Federal Highway Administration (FHWA). Any work performed prior to acceptance by FHWA or outside the scope of work will be considered nonparticipating and paid for at Agency expense.
4. State considers Agency a subrecipient of the federal funds it receives as reimbursement under this Agreement. The Catalog of Federal Domestic Assistance (CFDA) number and title for this Project is 20.205, Highway Planning and Construction.
5. The term of this Agreement will begin upon execution and will terminate upon completion of the Project and final payment or ten (10) calendar years following the date of final execution, whichever is sooner.

### **AGENCY OBLIGATIONS**

1. Agency's Project Manager is: Charles R. Mickelson, Public Works Director, 444 SW 4<sup>th</sup> St., Ontario, Oregon 97914. Phone: (541) 881-3231, Email Address: [chuck.mickelson@ontariooregon.org](mailto:chuck.mickelson@ontariooregon.org). State's Project Manager shall be notified in

writing of any contact information changes during the terms of this Agreement.

2. Agency shall perform all work as identified in the Special Provisions, Attachment number 1 and comply with the terms of this Agreement.
3. Agency shall, upon completion of Project and as a condition to this Agreement, complete and file with the appropriate County Clerk, an Acknowledgment of Federal Assistance, which is attached hereto as Exhibit B, and by this reference is made a part hereof or the filing of a memorandum of this Agreement including Acknowledgement of Federal Assistance. Agency shall provide confirmation of this filing by forwarding to the State's Region 5 Manager a conformed copy of the recorded Exhibit B or memorandum. By means of said acknowledgment of Agency's financial obligations, the continued use of said property for public purposes, and the maintenance of the facility or service at a level consistent with normal depreciation and/or demand is recognized and attached to the property as conditions of receipt of these funds. Any interest in said property by State is proportional to the federal and state participation in Project. Agency will be ineligible to receive any state or federal funds while in default of conditions of this Agreement or the Acknowledgment of Federal Assistance.

## **STATE OBLIGATIONS**

1. State certifies, at the time this Agreement is executed, that sufficient funds are available and authorized for expenditure to finance costs of this Agreement within State's current appropriation or limitation of the current biennial budget.
2. State shall provide Project Services, i.e., meetings, plan and design reviews, and all other work necessary to complete the Project as described in Terms of Agreement, Paragraph 1, through staff and/or consultants.
3. State's Project Manager for this Project is Doug Wright, Federal Aid Specialist, 3012 Island Avenue, La Grande, Oregon 97850, (541) 963-1362, [douglas.I.WRIGHT@odot.state.or.us](mailto:douglas.I.WRIGHT@odot.state.or.us), or assigned designee upon individual's absence. Agency's Project Manager shall be notified in writing of any contact information changes during the term of this Agreement.

## **GENERAL PROVISIONS**

1. This Agreement may be terminated by mutual written consent of both Parties.
2. State may terminate this Agreement effective upon delivery of written notice to Agency, or at such later date as may be established by State, under any of the following conditions:
  - a. If Agency fails to provide services called for by this Agreement within

the time specified herein or any extension thereof.

- b. If Agency fails to perform any of the other provisions of this Agreement, or so fails to pursue the work as to endanger performance of this Agreement in accordance with its terms, and after receipt of written notice from State fails to correct such failures within ten (10) days or such longer period as State may authorize.
  - c. If State fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow State, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement.
  - d. If federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the work under this Agreement is prohibited or State is prohibited from paying for such work from the planned funding source.
3. Any termination of this Agreement will not prejudice any rights or obligations accrued to the Parties prior to termination.
4. The Special and Standard Provisions attached hereto, marked Attachments 1 and 2, respectively, are by this reference made a part hereof. The Standard Provisions apply to all federal-aid projects and may be modified only by the Special Provisions. The Parties hereto mutually agree to the terms and conditions set forth in Attachments 1 and 2. In the event of a conflict, this Agreement will control over the attachments, and Attachment 1 will control over Attachment 2.
5. Agency, as a recipient of federal funds, pursuant to this Agreement with State, shall assume sole liability for Agency's breach of any federal statutes, rules, program requirements and grant provisions applicable to the federal funds, and will, upon Agency's breach of any such conditions that requires State to return funds to the Federal Highway Administration, hold harmless and indemnify State for an amount equal to the funds received under this Agreement; or if legal limitations apply to the indemnification ability of Agency, the indemnification amount will be the maximum amount of funds available for expenditure, including any available contingency funds or other available non-appropriated funds, up to the amount received under this Agreement.
6. Agency certifies and represents that the individual(s) signing this Agreement has been authorized to enter into and execute this Agreement on behalf of Agency, under the direction or approval of its governing body, commission, board, officers, members or representatives, and to legally bind Agency.
7. This Agreement may be executed in several counterparts (facsimile or otherwise) all

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

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

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

This Project is in the 2008-2011 Statewide Transportation Improvement Program, (Key #17192) that was approved by the Oregon Transportation Commission on November 14, 2007.

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

On September 15, 2006, the Director of the Oregon Department of Transportation approved Subdelegation Order No. 2, Paragraph 1, in which authority is delegated to the Deputy Director, Highways; Deputy Director, Central Services and the Chief of Staff, to approve and sign agreements over \$75,000 when the work is related to a project included in the Statewide Transportation Improvement Program or in other system plans approved by the Oregon Transportation Commission such as the Oregon Traffic Safety Performance Plan, or in a line item in the biennial budget approved by the Director. The Director may also delegate to other Administrators the authority to execute intergovernmental agreements over \$75,000 for specific programs such as transportation safety, growth management and public transit.

**SIGNATURE PAGE TO FOLLOW**

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

By \_\_\_\_\_  
Mayor (or other assigned designee)

Date \_\_\_\_\_

By \_\_\_\_\_  
City Recorder (or other assigned  
designee)

Date \_\_\_\_\_

**APPROVED AS TO LEGAL  
SUFFICIENCY**

By \_\_\_\_\_  
City Attorney

Date \_\_\_\_\_

**Agency Contact:**

Chuck Mickelson, Public Works Director  
City of Ontario  
444 SW 4<sup>th</sup> Street  
Ontario, Oregon 97912  
(541) 881-3231  
Chuck.mickelson@ontariooregon.org

**State Contact:**

Doug Wright, Federal Aid Specialist  
3012 Island Avenue  
La Grande, Oregon 97850  
(541) 963-1362

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

By \_\_\_\_\_  
Highway Division Administrator

Date \_\_\_\_\_

**APPROVAL RECOMMENDED**

By \_\_\_\_\_  
Technical Services Manager/Chief Engineer

Date \_\_\_\_\_

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

Date \_\_\_\_\_

**APPROVED AS TO LEGAL SUFFICIENCY**

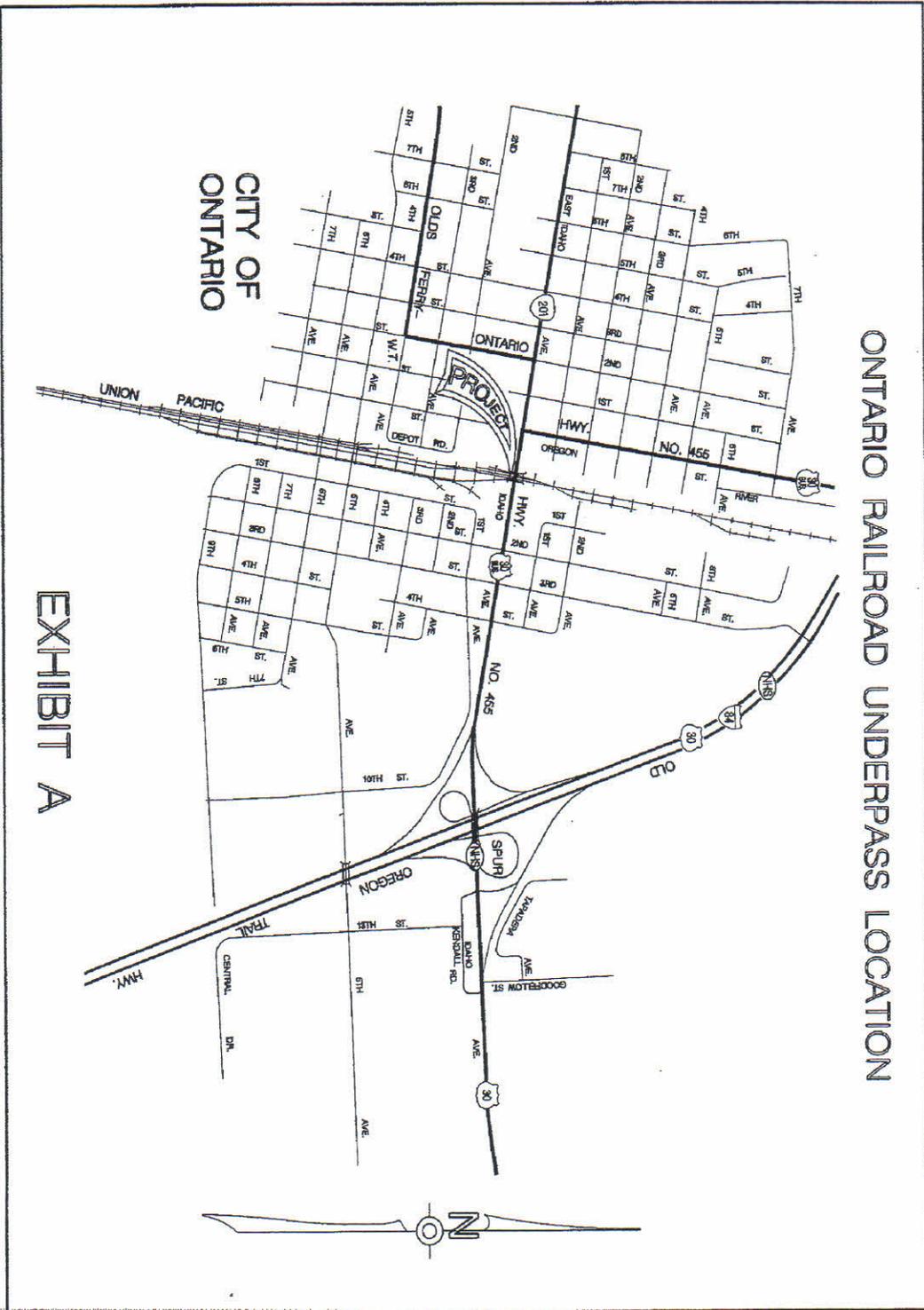
By \_\_\_\_\_  
Assistant Attorney General

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

Agency/State  
Agreement No. 27037

douglas.I.WRIGHT@odot.state.or.us

\\HWTF661\PROJECT\DATA\PROJECTS\ONTARIO\CONRAD97



Agency/State  
Agreement No. 27037

**EXHIBIT B**

Agreement Number: 27037

Project Name: **Ontario Railroad Underpass Rehabilitation and Reconstruction**

Key Number: 17192

**ACKNOWLEDGMENT OF FEDERAL ASSISTANCE**

The property and assets under the jurisdiction of \_\_\_\_\_ were improved with assistance from the United States Government under an agreement executed between \_\_\_\_\_ and the Oregon Department of Transportation dated \_\_\_\_\_. Such assistance was provided to \_\_\_\_\_ in reimbursement of costs associated with \_\_\_\_\_ the \_\_\_\_\_

The use and disposition of said property is subject to the terms of the above noted agreement, copies of which may be obtained from the Director, Oregon Department of Transportation, and is also subject to 49 CFR Part 18 which may be obtained from the Federal Highway Administration, U.S. Department of Transportation, 400 7th Street, S.W., Washington D.C. 20590.

By: \_\_\_\_\_

Title: \_\_\_\_\_

SUBSCRIBED and SWORN to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_

\_\_\_\_\_

**NOTARY PUBLIC FOR OREGON**

My commission expires: \_\_\_\_\_

*Forward the completed document to the following:*

**Oregon Department of Transportation**  
Doug Wright, Federal Aid Specialist  
3012 Island Avenue  
La Grande, Oregon 97850  
(541) 963-1362  
douglas.I.WRIGHT@odot.state.or.us

ATTACHMENT NO. 1 to Agreement No. 27037  
SPECIAL PROVISIONS

1. Agency or its consultant shall, as a federal-aid participating preliminary engineering function, conduct the necessary field surveys, environmental studies, traffic investigations, foundation explorations, and hydraulic studies, identify and obtain all required permits, perform all preliminary engineering and design work required to produce final plans, preliminary/final specifications and cost estimates. Upon completion of the Project Agency shall submit the final plans to State for review and approval.
2. State may make available Region 5's On-Call Preliminary Engineering (PE), Design and Construction Engineering Services consultant for Local Agency Projects upon written request. If Agency chooses to use said services, Agency agrees to manage the work performed by the consultant and make funds available to the State for payment of those services. All eligible work will be a federally participating cost and included as part of the total cost of the Project.
3. Final billings will be submitted to State for processing within two (2) years from the end of each funding phase as follows: 1) award date of a contract for preliminary engineering (PE). Partial billing (progress payment) will be submitted to State within one (1) year from the date that costs are incurred. Final billings submitted after two (2) years will not be eligible for reimbursement.

## **ATTACHMENT NO. 2**

### **FEDERAL STANDARD PROVISIONS**

#### **JOINT OBLIGATIONS PROJECT ADMINISTRATION**

1. State (ODOT) is acting to fulfill its responsibility to the Federal Highway Administration (FHWA) by the administration of this Project, and Agency (i.e. county, city, unit of local government, or other state agency) hereby agrees that State shall have full authority to carry out this administration. If requested by Agency or if deemed necessary by State in order to meet its obligations to FHWA, State will further act for Agency in other matters pertaining to the Project. Agency shall, if necessary, appoint and direct the activities of a Citizen's Advisory Committee and/or Technical Advisory Committee, conduct a hearing and recommend the preferred alternative. State and Agency shall each assign a liaison person to coordinate activities and assure that the interests of both parties are considered during all phases of the Project.
2. Any project that uses federal funds in project development is subject to plans, specifications and estimates (PS&E) review and approval by FHWA or State acting on behalf of FHWA prior to advertisement for bid proposals, regardless of the source of funding for construction.

