

AGENDA
CITY COUNCIL - CITY OF ONTARIO, OREGON

October 4, 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 29, 2010, and a study session was held on Thursday, September 30, 2010. Copies of the Agenda are available at the City Hall Customer Service Counter and on the city's website at www.ontariooregon.org.

3) Motion to adopt the entire agenda

4) Local Contract Review Board

A) Resolution #2010-143: Revise Financial Polices Manual for Personal Services Contracts 1-7

5) Consent Agenda: Motion Action Approving Consent Agenda Items

A) Approval of Minutes of Regular Meeting of 09/20/10 8-11
B) Proclamation: Oregon Days of Culture 12
C) Approval of the Bills

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

7) Old Business

A) Ordinance #2648-2010: Amend OMC 7-1 re: Nuisance Provisions (Final Reading) 13-18

8) New Business

A) Resolution #2010-148: Accept Amendment #1 of Connect Oregon II Grant Agreement #24941 for the Ontario Airport Pavement Improvement Project 19-61
B) Resolution #2010-149: Receive ODOT Connect Oregon Grant for Ontario Municipal Airport and Appropriating Revenue and Expense Budgets within City's Grant Fund 62-64
C) Resolution #2010-150: Authorize Application to ODOT for a Transportation Enhancement Program Grant w/10.27% City Match if Awarded 65-75
D) Agreement Between City and Kimley-Horn for Additional Engineering Services for Airport Improvement Project 3-4-0044-009 76-113

9) Public Hearing:

A) Ordinance #2650-2010: Annexation and Rezone of Property (Presbyterian Community Care Center) 2431 NW 4th Avenue - UGA Residential to RM-10 High Density Residential (1st Reading) 114-124

10) Discussion Item(s): Thursday

A) Web Site Presentation
B) Update Concerning Local Sale of "Spice"

11) Correspondence, Comments and Ex-Officio Reports

12) Adjourn

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

The City of Ontario does not discriminate in providing access to its programs, services and activities on the basis of race, color, religion, ancestry, national origin, political affiliation, sex, age, marital status, physical or mental disability, or any other inappropriate reason prohibited by law or policy of the state or federal government. Should a person need special accommodations or interpretation services, contact the City at 889-7684 at least one working day prior to the need for services and every reasonable effort to accommodate the need will be made. T.D.D. available by calling 889-7266.

AGENDA REPORT (LOCAL CONTRACT REVIEW BOARD)

October 4, 2010

TO: Mayor and City Council

FROM: Larry Sullivan, City Attorney

THROUGH: Henry Lawrence, City Manager

SUBJECT: RESOLUTION #2010-143: A RESOLUTION REVISING FINANCIAL POLICIES MANUAL FOR PERSONAL SERVICES CONTRACTS

DATE: September 19, 2010

SUMMARY:

Attached are the following documents:

- Resolution #2007-146
- Resolution #2010-143

This resolution changes the wording in the Ontario Financial Policies Manual for personal services contracts so that they do not need to be reviewed by the City Council.

PRIOR COUNCIL ACTION

December 17, 2007 The City Council passed Resolution #2007-146

DISCUSSION

When the City enters into public contracts for the purchase of goods or services it must comply with the Oregon Public Contracting Code (ORS Chapters 279A through 279C) and the Ontario Financial Policies and Procedures Manual (“the Financial Policies Manual”), which the City Council adopted in 2004. As a general rule, public contracts are subject to competitive bidding. Section 1.8(7)(1.) of the 2004 version of the Financial Policies Manual originally designated a class of contracts called “professional contracts” as being exempt from the competitive bidding process. That section had a list of entities falling within the class of “professional contracts”, such as contracts with attorneys, bond counsel, etc.

The Oregon Public Contracting Code does not have a classification called “professional contracts” that are exempt from competitive bidding. Instead ORS 279C.055C of the Oregon Public Contracting Code exempts contracts identified as “personal services contracts” by a local contract review board from the competitive bidding requirements.

In 2007, the Council adopted Resolution #2007-146 to change the name of “professional contracts” to “personal services contracts” and define the meaning of “personal services contracts”. That resolution also gave the City Council, acting as a local contract review board, the “sole discretion” to determine whether a particular personal services contract was exempt from competitive bidding and whether bids should be solicited for contract.

In practice, Resolution #2007-146 requires staff to bring each personal services contract to the City Council as a local contract review board to determine whether it should be exempt from the competitive bidding requirements, even if it is with one of the entities listed. This is an extra step that was not required in the original Financial Policies Manual. Resolution #2010-143 eliminates this extra step. Under Resolution #2010-143, contracts will be brought to the City Council to identify as “personal services contracts” only if they are with entities not listed in Resolution #2010-143. Resolution #2010-143 also adds “architects” to the list of entities.

Because ORS 279C.055 requires a local contract review board to determine whether a class of contracts are personal services contracts, the Council must act as a local contract review board in order to adopt Resolution #2010-143.

STAFF RECOMMENDATION:

Staff recommends the Council adopt Resolution #2010-143 in order to streamline the bidding process for personal services contracts. If the Council prefers to review such contracts to determine whether bids should be solicited for those contracts, the Council should not adopt Resolution #2010-143.

PROPOSED MOTION:

1) “I move that the Mayor and City Council, sitting as a local contract review board, approve **RESOLUTION #2010-143, A RESOLUTION REVISING FINANCIAL POLICIES MANUAL FOR PERSONAL SERVICES CONTRACTS.**”

RESOLUTION 2007-146
A RESOLUTION REVISING FINANCIAL POLICIES MANUAL
FOR PERSONAL SERVICES CONTRACTS

Whereas, On April 19, 2004, the City Council in Resolution No. 2004-11 adopted the Financial Policies and Procedures Manual for the City of Ontario; and

Whereas, Section 1.8(7.)(1.) of the Purchasing Policy on page 22 of the Manual provides an exemption from competitive bidding for professional services contracts; and

Whereas, Oregon's public contracting statutes exempt personal services contracts from competitive bidding but do not specifically refer to professional services contracts, this Section should be revised to bring it into compliance with Oregon law; to include a definition of personal services contracts; and to allow the City Council to determine how personal services should be solicited by the City.

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

1. Section 1.8(7.)(1.) of the City's Financial Policies and Procedures Manual is revised to read as follows:

1.8 Purchasing

7. Exemptions from the Public Bidding Process

1. Personal Services Contracts

This Purchasing Policy shall not apply to personal services contracts, and the public bidding requirements shall not be mandatory in the employment of contractors providing personal services as defined herein. "Personal Services" are those services that require specialized technical, creative, professional or communication skills or talents, unique and specialized knowledge, or the exercise of discretionary judgment, and for which the quality of the service depends on attributes that are unique to the service provider. The Ontario City Council, acting as a local contract review board, may in its sole discretion determine whether a particular contract is a personal services contract exempt from the public bidding process. After making that determination, the City Council may waive any solicitation requirements, or may allow solicitations by other means, including solicitations by informal bidding or through requests for proposals, within the complete discretion of the City Council. Personal services include, but are not limited to, the following:

- Attorneys
- Bond Counsel
- Certified Public Accountants/Auditors
- Consultants
- Engineers
- Financial Advisors
- Physicians
- Real Estate Brokers

EFFECTIVE DATE: Effective immediately upon passage.

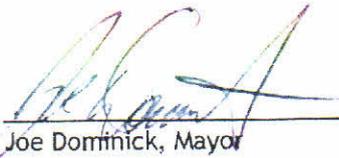
PASSED AND ADOPTED by the Ontario City Council this 17 day of December, 2007.

AYES: Gaskill, Allen, Cummings, Dominick, Mills, Mosier, Tuttle

NAYES: None

ABSENT: None

APPROVED by the Mayor this 17 day of December, 2007.



Joe Dominick, Mayor

ATTEST:



Tori Barnett, City Recorder

Please notify the Purchasing Agent when a vendor continues to have performance problems and forward a report documenting the incident. The City Manager can determine if a vendor is classed as irresponsible and can be taken off of our bidding list for a period of 3 years or until the vendor can prove the problems have been corrected.

6. Exclusive Service

In the event that there is only one firm or company or individual capable of providing a particular service or commodity, referred to as a sole source vendor, and such services or commodities cannot be secured from any other person(s) or company(ies), then the City Council may authorize securing such items without the above bidding process(es) by declaring a sole source vendor. Approval of the City Council must be received **prior** to making the purchase. To receive such authorization, the Department Head must submit with the purchase order, a detailed agenda report explaining why this is the only feasible person/company from which to purchase/contract; and confirmed research must be included in the explanation.

7. Exemptions from the Public Bidding Process

1. Professional Services

This Purchasing Policy shall not apply to professional services and the requirements shall not be mandatory in the employment of professional services. Professional services include, but are not limited to, the following:

- Attorneys
- Bond Counsel
- Certified Public Accountants/Auditors
- Consultants
- Engineers
- Financial Advisors
- Physicians
- Real Estate Brokers

2. Design-build Services

This Purchasing Policy shall not apply to design-build specialty services so long as the City Council approves such an exemption through formal action.

1.9 Employee Development

The Purpose of this policy is to establish the guidelines for which the City will reimburse employees for training, career education, and approved courses of study (Tuition Assistance). Travel and expense reimbursement procedures are outlined within the Tuition Assistance Policy. This policy is applicable to all City personnel.

RESOLUTION 2010-143
A RESOLUTION REVISING FINANCIAL POLICIES MANUAL
FOR PERSONAL SERVICES CONTRACTS

- Whereas,** On April 19, 2004, the City Council in Resolution No. 2004-11 adopted the Financial Policies and Procedures Manual for the City of Ontario; and
- Whereas,** The Ontario Financial Policies and Procedures Manual sets forth the competitive bidding requirements for contracts entered into by the City; and
- Whereas,** Resolution 2007-146, adopted by the City Council on December 17, 2007, revised Section 1.8(7.)(1.) of the Financial Policies Manual to impose the requirement that the City Council, sitting as a local contract review board, has the sole discretion to determine whether a particular contract is a personal services contract exempt from the competitive bidding requirements of the Oregon Public Contracting Code and the Ontario Financial Policies Manual; and
- Whereas,** ORS 279.055(2) of the Oregon Public Contracting Code authorizes the City Council, sitting as a local contract review board, to designate by resolution that certain classes of contracts are personal services contracts without requiring the City Council to review each individual contract; and
- Whereas,** Resolution 2007-146 should be rescinded and replaced by one that designates certain classes of contracts as personal services contracts without further action by the City Council.

NOW THEREFORE, BE IT RESOLVED by the City Council for the City of Ontario, sitting as a Local Contract Review Board:

1. Resolution 2007-146 is rescinded.
2. Section 1.8(7.)(1.) of the City's Financial Policies and Procedures Manual is revised to read as follows:

1.8 Purchasing

7. Exemptions from the Public Bidding Process

1. Personal Services Contracts

- (a) This Purchasing Policy shall not apply to personal services contracts, and competitive bidding shall not be mandatory in the employment of contractors providing personal services as provided herein.

(b) Contracts between the City of Ontario and the following entities are designated as personal services contracts:

- Attorneys
- Bond Counsel
- Certified Public Accountants/Auditors
- Consultants
- Engineers
- Architects
- Financial Advisors
- Physicians
- Real Estate Brokers

(c) For contracts with entities other than those listed above, the City Council, acting as a local contract review board, may determine whether a particular contract is a personal services contract exempt from the competitive bidding process. "Personal services" are those services that require specialized technical, creative, professional or communication skills or talents, unique and specialized knowledge, or the exercise of discretionary judgment, and for which the quality of the service depends on attributes that are unique to the service provider.

EFFECTIVE DATE: Effective immediately upon passage.

PASSED AND ADOPTED by the Ontario City Council this _____ day of _____, 2010.

AYES:

NAYES:

ABSENT:

APPROVED by the Mayor this _____ day of October, 2010.

ATTEST:

Joe Dominick, Mayor

Tori Barnett, MMC, City Recorder

**COUNCIL MEETING MINUTES
September 20, 2010**

The regular meeting of the Ontario City Council was called to order by Mayor Joe Dominick at 7:00 p.m. on Monday, September 20, 2010, in the Council Chambers of City Hall. Council members present were Norm Crume, Joe Dominick, Charlotte Fugate, John Gaskill, Susann Mills, and David Sullivan. Ronald Verini was excused.

Members of staff present were Henry Lawrence, Tori Barnett, Larry Sullivan, Mark Alexander, Bob Walker, Yorick de Tassigny, and camera operator Hailey Skinner.

John Gaskill led everyone in the Pledge of Allegiance.

AGENDA

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

LOCAL CONTRACTOR REVIEW BOARD ACTION

Award Personal Service Contract to Miller Nash, LLP, for Legal Services

Larry Sullivan, City Attorney, stated the purpose of this agenda item was for the Council to consider hiring Miller Nash LLP as its attorneys to consult with and represent the City in future negotiations with the Burns Paiute Tribe. On August 26, 2010, the City Council met with Christine M. Masse of Miller Nash LLP in executive session, but no action was taken at that time. Following the executive session, Ms. Masse was invited to send a representation letter to the City for the Council's consideration.

The City could hire Miller Nash LLP to represent it in negotiations with the Burns Paiute Tribe without soliciting proposals from other law firms if the City followed the procedure in Section 7.1 of the Ontario Financial Policies Manual. That Section exempted personal services contracts from the public bidding process. Personal services contracts included those between the City and attorneys. Section 7.1 allowed the City Council to enter into such contracts if it sat as a Local Contract Review Board and declared the particular contract to be a personal services contract and waived the City's solicitation requirements for the contract.

Charlotte Fugate moved, seconded by John Gaskill, that the Mayor and City Council, sitting as a Local Contract Review Board, declare the Miller Nash LLP representation letter of September 7, 2010 a personal services contract under Section 7.1 of the Ontario Financial Policies Manual. Roll call vote: Crume-yes; Fugate-yes; Gaskill-yes; Mills-yes; Sullivan-yes; Verini-out; Dominick-yes. Motion carried 6/0/1.

Susann Mills moved, seconded by Norm Crume, that the Mayor and City Council, sitting as a Local Contract Review Board, approve the personal services contract with Miller Nash LLP without soliciting proposals from other law firms. Roll call vote: Crume-yes; Fugate-yes; Gaskill-yes; Mills-yes; Sullivan-yes; Verini-out; Dominick-yes. Motion carried 6/0/1.

Award Personal Services Contract to CH2M Hill for City Hall Seismic Assessment

Yorick deTassigny, Facilities Maintenance Manager, stated in 2005, the legislature passed Oregon Senate Bill 2 that directed the Department of Geology and Mineral Industries to conduct a statewide seismic needs assessment of schools and emergency facilities using rapid visual screenings (RVS) in accordance with FEMA-154. The bill provided the first step in a statewide pre-disaster mitigation strategy. City Hall was evaluated as part of the process and the final RVS score placed the facility in a category of buildings having a very high collapse potential.

In a secondary step to their pre-disaster mitigation strategy for emergency facilities, the State of Oregon's Office of Emergency Management (OEM) made available, through its Seismic Rehabilitation Grant Program (SRGP), \$7.5 million for seismic-related activities that included structural improvements, architecture and engineering services, and project management. There was a \$1.5 million cap per project with no match requirements. Only portions of the building *directly* related to emergency services were eligible for funding.

In order to meet the application requirements, the city needed to have completed a preliminary engineering assessment with a cost estimate for all measures identified. Having reviewed the final RVS score for the building, staff deemed it appropriate to hire a firm well versed in FEMA's Tier 1 evaluation methodology. Staff selected CH2M Hill of Boise based on their extensive experience in completing these types of assessments and recommended a partnership with local engineering firm CK3 to reduce costs by taking advantage of their proximity to the facility. This arrangement was put in place expeditiously in order to meet an application deadline of October 15, 2010.

John Gaskill moved, seconded by Susann Mills, that the City Council, acting as the Local Contract Review Board, declare that the contract for the seismic evaluation of City Hall is a personal services contract that is exempt from the competitive bidding process. Roll call vote: Crume-yes; Fugate-yes; Gaskill-yes; Mills-yes; Sullivan-yes; Verini-out; Dominick-yes. Motion carried 6/0/1.

Susann Mills moved, seconded by Norm Crume, that the City Council waive all solicitation requirements for the personal services contract for the seismic evaluation of City Hall. Roll call vote: Crume-yes; Fugate-yes; Gaskill-yes; Mills-yes; Sullivan-yes; Verini-out; Dominick-yes. Motion carried 6/0/1.

CONSENT AGENDA

Mayor Dominick recused himself from voting on the Consent Agenda (excluding Item B) due to a conflict of interest as his business had an invoice for payment on the bills. Councilor Sullivan recused himself from voting on Item B as he was not present at the meeting.

Susann Mills moved, seconded by John Gaskill, to approve Consent Agenda Item A: Approval of Minutes of regular meeting of 09/02/2010; Item C: Approval of Liquor License Application: Greater Privilege (Full On-Premises Sales); and Item D: Approval of the Bills. Roll call vote: Crume-yes; Fugate-yes; Gaskill-yes; Mills-yes; Sullivan-yes; Verini-out; Dominick-recuse. Motion carried 5/0/1/1.

Charlotte Fugate moved, seconded by Susann Mills, to adopt Consent Agenda item B: Approval of Minutes of 09/07/2010. Roll call vote: Crume-yes; Fugate-yes; Gaskill-yes; Mills-yes; Sullivan-recuse; Verini-out; Dominick-yes. Motion carried 5/0/1/1.

PUBLIC COMMENT

Larry Heidbrink, Ontario, again stated his proposal for an ordinance to assist businesses in controlling unwanted solicitors from operating near their establishments. The City currently had an ordinance in place for door-to-door sales, garage sales, and other types of like businesses.

OLD BUSINESS

Ordinance #2648-2010: Amend OMC 7-1 re: Nuisance Provisions (1st Reading)

Mark Alexander, Interim Police Chief, stated 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 ten-day abatement period. In December 2009, the Council amended the existing nuisance ordinance to include a list of noxious weeds and to shorten the period for nuisance abatements from 14 to ten days; however, during the September 2, 2010, work session, staff tabled this proposed ordinance change in order to gain further information before proceeding.

The 2009 changes to the Municipal Code came about as a result of recommendations of a committee reviewing city nuisances. The committee recognized that by only allowing the city to abate weeds that exceeded ten inches in height, it would not allow abatement of low growing noxious 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 had now identified three additional noxious weeds within the city, which should be specifically mentioned on the list. They were Purple Loosestrife, (Lythrum Salicaria); Yellow Starthistle, (Centaurea Solstitialis L); and Rush Skeleton, (Chondrilla Juncea). The ordinance currently allowed 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 were being included in the proposed ordinance.

In December 2009, staff recommended to the Council that the time given a property owner to abate a nuisance be extended from ten 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; however, the department had not done this and had no plans to. The interest in not mailing a certified letter was financial and upon reflection could cause the City problems when trying to prove that notice was served. The period to abate usually extended beyond the number of days noted as the Ordinance Officer made attempts to contact someone to abate the nuisance. Ten days historically provided ample time for the property owner to receive notice and take appropriate action.

The police department would like to amend the 14-day period to abate a nuisance back to a ten-day period. The department was also recommending that Subsection 2 of the abatement procedure be removed and all notices either be personally served or served by certified mail.

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

Ordinance #2649-2010: Amend OMC 7-4-8 re: Graffiti Provisions (Final Reading)

Mark Alexander, Interim Police Chief, stated 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. On September 7, 2010 Council passed Ordinance #2649-2010 on first reading.

There were occasions when police officers were able to gather enough information through informants, intelligence, or evidence, to strongly believe that a suspect had committed an act. The information could fall short of a standard that would enable the officer to file a criminal complaint; however, the standard might be at a level that would enable the officer to file a violation. In Oregon, the standard of proof was less for a violation because a person convicted of a violation couldn't be sentenced to jail, however, a person convicted of a crime could be. Therefore, the state would provide an attorney to someone charged with a crime if that person couldn't 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 meant that an officer would have to convince the Municipal Judge that more likely than not the defendant committed the act.

By reducing the unlawful application of graffiti to a violation, the department believed that they could successfully resolve additional graffiti cases. The court would continue to have the authority to order restitution for the victim.

David Sullivan moved, seconded by Susann Mills, to 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 Second and Final Reading by Title Only. Roll call vote: Crume-yes; Fugate-yes; Gaskill-yes; Mills-yes; Sullivan-yes; Verini-out; Dominick-yes. Motion carried 6/0/1.

CORRESPONDENCE, COMMENTS, AND EX-OFFICIO REPORTS

- Mark Alexander stated that on Saturday, September 25, from 10-2, at City Hall, there would be a "Take Back the Drugs" program for prescription drugs. This was a national program sponsored by the DEA. OPD would receive the drugs and submit them to the DEA for permanent disposal.
- Councilor Crume stated new graffiti had been placed over the top of a newly completed Eagle Scout project. The public needed to be on watch, using neighborhood eyes and ears to catch the vandals who were defacing property. He encouraged everyone to be on the watch and to report suspicious activity.
- Tori Barnett reported that she had been at her annual recorder's conference last week, and had been successful in getting the OAMR Conference held in Ontario in 2012.
- Mayor Dominick informed everyone that on Tuesday, September 21, beginning at 7:00 pm people would be lining the overpasses along the freeway, waving flags as the troops deployed from La Grande, through to Boise, for deployment overseas. He encouraged everyone to show up. The Lion's Club would be providing flags for those who wanted/needed one.

ADJOURN

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

ATTEST:

Joe Dominick, Mayor

Tori Barnett, MMC, City Recorder

PROCLAMATION

- WHEREAS,** Culture draws us together in common purposes, understanding, and celebration; and
- WHEREAS,** Oregon's 1,300 arts, heritage and humanities nonprofits - museums, libraries, theaters, historical societies, arts centers and heritage sites - are the heart of our communities; and
- WHEREAS,** The Oregon Culture Trust presents Oregon Days of Culture, October 1-8, during National Arts and Humanities month, to encourage Oregonians to Celebrate! Participate! And Give! To Oregon culture; and
- WHEREAS,** October 8, 2010 marks the 8th anniversary of Oregon's innovative cultural tax credit, encouraging new public and private investment in Oregon culture; and
- WHEREAS,** The Oregon Cultural Trust is a smart public policy, like vote-by-mail, the bottle and beach bills, that make Oregon a proud thought-leader nationwide; and
- WHEREAS,** Supporting culture, by giving to cultural nonprofits and to the Oregon Cultural Trust, is vital to preserving the past, sustaining the present, and creating the future.

NOW, THEREFORE, BE IT RESOLVED, that I, Joe Dominick, Mayor of the City of Ontario, do hereby proclaim October 1-8, 2010, as

Oregon Days of Culture

in Ontario and call upon citizens during the 8-day period to participate in Oregon culture, to celebrate its vibrancy and depth, and to give to the arts, heritage, and humanities to ensure their future vitality.

Joe Dominick, Mayor of Ontario

AGENDA REPORT
October 5, 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 (Final Reading)**

DATE: September 22, 2010

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.

During a Council Work Session on September 2, 2010, staff tabled this proposed ordinance change in order to gain further information before proceeding.

September 19, 2010, Council passed Ordinance 2648-2010 on first reading.

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 Second and Final Reading by Title Only.

ORDINANCE NO. 2648-2010

AN ORDINANCE AMENDING THE NUISANCE PROVISIONS OF CHAPTER 1 OF TITLE 7 OF THE ONTARIO MUNICIPAL CODE, 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)~~ 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 nuisance which unmistakably exists and which imminently endangers human life, health or property.

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
October 4, 2010

TO: Mayor and City Council

FROM: Alan Daniels, Airport Manager

THRU: Henry Lawrence, City Manager

SUBJECT: RESOLUTION NO. 2010-148 A RESOLUTION ACCEPTING AMENDMENT NUMBER 01 OF CONNECT OREGON II GRANT AGREEMENT NO. 24941 FOR THE ONTARIO AIRPORT PAVEMENT IMPROVEMENT PROJECT

DATE: September 24, 2010

SUMMARY:

Attached are the following documents:

- Resolution #2010-148 Accepting the Grant and Authorizing Signature of Amendment
- Amendment Number 01 of Grant Agreement No. 24941
- ODOT Connect Oregon Grant Agreement No. 24941 dated July 6, 2009

The City of Ontario was awarded an un-funded grant from the Connect Oregon II program, as part of the Multimodal Transportation Fund Program of 2007. The project was approved without funding in an effort to allow the City to utilize FAA matching funds available for the City's airport.

Funding for the City's project has been awarded thru the Connect Oregon III grant program; however, we will continue to work with the July 2009 Grant Agreement so that all FAA funds expended since that time can be counted as project match on the City's behalf. Accordingly, the Council is presented with Amendment Number 01 for approval, which brings our Connect Oregon II project up to Connect Oregon III standards.

