

AGENDA
CITY COUNCIL - CITY OF ONTARIO, OREGON
Monday, September 17, 2012, 7:00 p.m., M.T.

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

2) **Pledge of Allegiance**

This Agenda was posted on Wednesday, September 12, 2012, and a study session was held on Thursday, September 13, 2012. Copies of the Agenda are available at the City Hall Customer Service Counter and on the city's website at www.ontariooregon.org.

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

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

- A) Approval of Minutes of Regular Meeting of 09/04/2012 1-4
B) Appointment to Planning Commission: Max Twombly 5-6
C) 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) **Department Head Updates**

7) **New Business:**

- A) Bid Award: Rectangular Rapid Flash Beacon: Walkway/Pathway Project #27208 7-25
B) Resolution #2012-119: Transfer Funds - Water Contingency into Operations (*Hand-Out*)

8) **Public Hearing(s)**

- A) Resolution #2012-120: Establish SDCs for Airport Hangars 26-28
B) Ordinance #2671-2012: Amend OMC 8-13-2 and 8-13-6 re: System Development Charge Exemptions for Real Property that was Subject to Previous Use (1st Reading) 29-32

9) **Discussion Item(s)**

- A) St. Luke's Medical enter Update: Bruce Jensen
B) 2-1-1 Update: Denise Swanson

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

11) **Executive Sessions:**

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

12) **Adjourn**

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

**COUNCIL MEETING MINUTES
September 4, 2012**

The regular meeting of the Ontario City Council was called to order by Council President Norm Crume 7:00 p.m. on Tuesday, September 4, 2012, in the Council Chambers of City Hall. Council members present were Norm Crume, Jackson Fox, Charlotte Fugate, Dan Jones, and David Sullivan. Ronald Verini arrived at 7:08pm, and Mayor Joe Dominick was excused.

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

Dan Jones led everyone in the Pledge of Allegiance.

AGENDA

Charlotte Fugate moved, seconded by David Sullivan, to adopt the Agenda as presented. Roll call vote: Crume-yes; Fox-yes; Fugate-yes; Jones-yes; Sullivan-yes; Verini-out; Dominick-out. Motion carried 5/0/2.

CONSENT AGENDA

David Sullivan moved, seconded by Charlotte Fugate, to approve Consent Agenda Item A: Approval of the Regular Minutes of 08/20/2012; Item B: Proclamation: National Alcohol and Drug Recover Month – Sep 2012; Item C: Hangar Lease: 219-Golf to Ed Claugus; and Item D: Approval of the Bills. Roll call vote: Crume-yes; Fox-yes; Fugate-yes; Jones-yes; Sullivan-yes; Verini-yes; Dominick-out. Motion carried 6/0/1.

Council President Crume read the Proclamation into the record:

WHEREAS, behavioral health is an essential part of health and one's overall wellness, and prevention works, treatment is effective, and people can and do recover from substance use and mental disorders; and

WHEREAS, it is critical to educate our policymakers, friends and family members, health care providers, and businesses that substance use and mental disorders are treatable, and that people should seek assistance for these conditions, with the same urgency as they would any other health condition; and

WHEREAS, we must encourage relatives and friends of people with mental and/or substance abuse disorders to implement preventive measures, recognize the signs of a problem, and guide those in need to appropriate treatment and recovery services; and

WHEREAS, in 2010, 2.6 million people received specialty treatment for a substance use disorder and more than 31.3 million adults aged 18 or older received services for mental health problems, according to the 2010 National Survey on Drug Use and Health. Given the serious nature of this public health problem, we must continue to reach the millions who need help; and

WHEREAS, for 23 years, **Recovery Month** has worked to improve the lives of those suffering from substance use and mental disorders by raising awareness of the disease and educating communities about treatment and recovery resources that are available.

NOW, THEREFORE, I, Norm Crume, City Council President of the City of Ontario, Oregon, do hereby declare September 2012 as National Alcohol and Drug Recover Month, and encourage all residents of Ontario to observe this month with appropriate programs, activities, and ceremonies supporting this year's theme: "Join the Voices for Recovery: It's Worth It!"

PUBLIC COMMENT

Megan Tschida, Weiser, Idaho, stated she was the Alcohol and Drug Prevention Coordinator for Lifeways throughout Malheur County. She thanked the Council for adopting the Proclamation for Recovery Month, and she wanted to invite the Council to join in their annual celebration. Every year, they hosted "Hands Around the Park for Recovery". It was a two-hour celebration from 6-8pm on September 20. It was a free hotdog bbq. The City donated use of the Lion's Park, and Chief Alexander would be cooking the hotdogs. This was the second year for the Dr. Stoune Memorial Award, and the late Judge Terry Thompson would be honored for his work in drug prevention. The Dr. Stoune award would be presented to an individual who had worked hard towards recovery; the Judge Thompson award would be presented to his family in his memory.

NEW BUSINESS

Resolution #2012-119: Transfer Funds – Water Contingency into Operations

Bob Walker, Public Works Director, stated the purpose of this item was to obtain the approval of the City Council to transfer funds from the Water Contingency Fund to three accounts in the Water Treatment Plant Operations Budget.

Due to past maintenance practices at the Water Treatment Plant, there had been several equipment failures. Also, some electrical situations that posed a danger to personnel or anyone else that visited the facilities were discovered. These items were presented to both the City Council and the Public Works Committee over the past several months to keep them informed of the situation. As a result of these emergency repairs, the following three accounts in the Water Treatment Plant Operations Budget overran their budgeted amount:

- General Supplies & Maintenance Overrun = \$2,902
- Contract Services Overrun = \$5,640
- Equipment Repair Overrun = \$124,434

This request was presented to the Public Works Committee on August 23, 2012, and they approved a recommendation to the City Council for approval of this request. The original approved budget for the 2011-2013 biennium was \$1,275,886.

Councilor Sullivan wanted to clarify a few things. Had these all been brought before Council prior to this?

Mr. Walker stated not all, probably 95/96%.

Councilor Sullivan stated he recognized four or five he didn't have any background on. In the resolution, it stated that these were emergency items; he wanted some time of clarification before voting. Would the Council be opposed to tabling this action pending further review?

Councilor Fox verified that Councilor Sullivan picked out items that were NOT an emergency issue?

Councilor Sullivan stated there was no record that all had come before Council. One was a SCADA laptop set-up for on-call staff. In parenthesis, it stated it would reduce overtime. That was a \$2,308 expense. He had no recollection of that coming before the Council.

Councilor Fox asked if this was tabled, would it harm the City in any way?

Mr. Walker stated none of the accounts were dried up.

Councilor Sullivan David stated another one was a routine maintenance contract. That concerns him, that it had been placed as an emergency item, a \$15K maintenance contract.