#### **PRELIMINARY & CONSTRUCTION ENGINEERING**

3. State, Agency, or others may perform preliminary and construction engineering. If Agency or others perform the engineering, State will monitor the work for conformance with FHWA rules and regulations. In the event that Agency elects to engage the services of a personal services consultant to perform any work covered by this Agreement, Agency and Consultant shall enter into a State reviewed and approved personal services contract process and resulting contract document. State must concur in the contract prior to beginning any work. State's personal services contracting process and resulting contract document will follow Title 23 Code of Federal Regulations (CFR) 172, Title 49 CFR 18, ORS 279A.055, the current State Administrative Rules and State Personal Services Contracting Procedures as approved by the FHWA. Such personal services contract(s) shall contain a description of the work to be performed, a project schedule, and the method of payment. Subcontracts shall contain all required provisions of Agency as outlined in the Agreement. No reimbursement shall be made using federal-aid funds for any costs incurred by Agency or its consultant prior to receiving authorization from State to proceed. Any amendments to such contract(s) also require State's approval.
4. On all construction projects where State is the signatory party to the contract, and where Agency is doing the construction engineering and project management, Agency, subject to any limitations imposed by state law and the Oregon Constitution, agrees to accept all

responsibility, defend lawsuits, indemnify and hold State harmless, for all tort claims, contract claims, or any other lawsuit arising out of the contractor's work or Agency's supervision of the project.

## REQUIRED STATEMENT FOR UNITED STATES DEPARTMENT OF TRANSPORTATION (USDOT) FINANCIAL ASSISTANCE AGREEMENT

5. If as a condition of assistance, Agency has submitted and the United States Department of Transportation (USDOT) has approved a Disadvantaged Business Enterprise Affirmative Action Program which Agency agrees to carry out, this affirmative action program is incorporated into the financial assistance agreement by reference. That program shall be treated as a legal obligation and failure to carry out its terms shall be treated as a violation of the financial assistance agreement. Upon notification from USDOT to Agency of its failure to carry out the approved program, USDOT shall impose such sanctions as noted in Title 49, CFR, Part 26, which sanctions may include termination of the agreement or other measures that may affect the ability of Agency to obtain future USDOT financial assistance.
6. **Disadvantaged Business Enterprises (DBE) Obligations.** State and its contractor agree to ensure that DBE as defined in Title 49, CFR, Part 26, have the opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with federal funds. In this regard, Agency shall take all necessary and reasonable steps in accordance with Title 49, CFR, Part 26, to ensure that DBE have the opportunity to compete for and perform contracts. Neither State nor Agency and its contractors shall discriminate on the basis of race, color, national origin or sex in the award and performance of federally-assisted contracts. Agency shall carry out applicable requirements of Title 49, CFR, Part 26, in the award and administration of such contracts. Failure by Agency to carry out these requirements is a material breach of this Agreement, which may result in the termination of this contract or such other remedy as State deems appropriate.
7. The DBE Policy Statement and Obligations shall be included in all subcontracts entered into under this Agreement.
8. Agency agrees to comply with all applicable civil rights laws, rules and regulations, including Title V and Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990 (ADA), and Titles VI and VII of the Civil Rights Act of 1964.
9. The parties hereto agree and understand that they will comply with all applicable federal, state, and local laws, regulations, executive orders and ordinances applicable to the work including, but not limited to, the provisions of ORS 279C.505, 279C.515, 279C.520, 279C.530 and 279B.270, incorporated herein by reference and made a part hereof; Title 23 CFR Parts 1.11, 140, 710, and 771; Title 49 CFR Parts 18, 24 and 26; 2 CFR 225, and OMB CIRCULAR NO. A-133, Title 23, USC, Federal-Aid Highway Act; Title 41, Chapter 1, USC 51-58, Anti-Kickback Act; Title 42 USC; Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970, as amended and provisions of Federal-Aid Policy Guide (FAPG).

## STATE OBLIGATIONS

### PROJECT FUNDING REQUEST

10. State shall submit a Project funding request to FHWA with a request for approval of federal-aid participation in all engineering, right-of-way acquisition, eligible utility relocations and/or construction work for the Project. **No work shall proceed on any activity in which federal-aid participation is desired until such approval has been obtained.** The program shall include services to be provided by State, Agency, or others. State shall notify Agency in writing when authorization to proceed has been received from FHWA. Major responsibility for the various phases of the Project will be as outlined in the Special Provisions. All work and records of such work shall be in conformance with FHWA rules and regulations.

### FINANCE

11. State shall, in the first instance, pay all reimbursable costs of the Project, submit all claims for federal-aid participation to FHWA in the normal manner and compile accurate cost accounting records. Agency may request a statement of costs to date at any time by submitting a written request. When the actual total cost of the Project has been computed, State shall furnish Agency with an itemized statement of final costs. Agency shall pay an amount which, when added to said advance deposit and federal reimbursement payment, will equal 100 percent of the final total actual cost. Any portion of deposits made in excess of the final total costs of Project, minus federal reimbursement, shall be released to Agency. The actual cost of services provided by State will be charged to the Project expenditure account(s) and will be included in the total cost of the Project.
12. If federal funds are used, State will specify the Catalog of Federal Domestic Assistance (CFDA) number in the Agreement. State will also determine and clearly state in the Agreement if recipient is a subrecipient or vendor, using criteria in Circular A-133.

### PROJECT ACTIVITIES

13. State shall, if the preliminary engineering work is performed by Agency or others, review and process or approve all environmental statements, preliminary and final plans, specifications and cost estimates. State shall, if they prepare these documents, offer Agency the opportunity to review and approve the documents prior to advertising for bids.
14. The party responsible for performing preliminary engineering for the Project shall, as part of its preliminary engineering costs, obtain all Project related permits necessary for the construction of said Project. Said permits shall include, but are not limited to, access, utility, environmental, construction, and approach permits. All pre-construction permits will be obtained prior to advertisement for construction.
15. State shall prepare contract and bidding documents, advertise for bid proposals, and award all contracts.

16. Upon State's award of a construction contract, State shall perform independent assurance testing in accordance with State and FHWA Standards, process and pay all contractor progress estimates, check final quantities and costs, and oversee and provide intermittent inspection services during the construction phase of the Project.
17. State shall, as a Project expense, assign a liaison person to provide Project monitoring as needed throughout all phases of Project activities (preliminary engineering, right-of-way acquisition, and construction). The liaison shall process reimbursement for federal participation costs.

### **RIGHT OF WAY**

18. State is responsible for proper acquisition of the necessary right of way and easements for construction and maintenance of the Project. Agency may perform acquisition of the necessary right of way and easements for construction and maintenance of the Project, provided Agency (or Agency's consultant) are qualified to do such work as required by the State's Right of Way Manual and have obtained prior approval from State's Region Right of Way office to do such work.
19. Regardless of who acquires or performs any of the right of way activities, a right of way services agreement shall be created by State's Region Right of Way office setting forth the responsibilities and activities to be accomplished by each party. State shall always be responsible for requesting project funding, coordinating certification of the right of way, and providing oversight and monitoring. Funding authorization requests for federal right of way funds must be sent through the State's Region Right of Way offices on all projects. All projects must have right of way certification coordinated through State's Region Right of Way offices (even for projects where no federal funds were used for right of way, but federal funds were used elsewhere on the Project). Agency should contact the State's Region Right of Way office for additional information or clarification.
20. State shall review all right of way activities engaged in by Agency to assure compliance with applicable laws and regulations. Agency agrees that right of way activities shall be in accord with the Uniform Relocation Assistance & Real Property Acquisition Policies Act of 1970, as amended, ORS Chapter 35, FHWA Federal-Aid Policy Guide, State's Right of Way Manual and the Code of Federal Regulations, Title 23, Part 710 and Title 49, Part 24.
21. If any real property purchased with federal-aid participation is no longer needed for the originally authorized purpose, the disposition of such property shall be subject to applicable rules and regulations, which are in effect at the time of disposition. Reimbursement to State and FHWA of the required proportionate shares of the fair market value may be required.
22. Agency insures that all Project right of way monumentation will be conducted in conformance with ORS 209.155.
23. State and Agency grants each other authority to enter onto the other's right of way for the performance of the Project.

## AGENCY OBLIGATIONS

### FINANCE

24. Federal funds shall be applied toward Project costs at the current federal-aid matching ratio, unless otherwise agreed and allowable by law. Agency shall be responsible for the entire match amount, unless otherwise agreed to and specified in the intergovernmental agreement.
25. Agency's estimated share and advance deposit.
- a) Agency shall, prior to commencement of the preliminary engineering and/or right of way acquisition phases, deposit with State its estimated share of each phase. Exception may be made in the case of projects where Agency has written approval from State to use in-kind contributions rather than cash to satisfy all or part of the matching funds requirement.
  - b) Agency's construction phase deposit shall be 110 percent of Agency's share of the engineer's estimate and shall be received prior to award of the construction contract. Any additional balance of the deposit, based on the actual bid must be received within forty-five (45) days of receipt of written notification by State of the final amount due, unless the contract is canceled. Any unnecessary balance of a cash deposit, based on the actual bid, will be refunded within forty-five (45) days of receipt by State of the Project sponsor's written request.
  - c) Pursuant to ORS 366.425, the advance deposit may be in the form of 1) money deposited in the State Treasury (an option where a deposit is made in the Local Government Investment Pool, and an Irrevocable Limited Power of Attorney is sent to the Highway Finance Office), or 2) an Irrevocable Letter of Credit issued by a local bank in the name of State, or 3) cash.
  - d) Agency may satisfy all or part of any matching funds requirements by use of in-kind contributions rather than cash when prior written approval has been given by State.
26. If the estimated cost exceeds the total matched federal funds available, Agency shall deposit its share of the required matching funds, plus 100 percent of all costs in excess of the total matched federal funds. Agency shall also pay 100 percent of the cost of any item in which FHWA will not participate. If Agency has not repaid any non-participating cost, future allocations of federal funds, or allocations of State Highway Trust Funds, to that Agency may be withheld to pay the non-participating costs. If State approves processes, procedures, or contract administration outside the Local Agency Guidelines that result in items being declared non-participating, those items will not result in the withholding of Agency's future allocations of federal funds or the future allocations of State Highway Trust Funds.

Agency/State  
Agreement No. 27037

27. Costs incurred by State and Agency for services performed in connection with any phase of the Project shall be charged to the Project, unless otherwise mutually agreed upon.
28. If Agency makes a written request for the cancellation of a federal-aid project; Agency shall bear 100 percent of all costs as of the date of cancellation. If State was the sole cause of the cancellation, State shall bear 100 percent of all costs incurred. If it is determined that the cancellation was caused by third parties or circumstances beyond the control of State or Agency, Agency shall bear all development costs, whether incurred by State or Agency, either directly or through contract services, and State shall bear any State administrative costs incurred. After settlement of payments, State shall deliver surveys, maps, field notes, and all other data to Agency.
29. Agency shall follow requirements of the Single Audit Act. The requirements stated in the Single Audit Act must be followed by those local governments and non-profit organizations receiving \$500,000 or more in federal funds. The Single Audit Act of 1984, PL 98-502 as amended by PL 104-156, described in "OMB CIRCULAR NO. A-133", requires local governments and non-profit organizations to obtain an audit that includes internal controls and compliance with federal laws and regulations of all federally-funded programs in which the local agency participates. The cost of this audit can be partially prorated to the federal program.
30. Agency shall make additional deposits, as needed, upon request from State. Requests for additional deposits shall be accompanied by an itemized statement of expenditures and an estimated cost to complete the Project.
31. Agency shall present invoices for 100 percent of actual costs incurred by Agency on behalf of the Project directly to State's Liaison Person for review and approval. Such invoices shall identify the Project and Agreement number, and shall itemize and explain all expenses for which reimbursement is claimed. Billings shall be presented for periods of not less than one-month duration, based on actual expenses to date. All billings received from Agency must be approved by State's Liaison Person prior to payment. Agency's actual costs eligible for federal-aid or State participation shall be those allowable under the provisions of Title 23 CFR Parts 1.11, 140 and 710. Final billings shall be submitted to State for processing within three (3) months from the end of each funding phase as follows: 1) award date of a construction contract for preliminary engineering (PE) 2) last payment for right of way acquisition and 3) third notification for construction. Partial billing (progress payment) shall be submitted to State within three (3) months from date that costs are incurred. Final billings submitted after the three months shall not be eligible for reimbursement.
32. The cost records and accounts pertaining to work covered by this Agreement are to be kept available for inspection by representatives of State and FHWA for a period of six (6) years following the date of final voucher to FHWA. Copies of such records and accounts shall be made available upon request. For real property and equipment, the retention period starts from the date of disposition (Title 49 CFR 18.42).
33. State shall request reimbursement, and Agency agrees to reimburse State, for federal-aid funds distributed to Agency if any of the following events occur:

- a) Right of way acquisition or actual construction of the facility for which preliminary engineering is undertaken is not started by the close of the tenth fiscal year following the fiscal year in which the federal-aid funds were authorized;
  - b) Right of way acquisition is undertaken utilizing federal-aid funds and actual construction is not started by the close of the twentieth fiscal year following the fiscal year in which the federal-aid funds were authorized for right of way acquisition.
  - c) Construction proceeds after the Project is determined to be ineligible for federal-aid funding (e.g., no environmental approval, lacking permits, or other reasons).
34. Agency shall maintain all Project documentation in keeping with State and FHWA standards and specifications. This shall include, but is not limited to, daily work records, quantity documentation, material invoices and quality documentation, certificates of origin, process control records, test results, and inspection records to ensure that projects are completed in conformance with approved plans and specifications.

### **RAILROADS**

35. Agency shall follow State established policy and procedures when impacts occur on railroad property. The policy and procedures are available through State's appropriate Region contact or State's Railroad Liaison. Only those costs allowable under Title 23 CFR Part 646, subpart B and Title 23 CFR Part 140, subpart I, shall be included in the total Project costs; all other costs associated with railroad work will be at the sole expense of Agency, or others. Agency may request State, in writing, to provide railroad coordination and negotiations. However, State is under no obligation to agree to perform said duties.

