

**AGENDA**  
**CITY COUNCIL - CITY OF ONTARIO, OREGON**

November 15, 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 Tuesday, November 9, 2010, and a study session was held on Wednesday, November 10, 2010. Copies of the Agenda are available at the City Hall Customer Service Counter and on the city's website at [www.ontariooregon.org](http://www.ontariooregon.org).

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

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

A) Approval of Minutes of Regular Meeting of 11/01/2010 . . . . . 1-4  
B) Resolution #2010-151: Reallocation of Funds w/in Aquatic Department to Complete Design Project for Facility Improvements . . . . . 5-6  
C) Resolution #2010-155: Accept/Expend JAG Grant (\$22,682) . . . . . 7-8  
D) Ordinance #2652-2010: Decriminalizing the Ontario Municipal Code (Final Reading)-Hand-Out  
E) Approval of the Bills

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

**6) New Business**

A) Resolution #2010-153: Reallocation of Funds w/in East Idaho Transportation Project Department of Capital Projects Fund for City Share of East Idaho Avene Phase 1 Improvements (STR-5) . . . 9-10  
B) Resolution #2010-154: Reallocation of Funds for Projects Relating to East Idaho, SW 2<sup>nd</sup> Street, SW 4<sup>th</sup> Avenue, and North Oregon as Funded through a Previous Jurisdictional Transfer . . . . . 11-14  
C) Approval of Cooperative Agreement (#26638) between ODOT and City (House Bill 2001) for Signal Upgrades and Lane Modifications at East Idaho and East Lane; Resurfacing of East Idaho Avenue (Highway 30) between Snake River and NE 4<sup>th</sup> Street . . . . . 15-36  
D) Approval of Amendment #1 to Misc. Contracts and Agreements (#26720) between ODOT and City for Fund Distribution for NW Washington Avenue Realignment (House Bill 2001) . . . . . 37-57

**7) Public Hearing:**

A) Ordinance #2653-2010: Request for Right-of-Way Vacation - Portion of SE 13<sup>th</sup> Street (Boyd Yee) - 1<sup>st</sup> Reading . . . . . 58-62

**8) Topics for Discussion: Wednesday Only**

A) Nadine Drive/Alameda Drive Project: Set Date for Public Hearing

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

**10) Adjourn**

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**COUNCIL MEETING MINUTES  
November 1, 2010**

The regular meeting of the Ontario City Council was called to order by Mayor Joe Dominick at 7:00 p.m. on Monday, October 18, 2010, in the Council Chambers of City Hall. Council members present were Norm Crume, Joe Dominick, Charlotte Fugate, John Gaskill, Susann Mills, David Sullivan, and Ronald Verini.

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

Ron Verini led everyone in the Pledge of Allegiance.

**AGENDA**

John Gaskill moved, seconded by Charlotte Fugate, to adopt the Agenda as amended. Roll call vote: Crume-yes; Fugate-yes; Gaskill-yes; Mills-yes; Sullivan-yes; Verini-yes; Dominick-yes. Motion carried 7/0/0.

**CONSENT AGENDA**

Ron Verini moved, seconded by Charlotte Fugate, to approve Consent Agenda Item A: Approval of Minutes of regular meeting of 10/18/2010; and Item B: Approval of the Bills. Roll call vote: Crume-yes; Fugate-yes; Gaskill-yes; Mills-yes; Sullivan-yes; Verini-yes; Dominick-yes. Motion carried 7/0/0.

**PRESENTATION**

State Representative Cliff Bentz was in attendance, to provide the Council with an update on the legislative happenings. Representative Bentz stated he would be being appointed to new committees in the next year, and valued the input from the Council on how he could best serve the community. He reminded them to let him know what the Council wanted to see happen for the City of Ontario. One issue Representative Bentz brought to the Council's attention was the possibility that the state was looking to eliminate the deductions on taxes.

**PUBLIC COMMENT**

Dan Cummings, CK3, LLC, read a statement into the record:

*You know, it is not often that the City Council and City staff get told that they're doing a good job and more often than not, you hear how tough it is to get things done in a timely manner, so, on behalf of CK3, LLC Engineering and Land Surveying; Boyd Yee, Wingers property owner and developer; the potential out of town developer of the new proposed site; Ray Frechette, Grubb & Ellis Idaho Commercial Group of Boise, and Dennis Kelly and Steve Yates of NAI Pinnacle Commercial Real Estate of Boise, who are representing the potential developer, they all would very much like to personally thank the City Council and City staff for stepping up and helping out by getting the street vacation of SE 13<sup>th</sup> Street on the agenda and the process started. We would further like to personally single out Chuck Mickelson, Dan Shepard and Tori Barnett for stepping up to the plate and getting all the information out that was required to have the public hearing on this action on the November 15<sup>th</sup> Council agenda.*

*The public needs to know that we have a great staff that is working hard at helping out and promoting development in our town, and that we have a Council that is also dedicated to promoting development in our community. A big kudos to all of you. Thank You*

**NEW BUSINESS**

**Bid Award: Water Treatment Plant Lighting Upgrade**

Yorick de Tassigny, Facilities Manager, stated in October 2008, Energy Industries performed an evaluation of lighting efficiency at the Water Treatment Plant and submitted a report that included a designed retrofit.

In 2009, staff applied for a State Energy Program (SEP) grant through the Oregon Department of Energy (ODOE) awarding American Recovery and Reinvestment Act (ARRA) federal stimulus funds from the US Department of Energy and was successful in securing an amount equivalent to half of the project cost, or \$17,500. Idaho Power and State of Oregon incentives, which were projected at nearly \$17,500, would represent the other half of the estimated project cost of \$35,000. It was important to note that the actual incentive amounts received might deviate from this projection as the basis for awarding these funds might have been adjusted. Any amount not reimbursed by the grant or the incentives would be paid with water fund expenditures reallocated as project match for the project, done previously through Resolution #2009-132. a resolution acknowledging the receipt and authorizing the expenditure of grant funds from the Oregon Department of Energy, and further authorizing a reallocation of water fund expenditures as project match for the Water Treatment Plant Lighting Upgrade project.

In August 2009, staff submitted a Business Energy Tax Credit (BETC) Application for Preliminary Certification for Lighting Projects to ODOE. The BETC pass-through option let a project owner transfer a tax credit to a pass-through partner in return for a lump-sum cash payment upon completion of the project. This would allow local governments without tax liability to use the BETC by transferring their tax credit for an eligible project to a partner with a tax liability. ODOE's review of the application was still pending.

Bids were first opened on September 2, 2010 for the Water Treatment Plant Lighting Upgrade Project. The Project involved retrofitting and replacing existing light fixtures in buildings throughout the plant with more efficient equivalents. This work focused on upgrading the existing lighting system to maximize energy use and to lower maintenance costs without actually reducing the amount of fixtures or lowering light levels.

The three bids received for the project were not in substantial compliance with the solicitation document and all prescribed public procurement procedures, and were therefore rejected. The project was placed back out to bid approximately six weeks later. Second round bids for the project were opened on October 19, 2010. Anderson and Wood Construction, of Meridian, was the apparent lowest responsive and responsible bidder at \$34,649.00. The re-bid results were as follows:

WATER TREATMENT PLANT LIGHTING UPGRADE BID RESULTS	
COMPANY	BID AMOUNT
Energy Industries (Spokane)	\$55,506.20
Fruitland Electric (Fruitland)	\$68,622.00
Anderson & Wood Construction (Meridian)	\$34,649.00
Power Plus Inc. (Boise)	Non-responsive
Tri State Electric (Boise)	\$39,245.00

Work under this contract would be funded in part with federal grant funds from the Oregon Department of Energy awarding American Recovery and Reinvestment Act federal stimulus funds from the US Department of Energy. Anderson and Wood Construction's bid in the amount of \$34,649 is within the project budget of \$35,000.

Charlotte Fugate moved, seconded by Ron Verini, that the City Council award the Water Treatment Plant Lighting Upgrade Project to Anderson and Wood Construction, the lowest responsive and responsible bidder, in the amount of \$34,649, and authorize the City Manager to be signatory to an agreement with Anderson and Wood Construction. Roll call vote: Crume-yes; Fugate-yes; Gaskill-yes; Mills-yes; Sullivan-yes; Verini-yes; Dominick-yes. Motion carried 7/0/0.

**Resolution #2010-151 and Contract Award: Aquatic Center Renovation Design Phase #2**

Yorick de Tassigny, Facilities Manager, stated in August 2010, the Budget Committee consented to move forward with a second design phase of the Aquatic Center remodel with a scope that sought to upgrade the facility without changing the existing footprint. This phase would provide the City with construction drawings and bid specifications that would render the project ready for implementation. In October 2009, Council approved Resolution #2009-129, authorizing the City Manager to enter into an agreement between the City of Ontario, Oregon and Hutchison-Smith Architects of Boise, Idaho for professional architectural services for the Ontario Aquatic Center Renovation project (Phase No. 1).

The cost for the design work was initially quoted at \$72,834 by HSA prior to the committee's meeting and, consequently, was the amount approved for the work. Since that time, however, the architectural firm and their consultants determined that the quoted fee was not reasonable for the scope of the design. HAS was now asking for a *guaranteed maximum price* of \$100,330 for completing the work.

CITY OF ONTARIO 444 SW 4<sup>TH</sup> STREET ONTARIO OREGON 97914

There were still sufficient funds in the current budget to cover the revised cost of the design work provided that allocations for various maintenance and repair projects were not expended. The funds were identified in the table below:

Project #	Description	Budgeted	Expended	Variance
AQU-1	Paint West Wing Exterior	\$3,500	\$0	\$3,500
AQU-2	Interior Metal Door Replacement	\$3,500	\$0	\$3,500
AQU-3	Lap Pool Drain Cover	\$1,500	\$0	\$1,500
AQU-47	Dressing Room Flooring	\$32,250	\$0	\$32,250
AQU-49	Pool Painting	\$12,100	\$0	\$12,100
AQU-50	Roof Repair Facility Design/Bid	\$75,000	\$20,068	\$54,932
<b>Totals:</b>		<b>\$127,850</b>	<b>\$20,068</b>	<b>\$107,782</b>

In June of 2009, staff issued a Request for Qualifications (RFQ) with the objective of formulating a list of qualified consultants for the design phase of the Aquatic Center Renovation project. The process yielded a total of three responses from firms deemed highly capable of meeting staff's expectations, and all were invited to respond to a Request for Proposal (RFP) released in July of that year. Hutchison Smith Architects (HSA) emerged as the first choice of the selection committee based on Don Hutchison's roofing expertise and the quality of the team of consultants assembled for the project. The Ontario City Council, in conjunction with the Ontario Budget Committee, approved Capital Improvement Project AQU-50 OAC Roof Repair Facility Design/Bid which allocates \$75,000 for the design of the project.

In October of 2009, Council authorized staff to execute a contract with HSA in the amount of \$18,175 for the first design phase of the project. A master planning effort meant to provide direction for moving forward with the renovation of the Aquatic Center. This phase resulted in a set of documents consisting of drawings (floor plan, site plan, building sections and elevations), a written description of deficiencies and cost estimates to solve those deficiencies. Other innovative concepts were developed to improve the overall appeal of the facility, including additions to the north and west sides of the building and a spray park to the east.

HSA presented their Master Plan for the future of Ontario Aquatic Center to the Budget Committee on August 4, 2010, and the project was further discussed at a subsequent meeting on August 24<sup>th</sup>. At the conclusion of the discussion, committee members reached a general consensus to move forward with the next phase of the design work with the intent of ending up with an "off-the-shelf" project ready for implementation. The focus of the scope was narrowed down to the development of construction drawings and bid specifications for the remodel of the facility without modifying the existing floor plan. The West Wing and Safe Waiting additions, as well as the spray park, were eliminated from this phase. The committee opted not to move forward with an array of budgeted facility maintenance and repair projects to cover the costs of design Phase No. 2. However, the Council could choose not to award the Ontario Aquatic Center Renovation design Phase No. 2 to HSA and either abandon the project, or start over by seeking the services of another design firm.

Expenditures for design Phase No. 2 was the guaranteed maximum price of \$72,834. Staff recommended using existing funds in the Aquatic Center budget allocated to this project and others. However, that meant that those budgeted projects will not be completed in 2010-11 and funds might again be requested thru the 2011-13 Budget. Question raised on whether this was one project, or if it would be Phase 1 and Phase 2.

Staff recommends the Council first adopt Resolution 2010-151, reallocating expenditures within the General Fund Aquatic Department, and then award the Aquatic Center Renovation Design Phase No. 2 to Hutchison-Smith Architects for a maximum guaranteed price of \$72,834.

*Charlotte Fugate* moved, seconded by *Ron Verini*, that the City Council award the Aquatic Center Renovation Design Phase No. 2 to Hutchison-Smith Architect for the maximum guaranteed price of \$72,834, and authorize the City Manager to be signatory to an agreement with Hutchison-Smith Architects. Roll call vote: Crume-yes; Fugate-yes; Gaskill-yes; Mills-yes; Sullivan-no; Verini-yes; Dominick-yes. Motion carried 6/1/0.

**Ordinance #2652-2010: Amend OMC, Decriminalizing the Code (Various Sections) (1<sup>st</sup> Reading)**

Larry Sullivan, City Attorney, stated the proposed ordinance was basically a housekeeping measure intended to remove all references to misdemeanor penalties in the Ontario City Code, and to replace them with references to violations instead.

Chapter 4 of Title 1 of the City Code set forth the general penalty for violation of City Code provisions in which the penalty was not otherwise specified. On December 4, 2006, the Council passed Ordinance 2587-2006, which removed the criminal penalty from Section 1-4-1B by repealing that Code section. The intended effect of repealing that Code section was to decriminalize Code offenses by making them subject only to civil fines. However, numerous

City Code sections continued to describe various offenses as misdemeanors. Misdemeanors were crimes under Oregon law for which an offender could be sentenced to jail for up to one year. The Council recently removed one of those references on September 20, 2010, when it passed Ordinance #2649-2010 decriminalizing Code Section 7-4-8 pertaining to graffiti.

The intended effect of proposed Ordinance #2652-2010 was to change any remaining Code penalty references from misdemeanors to violations, which were punishable only by fines under Code Section 1-4-1. Most of the existing references to misdemeanors were in error, because they continued to define the penalty only by reference to the General Penalty in Chapter 4 of Title 1, which no longer had a criminal penalty. In order to avoid confusion and potential legal challenges to these Code sections, all such misdemeanor references were being removed by Ordinance #2652-2010.

The proposed change would not prevent the Ontario police from charging many offenders with crimes. A number of City Code offenses were also crimes under the Oregon Criminal Code, and the police would continue to have the ability to charge those as crimes through Ontario Justice Court or through the Malheur County Circuit Court, with the approval of the Malheur County District Attorney.