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
Jul 2009	Approval of ODOT Connect Oregon Agreement #24941 dated July 8, 2009, Allowing City to Begin FAA Funded Work Prior to Accepting the Connect Oregon Grant
Nov 2009	Council approved Connect Oregon 3 Application
Mar 2010	Council Approves Contract Increase with Kimley-Horn from \$60,030 to \$124,168 for Additional Project Design Work
Sep 2010	Council Accepts FAA Grant #3-41-0044-009 for \$168,913 thru Resolution 2010-147

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 II project, the City reapplied for the same project under the Connect Oregon III funding cycle.

We have been notified that the City's grant request has been funded under the Connect Oregon III funding cycle, and the Council is asked to accept the Grant Agreement Amendment Number 01 to accept the funding.

The overall project budget approved by the Connect Oregon III Grant is approximately \$4,457,970. This Connect Oregon III 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 two FAA grants for this project in the amounts of \$124,168 and \$168,913 used for engineering work on the project. The City has budgeted its required match for the two FAA projects, a total of \$15,440.

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 \$3,566,376 in Connect Oregon grant revenue is proposed to be budgeted within the City's Grant Fund. The remainder of the required grant match funds will be budgeted with the approval of the next FAA Grant, anticipated to be \$553,933, which will require an additional \$29,140 in matching funds being reallocated from General Fund Contingency to a General Fund transfer to the Grant Fund.

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

RECOMMENDATION:

Staff recommends the Council approve Resolution #2010-148.

PROPOSED MOTION:

I move the Council approve Resolution #2010-148, A RESOLUTION ACCEPTING AMENDMENT NUMBER 01 OF CONNECT OREGON II GRANT AGREEMENT NO. 24941 FOR THE ONTARIO AIRPORT PAVEMENT IMPROVEMENT PROJECT.

RESOLUTION 2010-148
A RESOLUTION ACCEPTING AMENDMENT NUMBER 01 OF
CONNECT OREGON II GRANT AGREEMENT NO. 24941
FOR THE ONTARIO AIRPORT PAVEMENT IMPROVEMENT PROJECT

- 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,** The City has now received funding for the Connect Oregon portion of this project and an amendment to the July 2009 Grant Agreement is required to accept the grant; and
- Whereas,** The City Council desires to accept the ODOT Connect Oregon II grant of \$3,566,377 thru Grant Agreement No. 24941, Amendment Number 01.

NOW, THEREFORE, BE IT RESOLVED by the Ontario City Council that the City of Ontario shall accept Grant Agreement No. 24941, Amendment Number 01; 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

AMENDMENT NUMBER 01
GRANT AGREEMENT
ConnectOregon II
MULTIMODAL TRANSPORTATION FUND PROGRAM 2007
Ontario Airport Pavement Improvement Project

The State of Oregon, acting by and through its Department of Transportation, hereinafter referred to as "ODOT," and the CITY OF ONTARIO, acting by and through its elected officials, hereinafter referred to as "Recipient", entered into an Agreement on July 6, 2009. Said Agreement covers the Ontario Airport Pavement Improvement Project.

It has now been determined by ODOT and Recipient that the Agreement referenced above shall be amended to add funding to this Project, which was previously approved, but unfunded, revise the Project schedule and update language. Except as expressly amended below, all other terms and conditions of the Agreement are still in full force and effect.

"Exhibit A" shall be deleted in its entirety and replaced with the attached "Revised Exhibit A." All references to "Exhibit A" shall hereinafter be referred to as "Revised Exhibit A."

"Exhibit B" shall be deleted in its entirety and replaced with the attached "Revised Exhibit B." All references to "Exhibit B" shall hereinafter be referred to as "Revised Exhibit B."

RECITALS, Paragraph 3, page 1, which reads:

3. The Multimodal Transportation Fund Program began through *ConnectOregon*, a \$100 million lottery-bond-based initiative approved by the Oregon Legislative Assembly in 2005 (Oregon Law 2005, Ch. 815), to invest in air, rail, public transit, and marine transportation projects to ensure Oregon's transportation system is strong, diverse and efficient. The Oregon Legislative Assembly added an additional \$100 million in 2007 (Oregon Law 2007, Ch. 859). The Multimodal Transportation Fund Program is focused on improving the connections between air, rail, marine and transit modes of transportation to reduce transportation costs to businesses, remove key bottlenecks, and increase connectivity.

Shall be deleted in its entirety and replaced with the following:

3. The Multimodal Transportation Fund Program began through *ConnectOregon*, a \$100 million lottery-bond-based initiative approved by the Oregon Legislative Assembly in 2005 (Oregon Laws 2005, Ch. 816), to invest in air, rail, public transit, and marine transportation projects to ensure Oregon's transportation system is strong, diverse and efficient. The Oregon Legislative Assembly added an additional \$100 million in 2007 (Oregon Laws 2007, Ch. 859) and another \$100 million in 2009 (Oregon Laws 2009, Ch. 865 – HB 2001). The Multimodal Transportation Fund Program is focused on improving the connections between air, rail, marine and transit modes of transportation to reduce transportation costs to businesses, remove key bottlenecks, and increase connectivity.

Insert new RECITALS Paragraphs 7 and 8 to read as follows:

7. By the authority granted in *ConnectOregon* Partnership – Program Administration Agreement No. 26593, incorporated herein and by this reference made a part hereof, ODOT may enter into this Agreement for the performance of work on Projects.
8. The Oregon Transportation Commission approved *ConnectOregon* funding for this project at its August 2010 meeting.

DEFINITIONS, Paragraph 1, page 2, which reads:

1. The Multimodal Transportation Fund Program also known as "*ConnectOregon*" as defined in OAR 731-035-0010 is a legislatively authorized lottery-bond-based initiative to invest in air, rail, public transit, and marine transportation projects in Oregon.

Shall be deleted in its entirety and replaced with the following:

1. The Multimodal Transportation Fund Program also known as "*ConnectOregon*" as set forth in ORS 367.060 and OAR Ch. 731, Div. 35, is a legislatively authorized lottery-bond-based initiative to invest in air, rail, public transit, and marine transportation projects in Oregon.

DEFINITIONS, Paragraph 2, page 2, which reads:

2. Recipient, as defined in OAR 731-035-0020(18), means an Applicant that enters into Agreement with ODOT to receive funds from the Multimodal Transportation Fund.

Shall be deleted in its entirety and replaced with the following:

2. Recipient, as defined in OAR 731-035-0020(19), means an Applicant that enters into Agreement with ODOT to receive funds from the Multimodal Transportation Fund.

DEFINITIONS, Paragraph 3, page 2, which reads:

3. *ConnectOregon* Oversight Committee is to be composed of (A) *ConnectOregon* Program Manager, (B) Oregon Department of Aviation Administrator (ODA), (C) ODOT Chief of Staff, (D) ODOT Freight Mobility Manager, (E) ODOT Region representative, and (F) a non-agency representative, appointed by ODOT's *ConnectOregon* Program Manager to address the *ConnectOregon* Program and Project specific issues.

Shall be deleted in its entirety and replaced with the following:

3. *ConnectOregon* Oversight Committee is to be composed of (A) *ConnectOregon* Program Manager, (B) Oregon Department of Aviation Administrator (ODA), (C) ODOT Chief of Staff, (D) ODOT Freight Mobility representative, (E) ODOT Region representative, (F) ODOT Rail Division Administrator, and (G) a non-agency representative, appointed by ODOT's *ConnectOregon* Program Manager to address the *ConnectOregon* Program and Project specific issues.

TERMS OF AGREEMENT, Paragraph 2, page 2, which reads:

2. Under said provisions, Recipient shall perform the engineering and construction work to rehabilitate the airports runway 14-32 (100 foot width) and associated parallel taxiway with pavement overlay, replace the lighting system, and rehabilitation and expansion of the airport's primary apron, and rehabilitating and expanding existing parking area for jets hereinafter referred to as "Project. The Project description, tasks and deliverables, schedule and budget are further described in Exhibit A. The location of the Project is approximately as shown on the detailed map marked Exhibit A-1. The total Project cost is estimated at \$4,071,295.

Shall be deleted in its entirety and replaced with the following:

2. Under said provisions, Recipient shall perform the engineering and construction work to rehabilitate the airports runway 14-32 (100 foot width) and associated parallel taxiway with pavement overlay, replace the lighting system, and rehabilitation and expansion of the airport's primary apron, and rehabilitating and expanding existing parking area for jets hereinafter referred to as "Project. The Project description, tasks and deliverables, schedule and budget are further described in Revised Exhibit A.

The location of the Project is approximately as shown on the detailed map marked Exhibit A-1.

TERMS OF AGREEMENT, Paragraph 3, page 2, which reads:

3. This Project was not selected for funding in the first round of grants, but may be funded if additional *ConnectOregon* funds become available to ODOT because of cost savings on other projects, reduction on other grant amounts or grant terminations. If such funding becomes available, ODOT and Recipient may amend this Agreement to provide *ConnectOregon* funds to the Project. The maximum amount of *ConnectOregon* Funds shall not exceed \$3,257,036.

Shall be deleted in its entirety and replaced with the following:

3. The Project cost is estimated at \$4,457,971, which is subject to change. The *ConnectOregon* III grant funds are limited to \$3,566,377 or eighty (80) percent of the total eligible Project costs, whichever is less. Eligible costs for this Project will be reimbursed at eighty (80) percent until the \$3,566,377 limit is reached. ODOT cannot reimburse Recipient for any work performed, or for Project costs incurred prior to the effective date of this Agreement.

TERMS OF AGREEMENT, Paragraph 5, page 3, which reads:

5. Recipient shall proceed with the Project prior to such amendment using other funding sources. If grant funding becomes available and this Agreement is amended, ODOT shall reimburse Recipient for eligible Project costs incurred prior to the effective date of the Amendment at eighty (80) percent until the amount of grant funding provided in the Amendment is reached, but not to exceed the \$3,257,036 limit. ODOT cannot reimburse Recipient for Project costs incurred prior to the effective date of this Agreement; however, such Project costs can be applied to Recipient's match requirement.

Shall be deleted in its entirety and replaced with the following:

5. Recipient shall proceed with the Project prior to such amendment using other funding sources. If grant funding becomes available and this Agreement is amended, ODOT shall reimburse Recipient for eligible Project costs incurred prior to the effective date of the Amendment at eighty (80) percent until the amount of grant funding provided in the Amendment is reached, but not to exceed the \$3,566,377 limit. ODOT cannot reimburse Recipient for Project costs incurred prior to the effective date of this Agreement; however, such Project costs can be applied to Recipient's match requirement.

TERMS OF AGREEMENT, Paragraph 7, page 3, which reads:

7. If the Project is not completed in accordance with the application and this Agreement as they may be amended, the Recipient shall pay back all of the *ConnectOregon* grant funds to ODOT. Any funds disbursed but not used for the approved Project must be returned to ODOT. Recipient understands eligibility for *ConnectOregon* grant funds applies only to Project costs incurred on or after the effective date of this Agreement.

Shall be deleted in its entirety and replaced with the following:

7. If the Project is not completed in accordance with, or consistent with, the *ConnectOregon III* application and documents provided by the Recipient to ODOT prior to the execution of the Agreement, incorporated by reference into this Agreement, and this Agreement as they each may be amended, Recipient shall pay back all of the *ConnectOregon III* grant funds to ODOT. Any funds disbursed but not used for the approved Project must be returned to ODOT. Recipient understands eligibility for *ConnectOregon III* grant funds applies only to Project costs incurred on or after the effective date of this Agreement.

RECIPIENT OBLIGATIONS, Paragraph 2b, page 4, which reads:

- 2b. The monthly progress report will be prepared using the, *ConnectOregon* Monthly Progress Report (Form 734-2668), and will be submitted to the ODOT Project Liaison by the monthly submittal date established by ODOT's Project Liaison. Recipient must sign, date, and submit the *ConnectOregon* Monthly Progress Report to the ODOT Project Liaison. The fillable form can be downloaded on-line at the following address:
<http://www.oregon.gov/ODOT/HWY/LGS/online.shtml>.

Shall be deleted in its entirety and replaced with the following:

- 2b. The monthly progress report, which must be signed and dated, will be prepared using the *ConnectOregon III* Monthly Progress Report (Form 734-2668), attached by reference and made a part of this Agreement, and will be submitted to the ODOT Project Liaison and the *ConnectOregon* Program Manager, by the first Wednesday of each month. The fillable form can be downloaded on-line at the following address: <http://www.oregon.gov/ODOT/HWY/LGS/online.shtml>.

RECIPIENT OBLIGATIONS, Paragraph 2d, page 4, which reads:

- 2d. Any changes to the Project scope or delivery schedule must be approved by the *ConnectOregon* Oversight Committee prior to execution of an amendment to this Agreement. The *ConnectOregon* Oversight Committee may choose to request review by the Oregon Transportation Commission. Recipient's obligation to maintain and operate the Project will survive termination of this Agreement.

Shall be deleted in its entirety and replaced with the following:

- 2d. Any changes to the Project scope or delivery schedule must be approved by the *ConnectOregon* Oversight Committee or assigned designee prior to execution of an amendment to this Agreement. Recipient shall not proceed with any changes to the Project scope prior to the Change Order being approved by ODOT and the ensuing amendment executed. A Request for Change Order may be rejected at the discretion of the Oversight Committee. The *ConnectOregon* Oversight Committee may choose to request review by the Oregon Transportation Commission. Recipient's obligation to maintain and operate the Project will survive termination of this Agreement.

Insert new RECIPIENT OBLIGATIONS, Paragraph 2e to read as follows:

- 2e. Recipient shall submit a written report to ODOT's *ConnectOregon* Program Manager, that identifies the number of jobs created or retained both during construction and after Project completion, as a direct result of this Project. The report must also include the number of jobs projected in the application. The report must be received within three (3) years after the completion of the Project. Recipient's obligation to provide this report will survive termination of this Agreement.

RECIPIENT OBLIGATIONS, Paragraph 3, page 5, which reads:

3. The Recipient must produce and provide all documentation identified in the Project application, which includes the Project key milestones, schedule, budget and cash flow, feasibility readiness to construct, permits and complete all other promised elements. The documentation must indicate the likelihood the Project can be completed in the time frame planned.

Shall be deleted in its entirety and replaced with the following:

3. Recipient must produce and provide all documentation identified in the Project application and in the documents provided by the Recipient to ODOT prior to the execution of the Agreement, which includes the Project key milestones, schedule,

budget and cash flow, feasibility, readiness to construct, permits, and complete all other promised elements. The documentation must indicate the likelihood the Project can be completed in the time frame planned.

RECIPIENT OBLIGATIONS, Paragraphs 5, 5a and 5b, page 5, which read:

5. Recipient shall pay two (2) percent of Recipient's total *ConnectOregon* grant fund amount plus two (2) percent of its twenty (20) percent match requirement to ODOT within ninety (90) days of the Agreement effective date. Said funds shall be available for ODOT to conduct a statewide multimodal study of the transportation system as mandated by the Legislature. Reimbursement of any work performed will not be made until ODOT has received this payment from Recipient. The two (2) percent may be paid by the Recipient using one of two methods as follows:
 - a. Payment Method 1: Recipient shall send a check for 100 percent of the two (2) percent described above to ODOT, Attn: Receipts Technician, Transportation Building, 355 Capitol St NE, Rm. 434, Salem, OR 97301-3871, within ninety (90) days of the effective date of this Agreement. The check shall identify the Agreement number and *ConnectOregon* Application number.
 - b. Payment Method 2: Recipient shall send a check to the address shown in paragraph 5a above for the match amount and ask ODOT to transfer the remaining amount of the two (2) percent, described above, from Recipient's grant to an ODOT account to cover this cost.

Shall be deleted in its entirety and replaced with the following:

5, 5a and 5b [SAVED]

RECIPIENT OBLIGATIONS, Paragraph 13, page 7, which reads:

13. Recipient shall, upon execution of this Agreement and as a condition to this Agreement, complete and file with the appropriate County Clerk, Exhibit B, "Acknowledgment of ODOT Assistance". Recipient shall provide confirmation of this filing by forwarding to ODOT's Project Liaison a notarized copy of the recorded Exhibit B. By means of said acknowledgment, a lien shall be established against said property and assets subject to the satisfaction of Recipient'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 or demand or both. ODOT's interest in said property is proportional to the state participation in Project. While in default of conditions underlying the lien, Recipient will be ineligible to receive state funds from any ODOT-administered program for any project on a street, road or property. The Acknowledgment of ODOT

Assistance shall remain in place for the useful life of the Project. The useful life of the Project is defined as (twenty) 20 years. Reimbursement to Recipient will not be made until a copy of the recorded Exhibit B has been forwarded to the ODOT Project Liaison.

Shall be deleted in its entirety and replaced with the following:

13. Recipient shall, upon execution of this Agreement and as a condition to this Agreement, complete and file with the appropriate County Clerk, Revised Exhibit B, "Acknowledgment of ODOT Assistance" or the filing of a memorandum of this Agreement, including Acknowledgment of ODOT Assistance. Recipient shall provide confirmation of this filing by forwarding to ODOT's *ConnectOregon* Program Manager a notarized copy of the recorded Revised Exhibit B. By means of said acknowledgment of Recipient'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 or demand or both is recognized and attached to the property as conditions. Any interest in said property by ODOT is proportional to the state participation in Project. While in default of conditions of this Agreement, Recipient will be ineligible to receive state funds from any ODOT-administered program for any project on a street, road or property. The Acknowledgment of ODOT Assistance shall remain in place for the useful life of the Project. The useful life of the Project is defined as twenty (20) years. Reimbursement to Recipient will not be made until a copy of the recorded Revised Exhibit B has been forwarded to the ODOT Project Liaison.

Insert new RECIPIENT OBLIGATIONS, Paragraphs 19 and 20, to read as follows:

19. Recipient shall provide a copy of the fully executed Federal Aviation Administration Grant Agreement(s) that provides the funding, in part or whole, for the balance of the associated Project costs, prior to any costs being considered eligible for reimbursement and actually being reimbursed. Such funds must be available and committed for the duration of the Project. Recipient shall provide this documentation to ODOT's *ConnectOregon* Program Manager.
20. Recipient shall comply with all requirements of ORS 367.080 through ORS 367.086 and Oregon Administrative Rule (OAR) Chapter 731, Division 35.

ODOT OBLIGATIONS, Paragraph 1, page 9, which reads:

1. Based upon the *ConnectOregon* grant fund allocation allowed, if funding becomes available and a mutually acceptable amendment to this Agreement is executed, ODOT agrees to pay Recipient the amount of grant funding provided in the Amendment but not to exceed a maximum of \$3,257,036, or eighty (80) percent of

the total eligible Project costs, whichever is less. Eligible costs for this Project will be reimbursed at eighty (80) percent until the amount of grant funding provided in the Amendment is reached, but not to exceed \$3,257,036.

Shall be deleted in its entirety and replaced with the following:

1. Based upon the *ConnectOregon* III grant fund allocation allowed, ODOT agrees to pay Recipient \$3,566,377, or eighty (80) percent of the total eligible Project costs, whichever is less. Eligible costs for this Project will be reimbursed at eighty (80) percent until the \$3,566,377 limit is reached.

ODOT OBLIGATIONS, Paragraph 4, page 9, which reads:

4. ODOT shall monitor the Project for compliance and notify the Recipient in writing if it appears Recipient is failing to comply with Multimodal Transportation Fund Program requirements as specified in ORS Chapter 367; OAR Chapter 731, Division 35, the terms of this Agreement and Recipient's application.

Shall be deleted in its entirety and replaced with the following:

4. ODOT shall monitor the Project for compliance and notify Recipient in writing if it appears Recipient is failing to comply with Multimodal Transportation Fund Program requirements as specified in ORS Chapter 367; OAR Chapter 731, Division 35; the terms of this Agreement; or Recipient's application and documents provided by the Recipient to ODOT prior to the execution of the Agreement.

ODOT OBLIGATIONS, Paragraph 5c, page 10, which reads:

- 5c. There is a significant deviation from the terms and conditions of this Agreement;

Shall be deleted in its entirety and replaced with the following:

- 5c. There is a significant deviation from the terms and conditions of this Agreement or representations of Recipient's application and documents provided by the Recipient to ODOT prior to the execution of the Agreement;

ODOT OBLIGATIONS, Paragraph 9, page 10, which reads:

9. ODOT's *ConnectOregon* Program Manager is the Local Government Section Manager, Local Government Section, 355 Capitol St. NE, Room 326, Salem, OR 97301-3871, 503.986.3640, Martin.E.ANDERSEN@odot.state.or.us, or assigned designee upon individual's absence.

Shall be deleted in its entirety and replaced with the following:

9. ODOT's *ConnectOregon* Program Manager is Carol Olsen, Local Government Section, 355 Capitol St. NE, Salem, OR 97301-3871, 503-986-3327, carol.a.olsen@odot.state.or.us, or assigned designee upon individual's absence.

GENERAL PROVISIONS, Paragraphs 2a and 2b, page 11, which read:

- 2a. Statements, information, or representations in the *ConnectOregon* application for this Project were false, misleading, fraudulent or misrepresentations; or
- 2b. There has been a change in circumstances so that information provided in the application and relied upon in making the grant or loan, or representations concerning considerations in the selection of this project for *ConnectOregon II*, pursuant to OAR 731-035-0060(8), are no longer true or accurate.

Shall be deleted in its entirety and replaced with the following:

- 2a. Statements, information, or representations in the *ConnectOregon III* application and documents provided by the Recipient to ODOT prior to the execution of the Agreement, for this Project were false, misleading, fraudulent or misrepresentations; or
- 2b. There has been a change in circumstances so that information provided in the application and documents provided by the Recipient to ODOT prior to the execution of the Agreement, and relied upon in making the grant or loan, or representations concerning considerations in the selection of this project for *ConnectOregon III*, pursuant to OAR 731-035-0060, are no longer true or accurate.

GENERAL PROVISIONS, second Paragraph 3, page 12, which reads:

3. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.

Shall be renumbered to read Paragraph 4.

GENERAL PROVISIONS, Paragraphs 4 and 5, which read:

4. ODOT and Recipient are the only Parties to this Agreement and, as such, are the only Parties entitled to enforce its terms. Nothing in this Agreement gives or shall be construed to give or provide any benefit, direct, indirect or otherwise to third persons unless such third persons are expressly identified by name and specifically described as intended to be beneficiaries of its terms.

5. ODOT and Recipient hereto agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be invalid, unenforceable, illegal or in conflict with any law, the validity of the remaining terms and provisions will not be affected, and the rights and obligations of the Parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.

Shall be renumbered to read Paragraphs 5 and 6.

Insert new GENERAL PROVISIONS Paragraphs 7a, b and c to read as follows:

7a. The laws of the State of Oregon (without giving effect to its conflicts of law principles) govern all matters arising out of or relating to this Agreement, including, without limitation, its validity, interpretation, construction, performance, and enforcement.

b. Any Party bringing a legal action or proceeding against any other party arising out of or relating to this Agreement shall bring the legal action or proceeding in the Circuit Court of the State of Oregon for Marion County. Each party hereby consents to the exclusive jurisdiction of such court, waives any objection to venue, and waives any claim that such forum is an inconvenient forum.

c. Notwithstanding subsection (b), if a claim must be brought in a federal forum, then it must be brought and adjudicated solely and exclusively within the United States District Court for the District of Oregon. This section applies to a claim brought against the State of Oregon only to the extent Congress has appropriately abrogated the State of Oregon's sovereign immunity and is not consent by the State of Oregon to be sued in federal court. This section is also not a waiver by the State of Oregon of any form of immunity, including but not limited to sovereign immunity and immunity based on the Eleventh Amendment to the Constitution of the United States.

GENERAL PROVISIONS, Paragraph 6, page 12, which reads:

6. 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.

Shall be renumbered to read Paragraph 8.

GENERAL PROVISIONS, Paragraph 7, page 12, which reads:

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

Shall be deleted in its entirety and replaced with the following and renumbered to read Paragraph 9:

9. This Agreement, Project application and documents provided by the Recipient to ODOT prior to the execution of the Agreement, and attached exhibits constitute the entire agreement between the Parties on the subject matter hereof. In the event of a conflict, the body of this Agreement and the attached Revised Exhibit A will control over the Project application and documents provided by the Recipient to ODOT. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification, or change of terms of this Agreement shall bind either party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of either Party to enforce any provision of this Agreement shall not constitute a waiver by that Party of that or any other provision.

This Amendment 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 Amendment so executed shall constitute an original.

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.

City of Ontario/ODOT
Agreement No. 24941- Amendment No. 1

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.