Councilor Fox verified that if tabled, it would come back at the next meeting? He would support that.

Councilor Sullivan asked how they paid bills when there wasn't money in the account? What was the process for spending money that hadn't been budgeted?

Lisa Hansen, Finance Director, stated they hadn't reached the end of the two-year budget, so there were still funds there.

Councilor Sullivan verified there were no expenditures in there that overran the budget?

Mr. Walker stated that by his research to date, no.

Councilor Sullivan stated he wanted checks and balances. He wanted a Budget Officer that was going to look and make sure that an item was approved by the Council, and that there was funding allocated. Did Lisa review those?

Ms. Hansen stated that was correct.

Councilor Sullivan stated that all the bills, there was something signed by the Council? When bills went before Council, and it read that a payment was coming out of a specific line, did that give Lisa the authority to move that money? Basically, all the things being approved of by the Council should have already been taken care of.

Ms. Hansen stated they hadn't followed up with paperwork. First, she had zero hours of training as the Finance Director for the City, so she wasn't familiar with the accounting procedures. It appeared that Rachel [Hopper] had done a large annual resolution at the end of each year, making adjustments and corrections to the entire budget.

Councilor Verini wanted to verify that if tabled, it would not prevent any of the checks going out for repairs. This was money that had been spent?

Ms. Hansen stated that was correct.

Larry Sullivan, City Attorney, stated the City of Ontario Financial Policy authorized expenditures under \$5K that hadn't been budgeted, if approved by the City Manager, so there might be some individual projects that were under \$5K that might not be seen by the Council.

Councilor Fugate stated they had appointed a Budget Manager; wasn't that the City Manager?

Councilor Sullivan stated he believed that was correct.

Mary Jo Evers stated it was usually done by the Council at an organization meeting, but it was not in the Charter. Oregon Budget Law required that one be appointment.

Jack Fox moved, seconded by David Sullivan, to table the action until the next Council meeting. Roll call vote: Crume-yes; Fox-yes; Fugate-yes; Jones-yes; Sullivan-yes; Verini-yes; Dominick-out. Motion carried 6/0/1.

CORRESPONDENCE, COMMENTS, AND EX-OFFICIO REPORTS

- Ron Verini stated Oregon had lost another soldier in Afghanistan. A young soldier out of Baker City.
- Dan Jones stated he wanted to comment on what they had tabled earlier. It all stemmed from the budget process a year and half ago. He was trying to set the stage so it didn't happen again. To him, what happened was that the previous City Manager and the Mayor, basically, built the city budget around the Aquatic Center. That was what had gotten Public Works in trouble, and put a lot of pressure on Bob [Walker], and he wanted to get the word out to the new City Manager that it was now September, they had yet to tackle the Aquatic Center, So, tackle it, get it done before the end of the year, so when staff

began working on budget, they would have a clear set of directions to go with it, or they would know what they were going to do with it, so they could have a sound budget that had repairs in place and didn't put everyone in the position they were currently in today.

EXECUTIVE SESSION

Executive Session: ORS 192.660(2)(h)

An executive session was called at 7:23 p.m. under provisions of ORS 192.660(1)(h) to discuss potential or pending litigation. The Council reconvened into regular session at 8:15 p.m.

ADJOURN

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

APPROVED:

ATTEST:

Joe Dominick, Mayor

Tori Barnett, MMC, City Recorder

CONSENT AGENDA
September 17, 2012

TO: Mayor and City Council
FROM: Tori Barnett, MMC, City Recorder
SUBJECT: **APPOINTMENT TO PLANNING COMMISSION**
DATE: September 12, 2012

SUMMARY:

Attached is the following document:

- Letter of Request for Appointment: Max Twombly

Max Twombly has requested appointment to the Planning Commission. There are currently two vacancies on the Commission. The Planning Commission was polled and there were no objections to Mr. Twombly's appointment.

RECOMMENDATION:

Staff recommends appointment of Max Twombly to the Planning Commission with a term of service terminating December 31, 2014.

From: Max and Jennifer <maxandjen@twomblys.com>
To: <tori.barnett@ontariooregon.org>
Date: 8/29/2012 9:31 AM
Subject: Application for Ontario Planning Commission

August 29, 2012

RE: Letter of Application for Ontario Planning Commission

Tori,

My name is Max Twombly and I am interested in filling one of the vacant positions on the Planning Commission. I have lived in the city of Ontario for 11 years and in Malheur County my entire life. I also own Twombly Tile LLC, a tile contracting business here in Ontario. I would like to serve in this position because I am interested in learning how the city functions, as well as being able to help better my community.

Please feel free to contact me with any questions.

I appreciate your consideration of my application.

Max Twombly
293 NW 1st Ave
Ontario, OR 97914
541-212-6873

AGENDA REPORT
Sept. 17, 2012

TO: Mayor and City Council

FROM: Dawn Eden, Engineering Tech.

THROUGH: Jay Henry, City Manager
Bob Walker, Public Works Director

**SUBJECT: RECTANGULAR RAPID FLASH BEACON (RRFB) BID AWARD
2012-2013 ODOT BICYCLE AND PEDESTRIAN PROGRAM GRANT FUNDS
WALKWAY/BIKEWAY PROJECT AGREEMENT NO. 27208, FOR ENHANCED PEDESTRIAN
CROSSINGS AT THREE LOCATIONS
SITE 1: SW 4TH AVENUE AND SW 7TH STREET – SKATE PARK
SITE 2: SW 4TH AVENUE AND SW 24TH STREET – BOYS AND GIRLS CLUB
SITE 3: NORTH OREGON STREET AND NW 8TH AVENUE – MALLARD’S CORNER**

DATE: August 22, 2012

SUMMARY:

Attached are the following documents:

- Oregon Dept. of Transportation Bicycle and Pedestrian Program Grant Award Letter
- Walkway/Bikeway Project Agreement No. 27208, 2012-2013 Pedestrian and Bicycle Program Grant for Enhanced Pedestrian Crossings
- Letter of Support from Brandon Tarvin of Stan’s Heating
- Letter of Support from Chelle Robins, Executive Director of Four Rivers Community School
- Letter of Support from Erin Cunningham, Executive Director of Boys and Girls Club
- RRFB Bid Tabulation

Bids were due August 22, 2012 for the purchase of three RRFB systems for three locations in Ontario: Site 1: SW 4th Avenue and SW 7th Street – Skate Park; Site 2: SW 4th Avenue and SW 24th Street – Boys and Girls Club; and Site 3: North Oregon Street and NW 8th Avenue – Mallard’s corner. Request for quotes were sent to four companies who have been in contact with the City over the past year. The response was as follows:

Company	Bid
Northwest Signal (Oregon)	No Bid
Coral Sales (Oregon)	No Bid
Spot Devices (Nevada)	\$49,390.00
<i>Traffic Safety Supply (Oregon)</i>	<i>\$43,508.00</i>

PREVIOUS COUNCIL ACTION:

April 18, 2011 – City Council approves Intergovernmental Walkway/Bikeway Project Agreement No. 27208, 2012-2013 Pedestrian and Bicycle Program Grant for Ontario Enhanced Pedestrian Crossings between the City of Ontario and the State of Oregon.