Susann Mills moved, seconded by John Gaskill, that the Mayor and City Council approve Ordinance #2652-2010, AN ORDINANCE DECRIMINALIZING THE ONTARIO CITY CODE, on First Reading by Title Only. Roll call vote: Crume-yes; Fugate-yes; Gaskill-yes; Mills-yes; Sullivan-yes; Verini-yes; Dominick-yes. Motion carried 7/0/0.

#### **City Manager Evaluation**

Joe Dominick, Mayor, stated the Addendum #1, once duly signed, would incorporate the Council's action into the Employment Contract Agreement between the City of Ontario and Henry Lawrence. On October 28, 2010, the Council held an Executive Session under ORS 192.660(2)(i) to conduct the annual City Manager evaluation pursuant to Sections 5 and 7 of the contract between the City of Ontario and the City Manager.

Charlotte Fugate moved, seconded by Norm Crume, that the City Council adopt Addendum #1 to the City Manager's Contract, stipulating a 2% increase in annual salary, retroactive to June 2009; with an additional 2% retroactive increase beginning date June, 2010. Roll call vote: Crume-yes; Fugate-yes; Gaskill-yes; Mills-yes; Sullivan-yes; Verini-yes; Dominick-yes. Motion carried 7/0/0.

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

- Ron Verini reminded everyone of the Veteran's Parade on Saturday, November 6, 2010, beginning at 1pm. And, from 10am-2pm, the Veteran's Van would be in the parking lot of the Veteran's Advocates of Ore-Ida. On November 7<sup>th</sup>, from 8-10am, there would be a Warhawk Museum pancake breakfast. On November 9<sup>th</sup>, beginning at 7pm, there would be a Veteran's concert at Nyssa High School. On November 10<sup>th</sup>, from 8am-1pm, a living history day in Vale. Finally, on November 12<sup>th</sup>, there would be a retirement party for Bill Thompson from 2-4pm.

#### **ADJOURN**

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

ATTEST:

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

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

**CONSENT AGENDA**  
November 15, 2010

TO: Mayor and City Council

FROM: Yorick de Tassigny, Facilities Manager

THROUGH: Henry Lawrence, City Manager

**SUBJECT: RESOLUTION 2010-151: A RESOLUTION AUTHORIZING A REALLOCATION OF EXPENDITURE BUDGETS WITHIN THE GENERAL FUND AQUATIC DEPARTMENT TO FOREGO MINOR FACILITY IMPROVEMENTS AND COMPLETE THE DESIGN PROJECT FOR FACILITY IMPROVEMENTS**

DATE: November 5, 2010

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**SUMMARY:**

Attached are the following documents:

- Resolution 2010-151: Adjusting the Aquatic Budget for the Project

At their November 1, 2010 meeting, Council passed a motion to award the Aquatic Center Renovation Design Phase No. 2 to Hutchison-Smith Architect for the lump sum of \$72,834 with an additional \$3,000 in allowable reimbursable expenses, and authorize the City Manager to be signatory to an agreement with Hutchison-Smith Architects. This action was taken without first approving Resolution #2010-151 authorizing a reallocation of expenditure budgets within the General Fund Aquatic Department to forgo minor building maintenance projects and complete the design project for overall facility improvements.

Council is being asked to approve Resolution #2010-151.

**RECOMMENDATION:**

Staff recommends the Council adopt Resolution 2010-151.

**RESOLUTION # 2010-151**

**A RESOLUTION AUTHORIZING A REALLOCATION OF EXPENDURE BUDGETS WITHIN THE GENERAL FUND AQUATIC DEPARTMENT TO FOREGO MINOR FACILITY IMPROVEMENTS AND COMPLETE THE DESIGN PROJECT FOR FACILITY IMPROVEMENTS**

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

**WHEREAS,** a the Budget Committee met with the project architect and reached a consensus to have staff continue with the project design work with a few exclusions; and

**WHEREAS,** the 2009-2011 budget allotted funds of \$75,000 for project design and another \$52,850 for Facility Maintenance Projects; and

**WHEREAS,** the project architect has provided a cost of \$72,834 to complete the design without construction management to get to a document that can be used to budget and request construction bids in the future; and

**WHEREAS,** the City Council desires to formally modify the 2009-2011 General Fund budget by reallocating expenditures within the Aquatic Department to complete the aquatic facility improvement design project.

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

Account Number	Account Name	Adopted FY 09-11 Budget	Proposed Change	Revised FY 09-11 Budget
<b>GENERAL FUND</b>				
AQUATIC DEPARTMENT EXPENSE				
001-008-610600	BUILDING MAINT AND REPAIR	56,400	(22,000)	34,400
001-008-714120	SITE IMPROVEMENTS	75,000	22,000	97,000

Effective Date: Upon adoption

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

Ayes:

Nays:

Absent:

ATTEST:

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

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

**CONSENT AGENDA**  
November 15, 2010

**TO:** Mayor and City Council

**FROM:** Mark Alexander, Interim Police Chief

**THROUGH:** Henry Lawrence, City Manager

**SUBJECT:** RESOLUTION NO. 2010-155: ACKNOWLEDGING RECEIPT OF FEDERAL JUSTICE ASSISTANCE GRANT FUNDS AND APPROPRIATING EXPENDITURES WITHIN THE GRANT FUND

**DATE:** November 2, 2010

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Attached is the following document:

- Resolution 2010-155

**PREVIOUS COUNCIL ACTION:**

None.

**SUMMARY:**

The police department has been awarded a Federal Justice Assistance Grant (JAG) in the amount of \$22,682 for the purchase of police equipment.

**BACKGROUND:**

The police department applied for a Federal JAG grant for the purchase of police equipment and was awarded \$22,682. As with similar grants, the funding is to be shared amongst the Ontario Police Department, Nyssa Police Department and Malheur County Sheriff's Office.

**ALTERNATIVE:**

The Council could decline the grant award.

**FINANCIAL IMPLICATIONS:**

Grant revenues and expenditures would be budgeted within the City's Grant Fund. No grant match is required; however, City staff will be administering the grant.

**RECOMMENDATION:**

Staff recommends the Council adopt Resolution 2010-155.

**PROPOSED MOTION:**

I move that the Council adopt Resolution 2010-155, A RESOLUTION ACKNOWLEDGING RECEIPT OF FEDERAL JUSTICE ASSISTANCE GRANT FUNDS AND APPROPRIATING EXPENDITURES WITHIN THE GRANT FUND.

RESOLUTION NO. 2010-155

A RESOLUTION ACKNOWLEDGING RECEIPT OF FEDERAL JUSTICE ASSISTANCE GRANT FUNDS AND APPROPRIATING EXPENDITURES WITHIN THE GRANT FUND

WHEREAS, the 2009-2011 Biennial Budget was adopted without the knowledge of funding for an additional Justice Assistance Grant; and

WHEREAS, the City was awarded a Federal Justice Assistance Grant thru its Police Department for the purchase of police equipment; and

WHEREAS, the City desires to modify the 2009-2011 Budget, acknowledging new grant revenue of \$22,682 and appropriating expenditures within the Grant Fund to complete the project.

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

Line Item	Item Description	FY 09-11 Budget	Amount of Change	Adjusted Budget
<b>GRANT FUND</b>				
Revenue				
010-000-456187	PD - JAG Project #3	\$0	\$22,682	\$22,682
Expenses				
010-038-714187	PD - JAG Project #3 Expense	\$0	\$22,682	\$22,682

Effective Date: Upon adoption

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

Ayes:

Nays:

Absent:

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

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

ATTEST:

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

**CONSENT REPORT**  
November 15, 2010

TO: Mayor and City Council

FROM: Tori Barnett, MMC, City Recorder

THROUGH: Henry Lawrence, City Manager

**SUBJECT: ORDINANCE #2652-2010: AN ORDINANCE DECRIMINALIZING THE ONTARIO CITY CODE (FINAL READING)**

DATE: November 10, 2010

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**SUMMARY:**

Attached is the following document:

- Ordinance #2652-2010

This ordinance is a housekeeping measure intended to remove all references to misdemeanor penalties in the Ontario City Code and replace them with references to violations instead. This change will not prevent the Ontario police from charging many offenders with crimes. A number of City Code offenses are also crimes under the Oregon Criminal Code, and the police will continue to have the ability to charge these as crimes through Ontario Justice Court or through the Malheur County Circuit Court, with the approval of the Malheur County District Attorney.

**PREVIOUS COUNCIL ACTION:**

11-01-2010 Council passed Ordinance #2652-2010 on First Reading.

**STAFF RECOMMENDATION:**

Staff recommends the Council approve a Second and Final Reading of Ordinance #2652-2010 by Title Only.

**ORDINANCE NO. 2652-2010**

**AN ORDINANCE DECRIMINALIZING THE ONTARIO CITY CODE**

- WHEREAS,** the City Council passed Ordinance #2587-2006 on December 4, 2006, which was intended to decriminalize numerous offenses under the City Code by repealing Code Section 1-4-1B, which set a criminal penalty as one of the general penalties under the City Code; and
- WHEREAS,** many Code sections continue to refer to various City Code offenses as “misdemeanors”, which carry criminal penalties of fines and imprisonment under Oregon law, rather than as “violations”, which impose fines only, despite the fact that there is no longer a general penalty section in the City Code that imposes a criminal penalty; and
- WHEREAS,** these City Code references to misdemeanors are not only confusing but are potentially costly to the City, because a City Code offense that has a criminal penalty requires a court to appoint attorneys for indigent defendants at City expense; and
- WHEREAS,** in order to complete the decriminalization of the City Code, any penalty provisions in the City Code that refer to misdemeanors should be changed to violations and all references to imprisonment as a penalty should be removed.

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

**Section 1.** Any references in the following City Code Sections to the word “misdemeanor” shall be deleted and the word “violation” shall be inserted instead:

- A. Section 3-1-4;
- B. Section 3-11-20;
- C. Section 3-18-20;
- D. Section 4-4-8;
- E. Section 4-8-9;
- F. Section 5-2-9;
- G. Section 5-3-1;
- H. Section 6-1-5;

- I. Section 6-1-8;
- J. Section 6-1-10;
- K. Section 6-1-12;
- L. Section 6-1-12A;
- M. Section 6-1-15;
- N. Section 6-1-16;
- O. Section 6-1-19;
- P. Section 6-1-21;
- Q. Section 6-1-22;
- R. Section 6-1-26;
- S. Section 8-3-8;
- T. Section 8-3-10;
- U. Section 8-3-11;
- V. Section 8-5-7;
- W. Section 8-6-3;
- X. Section 8-7-6;
- Y. Section 9-1-16; and
- Z. Section 10A-60-05.

**Section 2.** Section 7-3-13 of the City Code is amended by deleting those portions that are stricken and adding those portions that are underlined:

**7-3-13 Penalty.**

Violation by any person of the provisions of this Chapter shall be deemed to be a Class A Violation ~~misdemeanor and shall be punishable upon conviction by a fine of not more than five hundred dollars (\$500.00) or by imprisonment of not more than six (6) months in the County Jail, or by both such fine and imprisonment.~~

**Section 3.** Section 9-7-3 of the City Code is amended by deleting those portions that are stricken and adding those portions that are underlined:

**9-7-3 Enforcement.**

(A) The violation of a provision of this Chapter relating to the operation of a motor vehicle on other property open to public travel shall be a Class A Violation, municipal offense and shall subject the violator to arrest by a police officer or a private citizen if the violation takes place in the presence of the officer or citizen or by a police officer acting under the authority of a Municipal Court warrant.

~~(B) ORS 133.310(3) and 484.105 shall not apply to offenses on other property open to public travel. The Oregon Uniform Traffic Citation and Complaint Form shall not be used and convictions for offenses occurring on other property open to public travel shall not be reported to the Department of Motor Vehicles.~~

~~(C) A misdemeanor citation may be issued in lieu of custody.~~

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

AYES:  
NAYS:  
ABSENT:

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

ATTEST:

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

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

**AGENDA REPORT**  
November 15, 2010

**TO:** Mayor and City Council

**FROM:** Chuck Mickelson, Public Works Director

**THROUGH:** Henry Lawrence, City Manager

**SUBJECT:** **RESOLUTION #2010-153: A RESOLUTION AUTHORIZING A REALLOCATION OF EXPENDITURES WITHIN THE EAST IDAHO TRANSPORTATION PROJECT DEPARTMENT OF THE CAPITAL PROJECTS FUND FOR CITY SHARE OF EAST IDAHO AVENUE PHASE I IMPROVEMENT (STR-5)**

**DATE:** November 1, 2010

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**SUMMARY:**

Attached is the following document:

- Resolution #2010-153

**BACKGROUND:**

In 2009 the Council adopted a two-year budget that including project STR-5 East Idaho Avenue turn lanes in the amount of \$750,000. The Oregon Department of Transportation (ODOT) also needs to upgrade and resurface the highway between the Snake River and NE 4<sup>th</sup> Street due to significant rutting.

In the mean time the City and ODOT have been working together to identify one single project that would combine our funding for construction, resurfacing and the upgrade of signals at the intersection of East Lane and East Idaho.

The Oregon Jobs and Transportation Act of 2009 Cooperative Improvement Agreement #26638 provides funding for preservation and modernization projects chosen by the Oregon Transportation Commission. In proceeding with this agreement with ODOT the Cities share of the project cost is estimated to be \$800,000.

**ALTERNATIVE:**

The City could not approve the reallocation of funds and the project would not go forward.

**FINANCIAL IMPLICATIONS:**

The proposed Resolution reduces the East Idaho Transportation Project Department contingency expense line item by \$50,000 and increases STR-5 East-Idaho Avenue expense line item by the same amount, leaving a balance of \$40,340 in the department's project contingency line item.

**RECOMMENDATION:**

Staff recommends the City Council adopt Resolution #2010-153.

**PROPOSED MOTION:**

I move the City Council adopt Resolution #2010-153, A RESOLUTION AUTHORIZING A REALLOCATION OF EXPENDITURES WITHIN THE EAST IDAHO TRANSPORTATION PROJECT DEPARTMENT OF THE CAPITAL PROJECTS FUND FOR CITY SHARE OF EAST IDAHO AVENUE PHASE I IMPROVEMENT (STR-5). **9**

**RESOLUTION #2010-153**

**A RESOLUTION AUTHORIZING A REALLOCATION OF EXPENDITURES WITHIN THE EAST IDAHO TRANSPORTATION PROJECT DEPARTMENT OF THE CAPITAL PROJECTS FUND FOR CITY SHARE OF EAST IDAHO AVENUE PHASE I IMPROVEMENT (STR-5)**

- WHEREAS,** the City of Ontario adopted the 2009-2011 budget document based upon known or anticipated revenues and expenditures; and
- WHEREAS,** the 2009-2011 East Idaho Transportation Project Department in the Capital Projects Fund included \$750,000 for project STR-5 East Idaho Avenue Turn Lanes; and
- WHEREAS,** the City and the Oregon Department of Transportation (ODOT) have been working together to identify a single project to combine funding to improve East Idaho and Highway 30 from the Snake River to Northeast 4<sup>th</sup> Street; and
- WHEREAS,** the Oregon Jobs and Transportation Act of 2009 Cooperative Improvement Agreement #26638 provides funding for preservation and modernization projects through ODOT; and
- WHEREAS,** the City's share of the project is estimated at \$800,000; and
- WHEREAS,** the City Council desires now to formally modify the 2009-2011 East Idaho Transportation Project Department of the Capital Projects Fund budget by reducing the project Contingency Expense line and increasing the STR-5 East Idaho Avenue Expense line to complete the project.