CITY OF ONTARIO, by and through its
elected officials

By _____

Date _____

By _____

Date _____

**APPROVED AS TO LEGAL
SUFFICIENCY**

By _____
Recipient Counsel

Date _____

Agency Contact:

Alan Daniels
City of Ontario
444 SW 4th Street
Ontario, OR 97914
541-881-8848
Alan.daniels@ontariooregon.org

State Contact:

Carol Olsen
ConnectOregon Program Manager
Local Government Section
355 Capitol St. NE
Salem, OR 97301-3871
503-986-3327
carol.a.olsen@odot.state.or.us

STATE OF OREGON, by and through
its Department of Transportation

By _____
Director

Date _____

APPROVAL RECOMMENDED

By _____
Freight Mobility Manager

Date _____

By _____
Local Government Section Manager

Date _____

**APPROVED AS TO LEGAL
SUFFICIENCY**

By _____
Assistant Attorney General

Date: _____

**Revised Exhibit A
Agreement No. 24941, Amendment No. 1
Statement of Work**

Application Number A50095
Ontario Airport Pavement Improvement
City of Ontario

A. PROJECT DESCRIPTION

This Project consists of engineering and construction to rehabilitate the airports runway 14-32 (100 foot width) and associated parallel taxiway with pavement overlay, replace the lighting system, and rehabilitation and expansion of the airport's primary apron, rehabilitating and expanding existing parking area for jets.

B. PROJECT KEY MILESTONES AND SCHEDULE

Project has four (4) Key Milestones. Key Milestones are used for evaluating performance on Project and determining level of compensation for completed work as described in the Agreement. Key Milestones cannot be changed without an amendment to the Agreement. Recipients may shift the estimated grant funds shown below between milestones without an amendment to the Agreement, but shall not, under any circumstances, exceed the "Total Not To Exceed Grant Fund Allocation". Recipient shall report changes to the Estimated Amounts corresponding to each Key Milestones, shown below, in Recipient's Monthly Report to the ODOT Project Liaison.

If the Recipient anticipates the Project key milestones will be delayed by more than ninety (90) days, Recipient shall submit a Request for Change Order (see attached Exhibit E) to the ODOT Project Liaison as soon as Recipient becomes aware of any possible delay. The Request for Change Order must be submitted prior to the Key Milestone completion date shown in this Exhibit.

The anticipated start date of the Project is: July 15, 2009

The estimated completion date of the Project is: December 31, 2011

Table 1: Key Milestones

Key Milestone	Description	Estimated Due Date	Estimated Amount
1	Scoping and planning	8/1/2009	\$16,000
2	Right of way and land acquisition	N/A	N/A
3	Permits	N/A	N/A
4	Final plans/bidding engineering documents	3/21/2011	\$589,000

**Revised Exhibit A
Agreement No. 24941, Amendment No. 1
Statement of Work**

5	Construction contract award	5/31/2011	\$3,852,971
6	Project completion	12/31/2011	N/A
	Total Project Cost		\$4,457,971

Table 2 – Funding Breakdown

A	Total Not to Exceed Grant Fund Allocation	\$3,566,377	
B	<i>ConnectOregon</i> 20 percent required match	\$ 891,594	
C	<i>ConnectOregon II</i> Total		\$4,457,971
D	Other Funds In Addition to 20 percent Required Match	\$0	
E	Total Project Funding		\$4,457,971

C. BUDGET

The Total Not to Exceed payable to Recipient will be \$3,566,377.

Total Project costs are estimated at \$4,457,971. The *ConnectOregon* grant fund allocation for this Project is \$3,566,377. Recipient shall be responsible for any unanticipated costs over the identified *ConnectOregon* grant fund allocation.

Revised EXHIBIT B

Agreement Number: 24941, Amendment No. 1

Project Name: Ontario Airport Pavement Improvement
City of Ontario

After recording, return to:

ACKNOWLEDGMENT OF STATE ASSISTANCE

The property and assets under the jurisdiction of City of Ontario, were improved with assistance from the State of Oregon, Department of Transportation under an agreement executed between City of Ontario, and the Oregon Department of Transportation (ODOT) dated . Such assistance was provided to City of Ontario, in reimbursement of costs associated with the Ontario Airport Pavement Improvement. 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 of ODOT.

By : _____

Title : _____

State of Oregon) _____
County of _____)

SUBSCRIBED and SWORN to before me this _____ day of _____, 20__

NOTARY PUBLIC FOR OREGON

My commission expires: _____

GRANT AGREEMENT
ConnectOregon II
MULTIMODAL TRANSPORTATION FUND PROGRAM 2007
Ontario Airport Pavement Improvement Project

THIS GRANT PROGRAM AGREEMENT, hereinafter referred to as "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 "ODOT"; and CITY OF ONTARIO, acting by and through its elected officials, hereinafter referred to as "Recipient", hereinafter individually referred to as the "Party" and collectively referred to as the "Parties."

RECITALS

1. By the authority granted in Oregon Revised Statute (ORS) 190.110, 366.572, and 366.576, state agencies may enter into agreements with counties, cities, and units of local government for the performance of any or all functions and activities that a party to the agreement, its officers, or agents have the authority to perform.
2. Pursuant to ORS 367.080 through 367.086, there is established the Multimodal Transportation Fund, separate and distinct from the General Fund, allowing for the issuance of lottery bonds for the purpose of financing grants and loans to fund Transportation Projects to public bodies and private entities that involve air, marine, rail or public transit.
3. The Multimodal Transportation Fund Program began through *ConnectOregon*, a \$100 million lottery-bond-based initiative approved by the Oregon Legislative Assembly in 2005 (Oregon Law 2005, Ch. 815), to invest in air, rail, public transit, and marine transportation projects to ensure Oregon's transportation system is strong, diverse and efficient. The Oregon Legislative Assembly added an additional \$100 million in 2007 (Oregon Law 2007, Ch. 859). The Multimodal Transportation Fund Program is focused on improving the connections between air, rail, marine and transit modes of transportation to reduce transportation costs to businesses, remove key bottlenecks, and increase connectivity.
4. The receipt and use of Multimodal Transportation Funds and the execution of this Agreement by Recipient are subject to conditions imposed by ORS 367.080 through 367.086 and Oregon Administrative Rule (OAR) Chapter 731 Division 35.

Recipient/ODOT
Agreement No. 24941

5. The Oregon Transportation Commission approved the projects to be funded under the Multimodal Transportation Fund Program at its June 2008 meeting. The OTC has set specific conditions on all approved projects and the inability to meet these OTC conditions may result in a loss of project funding. Final approval for the project is subject to meeting all the OTC conditions as stated below.
6. Safety is of paramount concern to ODOT. ODOT encourages recipients of *ConnectOregon* grant funds **to have safety as a high priority for all phases of work.**

DEFINITIONS

1. The Multimodal Transportation Fund Program also known as "*ConnectOregon*" as defined in OAR 731-035-0010 is a legislatively authorized lottery-bond-based initiative to invest in air, rail, public transit, and marine transportation projects in Oregon.
2. Recipient, as defined in OAR 731-035-0020(18), means an Applicant that enters into Agreement with ODOT to receive funds from the Multimodal Transportation Fund.
3. *ConnectOregon* Oversight Committee is to be composed of (A) *ConnectOregon* Program Manager, (B) Oregon Department of Aviation Administrator (ODA), (C) ODOT Chief of Staff, (D) ODOT Freight Mobility Manager, (E) ODOT Region representative, and (F) a non-agency representative, appointed by ODOT's *ConnectOregon* Program Manager to address the *ConnectOregon* Program and Project specific issues.

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

TERMS OF AGREEMENT

1. The following documents are attached hereto and by this reference made a part hereof:
 - a. "Exhibit A" – Statement of Work
 - b. "Exhibit A-1" – Map
 - c. "Exhibit B" – Acknowledgement of State Assistance
 - d. "Exhibit C" – Reserved
 - e. "Exhibit D" – *ConnectOregon* Monthly Progress Report (Form 734-2668)
 - f. "Exhibit E" – Request for Change Order (Form 734-2648)

2. Under said provisions, Recipient shall perform the engineering and construction work to rehabilitate the airports runway 14-32 (100 foot width) and associated parallel taxiway with pavement overlay, replace the lighting system, and rehabilitation and expansion of the airport's primary apron, and rehabilitating and expanding existing parking area for jets hereinafter referred to as "Project. The Project description, tasks and deliverables, schedule and budget are further described in Exhibit A. The location of the Project is approximately as shown on the detailed map marked Exhibit A-1. The total Project cost is estimated at \$4,071,295.
3. This Project was not selected for funding in the first round of grants, but may be funded if additional *ConnectOregon* funds become available to ODOT because of cost savings on other projects, reduction on other grant amounts or grant terminations. If such funding becomes available, ODOT and Recipient may amend this Agreement to provide *ConnectOregon* funds to the Project. The maximum amount of *ConnectOregon* Funds shall not exceed \$3,257,036.
4. *ConnectOregon* grant funds are not available for use or committed to this Project until a mutually acceptable amendment to this Agreement is executed by all Parties. Recipient's obligations shall begin upon execution of the Agreement. ODOT Obligations only begin when an amendment providing such funds is executed. Such amendment will include the assignment of dollar amounts in Exhibit A, and other amendments to the Exhibits as necessary to reflect the actual amount of the *ConnectOregon* funding.
5. Recipient shall proceed with the Project prior to such amendment using other funding sources. If grant funding becomes available and this Agreement is amended, ODOT shall reimburse Recipient for eligible Project costs incurred prior to the effective date of the Amendment at eighty (80) percent until the amount of grant funding provided in the Amendment is reached, but not to exceed the \$3,257,036 limit. ODOT cannot reimburse Recipient for Project costs incurred prior to the effective date of this Agreement; however, such Project costs can be applied to Recipient's match requirement.
6. Matching funds must be provided by the Recipient in the form of monetary outlay for elements necessary for implementation of the Project, including land, excavation, permits, engineering, payroll, special equipment purchase, rental or lease and cover at least twenty (20) percent of the eligible Project costs. Recipient shall be responsible for the twenty (20) percent match requirement and any costs in excess of the *ConnectOregon* grant funds.
7. If the Project is not completed in accordance with the application and this Agreement as they may be amended, the Recipient shall pay back all of the *ConnectOregon*

grant funds to ODOT. Any funds disbursed but not used for the approved Project must be returned to ODOT. Recipient understands eligibility for *ConnectOregon* grant funds applies only to Project costs incurred on or after the effective date of this Agreement.

8. The term of this Agreement is effective on the date all required signatures are obtained and shall terminate five (5) years from the date of execution.

RECIPIENT OBLIGATIONS

1. Recipient shall perform the work described in Exhibit A.
2. Recipient shall submit to ODOT's Project Liaison for review and approval, monthly invoices and updated monthly progress reports on the Project schedule.
 - a. The invoice must adhere to generally accepted accounting principals and will identify the Project, Agreement number, the Project start and end date, the invoice number or the account number or both, and will itemize all expenses as well as provide a detailed breakdown of funds expended to date and dollars remaining. In the event an invoice is not necessary during a specific period, an updated monthly progress report on the Project schedule must be submitted separately each month reflecting continuous progress.
 - b. The monthly progress report will be prepared using the, *ConnectOregon* Monthly Progress Report (Form 734-2668), and will be submitted to the ODOT Project Liaison by the monthly submittal date established by ODOT's Project Liaison. Recipient must sign, date, and submit the *ConnectOregon* Monthly Progress Report to the ODOT Project Liaison. The fillable form can be downloaded on-line at the following address:
<http://www.oregon.gov/ODOT/HWY/LGS/online.shtml>.
 - c. If the Recipient anticipates the Project key milestones will be delayed by more than ninety (90) days from the key milestones shown in Exhibit A, Recipient shall submit Exhibit E, Request for Change Order (Form 734-2648) to the ODOT's Project Liaison as soon as Recipient becomes aware of any possible delay. The Request for Change Order must be submitted prior to the milestone completion date shown in Exhibit A. The fillable form can be downloaded on-line at the following address: <http://www.oregon.gov/ODOT/HWY/LGS/online.shtml>.
 - d. Any changes to the Project scope or delivery schedule must be approved by the *ConnectOregon* Oversight Committee prior to execution of an amendment to this Agreement. The *ConnectOregon* Oversight Committee may choose to request

review by the Oregon Transportation Commission. Recipient's obligation to maintain and operate the Project will survive termination of this Agreement.

3. The Recipient must produce and provide all documentation identified in the Project application, which includes the Project key milestones, schedule, budget and cash flow, feasibility readiness to construct, permits and complete all other promised elements. The documentation must indicate the likelihood the Project can be completed in the time frame planned.
4. Recipient shall require its Contractor(s) performing work under this Agreement to furnish and maintain in effect at all times during its performance of work, a Performance Bond, and to name ODOT as an additional obligee under such bond.
5. Recipient shall pay two (2) percent of Recipient's total *ConnectOregon* grant fund amount plus two (2) percent of its twenty (20) percent match requirement to ODOT within ninety (90) days of the Agreement effective date. Said funds shall be available for ODOT to conduct a statewide multimodal study of the transportation system as mandated by the Legislature. Reimbursement of any work performed will not be made until ODOT has received this payment from Recipient. The two (2) percent may be paid by the Recipient using one of two methods as follows:
 - a. Payment Method 1: Recipient shall send a check for 100 percent of the two (2) percent described above to ODOT, Attn: Receipts Technician, Transportation Building, 355 Capitol St NE, Rm. 434, Salem, OR 97301-3871, within ninety (90) days of the effective date of this Agreement. The check shall identify the Agreement number and *ConnectOregon* Application number.
 - b. Payment Method 2: Recipient shall send a check to the address shown in paragraph 5a above for the match amount and ask ODOT to transfer the remaining amount of the two (2) percent, described above, from Recipient's grant to an ODOT account to cover this cost.
6. Recipient 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 279A, 279B and 279C, as applicable, incorporated herein by reference and made a part hereof. Without limiting the generality of the foregoing, Recipient 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.

7. Recipient shall, to the extent permitted by the Oregon Constitution and the Oregon Tort Claims Act, indemnify, defend, save, and hold harmless the State of Oregon, Oregon Transportation Commission and its members, Oregon Department of Transportation, its officers and employees from any and all claims, suits, or action of any nature arising out of activities of Recipient, its consultant, its contractor, its officers, subcontractors, agents, or employees under this Agreement.
8. Notwithstanding the foregoing defense obligations in the paragraph above, neither Recipient nor any attorney engaged by Recipient 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 Recipient is prohibited from defending the State of Oregon, or that Recipient 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 Recipient if the State of Oregon elects to assume its own defense.
9. Recipient acknowledges and agrees that ODOT, 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 Recipient which are directly pertinent to this 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 will be made available upon request. Payment for costs of copies is reimbursable by the requesting Party.
10. If Recipient enters into a construction contract for performance of work on the Project, then Recipient shall require its Contractor to provide the following:
 - a. Contractor shall indemnify, defend and hold harmless ODOT 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, subcontractors, or agents under this Contract.
 - b. Contractor and Recipient shall name ODOT 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 this Contract, Commercial General Liability Insurance covering bodily injury and property damage in a form and with

coverages that are satisfactory to ODOT. 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 will 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 will not be less than \$ 2,000,000.

- d. Automobile Liability. Contractor shall obtain, at Contractor's expense, and keep in effect during the term of this Contract, Commercial Business Automobile Liability Insurance covering all owned, non-owned, or hired vehicles. This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits). Combined single limit per occurrence 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 Contract will include ODOT and its divisions, officers and employees as Additional Insured but only with respect to Contractor's activities to be performed under this Contract. Coverage will be primary and non-contributory with any other insurance and self-insurance.
 - f. Notice of Cancellation or Change. There will 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's or its insurer(s) to ODOT. Any failure to comply with the reporting provisions of this clause will constitute a material breach of Contract and will be grounds for immediate termination of this Contract.
11. Recipient, and its Contractors, shall work as an independent contractor and shall be exclusively responsible for all costs and expenses related to its employment of individuals to perform the work under this Agreement including, but not limited to, retirement contributions, workers' compensation, unemployment taxes, and state and federal income tax withholdings.
12. All employers, including Recipient, that employ subject workers 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. Recipient shall ensure that each of its subcontractors complies with these requirements.
13. Recipient shall, upon execution of this Agreement and as a condition to this Agreement, complete and file with the appropriate County Clerk, Exhibit B,

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"Acknowledgment of ODOT Assistance". Recipient shall provide confirmation of this filing by forwarding to ODOT's Project Liaison a notarized copy of the recorded Exhibit B. By means of said acknowledgment, a lien shall be established against said property and assets subject to the satisfaction of Recipient'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 or demand or both. ODOT's interest in said property is proportional to the state participation in Project. While in default of conditions underlying the lien, Recipient will be ineligible to receive state funds from any ODOT-administered program for any project on a street, road or property. The Acknowledgment of ODOT Assistance shall remain in place for the useful life of the Project. The useful life of the Project is defined as (twenty) 20 years. Reimbursement to Recipient will not be made until a copy of the recorded Exhibit B has been forwarded to the ODOT Project Liaison.

14. Recipient and ODOT's Project Liaison shall, upon completion of all on-site work for the Project, perform an on-site review. Once review is completed, the ODOT Project Liaison shall recommend acceptance of the Project by signing the *ConnectOregon* "Recommendation of Acceptance" (Form 734-2649), which will be signed by the ODOT Project Liaison and Recipient and is hereby incorporated by reference. The full text of the above referenced exhibit may be reviewed and downloaded at the following web address:

<http://www.oregon.gov/ODOT/HWY/LGS/docs/Forms/COPProjectAccept2649.doc>

15. Recipient shall, at its own expense, maintain and operate the Project upon completion and throughout the useful life of the Project at a minimum level that is consistent with normal depreciation or service demand or both. ODOT and Recipient agree that the useful life of this Project is defined as 20 (twenty) years. Recipient has, by submitting its application for this *ConnectOregon* grant, represented and certified to sufficient funds and to its ability to operate and maintain the Project. ODOT may conduct periodic inspections following the execution of this Agreement to verify that Project is being properly maintained and continues to serve the purpose for which *ConnectOregon* grant funds were provided.
16. Maintenance responsibilities and potential ODOT inspections of the Project shall survive any termination of this Agreement.
17. Recipient certifies and represents that the individual(s) signing this Agreement has been authorized to enter into and execute this Agreement on behalf of Recipient, under the direction or approval of its governing body, commission, board, officers, members, or representatives, and to legally bind Recipient and shall provide ODOT proof of such authority upon request.

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18. Recipient's Project Manager is Alan Daniels, City of Ontario, 444 SW 4th Street, Ontario, OR 97914; 541-881-8848, alan.daniels@onatriooregon.org, or assigned designee upon individual's absence. ODOT's Project Liaison shall be notified in writing of any contact information changes during the term of this Agreement.

ODOT OBLIGATIONS

1. Based upon the *ConnectOregon* grant fund allocation allowed, if funding becomes available and a mutually acceptable amendment to this Agreement is executed, ODOT agrees to pay Recipient the amount of grant funding provided in the Amendment but not to exceed a maximum of \$3,257,036, or eighty (80) percent of the total eligible Project costs, whichever is less. Eligible costs for this Project will be reimbursed at eighty (80) percent until the amount of grant funding provided in the Amendment is reached, but not to exceed \$3,257,036.
2. Upon receipt of a monthly invoice and updated monthly progress report on the Project schedule, ODOT shall review for approval and make payment to Recipient for approved eligible costs, once an amendment to the Agreement has been executed.
3. This Agreement is contingent upon issuance and sale of lottery bonds sufficient to fund this Project. The Agreement is effective and work may begin upon execution of this Agreement, but ODOT's obligation to make Project payments is contingent upon the issuance and sale of lottery bonds by the State Treasurer. ODOT will notify Recipient when such sale has occurred and *ConnectOregon* grant funds are available.
4. ODOT shall monitor the Project for compliance and notify the Recipient in writing if it appears Recipient is failing to comply with Multimodal Transportation Fund Program requirements as specified in ORS Chapter 367; OAR Chapter 731, Division 35, the terms of this Agreement and Recipient's application.
5. ODOT may impose sanctions against Recipient for failing to comply with the requirements governing the Multimodal Transportation Fund Program. Before imposing sanctions, ODOT will send a notice to cure to Recipient if Recipient fails to comply with Program requirements and will allow fifteen (15) days from the date the notice to cure is sent for Recipient to respond and correct the deficiencies noted. The following circumstances may warrant sanctions:
 - a. Work on the approved Project has not been substantially initiated within six (6) months of the effective date of this Agreement or if continuous progress on the Project has not been maintained for six (6) months;

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- b. State of Oregon statutory requirements have not been met;
 - c. There is a significant deviation from the terms and conditions of this Agreement;
 - d. Significant corrective actions have been found to be necessary to protect the integrity of the funds for the approved Project, and those corrective actions are not, or will not, be made within a reasonable time;
 - e. Key Milestones shown in the Project schedule are delayed by more than ninety (90) days; or
 - f. Failure to submit monthly progress reports as required in Recipient Obligations, Paragraph number 2.
6. One or more of the following sanctions may be imposed if the circumstances listed above are not remedied within the time specified in the notice to cure:
- a. Revocation of an existing award;
 - b. Withholding of unexpended funds;
 - c. The return of unexpended funds or repayment of expended funds;
 - d. The barring of the Recipient from applying for future assistance; or
 - e. Other remedies that may be incorporated into this Agreement.
7. The remedies set forth in this Agreement are cumulative, are not exclusive, and are in addition to any other rights and remedies provided by law or under this Agreement.
8. ODOT's Project Liaison and Recipient shall, upon completion of all on-site work for Project, perform an on-site review. Once review is completed, the ODOT Project Liaison shall recommend acceptance of the Project by signing the *ConnectOregon* Recommendation of Acceptance (Form 734-2549), which will be signed by the ODOT Project Liaison and Recipient. Upon receipt of signatures by the Parties the ODOT Project Liaison shall forward the original signed copy to the ODOT *ConnectOregon* Program Manager.
9. ODOT's *ConnectOregon* Program Manager is the Local Government Section Manager, Local Government Section, 355 Capitol St. NE, Room 326, Salem, OR 97301-3871, 503.986.3640, Martin.E.ANDERSEN@odot.state.or.us, or assigned designee upon individual's absence.

GENERAL PROVISIONS

1. This Agreement may be terminated effective upon delivery of written notice to Recipient, or at such later date as may be established by ODOT under any of the following conditions:
 - a. If Recipient fails to perform any of the provisions of this Agreement, or so fails to pursue the work as to endanger performance of this Agreement in accordance with its terms, and within ten (10) days or such longer period as ODOT may authorize, after receipt of written notice from ODOT, fails to correct such failures.
 - b. The Legislature fails to approve, reduces, eliminates or otherwise interferes with appropriations of state expenditure limitation to the extent that legal authority is insufficient to enable ODOT, in its reasonable discretion, to continue making payments under this Agreement.
 - c. ODOT, the Department of Justice, or a court of competent jurisdiction determines that state law, rules, regulation or guidelines are modified, changed, or interpreted in such a way that the activities described in Exhibit A are no longer allowable or no longer eligible for funding proposed by this Agreement.
2. ODOT may impose one or more of the sanctions described under ODOT Obligations, Paragraph 6, without prior notice and without opportunity to cure, in the event ODOT determines:
 - a. Statements, information, or representations in the *ConnectOregon* application for this Project were false, misleading, fraudulent or misrepresentations; or
 - b. There has been a change in circumstances so that information provided in the application and relied upon in making the grant or loan, or representations concerning considerations in the selection of this project for *ConnectOregon* II, pursuant to OAR 731-035-0060(8), are no longer true or accurate.
3. Recipient may terminate this Agreement effective upon delivery of written notice to ODOT under any of the following conditions:
 - a. ODOT fails to make payments due under this Agreement, or
 - b. ODOT fails to perform any of the provisions of this Agreement, or so fails to pursue the work as to endanger performance of this Agreement in accordance with its terms, and within ten (10) days or such longer period as

Recipient may authorize, after receipt of written notice from Recipient, fails to correct such failure.

3. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
4. ODOT and Recipient are the only Parties to this Agreement and, as such, are the only Parties entitled to enforce its terms. Nothing in this Agreement gives or shall be construed to give or provide any benefit, direct, indirect or otherwise to third persons unless such third persons are expressly identified by name and specifically described as intended to be beneficiaries of its terms.
5. ODOT and Recipient hereto agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be invalid, unenforceable, illegal or in conflict with any law, the validity of the remaining terms and provisions will not be affected, and the rights and obligations of the Parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.
6. 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.
7. This Agreement and attached exhibits constitute the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either party unless in writing and signed by both parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of either Party to enforce any provision of this Agreement shall not constitute a waiver by that Party of that or any other provision.

THE PARTIES, by execution of this Agreement, hereby acknowledge that each Party has read this Agreement, understands it, and agrees to be bound by its terms and conditions.

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.

Recipient/ODOT
Agreement No. 24941

Oregon Transportation Commission on June 20, 2008, approved the *ConnectOregon* project application list and delegated authority to the Director of the Oregon Department of Transportation to enter into project agreements.

CITY OF ONTARIO, by and through its
elected officials

By [Signature]
City Manager

Date 6/15/09

By [Signature]
City Recorder

Date 06-15-09

**APPROVED AS TO LEGAL
SUFFICIENCY**

By [Signature]
Recipient Counsel

Date 6-15-09

Recipient Contact:

Alan Daniels
City of Ontario
444 SW 4th Street
Ontario, OR 97914
541-881-8848
Alan.daniels@ontariooregon.org

STATE OF OREGON, by and through
its Department of Transportation

By [Signature]
Director

Date 7-6-09

APPROVAL RECOMMENDED

By [Signature]
Freight Mobility Manager

Date 6-24-09

By [Signature]
Local Government Section Manager

Date 7/2/09

APPROVED AS TO LEGAL SUFFICIENCY

By [Signature]
Assistant Attorney General

Date 6/30/09

ODOT Contact:

Local Government Section Manager Local
Government Section
355 Capitol St. NE, Room 326
Salem, OR 97301-3871
503.986.3640
Martin.E.ANDERSEN@odot.state.or.us

**EXHIBIT A - to Agreement No. 24941
Statement of Work**

**Application Number A50009
Ontario Airport Pavement Improvement
City of Ontario**

A. PROJECT DESCRIPTION

This Project consists of engineering and construction to rehabilitate the airports runway 14-32 (100 foot width) and associated parallel taxiway with pavement overlay, replace the lighting system, and rehabilitation and expansion of the airport's primary apron, rehabilitating and expanding existing parking area for jets.

B. PROJECT KEY MILESTONES AND SCHEDULE

Project has six (6) Key Milestones. Key Milestones are used for evaluating performance on Project and determining level of compensation for completed work as described in the Agreement. Key Milestones cannot be changed without an amendment to the Agreement. Recipients may shift the estimated grant funds shown below between milestones without an amendment to the Agreement, but shall not, under any circumstances, exceed the "Total Not To Exceed Grant Fund Allocation". Recipient shall report changes to the Estimated Amounts corresponding to each Key Milestones, shown below, in Recipient's Monthly Report to the ODOT Project Liaison.

If the Recipient anticipates the Project key milestones will be delayed by more than ninety (90) days, Recipient shall submit a Request for Change Order (see attached Exhibit E) to the ODOT Project Liaison as soon as Recipient becomes aware of any possible delay. The Request for Change Order must be submitted prior to the Key Milestone completion date shown in this Exhibit.

The anticipated start date of the Project is: June 15, 2009

The estimated completion date of the Project is: October 31, 2010

Table 1: Key Milestones

Key Milestone	Description	Estimated Due Date	Estimate Amount
1	Scoping and planning	6/15/2009	\$16,000
2	Right of way and land acquisition	N/A	N/A
3	Permits	N/A	N/A

**EXHIBIT A - to Agreement No. 24941
Statement of Work**

4	Final plans/bidding engineering documents	11/1/2009	\$589,000
5	Construction contract award	2/1/2010	\$3,466,295
6	Project completion	10/31/2010	N/A
	Total Project Cost		4,071,295

Table 2 – Funding Breakdown

A	Total Not to Exceed Grant Fund Allocation	\$3,257,036	
B	ConnectOregon 20 percent required match	\$ 814,529	
C	ConnectOregon II Total		\$4,071,295
D	Other Funds In Addition to 20 percent Required Match	\$0	
E	Total Project Funding		\$4,071,295

Table 3 – 2 Percent Statewide Multimodal Study Fee Amount

	2 percent of <i>ConnectOregon</i> II total from Table 2, line C	\$ 81,425
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C. BUDGET

Should funding become available, the Total Not to Exceed payable to Recipient will be \$3,257,036.

Total Project costs are estimated at \$4,071,295. The *ConnectOregon* grant fund allocation for this Project, should funds become available, is \$3,257,036. Recipient shall be responsible for any unanticipated costs over the identified *ConnectOregon* grant fund allocation.

EXHIBIT B

Agreement Number: 24941

Project Name: Ontario Airport Pavement Improvement Project

ACKNOWLEDGMENT OF STATE ASSISTANCE

The property and assets under the jurisdiction of Recipient, were improved with assistance from the State of Oregon, Department of Transportation under an agreement executed between Recipient, and the Oregon Department of Transportation (ODOT) dated . Such assistance was provided to Recipient, in reimbursement of costs associated with the Ontario Airport Pavement Improvement Project. 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 of ODOT.

By : _____

Title : _____

SUBSCRIBED and SWORN to before me this _____ day of _____, 20__

NOTARY PUBLIC FOR OREGON

My commission expires: _____

EXHIBIT D
MONTHLY PROGRESS REPORT



ConnectOregon
MONTHLY PROGRESS REPORT
Overview of Actions and Responsibilities

Who Initiates the form?	The ConnectOregon Project Recipient.
Action required by the Recipient:	Fill out the Monthly Progress Report and send to the ODOT Project Liaison by the established monthly report date.
When is the form processed?	Monthly, on the date established as the monthly progress report due date, throughout the life of the Project.
Where does the Recipient send the form?	To the ODOT Project Liaison identified in the Notice to Proceed Letter or as later identified by ODOT if ODOT Project Liaison has changed.
Action required by ODOT Project Liaison:	The ODOT Project Liaison reviews the Monthly Progress Report. The ODOT Project Liaison contacts Local Government Section Manager if Recipient is not submitting reports.



ConnectOregon MONTHLY PROGRESS REPORT

The Project Recipient must submit this form to the ODOT Project Liaison by the monthly report date established by the Recipient and ODOT Project Liaison.

Part A: Project Details

PROJECT NAME		REGION NUMBER	IGA NUMBER
RECIPIENT NAME			EA PROJECT NUMBER
ADDRESS			
CITY		STATE	ZIP
			ESTABLISHED MONTHLY REPORT DATE
PHONE	FAX	E-MAIL	DATE OF THIS REPORT
Recipient – Complete form, sign, date, and send original form and any attachments to the ODOT Project Liaison.			RECIPIENT SIGNATURE
			DATE

Part B: Key milestone monthly report

Instructions:

1. Fill in the following information each month to provide information on key milestones. Use the key milestones and estimated due dates found in Recipient's *ConnectOregon* Agreement to fill in the "Description" and "Estimated Due Date" in the table below.
2. Fill in the "Anticipated Completion Date". If the Project key milestones are still anticipated to be completed on time, insert the same date shown in Recipient's Agreement under "Estimated Due Date" column. If the Project is expected to be delayed, provide the date the Project is anticipated to be completed in the "Anticipated Completion Date" column. (If the estimated due date is expected to be delayed by 90 days or more, Recipient will need to fill out the "Request Change Order" form and return it to the ODOT Project Liaison with the monthly progress report and any invoices.)
3. Indicate what percentage of work has been completed for each milestone in the "Percentage Complete" column.
4. Sign and date the form and return the completed form on or before the established monthly progress report date to the ODOT Project Liaison.

Description (List each milestone as shown in the <i>ConnectOregon</i> Agreement.)	Estimated Due Date	Anticipated Completion Date	Percentage Complete
1.			
2.			
3.			
4.			
5.			
6.			

EXHIBIT E

REQUEST FOR CHANGE ORDER FORM



ConnectOregon
REQUEST FOR CHANGE ORDER
Overview of Actions and Responsibilities

Who initiates the form?	The <i>ConnectOregon</i> Project Recipient.
When is the form processed?	<ol style="list-style-type: none">1. When any of the original Project key milestone dates and/or Project completion date listed in the Recipient's <i>ConnectOregon</i> agreement are projected to be delayed by 90 days or more, or2. When any other changes to the Agreement are being requested.
Where does the Recipient send the form?	To the ODOT Project Liaison identified in the Notice to Proceed Letter.
Action required by ODOT Project Liaison:	The ODOT Project Liaison reviews the Request for Change Order and makes a recommendation to approve or disapprove, then forwards the form to the Local Government Section Manager.
Action required by Local Government Section Manager:	Reviews the Request for Change Order and either approves the request or forwards to the <i>ConnectOregon</i> Oversight Committee for review.
<i>ConnectOregon</i> Oversight Committee:	Reviews the Request For Change Order and either approves or disapproves the request, or recommends approval and forwards to the ODOT Director for review.
ODOT Director:	Reviews the Request for Change Order and approves or disapproves requested changes. Returns form with action taken to Local Government Section Manager. (In some cases, Director may request OTC review and approval.)
Local Government Section Manager	Notifies ODOT Project Liaison of action taken.
ODOT Project Liaison	Notifies Project Recipient of action taken.



ConnectOregon REQUEST FOR CHANGE ORDER

The Project Recipient must submit this form to ODOT when any of the Project key milestone dates and/or completion date listed on the Recipient's *ConnectOregon* agreement are projected to be delayed by 90 days or more, or when any other changes to the Agreement are being requested.

Instructions to Recipient:

- Complete Part A: Project Details
- Complete Part B. List Project key milestones, current key milestone dates and requested dates.
- Complete Part C. Answer all questions in Part C.
- Sign and date Page 1 of this form, and submit completed form and all attachments to the ODOT Project Liaison.

Part A: Project Details

PROJECT NAME			REGION NUMBER	IGA NUMBER
RECIPIENT NAME				EA PROJECT NUMBER
ADDRESS				CHANGE ORDER NUMBER
CITY	STATE	ZIP	DATE CHANGE REQUESTED	
PHONE	FAX			E-MAIL
RECIPIENT SIGNATURE				DATE

Recipient – Complete form, sign, date, and send original form and any attachments to the ODOT Project Liaison.

ODOT Project Liaison – Send completed form to:

Local Government Section Manager
 ODOT Local Government Section
 355 Capitol St. NE, Room 326
 Salem, OR 97301-3871

ODOT USE ONLY

ODOT Project Liaison	<input type="checkbox"/> Recommend approval <input type="checkbox"/> Do not recommend approval	SIGNATURE	DATE
Local Government Section Manager	<input type="checkbox"/> Approved <input type="checkbox"/> Recommend approval <input type="checkbox"/> Do not recommend approval	SIGNATURE	DATE
ConnectOregon Oversight Committee	<input type="checkbox"/> Approved <input type="checkbox"/> Recommend approval <input type="checkbox"/> Do not recommend approval	SIGNATURE	DATE
Director, Oregon Department of Transportation	<input type="checkbox"/> Approved <input type="checkbox"/> Not approved	SIGNATURE	DATE

Part B: The key milestones are hereby requested to be modified as follows. (List all Project key milestones as described in Agreement, current key milestone due dates, and requested milestone due dates.)

Project Key Milestone Description	Current milestone due date(s)	Requested milestone due date(s)
1.		
2.		
3.		
4.		
5.		
6.		
Does the requested change affect the Project completion date? <input type="checkbox"/> Yes <input type="checkbox"/> No If yes, new date:		

Part C: Change request information. (Provide as much detail as possible to answer the questions in Part C. Use additional sheets if necessary.)

1. Describe the change requested.

2. Why is the change required? Provide as much detail as possible; use extra sheets if necessary.

3. Total costs
 - i. Does the change increase the total cost of the Project?.....
 - ii. Does the change decrease to total cost of the Project?
 - iii. What is the total cost of the Project now?

4. Impacts to local business
 Does the change bring any additional business partners/construction in connection with the *ConnectOregon* Project?

 - i. If yes, what is the additional business being added to the Project, and what is the cost?
 - ii. If yes, how many additional construction and/or permanent jobs are associated with the change?

5. Impacts to local jobs
 Number of construction and/or permanent jobs on the Project including this change:.....

 - i. What is the total estimated number of construction jobs?
 - ii. What is the new total number of permanent jobs estimated to be created?.....

6. Does the change meet the original intent of the *ConnectOregon* Project? Address what the original consideration

7. Does the change affect the total match?

8. Provide justification for the change. As project readiness is a key component to the Project, any delays to the Project identified under "ODOT Obligations" of your *ConnectOregon* agreement.

9. Mitigation: What efforts have you made to keep the Project on schedule?

AGENDA REPORT

October 4, 2010

TO: Mayor and City Council

FROM: Alan Daniels, Airport Manager

THROUGH: Henry Lawrence, City Manager

SUBJECT: **RESOLUTION NO. 2010-149, A RESOLUTION ACKNOWLEDGING RECEIPT OF AN ODOT CONNECT OREGON GRANT FOR THE ONTARIO MUNICIPAL AIRPORT AND APPROPRIATING REVENUE AND EXPENSE BUDGETS WITHIN THE CITY'S GRANT FUND**

DATE: September 24, 2010

SUMMARY:

Attached is the following document:

- Resolution No. 2010-149

The Council is asked to adopt Resolution No. 2010-149, acknowledging receipt and authorizing expenditure of a Connect Oregon grant in the amount of \$3,566,377 for the Ontario Airport Pavement Improvement Project.

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
Sep 2010	Council Accepts FAA Grant #3-41-0044-009 for \$168,913
Oct 2010	Council Accepts ODOT Connect Oregon Grant thru Agreement No. 24941, Amendment Number 01

BACKGROUND:

The City of Ontario applied for and has been awarded a Connect Oregon Grant in the amount of \$3,566,377 to be used on the Ontario Airport Pavement Improvement Project.

This represents the third grant award for this project, the first two being FAA Project #3-41-0044-008 and #3-41-0044-009. 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. Additional grant match dollars will be requested from the General Fund Contingency at such time as the final FAA grant project is awarded.

The overall project is projected to cost \$4,457,970, with the City's cash contribution in match totaling a mere \$44,580.

FINANCIAL IMPLICATIONS:

The \$3,566,377 in Connect Oregon grant revenue is proposed to be budgeted within the City's Grant Fund, with the required match to be budgeted at such time as the final FAA Grant is awarded, anticipated for January 2011.

The City will not spend down these grant funds until that final grant is awarded, securing the additional \$553,932 in FAA funds to cover the City's local match requirement for these monies.

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 2010-149, **A RESOLUTION ACKNOWLEDGING RECEIPT OF AN ODOT CONNECT OREGON GRANT FOR THE ONTARIO MUNICIPAL AIRPORT AND APPROPRIATING REVENUE AND EXPENSE BUDGETS WITHIN THE CITY'S GRANT FUND.**

PROPOSED MOTION:

I move that the Council adopt Resolution 2010-149, **A RESOLUTION ACKNOWLEDGING RECEIPT OF AN ODOT CONNECT OREGON GRANT FOR THE ONTARIO MUNICIPAL AIRPORT AND APPROPRIATING REVENUE AND EXPENSE BUDGETS WITHIN THE CITY'S GRANT FUND.**

RESOLUTION 2010-149

A RESOLUTION ACKNOWLEDGING RECEIPT OF AN ODOT CONNECT OREGON GRANT FOR THE ONTARIO MUNICIPAL AIRPORT AND APPROPRIATING REVENUE AND EXPENSE BUDGETS WITHIN THE CITY'S 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 Oregon Department of Transportation thru its Connect Oregon Program to complete engineering and construction to rehabilitate the airport's runway 14-32 (100 foot width) and associated parallel taxiway with pavement overlay, replace the lighting system, and rehabilitation and expansion of the airport's primary apron, rehabilitating and expanding existing parking area for jets; and

WHEREAS, the Connect Oregon grant award totals \$3,566,377, and the City's required grant match for the project is \$891,594, of which \$293,081 has already been secured from the FAA, and a final FAA Grant in the amount of \$553,932 is anticipated in January 2011 to cover the balance of the City's overall match; and

WHEREAS, the City Council accepted the grant award thru Resolution 2010-149, and desires now to formally modify the 2009-2011 Grant Fund budget by identifying the revenues and project expenses to complete the Connect Oregon funded portion of 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
GRANT FUND				
REVENUES				
010-000-458104	ODOT Connect Oregon Airport Project	\$ 0	\$ 3,566,377	\$ 3,566,377
EXPENSES				
010-038-714104	Airport Grants-Connect Oregon	\$ 0	\$ 3,566,377	\$ 3,566,377

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 30, 2010

TO: Mayor and City Council

FROM: Bob Walker, Deputy Public Works Director
Marcy Skinner, Planning Technician

THROUGH: Henry Lawrence, City Manager

SUBJECT: RESOLUTION #2010-150: A RESOLUTION AUTHORIZING PUBLIC WORKS STAFF TO APPLY TO THE OREGON DEPARTMENT OF TRANSPORTATION FOR A TRANSPORTATION ENHANCEMENT PROGRAM GRANT WHICH WILL INCLUDE CITY MATCHING FUNDS OF 10.27% IF THE GRANT IS AWARDED

DATE: September 27, 2010

SUMMARY:

Attached are the following documents:

- Resolution #2010-150
- Letter of support
- Notice of Intent Document
- Ordinance #2630-2009

Resolution #2010-150 is in support of the application to the Oregon Department of Transportation for a Transportation Enhancement Grant for program years 2013 and 2014, to make streetscape improvements to downtown Ontario on South Oregon Street, consistent with the approved Revitalization Plan. If the grant is awarded, it requires a 10.27% city match (cash, staff time, private donors, volunteer labor and/or services).

PREVIOUS COUNCIL ACTION:

July 2, 2009 Council passed Ordinance 2630-2009

Ordinance 2630-2009 amended the Comprehensive Land Use Plan, the Transportation System Plan, and Title 10 of the City's Municipal Code. The ordinance also adopted the Ontario Revitalization Plan into the Comprehensive Land Use Plan by reference so that it will provide the basis for future changes to the City's capital improvement plan, applications for local or state grants, or other initiatives intended to implement the recommendations within the Revitalization Plan.

BACKGROUND:

The Ontario Downtown Revitalization Plan was commissioned in 2008 and completed in 2009, to enhance the economic vitality of the downtown, to solidify, identity and create a vision for downtown, determine appropriate land uses for specific sites within the downtown, and identify streetscape, transportation, and other improvements that will support the economic vitality and identity of downtown. The plan was adopted into the City Comprehensive Plan. This proposed project will initiate Phase 1 of the plan, consisting of four blocks of streetscape improvement on South Oregon Street from Idaho Avenue to 4th Avenue. Due to the extensive sewer and storm drain work that will need to be accomplished in Oregon Street, additional street restoration work will be required as compared to the original plan.

FINANCIAL IMPLICATIONS:

If the City is awarded the grant of \$1,484,179 for project costs, it would require a match of 10.27% or \$169,050. These matching funds would be a combination cash, staff time, private donors, volunteer labor and/or services. Any matching funds will need to be budgeted in the future 2012-2013 City budget.

RECOMMENDATION:

Staff recommends Council approve Resolution #2010-150.

PROPOSED MOTION:

I move the City Council approve Resolution #2010-150, **A RESOLUTION AUTHORIZING PUBLIC WORKS STAFF TO APPLY TO THE OREGON DEPARTMENT OF TRANSPORTATION FOR A TRANSPORTATION ENHANCEMENT PROGRAM GRANT WHICH WILL INCLUDE CITY MATCHING FUNDS OF 10.27% IF THE GRANT IS AWARDED.**

RESOLUTION 2010-150

A RESOLUTION AUTHORIZING PUBLIC WORKS STAFF TO APPLY TO THE OREGON DEPARTMENT OF TRANSPORTATION FOR A TRANSPORTATION ENHANCEMENT PROGRAM GRANT WHICH WILL INCLUDE CITY MATCHING FUNDS OF 10.27% IF THE GRANT IS AWARDED.

WHEREAS, the Oregon Department of Transportation (ODOT) is soliciting Transportation Enhancement Act (TEA) project proposals for program years 2013 and 2014; and

WHEREAS, the City submitted a Notice of Intent to ODOT on June 30, 2010 for a TEA grant. The grant is for the purpose of enhancing the pedestrian environment through streetscape improvements in the Downtown Business District along South Oregon Street from Idaho Avenue to SW 4th Avenue as part of an overall effort to enhance commerce in the City of Ontario; and

WHEREAS, ODOT responded to the Letter of Intent authorizing the City of Ontario to apply for the grant in the amount of \$1,484,179 for project costs; and

WHEREAS, if the City of Ontario is awarded the grant, a 10.27% matching fund commitment totaling \$169,871 will be required. The matching funds are comprised of cash, donations of City Staff time, donations of cash or materials from private donors, and volunteer labor and/or services.

NOW THEREFORE, BE IT RESOLVED that the Ontario City Council authorize the City Manager to apply for the TEA grant. Furthermore, the Council understands that it may be necessary for a cash contribution from the City, which will need to be approved as part of the City's 2012-2013 budget, per Oregon State law.

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



Your Hometown Nursery
ANDREW'S
Seed Company

580 South Oregon St.
Ontario, Oregon 97914
(541) 889-9109
FAX: (541) 889-6470

September, 25 2010

To Whom It May Concern,

We write to you regarding recent efforts being made to obtain grant funding by representatives of the city of Ontario, Oregon.

As local business owners, we have seen first -hand what beautification in the two block area around our own business has created. It has generated excitement and much enthusiasm among our customers and local citizens alike. The results of our own curbside beautification rival all other forms of our marketing efforts combined.

We think that these types of projects can directly benefit the business' of Ontario, Oregon. Thus, also, benefiting the people of Ontario, Oregon. We have pushed for beautification projects in the recent past and have even offered to pay for materials involved in the cost. But it all comes back to 'no funding' for these types of projects at this time.

Therefore, we simply ask that you seriously consider our application for this grant so that we can move forward, beautify our community, and create a new pride in our hometown.

Sincerely,

Mike Keith
Susan Keith

NOTICE OF INTENT

This Notice is required for all applicants. FAX to: (503) 986-3290 or mail to:
 ODOT Transportation Enhancement Program, 355 Capitol St NE, Rm 326 Salem OR 97301-3871

Due: June 30, 2010

- INSTRUCTIONS:** (1) Enter project information in the boxes below. (2) Attach a letter or narrative (1 page max.) explaining the need for the project, type and extent of proposed work, property ownership status, funds requested and matching funds available, and the role of any co-applicants or partners.
 (3) Attach a vicinity map and site map or other appropriate graphics—1 or 2 pages.

APPLICANT		CITY OF ONTARIO	
Agency		Contact	Chuck Mickelson
Address	444 SW 4 TH ST ONTARIO, OR 97914	Title	PW Director
		Telephone	541-881-3231
		Email	Chuck.mickelson@ontariooregon.org
CO-APPLICANT (if any)			
Name		Contact	
Address		Title	
		Telephone	
PROJECT (name, location, and one-line description)			
South Oregon Street sidewalk streetscape			
COST SUMMARY		RIGHT-OF-WAY NEEDS	
Total Project Cost	1,854,050	Property to be purchased?	
Non-TE costs included above	200,000	<input type="checkbox"/> yes <input checked="" type="checkbox"/> no	<input type="checkbox"/> don't know yet
Matching funds	<i>Subtotal = 1,654,050</i> 154,050	Easements or donated property?	
TE Request	<i>10.27% = 169,871</i> 1,500,000	<input type="checkbox"/> yes <input checked="" type="checkbox"/> no	<input type="checkbox"/> don't know yet
(Total minus non-TE & match)	<i>1,484,179</i>		
COORDINATION ISSUES (mark all that apply)			
<input type="checkbox"/> Project located in MPO jurisdiction (metropolitan area with population >50,000)	<input type="checkbox"/> Project on railroad property		
<input type="checkbox"/> Project within state highway right-of-way	<input type="checkbox"/> Project within 500 ft. of a railroad crossing		
<input type="checkbox"/> Use of land owned by another agency	<input type="checkbox"/> Contribution from other than applicant		
	<input type="checkbox"/> Maintenance by other than applicant		

ODOT Reply Area

- APPROVED TO PROCEED with an application for FY 2013-2014 funding.
 Application requires advance coordination or endorsements. See 'Part 2 Checklist' attached.
 Please call the TE Program Manager at (503) 986-3528 to discuss this proposal.
 NOT APPROVED TO APPLY project not eligible applicant not eligible

→ Confirm method of calculating local match

APPLICATION FORM INSTRUCTIONS

*PRF
7/06/10*

South Oregon Street Sidewalk Streetscape

The Ontario South Oregon sidewalk streetscape plan is part of a multi-phase effort to strengthen Ontario's downtown. The Plan recognizes that a number of activities and developments in the last ten years have drawn travelers and customers away from Ontario's Main Street (Oregon Street) and core downtown area. At the same time, the downtown continues to support a strong collection of local businesses and provides an attractive, pedestrian friendly shopping environment for visitors and residents. The goal of this project is to further enhance the area's identity and vitality, build upon a strong historical old town character, and to create an even more attractive and unique environment that will continue to draw people and commerce to the area.

Ontario recently completed the construction of North Oregon Street immediately north of this project including the installation of trees, along with pedestrian and intersection lighting which greatly enhanced the character of the North Oregon neighborhood. The City is also preparing to extend North Oregon to align with NW Washington as it ties into the Yturri Beltline and the freeway which will further complement the South Oregon Street project. In 2005, the Oregon Downtown Development Association's Downtown Ontario Resource Team Report identified a variety of streetscape and other public facility improvements, as well as opportunities for infill and redevelopment. In 2009, the City of Ontario, through a TGM grant from ODOT and DLCD, hired Angelo Planning Group to assist in planning for the downtown improvement. This project will help meet the objectives of that study.

Proposed Oregon Street Projects and Costs

The South Oregon Street Sidewalk Streetscape would include: high-visibility crosswalks, tighter curb radii that shorten crossing distances and calm vehicular turning movements, bump outs, street trees, planter boxes and/or other landscaping such as hanging baskets, street furniture including benches, trash receptacles and drinking fountains, a transit bus stop, pedestrian-scaled lighting, bicycle parking, and crosswalks with special paving at intersections and selected mid-block crossings.

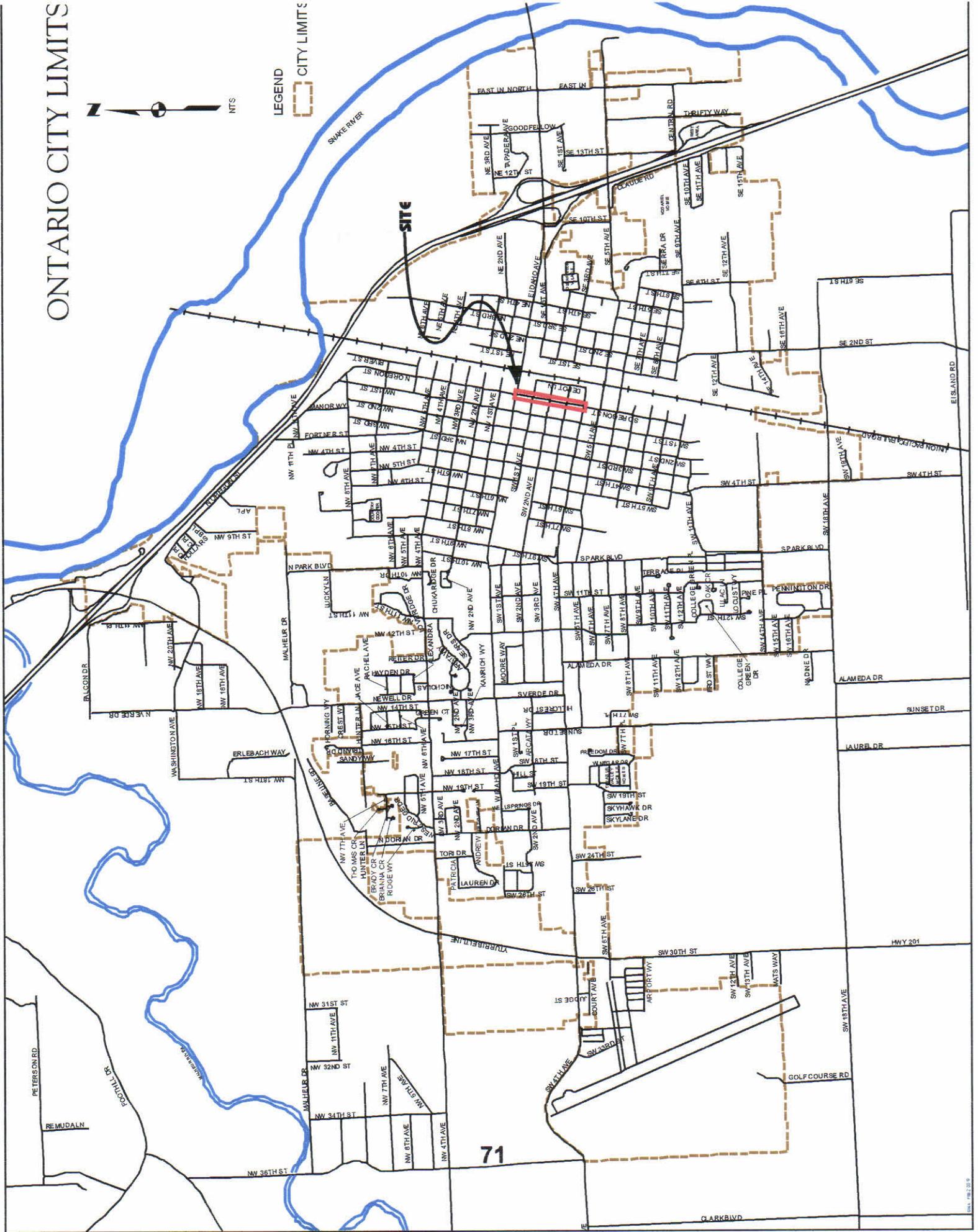
Preliminary rough cost estimates have been prepared for the priority downtown improvement projects and bicycle and pedestrian improvements described above. These costs include paving, curb and sidewalk construction, storm drainage improvements, landscaping, mobilization and traffic control, design and construction management and contingencies. The total costs are estimated to be approximately \$1,854,000, but the City would consider a lesser grant if the full allocation is not available.

These recommended projects provide an innovative blend of land use planning, urban design, and transportation planning to encourage a vibrant downtown, and to promote both transportation-efficient land uses and multi-modal choices within downtown Ontario.

ONTARIO CITY LIMITS



LEGEND
[Dashed line symbol] CITY LIMITS



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NTS

72

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JUL 15 2009

DEBORAH R. DE LONG County Clerk
By *Shari Balsys* Deputy

ORDINANCE NO. 2630-2009

AN ORDINANCE AMENDING THE COMPREHENSIVE LAND USE PLAN, THE
TRANSPORTATION SYSTEM PLAN, AND TITLE 10 OF
THE CITY OF ONTARIO MUNICIPAL CODE

WHEREAS, The City of Ontario has implemented the State of Oregon's Statewide Planning Goals through adoption of a Comprehensive Land Use Plan and Transportation System Plan, and implemented that Plan through adopted zoning regulations contained in Title 10 of the City's Municipal Code; and

WHEREAS, The *Ontario Downtown Revitalization Plan* was commissioned to enhance the economic vitality of the downtown, solidify an identity and vision for downtown, determine appropriate land uses for specific sites within the downtown, and identify streetscape, transportation, and other improvements that will support the economic vitality and identity of downtown; and

WHEREAS, The other amendments to the Comprehensive Land Use Plan, Transportation System Plan, and Title 10 of the Municipal Code are needed to implement the vision and improvements identified in the *Ontario Downtown Revitalization Plan*; and

WHEREAS, It is proposed that the *Ontario Downtown Revitalization Plan* be adopted into the Comprehensive Land Use Plan by reference so that it can provide the basis for future changes to the City's capital improvement plan, applications for local or state grants, or other initiatives intended to implement the recommendations within the Revitalization Plan;

WHEREAS, Staff has initiated a formal application for the proposed amendments, notified DLCD and all other required individuals and agencies; and

WHEREAS, Pursuant to the formal application, the City has held joint Planning Commission and City Council work sessions on April 16 and April 30, 2009 to review the proposed amendments and public hearings on adoption of the proposed amendments on June 1, 2009.

NOW, THEREFORE, THE CITY OF ONTARIO ORDAINS AS FOLLOWS:

1. Based upon the attached Exhibits "A", "B", "C", "D" and "E", and on the record of Land Use Action 2009-05-06 LURA, the Comprehensive Land Use Plan, Transportation System Plan, and Titles 10A and 10C are amended as follows:
 - A. Amendment. The *Ontario Downtown Revitalization Plan*, as presented in Exhibit "A", is to be adopted into the Comprehensive Land Use Plan by reference.
 - B. Amendment. Goal 2, 10-2-7 Policies: Commercial Land Use; Goal 9, 10-9-7 Policies: Economic Development; and Goal 10, 10-10-6 Policies: Housing of the Comprehensive Land Use Plan are amended to add language presented in Exhibit "B";
 - C. Amendment. Goal 6: Alternative Modes of Transportation of the Transportation System Plan is amended to add language presented in Exhibit "C";
 - D. Amendment. Title 10A, Sections 10A-03, 10A-27-05, 10A-29-05, 10A-33-05, 10A-35, 10A-57, 10A-57-65, 10-57-195, 10A-57-210, 10A-60 are to be amended and Section 10A-33-09 is to be deleted as presented in Exhibit "D";
 - E. Amendment. Title 10C, Sections 25-04.001 and 25-08 are to be amended as presented in Exhibit "E".

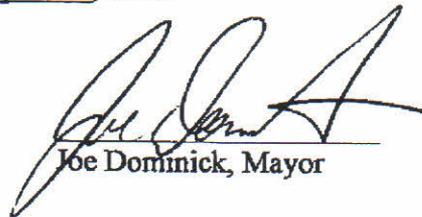
PASSED AND ADOPTED by the Common Council of the City of Ontario this 2nd day of July, 2009 by the following vote:

AYES: Mills, Dominick, Gaskill, Verini, Crume

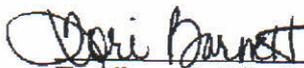
NAYS: None

ABSENT: Fugate, Sullivan

APPROVED by the Mayor this 2nd day of July, 2009.


Joe Dominick, Mayor

ATTEST:


Tom Barnett, City Recorder

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12:26 PM

Exhibit A

JUL 15 2009

DEBORAH R. DELONG County Clerk
By *Sharon Kelly* Deputy

**DRAFT FINAL REPORT
ONTARIO DOWNTOWN REVITALIZATION PLAN
MARCH 5, 2009**

PREPARED FOR THE CITY OF ONTARIO BY
COGAN OWENS COGAN, LLC

IN ASSOCIATION WITH
ANGELO PLANNING GROUP
ALTA PLANNING+DESIGN
JOHNSON REID, LLC
KITTELSON & ASSOCIATES, INC.
SERA ARCHITECTS

AGENDA REPORT

October 4, 2010

TO: Mayor and City Council

FROM: Alan Daniels, Airport Manager

THROUGH: Henry Lawrence, City Manager

SUBJECT: AGREEMENT ACKNOWLEDGEMENT AND APPROVAL BETWEEN THE CITY AND KIMLEY-HORN FOR ADDITIONAL ENGINEERING SERVICES FOR AIRPORT IMPROVEMENT PROJECT 3-41-0044-009

DATE: September 27, 2010

SUMMARY:

Attached is the following document:

- Contract to Kimley-Horn for \$316,782 dated March 2010

This request for approval consists of authorizing an additional \$168,913 in contract services to Kimley-Horn for our airport improvement project. This amount will be in addition to the existing \$124,168 agreement authorization made by the Council during March 2010. Funds for this contract authorization will be from the new FAA Grant Project #3-41-0044-009 in the amount of \$168,913, together with the City's match of \$15,390 from both open FAA Grants.

The original contract with Kimley-Horn was \$60,030 at July 2009, and the Council approved an increase based upon the maximum grant amount for Project #3-41-0044-008 thru Resolution No. 2009-104 in March 2010.

Unfortunately, neither the Agenda Report nor Resolution 2009-104 specified the maximum grant amount for Project #3-41-0044-008 to be \$130,668, and the Kimley-Horn contract attached to Resolution 2009-104 was for a lump sum fee of \$223,752, plus time and materials up to \$93,030 for bidding and a portion of construction and additional services, for a total of \$316,782.

Following the Council's approval, the agreement was signed for up to \$316,782 in services when the minutes reflect an approval of an amount up to the full project budget for Grant #3-41-0044-008, which was only \$130,668.

Since that time, the Council has accepted and budgeted for FAA Project #3-41-0044-009, and the Council is being asked by staff to approve the increase in the agreement with Kimley-Horn from \$124,168 to \$308,471, a total increase of \$184,303.

The new authorization represents a total contract with Kimley-Horn of \$308,471 and will represent the total project budget of both the #008 and #009 FAA Grants as follows:

Year	Project Number	Grant	Match	Project Budget
2009	#3-41-0044-008	\$ 124,168	\$ 6,500	\$ 130,668
2010	#3-41-0044-009	\$ 168,913	\$ 8,890	\$ 177,803
		\$ 293,081	\$ 15,390	\$ 308,471

PREVIOUS COUNCIL ACTION:

- Feb 2009 Council Accepts FAA Grant for Project #3-41-0044-008 for \$124,168 and Pledges \$6,500 in Grant Match for a Project Total of \$130,668
- 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
- Jul 2009 Council Approves ODOT Connect Oregon Agreement #24941, an Unfunded Grant Award, Allowing the City to Begin the Overall Project with FAA Grant Funds Prior to Receiving any Connect Oregon Grant Funds
- Nov 2009 Council approves Connect Oregon 3 Application for Same Project Awarded to the City and Unfunded
- Mar 2010 Council Approves Contract Increase with Kimley-Horn from \$60,030 to \$124,168 for Additional Project Design Work up to the Amount of Funding for Project #3-41-0044-008
- Sep 2010 Council Accepts FAA Grant #3-41-0044-009 for \$168,913 and Pledges \$8,890 in Grant Match for a Project Total of \$177,803

BACKGROUND:

Staff had previously informed the Council that in anticipation of major construction at the airport funded by Connect Oregon 3 and by FAA funds, the long lead time items needed to be started as soon as possible.

The State of Oregon gave written approval to start work on the project thru ODOT Connect Oregon II Grant Agreement Number 24941, however, ODOT Connect Oregon II funds would not be available for use on the project until funding became available, possibly thru the Connect Oregon III funding cycle.

Staff also informed the Council that any approved City funds spent on design prior to the Connect Oregon II grant award being funded could be applied to the City's grant match requirement for the overall project.

The FAA agreed to leverage the City's Connect Oregon II project thru grant funds it awarded to the City for the same project, acting as a majority of the City's required local match for the project. To date, the FAA has awarded two grants, the first of \$124,168 for Project #008, and most recently an additional \$168,913 for Project #009.

The work under this Council approval of an expanded agreement amount, much of which has already been completed, will allow for the City's project to proceed to bidding.

It is anticipated that further requests for additional engineering services to Kimley-Horn will be presented to the Council following the award of the Connect Oregon II funding agreement and the final FAA grant for the overall project.

ALTERNATIVE:

The Council could choose not to proceed with awarding additional design work to Kimley-Horn, understanding that the overall project would be delayed until design work is completed, and further understanding that some of this work has already been completed based on the existing agreement signed in March 2010.

FINANCIAL IMPLICATIONS:

This agreement expansion is proposed to be paid out of the FAA Grant Project #3-41-0044-009 as accepted by the Council thru Resolution 2010-141, and utilizing the budget adopted thru Resolution 2010-147, which allocates \$8,890, or 5% of this grant project budget, of General Fund Contingency as project matching funds.

Council approval will bring the maximum payment for work to Kimley-Horn to \$308,471, the total of both open FAA grants. The \$8,311 remaining difference between Council approved amounts funded by existing open grants and the value of the Agreement signed in March 2010 will not be authorized to be billed by Kimley-Horn until such time as the Council approves additional amounts based on future grant awards.

RECOMMENDATION:

Staff recommends the Council acknowledge and approve the Agreement between the City and Kimley-Horn for a value not to exceed \$308,471, to continue with design work for the Ontario Airport Improvement Project as funded by FAA Grant Project #3-41-0044-009.

PROPOSED MOTION:

I move that the City Council acknowledge and approve the Agreement between the City and Kimley-Horn for a value not to exceed \$308,471, to continue with design work for the Ontario Airport Improvement Project as funded by FAA Grant Project #3-41-0044-009.

**STANDARD AGREEMENT BETWEEN CLIENT AND
KIMLEY-HORN AND ASSOCIATES, INC. FOR PROFESSIONAL SERVICES**

THIS AGREEMENT is made this 1st day of February, 2010, by and between the City of Ontario, Oregon ("the Client") and KIMLEY-HORN AND ASSOCIATES, INC., ("the Consultant").

NAME OF PROJECT: Rehabilitate Runway 14-32, Rehabilitate Parallel Taxiway, Install New Runway Edge Lighting & Shouldering, Rehabilitate and Expand Existing Apron - AIP 3-41-0044-008.

The Client and the Consultant agree as follows:

(1) Scope of Services and Additional Services. The Consultant's undertaking to perform professional services extends only to the services specifically described in Exhibit A, which is attached and made a part of this Agreement ("the Services"). However, if requested by the Client and agreed to by the Consultant, the Consultant will perform additional services ("Additional Services"), and such Additional Services shall be governed by these provisions. Unless otherwise agreed to in writing, the Client shall pay the Consultant for the performance of any Additional Services an amount based upon the Consultant's then-current hourly rates plus an amount to cover certain direct expenses including in-house duplicating, local mileage, telephone calls, postage, and word processing. Other direct expenses will be billed at 1.15 times cost. Technical use of computers for design, analysis, GIS, and graphics, etc., will be billed at \$5.00 per hour.

(2) Client's Responsibilities. In addition to other responsibilities described herein or imposed by law, the Client shall:

(a) Designate in writing a person to act as the Client's representative with respect to this Agreement. Such person shall have complete authority to transmit instructions, receive information, interpret and define the Client's policies and decisions with respect to the Consultant's services for the Project.

(b) Provide all criteria and information as to the Client's requirements, objectives and expectations for the Project, including performance requirements, budgetary limitations, and copies of all design and construction standards which the Client will require to be used or included in the drawings and specifications.

(c) Assist the Consultant by placing at its disposal all available information pertinent to the Project including previous reports and any other data relative to studies, design, or construction or operation of the Project.

(d) Furnish to the Consultant, as required for performance of the Consultant's Services (except to the extent provided otherwise in Exhibit A), data prepared by or services of others, including without limitation borings, probings and subsurface explorations, hydrographic surveys, laboratory tests and inspection of samples, materials and equipment; appropriate professional interpretations of all of the foregoing; environmental assessment and impact statements; property, boundary, easement, right-of-way, topographic and utility surveys; property descriptions; zoning, deed and other land use restrictions; and other special data or consultations; all of which

Consultant may use and rely upon in performing services under this Agreement.

(e) Provide Consulting surveys to establish reference points for construction (except to the extent provided otherwise in Exhibit A).

(f) Arrange for access to and make all provisions for the Consultant to enter upon public and private property as required for the Consultant to perform services under this Agreement.

(g) Examine all studies, reports, sketches, drawings, specifications, proposals and other documents presented by the Consultant, obtain advice of an attorney, insurance counselor and other consultants as the Client deems appropriate for such examination and render in writing decisions pertaining thereto within a reasonable time so as not to delay the services of the Consultant. The Consultant shall have no liability to the Client for delays resulting from Client's failure to review documents promptly.

(h) Furnish approvals and permits for all government authorities having jurisdiction over the Project and such approvals and consents from others as may be necessary for completion of the Project.

(i) Cause to be provided such accounting, legal, independent cost estimating and insurance counseling services as may be required for the Project, including services for issues raised by any contractor(s) of the Client ("the Contractor"), such auditing services as the Client may require to ascertain how the Contractor has used the moneys paid to it under the construction contract, and such inspection services as the Client may require to ascertain that the Contractor is complying with any law, rule, regulation, ordinance, code or order applicable to it.

(j) If the Client designates a person to represent it at the site other than Consultant or its agent or employee, set forth the duties, responsibilities and limitations of authority of the representative and the effect on the responsibilities of the Consultant in an exhibit to this Agreement before services begin.

(k) If more than one prime contract is to be awarded for construction, materials, equipment and services for the Project, designate a person or organization to have authority and responsibility for coordinating the activities among the various prime contractors.

(l) Furnish to the Consultant data or estimates as to the Client's anticipated costs for services to be provided by others as required for the Consultant to support opinions of probable total Project costs.

(m) Attend the pre-bid conference, bid opening, pre-construction conferences, construction progress and other job-related meetings and substantial completion inspections and final payment inspections.

(n) Give prompt written notice to the Consultant whenever the Client observes or otherwise becomes aware of any development that affects the scope or timing of Consultant's services, or any defect or nonconformance in any aspect of the Project.

(o) Bear all costs incident to the responsibilities of the Client.

(3) Period of Services. This Agreement has been made in anticipation of conditions permitting orderly and continuous progress of the Project through completion of the Services. The Consultant shall begin work timely after receipt of a fully executed copy of this Agreement and will complete the Services described in Exhibit A within a reasonable length of time. The times for performance shall be extended as necessary for periods of delay or suspension resulting from circumstances the Consultant does not control. If such delay or suspension extends for

more than six months (cumulatively) for reasons beyond the Consultant's control, the rates of compensation provided for in this Agreement shall be renegotiated.

(4) Compensation for Services.

(a) Kimley-Horn will perform the Design Portion of the Scope of Services as stated in the method of Compensation Section of Exhibit A for a lump Sum fee of \$223,752.00. Kimley-Horn will perform a portion of the Bidding and Construction Portion which will include all of Bidding-Phase 5 and a portion of Additional Services-Phase 8 including 8.1, 8.2, 8.3, 8.4, 8.5, 8.6, 8.8, 8.9, 8.11, 8.12, 8.14, & 8.15 as stated in the method of Compensation Section of Exhibit A for a Prevailing Rates Basis Fee of \$93,030.00. The Client shall pay the Consultant an amount based upon the Consultant's then current hourly rates plus an amount to cover certain direct expenses including in-house duplicating, local mileage, telephone calls, facsimiles, word processing, and postage. Other direct expenses will be billed at 1.15 times cost. Technical use of computers for design, analysis, GIS, and graphics, etc., will be billed at \$5.00 per hour.

(b) If the Consultant's compensation is on an hourly basis, the parties may have estimated in Exhibit A costs and expenses for the various portions of the scope of Services. Services undertaken or expenses incurred by the Consultant exceeding any estimates shall be the liability of the Client.

(c) The Client shall also be invoiced for and shall pay to the Consultant all taxes, if any, whether state, local, or federal levied with respect to amounts paid hereunder.

(5) Method of Payment.

(a) Invoices will be submitted periodically, via regular mail or email, for services performed and expenses incurred. Payment of each invoice will be due within 45 days of receipt. The Client shall also pay any applicable sales tax. All retainers will be held by the Consultant for the duration of the project and applied against the final invoice. Interest will be added to accounts not paid within 45 days at the maximum rate allowed by law. If the Client fails to make any payment due the Consultant under this or any other agreement within 45 days after the Consultant's transmittal of its invoice, the Consultant may, after giving notice to the Client, suspend services until all amounts due are paid in full.

(b) If the Client objects to any charge on an invoice submitted by the Consultant, the Client shall so advise the Consultant in writing giving its reasons within 14 days of receipt of the invoice or all such objections shall be waived, and the amount stated in the invoice shall be conclusively deemed due and owing.

(c) If the Consultant initiates legal proceedings to collect payments for services, it may recover, in addition to all amounts due and payable, its reasonable attorneys' fees, reasonable experts' fees, and other expenses related to the proceedings, including the cost, determined at the Consultant's normal hourly billing rates, of the time devoted to such proceedings by its employees.

(d) The Client agrees that the payment to the Consultant is not subject to any contingency or condition. The Consultant may negotiate payment of any check tendered by the Client, even if the words "in full satisfaction" or words intended to have similar effect appear on the check without such negotiation being an accord

and satisfaction of any disputed debt and without prejudicing any right of the Consultant to collect additional amounts from the Client.

(6) Use of Documents.

(a) All work the Engineer performs under this Agreement shall be considered work made for hire and shall become the property of the Owner. The Owner shall own any and all data, documents, plans, copyrights, specifications, working paper and any other materials the Engineer produces in connection with this Agreement. On completion or termination of the Agreement the Engineer shall deliver these materials to the Owner's Airport Manager.

(b) The Engineer may retain for its own use and as its own cost copies of the materials referred to in section (a) of this section.

(c) Any use the Owner makes of the materials referred to in subsection (a) of this section, except for purposes of the work contemplated by this Agreement, shall be at the Owner's risk and the Owner shall indemnify and hold harmless the Engineer from any and all liability for any reuse of the material referred to in subsection (a) of this section, except for purposes of the work contemplated by this Agreement.

(7) Opinions of Cost. Because the Consultant does not control the cost of labor, materials, equipment or services furnished by others, methods of determining prices, or competitive bidding or market conditions, all opinions rendered as to costs, including but not limited to opinions as to the costs of construction and materials, shall be made on the basis of its experience and represent its judgment as an experienced and qualified professional, familiar with the industry. The Consultant cannot and does not guarantee that proposals, bids or actual costs will not vary from opinions of cost prepared by it. If at any time the Client wishes greater assurance as to the amount of any cost, it shall employ an independent cost estimator. Consultant's services required to bring costs within any limitation established by the Client will be paid for as Additional Services.

(8) Insurance. The Consultant carries Workers' Compensation insurance, professional liability insurance, and general liability insurance. If the Client directs the Consultant to obtain increased insurance coverage, the Consultant will take out such additional insurance, if obtainable, at the Client's expense.

(9) Standard of Care. In performing its professional services, the Consultant will use that degree of care and skill ordinarily exercised, under similar circumstances, by reputable members of its profession practicing in the same or similar locality at the time the services are provided. No warranty, express or implied, is made or intended by the Consultant's undertaking herein or its performance of services, and it is agreed that the Consultant is not a fiduciary of the Client.

(10) Limitation of Liability. In recognition of the relative risks and benefits of the Project to both the Client and the Consultant, the risks have been allocated such that the Client agrees, to the fullest extent of the law,

and notwithstanding any other provisions of this Agreement or the existence of applicable insurance coverage, that the total liability, in the aggregate of the Consultant and the Consultant's officers, directors, employees, agents, and subconsultants to the Client or to anyone claiming by, through or under the Client, for any and all claims, losses, costs or damages whatsoever arising out of, resulting from or in any way related to the services under this Agreement from any cause or causes, including but not limited to, the negligence, professional errors or omissions, strict liability or breach of contract or any warranty, express or implied, of the Consultant or the Consultant's officers, directors, employees, agents, and subconsultants shall not exceed twice the total compensation received by the Consultant under this Agreement or \$50,000, whichever is greater. Higher limits of liability may be negotiated for additional fee. Under no circumstances shall the Consultant be liable to the Client or those claiming by or through the Client for lost profits or consequential damages, for extra costs or other consequences due to changed conditions, or for costs related to the failure of contractors to perform work in accordance with the plans and specifications. This Section is intended solely to limit the remedies available to the Client and those claiming by or through the Client, and nothing in this Section shall require the Client to indemnify the Consultant.

(11) Certifications. The Consultant shall not be required to execute certifications or third-party reliance letters that are inaccurate, that relate to facts of which the Consultant does not have actual knowledge, or that would cause the Consultant to violate applicable rules of professional responsibility.

(12) Dispute Resolution. All claims by the Client arising out of this Agreement shall be submitted first to mediation in accordance with the Construction Industry Mediation Rules of the American Arbitration Association as a condition precedent to litigation. Failing to reach agreement thereby and if then agreed to by the parties, the matter shall then be submitted to binding arbitration. Any mediation, arbitration or civil action must be commenced within one year of the accrual of the cause of action asserted but in no event later than allowed by applicable statutes.

(13) Construction Phase Services.

(a) If the Consultant's services include the preparation of documents to be used for construction and the Consultant is not retained to make periodic site visits, the Client assumes all responsibility for interpretation of the documents and for construction observation, and the Client waives any claims against the Consultant in any way connected thereto.

(b) The Consultant shall have no responsibility for any contractor's means, methods, techniques, equipment choice and usage, sequence, schedule, safety programs, or safety practices, nor shall Consultant have any authority or responsibility to stop or direct the work of any contractor. The Consultant's visits will be for the purpose of endeavoring to provide the Client a greater degree of confidence that the completed work of its contractors will generally conform to the construction documents prepared by the Consultant. Consultant neither guarantees the performance of contractors, nor assumes responsibility for any contractor's failure to perform its work in accordance with the contract documents.

(c) The Consultant is not responsible for any duties assigned to the design professional in the construction contract that are not expressly provided for in this Agreement. The Client agrees that each contract with any contractor shall state that the contractor shall be solely responsible for job site safety and for its means and methods; that the contractor shall indemnify the Client and the Consultant for all claims and liability arising out of job site accidents; and that the Client and the Consultant shall be made additional insureds under the contractor's general liability insurance policy.

(14) Hazardous Substances.

(a) Services related to determinations involving hazardous substances or conditions, as defined by federal or state law, are limited to those tasks expressly stated in the scope of services. In any event, Consultant shall not be a custodian, transporter, handler, arranger, contractor, or remediator with respect to hazardous substances and conditions. Consultant's services will be limited to professional analysis, recommendations, and reporting, including, when agreed to, plans and specifications for isolation, removal, or remediation.

(b) The Consultant shall notify the Client of hazardous substances or conditions not contemplated in Exhibit A of which the Consultant actually becomes aware. Upon such notice by the Consultant, the Consultant may stop affected portions of its services until the hazardous substance or condition is eliminated. The parties shall decide if Consultant is to proceed with the services and if Consultant is to conduct testing and evaluations, and the parties may enter into further agreements as to the additional scope, fee, and terms for such services.

(15) Assignment and Subcontracting. Nothing under this Agreement shall be construed to give any rights or benefits in this Agreement to anyone other than the Client and the Consultant, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of the Client and the Consultant and not for the benefit of any other party. The Client shall not assign, sublet or transfer any rights under or interest in this Agreement, or any claim arising out of the performance of services by Consultant, without the written consent of the Consultant. The Consultant reserves the right to augment its staff with subconsultants as it deems appropriate due to project logistics, schedules, or market conditions. If the Consultant exercises this right, the Consultant will maintain the agreed-upon billing rates for services identified in the contract, regardless of whether the services are provided by in-house employees, contract employees, or independent subconsultants.

(16) Confidentiality. The Client consents to the Consultant's use and dissemination of photographs of the Project and to its use of facts, data and information obtained by the Consultant in the performance of its services. If, however, any facts, data or information are specifically identified in writing by the Client as confidential, the Consultant shall use reasonable care to maintain the confidentiality of that material.

(17) Public Contracting Law. Pursuant to the requirements of ORS Chapter 279, the following terms and conditions are made a part of this Agreement. The Engineer agrees that he or she shall:

(a) Make payments promptly, as due, to all persons supplying to Engineer labor or materials for the

prosecution of the work performed for in this Agreement.

(b) Pay all contributions or amounts due the Industrial Accident Fund incurred in the performance of this Agreement.

(c) Pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.

(d) If the Engineer fails, neglects or refuses to make prompt payment of any claim for labor or series furnished to Engineer by any person in connection with this Agreement, as such claim become due, the proper office representing Owner may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due the Engineer by reason this Agreement.

(e) No person shall be employed for more than ten (10) hours in any one day, or more than forty (40) hours in any one week, except in cases of necessity, emergency, or where the public policy absolutely requires it.

(f) Since this Agreement is for personal services as defined in ORS 279.051, the laborer shall be paid at least time and a half for all overtime worked in excess of 40 hours in any one week, except for individuals under these contracts who are excluded under ORS 653.010 to 653.261 or under 29 U.S.C. sections 201 to 209 from receiving overtime.

(g) The Engineer shall promptly, as due, make payments to any person, copartnership, association or corporation, furnishing medical, surgical and hospital care or other needed care and attention, incident to sickness or injury, to the employees of the Engineer, of all sums which the Engineer agrees to pay for such services and all moneys and sums which the Engineer collected or deducted from the wages of employees pursuant to any law, contract or agreement for the purpose of providing or paying for such services.

(h) The Engineer and all employees working under this agreement are subject employers under ORS 656.017.

(18) Early Termination of Agreement

(a) The Owner and the Engineer, by mutual written agreement, may terminate this Agreement at any time.

(b) The Owner on Thirty (30) days written notice to the Engineer, by may terminate this Agreement for any reason deemed appropriate in its sole discretion.

(c) Either the Owner or Engineer may terminate this Agreement in the event of a breach of the Agreement by the other. Prior to such termination, however, the party seeking the termination shall give the other party written notice of the breach and of the party's intent to terminate. If the party has not substantially cured the breach within fifteen (15) days of the notice, then the party giving notice may terminate the Agreement at any time thereafter giving a written notice of termination.

(19) Payment on Early Termination

(a) In the event of termination under Paragraphs 18.a. and 18.b., Early Termination of Agreement, herof, the Owner shall pay the Engineer, for work performed in accordance with the Agreement prior to the termination date.

(b) In the event of termination under Paragraphs 18.c., Early Termination of Agreement, by the Engineer due to a breach by the Owner, the Owner shall pay the Engineer as provided in Paragraph (a).

(c) In the event of termination under Paragraphs 18.c., Early Termination of Agreement, by the Owner due to a breach by the Engineer, then the Owner shall pay the Engineer as provided in Paragraph (a), subject to set off of excess cost, as provide in Paragraph (20), Remedies.

(d) In the event of termination, all of the Engineer's work product will become and remain property of the Owner.

(20) Remedies

(a) In the event of termination under Paragraphs 18.c. by the Owner due to a breach by the Engineer, then the owner may complete the work itself, or be agreement with another Consultant, or by a combination thereof. In the event the cost of completing the work exceeds the remaining unpaid balance of the compensation provide under paragraph 4. Compensation for Services, then the Engineer shall pay to the Owner the amount of the excess.

(b) The remedies provided to the Owner under paragraph (18) , Early Termination of Agreement, Paragraph (19) Payment on Early Termination and Paragraph (20), Remedies, hereof for a breach by the Engineer shall not be exclusive, The Owner also shall be entitled to any other equitable and legal remedies that are available.

(c) In the event of breach of this Agreement by the Owner, then the Engineer's remedy shall be limited to termination of the Agreement and receipt of payment as provided in Paragraph 18, Early Termination of Agreement, and Paragraph (19), Early Termination of Agreement, and Paragraph (19), Payment on Early Termination, hereof.

(21) Miscellaneous Provisions. This Agreement is to be governed by the law of the State of Arizona. This Agreement contains the entire and fully integrated agreement between the parties, and supersedes all prior and contemporaneous negotiations, representations, agreements or understandings, whether written or oral. Except as provided in Section 1, this Agreement can be supplemented or amended only by a written document executed by both parties. Provided, however, that any conflicting or additional terms on any purchase order issued by the Client shall be void and are hereby expressly rejected by the Consultant. Any provision in this Agreement that is unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such unenforceability without invalidating the remaining provisions or affecting the enforceability of the provision in any other jurisdiction. The non-enforcement of any provision by either party shall not constitute a waiver of that provision or affect the enforceability of that provision or the remainder of this Agreement.

CLIENT: City of Ontario

BY: [Signature]

ITS: CITY MANAGER

ATTEST: [Signature]

(IF CORPORATION, AFFIX CORPORATE SEAL)

KIMLEY-HORN AND ASSOCIATES, INC.

BY: [Signature]

ITS: SEVP

ATTEST: [Signature]

DESCRIPTION OF PROJECT

AND

**SCOPE OF CONSULTANT
SERVICES**

FOR

AIP 3-41-0044-008

PROJECT LOCATION:

**ONTARIO MUNICIPAL AIRPORT
ONTARIO, OREGON**

Owner:

CITY OF ONTARIO, OREGON

May, 2009

Revised June 2009 and January 2010

PROJECT DESCRIPTION

Proposed project work is to include the following generally described physical improvements to Airport Facilities:

1. Rehabilitate Runway 14-32, including Shouldering
2. Install New Runway Edge Lighting System
3. Rehabilitate Parallel Taxiway and Associated Connecting Taxiways
4. Rehabilitate and Expand Existing Apron Area

See the attached drawings for the general location of these improvements. The work will be performed and constructed with financial assistance from the State of Oregon-Connect Oregon funds and the Federal Aviation Administration (FAA) Airport Improvement Program (AIP). The remaining funds will be provided by the Owner. The FAA Project Number is AIP 3-41-0044-008. The estimated total project budget is in the range of \$3.8 million to \$4.3 million. The estimated total project construction cost is in the range of \$3.2 million to \$3.6 million.

Professional services to be provided shall include planning, civil design, grant administration, site planning, preliminary design, final design, bidding, construction administration and observation, quality assurance and the overall coordination of all phases of the project with the Owner, State of Oregon and the FAA.

PROJECT IMPROVEMENTS TO INCLUDE:

1. **Rehabilitate Runway 14-32, including new Shouldering (approximately 600,000 square feet)**
Work is anticipated to include pavement removal, new drainage structures, retrofitted edge drain system, crack filling, paving fabric and bituminous asphalt placement, aggregate shouldering, and pavement marking.
2. **Install New Runway Edge Lighting System (approximately 10,300 linear feet)**
Work is anticipated to include installation of new electrical conduit, cable, edge lights including light bases and transformers.
3. **Rehabilitate Parallel Taxiway and Associated Connecting Taxiways (approximately 175,000 square feet)**
Work is anticipated to include crack filling, paving fabric installation, bituminous asphalt placement, and pavement marking.
4. **Rehabilitate and Expand Existing Apron Area (approximately 322,500 square feet)**
Work is anticipated to include new drainage structures, crack filling, paving fabric, bituminous asphalt placement, unclassified excavation, subbase, base course, and pavement marking.

AVAILABLE INFORMATION:

- Existing Airport Layout Plan set and Associated Master Plan Update prepared by Toothman-Orton Engineering Company dated December 2007.
- Connect Oregon II Program Application 2007-2009 prepared by Toothman-Orton Engineering Company dated August, 2007.

SCOPE OF SERVICES

More specifically, professional services required to accomplish the Project are anticipated to include the following activities.

PHASE 1 - GENERAL ADMINISTRATION

During the course of the Project the following general administrative services shall be provided.

- 1.1 Assist in Project Scope review and formulation. Prepare a Scope of Professional Services narrative. The Scope of Work will include a listing of all work tasks in a spreadsheet with "empty cells" for man-hours, hourly rates, and lump sum costs. Provide a "draft" scope for review by the Sponsor, State and FAA. Discuss review comments and revise accordingly.
- 1.2 Prepare an Agreement for Professional Services for submittal and review by the Sponsor. The Agreement will be comprehensive in description of services and responsibilities of contract parties. Agreement will contain verbiage endemic to Oregon State Statutes.
- 1.3 Include a detailed cost proposal based on estimates of professional service man hours, hourly rates and lump sum costs required to accomplish the design development and construction administration of the work.
- 1.4 Attend Project PreDesign meeting with Owner and FAA by telephone. In addition a prescoping meeting will be held at the airport to determine the planning and study issues that will need to be addressed during the design of the project.
- 1.5 Obtain existing survey control data, preliminary design drawings as required, the Airport Layout Plan Set and other documents from the previous Engineer-of-Record at the airport. Provide release letter for the Owner to obtain documents.
- 1.6 Coordinate with Independent Engineering Fee Estimator to describe and review the proposed project Scope of Work and to discuss the project in detail. This meeting will be utilized to assist the Independent Estimator so he/she can better understand the project. If the Estimator is located in Boise, the meeting will be held face to face in Boise. If the Estimator is remotely located the meeting will be accomplished by telephone. One formal meeting will be held to describe and discuss the scope of the project.
- 1.7 Advise and Coordinate with Owner regarding compliance documentation, procedure requirements, Scope of Work and Engineering Services Contract and general

guidance with the design process. Coordinate with FAA concerning these and other procedural items.

- 1.8 Initiate internal budgets, prepare monthly invoices with status reports of project progress in performing the work.

PHASE 2 - PLANNING AND STUDY

Planning and Study Phase Services shall include:

- 2.1 Investigate the proposed job site and environs. Allow civil design personnel to become familiar with the proposed job site. Take photographs and otherwise document findings of visit.
- 2.2 Review Preliminary cost estimate compiled in association with the original Connect Oregon application. Determine the feasibility of the associated scope of the work that determined the costs. Review unit costs used in original application and determine fluctuations from current potential bid costs. Discuss any construction alternatives not included in the original scope of the application that may be advantageous to adopt for the project. Discuss method to adopt alternative while staying within the budget as established by Connect Oregon Application/Grant.
- 2.3 Determine alternatives for the rehabilitation of the existing Runway 14-32 shoulder. Alternatives will consider the viability of reusing the existing runway shoulder drainage facility. If reuse of the facility is not feasible, determine a new drainage system that will address runway runoff.
- 2.4 Determine the feasibility of overlaying the existing apron prior to expansion as an alternative to complete reconstruction. Use geotechnical testing to determine the structural reliability of overlaying the apron. Determine if an overlay will allow finish apron grades to meet FAA grading criteria without reconstruction.
- 2.5 Determine if the existing Connecting Taxiway width at the intersection of the old runway and Runway 14-32 is necessary. Also determine the cost effectiveness of other "extra" pavement at Taxiway A-2.
- 2.6 Determine the best method to smooth the existing Runway where it was extended in 2007. Review runway survey data to determine additional areas that may need asphaltic leveling or grinding. Determine the most cost effective method of smoothing these sections.
- 2.7 Determine if an overlay of Runway 14-32 is structurally feasible and a cost effective method. This will be determined from a review of geotechnical data.
- 2.8 Determine the most effective apron configuration for the various activities in the apron environ. This includes insuring adequate spacing between tie-down rows, circulation for aircraft traffic, providing adequate separation between taxiing and fueling aircraft and fuel facilities.

- 2.9 Inspect electrical vault for upgrades that may need to be made to existing facilities due to upgrades of runway edge light system and associated electrical codes. If substantial upgrades to the electrical vault or its appurtenances are required, these tasks will be considered an additional service.

PHASE 3 - PRELIMINARY DESIGN

Preliminary Design Phase Services shall include:

- 3.1 Assemble base data and base maps for the project work area from the design survey.
- 3.2 Compile existing utility data, required to develop the project current conditions and to form the basis for design. The utility investigation will be based on as-built documentation provided by the Airport plus topographic survey information of surface features gathered by the Consultant. One trip to the airport site to observe the location and condition of existing runway drainage system and associated inlets will be required.
- 3.3 Prepare a conceptual construction sequence and safety plan for evaluation by the Owner, Airport, FBO, airport users, agencies, and the FAA. FAA requires a construction Safety Plan showing construction haul routes and staging areas, Notices to Airmen, and temporary marking, lighting and operational surface shutdowns for each of the construction phases as required. It is anticipated that due to the time needed for construction and the amount of pavement effected, phasing will be required during both the runway rehabilitation and apron construction.
- 3.4 Prepare preliminary Design Plans (65% complete) for review and discussion with the Sponsor. See Item 4.1 for the number and type of anticipated plan sheets.
- 3.5 Determine detention or retention requirements required as a result of alterations in existing storm drainage scenarios if required. Perform storage calculations as required by local best management practices. Alteration of drainage scenarios are anticipated both in the apron and the runway area.
- 3.6 Determine configuration for retro reflective markers for proposed apron configuration in accordance with FAA Advisory Circulars. Determine/review new Runway 14/32 edge and threshold light layouts.
- 3.7 Define critical aircraft for the pavement design of the project and develop pavement design criteria accordingly. Pavement design criteria shall be in accordance with the FAA Advisory Circular (AC) 150/5320-6D.

- 3.8 Attend three meetings with the Airport Advisory Board during the design of the project in order to keep Airport personnel and management abreast of the progress of the design. Discussions concerning project phasing and the impact of movement of aircraft from within the existing apron will need to be discussed.
- 3.9 Consultant shall review existing drainage studies developed for the Airport and surrounding developments to evaluate existing drainage patterns and systems. Consultant shall conduct a required analysis for the design of drainage improvements associated with the project in accordance with the FAA AC 150/5320-5C, Surface Drainage Design. It is anticipated that a new drainage system presently located in the shoulder east of the runway will need to be relocated to a location between the Runway and the parallel taxiway for the entire length of the runway. Any necessary drainage improvements will be sized to accommodate a 5-year storm event based on FAA design criteria.

PHASE 4 - FINAL DESIGN

The Final Design phase shall include the preparation of detailed construction plans and specifications, required design report, cost estimates, bid and contract documents suitable for obtaining competitive bids for construction of improvements. Final Design Services shall include the following work tasks:

- 4.1 Prepare final design drawings in conformance with FAA AC 150/5300-13 "Airport Design" including Change 13. Plans will include a Final Construction Sequence and Safety Plan. Incorporate comments received during the preliminary design review process into project design.

Note: An indication of the number of anticipated project plan sheets will be shown with the cost proposal. It is anticipated that the project design will require forty-nine plan sheets. The Plan Sheets include the following:

- Sheet 1 Cover
- Sheet 2 Construction Layout Plan
- Sheet 3-5 Safety & Phasing
- Sheet 6-10 Demo Runway Shoulder Plans
- Sheet 11-12 Grading & Drainage (Apron)
- Sheet 13-17 Grading and Drainage (Runway & P. Taxiway)
- Sheet 18-19 Grading and Drainage (Fill Area)
- Sheet 20-21 Plan and Profile (Apron)
- Sheet 22-26 Plan & Profile (Runway)
- Sheet 27-31 Plan & Profile (Parallel Taxiway)
- Sheet 32-35 Plan & Profile (Connecting Taxiways)
- Sheet 36 Marking (Apron)
- Sheet 37-38 Marking (Runway)
- Sheet 39-40 Marking (P. Taxiway)
- Sheet 41-45 Runway, Lighting, Taxiway Reflector Layout
- Sheet 46-47 Details (Civil)
- Sheet 48 Details (Electrical)
- Sheet 49 Details (Marking)

- 4.2 Prepare construction specifications based on FAA AC 150/5370-10C "Standards for Specifying Construction on Airports" including the current Regional Notice published by the FAA Seattle Airports Districts Office.
- 4.3 Prepare Bid Documents to include Bid Advertisement, Instructions to Bidders, Proposal, Bid Documents, Construction Agreement and Bond Forms, Notice of Award, Notice to Proceed, Wage Rates, Special Provisions, General Provisions,

Technical Specifications, and other Contract Documents required for solicitation of Bids and execution of a construction contract following bid award.

- 4.4 Prepare a revised estimate of project costs based on detailed bid schedules and advise the Owner as to budget status.
- 4.5 Prepare the Engineer's Design Report in conformance with FAA guidelines. The report shall include a Summary of the Project and its specific design issues, Project Schedule, reference to the Construction Operation Safety Plan, Modification of Standards, Design Analysis, Geotechnical Investigation Report, and Construction Cost Estimate.
- 4.6 Prepare Modification(s) of FAA Standards, as required to document changes to FAA standard regulations identified in the Design Phase, and obtain FAA and Sponsor approval prior to Grant offer.
- 4.7 Review final design drawings and associated documents with the Owner. Send copies of the drawings, Specifications and Engineers Design Report to the FAA and the State of Oregon for their review. Review design philosophy, phasing and safety plan, preliminary design drawings, design analysis and project schedules with the Sponsor. Coordinate with airport users, if required. Anticipate two (2) review meetings with the Owner in Ontario, Oregon including attendance by the Project Manager and Senior Engineer. Upon receipt of FAA review, address comments to all Contract Documents. Consultant will provide a written response to the airport and the FAA to the final review comments.
- 4.8 Consultant shall conduct a Peer and Quality Control Review for the contract documents performed in the Final Design Phase. Consultant shall assign individuals who have not worked on the development of the Drawings and Specifications.
- 4.9 Provide the Owner with two (2) complete sets of Final Design Documents, including plans, specifications, and design report. Submit one (1) set of similar documentation to each of the FAA and the State of Oregon.

PHASE 5 - BIDDING

Assist the Owner in the competitive sealed bid and Contractor selection process. Prepare and process contract award and construction agreement documents for the Sponsor. Bidding phase services shall include the following tasks:

- 5.1 Provide Pre-Bid Conference coordination to familiarize bidders and interested parties with the construction project scope and requirements. Prepare a detailed agenda and displays, prepare and issue conference minutes. It is anticipated that the Engineer will conduct this meeting in Ontario, Oregon.
- 5.2 Respond to questions that arise during the Contractor's or supplier's bid preparation process. Issue addenda or other clarifications as may be required. The actual preparation and issuance of Addenda shall be considered an Additional Service in Phase 8.
- 5.3 Administer the public bid advertisement process including bid document reproduction and distribution of documents to plan rooms, contractors and suppliers. Submit advertisements to appropriate newspaper(s) and trade magazines as required for publication. Maintain a "bidders list" and distribute plans as requested.
- 5.4 Assist the Owner in preparation for the project Bid Opening as required, including preparation of a Project Bid Summary. It is anticipated that the Engineer will coordinate and attend this meeting in Ontario, Oregon.
- 5.5 Prepare detailed Bid Tabulations documenting bid results and submit to Owner, FAA and the State of Oregon.
- 5.6 Assist the Owner with review and analysis of bids received. Consultant will determine his opinion on "responsiveness" of bid submittal. Provide Engineer's letter of recommendation of award to Owner.
- 5.7 Prepare and distribute Notice of Award, Construction Agreement and other contract documents. Review Construction Agreement, bonds and insurance documents submitted by Contractor, and assist Owner and Contractor in processing documents for the project.
- 5.8 Advise the Owner of possible action in cases where bids exceed Sponsor's budget for the work to be performed by the Contractor.
- 5.9 Coordinate with FAA and State of Oregon throughout the bid and award process. Submit bid documentation including copies of all executed contract documents as required by the FAA.

Note: The Consultant is to assume an orderly and routine bid process in preparation of man-hour estimates. Resolution of non-routine issues which may be associated with, but not limited to the following: bid protests; questionable contractor or subcontractor qualifications; failure to submit a “responsive” bid; rebid services or bid negotiations. If these items are required, they will be considered Additional Services beyond the scope of man-hours and costs estimated to complete the work described herein.

PHASE 6 - CONSTRUCTION

During the construction phase, the Consultant shall administer all aspects of the construction contract over which the Consultant can be expected to have realistic control in order to assist the Owner in monitoring and documenting the construction process for design compliance, quality assurance, and cost control. Construction phase services shall more specifically include the following work tasks:

- 6.1 Provide pre-construction coordination; prepare a detailed Pre-Construction Conference agenda and displays; conduct a Pre-Construction Conference on behalf of the Owner in Ontario, Oregon, and prepare and issue minutes of the Pre-Construction Conference; advise the FAA and State of Pre-Construction Conference dates and include FAA items in conference agenda.
- 6.2 Prepare a Construction Management Plan in accordance with FAA guidelines. Clarify specification and document submittal requirements. Include Contractor's Quality Control Plan information into the plan. Submit document to the FAA.
- 6.3 Review the Contractor's Work Schedule and verify that it is consistent with the requirements of the Contract Documents. Coordinate construction activity schedule with Owner and Airport operations. The Consultant shall advise the Contractor of any areas where the schedule is not in compliance with the contract for construction.
- 6.4 Obtain from the Contractor proposed shop drawings and submittal schedule which shall identify all shop drawings, sample and submittals required by the contract for construction, along with the anticipated dates for submission. The Consultant shall review the Contractors shop drawings, samples, and other submittals. The Consultant shall log and track all shop drawings, samples and submittals.
- 6.5 Organize and conduct weekly construction meetings with Sponsor, Contractor and others as appropriate. Contractor's schedule review and work progress will be discussed at all meetings. The Resident Field Engineer will hold these meetings on the construction site at the Ontario Municipal Airport in Ontario, Oregon.
- 6.6 Provide three project representatives to monitor and document construction activities as appropriate. Duties for the resident personnel will include conformance with schedules, plans and specifications; review and document construction quantities; document significant conversations, situations, events or changed conditions; document input or visits from local authorities and officials; prepare and submit routine inspection reports; maintain a project diary, and attend weekly safety meetings. It is anticipated that the Consultant will provide a Resident Engineer for a period of 60 working days at 10 hours per day.

- 6.7 A second inspector will be required during the days the Contractor will be paving. The second inspector will be on-site for 16 working days for an anticipated period of 9.5 hours per day.
- 6.8 A third inspector will be required during the anticipated night construction. The third inspector will be on-site for 35 working days for an anticipated period of 9.5 hours per night.
- 6.9 Provide office administration support and assistance to the Onsite Project Representative with senior design management or other personnel as field activities may require.
- 6.10 The Consultant shall receive and review the Contractor's requests for payment. The Consultant shall determine whether the amount requested reflects the progress of the Contract's work and is in accordance with the contract for construction. The Consultant shall provide recommendations to the Owner as to the acceptability of the requests. The Consultant shall advise the Owner as to the status of the total amounts requested, paid, and remaining to be paid under the terms of the construction contract.
- 6.11 Monitor and coordinate Contractor Quality Control Testing Program pursuant to current FAA specifications for Quality Control and Quality Assurance.
- Note:** It is anticipated that Consultant will monitor and test for Quality Assurance compaction testing on bituminous concrete placement only. It is anticipated that the Contractor shall be responsible for all source approval testing, aggregate materials production, bituminous mix design and Quality Control Testing of bituminous concrete production and placement and Quality Assurance Testing for subgrade, subbase and base course. The Consultant will provide supplemental Quality Control testing only during aggregate production operations. The Consultant shall review and accept the mix design(s) submitted by the Contractor and coordinate with and review test results performed by Contractor as required.
- 6.12 Conduct a Final Completion Inspection with the Owner and Contractor. Advise and coordinate with FAA and the State of Oregon regarding inspection dates. Produce substantial and final completion inspection certificates and document "punch list" items.
- 6.13 Assist Sponsor with review of Contractor Wage and EEO documentation review. Conduct Wage interview with Contractor personnel as required.
- 6.14 Coordinate with Owner, FAA and the State throughout the construction process. Submit required construction documentation, including weekly activity report forms,

mix designs, change orders, etc. Coordinate with Owner and FAA verbally concerning change orders, as required.

PHASE 7 - OPERATIONAL

The Operational Phase shall consist of project closeout and documentation services. Operational phase services shall include the following tasks:

- 7.1 Prepare As-Constructed revisions to Design and Construction Drawings for project improvements. Provide Sponsor and FAA with copies of Record Drawings and one electronic copy to be submitted to the FAA as required. Provide Sponsor with one set of prints of Record Drawings.
- 7.2 Prepare an As-Constructed Airport Layout Plan Set (ALP) to document improvements. Consultant will be required to update ALP to show new development at the airport since the previous update. This includes any added facilities including new hangar development.
- 7.3 Document the Project work and accomplishments in a Final Construction Report in accordance with FAA guidelines. Contents to address test results and quality control program compliance per FAA guidelines. The following minimum items are required in the report: bid abstract narrative describing work sequence, problems and conditions; list of sub and prime contractors, change orders; dates for award; NTP; contract and actual completion dates; labor statement of compliance; final construction quantities; liquidated damages; Contractor statement that no further payment is due; updated pavement strength survey; construction management plan; acceptance test summary sheets; mix design information; consultant certifications; DBE program approval and participation summary; and copy of approval letter for the ALP revision.
- 7.4 Coordinate with Contractors on Owners behalf to obtain lien releases from subcontractors and prime Contractors in preparation to making final payment.
- 7.5 Assist Sponsor with overall budget status analysis and reports, closeout documentation review, and coordination with the FAA, as requested by the Owner. Assist in preparation of required project certifications.

PHASE 8 - ADDITIONAL SERVICES:

The following services shall be provided by Consultant as "Additional Services" to basic services required under Phases 1 through 7:

- 8.1 Prepare applications and supporting documents for governmental grants, loans or advances in connection with the project.
 - 8.1.1 Prepare a Grant Application for submittal to FAA prior to project design. Update the Grant Application for FAA-AIP funding assistance based on project bid results. Assist Sponsor in coordination of Grant Application submittal and process.
 - 8.1.2 Assist the Sponsor in preparation and processing of the following required certifications for Sponsors submittal to the FAA: "Selection of Consultants", "Project Plans and Specifications", "Equipment/Construction Contracts", and "Construction Project Final Acceptance".
 - 8.1.3 Assist Sponsor in communication and coordination with the Oregon Department of Transportation and the Connect Oregon personnel.
 - 8.1.4 Prepare a Pre-Application for FAA-AIP funding assistance. Assist Sponsor in coordination of Pre-Application submittal and process.
- 8.2 Assist Sponsor in preparation and processing of periodic project Request for Reimbursement (RFR) submittals to the FAA. Based on the size of the project anticipate approximately seventeen RFR's on this project. Consultant will provide the Owner and the FAA a spreadsheet that will track the RFR payments for the project for all of the anticipated seventeen RFR's. It is assumed that the owner will perform their own reimbursement of State of Oregon funds.
- 8.3 Provide the following services related to Federal Disadvantaged Business Enterprise requirements (DBE).
 - 8.3.1 Contact FAA to obtain most recent revisions to Federal DBE Program requirements. Research and advise the Owner as to program requirements and the Owners responsibilities as a grantee. Prepare a DBE program acceptable to the Owner and FAA following the FY 2004 requirements of the Federal DBE program. Review contract documents and special provisions for compliance with FY 2004 Federal and FAA requirements. Develop methodology for establishing contract DBE goals.

Note: Not included in this Scope of Work are services relating to significant revisions or updates to the DBE program beyond the FY 2004 Federal DBE program required format.

- 8.3.2 Evaluate contract work scope for DBE subcontract opportunities (both professional and contractor). Develop project specific goals, prepare required FAA justification and obtain FAA approval.
 - 8.3.3 Review project contract documents for compliance with current DBE requirements as required by FAA.
 - 8.3.4 Review project bids for compliance with DBE requirements, prepare and submit required DBE participation forms at completion of construction.
 - 8.3.5 Assist in evaluation and resolution of DBE issues which may arise during the bidding and construction process.
 - 8.3.6 Review Contractor provided data, prepare and submit required statements for DBE participation actually achieved in the work as part of the final construction report.
 - 8.3.7 Complete the "Uniform Report of DBE Awards or Commitments and Payments" including contract award amount or contractor/engineer's commitment and actual resulting payment to DBE's.
- 8.4 Administer design Geotechnical subconsultant contract and coordinate delivery of work product. Provide quality control review of work products. The geotechnical laboratory work will be performed utilizing the services of a subconsultant. The general scope of the geotechnical work will included the following:

Administer 8 cores/bore logs to a depth of 4-feet on existing Runway 32-14, 4 cores/bore logs to a depth of 4-feet on existing parallel taxiway, 8 cores/bore logs to a depth of 5-feet on existing asphalt shoulders, and 6 cores/bore logs to a depth of 5-feet on existing asphalt terminal apron. The geotechnical engineer shall immediately patch all pavement core holes to the satisfaction of Ontario Airport Manager. Data shall be collected on the soil type, existing asphalt condition, and depths and categorized according to the Unified Soil Classification System (USCS) as well as including Moisture Content, Atterberg Limits, Grain Size Distribution. Ground water depth shall be recorded if encountered. Recommendations concerning the ability to overlay with asphalt on the runway, parallel taxiway, and apron should be included.

Administer 6 cores/bore logs to a depth of 5-feet on existing future terminal apron area. Data shall be collected on the soil types and depths and categorized according

to the Unified Soil Classification System (USCS) as well as including Moisture Content, Atterberg Limits, and Grain Size Distribution. Ground water depth shall be recorded if encountered. One California Bearing Ratio (CBR) test shall be performed on one of the bore log samples at a depth of 18-inches which is the anticipated depth of subgrade.

Approximate locations of the cores/bore logs are shown on the attached drawing. The geotechnical engineer shall coordinate with the Engineer to determine exact core/bore log locations.

The geotechnical work shall be conducted in accordance to FAA AC 150/5370-2E safety guidelines. It should be anticipated that the bore logs taken on the Runway 32-14 and the existing shoulder area will be conducted after 11 p.m. in which the runway will be closed to aircraft. The geotechnical firm will need to coordinate with the Airport Manager and Engineer anticipated for closure time.

The geotechnical firm shall submit 3 copies of the final geotechnical report including all required information as mentioned above to the Engineer in a timely manner upon finishing field work.

- 8.5 Provide periodic project budget updates to Sponsor during performance of the work.
- 8.6 Provide or obtain field surveys, which include detailed topographic and cross section information of improvement areas for design purposes. Coordinate with subconsultant surveyors to assure that design survey is performed as required. Provide survey subconsultant with an adequate scope of work such that he can provide an accurate cost for performing the services as described below:

The primary area is along Runway 14-32, parallel taxiway, connector taxiways, and the terminal apron. Runway 14-32 shall be section surveyed every 50-foot longitudinally with 6 shots (edge pavement, midpoint between centerline and edge of pavement, and centerline) taken at each section. The parallel taxiway and connector taxiways shall be section surveyed every 50-foot longitudinally with 3 shots (edge pavement and centerline) taken at each section. The area west of Runway 14-32 to the existing fence, infield between Runway 14-32 and parallel taxiway, and 50-foot east of parallel taxiway shall be surveyed at 50-foot by 50-foot grid. The terminal apron area shown on the map including all ground features shall be surveyed at a minimum of 50-foot by 50-foot grid. All topographical features within all of these areas shall be surveyed including but not limited to: grade breaks, pavement markings, tie-downs, building corners, fence, drainage structures (invert elevations, pipes sizes, & rim elevations), utility markers, edge of pavements, and electrical components. At a minimum the area shall be survey on a 50-foot by 50-foot grid. The total of all areas are approximately 368,500 square yards.

The secondary area is the Runway 32 safety area and the east expansion area. These areas shall be surveyed at a minimum of 100-foot by 100-foot grid. All topographical features shall be surveyed including but not limited to: grade brakes, pavement markings, tie-downs, building corners, fence, drainage structures, utility markers, edge of pavements, and electrical components. The area is approximately 258,500 square yards.

Existing control monuments to be used for the survey control are shown on the attached drawing (will need to be tied together to double check for accuracy).

The survey will have to be coordinated with the Ontario Airport Manager for airport access and optimum time to minimize disruption to air traffic. Survey crew working on and around Runway 14-32 shall have hand held radio which can receive aircraft signals in order to avoid disruption to air traffic.

The survey shall be conducted in accordance to FAA AC 150/5370-2E. Vertical datum should be in accordance to NAVD 88, and horizontal datum should be in accordance to NAD 83. Vertical tolerances shall be ± 0.02 -feet for paved surfaces and ± 0.05 -feet for unpaved surfaces. Horizontal tolerances shall be ± 0.03 -feet.

The collected data shall be provided on a compact disk to Kimley-Horn with the following information: point number, description, northing, easting, and elevation along with paper copies of any pertinent field notes. No map or drawing will be required.

This line item will also reimburse the Consultant for the payment to the survey subconsultant in accomplishing the work as described above.

- 8.7 Perform the survey for the construction portion of the project. The construction survey will entail providing the Contractor with an initial vertical and horizontal survey control only. Grade control staking i.e. slope staking, "blue tops", etc. will be the Contractor's responsibility. Coordinate with surveying subconsultant to assure that construction surveys are performed as required.
- 8.8 Respond to Sponsor's questions during comparison of consultant proposal and independent fee estimate. Participate in negotiation and revision of work scope and engineering services costs, if required by Sponsor.
- 8.9 Prepare Bid Addendums. Addenda are normally required in response to Contractor questions and/or design changes initiated by the Owner and/or the FAA. Cost estimate includes cost for the preparation of two Addendums.
- 8.10 Prepare Contract Change Order/Supplemental Agreements. All services associated with evaluation, negotiation, and preparation and processing of Contract Change

Orders or Supplemental Agreements are considered to be an Additional Service. Man-hour estimates and costs are to be based on normal construction events as experienced by the consultant for projects of this type and size. Cost estimate is based on three Change Orders.

- 8.11 Address subsurface drainage requirements for the Runway 14-32 and propose appropriate methods for compliance with the FAA Northwest Mountain Region policy on subsurface pavement drainage.
- 8.12 Submit monthly Construction Project Reports from the U.S. Department of Commerce- U.S. Census Bureau during the design and construction periods of the project. These forms are required by the agency on a random basis and if required will include Project Information, Ownership and Construction Start dates, Cost Estimates and Monthly construction progress reports including monthly value of construction placed on the project.
- 8.13 Assist and coordinate with independent auditors in locating appropriate documents for performing A-133 annual audit. In addition to finding appropriate project files, answer questions concerning Contractors wage rates and interview forms as required.
- 8.14 Prepare two 7460's for submittal to the FAA prior to the project design. One form will show the FAA the anticipated pavements that will be added as a result of the project. Review of the submitted project configuration on the ALP drawing will be submitted to FAA for the first 7460. The second 7460 will document the anticipated equipment that will be involved in the construction period. Both documents will be reviewed by approximately five FAA divisions as part of the 7460 process.
- 8.15 Prepare and Submit a FAA Northwest Mountain Region, Airports Division Environmental Checklist. The purpose is to present to FAA information concerning the effect of the proposed project on environmental categories in an effort to support a categorical exclusion from the National Environmental Policy Act (NEPA). It is assumed that the area to be included in the documentation of the categorical exclusion will be the apron expansion area, runway shoulder and associated drainage area. Overlay of the runway, parallel taxiway, connecting taxiways and apron are not anticipated to require an environmental study.

The checklist includes the following NEPA categories:

Noise, Compatible Land Use, Social Impact, Induced Socio-Economic Impacts, Environmental Justice, Air Quality, Water Quality, Section 4F Impacts, Cultural Resources, Biotic Communities, Threatened and Endangered Activities, Essential Fish Habitats, Migratory Birds, Wetlands, Floodplains, Wild and Scenic Rivers, Farmlands, Energy Supply and Natural Resources, Light Emissions, Solid Waste Impacts, Construction Impacts and Hazardous Materials.

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TARGET SCHEDULE

The following dates summarize the target completion of significant Project tasks.

<u>ACTIVITY</u>	<u>COMPLIANCE</u>
Final Scope of Work Narrative	June 2009
Contracts to Owner	July 2009
Consultant Contract Execution	August 2009
Initiate Design	January 2010
Final Design Completion	**April 1, 2010
Advertise Project	April 15, 2010
Bid Opening	May 15, 2009
Award Project	June 1, 2010
Construction Contracts	July 1, 2010
Pre-Construction Conference	July 1, 2010
Start Construction	July 15, 2010
*Complete Construction	October 15, 2010
Project Construction Closeout	December 2010

Schedule is based on execution of a FAA Grant Offer in February 2010.

*Construction completion and commencements are weather dependent.

** Will depend on date of receipt of Connect Oregon funding

ONTARIO MUNICIPAL AIRPORT
City of Ontario, Oregon
PROPOSED FEE ESTIMATE / KIMLEY-HORN

NO	TASK/SUBTASK	MAN-HOURS BY CATEGORY												DIRECT EXPENSES					PROJECT TOTAL				
		Principal		Project Manager		Senior Planner/Engineer		Electrical Engineer I		Electrical Engineer II		Technician/Accountant		Administrative		TOTAL CDSIS		Travel		Allocation for In-office Materials, FAX, Phone and Misc.	Reproduction & Printing/Computer Time	Sub-Consultants	TOTAL
		HRS	COST	HRS	COST	HRS	COST	HRS	COST	HRS	COST	HRS	COST	HRS	COST	HRS	COST						
1.0 GENERAL ADMINISTRATION																							
1.1	Prepare Scope of Work	0	\$0	16	\$2,370	0	\$0	0	\$0	0	\$0	0	\$0	4	\$360	23	\$1,250	0	\$0	0	\$0	0	\$0
1.2	Prepare Professional Services Agreement	0	\$0	16	\$2,370	0	\$0	0	\$0	0	\$0	0	\$0	4	\$360	23	\$1,250	0	\$0	0	\$0	0	\$0
1.3	Prepare Engineering Services Cost Proposal	0	\$0	20	\$3,000	0	\$0	0	\$0	0	\$0	0	\$0	4	\$360	23	\$1,250	0	\$0	0	\$0	0	\$0
1.4	Attend Pre-design and Pre Scoping Meetings	0	\$0	1	\$1,320	0	\$0	0	\$0	0	\$0	0	\$0	0	\$0	1	\$1,320	0	\$0	0	\$0	0	\$0
1.5	Prepare Prelim. Cost Estimate/Outline Documents	0	\$0	1	\$1,320	0	\$0	0	\$0	0	\$0	0	\$0	0	\$0	1	\$1,320	0	\$0	0	\$0	0	\$0
1.6	Coordinate with Independent Fee Estimator	0	\$0	1	\$1,320	0	\$0	0	\$0	0	\$0	0	\$0	0	\$0	1	\$1,320	0	\$0	0	\$0	0	\$0
1.7	Coordinate with Owner and FAA	0	\$0	1	\$1,320	0	\$0	0	\$0	0	\$0	0	\$0	0	\$0	1	\$1,320	0	\$0	0	\$0	0	\$0
1.8	Administrative and Project Reporting	0	\$0	6	\$8,316	0	\$0	0	\$0	0	\$0	0	\$0	0	\$0	6	\$8,316	0	\$0	0	\$0	0	\$0
TOTAL PHASE 1		0	\$0	57	\$7,728	0	\$0	0	\$0	0	\$0	0	\$0	0	\$0	57	\$7,728	0	\$0	0	\$0	0	\$0
2.0 PLANNING AND STUDY																							
2.1	Investigate Proposed Job Site*	0	\$0	6	\$836	0	\$0	0	\$0	0	\$0	0	\$0	0	\$0	6	\$836	0	\$0	0	\$0	0	\$0
2.2	Review/Connect OR Application Cost/aff availability	0	\$0	6	\$836	0	\$0	0	\$0	0	\$0	0	\$0	0	\$0	6	\$836	0	\$0	0	\$0	0	\$0
2.3	Determine Runway Shoulder Alternatives	0	\$0	6	\$836	0	\$0	0	\$0	0	\$0	0	\$0	0	\$0	6	\$836	0	\$0	0	\$0	0	\$0
2.4	Determine the Feasibility of Apron Overlay	0	\$0	6	\$836	0	\$0	0	\$0	0	\$0	0	\$0	0	\$0	6	\$836	0	\$0	0	\$0	0	\$0
2.5	Determine the Practicality of Misc. Pavements	0	\$0	4	\$557	0	\$0	0	\$0	0	\$0	0	\$0	0	\$0	4	\$557	0	\$0	0	\$0	0	\$0
2.6	Determine Best Method to Smooth Runway	0	\$0	4	\$557	0	\$0	0	\$0	0	\$0	0	\$0	0	\$0	4	\$557	0	\$0	0	\$0	0	\$0
2.7	Determine Runway Overlay Feasibility	0	\$0	4	\$557	0	\$0	0	\$0	0	\$0	0	\$0	0	\$0	4	\$557	0	\$0	0	\$0	0	\$0
2.8	Determine Apron Configuration	0	\$0	8	\$1,132	0	\$0	0	\$0	0	\$0	0	\$0	0	\$0	8	\$1,132	0	\$0	0	\$0	0	\$0
2.9	Inspect Electrical Vault	0	\$0	4	\$557	0	\$0	0	\$0	0	\$0	0	\$0	0	\$0	4	\$557	0	\$0	0	\$0	0	\$0
TOTAL PHASE 2		0	\$0	48	\$6,728	0	\$0	0	\$0	0	\$0	0	\$0	0	\$0	48	\$6,728	0	\$0	0	\$0	0	\$0
3.0 PRELIMINARY DESIGN																							
3.1	Attend/Review DMR	0	\$0	14	\$1,860	0	\$0	0	\$0	0	\$0	0	\$0	0	\$0	14	\$1,860	0	\$0	0	\$0	0	\$0
3.2	Complete Existing Utility Data*	0	\$0	14	\$1,860	0	\$0	0	\$0	0	\$0	0	\$0	0	\$0	14	\$1,860	0	\$0	0	\$0	0	\$0
3.3	Prepare Conceptual Sequence and Safety Plan	0	\$0	14	\$1,860	0	\$0	0	\$0	0	\$0	0	\$0	0	\$0	14	\$1,860	0	\$0	0	\$0	0	\$0
3.4	Prepare Preliminary Design Plans (60 Plan Sheets)	0	\$0	10	\$1,320	22	\$2,844	11	\$1,452	0	\$0	0	\$0	0	\$0	43	\$5,616	0	\$0	0	\$0	0	\$0
3.5	Determine/Obtain or Refinement Requirements	0	\$0	6	\$792	0	\$0	0	\$0	0	\$0	0	\$0	0	\$0	6	\$792	0	\$0	0	\$0	0	\$0
3.6	Determine Config. for Retro. Marker/Edge Lights	0	\$0	4	\$557	0	\$0	0	\$0	0	\$0	0	\$0	0	\$0	4	\$557	0	\$0	0	\$0	0	\$0
3.7	Prepare Station Determination/Critical Aircraft	0	\$0	4	\$557	0	\$0	0	\$0	0	\$0	0	\$0	0	\$0	4	\$557	0	\$0	0	\$0	0	\$0
3.8	Participate in Design Meetings with Sponsor**	0	\$0	12	\$1,584	0	\$0	0	\$0	0	\$0	0	\$0	0	\$0	12	\$1,584	0	\$0	0	\$0	0	\$0
3.9	Storm Water Runoff and Drainage Design	0	\$0	5	\$665	0	\$0	0	\$0	0	\$0	0	\$0	0	\$0	5	\$665	0	\$0	0	\$0	0	\$0
TOTAL PHASE 3		0	\$0	54	\$7,148	22	\$2,844	11	\$1,452	0	\$0	0	\$0	0	\$0	67	\$8,444	0	\$0	0	\$0	0	\$0
4.0 FINAL DESIGN																							
4.1	Prepare Final Design Drawing (60 Plan Sheets)	0	\$0	2	\$264	22	\$2,844	3	\$396	0	\$0	0	\$0	0	\$0	27	\$3,504	0	\$0	0	\$0	0	\$0
4.2	Prepare Construction Technical Specifications	0	\$0	6	\$792	0	\$0	0	\$0	0	\$0	0	\$0	0	\$0	6	\$792	0	\$0	0	\$0	0	\$0
4.3	Prepare Bid Documents	0	\$0	6	\$792	0	\$0	0	\$0	0	\$0	0	\$0	0	\$0	6	\$792	0	\$0	0	\$0	0	\$0
4.4	Review Estimate of Project Construction Costs	0	\$0	2	\$264	0	\$0	0	\$0	0	\$0	0	\$0	0	\$0	2	\$264	0	\$0	0	\$0	0	\$0
4.5	Prepare Engineer's Design Report	0	\$0	4	\$557	0	\$0	0	\$0	0	\$0	0	\$0	0	\$0	4	\$557	0	\$0	0	\$0	0	\$0
4.6	Prepare Modifications to Standards	0	\$0	4	\$557	0	\$0	0	\$0	0	\$0	0	\$0	0	\$0	4	\$557	0	\$0	0	\$0	0	\$0
4.7	Review Final Design Drawings With Owner*	0	\$0	2	\$264	0	\$0	0	\$0	0	\$0	0	\$0	0	\$0	2	\$264	0	\$0	0	\$0	0	\$0
4.8	Quality Control Review	0	\$0	40	\$5,304	0	\$0	0	\$0	0	\$0	0	\$0	0	\$0	40	\$5,304	0	\$0	0	\$0	0	\$0
4.9	Provide FAA/Owner with Final Contract Documents	0	\$0	0	\$0	0	\$0	0	\$0	0	\$0	0	\$0	0	\$0	0	\$0	0	\$0	0	\$0	0	\$0
TOTAL PHASE 4		0	\$0	78	\$10,524	22	\$2,844	11	\$1,452	0	\$0	0	\$0	0	\$0	78	\$10,524	0	\$0	0	\$0	0	\$0
TOTAL PHASES 1-4		0	\$0	135	\$18,000	22	\$2,844	11	\$1,452	0	\$0	0	\$0	0	\$0	135	\$18,000	0	\$0	0	\$0	0	\$0
TOTAL PHASES 1-4		0	\$0	135	\$18,000	22	\$2,844	11	\$1,452	0	\$0	0	\$0	0	\$0	135	\$18,000	0	\$0	0	\$0	0	\$0