August 30, 2012 – City Council requests an update on the RRFB project.

BACKGROUND:

This agreement provides for funding Rapid Flash Beacons at three mid-block crosswalk locations. Funds are being provided by the State of Oregon in the amount of \$207,680 and the City shall provide a match in the amount of \$32,300 in the form of removal and replacement of sidewalk, ADA detectable warning ramps, curb and gutter, center lane medians and asphalt.

This summer, the Public Works Committee asked City staff to make contact with property owners and tenants at all three locations. The response was favorable overall.

After the City received notice that we were successful in the grant application process last year, the police department reported a near miss with a child crossing SW 4th Avenue to get to the charter school.

On August 30, 2011, after school started last fall, there was an accident reported in which an officer stopped for a pedestrian at SW 12th Street and another vehicle rear-ended the officer's car. The officer was taken to the hospital and released.

The following week, on September 8, 2011, a child on a bicycle was hit in the crosswalk at SW 12th Street crossing SW 4th Avenue. The child was not seriously injured.

On April 20, 2012, a pedestrian was crossing SW 4th Avenue at SW 7th Street, toward the Skate Park while walking her bicycle, when a vehicle travelling on SW 4th Avenue in the outside lane started to skid toward her. The child laid down her bicycle in an effort to get out of the way of the vehicle and the bicycle fell on top of her and the child injured her foot. The driver was issued a citation for failure to yield to a pedestrian in the cross walk.

FINANCIAL IMPLICATIONS:

This agreement authorizes up to \$207,680 of grant funds for the specialized pedestrian crossings. The City's share is \$32,300 either in kind or funded from the Bike Path/Pedestrian Reserve Fund.

RECOMMENDATION:

Staff recommends bid award to Traffic Safety Supply, located in Umatilla, Oregon, the lowest, responsive and responsible bidder, in the amount of \$43,508.00.

PROPOSED MOTION:

I move the City Manager be signatory to an agreement with Traffic Safety Supply, located in Umatilla, Oregon, the lowest, responsive and responsible bidder, in the amount of \$43,508.00, for three RRFB crosswalk systems.



Oregon

Theodore R. Kulongoski, Governor

Department of Transportation

Bicycle & Pedestrian Program

4040 Fairview Industrial Dr., MS#5

Salem, OR 97302-1142

Telephone (503) 986-3555

<http://www.oregon.gov/ODOT/HWY/BIKEP/ED/index.shtml>

November 16, 2010

Dawn Eden
Engineering Tech
444 SW 4th Street
Ontario, OR 97914

Subject: ODOT Pedestrian and Bicycle Program 2012-2013 Grant Program Application

Project: Rapid Flashing Beacons (Southwest 4th St. and North Oregon St.)
State share: \$207,680.00
Your share: \$32,300.00

I am pleased to inform you that the Oregon Bicycle and Pedestrian Advisory Committee has approved your request for a bikeway/walkway grant, at the funding level shown above, with the following conditions: Median island required at all crossing locations

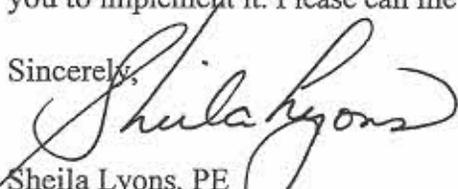
You will be sent an Intergovernmental Agreement for your signature; the IGA will have the following requirements:

1. The first half of the grant (\$207,680.00) will be available July 1, 2011; you must submit a written request for the first half. Design work may begin sooner but would not be considered an eligible grant expense.
2. A set of plans must be submitted to the Bicycle and Pedestrian Program Office for approval before any construction work begins. Projects located on ODOT owned right of way must obtain a permit for work on a state highway thru the ODOT local District office. All design elements are required to comply with the 1995 Oregon Bicycle and Pedestrian Plan.
3. Work should be completed by October 31, 2012 (a later date may be chosen by mutual agreement).
4. Final payment will be released upon completion of the project and inspection by the Bicycle and Pedestrian Program office or an ODOT representative.

Any work on the project started before the Inter-governmental Agreement (IGA) has been signed will be at your expense. We cannot pay for work completed prior to a fully executed IGA. This process should be completed by June 30, 2011.

This project will serve local bicyclists and pedestrians well. We look forward to working with you to implement it. Please call me if you have any questions.

Sincerely,


Sheila Lyons, PE
Bicycle and Pedestrian Program Manager

**WALKWAY/BIKEWAY PROJECT AGREEMENT
2012-2013 Pedestrian and Bicycle Program Grant
Ontario Enhanced Pedestrian Crossings**

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," individually referred to as the "Party" and collectively referred to as the "Parties".

RECITALS

1. North Oregon Street (Business Route US 30), SW 4th Avenue, SW 7th Street, SW 12th Street and NW 8th Street are part of the street system under jurisdiction and control of Agency.
2. By the authority granted in Oregon Revised Statute (ORS) 366.514, funds received from the State Highway Trust Fund are to be expended by the State and the various counties and cities for the establishment of footpaths and bicycle trails. For purposes of Article IX, Section 3(a), of the Oregon Constitution, the establishment and maintenance of such footpaths and bicycle trails are for highway, road, and street purposes when constructed within the public right of way.
3. By the authority granted in ORS 190.110, 366.572 and 366.576, State 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.
4. State established a Pedestrian and Bicycle Program fund in the Statewide Transportation Improvement Program (STIP) to meet the minimum requirement of one (1) percent of State Highway funds to be spent on Pedestrian and Bicycle facilities. The 2010-13 STIP programs \$24.58 million for the Pedestrian and Bicycle Program, allocated to three (3) programs: Grants, Sidewalk Improvement Programs and Quick Fixes.

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 design and construct three crossing improvements, including concrete median islands, striped crosswalks and pedestrian activated flashing beacons, hereinafter referred to as "Project." The location of the

Project is approximately as shown on the sketch map attached hereto, marked "Exhibit A," and by this reference made a part hereof.