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

Account Number	Account Name	Adopted 09-11 Budget	Proposed Change	Revised 09-11 Budget
<b>CAPITAL PROJECTS FUND</b>				
<b>EAST IDAHO TRANSPORTATION PROJECT DEPARTMENT</b>				
<b>EXPENSES</b>				
030-089-715310	STR-5 East Idaho Avenue	\$ 750,000	\$ 50,000	\$ 800,000
030-089-871000	Contingency	\$ 90,340	(\$ 50,000 )	\$ 40,340

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

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

AYES:

NAYES:

ABSENT:

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

ATTEST:

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

**10**

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

**AGENDA REPORT**  
November 15, 2010

TO: Mayor and City Council

FROM: Chuck Mickelson, Public Works Director

THROUGH: Henry Lawrence, City Manager

**SUBJECT: RESOLUTION NO. 2010-154, A RESOLUTION AUTHORIZING A CHANGE OF STREET FUND BUDGETED REVENUE FOR NW WASHINGTON TO THE CAPITAL PROJECTS FUND, AND AUTHORIZING A REALLOCATION IN CAPITAL PROJECTS FUND EXPENDITURES TO TRANSFER FUNDS TO THE STREET FUND FOR PROJECTS RELATING TO EAST IDAHO, SW 2<sup>ND</sup> STREET, SW 4<sup>TH</sup> AVENUE, AND NORTH OREGON AS FUNDED THROUGH A PREVIOUS JURISDICTIONAL TRANSFER**

DATE: November 3, 2010

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**SUMMARY:**

Attached is the following document:

- Resolution #2010- 154

The Oregon Department of Transportation (ODOT) Jurisdictional Transfer revenue of \$376,400 was inadvertently budgeted in the Street Fund when it should have been budgeted in the same fund as the Northwest Washington/North Oregon Corner Realignment Project (STR-6). The purpose of this agenda item is to obtain the approval of the City Council to correct the Street Fund and Capital Projects Fund budgets to reflect the original intention of the 2009-2011 Budget.

**PREVIOUS COUNCIL ACTION:**

Jun 2010 City Council approved the 2009-2011 Budget.

**BACKGROUND:**

In October of 2009, the City of Ontario approved Amendment #1 to Agreement #23255 with ODOT that transferred ownership of portions of Northwest Washington to the City of Ontario. These funds were identified within the City's 2009-11 Biennial Budget as a revenue within the Street Fund. However, the expenditure budget for this project, the realignment and sidewalk work to be done by the City on Northwest Washington, adopted as project number STR-6 in the City's 2009-11 Biennial Budget was within the Capital Projects Fund.

In order to correct this error, we are proposing to move the \$376,400 budgeted revenue from the Street Fund to the Capital Project Fund for use in the Northwest Washington Realignment Project, matching the revenue and expense budgets for that project within the Capital Projects Fund.

To keep the Street Fund in balance following the proposed reduction in budgeted revenue, staff is proposing that the Council adopt a budget adjustment that would allow for a transfer of a portion of the \$490,000 that is in Capital Projects available cash for the Washington/Oregon previously given to the City of Ontario by ODOT, and increase the ODOT STP Funds revenue budget.

**ALTERNATIVE:**

There really is no alternative to these resolutions as they are for the purpose of correcting the 2009-2011 Budget.

**FINANCIAL IMPLICATIONS:**

The proposed changes are to correct and 'match' budgeted revenues or resources with project expense budgets. The proposal to increase the STP revenue budget will result in fewer funds being available to the City from ODOT for the next biennium as those funds will be requested in 2009-11.

**RECOMMENDATION:**

The Public Works Department recommends that the City Council approve Resolution 2010-154.

**PROPOSED MOTION:**

I move the City Council adopt **Resolution #2010-154, A RESOLUTION AUTHORIZING A CHANGE OF STREET FUND BUDGETED REVENUE FOR NW WASHINGTON TO THE CAPITAL PROJECTS FUND, AND AUTHORIZING A REALLOCATION IN CAPITAL PROJECTS FUND EXPENDITURES TO TRANSFER FUNDS TO THE STREET FUND FOR PROJECTS RELATING TO EAST IDAHO, SW 2<sup>ND</sup> STREET, SW 4<sup>TH</sup> AVENUE, AND NORTH OREGON AS FUNDED THROUGH A PREVIOUS JURISDICTIONAL TRANSFER.**

**RESOLUTION #2010-154**

**A RESOLUTION AUTHORIZING A CHANGE OF STREET FUND BUDGETED REVENUE FOR NW WASHINGTON TO THE CAPITAL PROJECTS FUND, AND AUTHORIZING A REALLOCATION IN CAPITAL PROJECTS FUND EXPENDITURES TO TRANSFER FUNDS TO THE STREET FUND FOR PROJECTS RELATING TO EAST IDAHO, SW 2<sup>ND</sup> STREET, SW 4<sup>TH</sup> AVENUE, AND NORTH OREGON AS FUNDED THROUGH A PREVIOUS JURISDICTIONAL TRANSFER**

- WHEREAS,** the City of Ontario adopted the 2009-2011 budget document based upon known or anticipated revenue and expenditures; and
- WHEREAS,** in October 2009 the City of Ontario approved Amendment #1 to the Agreement #23255 with the Oregon Department of Transportation (ODOT), an agreement transferring ownership portions of Northwest Washington to the City of Ontario; and
- WHEREAS,** ODOT in return was to pay the City of Ontario \$376,400 specifically for the realignment and sidewalk work to be done by the City on Washington Avenue; and
- WHEREAS,** the ODOT Jurisdictional Transfer revenue was inadvertently budgeted in the Street Fund, when it should have been budgeted in the same fund as the Northwest Washington / North Oregon Corner Realignment Project STR-6 expense, the Capital Projects Fund; and
- WHEREAS,** the Street Fund completed projects STR-1 East Idaho Underpass Project, and STR-9 North Oregon Design Phase II, which could have been funded by the previously completed ODOT jurisdictional transfer of North Oregon and East Idaho; and
- WHEREAS,** the Street Fund is in need of those maintenance funds which are held in the Capital Projects Fund Washington/Oregon Realignment Project Department; and
- WHEREAS,** the Council now desires to modify the Street and Capital Projects Fund Budgets to match the NW Washington project revenues and expenses in the Capital Projects Fund, and match the East Idaho and North Oregon project revenues and expenses in the Street Fund, by formally modifying the 2009-11 revenue and expense budgets.

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

Account Number	Account Name	Adopted FY 09-11 Budget	Proposed Change	Revised FY 09-11 Budget
<b>STREET FUND</b>				
Revenues				
045-000-456260	ODOT Jurisdictional Transfer	376,400	(376,400)	0
045-000-456270	ODOT STP FUNDS	615,743	65,910	681,653
045-000-458605	TRANSF FR CAP PROJ - N OR	0	310,490	310,490
<b>CAPITAL PROJECT FUND</b>				
Revenues				
030-000-456260	ODOT J/T N OR/ NW Wash	0	376,400	376,400
Expenses				
030-091-834000	TRNSF TO STREET FUND-N OR	0	310,490	310,490
030-091-871000	CONTINGENCY - WA/OR PROJ	442,250	65,910	508,160
030-091-871000	CONTINGENCY - WA/OR PROJ	508,160	(310,490)	197,670

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

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

AYES:

NAYES:

ABSENT:

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

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

ATTEST:

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

**AGENDA REPORT**  
November 15, 2010

TO: Mayor and City Council

FROM: Chuck Mickelson, Public Works Director

THROUGH: Henry Lawrence, City Manager

**SUBJECT: APPROVAL OF A COOPERATIVE IMPROVEMENT AGREEMENT BETWEEN THE CITY OF ONTARIO AND THE STATE OF OREGON, ACTING BY AND THROUGH ITS DEPARTMENT OF TRANSPORTATION, AND AS AUTHORIZED BY THE OREGON JOBS AND TRANSPORTATION ACT OF 2009, ALSO KNOWN AS HOUSE BILL 2001 FOR SIGNAL UPGRADES AND LANE MODIFICATIONS AT EAST IDAHO AND EAST LANE AND RESURFACING OF EAST IDAHO AVENUE (HIGHWAY 30) BETWEEN THE SNAKE RIVER AND NE 4<sup>TH</sup> STREET**

DATE: November 1, 2010

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**SUMMARY:**

Attached are the following documents:

- ODOT Misc. Contracts and Agreements No. 26638
- 2009-11 Budget for Project STR-5

This agreement allows the City to partner with ODOT in combining funding to allow for the rehabilitation of East Idaho (ODOT responsibility) along with improvements to the Goodfellow and East Lane intersections (City responsibility).

Conceptual presentations have been made to the Public Works Committee and the Mayor and City Council and all parties indicated informally to proceed. This agreement formalizes the relationship between ODOT and the City of Ontario.

**PREVIOUS COUNCIL ACTION:**

- 2003-2004 The City hired the firm of Meyer Mohaddes Associates to prepare a traffic study for the "East Ontario Commercial Area." This study resulted in the recommendations for improvements to the roadway and intersections, as well as establishing fees per vehicle trip.
- 2005-2007 The City created Reimbursement District #3 and allocated \$167,500 from the Public Works Fund to be transferred to the Capital Projects Fund for project design work thru Resolution 2005-138.
- 2008-2009 ODOT requested the City take responsibility for maintenance of East Idaho Avenue from the Snake River to NE 4<sup>th</sup> Street. The City rejected this proposal and ODOT remains responsible for the structural integrity of this section of State Highway 30.

2009 Council adopted a two-year budget that included upgrades to East Idaho intersections in the amount of \$750,000 (STR 5, copy attached).

**BACKGROUND:**

The Oregon Jobs and Transportation Act of 2009 (HB 2001) provided funding for preservation and modernization projects chosen by the Oregon Transportation Commission. East Idaho Avenue between the Snake River and NE 4<sup>th</sup> Street has experienced significant rutting. The Oregon legislature allocated \$1.2 million to ODOT for resurfacing this state highway.

The City commissioned a traffic study in 2003 to identify improvements necessary to meet the increasing demand on East Idaho from the river to the freeway. Improvements recommended included adding turning lanes at East Lane and Goodfellow, adding an additional lane to East Idaho and modifying the signals. The overall improvements have an estimated current cost of \$2.2 million which is significantly more than the city has collected.

During peak traffic periods the eastbound traffic wishing to turn left onto East Lane into the Walmart and Home Depot area backs up to and through the Goodfellow intersection.

During the 2005-2007 Biennium, the City created a Reimbursement District after approving a Director's Report for the improvements along Goodfellow Street and East Idaho Avenue. The Council approved Resolution 2005-138 which allocated \$167,500 from the Public Works Fund toward the project with the anticipation of being repaid thru property owner reimbursements as they developed and accessed the improved areas. The \$167,500 was authorized to be expended for project engineering.

The City of Ontario has collected a total of \$840,340.75 in traffic impact fees from developers in this area to pay for roadway improvements. The fees collected from Home Depot, Hometown Toyota, Taco Del Mar, Carl's Jr., Walmart and Walgreens between 2005 and 2007 were placed into the Capital Project Fund and have been budgeted within the "East Idaho Transportation Project" Department for 2009-11 as Project STR-5. The \$167,500 from the Public Works Fund was also deposited into the Capital Projects Fund for the project.

Project expenses were incurred following the creation of Reimbursement District No. 3 in the amount of \$147,675.84. There remains \$860,164.91 in project funds plus interest earned on the fees collected.

The City and ODOT staffs have been working collaboratively to identify a single project that would combine our funding for construction. This project will allow us to proceed with construction in 2011 which will include the resurfacing of East Idaho as noted above as well as the modification of signals at the intersection of East Lane and East Idaho along with lane and striping modifications. This will improve the traffic flow into the Walmart and Home Depot area and will be compatible with future upgrades of East Idaho when additional funding becomes available. There is a limited amount of right of way that must be acquired as well. ODOT staff is taking the lead in design of the project.

The agreement also provides for the transfer of right of way from ODOT to the City for a portion of East Lane, Goodfellow and Tapadera. This transfer has been contemplated by both agencies for many years and this concludes that issue.

Questions that came up at the October 14th work session are as follows:

- Where are we getting the difference between the \$800,000 and the \$796,020 which is in the account?
  - With the additional \$167,500 in project revenues set aside during the 2005-07 Biennium, we have established that the project 'account' has \$860,164.91 plus interest earnings on the fees received. This is updated information from the \$796,020 figure provided earlier. We will not have to look elsewhere for project funding of the \$800,000.
  - During the past week, I have been in discussions with ODOT staff and the Finance Director. ODOT has agreed to modify the agreement to allow the City to deposit funds in the Local Government Investment Pool (LGIP) where the City will receive interest on the deposits and allow ODOT to draw funds as they are expended. Additionally, we have changed the funding requirement from an \$800,000 deposit to placing \$350,000 for engineering and right of way into the LGIP and then placing the balance in the LGIP upon bidding of the project.
- If we collected money from Wal-Mart for street improvements when they first built, why wasn't this used on the street improvement done at that time? The scope of the changes was not fully defined at the time that Wal-Mart paid the fees. This project will benefit Wal-Mart and their patrons and sets the stage for future improvements.
- Why are we adding turn lanes on the Wal-Mart side of E Idaho which will only benefit people coming from Idaho? What benefit is this to Ontario residents? The project includes adding a turn lane and pedestrian island at the NE corner of E Lane and E Idaho. This island limits the distance for pedestrians to cross E Idaho which is already substantial. Additionally, by modifying the signal sequencing and timing we will have two left turns onto E Lane from E Idaho thus eliminating or minimizing the traffic that currently backs up all the way to Goodfellow. This is a phased project and the improvements that we make today are compatible with the overall plan as additional funding becomes available in the future.
- Why aren't we improving the road though the mall that goes beside Denny's parking lot prior to intersecting Goodfellow? Seems like the jog should be eliminated. Staff agrees that the jog should be eliminated. Unfortunately, the city does not own the right of way to allow this to happen.

**ALTERNATIVE:**

The City could not approve this agreement and the project will not go forward.

**FINANCIAL IMPLICATIONS:**

The 2009-11 Biennial Budget includes an estimated amount of available cash, without projected interest earnings, for the project of \$840,340 and the budgeted expenses include \$750,000 for the project and \$90,340 as contingency.