ONTARIO MUNICIPAL AIRPORT
City of Ontario, Oregon
PROPOSED FEE ESTIMATE / KIMLEY-HORN

NO.	TASKS/DISK	MAN-HOURS BY CATEGORY										DIRECT EXPENSES				PROJECT TOTAL									
		Principal	Project Manager	Senior Planner/Engineer	Electrical Engineer I	Electrical Engineer II	Technician/Accountant	Administrative	LABOR COSTS	Travel	Allocation for in-office Materials, FAX, Phone and Misc.	Outsourced Reproduction & Printing/ Computer time	Sub-Consultants	TOTAL											
		HRS	HRS	HRS	HRS	HRS	HRS	HRS	HRS	HRS	HRS	HRS	HRS	HRS	HRS	HRS	HRS	HRS	HRS	HRS	HRS	HRS	HRS	HRS	
5.1	BIDDING																								
5.1	Pre-Bid Conference **	0	6	1680	16	1,200	0	40	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
5.2	Respond to Contractor Questions/Issue Addendum	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
5.3	Administer Public Bid Advertisement	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
5.4	UB Opening	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
5.5	UB Tabulations	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
5.6	UB Proposal Review/alter of Recommendation	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
5.7	Prepare/Review Constr. Agreement/Notice of Award	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
5.8	Advise Owner of Budget	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
5.9	Coordinate Bidding and Award Process	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
	TOTAL BIDDING	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
6.0	CONSTRUCTION																								
6.1	Pre-Construction Conference*	0	4	1680	4	1,584	0	60	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
6.2	Construction Management Plan	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
6.3	Review Contractors Schedule	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
6.4	Review Contractors Submittal/Shop Drawings	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
6.5	Weekly Construction Meetings	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
6.6	Provide Resident Construction Engineer (40) W/O	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
6.7	Provide Night Const. Engineer (15) Working Days	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
6.8	Provide Night Const. Engineer (15) Working Days	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
6.9	Provide Office Administration Construct. Support	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
6.10	Review Contractors Requests for Payment	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
6.11	Monitor/Coordinate Contractor Quality Control	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
6.12	Conduct Final Completion Inspection*	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
6.13	Review Contractor Maps and EEO Documentation	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
6.14	Coordinate with Owner/FAX during Construction	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
	TOTAL CONSTRUCTION	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
7.0	OPERATIONAL																								
7.1	Prepare As-Constructed Drawings	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
7.2	Prepare As-Constructed Approval Layout Plan 5+4	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
7.3	Prepare Final Construction Report	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
7.4	Obtain Lien Releases	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
7.5	Assist Sponsor with Owner Budget Status	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
	TOTAL OPERATIONAL	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
8.0	ADDITIONAL SERVICES																								
8.1	Prepare Application and Supporting Documents	0	12	5,180	18	3,100	0	10	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
8.2	Assist Sponsor with Request for Reboundments	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
8.3	Provide Federal DBE Requirements	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
8.4	Administer Design Geotechnical Subcontract	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
8.5	Provide Periodic Project Budget Updates	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
8.6	Coordinate with Subcontractor Surveyors/Design	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
8.7	Coordinate with Subcontractor Surveyors/Construct	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
8.8	Respond to Independent Fee Estimate Questions	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
8.9	Prepare Bid Advertisements	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
8.10	Prepare Subcontract Change Order/Sup. Agree	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
8.11	Address Subcontract Design Requirements	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
8.12	Submit US Census Bureau Project Reports	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
8.13	Assist and Coordinate with A-133 Audit	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
8.14	Prepare Two 7460 Forms to Submit to FAA	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
8.15	Prepare Environmental Checklist	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
	TOTAL ADDITIONAL SERVICES	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
	TOTAL PROJECT	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0

ONTARIO MUNICIPAL AIRPORT
 City of Ontario, Oregon
PROPOSED FEE ESTIMATE / KIMLEY-HORN

NO.	TASK/SUBTASK	MAN-HOURS BY CATEGORY										DIRECT EXPENSES					PROJECT TOTAL					
		Principal	Project Manager	Senior Planner/Engineer	Electrical Engineer I	Electrical Engineer II	Technician/Accountant	Administrative	LABOR COSTS	TOTAL COST	Allocation for In-office Material, FAX, Phone and Misc.	Outsourced Reproduction & Printing/ Computer Time	Sub-consultants	TOTAL								
		HR	HR	HR	HR	HR	HR	HR	HR	HR	HR	HR	HR	HR	HR	HR	HR	HR				
		COST	COST	COST	COST	COST	COST	COST	COST	COST	COST	COST	COST	COST	COST	COST	COST	COST				
		0	626	110,284	2112	\$299,444	32	\$11,040	34	\$5,400	719	\$79,096	170	\$11,900	383	\$470,209	\$18,660	\$9,000	\$54,218	\$92,872	\$462,872	
	TOTAL FEE ESTIMATE																					

AGENDA REPORT - PUBLIC HEARING

October 4, 2010

TO: Mayor and City Council

FROM: City of Ontario Planning Commission

THROUGH: Henry Lawrence, City Manager
David Richey, Planning & Zoning Administrator

SUBJECT: ORDINANCE #2650-2010: DE NOVO PUBLIC HEARING IN THE MATTER OF PLANNING FILE 2010-07-09 AZ, PRESBYTERIAN, THE ANNEXATION OF SEVEN (7) ACRES OF PROPERTY INTO THE CITY OF ONTARIO AND TO REZONE SAID PROPERTY FROM UGA-RESIDENTIAL TO CITY RM-10 HIGH DENSITY RESIDENTIAL; THE PROPERTY IS GENERALLY KNOWN AS TAX LOT 3300, ASSESSORS MAP 18S 47E-05BD, LOCATED AT 2431 NW 4TH AVENUE, ONTARIO, ON FIRST READING BY TITLE ONLY

DATE: September 20, 2010

SUMMARY:

Attached are the following documents:

- Ordinance # 2650-20103
- Exhibit "A" – Application Letter
- Exhibit "B" – Vicinity Maps: Before and After
- Exhibit "C" – Aerial Photo of Property
- Exhibit "D" – Consent to Annexation Form
- Exhibit "E" – Planning Commission Staff Report dated 09/13/2010

At its regular meeting of September 14, 2010 the Planning Commission heard the annexation and rezone proposal contained in Planning File 2010-07-09 AZ, which was applicable to property generally known as Tax Lot 3300, Assessors Map 18S 47E –05BD, located at 2431 NW 4th Avenue, Ontario.

PREVIOUS COUNCIL ACTION:

None.

BACKGROUND:

The applicant, Presbyterian Community Care Center felt a need to provide an expanded range of services that could not be conveniently accommodated at their facility on North Oregon Street.

The Planning Commission addressed the proposed annexation and the accompanying rezone from Urban Growth Area Residential to a City Zone classification of RM-10 High Density Residential for Tax Lot 3300, Assessor's Map #18S 47E 05BD. It is seven (7) acres in size, generally known as 2431 NW 4th Avenue. The Comprehensive Plan urban growth area

residential classification is broad enough that any of the City residential zones may be considered to be consistent with it. The existing land use on neighboring properties ranges from single family to assisted living facilities so this proposed care facility will not be a departure from the character of the existing neighborhood.

RECOMMENDATION:

The Planning Commission recommends approval of Ordinance #2650-2010 as presented before City Council.

PROPOSED MOTIONS:

- 1) I move that the City Council accept the Findings of Fact as presented (or amended).
- 2) I move that the City Council adopt Ordinance # 2650-2010, AN ORDINANCE ADDRESSING THE FINAL ORDER AND FINDINGS OF FACT FOR THE ANNEXATION OF SEVEN (7) ACRES OF PROPERTY INTO THE CITY OF ONTARIO AND TO REZONE SAID PROPERTY FROM UGA-RESIDENTIAL TO CITY RM-10 HIGH DENSITY RESIDENTIAL FOR PROPERTY LOCATED AT 2431 NW 4TH AVENUE, ONTARIO, TAX LOT 3300, MAP 18S 47E-5BD, PLANNING FILE 2010-07-09 AZ, on First Reading by Title Only.

ORDINANCE # 2650-2010

**FINAL ORDER AND FINDINGS OF FACT IN THE MATTER OF
PLANNING FILE 2010-07-09 AZ, THE ANNEXATION OF SEVEN (7) ACRES OF
PROPERTY INTO THE CITY OF ONTARIO AND TO REZONE SAID PROPERTY
FROM UGA-RESIDENTIAL TO THE CITY RM-10 HIGH DENSITY RESIDENTIAL;
THE PROPERTY IS GENERALLY KNOWN AS TAX LOT 3300,
ASSESSORS MAP 18S 47E-05BD,
LOCATED AT 2431 NW 4TH AVENUE, ONTARIO**

FINDINGS OF FACT:

- Whereas:** The proposal complies with applicable provisions of the Ontario Comprehensive Plan, Title 10 and its zone and administrative sections 10A and 10B, and;
- Whereas:** Notice has been sent to the Department of Land Conservation and Development a minimum of 45 days prior to this formal procedure to annex and in particular, rezone the subject property in accord with State Administrative Rules, and;
- Whereas:** The subject site is within the City of Ontario Urban Growth Area and thus approved under the rules and regulations of the State of Oregon for annexation to the City, and;
- Whereas:** The subject Urban Growth Area is classified as Residential and the proposed zone is RM-10 High Density Residential which is consistent with the UGA classification, and;
- Whereas:** The new property owner has formally requested that the subject site be annexed, the primary purpose of the annexation is to have City utilities and services, and;
- Whereas:** The subject site is immediately adjacent to the City boundary, and;
- Whereas:** City emergency services are available to this site in a manner similar to other land in the City, and;
- Whereas:** All appropriate local notices have been given for this proposal and the public hearings it requires, and;

Whereas: The property is seven (7) acres in size and is known as Tax Lot 3300, Assessor's Map #18S 47E 05BD, and;

Whereas: Pursuant to the formal application, the Ontario Planning Commission held a properly noticed public hearing on September 13, 2010 and made a recommendation to City Council, and;

Whereas: The City Council held a properly noticed public hearing on October 4, 2010, and reviewed all evidence and testimony submitted at the City of Ontario hearings.

NOW THEREFORE, THE CITY COUNCIL OF ONTARIO ORDAINS AS FOLLOWS:

Based upon the Comprehensive Plan, the procedures and regulations provided in Title 10 of the Comprehensive Plan and Zoning Ordinance, and the above listed Findings of Fact, the Ontario City Council approves and adopts Ordinance # 2650-2010 annexing and rezoning the seven (7) acre property identified as Tax Lot 3300, Assessor's Map #18S 47E 05BD (specific description attached) owned by Presbyterian Community Care Center, to RM-10, High Density Residential.

PASSED 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.

Joe Dominick, Mayor

ATTEST:

Tori Barnett, MMC, City Recorder

Exhibits

- Exhibit "A" Applicant's letter
- Exhibit "B" Comprehensive Plan/Zoning "Before & After" Maps
- Exhibit "C" Aerial photo
- Exhibit "D" Consent to annex form

**PRESBYTERIAN COMMUNITY CARE CENTER
BUILDING PROJECT**

BACKGROUND

Presbyterian Community Care Center (PCCC) was incorporated in 1957 and has occupied its current location at 1085 North Oregon Street since 1960. Responding to growing community need, PCCC expanded to a capacity of one hundred twenty three beds in the 1970's, serving mostly long term care residents.

Since that time, the state of Oregon has lead the country in promoting alternatives to long term nursing home care. Community-based levels of care such as assisted living, foster homes, and residential care have developed rapidly. Meanwhile, PCCC has changed much of its focus to providing short term therapies for those who need transition from a hospital setting to home or to a more independent level of care. PCCC's typically maintains a census of forty to fifty residents.

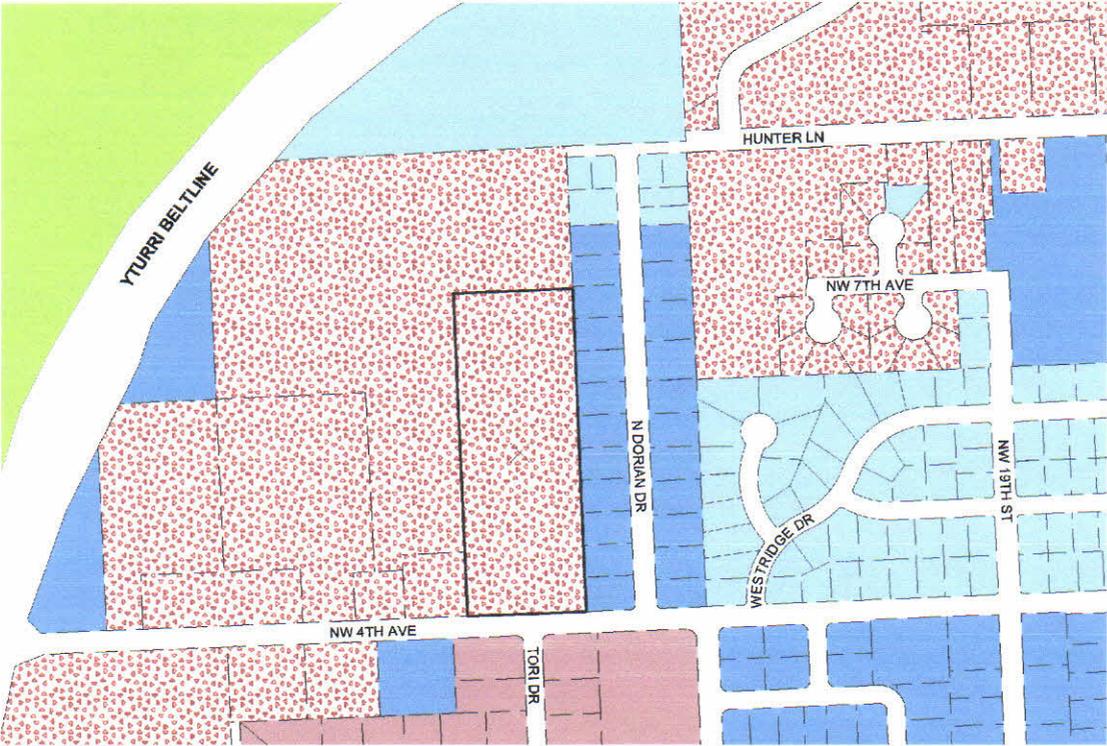
PLANS

The Board of Directors of Presbyterian Community Care Center proposes to build a new facility that will better meet the needs of current and future residents. All operations of the Care Center will be moved to the new location. PCCC has chosen an architectural firm and a contractor, both of whom have extensive experience with nursing home construction. Plans are to continue PCCC's current services, including both transitional and long term care. A priority with our new facility is to avoid an institutional appearance; the building (inside and out) will have a residential ambience.

The transitional care unit will serve up to forty inpatients and a varying number of outpatients. The majority of those served will receive orthopedic and neurologic aftercare. PCCC will continue to staff Physical, Occupational and Speech therapists, and a well-equipped therapy gym will be a significant feature of the facility. PCCC will also continue to offer services for skilled nursing diagnoses (wound care, I.V.'s, respiratory illnesses, cardiac issues, etc.).

PCCC's longterm care unit will focus on residents who need help with activities of daily living. Current plans for the unit are to serve up to fourteen residents with varying health diagnoses and certain cognitive disorders.

EXHIBIT "B"
Vicinity Maps
Before and After Change



BEFORE Annexation, Plan & Zone Change (R-UGA)



AFTER Annexation, Plan & Zone Change (RM-10 or RD-40)

EXHIBIT "C"
Aerial Photo



City of Ontario Planning and Zoning Application Form

444 SW 4th Street, Ontario, OR 97914
Permit Center Annex: 458 SW 3rd Street
Voice (541) 881-3224 / (541) 881-3222
Fax (541) 881-3251

EXHIBIT D
Consent to Annexation Form

CONSENT TO ANNEXATION

FILE # 2010-07-09 AZ

Date Received 7-12-2010 (MS)

Fee: \$330.00 + 2 cents per square foot

Accepted as Complete

Know all men by these presents, that we, the undersigned, being owners, contract purchasers, mortgagees, or security holders upon a portion of land described below and which is proposed to be annexed to the City of Ontario, do hereby give our irrevocable consent that such land be annexed to the City of Ontario, and that our consent may be filed with the City Council of Ontario Oregon and that no election shall be held in said territory or notices posted therein. This consent is given pursuant to ORS Section 222.170.

Name Robert & Marie Davis Trust, UAD 11/29/03 Signature
Name By Gary Robert Davis, Trustee Signature Gary Robert Davis
Name By Sandra Kay Plaza, Trustee Signature Sandra Kay Plaza
Name Presbyterian Community Care Center Signature
Name By Prudence Sherman, Chairman Signature Prudence Sherman

The above signatures on the original consents were filed in the office of the City Recorder in accordance with State Statute. The above parties are all the property owners within the territory to be annexed.

City Recorder

Property information:

Address 2431 Northwest 4th Avenue, Ontario, Oregon 97914
Tax Map # 1854705BD BS 47 05 BD Tax Lot #(s) 3300
Tax Map # Tax Lot #(s)
Lot size 330' X 924' 7 acres Zoning R - UGA
Existing use Residential and Agricultural
Proposed City zone RS 10

Please provide a legal description on a separate sheet.

OFFICE USE ONLY

120 day time limit Accepted as complete Final decision by
DLCD 45-day notice required Y/N Date mailed Date of first hearing
Notice of PC Hearing Date mailed Posted on site
Notice to media Publication date Emailed
Hearing dates PC CC
Notice of Decision Date mailed Appeal deadline
Legal description to DOR
Associated applications

PLANNING COMMISSION AGENDA REPORT

Planning Commission Meeting , Monday, Sep 13, 2010
City Council Meeting Monday, Oct 4, 2010

I. GENERAL INFORMATION:

TO: Planning Commission

FROM: David Richey, Planning and Zoning Administrator

THROUGH: Henry Lawrence, City Manager

SUBJECT: **ACTION 2010-07-09 AZ:** A request for **Annexation & Rezone** of property located at 2431 NW 4th Ave. The two parts of this action will result in annexation and reclassifying of 7 acres of land changing both the Comprehensive Plan and Zoning map designation from Urban Growth Area Residential to one of the City classifications, High Density Residential (RM-10) or Medium Density Residential (RD-40).

LEGAL DESCRIPTION: Assessor's Map #18S 47E 05BD; Tax Lot 3300; 2431 NW 4th Ave.

**APPLICANT/
PROPERTY OWNER:** Presbyterian Community Care Center
1085 N. Oregon Street
Ontario, OR 97914

II. SUMMARY & BACKGROUND

The applicants, Presbyterian Community Care Center, have chosen to build a new facility that will have an expanded range of service capabilities than provided at their Oregon Street facility.

Surrounding land use is residential, single family along the east edge of the site, assisted living and single family across 4th Ave to the south, scattered single family and undeveloped land to the west, and undeveloped land to the north.

The request for annexation initiates a process requiring a recommendation from the Planning Commission to the City Council regarding the City zone to be applied. State Law requires that the City Council upon annexation of a site, follow that action with an appropriate zone. In Ontario's case, the Urban Growth Area classifications are not identical to City zones, so a formal rezone must be executed to complete the annexation process while remaining consistent with the general Comprehensive Plan. The UGA portion of the Comprehensive Plan is Residential for the

site and this may be satisfied by any one of the four city residential classifications. To accommodate the applicant's proposal two zones have been chosen for consideration, the high density zone allows a nursing facility as an out-right use and the duplex zone allows it as a conditional use.

The Oregon Statutes pertaining to municipalities does not require Planning Commission participation for an annexation if it were not for the need to attach a City zone to the newly annexed land. Ontario has not made the Urban Growth Area land use classifications identical with the City incorporated land use classifications, hence the need for a Planning Commission public hearing to make a recommendation to the City Council.

III. PREVIOUS PLANNING COMMISSION ACTION

NONE

IV. FINDINGS OF FACT

Whereas: The proposal complies with applicable provisions of the Ontario Comprehensive Plan, Title 10 and its zone and administrative sections 10A and 10B;

Whereas: The subject site is within the City of Ontario Urban Growth Area and thus approved under the rules and regulations of the State of Oregon for annexation to the City;

Whereas: The subject Urban Growth Area is classified as Residential and the proposed zone is RM-10 High Density Residential which is consistent with the UGA classification. Alternatively, RD-40 Duplex Residential is also under consideration and is equally consistent with the Plan;

Whereas: The new property owner has formally requested that the subject site be annexed, the primary purpose of the annexation is to use the seven (7) acre site for a variety of activities related to the Presbyterian Care Center services which require City utilities and services;

Whereas: Within the same neighborhood there are two other privately operated facilities that provide services to the elderly or infirm. One of these is immediately across NW 4th Ave from the subject site;

Whereas: The subject site is immediately adjacent to the City boundary;

Whereas: Development of the site will include widening of the 4th Ave right-of-way across its frontage as well as associated construction of street improvements;

Whereas: City emergency services are available to this site in a manner similar to other land in the City;

Whereas: Appropriate notices have been given for this proposal and the public hearings it requires.

Conclusion:

The proposed rezone is consistent with all applicable criteria and standards. It is therefore concluded that there are no procedural or legal obstacles to the proposed annexation and rezone of this proposal.

V. RECOMMENDATION

Staff proposes that the City of Ontario Planning Commission recommend to City Council, and that the Ontario City Council accept and act favorably upon annexation and rezoning to RM-10, of the property at 2431 NW 4th Ave, Assessor's Map #18S 47E 05BD; Tax Lot 3300 (The metes & bounds description is in the Planning Dept file.)

VI. SUGGESTED MOTIONS FOR APPROVAL/DENIAL

A. Planning Commission Action:

- 1) I move that the Planning Commission accept the above Findings of Fact.
- 2) I move that the request for annexation and rezone of the subject property from UGA-Residential to City RM-10 High Density Residential as contained in Planning File 2010-07-09 AZ Presbyterian, be recommended to the City Council for **APPROVAL**.

VII. Exhibits

- Exhibit "A" Applicant's letter
- Exhibit "B" Comprehensive Plan/Zoning "Before & After" Maps
- Exhibit "C" Aerial photo
- Exhibit "D" Consent to annex form