2. Agency has determined that the actual total cost of the Project is estimated to be \$239,980.00. State shall fund the Project in an amount not to exceed \$207,680.00. Agency shall provide a match in the amount of \$32,300.00 and shall be responsible for any portion of the Project which is not covered by State funding.
3. The work is to begin upon execution of this Agreement by all Parties and be completed no later than October 31, 2013. This Agreement shall terminate upon completion of construction and final payment, or five calendar years from date of final signature of this Agreement, whichever is sooner, unless extended by a fully executed amendment. Maintenance responsibilities shall survive any termination of this Agreement.

AGENCY OBLIGATIONS

1. Agency shall notify State when it is prepared to proceed with the development of Project to initiate State's initial fifty (50) percent deposit, as listed under State Obligations, Paragraph 2.
2. Agency shall conduct the necessary field surveys, prepare plans and contract documents, advertise for bid proposals, award all contracts, and supervise construction of the Project.
3. Agency shall submit a copy of the plans and specifications to State through the State's Pedestrian and Bicycle Program Manager for review and concurrence prior to advertising for a construction contract or prior to construction, if Agency forces will perform the construction work. Concurrence must be received from State prior to proceeding with the Project. The Project design, signing, and marking shall be in conformance with the current Oregon Bicycle and Pedestrian Plan and shall comply with the most current Americans with Disabilities (ADA) guidelines.
4. Agency shall, upon completion of Project, submit to State Pedestrian and Bicycle Program Manager an itemized statement of the final actual total cost of the Project.
5. Agency shall comply with all federal, state, and local laws, regulations, executive orders and ordinances applicable to the work under this Agreement, including, without limitation, the provisions of ORS 279C.505, 279C.515, 279C.520, 279C.530 and 279B.270 incorporated herein by reference and made a part hereof; Without limiting the generality of the foregoing, Agency expressly agrees to comply with (i) Title VI of Civil Rights Act of 1964; (ii) Title V and Section 504 of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659A.142; (iv) all regulations and administrative rules established pursuant to the foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.

6. Agency shall not enter into any subcontracts for any of the work scheduled under this Agreement without obtaining prior written approval.
7. If Agency enters into a construction contract for performance of work on the Project, then Agency will require its contractor to provide the following:
 - a. Contractor shall indemnify, defend and hold harmless State from and against all claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature whatsoever resulting from, arising out of, or relating to the activities of Contractor or its officers, employees, sub-contractors, or agents under the resulting contract.
 - b. Contractor and Agency shall name State as a third party beneficiary of the resulting contract.
 - c. Commercial General Liability. Contractor shall obtain, at Contractor's expense, and keep in effect during the term of the resulting contract, Commercial General Liability Insurance covering bodily injury and property damage in a form and with coverages that are satisfactory to State. This insurance will include personal and advertising injury liability, products and completed operations. Coverage may be written in combination with Automobile Liability Insurance (with separate limits). Coverage shall be written on an occurrence basis. If written in conjunction with Automobile Liability, the combined single limit per occurrence will not be less than \$1,000,000 for each job site or location. Each annual aggregate limit shall not be less than \$2,000,000.
 - d. Automobile Liability. Contractor shall obtain, at Contractor's expense, and keep in effect during the term of the resulting contract, Commercial Business Automobile Liability Insurance covering all owned, non-owned, or hired vehicles. This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits). Combined single limit per occurrence will not be less than \$1,000,000.
 - e. Additional Insured. The liability insurance coverage, except Professional Liability, Errors and Omissions, or Workers' Compensation, if included, required for performance of the resulting contract will include State and its divisions, officers and employees as Additional Insured but only with respect to the Contractor's activities to be performed under the resulting contract. Coverage will be primary and non-contributory with any other insurance and self-insurance.
 - f. Notice of Cancellation or Change. There shall be no cancellation, material change, potential exhaustion of aggregate limits or non-renewal of insurance coverage(s) without thirty (30) days written notice from

Contractor or its insurer(s) to State. Any failure to comply with reporting provisions of this clause will constitute a material breach of the resulting contract and will be grounds for immediate termination of the resulting contract and this Agreement.

8. Agency shall require its contractor(s) and subcontractor(s) that are not units of local government as defined in ORS 190.003, if any, to indemnify, defend, save and hold harmless the State of Oregon, Oregon Transportation Commission and its members, Department of Transportation and its officers, employees and agents from and against any and all claims, actions, liabilities, damages, losses, or expenses, including attorneys' fees, arising from a tort, as now or hereafter defined in ORS 30.260, caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Agency's contractor or any of the officers, agents, employees or subcontractors of the contractor("Claims"). It is the specific intention of the Parties that the State shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the State, be indemnified by the contractor and subcontractor from and against any and all Claims.
9. Any such indemnification shall also provide that neither the Agency's contractor and subcontractor nor any attorney engaged by Agency's contractor and subcontractor 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's contractor is prohibited from defending the State of Oregon, or that Agency's contractor 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 claims it may have against Agency's contractor if the State of Oregon elects to assume its own defense.
10. Agency shall be responsible for all costs not covered by State funding. State funding is limited to \$207,680.00.
11. Agency shall be responsible for all costs and expenses related to its employment of individuals to perform the work under this Agreement, including but not limited to, retirement system contributions, workers' compensation, unemployment taxes, and state and federal withholdings.
12. Agency acknowledges and agrees that State, the Oregon Secretary of State's Office, the federal government, and their duly authorized representatives shall have access to the books, documents, papers, and records of Agency which are directly pertinent to the specific Agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of six (6) years after final payment. Copies of applicable records shall be made available upon request. Payment for costs of copies is reimbursable by State.

13. 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.
14. All employers, including Agency, that employ subject workers who work under this Agreement in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage unless such employers are exempt under ORS 656.126. Agency shall ensure that each of its subcontractors complies with these requirements.
15. Agency shall, upon completion of Project, maintain the Project at its own cost and expense, and in a manner satisfactory to State.
16. Agency's Project Manager for this Project is Dawn Eden, Engineering Tech, 444 SW 4th Street, Ontario, OR 97914, 541-881-3237, or assigned designee upon individual's absence. Agency shall notify the other Party in writing of any contact information changes during the term of this Agreement.
17. During project construction, Agency shall post signs that credit funding by a Grant from the Oregon Department of Transportation – Pedestrian and Bicycle Program.
18. Agency shall obtain pedestrian and bicycle traffic counts in the Project area prior to construction of Project and at a similar time of year after completion of Project construction. Agency shall provide State copies of count data.