In reviewing the historical expenditures for the work around East Idaho and the Goodfellow intersection, it was determined that \$146,675.84 had been expended between 2005 and 2009 for what was proposed to be Reimbursement District #3 on Goodfellow and East Lane as authorized by the Council thru Resolution 2005-138. That same Resolution authorized the transfer of funds from the Public Works Fund to the Capital Projects Fund in the amount of \$167,500.

During initial review of historical Capital Projects revenues and expenditures, the \$146,675.84 previously spent on Reimbursement District #3 was identified as expenditures for 'special projects' within the Capital Projects Fund, not the East Idaho Transportation Project. Accordingly, following Finance staff research of expenditures, the project cash balance was reduced by the Reimbursement District #3 expenses; however, the additional revenue amount of \$167,500 was not identified as project revenues, leaving the project total short of the proposed agreement. That oversight has been corrected in our Capital Projects Fund schedules and the Reimbursement District #3 revenues and expenses have been recorded as activity on the East Idaho Transportation Project as follows:

East Idaho Transportation Project					
	Description	Revenues	Expenses	Sub-Total by Fiscal Year	Total Project Funds Available
2005-06	Project Design - Holladay Engineering	-	82,281.29	(82,281.29)	(82,281.29)
2006-07	Transportation Fees Collected	840,340.75	-	840,340.75	758,059.46
2006-07	Public Works Transfer Reso 2005-138	167,500.00	-	167,500.00	925,559.46
2006-07	Project Design - Holladay Engineering	-	25,330.52	(25,330.52)	900,228.94
2007-08	Project Design - Holladay Engineering	-	5,726.51	(5,726.51)	894,502.43
2008-09	Project Design - Holladay Engineering	-	34,337.52	(34,337.52)	860,164.91

Staff is proposing a budget adjustment and agreement approval that would encumber \$800,000 of the funds available for the project.

This agreement requires the City to deposit the necessary funding to ODOT for the City's share of design and construction. The project will be designed to limit the cost to the City based on available funds.

**RECOMMENDATION:**

Staff recommends the City Council authorize the Mayor to sign the ODOT Misc. Contract and Agreement No. 26638.

**PROPOSED MOTION:**

I move that the City Council approve a Cooperative Improvement Agreement, No. 26638, between the City of Ontario and the State of Oregon, acting by and through its Department of Transportation, and as authorized by the Oregon Jobs and Transportation Act of 2009, also known as House Bill 2001, for signal upgrades and lane modifications at East Idaho and East Lane, and resurfacing of East Idaho Avenue (Highway 30) between the Snake River and NE 4<sup>th</sup> Street, and authorize the Mayor to sign this Agreement on behalf of the City.

City of Ontario  
2009-2011 Budget

Updated Project: STR – 5

Service Alternative Detail 0809-1

Department Name PW

<b>Project Name</b>	<b>Start Date</b>	<b>End Date</b>	<b>Dept.</b>
<b>E Idaho Ave Turn Lanes Design</b>			<b>Ranking</b>

Location: E Idaho Ave and East Lane and E Idaho Ave and Goodfellow St

Funding Source:	Traffic Impact Fees	Category: Project Update		
Amount to Approve:	Revenue:	\$150,000	Expense:	\$1,350,000

**Project Description**

Complete the preliminary design for intersection improvements at E Idaho Ave and East Lane and E Idaho Ave and Goodfellow St. The design project would include signal upgrades and additional left turn lanes for both of these intersections.

**Project Justification**

This project is part of the Transportation System Master plan and the Meyer Mohaddas Traffic Study dated 2004 and adopted by the City Council. Due to the increase of traffic volumes at these two intersections there is a need for the safety of our traveling public to upgrade the amount of turn lanes and to install updated traffic signals.

**Project Feasibility**

The City has collected Traffic Impact fees from the local businesses and developers currently in this area. These fees were collected to upgrade the street systems in the impact area for the additional traffic burden placed on them. These fees are currently in a fund for use for this project.

**Implications of Deferring Project**

The safety of the traveling public is important to the City of Ontario. By deferring the expansion of the intersections the potential for more accidents as traffic increases also increases.

**Opportunity for Coordination**

During conversations with ODOT they were willing to partner with the City to complete the necessary designs for these intersections. The City would have to pay for the costs of engineering and coordinate the construction with their future projects they have for E Idaho Ave upgrades. The possible timing of this project is unknown.

<b>Capital Summary</b>	<b>FY 2010</b>	<b>FY 2011</b>	<b>FY 2012</b>	<b>FY 2013</b>	<b>FY 2014</b>	<b>FY 2015</b>	<b>Total</b>
<b>Capital Revenue</b>							
Traffic Impact Fees	150,000	600,000	600,000				1,350,000
Option 2							-
Option 3							-
Total Revenue	150,000	600,000	600,000	-	-	-	1,350,000
<b>Capital Cost</b>							
Planning	150,000						150,000
Construction		600,000	600,000				1,200,000
Equipment							-
Land Acq							-
Contingency							-
Total Cost	150,000	600,000	600,000	-	-	-	1,350,000
<b>Net Fund Support</b>	0	0	0	0	0	0	0

### Fiscal and Operating Impact

<b>Operating Summary</b>	<b>FY 2010</b>	<b>FY 2011</b>	<b>FY 2012</b>	<b>FY 2013</b>	<b>FY 2014</b>	<b>FY 2015</b>	<b>Total</b>
<b>Operating Revenue</b>							
Revenue Category							-
Revenue Category							-
Revenue Category							-
Total Revenue	-	-	-	-	-	-	-
<b>Operating Cost</b>							
# of FTE's							0
Personnel Cost							-
O&M							-
Equip. (one time)							-
O&M Costs							-
Total Costs	-	-	-	-	-	-	-
<b>Net Fund Support</b>	0	0	0	0	0	0	0

**Comments:** Currently budgeted in 07-09.

If the City were to partner with ODOT for this project, the design engineering costs would most likely be less than hiring an independent engineer to complete this design.

**Oregon Jobs and Transportation Act of 2009  
Cooperative Improvement Agreement  
US30 East Idaho Avenue**

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

**RECITALS**

1. Oregon Jobs and Transportation Act of 2009 (JTA) Program, hereinafter referred to as the "JTA of 2009 Program", provides funding for preservation and modernization projects chosen by the Oregon Transportation Commission (OTC).
2. Projects named in Section 64 of 2009 Legislative Assembly, Oregon House Bill 2001, as well as projects approved by the OTC as of October 21, 2009 pursuant to Section 64(3), were amended into the Statewide Transportation Improvement Program (STIP), including the project identified below.
3. By the authority granted in ORS 366.425, State may accept deposits of money or an irrevocable letter of credit from any county, city, road district, person, firm, or corporation for the performance of work on any public highway within the State. When said money or a letter of credit is deposited, State shall proceed with the Project. Money so deposited shall be disbursed for the purpose for which it was deposited.
4. East Idaho Avenue is a part of the state highway system under the jurisdiction and control of the Oregon Transportation Commission (OTC). East Lane is part of the city street system under the jurisdiction and control of Agency.
5. The current asphalt on East Idaho Avenue between Fourth Street and border of Idaho has experienced heavy rutting and is in need of replacement. In addition, the traffic use of the East Lane and East Idaho Avenue intersection has increased and the intersection is in need of improvements and modifications.
6. By the authority granted in Oregon Revised Statutes 190.110, 366.572 and 366.576, State may enter into cooperative agreements with counties, cities and units of local governments for the performance of work on certain types of improvement projects with the allocation of costs on terms and conditions mutually agreeable to the contracting Parties. By the authority granted in ORS 366.395, State may relinquish title to any of its property not needed by it for highway

purposes to any other governmental body or political subdivision within the State of Oregon, subject to such restrictions, if any, imposed by deed or other legal instrument or otherwise imposed by State.

7. Pursuant to ORS 373.010, whenever the routing of any state highway passes through the corporate limits of any city, State may locate, relocate, reroute, alter or change any routing when in its opinion the interests of the motoring public will be better served.
8. State maintains a State Route system and a US Route System to assist the motoring public in their travels. Designated routes may be composed of both state highway and local roads. Designation and elimination of state routes are under authority of the OTC, subject to approval of the Special Committee on US Route Numbering of the American Association of State Highway and Transportation Officials (AASHTO).
9. This Agreement shall address the following:
  - a. The resurfacing of East Idaho Avenue from North East Fourth Street to the Snake River Bridge at the Idaho border and the reconfiguration of the intersection of East Lane and East Idaho Avenue utilizing JTA program funding.
  - b. The conveyance to Agency, by deed, of certain portions of right of way surrounding East Idaho Avenue (Units A-C), purchased by State for the completed East Idaho Avenue (Ontario Spur) project. Units A-C are not part of the National Highway System (NHS) and the right of way surrounding East Idaho Avenue is no longer needed.

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

#### **TERMS OF AGREEMENT**

1. Under such authority, State and Agency agree that State shall resurface East Idaho Avenue from North East Fourth Street to the Snake River Bridge at the Idaho border and shall reconfigure the intersection of East Lane and East Idaho Avenue, including the installation of a signal, roadway widening, sidewalk, landscaping, concrete medians and signage, hereinafter referred to as "Project" and as further described in the Project description identified on Exhibit "A", attached hereto and by this reference made a part hereof. A Project map showing the location and approximate limits of the Project is shown on Exhibit "B - Map 1", attached hereto and by this reference made a part hereof. The scope of work may change to stay within the limits of the funding.

2. State and Agency agree that upon execution of this Agreement, State shall convey to Agency, by deed, as a portion of the city street system, those portions of right of way surrounding East Idaho Avenue, hereinafter referred to as Units A-C, which were purchased by State for the construction of the East Idaho Avenue (Ontario Spur) project. Said project is complete and said portions of right of way are no longer needed. Agency shall maintain the units as part of the Agency street system as long as needed for the service of persons living thereon or a community served thereby. If said right of way is no longer used for public street purposes, it shall automatically revert to State. The locations to be conveyed are shown on Exhibit B – Map 2, and the right of way descriptions for Units A-C are outlined in Exhibit C, both attached hereto and by this reference made a part hereof.
3. The total Project cost is estimated at \$2,000,000 and will be financed with city, and state funds. This amount is subject to change. The JTA of 2009 Program funds are limited to \$1,200,000. Agency's share of the Project cost is estimated at \$800,000. Agency shall be responsible for all costs associated with the intersection reconfiguration in excess of the \$800,000. State shall be responsible for all paving related costs associated with the resurfacing of East Idaho Avenue in excess of the \$1,200,000 JTA of 2009 Program funds.
4. This Agreement shall become effective on the date all required signatures are obtained and shall remain in effect for the purpose of ongoing maintenance and power responsibilities for the useful life of the facilities constructed and relinquished as part of the Project. The useful life is defined as twenty (20) calendar years. The Project shall be completed within five (5) calendar years following the date of final execution of this Agreement by both Parties.
5. State shall pursue approval of the conveyance from the OTC or designee. Once approved, the actual conveyance of property shall be accomplished by acceptance and recording of the deed.
6. The JTA of 2009 Program Funds are contingent upon issuance and sale by the State Treasurer, of the bonds authorized by Section 61 of House Bill 2001, 2009 Legislative Assembly (Oregon Laws 2009, Chapter 865) in an amount 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 availability of JTA funds, which will be available on or before January 1, 2011. ODOT will notify Agency when such JTA funds are available. All other provisions and requirements of this Agreement shall remain the same.
7. Agency and State have a joint obligation to ensure timely expenditure of the JTA of 2009 Program funds and to comply with the provisions of the bonds that finance the JTA of 2009 Program.

## AGENCY OBLIGATIONS

1. Agency shall, upon receipt of a fully executed copy of this Agreement and upon subsequent letters of request from State, forward to State advance deposits in the following manner: Agency shall provide an advance deposit in the amount of \$350,000 for Preliminary Engineering (PE) and Right of Way phases of the Project, with the remaining \$450,000 advance deposit due upon receipt of letter of request from State, approximately 1 month prior to Plans, Specifications and Estimates (PSE) date of the Project. The total requested amount shall be a total of \$800,000, said amount being equal to Agency's total contribution. Project costs are outlined in "Exhibit A", attached hereto and by this reference made a part hereof. Agency certifies, at the time this Agreement is executed, that sufficient funds are available and authorized for expenditure to finance costs of this Agreement within Agency's current appropriation or limitation of the current budget.
2. Pursuant to ORS 366.425, Agency's advance deposit may be in the form of 1) money deposited in the State Treasury (an option where a deposit is made in the Local Government Investment Pool, and an Irrevocable Limited Power of Attorney is sent to the Highway Finance Office), or 2) an Irrevocable Letter of Credit issued by a local bank in the name of State, or 3) cash.
3. Agency shall be responsible for performance of 100 percent of maintenance as well as maintenance costs and power costs associated with the Project elements outside of the paved roadway, including medians, curbs, sidewalks, landscaping, irrigation systems, illumination, median and sidewalk snow removal, and storm drain system. The power company shall send power bills directly to Agency.
4. Agency, if a City, by execution of Agreement, gives its consent as required by ORS 373.030(2) and ORS 105.760 to any and all changes of grade within the Agency limits, and gives its consent as required by ORS 373.050(1) to any and all closure of streets intersecting the highway, if any there be in connection with or arising out of the Project covered by the Agreement.
5. Agency grants State the right to enter onto Agency right of way for the performance of duties as set forth in this Agreement.
6. Agency certifies and represents that the individual(s) signing this Agreement has been authorized to enter into and execute this Agreement on behalf of Agency, under the direction or approval of its governing body, commission, board, officers, members or representatives, and to legally bind Agency.

7. Upon conveyance, by deed, of Units A-C to Agency, Agency agrees to accept State's right, title and interest; to accept jurisdiction and control over the property, and to maintain the property as a portion of its street system as long as needed for the service of persons living thereon or a community served thereby. Any right of way being conveyed in which State has any title shall be vested in Agency so long as used for public street purposes. If said right of way is no longer used for public street purposes, it shall automatically revert to State.
8. Upon conveyance, by deed, of Units A-C to Agency, Agency agrees to accept all property, power costs and maintenance of features, pavement, drainage, signs, illumination, utilities, water lines, appurtenances, and all things within the conveyed right of way (with exception of items described in Paragraph 3, of State's Obligations).
9. Maintenance obligations for Units A-C shall supersede those set forth in any previous Agreements with Agency for these sections.
10. Agency agrees that title of Units A-C will not be vested in Agency until the subsequent conveyance, by deed, is executed by State, accepted by Agency, and recorded with the county in which the Agency is located. Agency agrees to accept all liability and maintenance responsibilities, as described in Paragraph 8 of Agency Obligations, immediately upon execution of this Agreement.
11. Agency shall return permit files, utility permit files, right of way maps and as-built files to State if any or a portion of Units A-C reverts to the State, or in the event that the OTC or designee does not approve the conveyance.
12. Agency's Project Manager for this Project is Chuck Mickelson, Public Works Director, City of Ontario, 444 S.W. 4<sup>th</sup> St., Ontario, Oregon, 97912, 541-881-3231, chuck.mickelson@ontariooregon.org, or assigned designee upon individual's absence. State's Project Manager shall be notified in writing of any contact information changes during the term of this Agreement.