### **UTILITIES**

36. Agency shall follow State established Statutes, Policies and Procedures when impacts occur to privately or publicly-owned utilities. Only those utility relocations, which are eligible for federal-aid participation under, the FAPG, Title 23 CFR 645A, Subpart A and B, shall be included in the total Project costs; all other utility relocations shall be at the sole expense of Agency, or others. State will arrange for utility relocations/adjustments in areas lying within jurisdiction of State, if State is performing the preliminary engineering. Agency may request State in writing to arrange for utility relocations/adjustments lying within Agency jurisdiction, acting on behalf of Agency. This request must be submitted no later than twenty-one (21) weeks prior to bid let date. However, State is under no obligation to agree to perform said duties.
37. The State utility relocation policy, procedures and forms are available through the appropriate State's Region Utility Specialist or State Utility Liaison. Agency shall provide copies of all signed utility notifications, agreements and Utility Certification to the State Utility Liaison.

## STANDARDS

38. Agency agrees that design standards for all projects on the National Highway System (NHS) and the Oregon State Highway System shall be in compliance to standards specified in the current "State Highway Design Manual" and related references. Construction plans shall be in conformance with standard practices of State for plans prepared by its own staff. All specifications for the Project shall be in substantial compliance with the most current "Oregon Standard Specifications for Highway Construction".
39. Agency agrees that minimum design standards for non-NHS projects shall be recommended AASHTO Standards and in accordance with the current "Oregon Bicycle and Pedestrian Plan", unless otherwise requested by Agency and approved by State.
40. Agency agrees and will verify that the installation of traffic control devices shall meet the warrants prescribed in the "Manual on Uniform Traffic Control Devices and Oregon Supplements".
41. All plans and specifications shall be developed in general conformance with the current "Contract Plans Development Guide" and the current "Oregon Standard Specifications for Highway Construction" and/or guidelines provided.
42. The standard unit of measurement for all aspects of the Project shall be English Units. All Project documents and products shall be in English. This includes, but is not limited to, right of way, environmental documents, plans and specifications, and utilities.

## GRADE CHANGE LIABILITY

43. Agency, if a County, acknowledges the effect and scope of ORS 105.755 and agrees that all acts necessary to complete construction of the Project which may alter or change the grade of existing county roads are being accomplished at the direct request of the County.
44. Agency, if a City, hereby accepts responsibility for all claims for damages from grade changes. Approval of plans by State shall not subject State to liability under ORS 105.760 for change of grade.
45. Agency, if a City, by execution of Agreement, gives its consent as required by ORS 373.030(2) to any and all changes of grade within the City limits, and gives its consent as required by ORS 373.050(1) to any and all closure of streets intersecting the highway, if any there be in connection with or arising out of the project covered by the Agreement.

## CONTRACTOR CLAIMS

46. Agency shall, to the extent permitted by state law, indemnify, hold harmless and provide legal defense for State against all claims brought by the contractor, or others resulting from Agency's failure to comply with the terms of this Agreement.
47. Notwithstanding the foregoing defense obligations under Paragraph 46, neither Agency nor any attorney engaged by Agency shall defend any claim in the name of the State of

Oregon or any agency of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without the prior written consent of the Oregon Attorney General. The State of Oregon may, at anytime at its election assume its own defense and settlement in the event that it determines that Agency is prohibited from defending the State of Oregon, or that Agency is not adequately defending the State of Oregon's interests, or that an important governmental principle is at issue or that it is in the best interests of the State of Oregon to do so. The State of Oregon reserves all rights to pursue any claims it may have against Agency if the State of Oregon elects to assume its own defense.

### **MAINTENANCE RESPONSIBILITIES**

48. Agency shall, upon completion of construction, thereafter maintain and operate the Project at its own cost and expense, and in a manner satisfactory to State and FHWA.

### **WORKERS' COMPENSATION COVERAGE**

49. All employers, including Agency that employ subject workers who work under this Agreement in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage unless such employers are exempt under ORS 656.126. Agency shall ensure that each of its contractors complies with these requirements.

### **LOBBYING RESTRICTIONS**

50. Agency certifies by signing the Agreement that:
- a) No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
  - b) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
  - c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, and contracts and subcontracts under grants, subgrants, loans, and cooperative agreements) which exceed \$100,000, and that all such subrecipients shall certify and disclose accordingly.

Agency/State  
Agreement No. 27037

- d) This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Title 31, USC Section 1352.
- e) Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Paragraphs 36, 37, and 48 are not applicable to any local agency on state highway projects.

**AGENDA REPORT**  
September 7, 2010

TO: Mayor and City Council

FROM: Chuck Mickelson, Public Works Director

THROUGH: Henry Lawrence, City Manager

**SUBJECT: RESOLUTION #2010-140: A RESOLUTION APPROVING THE WATER DISTRIBUTION MASTERPLAN UPDATE ADDENDUM No. 1 DATED APRIL 2010 AND THE SANITARY SEWER MASTER PLAN UPDATE ADDENDUM No. 1 DATED APRIL 2010.**

DATE: August 24, 2010

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**SUMMARY:**

Attached are the following documents:

- Resolution 2010-140
- Water Distribution Master Plan Update Addendum No. 1 dated April 2010
- Sanitary Sewer Master Plan Update Addendum No. 1 dated April 2010

**PREVIOUS COUNCIL ACTION:**

- June 2007 Council adopted the 2007-2009 Biennial Budget, including Projects 0809-2, Master Plan Updates, and 0809-16, Upgrade Aerial Photo of City's UGB, for a combined total of \$110,000.
- March 2008 Council approved resolution 2008-107 authorizing the City's contracting officer to enter into an agreement with Keller and Associates to update the City's mapping, water distribution, wastewater collection and transportation master plans.
- Council approved resolution 2008-108 authorizing a supplemental budget in the amount of \$30,000 for the update to the City's mapping, water distribution, wastewater collection and transportation master plans

**BACKGROUND:**

Keller and Associates developed the addendums to the master plans during 2008. A technical review committee comprised of staff members, some members of the Public Works Committee and the City Council met periodically to review the process and provide guidance. The primary purpose of these master plan updates was to address the expansion of the Urban Growth Area and the Urban Reserve Area. Proposed routing for water and sewer pipelines was identified within the addendum. Additionally, potential street layouts were identified for collectors and arterials in the Urban Reserve area.

When developing master plans, population growth and additional commerce is usually the reason that utility systems are expanded and roadways are extended. Keller with the guidance of the staff and technical review committee selected the EcoNorthwest population projections for utilization in this report. EcoNorthwest projected an annual population growth of 1.6% for

Ontario. The base year was 2005. Members of the PWC challenged this growth rate as being unrealistic. During the development of the addendums, the United States went into a deep recession and growth has essentially stopped. Ontario was no exception. In order to secure loans and grants for construction however, master plans need to be developed and or updated periodically and growth is normally the driving factor for expansion. Ontario is also in the position of having demands on our water system that are unique. Heinz and SRCI use well over 50% of the water that the city produces. A change in demand by either the prison or Heinz will have a far greater impact on our system than modest residential growth. Residential use is about 35% so a population increase has limited impact on the system demands.

A master plan is simply a guide or roadmap for future construction projects. The biennial budget and capital improvement planning efforts determine when capital projects will be built.

Rather than going back and changing the population projections in the water and sewer addendums due to the recession, the Public Works Committee met on May 20, 2010 and agreed that a preamble to the reports was acceptable since the 2010 census is underway. When the 2010 census results are available, we will review the tables and make modifications as appropriate.

The Public Works Committee approved the following Master Plans to be recommended to the City Council for adoption:

- Water Distribution Master Plan Update Addendum No. 1
- Sanitary Sewer Master Plan Update Addendum No. 1
- Ontario 2008 Urban Reserve Area Traffic Circulation System Expansion Study dated February 2009 (to also include the Safe Routes to School) – This plan must be incorporated into the City’s comprehensive plan and must be approved by DLCD.

**FINANCIAL IMPLICATIONS:**

There are no financial implications to adopting these master plans. Any capital improvements that are required will go through the budgeting process. Adoption of these master plans provides guidance for future expansion of our water and sewer utilities.

**RECOMMENDATIONS:**

Staff recommends that the City Council adopt Resolution #2010-140.

**PROPOSED MOTION:**

I move that the City Council adopt Resolution #2010-140, **A RESOLUTION APPROVING THE WATER DISTRIBUTION MASTER PLAN UPDATE ADDENDUM No. 1 DATED APRIL 2010 AND THE SANITARY SEWER MASTER PLAN UPDATE ADDENDUM No. 1 DATED APRIL 2010.**

**RESOLUTION #2010-140**

**A RESOLUTION APPROVING THE WATER DISTRIBUTION MASTERPLAN UPDATE ADDENDUM No. 1 DATED APRIL 2010 AND THE SANITARY SEWER MASTERPLAN UPDATE ADDENDUM No. 1 DATED APRIL 2010**

WHEREAS, the City Council adopted the 2007-2009 Biennial Budget, including the Master Plan updates and aerial photo upgrade of the City's UGB; and

WHEREAS, the adoption of the master plans provides guidance for future expansion of our water and sewer systems; and

WHEREAS, in order to secure funding for these projects the master plans must be in place, updated periodically with growth being the driving factor for expansion; and

WHEREAS, during the development of the addendums, the United States went into a recession where growth has essentially stopped; and

WHEREAS, the Public Works Committee agreed to include a preamble to the reports since the 2010 census is underway; and

WHEREAS, when the results of the census are available, we will review the tables and make modifications where appropriate.

**NOW THEREFORE, BE IT HEREBY RESOLVED** by the Ontario City Council, to approve Resolution 2010-140 and adopt the Water Distribution Master Plan update addendum No. 1 dated April 2010 and the Sanitary Sewer Master Plan update addendum No. 1 dated April 2010.

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

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

AYES:

NAYES:

ABSENT:

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

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

ATTEST:

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

**AGENDA REPORT**  
September 7, 2010

**TO:** Mayor and City Council

**FROM:** Alan Daniels, Airport Manager

**THRU:** Henry Lawrence, City Manager

**SUBJECT:** Resolution No. 2010-141: ACCEPTANCE OF FAA IMPROVEMENT PROJECT GRANT #3-41-0044-009, A GRANT AGREEMENT PART I FOR RUNWAY, TAXIWAY AND APRON REHABILITATION AND RUNWAY LIGHTING FOR A PROJECT AT THE ONTARIO MUNICIPAL AIRPORT

**DATE:** August 30, 2010

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**SUMMARY:**

Attached are the following documents:

- Cover Letter
- Grant Agreement Part I - Offer
- Award Letter
- Resolution No. 2010-141

The Council is being asked to accept this FAA Grant to be used as part of the City's matching funds for the Connect Oregon III Airport Improvement Project to be funded by the Oregon Department of Transportation.

**PREVIOUS COUNCIL ACTION:**

|          |   |
|----------|---|
| Feb 2009 | Council Accepts FAA Grant for Project #3-41-0044-008 for \$124,168 thru Resolution #2009-104  |
| Jul 2009 | Council Approves Contract with Kimley-Horn for \$60,030 for Project Design Start-up   |
| Jul 2009 | Council Approves Contract with USKH for Independent Review of Kimley-Horn Pricing   |
| Nov 2009 | Council approved Connect Oregon 3 Application   |
|          | Approval of ODOT Connect Oregon Agreement #24941 dated July 8, 2009, Allowing City to Begin Project Prior to Accepting the Connect Oregon Grant |
| Mar 2010 | Council Approves Contract Increase with Kimley-Horn from \$60,030 to \$124,168 for Additional Project Design Work                               |

**BACKGROUND:**

During the winter of 2007 the City of Ontario applied for Connect Oregon II funds for the runway rehabilitation and apron rehabilitation/expansion project for the Ontario Municipal Airport. While waiting to be moved into a funded position on the Connect Oregon 2 project, the City reapplied for the same project under the Connect Oregon 3 funding cycle.

We have been notified that the City's grant request has been funded under the Connect Oregon 3 funding cycle; however, have not yet received the paperwork from the Oregon Department of Transportation to formally accept the grant at this time.

The overall project budget approved by the Connect Oregon 3 Grant is approximately \$4,457,970. This Connect Oregon 3 grant award is for a total of \$3,566,376, or 80% of the overall project budget, which leaves the City's matching portion a total of \$891,594, or 20%, of the total project budget.

With respect to the City's \$891,594 Connect Oregon 3 match, the City has leveraged FAA grant funds that will amount to approximately 95% of the total City match, or \$847,014. The FAA grant funding will be issued in several smaller project grants over the course of the project.

The City has already accepted one FAA grant for this project in the amount of \$124,168 which was used to start the engineering work thru Kimley-Horn. The City spent \$6,550 of its required match thru that project.

The City has been awarded a second FAA grant for this project in the amount of \$168,913 which will be used to continue design work thru Kimley-Horn. The City will spend \$8,890 of its required match on this project.

The final FAA grant, anticipated to be \$553,933, will come some time after January 2011, and the remaining City match of \$29,140 will be requested from the General Fund contingency at that time to complete that piece of the project.

**FINANCIAL IMPLICATIONS:**

The \$168,913 in FAA grant revenue is proposed to be budgeted within the City's Grant Fund with the required \$8,890 in City matching funds being reallocated from General Fund Contingency to a General Fund transfer to the Grant Fund. This will bring the total project budget to \$177,803, and is proposed to the Council thru Resolution 2010-147.

City Staff will manage the grant project and those costs are not reimbursable thru this grant project.

Additionally, acceptance of this grant would continue to reinforce the City's commitment to the overall project which is anticipated to cost the General Fund Contingency an additional \$29,140 prior to the completion of the project.

**RECOMMENDATION:**

City staff recommends the Mayor and Council approve Resolution #2010-141.

**PROPOSED MOTION:**

I move the Mayor and Council approve Resolution #2010-141, ACCEPTANCE OF FAA IMPROVEMENT PROJECT GRANT #3-41-0044-009, A GRANT AGREEMENT PART I FOR RUNWAY, TAXIWAY AND APRON REHABILITATION AND RUNWAY LIGHTING FOR A PROJECT AT THE ONTARIO MUNICIPAL AIRPORT.



U.S. Department  
of Transportation  
**Federal Aviation  
Administration**

Federal Aviation Administration  
Northwest Mountain Region

**Seattle Airports District Office**  
1601 Lind Avenue, S.W., Suite 250  
Renton, Washington 98057-3356

August 26, 2010

Mr. Alan Daniels  
Airport Manager  
Ontario Municipal Airport  
444 SW 4<sup>th</sup> Street  
Ontario, Oregon 97914

Dear Mr. Daniels:

Grant Offer for  
Ontario Municipal Airport; Ontario, Oregon  
AIP Project Number 3-41-0044-009

Rather than mailing the grant offer, we are scanning and sending it to you via email to expedite the process. Please note that:

- a. The grant offer must be accepted by the sponsor on or before September 10, 2010.
- b. The grant offer must be accepted by an official authorized by the governing agency to do so.
- c. The "Certification of Sponsor's Attorney" relates to the acceptance and, therefore, must be made **after** the Sponsor's acceptance.
- d. **After execution is completed, please fax (425-227-1650) or scan and e-mail a copy of the grant agreement to [Renee.Hall@FAA.gov](mailto:Renee.Hall@FAA.gov) not later than September 10, 2010. Also, return one originally signed copy of the grant agreement to our office by mail.**

All applicable project-related requirements pertaining to environmental analysis and approval for this grant have been met in accordance with the guidelines contained in FAA Order 5050.4B, Airport Environmental Handbook.

If you have any questions in regard to acceptance of the grant offer, please contact your project manager.

Sincerely,

Carol Suomi  
Manager, Seattle Airports District Office

Enclosures

cc: Oregon Department of Aviation



Grant Agreement  
Part 1 - Offer

Date of Offer: August 26, 2010

Ontario Municipal Airport  
Ontario, Oregon

Project Number: 3-41-0044-009

Contract Number: DOT-FA10NM-0115

DUNS Number: 02-582-5886

To: City of Ontario, Oregon (herein called the "Sponsor")

From: The United States of America (acting through the Federal Aviation Administration, herein called the "FAA")

WHEREAS, the Sponsor has submitted to the FAA a Project Application dated March 4, 2008, for a grant of Federal funds for a project at or associated with the Ontario Municipal Airport which Project Application, as approved by the FAA, is hereby incorporated herein and made a part hereof; and

WHEREAS, the FAA has approved a project for the Airport (herein called the "Project") consisting of the following:

Rehabilitate Runway 14/32 (Phase 2 – overlay), Station 10+00 to 62+20; Install Runway 14/32 lighting (Phase 2), Station 17+00 to 62+20; Rehabilitate Parallel Taxiway (Phase 2 – overlay) Station 10+00 to 61+28; Rehabilitate north terminal apron (Phase 2 – 21,660 s.y.); Expand south terminal apron (Phase 1 – 7,725 s.y.);

all as more particularly described in the Project Application.

NOW THEREFORE, pursuant to and for the purpose of carrying out the provisions of Title 49, United States Code, and in consideration of (a) the Sponsor's adoption and ratification of the representations and assurances contained in said Project Application and its acceptance of this Offer as hereinafter provided, and (b) the benefits to accrue to the United States and the public from the accomplishment of the Project and compliance with the assurances and conditions as herein provided, THE FEDERAL AVIATION ADMINISTRATION, FOR AND ON BEHALF OF THE UNITED STATES, HEREBY OFFERS AND AGREES to pay, as the United States share of the allowable costs incurred in accomplishing the Project, ninety-five (95) percentum of all allowable Project costs.

This Offer is made on and subject to the following terms and conditions:

#### Conditions

1. The maximum obligation of the United States payable under this Offer shall be \$168,913.00. For the purposes of any future grant amendments which may increase the foregoing maximum obligation of the United States under the provisions of Section 47108(b) of the Act, the following amounts are being specified for this purpose:
 

|    |              |   |
|----|--------------|---|
| \$ | 0.00         | for planning  |
|    | \$168,913.00 | for airport development or noise program implementation |
2. The allowable costs of the project shall not include any costs determined by the FAA to be ineligible for consideration as to allowability under the provisions of the Act.
3. Payment of the United States' share of the allowable project costs will be made pursuant to and in accordance with the provisions of such regulations and procedures as the Secretary shall prescribe. Final determination of the United States' share will be based upon the final audit of the total amount of allowable project costs and settlement will be made for any upward or downward adjustments to the Federal share of costs.
4. The Sponsor shall carry out and complete the Project without undue delays and in accordance with the terms hereof, and such regulations and procedures as the Secretary shall prescribe, and agrees to comply with the assurances which were made part of the project application.
5. The FAA reserves the right to amend or withdraw this Offer at any time prior to its acceptance by the Sponsor.
6. This Offer shall expire and the United States shall not be obligated to pay any part of the costs of the project unless this Offer has been accepted by the Sponsor on or before September 10, 2010, or such subsequent date as may be prescribed in writing by the FAA.
7. The Sponsor shall take all steps, including litigation if necessary, to recover Federal funds spent fraudulently, wastefully, or in violation of Federal antitrust statutes, or misused in any other manner in any project upon which Federal funds have been expended. For the purposes of this grant agreement the term "Federal funds" means funds however used or disbursed by the Sponsor that were originally paid pursuant to this or any other Federal grant agreement. It shall obtain the approval of the Secretary as to any determination of the amount of the Federal share of such funds. It shall return the recovered Federal share, including funds recovered by settlement, order, or judgment to the Secretary. It shall furnish upon request, all documents and records pertaining to the determination of the amount of the Federal share or to any settlement, litigation, negotiation, or other efforts taken to recover such funds. All settlements or other final positions of the Sponsor, in court or otherwise, involving the recovery of such Federal share shall be approved in advance by the Secretary.
8. The United States shall not be responsible or liable for damage to property or injury to persons which may arise from, or be incident to, compliance with this grant agreement.

9. Trafficking in persons:

- a. **Provisions applicable to a recipient that is a private entity.**
  1. You as the recipient, your employees, subrecipients under this award, and subrecipients' employees may not –
    - i. Engage in severe forms of trafficking in persons during the period of time that the award is in effect;
    - ii. Procure a commercial sex act during the period of time that the award is in effect; or
    - iii. Use forced labor in the performance of the award or subawards under the award.
  2. We as the Federal awarding agency may unilaterally terminate this award, without penalty, if you or a subrecipient that is a private entity –
    - i. Is determined to have violated a prohibition in paragraph a.1 of this award term; or
    - ii. Has an employee who is determined by the agency official authorized to terminate the award to have violated a prohibition in paragraph a.1 of this award term through conduct that is either ---
      - A. Associated with performance under this award; or
      - B. Imputed to you or the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, "OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," as implemented by our agency at 49 CFR Part 29.
- b. **Provision applicable to a recipient other than a private entity.** We as the Federal awarding agency may unilaterally terminate this award, without penalty, if a subrecipient that is a private entity –
  1. Is determined to have violated an applicable prohibition in paragraph a.1 of this award term; or
  2. Has an employee who is determined by the agency official authorized to terminate the award to have violated an applicable prohibition in paragraph a.1 of this award term through conduct that is either –
    - i. Associated with performance under this award; or
    - ii. Imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, "OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," as implemented by our agency at 49 CFR Part 29.
- c. **Provisions applicable to any recipient.**
  1. You must inform us immediately of any information you receive from any source alleging a violation of a prohibition in paragraph a.1 of this award term.
  2. Our right to terminate unilaterally that is described in paragraph a.2 or b of this section:
- d. Implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. 7104 (g)), and
- e. Is in addition to all other remedies for noncompliance that are available to us under this award.
  1. You must include the requirements of paragraph a.1 of this award term in any subaward you make to a private entity.

**f. Definitions.** For purposes of this award term:

1. "Employee" means either:
  - i. An individual employed by you or a subrecipient who is engaged in the performance of the project or program under this award; or
  - ii. Another person engaged in the performance of the project or program under this award and not compensated by you including, but not limited to, a volunteer or individual whose services are contributed by a third party as an in-kind contribution toward cost sharing or matching requirements.
2. "Forced labor" means labor obtained by any of the following methods: the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.
3. "Private entity":
  - i. Means any entity other than a State, local government, Indian tribe, or foreign public entity, as those terms are defined in 2 CFR 175.25.
  - ii. Includes:
    - A. A nonprofit organization, including any nonprofit institution of higher education, hospital, or tribal organization other than one included in the definition of Indian tribe at 2 CFR 175.25(b).
    - B. A for-profit organization.
4. "Severe forms of trafficking in persons," "commercial sex act," and "coercion" have the meanings given at section 103 of the TVPA, as amended (22 U.S.C. 7102).

**Special Conditions**

10. It is mutually understood and agreed that if, during the life of the project, the FAA determines that the maximum grant obligation of the United States exceeds the expected needs of the Sponsor the maximum obligation of the United States can be unilaterally reduced by letter from the FAA advising of the budget change. Conversely, if there is an overrun in the total actual eligible and allowable project costs, FAA may increase the maximum grant obligation of the United States to cover the amount of the overrun not to exceed the statutory percent limitation and will advise the Sponsor by letter of the increase. It is further understood and agreed that if, during the life of the project, the FAA determines that a change in the grant description is advantageous and in the best interests of the United States, the change in grant description will be unilaterally amended by letter from the FAA. Upon issuance of the aforementioned letter, either the grant obligation of the United States is adjusted to the amount specified or the grant description is amended to the description specified.
11. Unless otherwise approved by the FAA, the Sponsor will not acquire or permit any contractor or subcontractor to acquire any steel or manufactured products produced outside the United States to be used for any project for airport development or noise compatibility for which funds are provided under this grant. The Sponsor will include in every contract a provision implementing this special condition.

The Sponsor's acceptance of this Offer and ratification and adoption of the Project Application incorporated herein shall be evidenced by execution of this instrument by the Sponsor, as hereinafter provided, and this Offer and Acceptance shall comprise a Grant Agreement, as provided by the Act constituting the contractual obligations and rights of the United States and the Sponsor with respect to the accomplishment of the Project and compliance with the assurances and conditions as provided herein. Such Grant Agreement shall become effective upon the Sponsor's acceptance of this Offer.

UNITED STATES OF AMERICA  
FEDERAL AVIATION ADMINISTRATION

By ..... *Carol Suomi* .....  
Carol Suomi, Manager, Seattle Airports District Office

Part II - Acceptance

The Sponsor does hereby ratify and adopt all assurances, statements, representations, warranties, covenants, and agreements contained in the Project Application and incorporated materials referred to in the foregoing Offer and does hereby accept this Offer and by such acceptance agrees to comply with all of the terms and conditions in this Offer and in the Project Application.

Executed this ..... day of ....., 2010.  
City of Ontario, Oregon

(SEAL)

By .....  
Sponsor's Designated Official Representative  
Title: .....

Attest: .....  
Title: .....

CERTIFICATE OF SPONSOR'S ATTORNEY

I, ....., acting as Attorney for the Sponsor do hereby certify:

That in my opinion the Sponsor is empowered to enter into the foregoing Grant Agreement under the laws of the State of Oregon. Further, I have examined the foregoing Grant Agreement and the actions taken by said Sponsor and Sponsor's official representative has been duly authorized and that the execution thereof is in all respects due and proper and in accordance with the laws of the said State and the Act. In addition, for grants involving projects to be carried out on property not owned by the Sponsor, there are no legal impediments that will prevent full performance by the Sponsor. Further, it is my opinion that the said Grant Agreement constitutes a legal and binding obligation of the Sponsor in accordance with the terms thereof.

Dated at ..... this ..... day of ....., 2010.

.....  
Signature of Sponsor's Attorney



August 26, 2010

Alan Daniels  
City of Ontario  
444 SW 4th St  
Ontario, OR 97914

**Subject: *ConnectOregon* III – Project Approval**

**Agreement Number: 26912**

**Application Number: A50095**

**Project Name: Airport Runway/Taxiway Rehabilitation**

We are pleased to announce the Oregon Transportation Commission has approved your project for *ConnectOregon* III funding. The *ConnectOregon* III award for your project is \$3,566,377. In the next couple of weeks you will receive an agreement in the mail for signature. Once you receive the agreement, please sign it and return as soon as possible.

**Please note** that only work performed on the project after the agreement is fully signed and as described in the agreement will be eligible for reimbursement. Additionally, recipients are not eligible to receive reimbursement until they provide a conformed copy of the recorded Acknowledgement of Assistance.

We will be hosting a conference call on **Wednesday, September 8<sup>th</sup> at 10:00 a.m. - PST** to discuss the following aspects of the *ConnectOregon* III Program:

- Grant Agreement/Notice to Proceed
- ODOT Local Agency Liaison
- Monthly Invoices/Monthly Progress Reports/Project Milestones
- Request for Change Order Process/Amendment Process
- Acknowledgement of Assistance
- Project Acceptance

**The conference call number: 1-877-287-0283; Participant Code: 868544**

If you cannot personally attend the conference call, please send a representative.

If you have any questions, contact me at 503-986-3327.

Sincerely,

*Carol Olsen*

Carol Olsen  
ODOT *ConnectOregon* Program Manager

**RESOLUTION 2010-141**

**A RESOLUTION AUTHORIZING THE MAYOR TO SIGN FAA GRANT AGREEMENT PART 1 FOR RUNWAY, TAXIWAY AND APRON REHABILITATION AND RUNWAY LIGHTING FOR PROJECT #3-41-0044-009 AT THE ONTARIO MUNICIPAL AIRPORT**

- Whereas,** The City of Ontario submitted a Project Application dated March 4, 2008, to the FAA for a grant of Federal funds for a project at the Ontario Municipal Airport; and
- Whereas,** The FAA has approved a project for the Airport consisting of rehabilitating a runway, rehabilitating a parallel taxiway, rehabilitating an apron and installing runway lighting; and
- Whereas,** The overall Connect Oregon Grant Project is approximately \$4,457,970, however this is an 80 percent grant leaving the City's matching portion at approximately \$891,594; and
- Whereas,** The FAA has agreed to provide grant funding to the City of Ontario thru a series of FAA project grants that will represent 95 percent of the City's required grant match for the overall project; and
- Whereas,** This is the second FAA Grant for this overall project and consists of \$168,913 in federal funding to continue work on the project design; and
- Whereas,** The City Council desires to accept the FAA grant of \$168,913 for Project #3-41-0044-009 to continue project design work on the overall airport project.

**NOW, THEREFORE, BE IT RESOLVED** by the Ontario City Council that the City of Ontario shall accept Grant Agreement Part I – Offer for Project #3-41-0044-009; and

**BE IT FURTHER RESOLVED** by the Ontario City Council that the Mayor of the City of Ontario and City Attorney are hereby authorized and directed to sign the Grant Agreement on behalf of the City of Ontario, and the City Recorder is hereby authorized and directed to attest the signature of the Mayor of the City of Ontario and to impress the official seal of the City of Ontario on the aforesaid statement of acceptance.

Passed and adopted by the Ontario City Council this \_\_\_\_ day of \_\_\_\_\_, 2010.

Ayes:

Nays:

Absent:

**Approved by the Mayor this \_\_\_\_ day of \_\_\_\_\_, 2010.**

Attest:

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

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

**AGENDA REPORT**  
September 7, 2010

TO: Mayor and City Council

FROM: Alan Daniels, Airport Manager

THROUGH: Henry Lawrence, City Manager

SUBJECT: **RESOLUTION NO. 2010-147: A RESOLUTION ACKNOWLEDGING RECEIPT OF FAA GRANT PROJECT #3-41-0044-009 FOR THE ONTARIO MUNICIPAL AIRPORT, AND FURTHER APPROVING A REALLOCATION OF GENERAL FUND EXPENDITURES, AND APPROVING REVENUE AND EXPENSE BUDGETS WITHIN THE GRANT FUND**

DATE: August 30, 2010

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**Summary:**

Attached is the following document:

- Resolution #2010-147

The City of Ontario applied for and has been awarded an FAA Grant in the amount of \$168,913 to be used on FAA Project #3-41-0044-009, a project continuing the design work for the larger \$4,457,970 Airport Improvement Project. This will allow funding to continue project design work paid for by the previous FAA Grant Project #3-41-0044-008. It is anticipated that a third FAA Grant will be awarded to continue to help meeting a majority of the City's match requirement as this overall project continues toward completion.

**PREVIOUS COUNCIL ACTION:**

|          |   |
|----------|---|
| Feb 2009 | Council Accepts FAA Grant for Project #3-41-0044-008 for \$124,168  |
| Jul 2009 | Council Approves Contract with Kimley-Horn for \$60,030 for Project Design Start-up                               |
| Jul 2009 | Council Approves Contract with USKH for Independent Review of Kimley-Horn Pricing                                 |
| Mar 2010 | Council Approves Contract Increase with Kimley-Horn from \$60,030 to \$124,168 for Additional Project Design Work |

**BACKGROUND:**

This is the second FAA project grant awarded to go toward the completion of the larger overall airport improvement project that the City has sought funding for from both the FAA and the Oregon Department of Transportation thru its Connect Oregon grant program.

**FINANCIAL IMPLICATIONS:**

The \$168,913 in FAA grant revenue is proposed to be budgeted within the City's Grant Fund with the required \$8,890 in City matching funds being reallocated from General Fund Contingency to a General Fund transfer to the Grant Fund. This will bring the total project budget to \$177,803.

Additionally, City Staff will manage the grant project and those costs are not reimbursable thru this grant project.

**RECOMMENDATION:**

Staff recommends the Council adopt Resolution 2010-147.

**PROPOSED MOTION:**

I move that the Council adopt Resolution 2010-147, A RESOLUTION ACKNOWLEDGING RECEIPT OF FAA GRANT PROJECT #3-41-0044-009 FOR THE ONTARIO MUNICIPAL AIRPORT, AND FURTHER APPROVING A REALLOCATION OF GENERAL FUND EXPENDITURES, AND APPROVING REVENUE AND EXPENSE BUDGETS WITHIN THE GRANT FUND.

**RESOLUTION 2010-147**

**A RESOLUTION ACKNOWLEDGING RECEIPT OF FAA GRANT PROJECT #3-41-0044-009 FOR THE ONTARIO MUNICIPAL AIRPORT, AND FURTHER APPROVING A REALLOCATION OF GENERAL FUND EXPENDITURES, AND APPROVING REVENUE AND EXPENSE BUDGETS WITHIN THE GRANT FUND**

**WHEREAS**, the City of Ontario adopted the 2009-2011 budget document based upon known or anticipated revenues and expenditures; and

**WHEREAS**, the City applied for and received a grant from the Federal Aviation Administration to complete additional design work toward a runway and parallel taxiway overlay, rehabilitate the parking apron, and install runway lighting project at the airport in the amount of \$168,913, and the City's required grant match for the project is \$8,890; and

**WHEREAS**, the City Council accepted the grant award thru Resolution 2010-141, and desires now to formally modify the 2009-2011 General and Grant Fund budgets by identifying the revenues and total project expenses, including match, to complete the project.

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

| Account Number                     | Account Name                       | Adopted<br>09-11 Budget | Proposed<br>Change | Revised<br>09-11 Budget |
|------------------------------------|------------------------------------|-------------------------|--------------------|-------------------------|
| <b>GENERAL FUND</b>                |                                    |                         |                    |                         |
| ADMINISTRATIVE OVERHEAD DEPARTMENT |                                    |                         |                    |                         |
| EXPENSES                           |                                    |                         |                    |                         |
| 001-004-829000                     | Transfer to Grant Fund             | \$ 6,550                | \$ 8,890           | \$ 15,440               |
| 001-004-871000                     | Operating Contingency              | \$ 2,089,394            | (\$ 8,890)         | \$ 2,080,504            |
| <b>GRANT FUND</b>                  |                                    |                         |                    |                         |
| REVENUES                           |                                    |                         |                    |                         |
| 010-000-458103                     | FAA Project #3-41-0044-009 Revenue | \$ 0                    | \$ 168,913         | \$ 168,913              |
| 010-000-458100                     | Transfer from General Fund         | \$ 6,550                | \$ 8,890           | \$ 15,440               |
| EXPENSES                           |                                    |                         |                    |                         |
| 010-038-714103                     | Airport Grants-FAA#3-41-0044-009   | \$ 0                    | \$ 177,803         | \$ 177,803              |

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

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

Ayes:

Nays:

Absent:

**APPROVED BY THE Mayor** this \_\_\_\_ day of \_\_\_\_\_ 2010.

ATTEST:

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

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

**AGENDA REPORT**  
September 7, 2010

TO: Mayor and City Council

FROM: Mark Alexander, Police Captain

Through: Henry Lawrence, City Manager

**SUBJECT: ORDINANCE #2648-2010: AMENDING ONTARIO MUNICIPAL CODE TITLE 7, CHAPTER 1, OF THE NUISANCE PROVISIONS, ADDING NEW PROVISIONS AND REPEALING OTHER PROVISIONS, on First Reading by Title Only**

DATE: August 27, 2010

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**SUMMARY:**

Attached is the following document:

- Ordinance #2648-2010

The Police Department would like to amend Municipal Code Chapter 1, Title 7, by adding three weeds to the list of noxious weeds and changing all reference to a 14-day abatement period to a 10-day abatement period.

**PREVIOUS COUNCIL ACTION:**

In December of 2009, the Council amended the Nuisance Ordinance to include a list of noxious weeds and to shorten the period for a nuisance abatement from 14 to 10 days.

**BACKGROUND:**

The 2009 changes to the Municipal Code came about as a result of recommendations of a staff committee looking at all city nuisances. The committee recognized that by only allowing the city to abate weeds that exceeded ten inches in height we would be unable to abate some very noxious low growing weeds.

The police department consulted with the County Weed Department and developed a list of eight noxious weeds, which at that time were growing within the city. The City Ordinance Officer has identified three additional noxious weeds within the city, which we believe should be specifically mentioned on the list.

The three noxious weeds are:

Purple Loosestrife, scientific name of *Lythrum salicaria*  
Yellow Starthistle, scientific name of *Centaurea Solstitialis* L  
Rush Skeleton weed, scientific name of *Chondrilla juncea*

The ordinance allows the Council to change the noxious weed list by resolution, however because other changes to the ordinance were proposed the changes to the noxious weed list have been included by ordinance.

In December 2009, staff recommended to the Council that the time given a property owner to abate a nuisance be extended from 10 to 14 days, to allow the Ordinance Department the opportunity to notice a property owner by posting the property and not mailing a certified letter. In practice we have not done this and do not plan to. The interest in not mailing a certified letter was only financial and upon reflection may cause the City problems when trying to prove that notice was served.

In truth the period to abate usually extends days as the Ordinance Officer attempts to contract with someone to abate the nuisance. Ten days has historically given the property owner enough time to receive the notice and take action.

The police department recommends that any reference to a 14-day period to abate a nuisance under Title 7, Chapter 1, be changed back to a ten-day period. The police department also recommends that Sub 2 of the abatement procedure be removed and all notices either be personally served or served by certified mail.

**FINANCIAL IMPLICATIONS:**

There will be no financial impact as a result of this ordinance.

**RECOMMENDATION:**

Staff recommends the Mayor and Council adopt Ordinance #2648-2010.

**PROPOSED MOTION:**

I move the Council adopt Ordinance #2648-2010, **AN ORDINANCE AMENDING ONTARIO MUNICIPAL CODE TITLE 7, CHAPTER 1, ADDING NEW PROVISIONS AND REPEALING OTHER PROVISIONS**, on first reading by title only.

**ORDINANCE NO. 2648-2010**

**AN ORDINANCE AMENDING ONTARIO MUNICIPAL CODE TITLE 7, CHAPTER 1,  
ADDING NEW PROVISIONS AND REPEALING OTHER PROVISIONS**

- WHEREAS,** the City Council of Ontario is authorized through its legislative authority to define nuisances within the City of Ontario; and,
- WHEREAS,** the City Council of Ontario has an interest in providing a clean, safe, and healthy City for its residents; and,
- WHEREAS,** in order to accomplish this mission, there must be a procedure to abate nuisances of those properties by owners who will not or cannot abate the nuisance themselves.

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

**Section 1.** Section 7-1-2 of the Ontario City Code is hereby amended by adding those portions, which are underlined, and by deleting those portions, which are stricken:

(M) Noxious Weeds. Any of the following noxious weeds:

- a) Puncturevine (*Tribulus terrestris*);
- b) Kochia (*Kochia scoparia*);
- c) Russian thistle (*Salsola kalil* aka tumbleweed);
- d) Prickly lettuce (*Lactuca serriola*) aka Chinese lettuce;
- e) Field bindweed (*Convolvulus arvensis*) aka morning glory;
- f) Hoary cress (*Lepidium draba*) aka white top;
- g) Scotch thistle (*Onopordum acanthium*);
- h) Canada thistle (*Cirsium arvense*);
- i) Rush Skeleton weed, (*Chondrilla juncea*);
- j) Purple Loosestrife, (*Lythrum Salicaria*); and
- k) Yellow Starthistle, (*Centaurea Solstitialis* L)

**Section 2.** Section 7-1-4 of the Ontario City Code is hereby amended by adding those portions, which are underlined, and by deleting those portions, which are stricken:

7-1-4 Abatement procedure.

(A) Notice to Abate.

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

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

3. The initial notice to abate shall contain:

(a) A description of the real property, by street address or otherwise, on which the nuisance exists.

(b) A direction to abate the nuisance within ten (10) ~~fourteen (14)~~ days from the date of the notice.

(c) A description of the nuisance, a citation to the section(s) of the City Code which are violated, and a description of the corrective action required.

(d) A statement that unless the nuisance is removed, the City may abate the nuisance and the cost of abatement will be charged to the person responsible and assessed as a lien on the property.

(e) A statement that failure to abate a nuisance may result in a fine.

(f) A statement that the person responsible may appeal from the notice to abate by giving notice to the City Manager or his designee within ten (10) ~~fourteen (14)~~ days from the date of the notice.

~~(g) A statement that the City is not required to provide a written notice of a second or subsequent nuisance violation within a twelve (12) month period, and that notice of a second or subsequent violation may be done by posting notice on the property.~~

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

(B) Abatement by Person Responsible.

1. Within ten (10) ~~fourteen (14)~~ days of the date of the notice, the person responsible shall remove the nuisance or show that no nuisance exists, or deliver a written notice of appeal to the City Manager. A written notice of appeal shall specify the basis for the appeal.

2. The Ontario Municipal Court shall conduct a hearing on the appeal of the abatement notice at which the City's designee and the appellant may call witnesses and present evidence. The City shall have the burden of proof to demonstrate by a preponderance of the evidence that a violation has occurred and that the required corrective action is reasonable. The Ontario Municipal Court shall affirm, vacate, or modify the City's decisions regarding the alleged violation and/or the required corrective action, with or without written conditions.

(C) Abatement by City.

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

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

(E) Assessment of Costs.

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

- (a) The total cost of abatement, including incidental expenses.
  - (b) That the cost as indicated will be assessed to and become a lien against the property unless paid within thirty (30) days from the date of the notice.
  - (c) That if the person, responsible objects to the cost of the abatement as indicated, he may file a notice of objection with the City Manager or his designee not more than ~~ten (10)~~ ~~fourteen (14)~~ ten (10) days from the date of the notice. Objections shall be heard by the Ontario Municipal Court and shall be limited to the question of whether the amount of the abatement assessment is reasonable.
2. If the costs of the abatement are not paid within thirty (30) days from the date of the notice or thirty (30) days from the date of the Ontario Municipal Court's decision on objections, the City may cause the assessment to be filed as a lien in the Malheur County Deed records against the property of any property owner who was served with the initial notice of abatement pursuant to Section 7-1-4(A)1 set forth above.

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

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

(F) Separate Violations. The requirements to abate a nuisance are not a penalty for violating the Code but are an additional remedy. The imposition of a penalty does not relieve a person of the duty to abate the nuisance; however, abatement by the person responsible of a nuisance within ~~ten (10) fourteen~~ (14) days of the date of notice to abate, or within ten (10) days of the determination by the Ontario Municipal Court upon an appeal therefrom, will excuse the person responsible from the imposition of any fine.

(G) Summary Abatement. The procedure provided by subsections (A) through (F) is not exclusive but is in addition to procedure provided by other law and the City Manager or other officer delegated responsibilities therefore, may proceed summarily to abate a health or other

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

AYES:

NAYS:

ABSENT:

ABSTAIN:

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

ATTEST:

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

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

**AGENDA REPORT**  
September 7, 2010

To: Mayor and City Council

FROM: Mark Alexander, Police Captain

Through: Henry Lawrence, City Manager

Subject: **ORDINANCE #2649-2010: AN ORDINANCE AMENDING ONTARIO MUNICIPAL CODE TITLE 7, CHAPTER 4, SECTION 8, TO CHANGE THE ACT OF UNLAWFULLY APPLYING GRAFFITI FROM A CRIME TO A VIOLATION, on First Reading by Title Only**

DATE: August 26, 2010

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**SUMMARY:**

Attached is the following document:

- Ordinance #2649-2010

The Police Department would like to amend Ontario Municipal Code Section 8, Chapter 4, Title 7, by making the crime of unlawfully applying graffiti a Class A civil violation rather than a Class B misdemeanor.

**PREVIOUS COUNCIL ACTION:**

This ordinance has been unchanged since its creation in 1996.

**BACKGROUND:**

Often times police officers are able to gather enough information through informants, intelligence, or evidence to strongly believe that a suspect has committed an act. The information may fall short of a standard that will enable the officer to file a criminal complaint; however, the standard may be at a level that would enable the officer to file a violation.

In Oregon, the standard of proof is less for a violation because a person convicted of a violation cannot be sentenced to jail, however, a person convicted of a crime can be sentenced to jail. Therefore, the state will provide an attorney to someone charged with a crime if that person cannot afford one.

In order for the government to convict someone of a violation, it must be proven by a "preponderance of the evidence" that the defendant committed the act. This means that an officer would have to convince the trier of fact (Municipal Judge) that more likely than not the defendant committed the act.

In order to be convicted of a misdemeanor the government must prove “beyond a reasonable doubt”. This is a much higher standard of proof and means that the trier of fact (Jury or Judge) must be convinced beyond a moral certainty.

Some years ago the majority of our penalties associated with city ordinance violations were changed from crimes to violations. The city did this mainly to save costs by not having to provide indigent attorneys.

Some sections of the code were not changed during the transition and continue to be listed as a misdemeanor crime. Ontario Municipal Code 7-4-8, which provides the penalty for unlawfully applying graffiti, is one of those.

Presently the penalties for violations within the city are a Class A violation- fine not to exceed \$720; Class B violation-fine not to exceed \$360; Class C violation-fine not to exceed \$180; and a Class D violation-fine not to exceed \$90.

By reducing the unlawful application of graffiti to a violation, the department believes that we can successfully resolve additional graffiti cases. The court will continue to have the authority to order restitution for the victim.

**FINANCIAL IMPLICATIONS:**

There will be no financial impact as a result of this ordinance.

**RECOMMENDATION:**

Staff recommends the Mayor and Council adopt Ordinance #2649-2010.

**PROPOSED MOTION:**

I move the Council adopt Ordinance #2649-2010, **AN ORDINANCE AMENDING ONTARIO MUNICIPAL CODE TITLE 7, CHAPTER 4, SECTION 8, TO CHANGE THE ACT OF UNLAWFULLY APPLYING GRAFFITI FROM A CRIME TO A VIOLATION**, on first reading by title only.

**ORDINANCE NO. 2649-2010**

**AN ORDINANCE AMENDING ONTARIO MUNICIPAL CODE TITLE 7, CHAPTER 4,  
SECTION 8, CHANGING THE ACT OF UNLAWFULLY APPLYING GRAFFITI  
FROM A CRIME TO A VIOLATION**

- WHEREAS,** the City Council of Ontario through its legislative authority regulates conduct and by way of municipal ordinances; and
- WHEREAS,** the City Council of Ontario strives to provide law enforcement services as economically and efficiently as possible; and
- WHEREAS,** the City Council of Ontario believes that the public's safety will be better served if the act of unlawfully applying graffiti were a Class A violation rather than a Class B Misdemeanor.

**NOW, THEREFORE, BE IT ORDAINED** by the City Council of the City of Ontario, Oregon, that Ontario City Code Section 7-4-8 be amended by adding the underlined and eliminating the strikethrough language:

7-4-8 Penalty.

A violation of Section 7-4-2 of this chapter shall be a Class B ~~misdemeanor~~ A Violation as prescribed in the Ontario Municipal Code, Section 1-4-1 B (B) (A) ~~Upon conviction for unlawfully possessing a graffiti implement the Court shall impose a mandatory minimum fine of two hundred dollars (\$200.00).~~

**APPROVED AND ADOPTED** by the Common Council of the City of Ontario this \_\_\_\_\_ day of \_\_\_\_\_, 2010, by the following vote.

AYES:

NAYS:

ABSENT:

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

ATTEST:

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

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

## PUBLIC HEARING - AGENDA REPORT

September 7, 2010

TO: Mayor and City Council

FROM: Rachel L. Hopper, Finance Director

THROUGH: Henry Lawrence, City Manager

**SUBJECT: RESOLUTION #2010-142: A RESOLUTION ADOPTING A SUPPLEMENTAL BUDGET FOR THE GOLF FUND AND AUTHORIZING A REALLOCATION OF EXPENDITURES WITHIN THE GENERAL FUND ADMINISTRATIVE OVERHEAD DEPARTMENT TO REDUCE CONTINGENCY AND INCREASE GENERAL FUND TRANSFERS TO THE GOLF FUND**

DATE: August 30, 2010

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### **SUMMARY:**

Attached is the following document:

- Resolution #2010-142

### **PREVIOUS COUNCIL ACTION:**

Jun 2009 The City Council adopted the 2009-11 Biennial Budget which Included a Golf Fund Budget with a Single Year Operating Budget and a Large Golf Fund Contingency Set Aside to Revisit the Golf Fund Needs Following One Year of City Staff Operations

### **BACKGROUND:**

The City has completed one year of City-run operations at the golf course and the Golf Fund budget was compared to first year actual revenues and expenses by Staff, resulting in the drafting of a supplemental budget. The City's Budget Committee reviewed by the proposed budget and passed a motion to recommend the Council adopt the Golf Fund Supplemental Budget.

Due to the amount of change in the Golf Fund exceeding 20% of the original Golf Fund Budget, a formal Supplemental Budget is now before the Council to review and act upon following a public hearing.

### **FINANCIAL IMPLICATIONS:**

The proposed resolution reduces the General Fund Administrative Overhead Department Contingency by \$142,291 and increases Transfers to the Golf Fund by the same amount, leaving a General Fund contingency balance of \$1,947,103.

The resolution further approves a modified Golf Fund Budget in both revenues and expenses summarized as follows:

| Account Number                  | Account Name             | Adopted FY<br>09-11 Budget | Proposed<br>Change | Revised FY<br>09-11 Budget |
|---------------------------------|--------------------------|----------------------------|--------------------|----------------------------|
| <b>GENERAL FUND</b>             |                          |                            |                    |                            |
| ADMINISTRATIVE OVERHEAD EXPENSE |                          |                            |                    |                            |
|                                 | TRANSFERS                | 290,508                    | 142,291            | 432,799                    |
|                                 | CONTINGENCY              | 2,089,394                  | (142,291)          | 1,947,103                  |
| <b>GOLF FUND</b>                |                          |                            |                    |                            |
| REVENUE                         |                          |                            |                    |                            |
|                                 | TOTAL REVENUE            | 617,401                    | 133,188            | 750,589                    |
| EXPENSE                         |                          |                            |                    |                            |
|                                 | PAYROLL RELATED EXPENSES | 137,150                    | 143,425            | 280,575                    |
|                                 | MATERIALS & SUPPLIES     | 202,514                    | 157,500            | 360,014                    |
|                                 | CAPITAL                  | 125,000                    | (25,000)           | 100,000                    |
|                                 | CONTINGENCY              | 152,737                    | (142,737)          | 10,000                     |
|                                 | TOTAL EXPENSE            | 617,401                    | 133,188            | 750,589                    |

The proposed supplemental budget takes into consideration estimated ending revenues and expenses from 2009-10, and projects revenue and expenses for 2010-11, assuming a similar level of service at the course.

The City's Budget Committee met on August 24, 2010 and reviewed the proposed budget and passed a motion recommending the Council adopt the supplemental budget and increase the transfer from the General Fund to the Golf Fund.

**RECOMMENDATION:**

Staff recommends the Council adopt the Golf Fund Supplemental Budget as recommended by the City's Budget Committee by approving Resolution #2010-142.

**PROPOSED MOTION:**

I move the Ontario City Council adopt Resolution #2010-142: A RESOLUTION ADOPTING A SUPPLEMENTAL BUDGET FOR THE GOLF FUND AND AUTHORIZING A REALLOCATION OF EXPENDITURES WITHIN THE GENERAL FUND ADMINISTRATIVE OVERHEAD DEPARTMENT TO REDUCE CONTINGENCY AND INCREASE GENERAL FUND TRANSFERS TO THE GOLF FUND

**RESOLUTION # 2010-142**

**A RESOLUTION ADOPTING A SUPPLEMENTAL BUDGET FOR THE GOLF FUND AND AUTHORIZING A REALLOCATION OF EXPENDITURES WITHIN THE GENERAL FUND ADMINISTRATIVE OVERHEAD DEPARTMENT TO REDUCE CONTINGENCY AND INCREASE GENERAL FUND TRANSFERS TO THE GOLF FUND**

**WHEREAS,** the City of Ontario adopted the 2009-2011 budget document based upon known or anticipated revenues and expenditures; and

**WHEREAS,** the City's Golf Fund Budget was adopted with placeholders in order to allow for a year of City staff operation of the course, after which a follow-up review of the budget would be completed; and;

**WHEREAS,** the City's Budget Committee reviewed the proposed Golf Fund Supplemental Budget and passed a motion recommending the Council adopt the Supplemental Budget; and

**WHEREAS,** the City Council, following a public hearing on the matter, desires to formally adopt a Supplemental Budget to the City's 2009-2011 Golf Fund and reallocate expenditures within the General Fund Administrative Overhead Department to provide an additional \$142,291 in General Fund transfers to the Golf Fund.

**NOW THEREFORE, BE IT RESOLVED** by the Ontario City Council to approve the following adjustments to the fiscal year 2009-2011 Budget:

| Account Number                  | Account Name                   | Adopted FY 09-11 Budget | Proposed Change | Revised FY 09-11 Budget |
|---------------------------------|--------------------------------|-------------------------|-----------------|-------------------------|
| <b>GENERAL FUND</b>             |                                |                         |                 |                         |
| ADMINISTRATIVE OVERHEAD EXPENSE |                                |                         |                 |                         |
| 001-004-828000                  | TRNSF TO GOLF FUND - OPERATING | 250,508                 | 92,291          | 342,799                 |
| 001-004-828000                  | TRNSF TO GOLF FUND - CAPITAL   | 40,000                  | 50,000          | 90,000                  |
| 001-004-871000                  | OPERATING CONTINGENCY          | 2,089,394               | (142,291)       | 1,947,103               |

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| Account Number   | Account Name                   | Adopted FY<br>09-11 Budget | Proposed<br>Change | Revised FY<br>09-11 Budget |
|------------------|--------------------------------|----------------------------|--------------------|----------------------------|
| <b>GOLF FUND</b> |                                |                            |                    |                            |
| <b>REVENUE</b>   |                                |                            |                    |                            |
| 005-000-441000   | INTEREST ON DEPOSIT            | -                          | 60                 | 60                         |
| 005-000-458100   | TRNSF FROM GENERAL FUND - OP   | 250,508                    | 92,291             | 342,799                    |
| 005-000-458105   | TRNSF FROM GENERAL FUND - CIPs | 40,000                     | 50,000             | 90,000                     |
| 005-000-462200   | DRIVING RANGE                  | 15,750                     | 500                | 16,250                     |
| 005-000-469200   | MISC REVENUE - GAS SALES       | 20,250                     | (4,660)            | 15,590                     |
| 005-000-469220   | PRO SHOP SALES                 | -                          | 22,120             | 22,120                     |
| 005-000-469240   | RESTAURANT SALES               | -                          | 13,680             | 13,680                     |
| 005-000-477200   | SEASON TICKETS                 | 162,001                    | (57,751)           | 104,250                    |
| 005-000-477300   | CART STORAGE                   | 48,000                     | 8,436              | 56,436                     |
| 005-000-477500   | CART RENTAL                    | 15,600                     | 8,340              | 23,940                     |
| 005-000-477600   | TOURNAMENT FEES                | 15,000                     | (10,836)           | 4,164                      |
| 005-000-477700   | TRAIL FEES                     | 24,300                     | (24,300)           | -                          |
| 005-000-477800   | GREEN FEES                     | 25,992                     | 35,308             | 61,300                     |
|                  | TOTAL REVENUE                  | 617,401                    | 133,188            | 750,589                    |
| <b>EXPENSE</b>   |                                |                            |                    |                            |
| 005-034-512000   | PART-TIME EMPLOYEES            | 128,000                    | 121,000            | 249,000                    |
| 005-034-513000   | OVERTIME                       | -                          | 380                | 380                        |
| 005-034-515000   | WORKMANS COMP                  | 400                        | 995                | 1,395                      |
| 005-034-516500   | SOCIAL SECURITY                | 8,750                      | 11,280             | 20,030                     |
| 005-034-516000   | RETIREMENT - EMPLOYER COST     | -                          | 9,770              | 9,770                      |
| 005-034-610500   | BANK CHARGES                   | -                          | 4,425              | 4,425                      |
| 005-034-610600   | BUILDING MAINT & REPAIR        | 13,625                     | (3,350)            | 10,275                     |
| 005-034-610900   | CHEMICAL/FERTILIZER/SEED       | 40,000                     | 21,950             | 61,950                     |
| 005-034-612100   | LICENSES/PERMITS/FEES          | -                          | 1,800              | 1,800                      |
| 005-034-612400   | ELECTRICITY                    | 38,000                     | 7,000              | 45,000                     |
| 005-034-613000   | EQUIPMENT RENTAL               | 1,900                      | 7,500              | 9,400                      |
| 005-034-613300   | FUEL HEAT                      | 7,200                      | 3,600              | 10,800                     |
| 005-034-613400   | GARBAGE SERVICE                | 1,200                      | -                  | 1,200                      |
| 005034-613500    | GENERAL SUPPLIES & MAINT       | 12,000                     | 25,400             | 37,400                     |
| 005-034-613600   | COURSE MAINTENANCE             | 5,000                      | -                  | 5,000                      |
| 005-034-613700   | HVAC MAINENANCE                | -                          | 3,350              | 3,350                      |
| 005-034-613900   | INSURANCE PREM & SURETY        | 7,175                      | 575                | 7,750                      |
| 005-034-614900   | OFFICE SUPPLIES                | 700                        | 1,160              | 1,860                      |
| 005-034-615100   | PETROLEUM SUPPLIES             | 20,000                     | -                  | 20,000                     |
| 005-034-615300   | SALES & MARKETING              | 3,000                      | -                  | 3,000                      |
| 005-034-615410   | COURSE OPERATION EXPENSE       | 2,800                      | -                  | 2,800                      |
| 005-034-615420   | PURCHASE OF GOODS FOR RESALE   | -                          | 26,400             | 26,400                     |
| 005-034-615550   | CONTRACT SERVICES              | 1,700                      | 1,300              | 3,000                      |
| 005-034-617100   | COURSE REPAIRS                 | 3,000                      | 9,000              | 12,000                     |
| 005-034-617300   | TELEPHONE                      | 5,160                      | 840                | 6,000                      |
| 005-034-617520   | UNEMPLOYMENT - GOLF            | -                          | 12,550             | 12,550                     |
| 005-034-618310   | EQUIPMENT REPAIR               | 24,000                     | 34,000             | 58,000                     |
| 005-034-618950   | LAND LEASES                    | 16,054                     | -                  | 16,054                     |
| 005-034-714120   | SITE IMPROVEMENTS              | 125,000                    | (25,000)           | 100,000                    |
| 005-034-871000   | OPERATING CONTINGENCY          | 152,737                    | (142,737)          | 10,000                     |
|                  | TOTAL EXPENSE                  | 617,401                    | 133,188            | 750,589                    |

**DISCUSSION ITEM REPORT**  
September 2, 2010

TO: Mayor and City Council

FROM: Tori Barnett, MMC, City Recorder

THROUGH: Henry Lawrence, City Manager

**SUBJECT: Letter from Pastor Frank Moloney, First Christian Church**

DATE: August 30, 2010

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**SUMMARY:**

Attached is the following document:

- Letter from Pastor Moloney (taken from an email dated 08/24/2010)

Staff received an email from Pastor Frank Moloney, First Christian Church, with a request for Council. A representative from the church will be in attendance to discuss this issue at the study session.

Dear Tori,

I spoke with you last week regarding a request I would like to make at the city council meeting on September 7, 2010. I am not quite sure how formal a request you need prior to the meeting or to what extent I need to elaborate my request. Here is an explanation. Please write me back if you have any suggestions or if I need to be more formal in the written proposal.

I would like to request that the City Council provide funding for the part time position of "Meal Site Coordinator" at the First Christian Church in Ontario. This position is being created in conjunction with The Oregon Food Bank, Harvest House Missions and the First Christian Church in order to coordinate and oversee the operation of a public meal site that has been held at the First Christian Church for the previous two school years. This position is being created to ensure the effective and successful management of a meal site here in Ontario that has fed approximately 300 people per week a hot meal during the last two years. The meal site is hosted by the First Christian Church, staffed by a number of local volunteers, all of the food is provided by The Oregon Food Bank and all of the paperwork, tracking and filing of necessary forms with a variety of County, State and Federal agencies is overseen by Harvest House Missions.

After offering this service to the community of Ontario for the past two school years, it has become apparent that a position needs to be created to facilitate and manage the operation of the meal site. This position would include supervising and participating in the preparation of food, the scheduling and participation of volunteers, the serving of the food and the clean up and closing of the facility being used. The proposed position would require 10 hours of service per week with a base pay of \$10.00 per hour. On a monthly/annual basis the expenditure would come to \$400.00 per month/ \$3600 per school year. This request for funding could and/or should be reviewed and renewed each school year, making the commitment to fund a 9 month duration each cycle.

The City Council should be mindful of a number of issues connected to this program. First, this program is in no way connected to any religious services or the attempt to evangelize any person in response to the acceptance of the services of the meal site. There is no compulsion to attend any religious services or be involved in any manner with the hosting church in response or in compensation for receiving a meal. Second, the meal site has established programs with the Oregon Food Bank and the USDA which ensures that all food products needed for the meal site are provided by The Oregon Food Bank. Third, the meal site has an ongoing source of funding from the USDA, in compensation for feeding Developmentally Disabled and/or Minor Children, which reimburses the meal site on a per meal served basis. This income is then used to pay the First Christian Church for utilities, trash services and incidentals such as paper

products and janitorial supplies. All funds received from the USDA are channeled through a Non-Profit org account held at Sterling Bank in Ontario, with Renee Cummings (Director of Harvest House Missions) having control and supervision of said account. However, this reimbursement source of funding does not generate enough income to pay for the requested position of meal site manager.

The basis for this request to the City Council lies in the success and the difficulty of providing food services to the low income, needy, homeless and alcohol/drug impacted citizens of Ontario. The program has steadily grown in the last two years, making a difference in the lives of many people. Unfortunately, the complexity of problems has also grown. Managing such a program requires oversight, planning and direct supervision. The First Christian Church, while willing to provide space, is unable to absorb the cost of staffing a position for these needs. The Oregon Food Bank does not have a source of income that can be dedicated to this particular situation, nor does Harvest House Missions. In the past two years the program has been supervised internally by a number of volunteers from within the community of clients that use these services. We are finding that, without the direct supervision of this program through a dedicated position filled by a responsible and unaffected (non-client of the program) person, the leadership at First Christian Church feels unable to continue in the role of "host", resulting in either terminating the program or finding another host location. By providing these funds, the City of Ontario would be ensuring that a program which directly affects our citizens, would continue.

Respectfully submitted,

Pastor Frank Moloney

First Christian Church

180 NW First Street

Ontario, Oregon

## **AGENDA REPORT (THURSDAY EXECUTIVE SESSION)**

September 2, 2010

TO: Mayor and City Council

FROM: Larry Sullivan, City Attorney

THROUGH: Henry Lawrence, City Manager

**SUBJECT: Larry Gillingham Real Property Offer RE: Tax Lot 18S04709 800**

DATE: August 30, 2010

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### **SUMMARY:**

Attached are the following documents:

- March 15, 2004, Agreement between the City and Larry Gillingham re: LID payments.
- August 12, 2010, Letter From Larry Gillingham Offering to Deed Real Property to the City.
- Title Report on the Real Property.

The purpose of this agenda item is for the Council to consider Larry Gillingham's offer to deed a parcel of real property to the City.

### **DISCUSSION:**

The real property which is being offered to the City is identified by the Malheur County Tax Assessor as Tax Lot #18S04709 800, consisting of 1.34 acres. There is a plat map on the last page of the attached title report showing the location and configuration of the parcel. It is located at the intersection of 18th Avenue and SW 4th Street in the Ontario urban growth area, past the new armory. It is zoned Residential UGA.

Larry Gillingham's offer in his August 12, 2010 letter is to deed the real property to the City and pay \$10,000 in cash, in order to release Mr. Gillingham from the City's LID assessment on the real property. The LID lien was placed on the real property in 2004 for \$46,694.46. An Agreement was entered into between the City and Larry Gillingham that year allowing him to make monthly installments on the assessment in the amount of \$392.78 per month, including interest at 5.95%. He made his last payment on November 10, 2008.

The remaining principal balance of the LID assessment is \$40,509.90, plus accrued interest of \$3,432.57 through September 7, 2010, for a total owing in principal and interest of \$43,942.47. According to the Malheur County Tax Office, the unpaid real property taxes are \$1,044.64 principal and interest, which the City would have to pay if the Council accepts the offer. Together those obligations total \$44,987.11. If the \$10,000 proposed payment from Mr. Gillingham is subtracted from this amount, the cost to the City in accepting the parcel would be \$34,987.11.

The Malheur County Assessor's current real market valuation of the real property is \$37,550, which, if accurate, means that the City would receive a net equity in the real property of \$2,562.89 if it accepts Larry Gillingham's offer.

The attached title report for the property shows that the LID assessment and the unpaid real property taxes are the only encumbrances on the property.

City attorney Larry Sullivan will discuss with the Council in executive session the legal options available to the City if the City chooses not to accept Mr. Gillingham's offer.

**RECOMMENDATION:**

Staff recommends that the Council accept Larry Gillingham's offer to deed Tax Lot 18S04709 800 plus pay \$10,000 to the City in consideration for the City's assumption of the LID assessment on the real property.

**PROPOSED MOTION:**

"I move that the Mayor and City Council accept Larry Gillingham's offer to deed Tax Lot 18S04709 800 plus pay \$10,000 in cash to the City in consideration for the City's assumption of the LID assessment on the real property."

## AGREEMENT

BETWEEN: CITY OF ONTARIO, OREGON, an Oregon municipal corp.,  
hereinafter "City"

AND **Larry Gillingham**  
hereinafter "Owner"

DATE 15 day of ~~February~~ 2004.  
**MARCH**

PREMISES:

WHEREAS, Owner owns certain real property, more particularly described in "Exhibit A", attached hereto and herein incorporated by reference and hereinafter referred to as the "Property."

WHEREAS, In 2002-2003, the City, under Local Improvement District (LID) #45, made improvements to the public right of way adjacent to the property and levied an assessment against the property for the costs of said improvements.

WHEREAS, The LID #45 assessment against the property is now due and owing and, as of the 16<sup>th</sup> day of January 2004, has a balance owing of **\$46,694.86**.

WHEREAS, Owner has elected to pay the LID assessment over time.

NOW THEREFORE, THE PARTIES AGREE:

1. City agrees that in exchange for Owner performing under the terms and conditions set forth herein, City will bond the outstanding balance owing on the LID #45 assessment against the property and will accept 180 monthly payments from the Owner for the payment principal and interest.
2. Interest will accrue on the outstanding balance, including principal, penalty and interest at the rate of five and ninety-five one hundredths percent (5.95%) per annum.
3. On or before the 1st day of March, 2004, and continuing each month thereafter, on or before the 1st day of the month, Owner will make a payment in the amount of **\$392.78**, until all amounts owed, including principal, penalty and interest have been paid.
4. Time is of the essence in the parties performing the terms and conditions of this agreement.
5. In the event Owner fails in any manner to fully perform and carry out each and all of the terms, provisions and conditions in this agreement within the time frames specified herein, the City may, after 30 days prior written notice: seek foreclosure of the lien against the Property; bring an action in a court of competent jurisdiction for the sums due and owing; or, may, in the discretion of the City seek any other remedy available in law or equity.
6. The waiver of any breach of this agreement shall not operate as a waiver of any subsequent breach of the same or any other term, covenant or condition of this agreement. The failure to pursue the enforcement of any term, provision or condition shall not be deemed a waiver of the term, provision or condition of the agreement and shall not bar the City from pursuing any remedy available to the City in law or in equity.

7. In the event action is instituted to enforce any term of this agreement, the prevailing party shall recover from the losing party reasonable attorney fees incurred in such action as set by the trial court and, in the event of an appeal, as set by the appellate courts.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the day and year first above written.

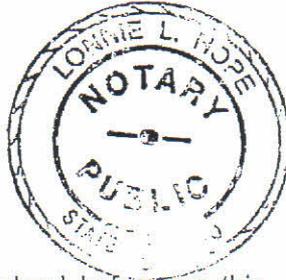
CITY OF ONTARIO

LeRoy Cammack  
LeRoy Cammack, Mayor

Larry Gillingham  
Larry Gillingham, Owner

Attest:

Tori Ankrum  
Tori Ankrum, City Recorder



STATE OF IDAHO )  
County of ADA ) ss.

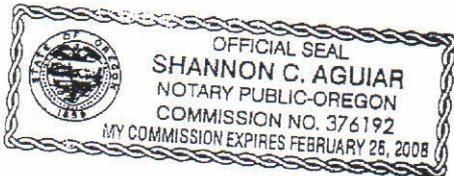
The foregoing instrument was acknowledged before me this 15 day of MARCH 2004, by Larry Gillingham, Owner.

Lonnie L. Hope  
Notary Public for ID  
My commission expires: 9/1/07

STATE OF OREGON )  
County of Malheur ) ss.

The foregoing instrument was acknowledged before me this 23<sup>rd</sup> day of March 2004, by LeRoy Cammack, Mayor, for the City of Ontario.

Shannon C. Aguiar  
Notary Public for Oregon  
My commission expires: 2/26/08



CITY OF ONTARIO, OREGON  
NOTICE OF ASSESSMENT PURSUANT TO ORS 93.643 (1) AND ORS 223.393

|                                      |   |
|--------------------------------------|---|
| OWNER(S) OF PROPERTY BEING ASSESSED: | Larry Gillingham<br>PO Box 15444<br>Boise, Idaho 83715  |
| DATE OF ASSESSMENT:                  | JANUARY 5, 2004   |
| TOTAL AMOUNT OF LIEN:                | \$46,694.86   |
| LOCAL IMPROVEMENT DISTRICT NAME:     | LID 45  |
| DOCUMENT TO BE RETURNED TO:          | TORI ANKRUM, CITY RECORDER<br>ONTARIO CITY HALL<br>444 SW 4 <sup>TH</sup> STREET<br>ONTARIO, OR 97914 |

The City of Ontario, Oregon claims a lien pursuant to ORS 223.393 and according to OR 2469 against the following attached described property situated in Malheur County, Oregon, for assessments on property specially benefited within the local improvement district named above.

SEE EXHIBIT A

The assessment amount listed does not include the interest being charged. The assessment has been spread upon this property by resolution adopted of the City Council of the City of Ontario, Oregon on the date listed above.

Dated this 26 day of January, 2004.

Tori Ankrum  
Tori Ankrum, City Recorder

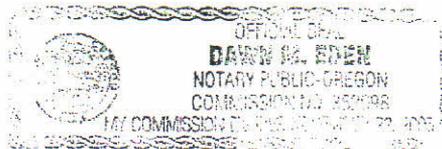
Rachel Hopper  
Rachel Hopper, Finance Director

State of Oregon )  
County of Malheur )

This instrument acknowledged before me on January 26, 2004, by Tori Ankrum, City Recorder and Rachel Hopper, Finance Director of the City of Ontario, Oregon.

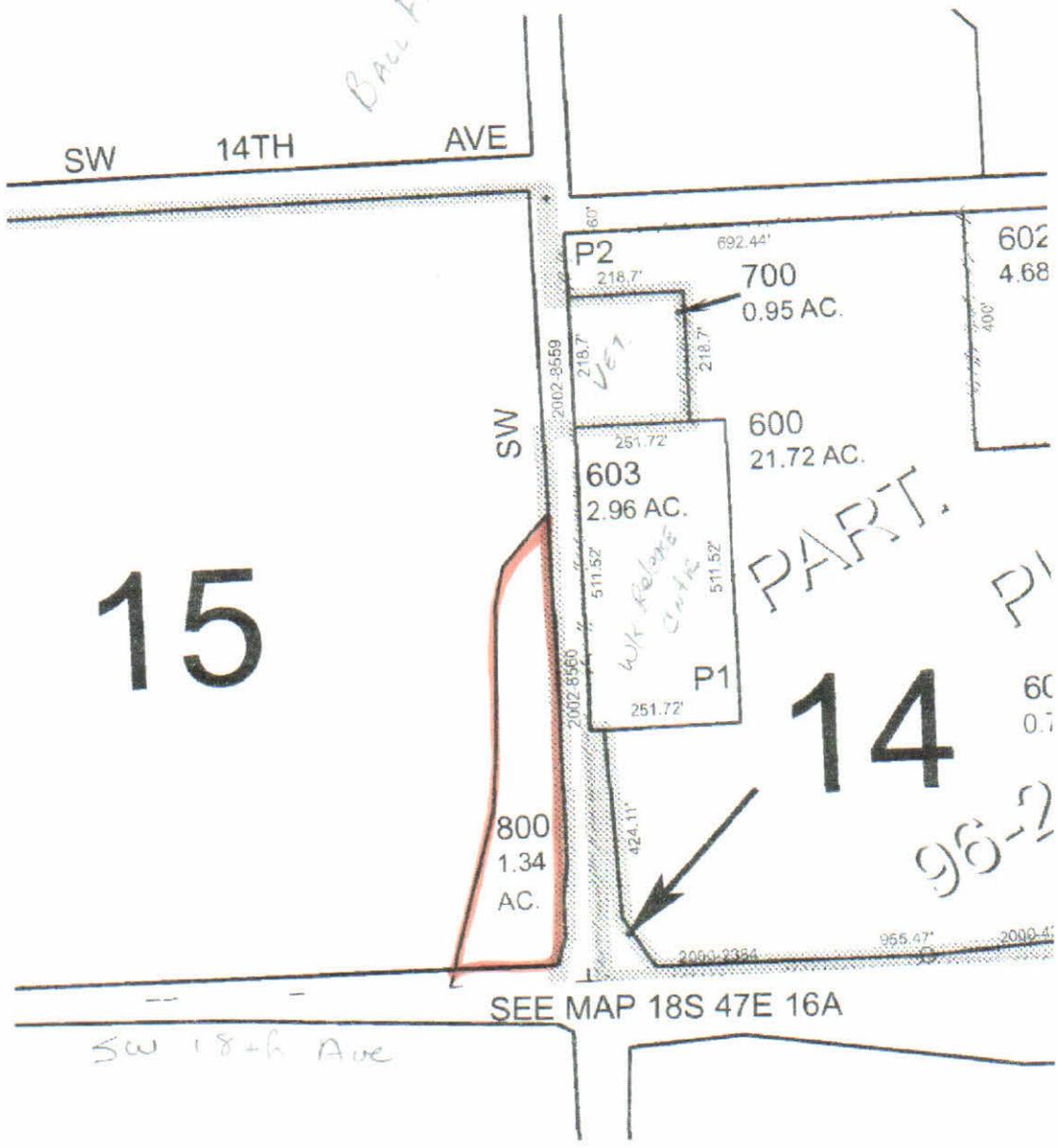
Dawn M. Eden  
Notary Public of Oregon  
My Commission expires: Nov. 22, 2005

Inst. No. 2004-618  
I certify that the within instrument of writing was received for record on the 26 day of Jan., 2004 at 4:09 O'clock P.M. FEE \$21  
STATE OF OREGON, County of Malheur  
DEBORAH R. DeLONG  
County Clerk



By: Sheyl Johnson Deputy

*Ball Fields*



15

14

PART.

95-2

SEE MAP 18S 47E 16A

SW 18th Ave

ms  
8/13/10

LARRY GILLINGHAM

3628 Hillcrest Drive  
Boise, Idaho 83705  
Phone (208) 861-6900  
Fax (208) 322-0707  
[Charity-feroy@hotmail.com](mailto:Charity-feroy@hotmail.com)

August 12, 2010

City of Ontario  
Office of the City Manager  
Henry Lawrence  
444 SW 4<sup>th</sup> Street  
Ontario, Oregon 97914

Dear Mr. Lawrence,

RE: Local Improvement District Number 45 Map 18-47-09, Lot 800  
Tax Lot 18S04709 800  
Assessment Number 000000631

I am the owner of a parcel of land in Malheur County; the physical address is 1795 SW 4<sup>th</sup> Street Ontario, Oregon 97914 with the legal description of;

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

Section 9 Beginning at the SE corner of the SW  $\frac{1}{4}$  SE  $\frac{1}{4}$  of section 9

Thence N. 746 feet, thence W. 16 feet, thence in a southerly direction along a waste ditch 746 feet to a point on the S. line of said SW  $\frac{1}{4}$  SE  $\frac{1}{4}$ , which is 189 feet W. of the SW corner of the SW  $\frac{1}{4}$  SE  $\frac{1}{4}$ , thence E 189 feet to the point of beginning.

On December 4, 2003, I received 10-day notification of the assessment ordinance review by the City of Ontario. The letter stated that the assessment for my property was \$46,694.86 and the payment would be \$392.78 for 15 years.

I have been trying to donate the property to the City of Ontario since November 2008. The assessment far exceeds the value of the property. In August 2000, I was served with notice of Proceedings of Eminent Domain. The State of Oregon by resolution declared it necessary to acquire and entirely remove the brick house, which held the majority of the property value. The value on the 1.3 acres of bare land for tax year July 1, 2006 to June 30, 2007 was \$28,630.00, the balance of the LID as of November 2008 was \$35,906.19. My office has made several phone calls to the City of Ontario, Gary Page and other City employees trying to find out what needs to be done in order to donate the land that no longer holds a purpose or value to me. If the City of Ontario is willing to accept a compromise, I would be willing to pay an additional \$10,000.00 above what I have already paid on the LID. If the City is not willing to accept my offer then I will be left with no other choice then to let the property laps into foreclosure.

Sincerely,



Larry Gillingham



Larry Sullivan, Attorney at Law  
P.O. Box 220  
Vale, OR 97918

Attn: Larry Sullivan

Date: August 30, 2010  
Escrow Number: N/A  
Escrow Officer: N/A  
Title Number: 0006415  
Title Officer: Michael W. Malmberg  
Your Reference: City of Ontario/Gillingham

**PRELIMINARY TITLE REPORT FOR:  
RE: The City of Ontario / Gillingham, Larry**

**REPORT NO. 1**

**Policy or Policies to be issued:**  
STANDARD OWNER'S POLICY  
Proposed Insured: **The City of Ontario**

| <u>Liability</u> | <u>Premium</u> |
|------------------|----------------|
| \$47,000.00      | \$288.00       |

Government Lien Search:

\$ 5.00

We are prepared to issue ALTA (6/17/2006) Title Insurance Policy(ies) through **CHICAGO TITLE INSURANCE COMPANY** in the usual form insuring the title to the land herein described:

See attached **EXHIBIT "A"**, made a part hereof.

Dated as of **August 23, 2010 at 8:00 A.M.**

*The fee simple title to said land, at the date hereof, vested in:*

**Larry Gillingham**

The estate or interest in the land described or referred to in this Commitment and covered herein is:

**FEE SIMPLE**

Schedule B of the policy(ies) to be issued will contain the following general and special exceptions unless removed prior to issuance:

**GENERAL EXCEPTIONS:**

1. *Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records; proceedings by a public agency which may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the public records.*
2. *Facts, rights, interests or claims which are not shown by the public records but which could be ascertained by an inspection of the land or by making inquiry of persons in possession thereof.*
3. *Easements, or claims of easement, not shown by the public records; reservations or exceptions in patents or in Acts authorizing the issuance thereof; water rights, claims or title to water.*
4. *Any encroachment (of existing improvements located on the subject land onto adjoining land or of existing improvements located on adjoining land onto the subject land), encumbrance, violation, variation, or adverse circumstance affecting the title that would be disclosed by an accurate and complete land survey of the subject land.*
5. *Any lien, or right to a lien, for services, labor, material, equipment rental or workers compensation heretofore or hereafter furnished, imposed by law and not shown by the public records.*
6. *Unpatented mining claims whether or not shown by the public records.*

**SPECIAL EXCEPTIONS:**

7. Taxes for the year 2008-2009: \$435.44, Unpaid plus interest  
Reference No.: 8288  
Code No.: 15  
Map No.: 184709  
Tax Lot No.: 800
8. Taxes for the year 2009-2010: \$456.32, Unpaid plus interest  
Reference No.: 8288  
Code No.: 15  
Map No.: 184709  
Tax Lot No.: 800
9. Taxes for the fiscal year 2010-2011, a lien in an amount to be determined, but not yet payable.
10. Subject to City and/or Municipal Liens, if any, to the City of Ontario. No search having been made of the City Records.
11. Rights of the Public in and to County road rights of way.
12. Reservation, including the terms and provisions thereof, as contained in that certain Deed from M. J. Janney, recorded April 6, 1903, Book J, Page 23, Deed Records.
13. Easement, including the terms and provisions thereof, in favor of Idaho Power Company, a corporation, recorded June 14, 1942, Book 55, Page 180, Deed Records.

(Continued)

14. Permanent Easement for Slopes Water, Gas, Electric and Communication Service Lines, Fixtures and Facilities, as awarded in that Stipulated Final Judgment, filed June 14, 2001, Case No. 0008480L, Malheur County Circuit Court Records, in favor of Malheur County, a political subdivision of the State of Oregon.
15. Notice of Assessment Pursuant to ORS 93.643 (1) and ORS 223.393, LID 45, including the terms and provisions thereof, in favor of the City of Ontario, against Larry Gillingham, in the amount of \$46,694.86, as therein provided, recorded January 26, 2004, Instrument No. 2004-618, Malheur County Records.
16. Oregon Statute 93.008, including the terms and provisions thereof States that any City, County, State or Municipality has to sign acceptance "As Grantee" to a piece of Real Estate. Disclosed by Statute 93.808, in the conveying document.

**NOTE:** Any map or sketch enclosed as an attachment herewith is furnished for information purposes only to assist in property location with reference to streets and other parcels. No representation is made as to accuracy and the company assumes no liability for any loss occurring by reason of reliance thereon.

**NOTE:** The policy to be issued may contain an arbitration clause. When the Amount of Insurance is less than the amount, if any, set forth in the arbitration clause, all arbitrable matters shall be arbitrated at the option of either the Company or the Insured as the exclusive remedy of the parties.

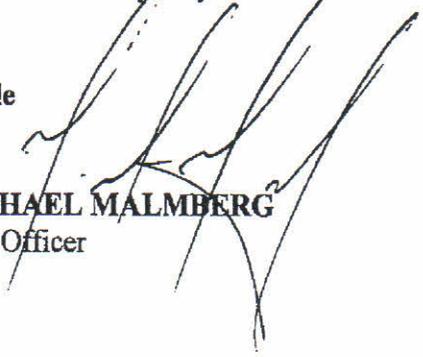
**NOTE:** Underwriter's portion of the total title insurance premium (include endorsements and additional risk premiums) 10%.

**NOTE:** Property Address: N/A

**This report is for the exclusive use of the parties herein shown and is preliminary to the issuance of a title insurance policy and shall become void unless a policy is issued and the full premium paid.**

**AmeriTitle**

By: **MICHAEL MALMBERG**  
Title Officer



\*\*\*END\*\*\*

*"Superior Service with Commitment and Respect for Customers and Employees"*

**EXHIBIT "A"**

Land in Malheur County, Oregon, as follows:

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

Sec. 9: All that portion of the SW ¼ SE ¼ lying East of a waste ditch and being described  
As follows:

Beginning at the Southeast corner of the said SW ¼ SE ¼;

Thence North 746 feet;

Thence West 16 feet;

Thence Southerly along said waste ditch 746 feet to a point on the South  
Line of the SW ¼ SE ¼, which point is 189 feet West of the  
Southeast corner of the SW ¼ SE ¼;

Thence East 189 feet to the Point of Beginning.

EXCEPTING THEREFROM that portion awarded by Case No. 0008480L, filed June 14,  
2001, Malheur County Circuit Court Records, in favor of Malheur County, a political  
subdivision of the State of Oregon.

FURTHER EXCEPTING THEREFROM that portion conveyed to the City of Ontario, a  
body politic And corporate of the State of Oregon, recorded November 22, 2002,  
Instrument No. 2002-8560, Deed Records.

\*\*\*\*\*

S PARK BLVD

15

800  
1.34  
AC.

SW

SEE MAP 18S 47E 16A



600  
21.72 AC.

14

PART  
PLAT

600-727

601  
0.79 AC.

P2

480.75'

1.80 AC.

5200

U.P.R.R.