STATE OBLIGATIONS

1. State's Pedestrian and Bicycle Program shall review and must concur in the plans prepared by Agency before the Project is advertised for a construction contract or before construction begins if Agency forces shall perform the work. State's Pedestrian and Bicycle Program office shall process all invoices submitted by Agency.
2. Upon receipt of notification that the Agency is prepared to proceed with the development of Project, State shall deposit with Agency the sum of \$103,840.00, such amount being equal to fifty (50) percent of the State's share of the estimated Project costs. Upon completion of Project, inspection and approval by State staff, and receipt from Agency of an itemized statement of the actual total cost of the Project, State shall deposit with Agency a final payment, the sum of \$103,840.00, such amount being equal to fifty (50) percent of the State's share of the estimated Project costs. When added to the initial deposit, the final deposit will equal the State's share of the originally estimated Project cost of \$239,980.00. Should final Project costs exceed the original estimate, extra costs shall be borne by Agency; the maximum amount of State reimbursement is \$207,680.00. If final Project costs are less than the original estimate, State shall deposit with Agency a final payment in an amount which, when

added to the initial deposit, would equal the State's proportionate share of the originally estimated costs, based on a percentage calculated using State share and local match.

3. 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 current biennial budget.
4. State's Project Manager for this Project is Sheila Lyons, Pedestrian and Bicycle Program Manager, 4040 Fairview Industrial Drive SE MS # 5, Salem OR 97302, 503-986-3555, Sheila.A.Lyons@odot.state.or.us, or assigned designee upon individual's absence. State shall notify the other Party 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 10 days or such longer period as State may authorize.
 - c. If Agency fails to provide payment of its share of the cost of the Project.
 - d. 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.
 - e. 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 shall not prejudice any rights or obligations accrued to the Parties prior to termination. If any funds are remaining from the advance deposit, they shall be refunded to State.

4. If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third Party Claim") against State or Agency with respect to which the other Party may have liability, the notified Party must promptly notify the other Party in writing of the Third Party Claim and deliver to the other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Each Party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by a Party of the notice and copies required in this paragraph and meaningful opportunity for the Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to that Party's liability with respect to the Third Party Claim.
5. With respect to a Third Party Claim for which the State is jointly liable with the Agency (or would be if joined in the Third Party Claim), the State shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by the Agency in such proportion as is appropriate to reflect the relative fault of the State on the one hand and of the Agency on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of the State on the one hand and of the Agency on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. The State's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if the State had sole liability in the proceeding.
6. With respect to a Third Party Claim for which the Agency is jointly liable with the State (or would be if joined in the Third Party Claim), the Agency shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by the State in such proportion as is appropriate to reflect the relative fault of the Agency on the one hand and of the State on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of the Agency on the one hand and of the State on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. The Agency's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if it had sole liability in the proceeding.

7. The Parties shall attempt in good faith to resolve any dispute arising out of this Agreement. In addition, the Parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation.
8. This Agreement may be executed in several counterparts [facsimile or otherwise] all of which when taken together shall constitute one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of this Agreement so executed shall constitute an original.
9. This Agreement and attached exhibits constitute the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either Party unless in writing and signed by both Parties and all necessary State approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of a Party to enforce any provision of this Agreement shall not constitute a waiver by a Party of that or any other provision.

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

The Oregon Transportation Commission on May 20, 2009 approved Delegation Order No. 3, which authorizes the Director and Deputy Director, Highways to approve and execute all agreements pertaining to OTC approved local grant program agreements for bicycle and pedestrian projects.

On July 7, 2005 the Director and Deputy Director, Highways approved Subdelegation Order No. 4, in which the Director and Deputy Director, Highways, delegates authority to the Technical Services Manager/Chief Engineer to approve and execute all agreements pertaining to OTC approved local grant program agreements for bicycle and pedestrian projects.

Signature Page to Follow

State / City of Ontario
Agreement No. 27208

CITY OF ONTARIO, by and through its
elected officials

By [Signature]

Date May 2, 2011

By _____

Date _____

APPROVED AS TO LEGAL
SUFFICIENCY

By [Signature]
City Counsel

Date 5/4/2011

Agency Contact:
Dawn Eden
Engineering Tech
444 SW 4th Street
Ontario, OR 97914
541-881-3237
dawn.eden@ontariooregon.org

State Contact:
Sheila Lyons, PE, ODOT Pedestrian &
Bicycle Program Manager
4040 Fairview Industrial Drive SE MS #5
Salem OR 97302
503-986-3555
Sheila.A.Lyons@odot.state.or.us

STATE OF OREGON, by and through
its Department of Transportation

By [Signature]
Technical Services Manager/Chief
Engineer

Date 5-18-11

APPROVAL RECOMMENDED

By [Signature]
Pedestrian/Bicycle Program Manager

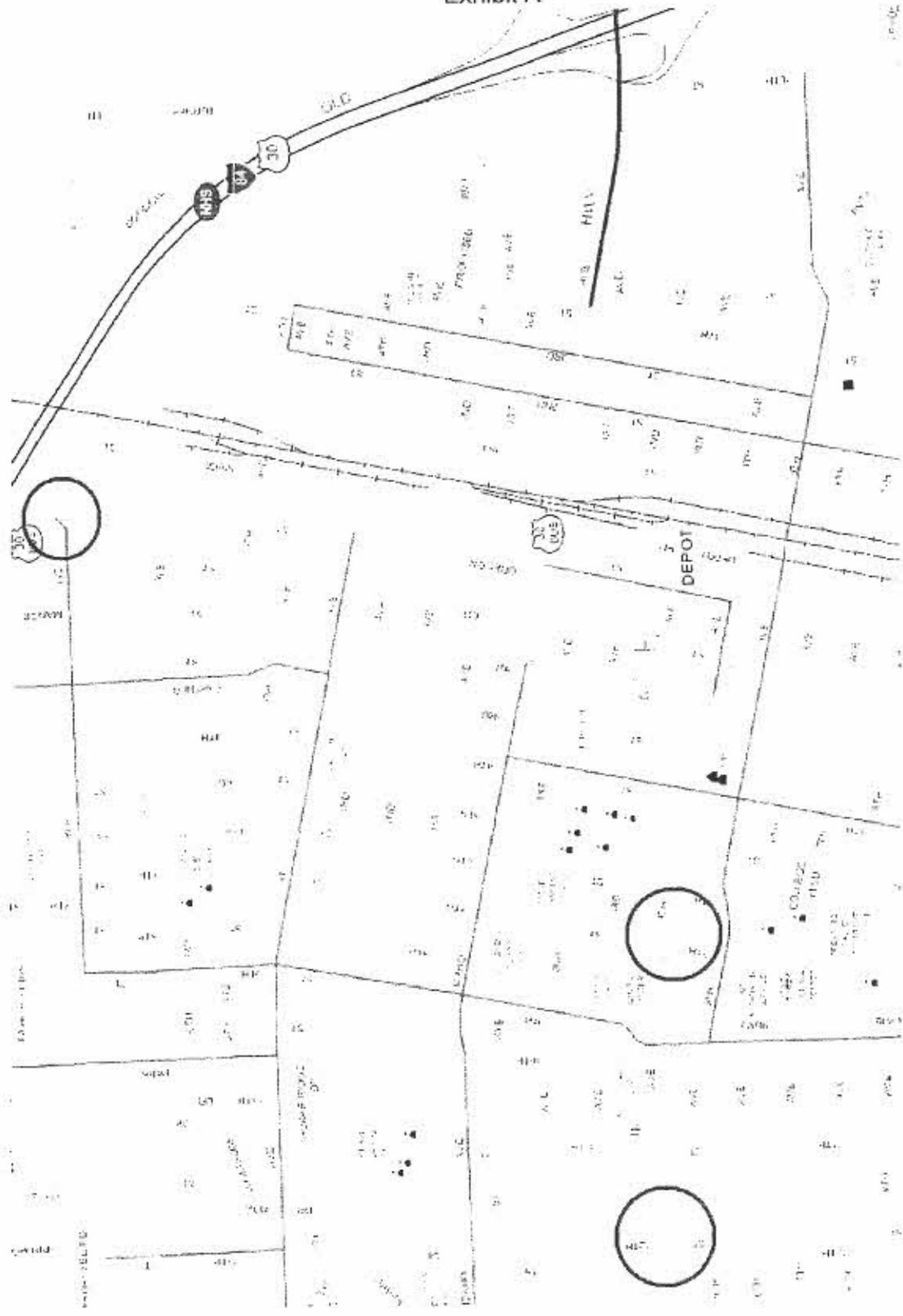
Date 17 May '11

APPROVED AS TO LEGAL
SUFFICIENCY

By [Signature]
Assistant Attorney General

Date: 5/11/11

Exhibit A



Dawn Eden - FW: Crosswalk

From: "Helen Dickinson" <shamrockagency@hanigan.com>
To: "Dawn Eden" <Dawn.Eden@ontariooregon.org>
Date: 6/13/2011 2:08 PM
Subject: FW: Crosswalk

Hi Dawn,
Here is a letter of support from Brandon Tarvin from Stans Heating in Ontario.
Feel free to call him if you have any questions or if anyone on the budget committee
has any. He is more than willing to answer them.
Thanks
Helen

On Mon, Jun 13, 2011 at 10:16 AM, Brandon Tarvin <tarvin01@gmail.com> wrote:
To whom it may concern,

In my opinion, there needs to be traffic control in place for the four rivers school on s.w.4th ave. A crosswalk, control light, or a stop light, would be of great value. I myself have had close encounters with kids there, even with a school zone speed limit. The addition of any of these items would help with any future issues. As far as cost, I personally feel as though the people and businesses of the community would likely support it, if they understand that it could save children's lives. After all, no one wants to ever deal with an accident, especially a fatal accident. I support, in every way, the traffic control for the school. Thank you.

Brandon Tarvin
(208)-695-6894

Dawn Eden - crosswalk

From: "Chelle Robins" <Chelle@4riverscs.org>
To: <dawn.eden@ontariooregon.org>
Date: 6/1/2011 2:12 PM
Subject: crosswalk

Hello Dawn,

Thank you so much for considering a crosswalk with Rapid Flashing Beacons located near the Boys and Girls Club and Four Rivers Community School. Since moving to this location three years ago, I have been very worried about students that live in the Ontario Villa and Sundown Apartments and have to cross the highway to come to our school or attend Boys and Girls Club. We have had a very hard time getting drivers to slow down in our school zone due to the location and heavy traffic. We have worked with the City of Ontario and are very grateful that we could partner to purchase "SCHOOL" road lettering that has really helped slow down traffic in our area.

Unfortunately, people are still not used to having children cross the highway in this location and on May 19th, we had a near miss witnessed by a teacher that was walking a group of students to the Boys and Girls Club. A middle school student and his sister needed to cross the highway to get to their apartment. All of the traffic had stopped and the children began to cross. Like I have seen many times on SW 4th, one car didn't see why everyone was stopped and nearly hit the 8 year old. This is too close and too dangerous to continue. Our school serves 246 students and the Boys and Girls Club serves approximately 75-100 students daily.

I really appreciate your consideration in making the West end of SW 4th Ave safer for children and families!

Chelle Robins, Executive Director

Four Rivers Community School
2449 SW 4th Ave.
Ontario, OR 97914
P 541.889.3715
www.4riverscs.org



BOYS & GIRLS CLUB
OF THE WESTERN TREASURE VALLEY

June 30, 2012

To Whom it May Concern:

We would like to voice our support and thank you for considering a crosswalk with Rapid Flashing Beacons located near Four Rivers Community School, Valley Family Health, and the children heavy neighborhoods along SW 4th Ave.

Many families with children live in the Ontario Villa and Sundown Apartments and have to cross the highway to attend school, go shopping, or visit the Boys & Girls Club. As you know SW 4th is a main thoroughfare through town and many drivers do not adhere to the school zone speed limit.

The addition of Rapid Flashing Beacons would alert drivers to the presence of pedestrians and give children a safe crossing zone over the highway. The west end of SW 4th Ave. would be a safer street for pedestrians and drivers alike.

I appreciate your consideration of making SW 4th Ave. safer for everyone.

Sincerely,



Erin Cunningham, Executive Director

Boys & Girls Club of the Western Treasure Valley
2441 SW 4th Ave.
Ontario, OR 97914
P 541.889.7979
www.bgcwv.org



City of Ontario

444 SW 4th Street
Ontario, OR 97914

Equipment Purchase Bid or Quote Tracking Form

Item: 13STR-02 PED Grant - RRFB

Item On State Bid List? Yes No

City Representative: Bret Turner

Budgeted Amount: \$109,400.00

Date: 08/22/12

Line Item: 010-038-714171 \$207,680 (Grant Fund)

Line Item: 055-115-714171 \$32,300 (Bike Path)

Vendor #1 Name: Northwest Signal

Contact Person: Jon Meusch

Email: jon.meusch@nwsignal.com

First Attempt: Contact Date: 8/8/12 Contact Time: 11:19 AM Response? Yes No

Second Attempt: Contact Date: _____ Contact Time: _____ Response? Yes No

Bid Attached? Yes No Verbal Quote? Written Quote? Amount: n/a

Vendor #2 Name: Coral Sales

Contact Person: Kristen Umbras

Email: kristen@coralsales.com

First Attempt: Contact Date: 8/8/12 Contact Time: 11:19 AM Response? Yes No

Second Attempt: Contact Date: _____ Contact Time: _____ Response? Yes No

Bid Attached? Yes No Verbal Quote? Written Quote? Amount: n/a

Vendor #3 Name: Spot Devices

Contact Person: Dustin Hinds

Email: dustinh@spotdevices.com

First Attempt: Contact Date: 8/8/12 Contact Time: 11:19 AM Response? Yes No

Second Attempt: Contact Date: _____ Contact Time: _____ Response? Yes No

Bid Attached? Yes No Verbal Quote? Written Quote? Amount: \$49,390.00

Vendor #4 Name: Traffic Safety Supply

Contact Person: Amy Sanchez

Email: asanchez@tssco.com

First Attempt: Contact Date: 8/8/12 Contact Time: 11:19 AM Response? Yes No

Second Attempt: Contact Date: _____ Contact Time: _____ Response? Yes No

Bid Attached? Yes No Verbal Quote? Written Quote? Amount: \$43,508.00

**CITY OF ONTARIO
Request for Quotation
Inquiry Only - This Is Not an Order**

Requested By: **Bret Turner** Date: **8/6/2012**
 City of Ontario Phone No.: **541-889-8572**
 444 SW 4th Street Fax **541-889-3488**
 Ontario OR 97914

On this form, please quote your best price, terms, and delivery on the items described below.
 Substitute offers will be considered if differences in specifications are explained on this form or submit separate letter.

Return this completed form to: Brett Turner to the address above by Wed., August 22, 2012 by 2 PM.

Vendor Information/Quotation Information

Vendor: **Spot Devices**

Name/Signature: Thomas Burnham 
 Official Title: Vice President, Services
 Date: 8/21/12 Terms: Net 30
 F.O.B.: Factory Shipment Via: Best Way
 Shipping Weight: 2300 lbs. Date Shipment can be Made: 6-8 weeks ARO
 Shipping not included. Estimated shipping cost \$1450

Quantity	Description	Unit Price	Amount
L.S.	Rectangular Rapid Flash Beacons - three locations plus one advanced warning beacon	\$49,390.00	\$49,390.00

**CITY OF ONTARIO
Request for Quotation
Inquiry Only - This Is Not an Order**

Requested By:

Bret Turner

Date:

8/6/2012

Phone No.:

541-889-8572

Fax

541-889-3488

City of Ontario
444 SW 4th Street
Ontario OR 97914

On this form, please quote your best price, terms, and delivery on the items described below.

Substitute offers will be considered if differences in specifications are explained on this form or submit separate letter.

Return the completed form **Attn: Bret Turner** to the address above by **Wed., August 22, 2012 by 2 PM.**

Vendor Information/Quotation Information

Vendor: Traffic Safety Supply Co.

Name/Signature: Amy Sanchez (Amy Gomez)

Official Title: Sales Representative

Date: August 21, 2012

Terms: net 30

F.O.B.: Ontario, OR

Shipment Via: Truck

Shipping Weight: 2000 lbs

Date Shipment can be Made: 30 days from acceptance

Quantity	Description	Unit Price	Amount
L.S.	Rectangular Rapid Flash Beacons - three locations plus one advanced warning beacon	\$43,508	\$43,508 ⁰⁰

* Please see attached letter along with specifications for items provided in bid.

AGENDA REPORT - PUBLIC HEARING

September 17, 2012

TO: Mayor and City Council

FROM: Larry Sullivan, City Attorney

THROUGH: Jay Henry, City Manager

SUBJECT: RESOLUTION 2012-120 ESTABLISHING A SYSTEM DEVELOPMENT CHARGE FOR AIRPORT HANGARS

DATE: September 10, 2012

SUMMARY:

Attached is the following document:

- Resolution 2012-120

BACKGROUND:

System Development Charges (SDCs) are one-time fees charged to new development to help pay a portion of the costs associated with building capital facilities to meet needs created by growth. The SDC fee schedule previously approved by the City Council includes a fee for the construction of warehouses but not for airport hangars. The Public Works Department proposes that a separate fee should be used for the construction of airport hangars, because the burden imposed on the City's transportation infrastructure is smaller (i.e. less traffic is generated) for airport hangars than it is for warehouses. The issue was reviewed by the Public Works Committee, which recommended that the City Council adopt an SDC fee of \$142 per thousand square feet gross floor area (TSFGFA) for airport hangars instead of continuing to impose the SDC fee for warehouses of \$708 TSFGFA. This new fee was based on a review of comparable SDC fees charged by other cities for airport hangars.

Because this is a modification of the City's SDC rate structure, Oregon law and the City Code require that the City Council have a public hearing on the modification to take public input about the proposed modification. The City maintains a list of persons who requested notice about proposed SDC modifications, and notices of the proposed modification have been given to those persons more than 90 days before the scheduled hearing.

RECOMMENDATION:

Staff recommends adoption of Resolution 2012-120.

PROPOSED MOTION:

"I move the Mayor and City Council adopt Resolution No. 2012-120."

Resolution 2012-120

**A RESOLUTION ESTABLISHING
A SYSTEM DEVELOPMENT CHARGE
FOR AIRPORT HANGARS**

- WHEREAS,** Section 8-13-4(c) of the Ontario City Code authorizes the City to establish an improvement fee system development charge (SDC) by resolution; and
- WHEREAS,** Under the City's SDC current rate resolution, airport hangars are categorized as warehouses, which generate substantially more vehicular traffic than airport hangars and create more of a burden on the City's transportation system; and
- WHEREAS,** On February 16, 2012, the Public Works Committee recommended that the City Council establish a transportation SDC for the construction of airport hangars based on the rates charged by comparable cities, as stated in the staff reports prepared for Public Works Committee and the minutes of the Public Works Committee; and
- WHEREAS,** The City gave the notice required by ORS 223.304(7)(a) by providing written notice to persons requesting such notice more than 90 days before the establishment of an SDC; and
- WHEREAS,** The City satisfied the requirement of ORS 223.304(7)(a) that the methodology supporting an SDC be made available at least 60 days before the first hearing preceding the establishment of the SDC.

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

- 1) A transportation SDC is hereby established for airport hangars as a new category of development at the rate of \$142 per thousand square feet gross floor area (TSFGFA).

EFFECTIVE DATE: Immediately upon passage.