## **STATE OBLIGATIONS**

1. State shall, upon execution of the Agreement, forward to Agency a letter of request for an advance deposit in the amount of \$800,000 for payment of Agency's contribution.
2. State shall place signs that identify Project as "Oregon Jobs and Transportation Act". State may affix additional signage that identifies local funds used for the Project.
3. State shall be responsible for performance of 100 percent of maintenance as well as

maintenance costs and power costs associated with all of the elements within the paved roadway, including asphalt, striping, signs, snow removal, signals, as well as the drainage swale and drain pipe outflow to the Snake River (outside of paved roadway). The power company shall send power bills directly to State.

4. State certifies, at the time this Agreement is executed, that sufficient funds are available and authorized for expenditure to finance costs of this Agreement within State's current appropriation or limitation of current biennial budget.
5. State shall, upon execution of this Agreement, convey, by deed, Units A-C to Agency, which were purchased by State for the construction of the East Idaho Avenue (Ontario Spur) project. Said project is complete and said portions of right of way are no longer needed. If said right of way is no longer used for public street purposes, it shall automatically revert to State.
6. Upon conveyance, by deed, of Units A-C to Agency, State relinquishes all maintenance, power costs, repair responsibilities, liabilities and including all appurtenances within the conveyed right of way, to Agency.
7. State agrees to furnish Agency any maps, records, permits, and any other related data available that may be required to administer Units A-C.
8. State agrees that it will notify the Travel Information Council (TIC) of the transfer of jurisdiction when there are any TIC signs on such facility, in accordance with ORS 377.708. TIC Sign Operations Officer, 229 Madrona Avenue SE, Salem, OR 97302, Phone: (503) 373-0870.
9. State's Project Manager for this Project is Sean P. Maloney, Project Leader, Oregon Department of Transportation, 1390 SE 1st Ave, Ontario, Oregon, 97914, 541-889-8558 ext. 235, Sean.Maloney@odot.state.or.us, or assigned designee upon individual's absence. Agency's Project Manager shall be notified in writing of any contact information changes during the term of this Agreement.

## **GENERAL PROVISIONS**

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

Agency/State  
Agreement No. 26638

- to pursue the work as to endanger performance of this Agreement in accordance with its terms, and after receipt of written notice from State fails to correct such failures within 10 days or such longer period as State may authorize.
- c. If State fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow State, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement.
  - d. If federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the work under this Agreement is prohibited or if State is prohibited from paying for such work from the planned funding source.
  - e. If OTC or designee fails to approve the conveyance, by deed, of Units A-C, to the Agency.
3. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
  4. Both Parties shall comply with all federal, state, and local laws, regulations, executive orders and ordinances applicable to the work under this Agreement, including, without limitation, the provisions of ORS 279C.505, 279C.515, 279C.520, 279C.530 and 279B.270 incorporated herein by reference and made a part hereof. Without limiting the generality of the foregoing, both Parties expressly agree 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.
  5. Both Parties shall perform the service under this Agreement as independent contractors 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.
  6. All employers, including both Parties, that employ subject workers who work under this Agreement in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage unless such employers are exempt under ORS 656.126. Agency shall ensure that each of its subcontractors complies with these requirements.
  7. Both Parties shall, to the extent permitted by the Oregon Constitution and the Oregon Tort Claims Act, indemnify, defend, save, and hold harmless each other, their officers and employees from any and all claims, suits, and liabilities which may

occur in their respective performance of this Project. Agency's total liability shall not exceed the tort claims limits provided in Oregon Tort Claims Act, ORS 30.260 to 30.300, for 'local public bodies'.

8. Notwithstanding the foregoing defense obligations under the paragraph above, neither Party nor any attorney engaged by either Party shall defend any claim in the name of the other Party or any agency/department/division of such other Party, nor purport to act as legal representative of the other Party or any of its agencies/departments/divisions, without the prior written consent of the legal counsel of such other Party. Each Party may, at anytime at its election assume its own defense and settlement in the event that it determines that the other Party is prohibited from defending it, or that other Party is not adequately defending it's interests, or that an important governmental principle is at issue or that it is in the best interests of the Party to do so. Each Party reserve all rights to pursue any claims it may have against the other if it elects to assume its own defense.
9. State and Agency 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.
10. Agency acknowledges and agrees that State, the Oregon Secretary of State's Office, and their duly authorized representatives shall have access to the books, documents, papers, and records of Agency which are directly pertinent to the specific Agreement for the purpose of making audit, examination, excerpts, and transcripts during the course of the Project and for a period of six (6) years after final payment. Copies of applicable records shall be made available upon request. Payment for costs of copies is reimbursable by State.
11. The properties described above as Units A-C are conveyed subject, however, to the rights of any utilities located with said properties and further subject to the rights of the owners of said existing facilities, if any there be, to operate, reconstruct, and maintain their utility facilities presently located within said properties.
12. 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.
13. 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 its signing representatives have read this Agreement, understand it, and agree to be bound by its terms and conditions.

This Project is in the 2008-2011 STIP, (Key #16792) that was approved by the OTC on October 21, 2009.

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

On September 15, 2006, the Director of the Oregon Department of Transportation approved Subdelegation Order No. 2, Paragraph 1, in which authority is delegated to the Deputy Director, Highways to approve and sign agreements over \$75,000 when the work is related to a project included in the Statewide Transportation Improvement Program.

SIGNATURE TO FOLLOW

Agency/State  
Agreement No. 26638

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

By \_\_\_\_\_

Date \_\_\_\_\_

By \_\_\_\_\_

Date \_\_\_\_\_

**APPROVED AS TO LEGAL SUFFICIENCY**

By \_\_\_\_\_  
Agency Counsel

Date \_\_\_\_\_

**Agency Contact:**  
Chuck Mickelson, Public Works Director City  
of Ontario  
444 S.W. 4<sup>th</sup> St.  
Ontario, Oregon, 97912  
541-881-3231,  
chuck.mickelson@ontariooregon.org

**State Contact:**  
Sean P. Maloney, Project Leader  
Oregon Department of Transportation, 1390  
SE 1<sup>st</sup> Ave, Ontario, Oregon, 97914 541-889-  
8558 ext. 235,  
Sean.Maloney@odot.state.or.us

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

By \_\_\_\_\_  
Deputy Director, Highways

Date \_\_\_\_\_

**APPROVAL RECOMMENDED**

By \_\_\_\_\_  
Local Government Section Manager

Date \_\_\_\_\_

By \_\_\_\_\_  
State Right of Way Manager

Date \_\_\_\_\_

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

Date \_\_\_\_\_

By \_\_\_\_\_  
Region 5 Right of Way Manager

Date \_\_\_\_\_

By \_\_\_\_\_  
District 14 Manager

Date \_\_\_\_\_

**APPROVED AS TO LEGAL SUFFICIENCY**

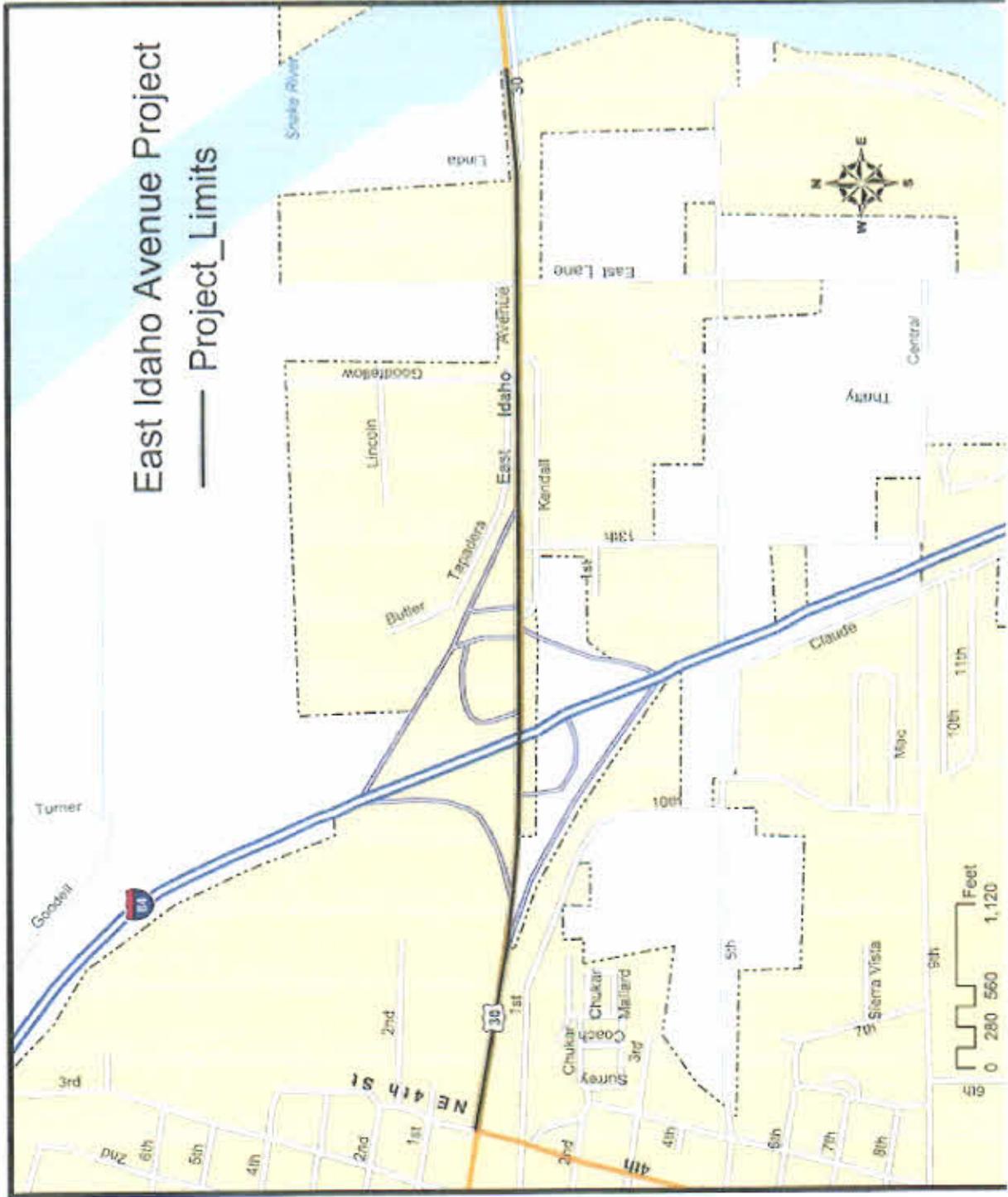
By \_\_\_\_\_  
Assistant Attorney General

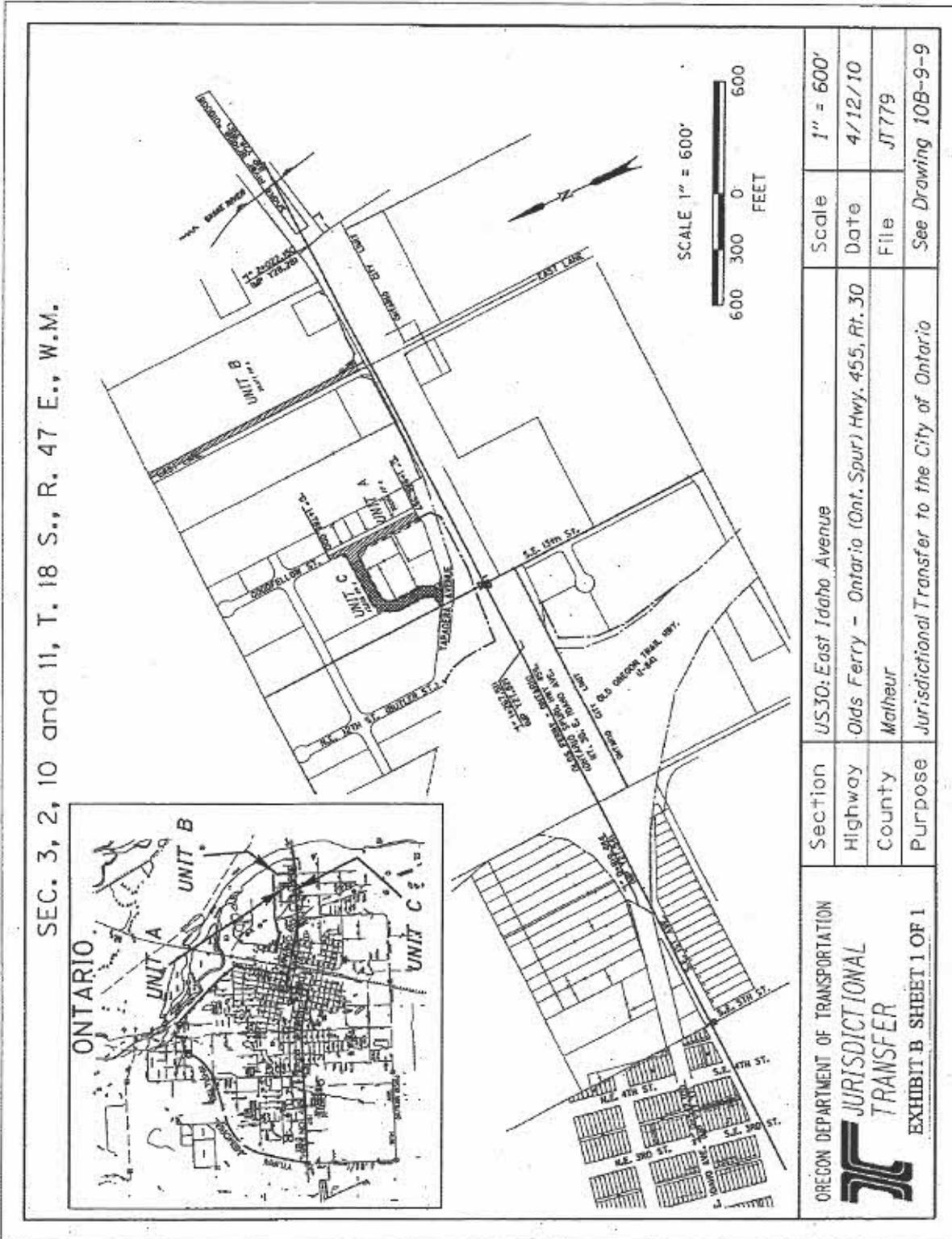
Date: \_\_\_\_\_

**PROJECT DESCRIPTION**  
 City of Ontario  
 US30 East Idaho Avenue

The Project consists of asphalt preservation and reconfiguration of the intersection of East Lane and East Idaho Avenue, and the repaving of East Idaho Avenue from Fourth Street to the Idaho border. The work includes: asphalt grinding, new asphalt placement, intersection reconfiguration, replace signal, striping, sidewalk (replace impacted sidewalk), landscaping (replace impacted), concrete medians, and signage.

Project Cost Estimate		Project Financing	
Preliminary engineering & design	\$ 250,000	Agency Contribution	\$ 800,000
Right-of-way purchase	\$ 200,000	JTA of 2009 Program	\$1,200,000
Construction	\$1,550,000	<b>Total Funds</b>	<b>\$2,000,000</b>
<b>Total Project Cost</b>	<b>\$2,000,000</b>		





**Units A-C are described as follows:**

**UNIT A**

That portion of Goodfellow Street lying between Engineer's center line Station "G" 1+788.000 and "G"1+946.337 lying in Section 2, Township 18 South, Range 47 East, W.M., Malheur County, Oregon.

**UNIT B**

A parcel of land lying in Parcel 1 of Partition Plat No. 93-1, Malheur County, Oregon, and being a portion of that property acquired by the State of Oregon, by and through its Department of Transportation, in that Stipulated Final Judgment dated December 19, 1997, entered as Circuit Court Case No. 96-0928252L, Malheur County Oregon, and recorded January 29, 1998 Instrument No. 98-693 Malheur County Deed Records; said parcel being that portion of said property lying Northerly of the following described line: Beginning at a point opposite and 28.890 meters Northerly of the center line of the Olds Ferry - Ontario Highway, State Highway No. 455, US Route 30 (East Idaho Avenue) at Engineer's center line Station "I" 1+790.400, thence Easterly in a straight line to a point opposite and 27.000 meters Northerly of Engineer's center line Station "I" 1+823.000 on said center line, which said center line is described in said Stipulated Final Judgment.

**UNIT C**

A parcel of land lying in Lot 3, Block 6, INTERSTATE SUBDIVISION, Malheur County, Oregon and being that property described in that deed to the State of Oregon, by and through its Department of Transportation, recorded October 17, 1996 Instrument No. 96-7664 Malheur County Deed Records.

ALSO a parcel of land lying in Lots 2, 4, and 5, Block 6, INTERSTATE SUBDIVISION, Malheur County, Oregon and being a portion of that property described in that deed to the State of Oregon, by and through its Department of Transportation, recorded October 28, 1996 Instrument No. 96-7899 Malheur County Deed Records; and being a portion of that property acquired by the State of Oregon, by and through its Department of Transportation, in that Stipulated Final Judgment dated October 27, 1997, entered as Circuit Court Case No. 96-0928244L, Malheur County Oregon, and recorded January 29, 1998 Instrument No. 98-692 Malheur County Deed Records; the said parcel being that portion of said properties lying Westerly of a line at right angles to the center line of Tapadera Avenue at Engineer's Station "T" 0+971.600, which center line is described in said Judgment.



030-089 CAPITAL PROJ FUND E ID TRANSP PROJ		EXPENDITURE DETAIL				06/17/09
PROP'D	YEAR 1 UNIT COST	YEAR 2 UNIT COST	Account	Description Expenses	YEAR 1	YEAR 2
					09-11 ADOPTED	ADOPTED
0	-	-	030-089-616300	REFUND - TRANSP IMPACT FEE Refund overpayments	-	-
1	150,000	600,000	030-089-715310	STR-5 EAST IDAHO AVE STR-5 E ID AVE TURN LANE DESIGN	150,000	600,000
90,340	-	1	030-089-871000	OPERATING CONTINGENCY	-	90,340
					<u>150,000</u>	<u>690,340</u>
						<u>840,340</u>

**AGENDA REPORT**  
November 15, 2010

TO: Mayor and City Council

FROM: Chuck Mickelson, Public Works Director

THROUGH: Henry Lawrence, City Manager

**SUBJECT: APPROVAL OF AMENDMENT NUMBER 01 TO MISCELLANEOUS CONTRACTS AND AGREEMENTS NO. 26720, A LOCAL AGENCY AGREEMENT FOR FUND DISTRIBUTION FOR THE NORTHWEST WASHINGTON AVENUE REALIGNMENT BETWEEN THE CITY OF ONTARIO AND THE STATE OF OREGON, ACTING BY AND THROUGH ITS DEPARTMENT OF TRANSPORTATION, AND AS AUTHORIZED BY THE OREGON JOBS AND TRANSPORTATION ACT OF 2009, ALSO KNOWN AS HOUSE BILL 2001**

DATE: November 3, 2010

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**SUMMARY:**

Attached is the following document:

- Amendment Number 1 to ODOT Agreement No. 26720
- Agreement Number 26720

The Oregon Jobs and Transportation Act of 2009 provides funding for preservation and modernization projects chosen by the Oregon Transportation Commission. During the planning for the Yturri Beltline and the North Ontario Interchange, discussion was held on the realignment of Northwest Washington Avenue. Agreement Number 26720 provided \$4.5 million for the completion of design, acquisition of right of way and construction of a realigned Northwest Washington to North Oregon and the extension of Park Boulevard to the recently acquired city property.

There is one clause in the original agreement that will control the schedule on this project. Paragraph 5 on Page 2 reads as follows:

*"5. The Agreement is contingent upon issuance and sale by the State Treasurer, of the bonds authorized by Section 61 of House Bill 2001, 2009 Legislative Assembly (Oregon Laws 2009, Chapter 865) in an amount 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 such bonds. ODOT will notify Agency when such sale has occurred and the JTA funds are available."*

This amendment removes this restrictive clause and allows us to proceed forward with the project.

**PREVIOUS COUNCIL ACTION:**

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

2006-

2007 Ontario City Council approved a project to realign Northwest Washington to North Oregon

2007 Ontario hired the firm of CH2M Hill to prepare plans and specifications for this project. Funding for the acquisition of right of way and construction of the realignment was not clearly identified at that time.

October

2009 Resolution 2009-126 approved Amendment No. 1 with ODOT to the Miscellaneous Agreement No. 23255 also known as Cooperative Agreement OR 201 North Ontario Interchange Bridge # 08635, an agreement transferring Northwest Washington to the City of Ontario. In return, ODOT paid the City of Ontario \$375,200 for the realignment of the intersection of Northwest Washington and North Oregon and the construction of curb, gutter and sidewalks along Northwest Washington.

July, 2010 Mayor and City Council approved ODOT Agreement No. 26720 which accepted \$4.5 million for the design, right of way acquisition and construction of NW Washington subject to a number of conditions.

**BACKGROUND:**

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

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

Resolution 2009-126 provided for Ontario to take responsibility for Northwest Washington Street from North Oregon to the Yturri Beltline, which is about 1,500 feet in length upon completion of the realignment of NW Washington. The following significant issues were addressed in the amendment:

- ODOT contributed \$375,200 to the City for improvements or realignment. Should the City not use these funds for the Northwest Washington improvements or realignment, they must be returned to ODOT.
- City accepts responsibility for all maintenance, power costs and repair responsibilities over this section of roadway.
- ODOT retains access control on the transferred right of way.

This amendment authorizes the City to proceed with the project and provides for reimbursement of expenses up to \$4.5 million for finalizing the design, acquisition of right of way and construction of the realignment of Northwest Washington and construction of Park Boulevard to the city property. In addition, the City can use the \$375,200 previously forwarded to the city for sidewalk construction and curve realignment.

**ALTERNATIVE:**

The City could choose not to approve this agreement and the project will not go forward.

**FINANCIAL IMPLICATIONS:**

This agreement provides \$4,875,200 for the realignment of Northwest Washington. Primary expenses for the City include the costs for new sewer and water lines that are necessary to serve the area.

**RECOMMENDATION:**

Staff recommends that the Mayor and City Council approve Amendment No. 1 to Agreement No. 26720.

**PROPOSED MOTION:**

I move that the Mayor and City Council approve Amendment No. 1 to Agreement No. 26720 and authorize the Mayor to sign this amendment.

**Oregon Jobs and Transportation Act of 2009  
Local Agency Agreement for Fund Distribution  
NW Washington Avenue Realignment**

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

**RECITALS**

1. Oregon Jobs and Transportation Act of 2009 (JTA) Program, hereinafter referred to as the "JTA of 2009 Program", provides funding for preservation and modernization projects chosen by the Oregon Transportation Commission (OTC).
2. Projects named in Section 64 of 2009 Legislative Assembly, Oregon House Bill 2001, as well as projects approved by the OTC as of October 21, 2009 pursuant to Section 64(3), were amended into the Statewide Transportation Improvement Program (STIP), including the project identified below.
3. By the authority granted in ORS 190.110, 366.572 and 366.576, state agencies may enter into cooperative 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.
4. By the authority granted in ORS 366.425, State may accept deposits of money or an irrevocable letter of credit from any county, city, road district, person, firm, or corporation for the performance of work on any public highway within the State. When said money or a letter of credit is deposited, State shall proceed with the Project. Money so deposited shall be disbursed for the purpose for which it was deposited.
5. A portion of NW Washington Avenue is a part of the state highway system under the jurisdiction and control of the Oregon Transportation Commission (OTC). North Park Boulevard, North Oregon Street and a portion of NW Washington Avenue are a part of the City street system under the jurisdiction and control of City.

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

### **TERMS OF AGREEMENT**

1. Agency shall reconstruct and realign NW Washington Avenue, North Park Boulevard, and North Oregon Street, hereinafter referred to as "Project". A project description, budget, and map showing the location and approximate limits of the Project are shown on Exhibit "A", attached hereto and by this reference made a part hereof.
2. The total Project cost is estimated at \$4,500,000, which is subject to change. The JTA of 2009 Program funds are limited to \$4,500,000. State shall reimburse Agency 100 percent of eligible, actual costs incurred up to the maximum amount of JTA funds committed for the Project. Agency shall be responsible for all costs in excess of the JTA of 2009 Program funded amount for this Project.
3. This Agreement shall become effective on the date all required signatures are obtained and shall terminate on December 31, 2014. Only work begun after the effective date of this Agreement is eligible for reimbursement with funds available under the JTA of 2009 Program.
4. The funds available under the JTA of 2009 Program are State Highway Funds. To be eligible for reimbursement under the JTA of 2009 Program, expenditures must comply with the requirements of Article IX, Section 3a of the Oregon Constitution.
5. The Agreement is contingent upon issuance and sale by the State Treasurer, of the bonds authorized by Section 61 of House Bill 2001, 2009 Legislative Assembly (Oregon Laws 2009, Chapter 865) in an amount 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 such bonds. ODOT will notify Agency when such sale has occurred and the JTA funds are available.
6. Agency and State have a joint obligation to ensure timely expenditure of the JTA of 2009 Program funds and to comply with the provisions of the bonds that finance the JTA of 2009 Program.

### **AGENCY OBLIGATIONS**

1. Agency shall perform the work described in Exhibit A.
2. Agency shall present invoices for the eligible, actual costs incurred by Agency on behalf of the Project directly to State's Project Liaison for review and approval. Such invoices shall be submitted in the form as shown on Exhibit "B", JTA of 2009 Program fund Progress Billing, attached hereto and by this reference made a part

Agency/State  
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hereof. Invoices will identify the Project and Agreement number, and shall itemize and explain all expenses for which reimbursement is claimed. Invoices shall be presented for periods of not greater than one month, based on actual expenses incurred, and must clearly specify the percentage of completion of the Project. Upon completion of the Project, Agency shall submit a final invoice and letter indicating that the Project is complete.

3. In the event the bonds authorized by HB 2001, Section 61, are not sold, for whatever reason, then Agency shall be responsible for any and all costs incurred on such project.
4. Agency shall be responsible for any and all costs of Project which are not covered by the JTA of 2009 Program funds, including costs of the Project when the maximum amount of the JTA of 2009 Program funds obligated under this Agreement have been expended.
5. Agency or its consultant shall acquire all necessary rights of way according to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, ORS Chapter 35 and the State Right of Way Manual. Certification of right of way acquisition work must be made by the Agency (or on behalf of its consultant) doing the work. If Agency acquires the right of way, they shall provide a letter from Agency's legal counsel certifying that 1) the right of way needed for the Project has been obtained and 2) right of way acquisition has been completed in accordance with the right of way requirements contained in this Agreement. The certification form shall be routed through the State Region 5 Right of Way Office for co-signature and possible audit. If Agency elects to have State perform right of way functions, a separate agreement shall be executed between Agency and State right of way, referencing this Agreement number.
6. The Project shall be developed in conformance with Agency's standards. If Agency has not adopted standards of its own, the Project shall be developed in conformance with the current edition of A Policy on Geometric Design of Highways and Streets by the American Association of State Highway and Transportation Officials (AASHTO). Agency shall provide State with sufficient information to complete a project prospectus.
7. Agency shall comply with all federal, state, and local laws, regulations, executive orders and ordinances applicable to the work under this Agreement, including, without limitation, the provisions of ORS 279C.505, 279C.515, 279C.520, 279C.530 and 279B.270 incorporated herein by reference and made a part hereof. Without limiting the generality of the foregoing, Agency expressly agrees to comply with (i) Title VI of Civil Rights Act of 1964; (ii) Title V and Section 504 of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659A.142; (iv)

Agency/State  
Agreement No. 26720

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.

8. Agency shall perform the service under this Agreement 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.
9. All employers, including Agency, that employ subject workers who work under this Agreement in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage unless such employers are exempt under ORS 656.126. Agency shall ensure that each of its subcontractors complies with these requirements.
10. Agency will maintain the improvements made as a result of the Project at the same level as other similar facilities owned by Agency.
11. Agency agrees that the Project will be on the public right of way and will serve general transportation needs.
12. Utility relocation or reconstruction may or may not be an eligible Project expense according to the following standard:
  - a. The expense is an eligible expense if the owner of the utility facility possesses a property right for its location on the public right of way.
  - b. The expense is not an eligible expense if the owner of the utility facility does not possess a property right for its location, but the facility exists on the public right of way solely under the permission of the Agency or other road authority, whether that permission is expressed or implied, and whether written or oral.
13. Agency certifies, at the time this Agreement is executed, that sufficient funds are available and authorized for expenditure to finance costs of this Agreement within Agency's current appropriation or limitation of the current budget. Agency further agrees that they will only submit invoices to State for reimbursement on work that has been performed and paid for by Agency.
14. Agency 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, OTC and its members, Department of Transportation, its officers and employees from any and all claims, suits, and liabilities which may occur in the performance of

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this Project. Agency's total liability shall not exceed the tort claims limits provided in Oregon Tort Claims Act, ORS 30.260 to 30.300, for "local public bodies".