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

Ayes:

Nays:

Absent:

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

ATTESTED:

Joe Dominick, Mayor

Tori Barnett, MMC, City Recorder

AGENDA REPORT - PUBLIC HEARING

September 17, 2012

TO: Mayor and City Council

FROM: Larry Sullivan, City Attorney

THROUGH: Jay Henry, City Manager

SUBJECT: ORDINANCE NO. 2671-2012 AMENDING SECTIONS 8-13-2 AND 8-13-6 CONCERNING SYSTEM DEVELOPMENT CHARGE EXEMPTIONS FOR REAL PROPERTY THAT WAS SUBJECT TO PREVIOUS USE-FIRST READING

DATE: September 10, 2012

SUMMARY:

Attached is the following document:

- Ordinance No. 2671-2012

BACKGROUND:

Ontario City Code Title 13, Chapter 8 regulates the imposition of system development charges (SDCs) for new development within the City. The current Code provisions were enacted in 2008. The Public Works Committee recommends that certain changes be made in the City Code pertaining to SDC charges for development on real property that was subject to previous use. The effect of the ordinance changes to Section 8-13-2 and 8-13-6(c) will be to allow the Public Works Director to grant exemptions for sewer and water SDCs based on the previous use of the property, even if the property has not been used for the past 18 months, so long as the property has not been vacant for more than ten years.

Proposed Code Section 8-13-6(c) Amendment: Code Section 8-13-6(c) gives the Public Works Director the discretion to grant an exemption from SDC fees if the new development will not create demands on City infrastructure greater than those of the previous use of the property. The Public Works Committee recommends a modification of Code Section 8-13-6(c), to provide that a sewer or water SDC exemption be allowed only if the property has not been vacant for more than ten years. With the proposed change in Section 8-13-6(c), a property that is vacant for more than ten years will have to pay a sewer and water SDC for new development, regardless of what the property was used for previously.

Proposed Code Section 8-13-2 "Previous Use" Definition Amendment: As noted above, Section 8-13-6(c) gives the Public Works Director the discretion to grant an exemption from SDC fees if the new development will not create demands on City infrastructure greater than those of the previous use of the property. The definition of "previous use" is in Section 8-13-2. As currently

defined, the Public Works Director is to consider what the property has been used for in the past 18 months to determine the “previous use” of the property for the purpose of granting the SDC exemption. Staff has had situations in which property has been vacant or unused for more than 18 months, and the Code hasn’t provided a way to determine “previous use” under those circumstances. Staff requests and the Public Works Committee recommends an amendment that will allow staff to consider the last use of the property as the “previous use” even if the property has not been used for more than 18 months. In addition, the Public Works Committee also recommended that the “previous use” definition be clarified for certain properties, such as a mall, that may be used for more than one purpose.

A public hearing has been scheduled for these ordinance changes, because they might arguably result in a modification of the City’s SDC rate structure. The City maintains a list of persons who requested notice about proposed SDC modifications, and notices of the proposed modification have been given to those persons more than 90 days before the hearing.

RECOMMENDATION:

Staff recommends the Council approve a first reading of Ordinance No. 2671-2012.

PROPOSED MOTION:

“I move the Mayor and City Council approve a first reading of Ordinance No. 2671-2012, AN ORDINANCE AMENDING SECTIONS 8-13-2 AND 8-13-6 CONCERNING SYSTEM DEVELOPMENT CHARGE EXEMPTIONS FOR REAL PROPERTY THAT WAS SUBJECT TO PREVIOUS USE.”

ORDINANCE NO. 2671-2012

AN ORDINANCE AMENDING SECTIONS 8-13-2 AND 8-13-6 CONCERNING
SYSTEM DEVELOPMENT CHARGE EXEMPTIONS FOR
REAL PROPERTY THAT WAS SUBJECT TO PREVIOUS USE

- WHEREAS, Ontario City Code Section 8-13-2 includes a definition of “previous use” in subsection (s) that is used to determine the Public Works Director’s authority to issue exemptions from certain system development charges for real property that was subject to previous use; and
- WHEREAS, On February 16, 2012, the Public Works Committee recommended that Section 8-13-2(s) be amended to clarify how “previous use” is to be determined for vacant real property that is subject to system development charges; and
- WHEREAS, Section 8-13-6 authorizes the Public Use Director to issue exemptions from system development charges for real property that meets the definition of “previous use”; and
- WHEREAS, On February 16, 2012, the Public Works Committee recommended that Section 8-13-6 be amended to restrict the granting of exemptions for sewer or water of system development charge for parcels of real property that have been vacant for more than ten years; and
- WHEREAS, The City gave the notice required by ORS 223.304(7)(a) by providing written notice to persons requesting such notice more than 90 days before a modification of a system development charge; and
- WHEREAS, The City satisfied the requirement of ORS 223.304(7)(a) that the methodology supporting a modification of a system development charge be made available at least 60 days before the first hearing preceding a system development charge modification.

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

Section 1. Section 8-13-2 of Chapter 13 of Title 8 of the Ontario City Code is hereby amended by deleting those portions that are stricken and by adding those portions that are underlined:

PREVIOUS USE means the most intensive use conducted at a particular property within the past 18 months prior to the date of application for a permit. Where the site was used simultaneously for several different uses (~~mixed use such as, for example, mixed uses in a mall complex~~) then, for the purposes of this Ordinance, all of the specific use categories shall be considered. Where the previous use is composed of a primary use with one or more ancillary uses that support the primary use and are owned and operated in common, that primary use shall be deemed to be the sole use of the property for purposes of this Ordinance. If the property has been vacant and unused for more than 18 months then the last known use shall be relied on as the previous use.

SECTION 2. Section 8-13-6 of Chapter 13 of Title 8 of the Ontario City Code is hereby amended by deleting those portions that are stricken and by adding those portions that are underlined:

8-13-6 Partial and Full Exemptions.

The uses listed and described in this Section 8-13-6 shall be exempt, either partially or fully, from payment of the SDC. Any Applicant seeking an exemption under this Section shall specifically request that exemption no later than the time of application for the Permit. Where development consists of only part of one or more of the uses described in this Section, only that portion of the development that qualifies under this Section is eligible for an exemption. The balance of the development which does not qualify for any exemption under this Section shall be subject to the full SDC. Should the Applicant dispute any decision by the City regarding an exemption request, the Applicant must apply for an Alternative Exemption calculation under Section 8-13-8 Alternative Calculation for SDC Rate, Credit or Exemption. The Applicant has the burden of proving entitlement to any exemption so requested.

(a) Temporary uses are fully exempt so long as the use will not exist for more than 180 days within a 12 month period.

(b) Alteration permits for tenant improvements are fully exempt.

(c) Development which, in the Administrator's opinion, will not create demands on the system greater than those of the previous use of the property, as defined in Section 8-13-2, are is fully exempt. If the property has been vacant and unused for a period of more than ten (10) years, the Administrator shall not approve a previous use exemption from a sewer or water system development charge.

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

AYES:

NAYS:

ABSENT:

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

ATTEST:

Joe Dominick, Mayor

Tori Barnett, MMC, City Recorder