15. Notwithstanding the foregoing defense obligations under the paragraph above, neither Agency nor any attorney engaged by Agency shall defend any claim in the name of the State of Oregon or any agency of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without the prior written consent of the Oregon Attorney General. The State of Oregon may, at anytime at its election assume its own defense and settlement in the event that it determines that Agency is prohibited from defending the State of Oregon, or that Agency is not adequately defending the State of Oregon's interests, or that an important governmental principle is at issue or that it is in the best interests of the State of Oregon to do so. The State of Oregon reserves all rights to pursue any claims it may have against Agency if the State of Oregon elects to assume its own defense.
16. Agency shall place signs that identify Project as "Oregon Jobs and Transportation Act" (State approved design). Agency may affix additional signage that identifies local funds used for the Project.
17. Agency shall provide progress information, appropriate links from Agency's web sites related to their JTA of 2009 Projects, and photographs in a suitable format directly to the State's Project Liaison for posting on the State's JTA of 2009 Program web site.
18. Agency agrees to provide State with name of the contractor and subcontractors doing work on the Project along with total dollars contracted to those listed.
19. The Special Provisions for the construction contract (Contract) work between Agency and its construction contractor(s) for this Project shall include the following stipulations:
  - a. Contractor shall name State and Agency as third Party beneficiaries of the resulting Contract.
  - b. Contractor shall indemnify, defend and hold harmless Agency, State and their officers, employees and agents from and against all claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature whatsoever resulting from, arising out of, or relating to the activities of Contractor or its officers, employees, sub-contractors, or agents under this 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 State and Agency. This insurance shall include personal and advertising injury liability, products and completed operations. Coverage may be written in combination with Automobile Liability Insurance (with separate limits). Coverage shall be written on an occurrence basis. If written in conjunction with Automobile Liability the combined single limit per occurrence shall not be less than \$ 1,000,000 for each job site or location. Each annual aggregate limit shall not be less than \$ 2,000,000.

- d. Automobile Liability. Contractor shall obtain, at Contractor's expense, and keep in effect during the term of 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 shall 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 shall include State and Agency and its divisions, officers and employees as Additional Insured but only with respect to the Contractor's activities to be performed under this Contract. Coverage shall be primary and non-contributory with any other insurance and self-insurance.
  - f. Notice of Cancellation or Change. There shall be no cancellation, material change, potential exhaustion of aggregate limits or non-renewal of insurance coverage(s) without thirty (30) days written notice from the Contractor or its insurer(s) to State and Agency. Any failure to comply with the reporting provisions of this clause shall constitute a material breach of Contract and shall be grounds for immediate termination of this Contract.
20. Agency certifies and represents that the individual(s) signing this Agreement has been authorized to enter into and execute this Agreement on behalf of Agency, under the direction or approval of its governing body, commission, board, officers, members or representatives, and to legally bind Agency.
21. Agency's Project Manager for this Project is Chuck Mickelson, Public Works Director, City of Ontario, 444 S.W. 4<sup>th</sup> St., Ontario, Oregon, 97912, 541-881-3231, chuck.mickelson@ontariooregon.org, or assigned designee upon individual's absence. State's Project Manager shall be notified in writing of any contact information changes during the term of this Agreement.

### **STATE OBLIGATIONS**

1. In consideration for the services performed, State agrees to pay Agency within forty-five (45) days of receipt by State of the Project invoice and Progress Billing Form. State shall reimburse Agency 100 percent of eligible, actual costs incurred up to the maximum amount of JTA funds committed for the Project specified in Terms of Agreement, Paragraph two (2). Under no conditions shall State's total obligation exceed \$4,500,000, in JTA of 2009 Program funds, including all expenses. When reimbursement is requested, Agency shall submit Exhibit B.
2. State shall review the documentation provided by Agency to ensure that the Project undertaken by Agency is the Project approved by the OTC at the October 21, 2009 meeting.
3. State grants authority to Agency to enter upon State right of way for the construction of this Project as provided for in miscellaneous permit to be issued by State District 14 Office.
4. State shall not be required to approve Agency's selection of contractors, right of way purchase, or engineering design documents, except as the Project design affects the state highway system or as required by the conditions of approval adopted by the OTC.
5. State's Project Manager for this Project is Sean P. Maloney, Project Leader, Oregon Department of Transportation, 1390 SE 1<sup>st</sup> Ave., Ontario, Oregon, 97914, 541-889-8558 ext 235, sean.maloney@odot.state.or.us, or assigned designee upon individual's absence. Agency's Project Manager shall be notified in writing of any contact information changes during the term of this Agreement.

### **GENERAL PROVISIONS**

1. This Agreement may be terminated by mutual consent of both Parties.
2. State may terminate this Agreement effective upon delivery of written notice to Agency, or at such later date as may be established by State, under any of the following conditions:
  - a. If Agency fails to provide services called for by this Agreement within the time specified herein or any extension thereof.
  - b. If Agency fails to perform any of the other provisions of this Agreement or so fails to pursue the work as to endanger performance of this Agreement in accordance with its terms, and after receipt of written notice from State fails to correct such failures within ten (10) days or such longer period as State may authorize.

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- c. Because of legislative or other legal action, including but not limited to initiative petitions, there is failure to approve, reduction, elimination, or other interference with appropriations of state expenditure limitation to the extent that legal authority is insufficient to enable State, in its reasonable discretion, to continue making payments under this Agreement.
  - d. State, the Department of Justice, or a court of competent jurisdiction determines that state law, rules, regulation or guidelines are modified, changed, repealed or interpreted in such a way that the activities described in this Agreement are no longer allowable or no longer eligible for funding proposed by this Agreement.
  - e. If State fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow State, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement.
  - f. If federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the work under this Agreement is prohibited or if State is prohibited from paying for such work from the planned funding source.
3. If State terminates this Agreement for the reasons described in General Provisions 2. "a" or "b" above, Agency must reimburse State for all JTA of 2009 Program funds expended. If Agency fails to reimburse State, State may withhold Agency's proportional share of State Highway Fund distribution necessary to reimburse State for costs incurred by such Agency breach.
  4. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
  5. State and Agency 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.
  6. Agency acknowledges and agrees that State, the Oregon Secretary of State's Office, and their duly authorized representatives shall have access to the books, documents, papers, and records of Agency which are directly pertinent to the specific Agreement for the purpose of making audit, examination, excerpts, and transcripts during the course of the Project and for a period of six (6) years after final payment. Copies of applicable records shall be made available upon request. Payment for costs of copies is reimbursable by State.
  7. 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.

8. This Agreement and attached exhibits constitute the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement 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 acknowledges that its signing representatives have read this Agreement, understand it, and agree to be bound by its terms and conditions.

This Project is in the 2008-2011 Statewide Transportation Improvement Program, (Key # 16783) that was approved by the Oregon Transportation Commission on November 14, 2007.

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

On September 15, 2006, the Director of the Oregon Department of Transportation approved Subdelegation Order No. 2, Paragraph 1, in which authority is delegated to the Deputy Director, Highways to approve and sign agreements over \$75,000 when the work is related to a project included in the Statewide Transportation Improvement Program.

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CITY OF ONTARIO, by and through its  
elected officials

By [Signature]

Date July 6, 2010

By N/A

Date \_\_\_\_\_

APPROVED AS TO LEGAL  
SUFFICIENCY

By [Signature]  
Agency Counsel

Date 7-8-2010

**Agency Contact:**

Chuck Mickelson, Public Works Director  
City of Ontario  
444 S.W. 4<sup>th</sup> St.  
Ontario, Oregon 97912  
541-881-3231  
Chuck.mickelson@ontariooregon.org

**State Contact:**

Sean P. Maloney, Project Leader  
Oregon Department of Transportation  
1390 SE 1<sup>st</sup> Ave., Ontario, Oregon 97914  
541-889-8558 ext. 235  
Sean.maloney@odot.state.or.us

STATE OF OREGON, by and through  
its Department of Transportation

By [Signature]  
Deputy Director, Highways

Date 8/17/10

APPROVAL RECOMMENDED

By [Signature]  
Local Government Section Manager

Date 8-13-10

By [Signature]  
Region 5 Manager

Date 7/29/10

By N/A  
District 14 Manager

Date \_\_\_\_\_

APPROVED AS TO LEGAL  
SUFFICIENCY

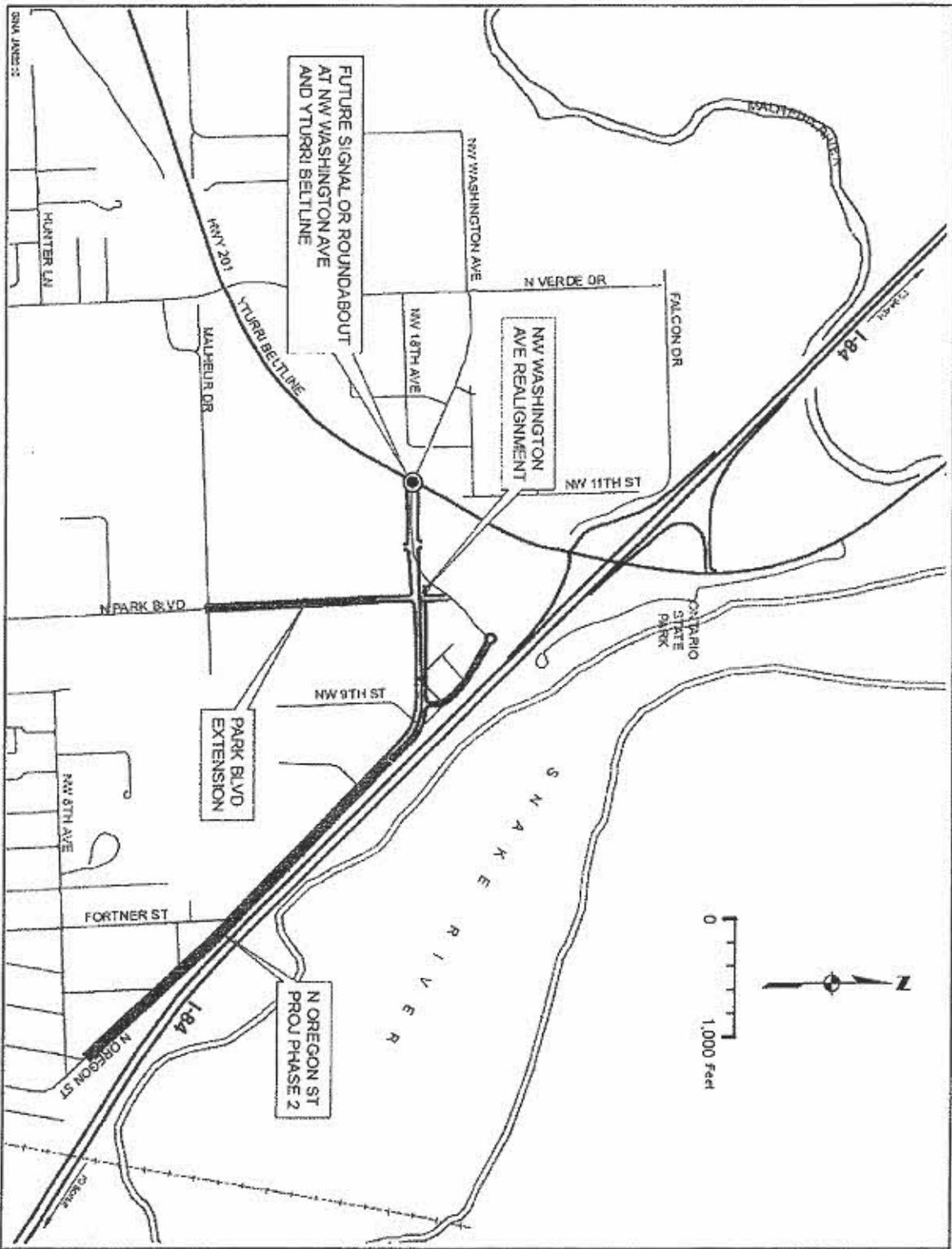
By [Signature]  
Assistant Attorney General

Date: 8/10/10

PROJECT DESCRIPTION  
City of Ontario  
NW Washington Avenue Realignment

Agency shall reconstruct and realign NW Washington Avenue, North Park Boulevard, and North Oregon Street.

Project Cost Estimate		Project Financing	
Preliminary engineering & design	\$50,000	Agency Contribution	
Right-of-way purchase	\$1,000,000	JTA of 2009 Program	\$4,500,000
Construction	\$3,450,000	<b>Total Funds</b>	<b>\$4,500,000</b>
<b>Total Project Cost</b>	<b>\$4,500,000</b>		



**Oregon Jobs and Transportation Act of 2009  
 Progress Billing Form**

Agency: \_\_\_\_\_  
 Project: \_\_\_\_\_  
 Agreement No: \_\_\_\_\_  
 Billing Period: \_\_\_\_\_ to \_\_\_\_\_

	Costs Incurred This Period	Costs Billed Previously	Total Cost To Date	Participation Rate	Total Amount Claimed	Prior Total Claimed	Amount Claimed This Period	Percent Complete This Phase
Planning								
Engineering Design								
Right of Way								
Construction								
Total								

Submission of this request certifies that, in accordance with the laws of the State of Oregon and under the conditions of approval for the Project identified above, actual costs claimed have been incurred and are eligible pursuant to the Intergovernmental Agreement between Agency and State. Also, no other claims have been presented to, or payment made by, the State of Oregon for those costs claimed for reimbursement.

\_\_\_\_\_  
 Agency Project Liaison

\_\_\_\_\_  
 Date

-----  
 (for State use)

I have reviewed the above Project and related costs and, in my opinion, subject to audit, the costs reflect the progress to date and are eligible for reimbursement in the amount of \$ \_\_\_\_\_.

\_\_\_\_\_  
 State Project Liaison

\_\_\_\_\_  
 Date

**AMENDMENT NUMBER 01**  
**Oregon Jobs and Transportation Act of 2009 Agreement**  
**Local Agency Agreement for Fund Distribution**  
**NW Washington Avenue Realignment**  
**CITY OF ONTARIO**

The **State of Oregon**, acting by and through its Department of Transportation, hereinafter referred to as "State," and the CITY OF ONTARIO, acting by and through its elected officials, hereinafter referred to as "Agency," entered into an Agreement on August 17, 2010. Said Agreement covers the reconstruction and realignment of NW Washington Avenue, North Park Boulevard, and North Oregon Street.

It has now been determined by State and Agency that the Agreement referenced above shall be amended to update language. Except as expressly amended below, all other terms and conditions of the Agreement are still in full force and effect.

**Insert new RECITALS, Paragraph 6, to read as follows:**

6. Governor Kulongoski signed HB 2001 on July 29, 2009, Chapter 865, Oregon Laws 2009. This legislation also known as the Oregon Jobs and Transportation Act, is the transportation funding plan for accountability, innovation and environmental stewardship; highway, road and street funding; and, multimodal funding. On October 21, 2009 the OTC approved projects relating to this legislation.

**TERMS OF AGREEMENT, Paragraph 5, Page 2, which reads:**

5. The Agreement is contingent upon issuance and sale by the State Treasurer, of the bonds authorized by Section 61 of House Bill 2001, 2009 Legislative Assembly (Oregon Laws 2009, Chapter 865) in an amount 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 such bonds. ODOT will notify Agency when such sale has occurred and the JTA funds are available.

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

5. The JTA of 2009 Program Funds are expected to become available on or before January 1, 2011 by way of increases in gas taxes and other fees under House Bill 2001, 2009 Legislative Assembly (Oregon Laws 2009, Chapter 865), and through the issuance and sale by the State Treasurer, of the bonds authorized by Section 61 of House Bill 2001, in an amount 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 ODOT determining that sufficient funds are available for the Project. ODOT will notify Agency when such funds are available; and ODOT shall begin payments for invoiced work pursuant to this Agreement from such date.

**AGENCY OBLIGATIONS, Paragraph 3, shall be deleted in its entirety.**

**AGENCY OBLIGATIONS, Paragraphs 4 through 12 shall be hereinafter re-numbered as Paragraphs 3 through 11.**

**AGENCY OBLIGATIONS, Paragraph 13, shall be deleted in its entirety.**

**AGENCY OBLIGATIONS, Paragraphs 14 through 21 shall be hereinafter re-numbered as Paragraphs 12 through 19.**

**AGENCY OBLIGATIONS, Paragraph 17, Page 5, which reads:**

17. The Special Provisions for the construction contract (Contract) work between Agency and its construction contractor(s) for this Project shall include the following stipulations:
- a. Contractor shall name State and Agency as third Party beneficiaries of the resulting Contract.
  - b. Contractor shall indemnify, defend and hold harmless Agency, State and their officers, employees and agents from and against all claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature whatsoever resulting from, arising out of, or relating to the activities of Contractor or its officers, employees, sub-contractors, or agents under this 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 State and Agency. This insurance shall include personal and advertising injury liability, products, and completed operations. Coverage may be written in combination with Automobile Liability Insurance (with separate limits). Coverage shall be written on an occurrence basis. If written in conjunction with Automobile Liability the combined single limit per occurrence shall not be less than \$ 1,000,000 for each job site or location. Each annual aggregate limit shall not be less than \$ 2,000,000.
  - d. Automobile Liability. Contractor shall obtain, at Contractor's expense, and keep in effect during the term of 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 shall 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 shall include State and Agency and its divisions, officers and employees as Additional Insured but only with respect to the Contractor's activities to be performed under this Contract. Coverage shall be primary and non-contributory with any other insurance and self-insurance.

- f. Notice of Cancellation or Change. There shall be no cancellation, material change, potential exhaustion of aggregate limits or non-renewal of insurance coverage(s) without thirty (30) days written notice from the Contractor or its insurer(s) to State and Agency. Any failure to comply with the reporting provisions of this clause shall constitute a material breach of Contract and shall be grounds for immediate termination of this Contract.

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

17. If Agency enters into a construction contract for performance of work on the Project, then Agency will require its contractor to provide the following:

- a. Contractor and Agency shall name State as a third party beneficiary of the resulting contract.
- b. Contractor shall indemnify, defend and hold harmless State from and against all claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature whatsoever resulting from, arising out of, or relating to the activities of Contractor or its officers, employees, sub-contractors, or agents under the resulting contract.
- c. Commercial General Liability. Contractor shall obtain, at Contractor's expense, and keep in effect during the term of the resulting contract, Commercial General Liability Insurance covering bodily injury and property damage in a form and with coverages that are satisfactory to State. This insurance shall include personal and advertising injury liability, products and completed operations. Coverage may be written in combination with Automobile Liability Insurance (with separate limits). Coverage shall be written on an occurrence basis. If written in conjunction with Automobile Liability the combined single limit per occurrence shall not be less than \$ 1,000,000 for each job site or location. Each annual aggregate limit shall not be less than \$2,000,000.
- d. Automobile Liability. Contractor shall obtain, at Contractor's expense, and keep in effect during the term of the resulting contract, Commercial Business Automobile Liability Insurance covering all owned, non-owned, or hired vehicles. This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits). Combined single limit per occurrence shall not be less than \$1,000,000.
- e. Additional Insured. The liability insurance coverage, except Professional Liability, Errors and Omissions, or Workers' Compensation, if included, required for performance of the resulting contract will include State and its divisions, officers and employees as Additional Insured but only with respect to the Contractor's activities to be performed under the resulting contract. Coverage shall be primary and non-contributory with any other insurance and self-insurance.
- f. Notice of Cancellation or Change. There shall be no cancellation, material change,

potential exhaustion of aggregate limits or non-renewal of insurance coverage(s) without thirty (30) days written notice from the Contractor or its insurer(s) to State. Any failure to comply with the reporting provisions of this clause shall constitute a material breach of the resulting contract and shall be grounds for immediate termination of the resulting contract and this Agreement.

**Insert new AGENCY OBLIGATIONS, Paragraph 18, to read as follows:**

18. Agency acknowledges and agrees that State, the Oregon Secretary of State's Office, and their duly authorized representatives shall have access to the books, documents, papers, and records of Agency which are directly pertinent to the specific Agreement for the purpose of making audit, examination, excerpts, and transcripts during the course of the Project and for a period of six (6) years after final payment. Copies of applicable records shall be made available upon request. Payment for costs of copies is reimbursable by State.

**AGENCY OBLIGATIONS, Paragraphs 18 and 19, shall be hereinafter re-numbered as Paragraphs 19 and 20.**

**STATE OBLIGATIONS, Paragraph 1, Page 7, which reads:**

1. In consideration for the services performed, State agrees to pay Agency within forty-five (45) days of receipt by State of the Project invoice and Progress Billing Form. State shall reimburse Agency 100 percent of eligible, actual costs incurred up to the maximum amount of JTA funds committed for the Project specified in Terms of Agreement, Paragraph two (2). Under no conditions shall State's total obligation exceed \$4,500,000, in JTA of 2009 Program funds, including all expenses. When reimbursement is requested, Agency shall submit Exhibit B.

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

1. In consideration for the services performed, State agrees to pay Agency within forty-five (45) days of receipt by State of the Project invoice and Exhibit B. State shall reimburse Agency 100 percent of eligible, actual costs incurred up to the maximum amount of JTA funds committed for the Project specified in Terms of Agreement, Paragraph two (2). Under no conditions shall State's total obligation exceed \$4,500,000, in JTA of 2009 Program funds, including all expenses.

**GENERAL PROVISIONS, Paragraph 6, shall be deleted in its entirety.**

**GENERAL PROVISIONS, Paragraphs 7 and 8, shall be hereinafter re-numbered as Paragraphs 6 and 7.**

**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.

Agency/State  
Agreement No. 26720-01

This Project is in the 2008-2011 Statewide Transportation Improvement Program, (Key #16783) that was approved by the Oregon Transportation Commission on November 14, 2007 (or subsequently approved by amendment to the STIP).

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

On September 15, 2006, the Director of the Oregon Department of Transportation approved Subdelegation Order No. 2, Paragraph 1, in which authority is delegated to the Deputy Director, Highways to approve and sign agreements over \$75,000 when the work is related to a project included in the Statewide Transportation Improvement Program.

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

By \_\_\_\_\_

Date \_\_\_\_\_

**APPROVED AS TO LEGAL SUFFICIENCY**

By \_\_\_\_\_  
Agency Counsel

Date \_\_\_\_\_

**Agency Contact:**

Chuck Mickelson, Public Works Director  
City of Ontario  
444 S.W. 4<sup>th</sup> St.  
Ontario, OR 97912  
541-881-3231  
Chuck.mickelson@ontariooregon.org

**State Contact:**

Sean P. Maloney, Project Leader  
Oregon Department of Transportation  
1390 SE 1<sup>st</sup> Ave.  
Ontario, OR 97914  
541-889-8558 ext. 235  
Sean.maloney@odot.state.or.us

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

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

Date \_\_\_\_\_

**APPROVAL RECOMMENDED**

By \_\_\_\_\_  
Local Government Section Manager

Date \_\_\_\_\_

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

Date \_\_\_\_\_

**APPROVED AS TO LEGAL SUFFICIENCY**

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

Date \_\_\_\_\_

## PUBLIC HEARING AGENDA REPORT

November 15, 2010

TO: Mayor and City Council

FROM: Dan Shepard, Engineering Technician III

THRU: Chuck Mickelson, Public Works Director

**SUBJECT: PUBLIC HEARING  
ORDINANCE #2653-2010 FOR RIGHT OF WAY VACATION – PORTION OF SE 13<sup>TH</sup> STREET  
(1<sup>ST</sup> READING)**

DATE: November 8, 2010

---

### **SUMMARY:**

Attached are the following documents:

- Ordinance #2653-2010
- "Exhibit A" Proposed Vacation Area

Boyd Yee, owner of Wingers Restaurant, represented by his agent, Dan Cummings, has approached the city to vacate a portion of SE 13<sup>th</sup> Street adjacent to his property, Lot 102, designated on Exhibit "A", attached.

### **PREVIOUS COUNCIL ACTION:**

October 28, 2010 At the request of Dan Cummings, representing Boyd Yee, Council directed staff to schedule a public hearing for November 15, 2010 and to prepare a staff report for the vacation of a portion of SE 13<sup>th</sup> Street on the Council's own motion.

### **BACKGROUND:**

The right-of-way for the west side of SE 13<sup>th</sup> Street between SE 1st Avenue and Kendal Street was dedicated through the Waremart Commercial Subdivision plat. Along this same section of SE 13<sup>th</sup> Street, the east side of the street was constructed on Oregon Department of Transportation (ODOT) property. The City of Ontario's Transportation System Plan (TSP), November 1999, for the short-term project number 119 "SE 13<sup>th</sup> Street to Goodfellow Street," states, "New local roadway to provide east-west connection in southeast Ontario. Will replace Kendal Street." Kendal Street provided a connection between Goodfellow and SE 13th Street that was part of the ODOT property that is adjacent to the south side of East Idaho Avenue. This project was accomplished when ODOT constructed a new office in January of 2003 and partitioned their property in February of 2005. With

construction of SE 1<sup>st</sup> Avenue, the intersection at SE 13<sup>th</sup> Street and SE 1<sup>st</sup> Avenue was converted from a four-way to a three-way intersection. The pavement and curb and gutter north of this intersection was removed in anticipation of further development.

Oregon Revised Statute 271.130 reads, "Vacation on council's own motion; appeal. (1) The city governing body may initiate vacation proceedings authorized by ORS 271.080 and make such vacation without a petition or consent of property owners. Notice shall be given as provided by ORS 271.110, but such vacation shall not be made before the date set for hearing, nor if the owners of a majority of the area affected, computed on the basis provided in ORS 271.080, object in writing thereto, nor shall any street area be vacated without the consent of the owners of the abutting property if the vacation will substantially affect the market value of such property, unless the city governing body provides for paying damages. Provision for paying such damages may be made by a local assessment, or in such other manner as the city charter may provide."

Vacation of a right-of-way on the Council's own motion does not require the petition or consent of property owners. At the October 28<sup>th</sup> work session, Council members request Dan Cummings to provide signed statement from Oregon Department of Transportation that they had no objection to the vacation of SE 13<sup>th</sup> Street. Mr. Cummings agreed to do so, further stating he would provide statements from each public utility approving the vacation as well as the consent of the owners of two-thirds, in area, of the property within the notification boundary of the proposed vacation.

**ALTERNATIVES:**

Council could choose to deny Ordinance #2553-2010 to vacate a portion of SW 13<sup>th</sup> Street.  
Council could choose to table Ordinance #2653-2010 to vacate a portion of SW 13<sup>th</sup> Street.

**RECOMMENDATION:**

In staff's opinion, the vacation does not prejudice the public interest and recommends adoption of Ordinance #2653-2010.

**PROPOSED MOTION:**

I move that the City Council adopt Ordinance No. 2653-2010, AN ORDINANCE VACATING A PORTION OF THE STREET RIGHT OF WAY OF SE 13<sup>TH</sup> STREET BEING THE 30 FEET LAYING ADJACENT TO AND WEST OF THE EAST BOUNDARY OF LOT 1 OF THE WAREMART COMMERCIAL SUBDIVISION PLAT TO THE CITY OF ONTARIO, MALHEUR COUNTY, OREGON, on First Reading by Title Only.

## **ORDINANCE NO. 2653-2010**

**AN ORDINANCE VACATING A PORTION OF THE STREET RIGHT OF WAY OF SE 13<sup>TH</sup> STREET BEING THE 30 FEET LAYING ADJACENT TO AND EAST OF THE EAST BOUNDARY OF LOT 1 OF THE WAREMART COMMERCIAL SUBDIVISION PLAT TO THE CITY OF ONTARIO, MALHEUR COUNTY, OREGON**

**WHEREAS,** On October 28, 2010, at the City Council work session, a representative for Yick Yee Family Company, LLP, requested that the City Council vacate a portion of SE 13<sup>th</sup> Street on the City Council's own motion under ORS 271.130, so that the vacated portion of the street would be available for commercial development; and

**WHEREAS,** The Ontario City Council passed a motion to schedule a public hearing for the vacation of the requested portion of SE 13<sup>th</sup> Street, upon condition that the Oregon Department of Transportation consent to the vacation, and that all the City's costs for the street vacation be paid by Yick Yee Family Company, L.L.P.; and

**WHEREAS,** The public hearing was advertised as required by ORS 271.110 and was held at 7:30 p.m. on November 15, 2010, in the City Council Chambers; and

**WHEREAS,** After the public hearing, the Council found that notice of the public hearing was duly given; that the owners of the abutting property consented in writing to the proposed street vacation; that none of the property owners in the area affected by the proposed vacation filed objections to the proposed vacation; that the vacation of said property will not prejudice the public interest; and that there was no reason to deny the requested street vacation.

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

**SECTION 1.** The following described street right-of-way is hereby vacated:

That portion of SE 13<sup>th</sup> Street described as follows:

Land in the City of Ontario according to the Official Plat of WAREMART COMMERCIAL SUBDIVISION to the City of Ontario, Oregon being that portion of the West Half of SE 13th Street that lies North of the Intersection of SE 13th Street and SE 1st Court (also known as SE 1st Avenue), South of the North Line of Lot 1 of WAREMART COMMERCIAL SUBDIVISION as recorded under Instrument No. 96-48810 and West of Parcel 1 of Partition Plat 2005-6, Instrument No. 2005-1866 more particularly described as follows:

With the following reservations:

- A 20-foot wide utility easement for public utilities; and
- Free and unhindered ingress and egress necessary for the operation, inspection, repair or replacement, alteration, and protection of public utilities in the easement; and
- No structure other than for utility purposes shall be erected within the limits of the easement; and
- Property owner is responsible for the removal and replacement of any fence, asphalt, concrete, landscaping irrigation or other ancillary improvements associated in the conditions listed in item 2.

**PASSED AND ADOPTED** by the Common Council of the City of Ontario this \_\_\_\_\_ day of November, 2010.

AYES:

NAYS:

ABSENT:

ABSTAIN:

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

ATTEST:

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

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

M.

# EXHIBIT "A"

18S47E10  
DETAIL MAP 2  
ONTARIO  
IN SEC 10

CANCELLED:

