

AGENDA
CITY COUNCIL - CITY OF ONTARIO, OREGON
Monday, November 21, 2011, 7:00 p.m., M.T.

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

2) **Pledge of Allegiance**

This Agenda was posted on Wednesday, November 16, 2011, and a study session was held on Thursday, November 17, 2011. Copies of the Agenda are available at the City Hall Customer Service Counter and on the city's website at www.ontariooregon.org.

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

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

- A) Approval of Minutes of Regular Meeting of 11/07/2011 1-5
- B) Liquor License Application: Additional Privilege (Brewery Public House) 6
- C) Approval of the Bills

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

6) **New Business**

- A) Move to a High Deductible Insurance Plan for Non-Represented Employees 7-9
- B) Second Amended Purchase and Sale Agreement with Chris Hardin of CDH Consulting for the Stelling Property 10-23
- C) Bid Award: SCADA/Electrical Maintenance Contract 24-60

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

8) **Executive Session:**

- A) ORS 192.660(2)(d): Labor Negotiations

9) **Adjourn**

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

COUNCIL MEETING MINUTES
November 7, 2011

The regular meeting of the Ontario City Council was called to order by Mayor Joe Dominick at 7:00 p.m. on Monday, November 7, 2011, in the Council Chambers of City Hall. Council members present were Norm Crume, Joe Dominick, Jackson Fox, Charlotte Fugate, Dan Jones, David Sullivan and Ron Verini.

Members of staff present were Henry Lawrence, Larry Sullivan, Suzanne Skerjanec, Anita Zink, Mark Alexander, Dan Shepard and Marcy Skinner. The meeting was recorded on tape, and the tapes are available at City Hall.

Charlotte Fugate led everyone in the Pledge.

AGENDA

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

CONSENT AGENDA

Ron Verini moved, seconded by David Sullivan, to approve Consent Agenda Item A: Approval of the Regular Minutes of 10/17/2011; Item B: Water Line Easement Request: Keizer Enterprises, LLC; Item C: Airport Hangar Lease Agreements: Alan Daniels – 215/217 Golf; and Item D: Ordinance #2663-2011: An Ordinance Granting to Lightspeed Networks, Inc., the Right of Way to Maintain a General Telecommunications Business in the City of Ontario and to Use the rights of Way of the City of Ontario for its Telecommunications Operations; and Declaring an Emergency 2nd Reading by Title Only. Roll call vote: Crume-yes; Fox-no; Fugate-yes; Jones-yes; Sullivan-yes; Verini-yes; Dominick-yes. Motion carried 6/1/0.

NEW BUSINESS

Resolution #2011-127: Declaring Necessity and Intent to Acceptance of Road Right-of-Way from Anchors Mini-Storage, LLC, H2MK, LLC, and 3DY, LLC

Dan Shepard, Engineering Technician III, stated Anchor Mini-Storage L.L.C. was requested to donate the right of way for SE 5th Avenue as part of their development requirements. Dan Cummings, working for CK3 LLC, contacted adjacent property owners to see if they wished to donate right of way along their properties also. Two of these property owners, Dale Yee of 3DY L.L.C. and Mike Hanigan, of H2MK, L.L.C., agreed to donate right of way at this time, prior to development occurring on their respective properties. Each of the three properties was donating an additional 10-foot of right of way that would meet the future development requirements for a street right of way width of 70-feet. H2MK, L.L.C. was also donating an additional five feet of right of way, for a total of 30 feet, on SE 10th Street. This would bring their property into conformance with the others on SE 10th Street.

During the building permit review process for the Anchor Storage development, it was noted that there was a 50-foot right of way dedication for SE 5th Avenue. The Transportation System plans classified SE 5th Avenue as a Major Collector with a right of way of 70-feet. Anchor Storage was requested to donate additional 10-feet of right of way that would make the south half of SE 5th Avenue 35-feet. Dan Cummings worked with adjacent property owner Yee to obtain a donation of right of way adjacent to and east of Anchor Storage for the south side of SE 5th Avenue and with Hanigan for donation of right of way for the north side of SE 5th Avenue. Both of these donations would also match the requirement for a 70-foot right of way. Anchor Storage would construct a storm sewer main and a sanitary sewer main. They would also sign an agreement to defer the street improvements until more

development occurred in the area. Hanigan and Yee would be obligated to do off-street improvements when their respective properties developed. Hanigan also agreed to donate additional right of way on SE 10th Street to match the existing right of ways of the adjacent properties. This portion of right of way was not picked up during the Eastside Development project in 1988.

Ron Verini moved, seconded by Dan Jones, that the Mayor and City Council adopt Resolution 2011-127, A RESOLUTION DECLARING THE NECESSITY AND INTENT FOR ACCEPTANCE OF ROAD RIGHT OF WAY FROM ANCHOR MINI-STORAGE L.L.C., H2MK L.L.C. AND 3DY L.L.C. Roll call vote: Crume-yes; Fox-yes; Fugate-yes; Jones-yes; Sullivan-yes; Verini-yes; Dominick-yes. Motion carried 7/0/0.

Student Resource Officer (SRO) Contract with Ontario 8C School District

Mark Alexander, Police Chief, stated the Police Department would like to enter into a contract with the Ontario 8C School District to provide two SRO's for the 2011-2012 school year. The Department had partnered with the Ontario 8C School District to provide SRO's for several years. The level of service and associated costs had fluctuated, depending upon budget conditions. There currently was no written contract between the City and the District for SRO services. The School District budgeted a maximum of \$125,000 to fund two SRO's for the 2011-2012 school year. The proposed contract outlined the services and associated costs, and also stated the budgeted maximum. Ontario 8C School District would pay the City fully burdened wages for actual hours performed by SRO's, up to \$125,000. The City would provide equipment and training for the officers. The City's approved 2011-2013 budget assumed revenues of \$124,462 per year from the SRO contract.

Councilor Sullivan requested the removal of the 30-day clause from the contract (Section 9). *Either party to this Agreement may terminate the Agreement with or without cause upon thirty (30) days written notice given to the other party. Should this Agreement be terminated, any funds paid under this Agreement shall not be prorated or returned to Ontario School District.*

Chief Alexander stated this was a year-to-year contact, so the School District followed the City's budget cycle; therefore they budgeted the costs through the school year. At the end of the school year, his intention was to renegotiate the contract for the following school year. He would take the elimination request back to the Board.

Councilor Verini questioned Section 2(a) and (b): *The District shall pay the City for law enforcement services to be rendered pursuant to this Agreement. Said sum shall be paid to the City upon receipt of invoices that will be submitted in the following manner: (a) The District shall pay the fully burdened cost for two SROs for hours worked for the District during the school year at a rate of \$49.87/hour, not to exceed \$125,000. It needed to read \$49.87/hour, **per officer.** (b) The District shall pay the fully burdened cost for overtime worked by officers during after-school activities when those hours are after the completion of a workday or workweek as defined in the Ontario Police Association bargaining agreement at a rate of \$68.39/hour. Billing for overtime hours shall be included in the above listed cap of \$125,000. Again, it should read \$68.39/hour, **per officer.***

Norm Crume moved, seconded by David Sullivan, City Council authorize the Mayor to sign a contract with 8C School District to provide two School Resource Officers for the 2011-2012 school year with amendments rewording Section 2(a) and 2(b) to list "per officer" and to eliminate Section 9 in its entirety. Roll call vote: Crume-yes; Fox-yes; Fugate-yes; Jones-yes; Sullivan-yes; Verini-yes; Dominick-yes. Motion carried 7/0/0.

Approval of the Bills

Henry Lawrence, City Manager, stated following some questions about the invoice from Hutchinson, it appeared that he might have violated the Financial Policies with regard to one of the charges. He had discussed the matter with the Mayor, and advised the Council they had to the option of entering into an executive session to discuss the matter. The policy he was referencing was the \$5000 limit the City Manager had the authority to approve.

Moving through the invoice in question, the Master Plan completed in 2009, was \$18,175, with reimbursables totaling \$20,933. With regard to the design phase, the question raised by Councilor Fox on Thursday, was in reference to the \$13,055.90 on the roster for Hutchison-Smith Architects. Councilor Fox asked if that was part of

the \$75,000, and had more than \$75,000 been expended. After sorting through the bills, it was noted that under the construction documents phase, design phase two construction drawings there was a line item contract price of \$72,834, and right below that was \$3,000 in reimbursables. That was the \$75,834 he believed Councilor Fox was referring to. The Council might recall that last year, in order to fund the first design contract with Hutchison-Smith, the City had allocated \$75,000 towards the design and bid documents. To fund that, the City reallocated some capital project funds, such as pool painting, etc., in the last budget cycle. Those were reallocated to pay for the \$75,000 design. The day before the Budget Committee hearings were to be, Yorick deTassigny, Facilities Manager, received a price to do additional phases from the architect. The bottom line with the Budget Committee, later adopted by the City Council, was that the City would have \$500,000 in the General Fund money to move forward with the project. It was his understating at that point, that staff was given a mandate to move the project forward, to finish up the bid documents, get it bid, and present actual numbers to the Council. It was his understanding that they had talked about a project date of shutting down the facility if the bids were alright, of October 1st. Mr. deTassigny stated there would be no way to get numbers on the safe waiting area design because it wasn't part of the \$75,000 contract. Mr. Lawrence then approved a purchase order for \$8,500 to add the safe waiting area. In hindsight, that was probably a violation of the Financial Policies. It wasn't an emergency, and they could have waited the two weeks to bring it back before Council. He offered his apologies to the Council for even having to address a policy violation issue. It had not been his intent to side-step the Council. Regardless, he had approved the invoice for \$8,500, and the actual cost for the safe-waiting area design and the bid documents, was at \$7,650. There were also surveying costs not in the contract, of \$535. The total billed on that item was \$8,185, at 100%. Mr. deTassigny approached Mr. Lawrence in July, and indicated they had not included the small mechanical room, as it had been pulled out when they were developing the scope in the original \$75,000 contract to save money. The small mechanical room serviced the hot tub spa, and the small wading pool. However, one of the boilers in that room was becoming critical, and was going to be failing soon. The piping was shot, and there was no ventilation in there. The chlorine hypochlorite was deteriorating the pumps and piping. It did not make sense to leave the small mechanical room out of the project. Mr. Lawrence told Mr. deTassigny to put it back in the project.

Further, there needed to be some structural engineering that needed to be done, that was not anticipated. Next, Energy Trust of Oregon, Mr. deTassigny had located an incentive grant program that provide a check for \$1,250, and the engineer wanted to be paid for his time on the structural engineering piece, which was \$540, netting the City a \$710 credit. The number provided by Mr. deTassigny at the Budget Committee meetings was \$53,170, but that was for bidding, negotiations, and construction administration, if the Council moved forward with the project. \$39,000 of that was part of the \$53,000, for the construction administration.

To get to the answer Councilor Fox wanted, the \$13,051.90 of the current bill was simply for bidding and negotiation. The bidding negotiation fees on the invoice were \$11,298.63. On top of that was the \$1,753.27 for travel mileage, photocopies, and postage. In the previous month, the City was charged for printing reproduction of the plans. Under the bidding and negotiation area, the total amount was \$13,292; reimbursables were mostly for plan sets reproduction, \$5,397, and no additional charges for the safe-waiting area. Lastly, additional items not in the contract were plan reviews and inspections. Inspections, Inc. charged \$488 for review of plumbing plans, paid as a reimbursable to Hutchins-Smith; advertising of bids in the Argus Observer and The Daily Journal of Commerce, \$934.63; and an asbestos test paid out for \$985. That should represent everything that was done.

Councilor Verini stated that with understanding the situation and the timing, as well as the scope of the project, the overages were addressed, and the Council was aware of the problems. He did not feel an executive session was necessary. It was apparent Mr. Lawrence reviewed it and admitted he made an error. It would have been better if it hadn't been spent, but that was a personal opinion.

Mr. Lawrence reiterated it was not his intent to violate policy, but he needed to set a good example for staff. He would not be offended if the Council wanted to take action on the issue.

Mayor Dominick cautioned the Council that they needed to address the current action, which was adopting of the bills. He agreed they needed to enter into executive session before further discussing the policy violation piece. He

confirmed that, to date, including design, all the way from February, \$129,145 had been expended. Amount remaining \$6,026.66, was that overage?

Mr. Lawrence stated yes, the reimbursables was \$5,397, so that would take a large chunk of that money.

Councilor Crume stated they had discussed the small mechanical room, was the room included in the reconstruction bids the City had recently received?

Mr. Lawrence stated that was included.

Councilor Fox asked for the exact amount that the Budget Committee and the City Council had approved to be spent on this project.

Mr. Lawrence stated all but the \$8,500 and the \$4,550, and \$360 and things like that.

Councilor Fox asked "things like what"?

Mr. Lawrence stated additional structural engineering \$360, was not specifically approved as it was not part of the original contract, along with the advertising was not included either.

Mayor Dominick stated the "unapproved" expenditures totaled approximately \$16,000.

Norm Crume moved, seconded by Charlotte Fugate, to approve the bills as presented. Roll call vote: Crume-yes; Fox-no; Fugate-yes; Jones-no; Sullivan-yes; Verini-yes; Dominick-yes. Motion carried 5/2/0.

AMEND AGENDA

David Sullivan moved, seconded by Norm Crume, to amend the Agenda to include an Executive Session under ORS 192.660(2)(b). Roll call vote: Crume-yes; Fox-yes; Fugate-yes; Jones-yes; Sullivan-yes; Verini-yes; Dominick-yes. Motion carried 7/0/0.

CORRESPONDENCE, COMMENTS, AND EX-OFFICIO REPORTS

- Mayor Dominick reminded the Council of the special study session on Thursday, November 10th, beginning at noon to discuss the Skyline Farm Sediment Removal issue. The HSA discussion had been moved to the 17th.

Mr. Lawrence stated Matt Mejia, Accounting Assistant, had contacted five of the seven Budget Committee members and they had indicated a preference for the 15th for the special meeting, beginning at 6:00 p.m. if that met with Council approval.

Councilor Jones verified that all the Councilors would be in attendance at the meeting on the 10th.

Mayor Dominick stated he understood Councilor Jones would be out of town, but would relay his comments for the record.

Councilor Verini stated he had conflict on the 15th, which he would try to work around.

Councilor Fox asked what the 15th was for.

Mayor Dominick stated it was for the Budget Committee meeting to discuss the Aquatic Center.

Councilor Fugate stated she would be out of town on the 15th.

Councilor Jones stated he would not be able to get his comments to the Mayor for the meeting on the 10th. Tomorrow was already the 8th, and he was going to be gone. He would state his comments later that night.

Mayor Dominick stated they had a majority for the meeting, so schedule it for Tuesday, November 15th, beginning at 6:00 p.m.

- Councilor Verini thanked the community for the turn-out for the Veteran's Day Parade last Saturday. Also, a reminder that November 11th was Veteran's Day, and there would be a service at Evergreen Cemetery at 11:00 a.m.
- Councilor Jones stated he had accompanied Bob and Chuck to the irrigation reservoir and the issue that had been brought forward to the previous work session. His first opinion was that they overreacted on the situation a bit. He didn't feel it was an emergency. There was soil sediment on the bottom of the reservoir. The reservoir was lined. They had probably ripped the tarp by going in there. There needed to be further investigation on it. Their first presentation and proposal with the bag system, and he wanted to caution the Council to be very careful about proceeding with this because, again, it was sediment, it was for irrigation, and he thought within the City, they could explore other possibilities. He didn't think they could have a decision, or a decent proposal, by the 10th, that made any sense, and/or that they didn't open Pandora's Box for an open checkbook. He believed it could get very expensive to try and remove the sediment. He cautioned the Council to be very careful. Get the facts, get a couple of different proposals, and get a couple different opinions. Again, there was sediment on the bottom of a reservoir coming from farm land. It was contained, it was not causing an issue, and that issue could be fixed pretty inexpensively if there was a pump problem, and he wasn't even sure there was a pump problem. Get all facts before proceeding and getting into the checkbook. It was going to get very expensive with what was being proposed.

EXECUTIVE SESSION(S)

Executive Session: ORS 192.660(2)(d)

An executive session was called under provisions of ORS 192.660(1)(d) to discuss labor negotiations. The Council convened into a second Executive Session.

Executive Session: ORS 192.660(2)(b)

An executive session was called under provisions of ORS 192.660(1)(b) to discuss consider discipline or dismissal or to hear charges or complaints. The Council reconvened into regular session.

ADJOURN

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

APPROVED:

ATTEST:

Joe Dominick, Mayor

Tori Barnett, MMC, City Recorder

CONSENT AGENDA
NOVEMBER 21, 2011

TO: Mayor and City Council

FROM: Mark Alexander, Chief of Police

THROUGH: Henry Lawrence, City Manager

**SUBJECT: LIQUOR LICENSE APPLICATION – Additional Privilege
Brewery Public House**

DATE: November 14, 2011

SUMMARY:

Vicki and Todd Heinz, owner/managers of Jolts & Juice Company have completed the “Additional Privilege” application process for “Brewery Public House” liquor license privileges through the Oregon Liquor Control Commission for their business located at 17 SE 3rd Avenue, Ontario, Oregon.

All necessary paperwork has been approved through OLCC office and is awaiting approval through the Ontario City Council.

BACKGROUND:

Criminal Record process was completed on owners/managers Vicki and Todd Heinz. All records returned clear. The application forms have been filled out appropriately and required fees have been paid. All Permit requirements have been met.

This Jolts and Juice location currently holds a Limited On-Premises and Off-Premises Sales license through Oregon Liquor Control Commission. The additional privilege will allow this location of Jolts & Juice to sell product brewed at this location. The brewery part of this business will operate under the trade name of Tandem Brewing.

RECOMMENDATION:

I have completed a review of this application information in accordance with the City of Ontario’s ordinance regulating this license. I recommend that we approve the application for Additional Privilege / Brewery Public House for Jolts & Juice – Tandem Brewing.

AGENDA REPORT
November 21, 2011

TO: Mayor and City Council

FROM: Anita Zink, Human Resource Manager

THROUGH: Henry Lawrence, City Manager

SUBJECT: **APPROVAL OF CITY'S MOVE TO A HIGH DEDUCTIBLE INSURANCE PLAN FOR NON-REPRESENTED EMPLOYEES**

DATE: November 14, 2011

SUMMARY:

Attached is the following document:

- Non-Rep Staff Health Insurance Costs and Employee Contributions

At the direction of the City Council, staff has been researching the option of moving the non-represented employees to a High Deductible Health Plan with HSA effective January 1, 2012.

BACKGROUND:

The City of Ontario has not increased the cap (\$1,034.00) for the medical/life/dental insurance for the non-represented employees since 8/1/08. (Current cap for the Teamsters is \$1,185.18; cap for the Police is \$1,223.78; cap for the Fire is \$1,295.35). Therefore, all of the insurance increases have been borne by the non-represented employees. The non-represented employees have agreed to reduce coverage on an annual basis in order to deflect some of the cost increases, but the employees are still currently paying \$335.68 for family coverage which represents 25% of their insurance costs.

In order to stay in compliance with the potential upcoming new federal laws in regards to insurance costs per employee and at the direction of the City Council, we have researched the option of moving the non-represented group to a high deductible health plan with a HSA.

There are a total of 19 employees that would qualify for the HDHP-2 Plan with an HSA and 3 employees are currently waiving the medical/vision portion of the current insurance the City of Ontario is offering.

ALTERNATIVE:

Stay with current plan.

FINANCIAL IMPLICATIONS:

The City of Ontario could have a potential to save 7.65% of the pre-tax portion employees are able to pay into an HSA up to \$6,150.00. An example would be if 15 employees chose to pay \$4,000.00 into a pre-tax HSA, the City could save \$4,590.00 ($\$4,000.00 * 15 * 7.65\%$).

It is also possible employees may opt-out because of double coverage potential that is not allowed under the HDHP-2 Plan with an HSA and therefore save the City the insurance costs for that employee.

RECOMMENDATION:

Staff has two recommendations:

- 1) Approve the HDHP/HSA plan offering to the non-rep employees for a 1/1/2012 effective date (Option 1 or 2); and
- 2) Consider using the City's FICA savings to offset the administration fees from the HSA Bank at a \$2.25 per employee cost per month. ($\$2.25 * 12 \text{ months} * 15 \text{ employees} = \405.00)

PROPOSED MOTION:

I move the City Council approve the move of the non-represented employees to the High Deductible Health Plan effective January 1, 2012, with (Option 1 or Option 2) and use the City's FICA savings to offset the administration fees from the HSA Bank at a \$2.25 per employee cost per month.

Non-Rep Staff Health Insurance Costs and Employee Contributions

Current Plan	Proposed Plan-Option 1		Proposed Plan-Option 2		
Total Plan Cost	\$ 1,369.68	Total Plan Cost	\$ 1,012.04	Total Plan Cost	\$ 1,012.04
Employee Portion	\$ 335.68	Employee Portion	\$ -	Employee Portion	\$ 200.00
City Portion	\$ 1,034.00	City Portion	\$ 1,012.04	City Portion	\$ 812.04
		Whatever they'd like to help defer the costs of the deductible. A suggested amount would be \$335.00		Whatever they'd like to help defer the costs of the deductible.	
		Employee Pays into an H.S.A.	Employee Pays into an H.S.A.	Employee Pays into an H.S.A.	Employee Pays into an H.S.A.
		Employer Pay into an H.S.A.	Employer Pay into an H.S.A.	Employer Pay into an H.S.A.	Employer Pay into an H.S.A.
		\$	\$ 21.96	\$	\$ 208.33
Total City Cost	\$ 1,034.00	Total City Cost	\$ 1,034.00	Total City Cost	\$ 1,020.37

Current Plan is CoPay Plan B and has a \$500/\$1,500 deductible

Proposed Plan is HDHP-2 and has a \$2,500/\$4,000 deductible

Proposed Plan is HDHP-2 and has a \$2,500/\$4,000 deductible

AGENDA REPORT
November 21, 2011

TO: Mayor and City Council

FROM: Henry Lawrence, City Manager

SUBJECT: SECOND AMENDED PURCHASE AND SALE AGREEMENT WITH CHRIS HARDIN OF CDH CONSULTING FOR THE STELLING PROPERTY

DATE: November 15, 2011

SUMMARY:

Attached is the following document:

- Second Amended Purchase and Sale Agreement

BACKGROUND:

The City of Ontario is under contract to sell approximately 75 acres of undeveloped property (the Stelling property) to Chris Hardin, dba CDH Consulting, for construction of a data center. The escrow closing date expired on November 4, 2011, and Mr. Hardin has requested a six month extension while he continues to work with potential user clients. The proposed Second Amended Purchase and Sale Agreement provides for the following:

1. Closing date extension to May 5, 2012
2. \$50,000 payable to the City of Ontario: \$25,000 as consideration for extending the escrow period and \$25,000 credited towards the purchase price at escrow closing.

The City currently holds \$183,300 in non-refundable earnest money under previous agreements with Mr. Hardin. With this additional \$25,000 non-refundable consideration, the City will hold a total of \$208,300 in non-refundable funds, plus \$25,000 in refundable funds.

FINANCIAL IMPLICATIONS:

\$50,000 payable to the City of Ontario: \$25,000 as additional non-refundable consideration for extending the escrow period and \$25,000 credited towards the purchase price.

RECOMMENDATION:

Adopt.

PROPOSED MOTION:

I move that the City Council authorize the City Manager to sign the Second Amended Purchase and Sale Agreement with Chris Hardin of CDH Consulting.

SECOND AMENDED PURCHASE AND SALE AGREEMENT

THIS SECOND AMENDED PURCHASE AND SALE AGREEMENT is entered into on _____, 2011, by and between the CITY OF ONTARIO, a municipal corporation ("Seller"), and CHRIS D. HARDIN, a sole proprietor doing business as CDH Consulting, or his assigns ("Purchaser").

RECITALS

A. Seller owns certain real property consisting of a parcel of bare ground of 74.72 acres commonly known as the "Stelling Property," located in Ontario, Oregon, more particularly described in Exhibit 1 attached hereto (the "Property").

B. On December 10, 2009, Seller and Purchaser entered into a Purchase and Sale Agreement ("the Original Agreement") to purchase the Property for \$20,000 per acre. A subsequent survey established that the Property consisted of 74.72 acres. The Original Agreement gave the Purchaser a 270 day due diligence period within which to investigate the Property, and provided for a closing date within 15 days after the expiration of the due diligence period.

C. At that time, Purchaser deposited the sum of \$133,300 in a closing escrow account as earnest money for the purchase of the Property.

D. On September 21, 2010, the parties signed a Letter of Intent to Modify Purchase Agreement (the "Letter of Intent") in which Purchaser requested and Seller agreed to extend the 270 due diligence period until January 17, 2011. As consideration for that extension, Purchaser released to Seller the nonrefundable \$50,000 portion of the earnest money being held in escrow, leaving an earnest money balance in escrow of \$83,300.

E. Subsequently, the parties executed an Amended Purchase and Sale Agreement (the "Amended Agreement") in which the closing date was extended until November 5, 2011, and the remaining balance in escrow of \$83,300, was released to Seller as nonrefundable earnest money.

F. The due diligence period has expired and all contingencies and conditions with respect to the sale of the Property have been satisfied or have occurred, other than the Purchaser's payment of the remaining balance of the purchase price to the escrow agent. The Purchaser failed to pay that balance by the November 5, 2011, closing date.

G. Purchaser has requested that Seller extend the closing date for an additional six months, until May 5, 2012. Seller is willing to extend the closing date upon the terms and conditions set forth herein, including the payment by Purchaser of an additional \$50,000, to be allocated as set forth below.

AGREEMENT

SECTION 1. Recitals.

The recitals set forth above are true and correct and are incorporated herein by reference.

SECTION 2. Purchase and Sale of the Property

Seller agrees to sell the Property to Purchaser, and Purchaser agrees to purchase the Property from Seller, on the terms and conditions set forth in this Second Amended Agreement. The Property consists of the land described in Exhibit 1 attached hereto and all easements, rights-of-way, and any other rights or interests appurtenant thereto.

SECTION 3. Purchase Price

The total purchase price for the Property is One Million Four Hundred Ninety Four Thousand Four Hundred Dollars(\$1,494,400.00), with adjustments for customary pro-rations and credits as set forth below.

SECTION 4. Escrow Agent.

Malheur County Title Company of Ontario, Oregon, is the Escrow Agent and is the successor in interest to First American Title Company, the original closing escrow agent named in the Original Agreement. References to "Escrow Agent" herein refer either to Malheur County Title Company or to its predecessor, First American Title Company, as the context so requires.

SECTION 5. Earnest Money Deposit

On or before the date this Second Amended Agreement is executed and delivered by both parties to this Second Amended Agreement (the later of those dates of execution and delivery being herein referred to as the "Effective Date"), Purchaser shall deliver directly to Seller the cash sum of Fifty Thousand Dollars (\$50,000), which shall be allocated as follows:

(a) Twenty Five Thousand Dollars (\$25,000) is payable to Seller solely as consideration for Seller's extension of the closing date until May 5, 2012, which sum shall not be credited against the purchase price as earnest money or otherwise; and

(b) Twenty Five Thousand Dollars (\$25,000) will constitute earnest money in addition to the \$183,300 earnest money referred to in the Original Agreement and the Amended Agreement, for a total earnest money deposit of \$208,300 (the "Deposit"), all of which shall be credited to the purchase price at Closing. Purchaser hereby acknowledges and agrees that the Deposit does not and will not constitute property of the estate of Purchaser within the meaning of Title 11 of the United

States Code or substantially similar provisions of state law (the "Bankruptcy Code"), including §541 of the Bankruptcy Code, and Purchaser's interest in the Deposit is limited to the right to have the Deposit returned if and when the conditions for the return of the Deposit to Purchaser are satisfied as set forth herein.

SECTION 6. Payment of Purchase Price

The Purchase Price must be paid by Purchaser in all cash on the Closing Date (as defined in Section 12.1), subject to application of the Deposit and the adjustments and credits as provided in this Second Amended Agreement.

SECTION 7. Inspection Contingency

Purchaser acknowledges that the Purchaser's due diligence period in the Original Agreement has expired, that the Inspection Contingency in the Original Agreement has been deleted from this Second Amended Agreement, and that there are no conditions to the Purchaser's payment of the purchase price other than as set forth in this Second Amended Agreement.

SECTION 8. Title to the Property

Purchaser acknowledges that on or about July 19, 2010, Seller provided to Purchaser a third supplemental preliminary title report from the Escrow Agent with respect to the Property (the "Title Report"). Purchaser accepts the title to the Property subject to the exceptions set forth in the Title Report.

SECTION 9. Seller's Representations

9.1 *Content of Representations.* Seller represents, warrants, and covenants to Purchaser as follows:

(a) **No Notice of Violation of Zoning and Other Laws.** Seller has not received any written notice from any governmental authority alleging that the Property is in violation of zoning ordinances, rules, or regulations.

(b) **No Litigation.** To Seller's knowledge, there is no pending or threatened litigation or administrative action with respect to the Property.

(c) **No Condemnation.** To Seller's knowledge, there is no pending or contemplated eminent domain, condemnation, or other governmental taking of the Property or any portion thereof.

(d) **No Additional Assessments.** To Seller's knowledge, there are no extraordinary governmental assessments or impositions levied against, applicable to, or proposed for the Property.

(e) No Government Obligations. To Seller's knowledge, there are no unperformed obligations that are currently due relative to the Property to any governmental or quasi-governmental body or authority.

(f) No Seller Contamination. To Seller's knowledge, Seller has not caused any hazardous substance, waste, or material to be used, generated, stored, or disposed of on or transported to or from the Property in violation of any applicable law before or during the period in which the Seller has owned the Property. For the purposes of this paragraph, "hazardous substance, waste, or material" means all petroleum-based products, radon, asbestos, PCBs, and all substances, wastes, and materials that are so defined in the Comprehensive Environmental Response, Compensation, and Liability Act, 42 USC §§9601-9675; the Resource Conservation and Recovery Act, 42 USC §§6901-6992k; and the Hazardous Materials Transportation Act, 49 USC §§5101-5128.

(g) Authority of Seller. Seller's execution of, delivery of, and performance under this Second Amended Agreement are undertaken according to authority validly and duly conferred on Seller and the signatories hereto. Seller's City Council has authorized Henry Lawrence, as City Manager, to execute this Second Amended Agreement on behalf of the Seller.

(h) No Breach of Agreements. This Agreement and the consummation of the transaction evidenced by this Second Amended Agreement do not violate any other agreement to which Seller is a party.

(i) Nonforeign Status. Seller is not a "foreign person" as defined in IRC §1445(f)(3), and Seller is not a "transferor" as defined in ORS 314.258(2)(b).

9.2 Seller's Knowledge. In each event in which any representation of Seller is limited "to Seller's knowledge" or similar phrase, that knowledge must include only the actual, personal knowledge (and not the implied, imputed, or constructive knowledge) of Seller, its elected officials or employees, without any investigation or inquiry whatsoever.

9.3 Effect of Purchaser's Knowledge. Purchaser agrees that in the absence of an intent on the part of Seller to fraudulently conceal information about the Property or fraudulently mislead Purchaser, Purchaser will not have the right to rely on any warranty or representation of Seller, and Seller will not be liable for any breach of any such warranty or misrepresentation, if and to the extent Purchaser is given access to data or information relating to the Property before the Closing Date that reveals, or Purchaser's tests or inspections before the Closing Date reveal, or Purchaser otherwise knows or has reason to know before the Closing Date of any information that reveals the warranty or representation to be incorrect, and in any of such events Purchaser nevertheless elects to close this purchase.

9.4 Survival of Warranties. All Seller's warranties in this Second Amended Agreement are deemed given only as of the date of this Second Amended Agreement. Seller's liability for any misrepresentation or the breach of any warranty under this Second Amended Agreement will survive the closing of this transaction, but any claim for any misrepresentation or breach of any covenant

will be deemed to have been waived unless Purchaser files and serves a complaint for damages or other remedies based on the alleged misrepresentation or breach within 12 months after the Closing Date or, if this transaction fails to close, within six months after the date this Second Amended Agreement is canceled or terminates. Seller's maximum liability for breach of its warranties will be the Earnest Money Deposit or portion thereof received by Seller, or in the event this sale closes, the Purchase Price.

SECTION 10. Purchaser's Representations

Purchaser represents, warrants, and covenants to Seller as follows:

10.1 *Purchaser's Existence and Authority.* Purchaser is a sole proprietor and is not operating under any disabilities that would prevent Purchaser from knowingly and voluntarily executing the Agreement.

10.2 *No Third-Party Consents.* The execution of this Second Amended Agreement by Purchaser and Purchaser's performance of all its obligations hereunder are not subject to any approval or consent of any person, board, committee, or third party.

10.3 *No Litigation.* Purchaser is not a party to any litigation or civil or criminal proceedings; no petitions in bankruptcy have been filed by or against Purchaser; and none of Purchaser's assets are currently subject to any insolvency, receivership, or foreclosure proceedings.

10.4 *No Breach of Agreements.* This Agreement does not breach or violate any term or provision of any other agreement or contract to which Purchaser is a party.

SECTION 11. Conditions to Closing

11.1 *Purchaser's Conditions.* Purchaser acknowledges that Seller does not guarantee the satisfaction of the conditions precedent listed in this Section 11.1 and that Seller's failure to satisfy the conditions (for any reason other than Seller's bad faith) will not be deemed to be a default hereunder but will merely be a failure of a condition to closing, in which event Purchaser's sole remedy will be to (1) waive the condition(s) and any claim against Seller with respect thereto, including, without limitation, as provided in Section 9.3, or (2) terminate this Second Amended Agreement and receive a refund of the refundable portion of the Deposit. Purchaser's obligation to close this transaction is subject to the satisfaction of each of the following conditions:

(a) **Seller's Compliance.** Seller's fulfillment of each of its obligations under this Second Amended Agreement in all material respects.

(b) **Seller's Representations.** The continuing accuracy of all Seller's warranties and representations in this Second Amended Agreement in all material respects.

(c) **Material Condemnation.** The absence of any condemnation or the institution of condemnation proceedings that result in the taking of any of the Property or portion thereof.

(d) **Title Insurance.** The Title Company must be ready, willing, and able to issue an extended coverage owner's policy of title insurance in the amount of the Purchase Price, insuring title to Purchaser to the Property consistent with the terms of this Second Amended Agreement and subject only to the title exceptions in the Title Report referred to in Section 8.

11.2 Seller's Conditions. Seller's obligation to close this transaction is subject to the satisfaction of each of the following conditions:

(a) **Purchaser's Compliance.** Purchaser's fulfillment of each of its obligations under this Second Amended Agreement.

(b) **Purchaser's Representations.** The continuing accuracy of all Purchaser's warranties and representations in this Second Amended Agreement.

SECTION 12. Closing

12.1 Closing Date. This transaction will be closed on or before May 5, 2012 (the date that this transaction closes, as evidenced by the recordation of Seller's deed to Purchaser, being herein referred to as the "Closing Date"). Each party may extend the Closing Date one (1) time by up to ten (10) days if the extension is required by illness, transportation delays, the unavailability of the Escrow Agent, or other causes beyond the party's reasonable control. Purchaser may set a closing date for this transaction earlier than May 5, 2012, upon not less than ten days written notice to Seller.

12.2 Manner and Place of Closing. This transaction will be closed by the Escrow Agent in Ontario, Oregon. Closing will take place in the manner and in accordance with the provisions set forth in this Second Amended Agreement.

12.3 Prorations, Adjustments.

(a) All ad valorem real property taxes and assessments will be prorated and adjusted between the parties as of the Closing Date. Any taxes or additional penalties that would be due as a result of removal of the Property from any tax deferral or special use assessment program will be assumed by Purchaser.

(b) Seller and Purchaser will each pay one-half of all conveyance, excise, or transfer taxes and fees in connection with this sale, and Purchaser will pay the recording fees for Seller's deed.

(c) Seller will pay the premium for a standard owner's title insurance policy in favor of Purchaser in the amount of the purchase price. Any additional title insurance coverage or endorsements requested by Purchaser or its lender will be paid by Purchaser.

(d) Seller and Purchaser will each pay one-half of the escrow and closing fees charged by the Escrow Agent. Purchaser will pay all costs and expenses related to Purchaser's financing.

(e) Each party will pay its own attorney fees.

12.4 Events of Closing. If the Escrow Agent has received the sums and is in a position to cause the title insurance policy to be issued as described below, this transaction will be closed on the Closing Date as follows:

(a) Seller will convey the real property to Purchaser by statutory warranty deed, subject to the exceptions in the Title Report referred to in Section 8 of this Second Amended Agreement.

(b) Seller will provide Purchaser with (i) the Certificate of Nonforeign Status as provided in IRC §1445(b)(2) and (ii) a certificate or other documentary evidence complying with ORS 314.258 that is reasonably acceptable to Purchaser and the Escrow Agent and sufficient to assure Purchaser and the Escrow Agent that no withholding is required under ORS 314.258.

(c) The Escrow Agent will calculate the prorations agreed to herein, and the parties will be charged and credited accordingly.

(d) Any liens to be paid by Seller at closing will be paid and satisfied of record at Seller's expense.

(e) Purchaser will pay the entire purchase price to Seller in cash, minus the Deposit, as adjusted for the charges and credits set forth in this Second Amended Agreement.

(f) The Escrow Agent will be committed to issuing the policy described in Section 12.5 upon recordation of the closing documents.

(g) Upon compliance with the parties' closing instructions, the Escrow Agent will record the deed to Purchaser at Purchaser's expense.

12.5 Title Insurance. As soon as possible after the Closing Date, the Escrow Agent will furnish Purchaser a standard American Land Title Association (ALTA) form of owner's policy of title insurance in the amount of the purchase price for the Property, subject only to the Escrow Agent's standard preprinted exceptions and exclusions for the form and except for the exceptions set forth in the Title Report described in Section 8 of this Second Amended Agreement. The costs of additional or extended title insurance beyond standard coverage will be paid by Purchaser, and the availability of any such coverage will not be a condition of closing.

12.6 Possession. Seller will deliver possession of the Property to Purchaser on the Closing Date.

12.7 Acceptance of Property. Purchaser acknowledges that Purchaser has assessed, or has had the opportunity to assess, the size, configuration, utility service, environmentally sensitive areas, means of access, permitted uses, status of title, value, condition, and all other material aspects of the Property, and, except as specifically stated herein, Purchaser is not relying on, nor has Purchaser been influenced by, any statement or representation of Seller or any agent or representative of Seller regarding any of such items. Except for any actionable breaches of Seller's representations and warranties contained herein, Purchaser's acceptance of the Property and the satisfaction or waiver of all Purchaser's conditions to closing will be evidenced solely by the closing of this transaction and without any other act or confirmation by Purchaser. Purchaser does not have the option to close this transaction without accepting the Property in its then current condition, and Purchaser acknowledges that except for any Seller's breach of an express warranty stated in this Second Amended Agreement, Purchaser is acquiring the Property "AS IS, WHERE IS" in its current condition existing as of the Closing Date, without any representation or warranty of any kind or nature by Seller.

12.8 Waiver of Certain Claims. As part of the consideration for this Second Amended Agreement, Purchaser agrees that except for any breach by Seller of an express warranty stated in this Second Amended Agreement, Seller has no liability, and Purchaser hereby waives any claims and releases Seller for all liability, for any title, physical condition, or any other aspect of the Property, whether direct or indirect, absolute or contingent, foreseen or unforeseen, and known or unknown. The waiver and release extend to Seller and Seller's officers, employees, and agents, and their respective heirs, successors, and assigns. Without limiting the generality of the foregoing, Purchaser waives all rights to contribution, offsets, and damages that in any manner relate to the compliance of the Property with any law or regulation applicable thereto, including, without limitation, the Americans with Disabilities Act, 42 USC §§12101-12213; the Fair Housing Act, 42 USC §§3601-3631; the Comprehensive Environmental Response, Compensation, and Liability Act, 42 USC §§9601-9675; the Resource Conservation and Recovery Act, 42 USC §§6901-6992k; the Clean Water Act, 33 USC §§1251-1387; the Safe Drinking Water Act, 42 USC §§300f-300j-26; the Hazardous Materials Transportation Act, 49 USC §§5101-5128; the Toxic Substances Control Act, 15 USC §§2601-2692; and any and all other federal, state, and local personal disabilities and environmental laws or regulations.

SECTION 13. Defaults and Failure to Close

13.1 Seller's Remedies. In the event that this transaction fails to close on account of a default by Purchaser under this Second Amended Agreement, the entire Deposit will be forfeited by Purchaser and retained by Seller as liquidated damages as Seller's sole remedy for the default. SUCH AMOUNT HAS BEEN AGREED BY THE PARTIES TO BE REASONABLE COMPENSATION AND THE EXCLUSIVE REMEDY FOR PURCHASER'S DEFAULT, SINCE

THE PRECISE AMOUNT OF SUCH COMPENSATION WOULD BE DIFFICULT TO DETERMINE.

13.2 Purchaser's Remedies. If this transaction fails to close on account of a default by Seller under this Second Amended Agreement, Purchaser's sole and exclusive remedy will be either (but not both) (a) the return of the entire \$208,300 Deposit (with Purchaser thereby waiving any other remedy that Purchaser may have against Seller at law or in equity, including without limitation the right to specific performance), and for recovery of Purchaser's attorney fees and costs incurred in this transaction not to exceed \$10,000, or (b) an action for specific performance of this Second Amended Agreement for the conveyance of the Property to Purchaser (with Purchaser thereby waiving any other remedy that Purchaser may have against Seller at law or in equity).

13.3 Defaults. Except for (a) Purchaser's failure to pay any portion of the Deposit as and when due hereunder or (b) either party's wrongful failure to close or satisfy a condition to closing by the required Closing Date, neither party will be deemed in default under this Second Amended Agreement unless the party is given written notice of its failure to comply with this Second Amended Agreement and the failure continues for a period of thirty (30) days after the date the notice is given. This section will not be construed as extending the time by which any notice or contingency waiver must be given.

13.4 Costs and Attorney Fees. If suit, action, arbitration, or mediation is instituted to interpret or enforce the terms of this Second Amended Agreement or with respect to any dispute under this Second Amended Agreement, the prevailing party is entitled to recover from the other party the sum that the court, arbitrator, or mediator may adjudge reasonable as costs and expert witness and attorney fees in any such proceeding, at trial, on any appeal or petition for review, and in any bankruptcy proceeding (including the adjudication of any issues peculiar to bankruptcy law), in addition to all other sums provided by law.

13.5 Waiver of Jury Trial. AS PART OF THE CONSIDERATION FOR THIS AGREEMENT, EACH OF THE PARTIES HERETO WAIVES THE RIGHT TO TRIAL BY JURY IN CONNECTION WITH ANY DISPUTE OR ACTION UNDER THIS AGREEMENT.

SECTION 14. Maintenance of Property

Between the date of this Second Amended Agreement and the Closing Date, Seller agrees to maintain the Property so as to cause the Property to be delivered to Purchaser in substantially the same condition existing as of the Effective Date of this Second Amended Agreement, ordinary wear and tear and damage by condemnation excepted. In no event will Seller be required to make any capital repairs or replacements to the Property between the Effective Date and the Closing Date. Except as provided in this section, Seller has no obligation to maintain, repair, alter, reconstruct, or replace any portion of the Property or preserve or enter into any existing or new leases or service contracts, and Purchaser acknowledges that there exist no express or implied representations or covenants to do so.

SECTION 15. Legal Relationships

15.1 *Relationship of Parties.* This Agreement creates only the relationship of seller and buyer, and no joint venture, partnership, or other joint undertaking is intended hereby. Neither party hereto will have any rights to make any representations or incur any obligations on behalf of the other. Neither party has authorized any agent to make any representations, admit any liability, or undertake any obligation on its behalf.

15.2 *No Third-Party Beneficiaries.* No third party is intended to be benefited or afforded any legal rights under or by virtue of this Second Amended Agreement unless those rights are formally assigned by Purchaser as provided in Section 15.5.

15.3 *Joint and Several Liability.* If either party comprises more than one person or entity, the obligations of each person or entity comprising such party under this Second Amended Agreement will be joint and several.

15.4 *Indemnified Parties.* Any indemnification contained in this Second Amended Agreement for the benefit of a party will extend to the party's members, directors, shareholders, officers, employees, and agents.

15.5 *Assignments and Successors.* Purchaser intends to form a limited liability company to complete the purchase of the Property and may assign its rights under this Second Amended Agreement to the limited liability company prior to the Closing Date without Seller's consent. Any other assignment by Purchaser shall require Seller's consent. Subject to the foregoing, this Second Amended Agreement will bind and inure to the benefit of the parties hereto and their respective successors and assigns.

SECTION 16. General Provisions

16.1 *Termination of Original Agreement and Letter of Intent.* This Amended Agreement replaces and supersedes all prior agreements between the parties.

16.2 *Notices.* Notices under this Second Amended Agreement must be in writing and, if personally delivered or sent by facsimile, will be effective when received. If mailed, a notice will be deemed effective on the second day after deposited as registered or certified mail, postage prepaid, directed to the other party. Notices must be delivered, mailed, or sent by facsimile to the following addresses and telephone numbers:

Seller: City of Ontario
444 SW 4th Avenue
Ontario, OR 97914
Attn: Henry Lawrence, City Manager

with a copy to:

Larry A. Sullivan
Attorney at Law
PO Box 220
Vale, OR 97918
Facsimile No.: 541-473-2651

Purchaser: Chris Hardin, President
CDH Consulting
3567 Benton Street
Santa Clara, California 95051

Either party may change its address for notices by at least fifteen (15) days' advance written notice to the other.

16.3 *Time of Essence.* Except as otherwise specifically provided in this Second Amended Agreement, time is of the essence for each and every provision of this Second Amended Agreement.

16.4 *Invalidity of Provisions.* If any provision of this Second Amended Agreement, or any instrument to be delivered by Purchaser at closing under this Second Amended Agreement, is declared invalid or is unenforceable for any reason, the provision will be deleted from the document and will not invalidate any other provision contained in the document.

16.5 *Neutral Construction.* This Agreement has been negotiated with each party having the opportunity to consult with legal counsel and will be construed without regard to which party drafted all or part of this Second Amended Agreement.

16.6 *Captions.* The captions of the sections and paragraphs in this Second Amended Agreement are used solely for convenience and are not intended to limit or otherwise modify the provisions of this Second Amended Agreement.

16.7 *Waiver.* The failure of either party at any time to require performance of any provision of this Second Amended Agreement will not limit the party's right to enforce the provision. Waiver of any breach of any provision will not be a waiver of any succeeding breach of the provision or a waiver of the provision itself or any other provision.

16.8 *Subsequent Modifications.* This Agreement and any of its terms may be changed, waived, discharged, or terminated only by a written instrument signed by the party against whom enforcement of the change, waiver, discharge, or termination is sought.

16.9 *Saturdays, Sundays, and Legal Holidays.* If the time for performance of any of the terms, conditions, and provisions hereof falls on a Saturday, Sunday, or legal holiday, then the time of the performance will be extended to the next business day thereafter.

16.10 *Venue.* In any action brought to interpret or enforce any of the provisions of this Second Amended Agreement, the venue will be in Malheur County, Oregon.

16.11 *Applicable Law.* This Agreement will be construed, applied, and enforced in accordance with the laws of the state of Oregon.

16.12 *Entire Agreement.* This Agreement constitutes the entire agreement of the parties with respect to the Property and supersedes and replaces all written and oral agreements previously made or existing between the parties.

16.13 *No Recording.* Neither this Second Amended Agreement nor any memorandum or short form thereof may be recorded.

16.14 *Counterparts.* This Agreement may be executed simultaneously or in counterparts, each of which will be deemed an original, but all of which together will constitute one and the same contract.

16.15 *Facsimile Copies.* Either party may rely on facsimile copies of this Second Amended Agreement to the same extent as the originals.

16.16 *Statutory Warning (ORS 93.040(2)).* THE PROPERTY DESCRIBED IN THIS INSTRUMENT MAY NOT BE WITHIN A FIRE PROTECTION DISTRICT PROTECTING STRUCTURES. THE PROPERTY IS SUBJECT TO LAND USE LAWS AND REGULATIONS THAT, IN FARM OR FOREST ZONES, MAY NOT AUTHORIZE CONSTRUCTION OR SITING OF A RESIDENCE AND THAT LIMIT LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, IN ALL ZONES. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, AND SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO VERIFY THE EXISTENCE OF FIRE PROTECTION FOR STRUCTURES AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, AND SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009.

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

SELLER:

PURCHASER:

Page 12- SECOND AMENDED PURCHASE AND SALE AGREEMENT

CITY OF ONTARIO

By:

Henry Lawrence, City Manager

Date Executed: _____

Attest:

Tori Barnett, MMC, City Recorder

CHRIS D. HARDIN, dba CDH Consulting

Date Executed: _____

AGENDA REPORT
November 17, 2011

TO: Mayor and City Council

FROM: Bob Walker, Deputy Public Works Director

THROUGH: Henry Lawrence, City Manager

SUBJECT: SCADA/ELECTRICAL MAINTENANCE CONTRACT

DATE: November 14, 2011

SUMMARY:

Attached are the following documents:

- Invitation to Bid
- RFQ Summary

The purpose of this agenda item is to obtain approval from the City Council to authorize the City Manager to sign the maintenance contract for the City of Ontario's SCADA and electrical systems.

BACKGROUND:

In 2003, the City of Ontario contracted with Fruitland Electric to provide maintenance services for the SCADA System and our electric facilities. The SCADA System is an essential element to the operation of the water treatment plant, the wastewater treatment plant, booster stations, and sewage lift stations. The majority of SCADA maintenance requires the inclusion of a licensed electrician. Consequently, it was essential that both SCADA maintenance and electrical maintenance was included in one contract to avoid having a service charge from both an electrical contractor and a SCADA contractor plus avoid coordination issues.

In 2009, Larry Laird left Fruitland Electric and formed his own firm, L & M Electric LLC. Consequently, since Fruitland Electric no longer had SCADA capability, we had to rebid the contract. The Invitation to Bid was sent to five firms and two companies responded to the bid request: L & M Electric and Advanced Control Systems (ACS). Our review committee consisted of City of Ontario employees who work with and depend upon the proper functioning of the SCADA systems plus Yorick de Tassigny, Chuck Mickelson and Bob Walker. We interviewed these companies and discussed our concerns. Both companies are very familiar with our SCADA software and components. Larry Laird with L & M Electric has worked on the system for the past few years and ACS did all the SCADA work for our new water treatment plant.

In order to quantify the bid items, we based quantities on actual work and expenditures which have occurred during the past few years. Refer to page 20 of 33 in the Invitation to Bid. The low bidder for this contract was ACS with a base bid of \$29,521.35. L & M Electric's bid was \$33,000. After the bid opening we interviewed both firms to review our expectations and concerns. A concern with ACS was response time since their main office is located in Boise. This is not a problem on the electrical side as they are utilizing Quality Electric which has a local office located at the Heinz Plant with five employees and will have a quick response time and no travel charges. As far as the SCADA component of the contract, ACS would be tied directly into our SCADA system and could handle much of the trouble shooting remotely. When a site visit was necessary, they would dispatch a person from the Kuna or Nampa area and be able to comply within the 1 to 1.5 hour emergency response time. ACS currently provides SCADA maintenance to several surrounding communities (Vale Irrigation District, City of Nyssa, City of Vale, and City of Payette) and were given excellent recommendations from all of them.

Based upon the above review and the bid results, we selected ACS as the contractor to perform our SCADA/ELECTRICAL Maintenance.

FINANCIAL IMPLICATIONS:

If this contract is not awarded, we could experience serious operational problems that could be costly in both repairs and meeting regulatory compliance.

RECOMMENDATION:

The Public Works Department recommends that the City Council authorize the City Manager to sign the SCADA/ELECTRICAL Maintenance Contract with ASC.

PROPOSED MOTION:

I move the City Council authorize the City Manager to sign the contract with ACS for the maintenance of the City of Ontario's SCADA and Electrical systems.



CITY OF ONTARIO
PUBLIC WORKS DEPARTMENT
444 SW 4TH STREET
ONTARIO, OR 97914

Invitation to Bid

**SCADA and Electrical Maintenance
Services**

2011

Issue Date: August 10, 2011
Due Date: August 31, 2011 – 2:00 P.M. MST

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**PUBLIC NOTICE
INVITATION TO BID
SCADA & ELECTRICAL MAINTENANCE SERVICES**

The City of Ontario is seeking bids from qualified firms to provide electrical maintenance services, as well as technical services for emergency repair, routine maintenance, operator training, and minor upgrades to the Public Works Water, Wastewater and Utility divisions Supervisory Control and Data Acquisition (SCADA) systems. Qualified firms are invited to submit a bid for the services outlined in the City's Invitation to Bid.

The complete Invitation to Bid packet will be available on Wednesday, August 10, 2011 and may be obtained at the City of Ontario – Reception Counter, 444 SW 4th Street, Ontario, Oregon 97914 or by contacting Suzanne Skerjanec at (541) 881-3274 or by e-mail at suzanne.skerjanec@ontariooregon.org.

Sealed bids will be received by the City of Ontario at Ontario City Hall, 444 SW 4th Street, Ontario, Oregon 97914 until 2:00 p.m. Mountain Standard Time, Wednesday, August 31, 2011. There will be no formal opening. Facsimile and electronic bids will not be accepted. Bids will not be accepted after the stated opening date and time. Late bids will be returned to the vendor unopened.

Bidders are required to certify non-discrimination in employment practices, and identify resident status as defined in ORS 279.029. Pre-qualification of bidders is not required. All bidders are required to comply with the provisions of Oregon Revised Statutes and Local Contract Review Board (LCRB) Policy.

The City of Ontario reserves the right to:

1. Reject any or all bids not in compliance with public bidding procedures;
2. Postpone award of the contract for a period not to exceed sixty (60) days from date of bid opening;
3. Waive informalities in the bids; and
4. Select the bid which appears to be in the best interest of the City.

END OF ADVERTISEMENT FOR BID

Publish one time only in the Argus Observer under LEGAL on Wednesday, August 10, 2011.

**SECTION A
INSTRUCTIONS BIDDERS**

1. ANNOUNCEMENT OF CALL FOR BIDS

The City of Ontario's Public Works Department is requesting bids from qualified firms for services related to the maintenance of the City's electrical systems, as well as water, wastewater, distribution and collection System Control and Data Acquisition (SCADA) equipment, including radio telemetry systems, variable frequency drives, process equipment and other instrumentation.

2. TERM OF CONTRACT

The term of the service contract shall be a period of two (2) years with mutual options to renew for one (1) additional two (2) year period. The total length of this agreement shall not exceed four (4) years. A renewal shall be by written notice sent by either party and written acceptance by the other. All other terms and conditions of the contract shall remain the same as set forth herein, and may be amended only by written instrument signed by both the City and Contractor and attached hereto as an amendment.

3. FORM OF CONTRACT

A copy of the City's standard general services contract, which the City expects the successful firm to execute, is included as "Attachment A". The contract will incorporate the terms and conditions from this ITB document and the successful Bidder's response documents. **Firms taking exception to any of the contract terms shall submit a protest or request for change in accordance with Section A, Item 14 "Protest of Scope of Work or Terms" or their exceptions will be deemed waived.**

4. PRICE CHANGES

- A. Prices will remain firm for the initial term (see Term of Contract) of the contract. The City or Contractor may request a change in prices to be in effect for the length of the extension term. Any request for price changes must be received by the Public Works Department in writing 30 days prior to the end of the current contract period. Upon approval by the Public Works Department, prices shall remain firm for the next contract term.
- B. Any price changes must be substantiated by firm proof that conditions have changed in the industry, which would warrant a change in price, and may not exceed the West Region Consumer Price Index (CPI). If the CPI decreases during the contract period the contract price shall be reduced to reflect the industry-wide price decreases.
- C. All approvals for price increases must be approved in writing (by modification to the Service Contract) by the City of Ontario, Public Works Department.

5. TERMINATION

The contract may be terminated by mutual consent of both parties or by the City at its discretion with a 30 days' written notice. If the agreement is so terminated, Contractor shall be paid in accordance with the terms of the agreement.

6. BIDDER QUALIFICATIONS

Bidder(s) shall be a registered corporation, partnership, joint venture or individual licensed to do work in the State of Oregon at the time of submission of bid and during the work cycle. All Bidders and their sub-contractors shall be registered with the State of Oregon Construction Contractors Board (ORS 701.005 – 701.055). A contractor must not be listed on the *List of Parties Excluded from Federal Procurement and Non-Procurement Programs*, Oregon's list of *Contractors Not Qualified to Hold or Bid Upon Public Contracts or Public Improvement Projects*, or Oregon's *List of Contractors Ineligible to Receive Public Works Contracts*.

accepted, a bid/quote/proposal is considered a binding contract and non-cancelable that the bidder will be expected to honor. If for any reason the bidder does not perform, the City of Ontario can be expected to take whatever action it believes appropriate, including but not limited to, the removal of that bidder's name from future bid lists.

10. ACCEPTANCE OF CONDITIONS

Each bidder, by the submission of a bid, assents to each and every term, condition and specification set forth anywhere in this document and agrees to be bound thereby.

11. REJECTION OF BIDS

It is City of Ontario's intent to select the "lowest responsible bid" (ORS 279.031(6)(a)) based upon our evaluation of the responses to this Invitation to Bid. However, City of Ontario reserves the right to reject any and all bids deemed not in the best interest of City of Ontario or its patrons prior to the execution of an acceptable contract.

12. PROHIBITION OF ALTERATIONS

Bids which are incomplete or conditioned, or which contain any erasures, alterations, addition of items not called for in the *Scope of Services*, or that contain irregularities of any kind, or which are not in conformity with the law *may be rejected*, as well as bids that take exception to specifications or those that place conditions on the purchase, unless specifically indicated as acceptable.

13. INQUIRIES

If you have questions regarding technical specifications in this invitation to bid, please contact City of Ontario's designated representative for this contract: Yorick de Tassigny, telephone (541) 889-4814, email yorick.detassigny@ontariooregon.org. All inquiries regarding bid procedures or documentation should be directed to the Facilities Division office at the number as listed above.

14. PROTEST OF SCOPE OF WORK OR TERMS

- A. Any protest to the scope of work or terms herein contained must be in writing and must indicate in detail the reason(s) for the protest, and a suggested change in wording or specifications that would remedy the cause for protest. A protest may be submitted via facsimile or electronically (email). All protests must be received by 2:00 P.M. SEVEN (7) calendar days prior to the official bid due date. All protest should be directed to the office of the City's designated representative Yorick de Tassigny, Facilities Manager and marked as follows:

City of Ontario – RFP Specifications/Term Protest
SCADA & Electrical Maintenance Services
Attn: Yorick de Tassigny
444 SW 4th Street
Ontario, OR 97914
(541) 889-4814 – office tel/fax
yorick.detassigny@ontariooregon.org

- B. All protests received prior to said time will be reviewed and acknowledged. Failure to do so shall be construed as the willingness of the Proposer to supply all necessary material and labor required for the proper completion of the work in a manner approved by the City of Ontario. If a protest is received in accordance with section above, the bid opening date may be extended if necessary to allow consideration of the protest and issuance of any necessary addenda to the bid documents.

15. INTERPRETATIONS AND ADDENDA

- A. If necessary, interpretations or clarifications in response to questions regarding this invitation to bid will be made by issuance of an "Addendum" to all prospective Bidders within a reasonable time prior to bid closing, but in no case less than 72 hours before the bid closing. If an addendum is necessary after that time, the City, at its discretion, can extend the closing date.
- B. Any Addendum issued that results in a change in the ITB must be acknowledged by submitting the "Acknowledgment of Addendum" with bid. **Only questions answered by formal written addenda will be binding.** Oral and other interpretations or clarifications will be without legal effect.

16. COST OF PREPARING A BID

The ITB does not commit the City to paying any costs incurred by bidders in the submission or presentation of a bid, or in making the necessary studies for the preparation thereof.

17. BID VALIDITY PERIOD

No bidder may withdraw his bid after the hour set for the opening thereof or before award of the Contract. An award of the contract to any bidder shall not constitute a rejection of any other bid. Each bid shall be irrevocable for a period of sixty (60) days from the bid opening date.

18. CONTRACTOR'S RESPONSIBILITY

It is understood that the specifications and other contract documents do not purport to control the method of performing the work, but only the requirements as to the nature of the completed work. The Contractor assumes the entire responsibility for the method of performing and installing the work. Suggestions as to the methods included in the contract documents shall be deemed advisory only and the feasibility of such methods, or the lack thereof, shall not affect the Contractor's liability, or status as an independent Contractor under this contract.

19. CITY FURNISHED PROPERTY

No Material, labor or facilities will be furnished by the City unless otherwise provided for in the Specifications.

20. EQUAL EMPLOYMENT COMPLIANCE REQUIREMENT

By submitting this bid, the bidder certifies conformance to the applicable Federal Acts, Executive Orders and Oregon Statutes and Regulations concerning Affirmative Action toward equal employment opportunities. All information and reports required by the Federal or Oregon Governments, having responsibilities for the enforcement of such laws, shall be supplied to the City of Ontario upon request, for purposes of investigation to ascertain compliance with such acts, regulations and orders.

21. NON-COLLUSION

By submitting a proposal, the Bidder certifies that the Bid has been arrived at independently and has been submitted without any collusion designed to limit competition.

22. PUBLIC RECORD

All materials submitted by bidders shall become property of the City and is public record unless otherwise specified. A bid that contains any information that is considered trade secret under ORS 192.501(2) should be segregated and clearly identified as such. This information will be kept confidential and shall not be disclosed except in accordance with the Oregon Public Records Law, ORS 192. The above restrictions may not include cost or price information, which must be open to the public.

**SECTION B
GENERAL CONDITIONS**

1. DEFINITIONS

As used in the Contract Documents, unless the context requires otherwise:

- A. "Owner" means City of Ontario
- B. "Contractor" means the person or persons with whom a contract is entered into by City of Ontario for the performance of the work.
- C. "Subcontractor" means a contractor to whom the contractor has subcontracted a portion of the work, and includes material suppliers who furnish fabricated items or materials to be incorporated into the work which are not of standard design but rather are fabricated or otherwise specially processed to a particular design required for the performance of some portion of the work. The subcontract may be directly with the contractor or with another subcontractor.
- D. "Contract Administrator" means the person or persons employed by City of Ontario to assure that the contract is successfully executed. This person means Yorick de Tassigny or his duly appointed successor.
- E. "Person" means either a natural or an artificial person which includes individuals, partnerships, corporations, and other associations.
- F. "Contract" or "Contract Documents" include the Agreement, Instructions to Bidders (Section A), General Conditions (Section B), Scope of Services (Section C), Bid Forms (Section D), SCADA Systems List (Exhibit A), Service Locations (Exhibit B) and Addenda, if any, incorporated in the documents before their execution, and all agreements of work, whether by change order or otherwise, modifying or supplementing any of the documents.
- G. "Specification" means the directions, requirements, explanations, terms and provisions pertaining to the various features of the work, the manner and method of bidding for the work, the manner and method of performance of the work, and the manner and method of payment, all as they appear in the Contract Documents.
- H. "Directed", "required", "permitted", "selected", "ordered", "designated", "prescribed", or words of like import, mean the direction, requirement, permission, selection, order, designation, or prescription of the City of Ontario.

2. COMPLIANCE WITH LAWS AND REGULATIONS

The Contractor agrees to comply and to cause all of its subcontractors to comply with all applicable federal, state, or local laws and regulations, and any and all standards and regulations which may be promulgated during the contract term.

3. CONTRACTUAL RELATIONS WITH MATERIAL SUPPLIERS AND LABOR

A. The Contractor shall:

- i. Make payment promptly, as due, to all persons supplying to the Contractor labor, services, material, supplies or provisions for the prosecution of the work provided for in the current contract. If a contractor fails, neglects or refuses to make payment to a person furnishing labor or materials in connection with this contract within 30 days after receipt of payment from

Owner or the contractor, the contractor or subcontractor shall owe the person the amount due plus interest charges commencing at the end of the 10-day period that payment is due and ending upon final payment, see ORS 279.445 for exceptions. If the contractor or subcontractor fails, neglects or refused to make payment to a person furnishing labor or materials in connection with this contract, the person may file a complaint with the Construction Contractors Board, unless ORS 279.445 applies. See ORS 279.314.

- ii. Not permit any lien or claim to be filed or prosecuted against Owner on account of any labor or material furnished.
 - iii. Pay to the State Tax Commission all sums withheld from employees pursuant to ORS 316.711.
 - iv. Demonstrate that an employee drug testing program is in place per ORS 279.312(2).
- B. The Contractor shall promptly, as due, make payment to any person, co-partnership, association or corporation, furnishing medical, surgical and hospital care or other needed care and attention, incident to sickness or injury, to the employees of the Contractor, of all sums which the Contractor agrees to pay for such services and all moneys and sums which the Contractor collected or deducted from the wages of his employees pursuant to any law, contract or agreement for the purpose of providing or paying for such service.
- C. The Contractor, and every subcontractor or other person doing work or contracting to do the whole or any part of the work contemplated by the Contract, shall comply with all conditions and requirements of:
- i. Every law, regulation, order and decree promulgated by governmental authority and in effect at any time during the performance of the work to the extent applicable to the employment, discharge, wages, hours, working conditions, or other terms or conditions of employment of labor employed in connection with the Work, or to employment and payment practices with respect thereto.
 - ii. Every agreement between any labor organization and the Contractor or subcontractor or other person doing or contracting to do the whole or any part of the work, as the case may be, in effect at any time during the performance of the work to the extent applicable to the employment, discharge, wages, hours, working conditions, or other terms or conditions of employment of labor employed in connection with the work, or to employment and payment practices with respect thereto.
 - iii. Contractor's personnel are to abide by all rules and regulations of the Owner, especially those relating to conduct, smoking, consumption of alcoholic beverages and safety.

4. PAYMENT OF CLAIMS BY OWNER

- A. If the Contractor fails, neglects or refuses to make prompt payment of any claim for labor, services, material, supplies or provisions furnished to the Contractor or a subcontractor by any person in connection with the Contract as such claim becomes due, the proper officer or officers representing Owner may pay such claim to the person furnishing the labor, services, material, supplies or provisions, and charge the amount of the payment against the funds due or to become due the Contractor by reason of the Contract.
- B. The payment of any claim in the manner herein authorized shall not relieve the Contractor or the Contractor's surety from liability with respect to any unpaid claims.

5. PROTECTION TO PERSONS AND PROPERTY

- A. During the execution of the work the Contractor shall provide and maintain all guards, railings, lights, warnings, and other protective devices which are required by law or which are reasonably necessary for the protection of persons and property from injury or damage.
- B. The Contractor shall protect and indemnify Owner from every claim or demand which may be made by reason of:
 - (i) Any injury to person or property sustained by the Contractor or by any subcontractor or other person employed directly or indirectly by the Contractor upon or in connection with the work, however caused.
 - (ii) Any injury to person or property sustained by any person caused by an act, neglect, default or omission of the Contractor or any subcontractor or other person employed directly or indirectly by the Contractor upon or in connection with the work.
- C. The Contractor, at the Contractor's own expense and risk, shall defend any and all actions, suits, or other legal proceeding that may be brought or instituted against Owner on any such claim or demand and pay or satisfy any order, judgment or decree that may be rendered against Owner in any such action, suit or legal proceeding.
- D. The Contractor shall assume full control of the site of the Contractor's operations and, until the completion of the work and its acceptance by Owner, shall be responsible for the premises and for the work and shall bear the risk of loss for all damage thereto, however caused, except loss covered by fire insurance carried by Owner.
- E. The Contractor shall exercise every possible care and precaution to protect the structure, its contents and site from damage from the weather or other causes, and shall bear the risk of loss for all damage thereto related however remotely to the Contractor's operations except loss covered by fire insurance carried by Owner.
- F. Contractor shall designate a responsible member of his organization at the site whose duty shall be the prevention of accidents. This person shall be Contractor's superintendent unless otherwise designated in writing by Contractor to Owner.
- G. In emergencies affecting the safety or protection of persons or the Work or property at the site or adjacent thereto, Contractor, without special instruction or authorization from Project Manager or Owner, is obligated to act to prevent threatened damage, injury or loss. Contractor shall give Project Manager prompt written notice of any significant changes in the Work or deviations from the contract Documents caused thereby.

6. ASSIGNMENT

Neither this contract nor any interest therein shall be transferred to any other party or parties, and in case of such transfer, Owner may refuse to carry out this contract, either with the transferor or the transferee, but all rights of action for any breach of this contract by Contractor are reserved to Owner, and no officer of said Owner, nor any person employed in its service, is, or shall be, permitted any share or part of this contract or to any benefit which may arise herefrom; that the Contractor further agrees promptly as due, to make payment to all persons supplying labor or material for the prosecution of the work provided for herein, and the Contractor shall not permit any lien or claim to be filed or prosecuted against Owner for or on account of any labor or material furnished aforesaid.

7. SUBCONTRACTING

- A. All subcontracting shall be subject to the approval of Owner. No list of subcontractors approved by Owner may be changed or departed from except as consented to by Owner in writing. Prior to Owner approval of any subcontractor change all pertinent information must be submitted to the Project Manager, including Construction Contractor's Board Number, insurance, and etc. Whenever Owner consents to the substitution of one subcontractor for another, if any reduction in cost to the Contractor results therefrom, the amount thereof shall be passed on to Owner as a reduction in the amount to be paid to the Contractor for the performance of the work.
- B. The Contractor shall be wholly responsible for the performance of all subcontractors and for their acts and omissions, and those of persons either directly or indirectly employed by them, to the same extent as for the acts and omissions of persons directly employed by the Contractor, and the fact that subcontractors are subject to the approval of Owner shall not affect the Contractor's responsibility in this regard.
- C. The Contractor shall bind every subcontractor to all terms and conditions anywhere contained in the contract documents as far as applicable to the work of such subcontractor so that the subcontractor assumes toward the Contractor and toward the work all the obligations and responsibilities that the Contractor assumes toward Owner as to the performance of the subcontractor's portion of the work.
- D. Nothing contained in the contract documents shall be construed to create any contract between Owner and any subcontractor.

8. ROYALTIES AND PATENTS

The Contractor shall pay all royalties and other charges for the use of any patented article, device, method, process or invention in the performance of the work. The Contractor shall fully indemnify Owner and hold it harmless from any and all loss, damage, cost and expense in connection with any alleged infringement or patent rights in the performance of the work. The Contractor shall defend all claims, actions, suits or other legal proceeding with reference thereto and satisfy the requirements of any adverse judgment, decree or order resulting there from.

9. AUDIT OF BOOKS AND RECORDS

Owner, through its representatives, shall have access at all reasonable time to the books and records of the Contractor and subcontractors so far as they relate to the contract and the performance of the work.

10. BUILDING CODES AND REGULATIONS

The Contractor shall comply with all applicable regulations and requirements of governmental bodies with regulatory jurisdiction over the work. Where code requirements exceed the requirements of the specifications, the installation in conflict shall be made to comply with the code requirements and at no additional cost to the Owner.

11. MATERIALS AND WORKMANSHIP

- A. Unless otherwise specified, all materials and equipment shall be new and in production at time of bidding, and both materials and workmanship shall be of best quality of the type involved. Unless otherwise specified, manufacturer's directions for all manufactured articles shall be followed meticulously.
- B. No one shall be employed in connection with the work that is unskilled or unlicensed in the work he is given to do. Should the Contract Administrator deem anyone on the work incompetent or unfit for his duties, the Contractor or subcontractor employing him upon,

notification thereof, shall dismiss him immediately and shall not again employ him on any work for Owner.

- C. The Contractor must meet highest standards prevalent in the industry.
- D. Services performed, product application and equipment installed shall be in full compliance with the manufacturer's instructions.

12. OPERATIONS AND STORAGE OF MATERIALS

- A. The Contractor shall confine all operations and the storage of materials at the job site to the limits indicated by law and permits and as further directed by the Contract Administrator. Neither the Contractor nor any subcontractor nor any servant of the Contractor or of any subcontractor shall make any use of an existing Owner structure or any facility therein unless specifically authorized by the Contract Administrator.
- B. All materials/equipment must be delivered in original containers as packaged by the manufacturer, with the label intact. Empty containers must be stored at a designated area, and must remain on premises until satisfactory completion of all work or permission is received from Owner to dispose of packaging.

13. SUPERVISION

The Contractor at all times during the execution of work under this agreement shall have a competent superintendent or foreman on the job who shall be accessible at all times and have full authority to receive and execute orders or directions from Owner.

14. INSPECTIONS

- A. Owner's representatives shall be allowed access to all parts of the work at all times wherever it is in preparation or progress and shall be furnished every reasonable facility for ascertaining whether or not the work as performed is in accordance with the requirements and intent of the Contract Documents.
- B. If any work is covered up without the approval of the Contract Administrator or code officials, it shall be uncovered for examination, and after examination the Contractor shall perform all rework involved in correcting defective work and/or in restoring the same to the condition called for by the Contract Documents. In such case, the cost of uncovering the work and of all rework involved shall be borne by the Contractor.
- C. Owner shall have the right at any and all times to re-examine any part or parts of the work previously passed upon inspection. If at any time Owner desires to re-examine a part of the work previously passed upon inspection and thereafter covered up, Owner may order the same to be uncovered for reexamination. Such order shall be issued in writing over the signature of an authorized representative of Owner, and shall be strictly observed and complied with by the Contractor and all subcontractors involved. After reexamination, the Contractor shall perform all rework involved in correcting defective work and/or in restoring the same to the condition called for by the Contract Documents. If the work thus exposed and reexamined complies in all respects with the requirements of the Contract Documents, the order to uncover the same shall be deemed to be an order for an addition to or change in the work subject to the provisions of the Contract Documents. If such work does not comply in all respects with the requirements of the Contract Documents, the cost of uncovering the same and of all rework involved shall be borne by the Contractor.

D. Within TEN (10) days after notice of completion, Owner shall inspect the work and deliver to the Contractor a written statement of defects, if any, to be corrected prior to acceptance of the work. The Contractor shall correct such defects immediately.

15. REMOVAL OF EQUIPMENT, ETC.

The Contractor and subcontractor shall clear the site and surrounding areas of their equipment, apparatus, appliances, tools, unused material, etc., as rapidly as such items cease to be needed for the production of the work.

16. SEPARATE CONTRACTS

Owner shall have the right to let separate contracts for other work to be performed at or adjacent to the site of the Contractor's operations, in which event the Contractor shall cooperate in all reasonable ways to facilitate the operations of other contractors and shall avoid unnecessary interference therewith. Also, Owner reserves the right to perform work with its own crews at or adjacent to the site of the Contractor's operations and receive full cooperation.

17. INTENT OF CONTRACT

The Contract Documents shall be considered as a whole, and whatever is specified in any one of the documents shall have the same effect as if specified in all. Minor details of both labor and material that are necessary to complete each branch of the work shall be provided by the Contractor whether or not specifically mentioned in the specifications or on the drawings. Unless otherwise specified in the Contract Documents, it is the intent and meaning of the Contract that the Contractor shall take the site in the condition existing at the time of bidding for the work and provide and pay for all labor, materials, equipment, apparatus, appliances, tools, transportation, and other facilities and services necessary to complete the work to the fullest extent inferable from the Contract Documents. It shall be conclusively presumed that all conditions to be encountered in executing the work were known to and accepted by the Contractor at the time of bidding for the accepted work, except conditions concealed and not discoverable from information reasonably available to the Contractor.

18. INCONSISTENCIES

Inconsistencies, if any, shall be resolved as follows:

- A. The specifications control over code requirements where the requirements of the former exceed the latter.
- B. The Scope of Services control over the General Conditions.

19. FEDERAL, STATE, AND LOCAL STATUTES OR REGULATIONS

All structures, contract work, materials and/or equipment shall conform to applicable requirements of Federal, State or Local Statutes or Regulations. This includes, but is not limited to OSHA, fire regulations, noise abatement requirements, and EPA and DEQ requirements. All electrical equipment shall bear a UL or other approved label, and all rules pertaining to hazardous material shall be adhered to.

20. M.S.D.S. HAZARD COMMUNICATION

Any products used by contractor must be labeled in conformance with Federal and OSHA requirements, and with OAR Chapter 437, Division 155. M.S.D.S. (Material Safety Data Sheet) MUST be supplied on products, as used.

21. BUILDERS BOARD

Every contractor/subcontractor engaged in any construction activity involving improvements to real estate must be registered with the Oregon State Construction Contractors Board.

SECTION C SCOPE OF SERVICES

1. SCOPE

Services for emergency repair, routine maintenance, operator training and minor upgrades to the SCADA systems within the City of Ontario's Public Works Department at various water, wastewater and collection locations on an as-needed basis. Electrical system maintenance services for all City-owned facilities, including water and wastewater plants, office buildings, shops, park structures, lift stations, pump stations, etc. on an as-needed basis.

2. DESCRIPTION OF WORK

Typical maintenance, repairs and/or new installations work shall include, but will not be limited to the following:

- A. Provide technical support for the service and maintenance of existing SCADA systems.
- B. Provide technical support for the service, maintenance, repair or replacement of existing RTUs/PLCs.
- C. Modify and implement the software components of the City's SCADA systems.
- D. Design, code and test compatible programming, and modify the existing programs to accommodate unique individual project sites.
- E. Update or modify PLC interface and data acquisition parameters as applicable.
- F. Test and review operating parameters.
- G. Prepare design documents and documentation to aid in maintenance and code reuse.
- H. Analyze and recommend improvements to the software and applications.
- I. Provide emergency work as needed at all of the City's SCADA locations.
- J. Conduct periodic training of City personnel for operation and maintenance of the database, human-machine interface (HMI), and setup of additional City sites.
- K. Power distribution systems, including switchgear, motor control centers, panel boards, safety switches, starters and transformers, motor controls, explosion proof controls and lighting.
- L. Installation, removal or relocation of interior/exterior electrical outlets, switches, power poles, lighting fixtures, ballasts, duct and conduit, etc.
- M. Work shall be performed on a wide variety of facilities equipment, including, but not limited to: Low voltage, outdoor and temporary electrical systems and powered equipment.
- N. Maintenance, repair and installation of exterior lighting hardware as needed.
- O. Contractor shall monitor and test all loads prior to adding any additional service to the distribution systems.
- P. Contractor shall indicate on all appropriate service panels the correct circuit identification and maintain all electrical panels up to date.

- Q. Contractor shall also maintain onsite documentation on record drawings (to be supplied by owner) showing the location of any new or relocated outlet, switch, power pole, light, panel and conduit, etc.
- R. Any changes on record drawings shall be reviewed a minimum of every six (6) months from start of contract with the Contract Administrator or the Designated Representative.

3. OTHER CONSIDERATIONS

- A. Contractor shall obtain and maintain in current status all applicable permits and licenses for inspections, tests and other services required for completion of work.
- B. If during the course of work the contractor experiences a conflict with the plans/scope of work and the N.E.C. (National Electrical Code), the contractor shall notify the Contract Administrator before proceeding with said work.
- C. Contractor shall keep the premises free from debris and accumulation of waste and shall remove construction smears and stains from finished surfaces. Contractor shall remove all surplus materials and tools from site at completion of job.
- D. City makes no guarantee as to any minimum amount of work that will be given the Contractor.
- E. Total cost for services under this contract, including any renewals, is subject to availability of funds.
- F. Subcontractors may be used by Contractor subject to City's approval. The Contractor must submit the full name, address, phone, fax, email and a copy of the subcontractor's Oregon Construction Contractor's license with each work order.
- G. Contractor may be required to provide a detailed description of any subcontractor's work and copies of agreements between the subcontractor and Contractor in the response to a work order.
- H. City reserves the right to contract with other contractors for similar services that may be provided under this contract during the period of the term agreement and any subsequent renewals if City believes it is in its best interest to do so.

4. INVOICING INFORMATION

- A. Each invoice shall include adequate detail to identify each service call. At a minimum the invoice shall detail and include the following:
 - 1) The date of the service call
 - 2) A copy of the work order
 - 3) The service location
 - 4) Name and department of individual requesting the work
 - 5) Copies of material invoices
 - 6) The job classification of the employees performing the work
 - 7) The applicable hourly rate
 - 8) The arrival time on-site
 - 9) The time service call was completed
 - 10) The total time on-site
 - 11) The total charge for the service call

- B. Invoices shall be sent to City of Ontario, Attn: Accounts Payable, 444 SW 4th St., Ontario, OR 97914.
- C. The total amount paid to Contractor for work performed on any one project under this agreement shall not exceed *five thousand dollars (\$5,000)*. Any project whose total cost equals or exceeds \$5,000 will be bid separately in compliance with City financial policies and procedures.

In case of an emergency which requires immediate purchase of supplies or services and time is of the essence, the City Manager shall have the authority to authorize such purchase up to \$50,000. For purchases over \$50,000, a poll of the City Council should be made prior to the purchase. If a poll of the Council is not possible, a full report of such an emergency purchase shall be made by the City Manager to the City Council no later than the next City Council meeting.

5. MATERIAL SAFETY DATA SHEETS

Contractor shall not use any materials, products, or chemical which may be hazardous to an employee's health, unless a Material Safety Data Sheet is submitted to City for approval before use of product.

6. IDENTIFICATION

Contractor employees shall be easily identifiable while providing service through this contract. This identification shall be clearly visible and will include the company name and the name of the employee.

7. DISPATCHING

Contractor shall furnish a single point of contact to City for the placement of faxed or phone service requests to Contractor. This contact shall be furnished as a part of the contract and at no additional cost to City. The dispatch service shall be available from 8:00 AM to 5:00 PM (local time). Contractor shall make provisions for after hours dispatching and provide phone numbers for this purpose to the City Contract Administrator.

8. WORK ORDERS

- A. The Contract Administrator or the Designated Representative will place all requests for service directly to Contractor electronically (email) or by phone call. The Contract Administrator reserves the right to request from Contractor a written cost estimate before authorizing the work. Contractor shall respond with a cost estimate within 24 hours, excluding weekend and holiday, if the job/cost estimate is simple and small enough that it does not require site verification or site visit. If the job/cost estimate is more complicated or requires site verification or visit, the response time will be adjusted accordingly, up to 48 hours excluding weekends and holidays.
- B. Failure of Contractor to respond as required will constitute non-performance and City may take steps to secure compliance as stated elsewhere in the contract.

9. RESPONSE TIME AND PROCESS

- A. Standard service – The task performance period shall be regular business hours only (M – F, 8:00 a.m. – 5:00 p.m.) and Contractor response time shall be 24 – 48 hours excluding weekends and holidays.
- B. Emergency service – Task performance period shall be anytime emergency service is needed and Contractor response time shall be 1 – 1.5 hours.

- C. All maintenance services shall be completed within a reasonable and expedient manner, based on the severity of the request.
- D. If discrepancies occur in labor hours, the current edition of the National Electrical Contractors Associations (NECA) manual for labor units will be consulted and used as a guide to determine the reasonableness of labor charges.
- E. Contractor shall provide all necessary transportation to and from work sites. Transportation shall be fully insured by Contractor.
- F. Only upon request and authorization by the Contract Administrator or designee shall Contractor perform work after hours.
- G. Contractor will notify the Contract Administrator or Designated Representative upon completion of work. Notification shall be within thirty-six (36) hours of completion of assigned task.
- H. Failure to comply with response times shall be considered as non-compliance. Repeated failure to comply may result in contract termination.

10. MATERIALS PROVIDED BY CITY

City will have the option to supply materials to be used on the job if it is in the best interest of City to do so. City will be responsible for all warranty issues on all parts and supplies provided by City.

11. MATERIALS PROVIDED BY CONTRACTOR

All materials to be used shall be new. No aluminum wiring shall be used under this contract.

12. WARRANTY & GUARANTEES

Unless otherwise specified herein, all goods shall be guaranteed and warranted for a period of twelve (12) months from the date of delivery, including parts and labor except damage caused by misuse, vandalism or act(s) of God.

13. OWNERSHIP OF DOCUMENTS

All work Contractor performs under this contract shall be considered work made for hire and shall be property of City. City shall own any and all data, documents, plans, copyrights, specifications, working papers and any other materials Contractor produces in connection with this contract. On completion or termination of this contract, Contractor shall deliver these materials to the Contract Administrator or his designee.

14. COST OF MATERIALS PROVIDED BY CONTRACTOR

Contractor shall supply all materials at a percentage set by Contractor; however said percentage shall not exceed twenty (20%) percent of Contractor's invoiced cost. Percentage above cost that will be charged by Contractor shall be listed on the "Rate Form" on page 22.

15. EQUIPMENT

Contractor shall furnish all equipment to provide SCADA and electrical system maintenance, repair and installation services under the scope of this contract. If work to be performed requires special equipment, which is outside the scope of services described herein, Contractor **with prior approval of the City's Contract Administrator or delegated representative** may bill for rental equipment or use of their own special equipment at cost, with no additional charges to the City.

16. CITY-OWNED EQUIPMENT

Contractor shall not use City owned equipment, tools etc. in the performance of work under this contract.

17. CONTRACTOR'S PERFORMANCE

- A. Contractor shall perform all services required within these Specifications. All services shall be performed in the highest professional manner, and in accordance with all applicable, current industry standards, regulations, codes and statutes. Unless the means or methods of performing a task are specified elsewhere in this contract, Contractor shall employ methods that are generally accepted and used by the industry.
- B. Contractor will seek to be efficient with regard to time expended and costs incurred. For example, Contractor should inform City of opportunities to minimize travel costs by coordinating work done on behalf of City with other non-City related work Contractor may be performing.
- C. All work shall comply with applicable Oregon Statutes and the Electrical Safety Law and any other local, state, federal and industry regulations or standards applicable to the type of work being performed under the scope of the contract.
- D. City reserves the right to have any Contractor employee removed if the employee fails to perform within the requirements of this contract. The Contractor shall replace the excluded employee at the earliest possible date following the removal.
- E. Once an employee is removed for failure to perform, that employee shall not be used to service this contract at anytime during the term of the contract without written permission of the Contract Administrator or their Designated Representative.
- F. The rights and remedies of City provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

18. JOB CLASSIFICATIONS

The classifications required for the performance of the work under this contract and used in bid evaluation will be Journeyman, Apprentice and Limited Maintenance Electrician. The use of apprentices by themselves will not be allowed in the performance of work under this contract. However, an apprentice may be allowed as a helper to the Journeyman. For tasks not requiring the service of a Journeyman, such as changing lamps, ballast's, etc., a Limited Maintenance Electrician may be used.

**SECTION D
BID FORMS**

The following forms must be submitted with your bid in order to be considered responsive:

- Rate Form (page 20)
- Signature Page (page 21)
- Subcontractor Information Sheet (page 22)
- Reference Sheet (page 23)
- Bid Certifications (pages 24 & 25)

**RATE FORM
SCADA & ELECTRICAL MAINTENANCE SERVICES**

BID MUST BE SUBMITTED ON THIS FORM OR IT WILL BE CONSIDERED NON-RESPONSIVE

The Bidder, whose legal signature binds the Bidder to the quoted prices indicated on these pages, hereby proposes as follows:

ITEM	UNIT PRICE	MULTIPLIER [^]	EXTENDED PRICE
SCADA Services – Standard Rate* (Systems Integration, Programming)	\$ _____	X 40	\$ _____
SCADA Services – Overtime Rate** (Systems Integration, Programming)	\$ _____	X 10	\$ _____
Electrical Services – Journeyman Standard Rate*	\$ _____	X 75	\$ _____
Electrical Services – Journeyman Overtime Rate**	\$ _____	X 20	\$ _____
Electrical Services – Limited Maint. Electrician Standard Rate*	\$ _____	X 25	\$ _____
Electrical Services – Limited Maint. Electrician Overtime Rate**	\$ _____	X 10	\$ _____
Electrical Services – Apprentice Standard Rate*	\$ _____	X 25	\$ _____
Electrical Services – Apprentice Standard Rate**	\$ _____	X 10	\$ _____
Travel Time Rate	\$ _____	X 10	\$ _____
Mileage Cost/Mile	\$ _____	X 500	\$ _____
Markup*** (percentage to be charged over Contractor's cost for parts and material)	_____ %	1.____ X 15000	\$ _____
Bid Total			\$ _____

^The multiplier is an approximation only and is meant to serve the purpose of the bid. It does not represent a guaranteed amount of work under this service agreement.

**Standard Time is Monday through Friday from 8:00 AM to 5:00 PM, excluding holidays*

***Overtime is anytime after Standard Time, including weekends and holidays*

****Many not exceed 20% per ITB Section C, Item 14*

Bid total spelled out: _____

Date: _____

Bidder's Representative Signature: _____

Print Representative's Name and Title: _____

Print Corporate Name of Bidding Firm: _____

**SIGNATURE PAGE
SCADA & ELECTRICAL MAINTENANCE SERVICES**

The undersigned agrees to perform all work as listed in the Contract Specifications sections, for the price(s) stated; and that all articles supplied under any resultant contract will conform to the specifications herein,

The undersigned agrees to be bound by all applicable laws and regulations, the accompanying specifications and by City policies and regulations.

The undersigned, by submitting a bid, represents that:

- A) The Bidder has read and understands the specifications.
- B) Failure to comply with the specifications or any terms of the Invitation to Bid may disqualify the Bidder as being non-responsive.

The undersigned certifies that the bid has been arrived at independently and has been submitted without any collusion designed to limit competition.

The undersigned certifies that all addenda to the specifications has been received and duly considered and that all costs associated with all addenda have been included in this bid:

Addenda: No. _____ through No. _____ inclusive.

We therefore submit this bid to furnish services at the price(s) indicated herein in fulfillment of the attached requirements and specifications of the City.

Bidder (Company Name): _____

Address: _____

Telephone Number: _____ Fax Number: _____

By: _____ Date: _____
(Signature of Authorized Official. If partnership, signature of one partner.)

Typed Name/Title: _____

If corporation, attest: _____
(Corporate officer)

Corporation Partnership Individual

Federal Tax Identification Number (TIN): _____

Oregon State Construction Contractor's Board No.: _____ Exp. Date: _____

**SUBCONTRACTOR INFORMATION SHEET
SCADA & ELECTRICAL MAINTENANCE SERVICES**

All subcontracting shall be subject to the approval of Owner (see Section B, Item 7).

Name: _____ CCB#: _____

Type of work to be performed under this service agreement: _____

Licensed? (please list licenses): _____

Name: _____ CCB#: _____

Type of work to be performed under this service agreement: _____

Licensed? (please list licenses): _____

Name: _____ CCB#: _____

Type of work to be performed under this service agreement: _____

Licensed? (please list licenses): _____

Name: _____ CCB#: _____

Type of work to be performed under this service agreement: _____

Licensed? (please list licenses): _____

**REFERENCE SHEET
SCADA & ELECTRICAL MAINTENANCE SERVICES**

Provide at least five (5) references for each service category (SCADA and Electrical) below. A contact reference may be used for both categories in cases where Bidder performed both services for the individual/organization referenced.

SCADA Maintenance References

Contact Name	Organization	Telephone Number
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Electrical Maintenance References

Contact Name	Organization	Telephone Number
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

**BID CERTIFICATIONS
SCADA & ELECTRICAL MAINTENANCE SERVICES**

CERTIFICATION OF NON-DISCRIMINATION

Pursuant to ORS 279A.110, discrimination in subcontracting is prohibited. Any contractor who contracts with a public contracting agency shall not discriminate against minority, women or emerging small business enterprises in the awarding of contracts.

By signature of the authorized representative of the bidder/proposer, the bidder/proposer hereby certifies to the City of Ontario, Oregon that this bidder/proposer has not discriminated against minority, women, or emerging small business enterprises in obtaining any subcontracts; and, further, that if awarded the contract for which this bid or proposal is submitted, shall not so discriminate.

Date: _____

Signature: _____

Printed Name/Title: _____

Name of Firm: _____

CERTIFICATION OF RESIDENCY

The Bidder submitting this bid shall indicate below if the Bidder is a resident or nonresident bidder as defined by ORS 279.029. A resident bidder is defined as a bidder that has paid unemployment taxes or income taxes in Oregon during the twelve (12) calendar months immediately preceding submission of this bid and has a business address in Oregon.

- Resident Bidder
- Non-resident Bidder

Date: _____

Signature: _____

Printed Name/Title: _____

Name of Firm: _____

CERTIFICATION OF EMPLOYEE DRUG TESTING PROGRAM

ORS 279C.505 (2) requires that bidders shall demonstrate and disclose to the City of Ontario that he/she has an employee drug testing program in place before a public contract can be awarded. Therefore, by signing this Certification, the Bidder does hereby certify and confirm that he/she has an employee drug testing program in place that is consistent with, and satisfies the intent of, the above-referenced legislation.

Date: _____

Signature: _____

Printed Name/Title: _____

Name of Firm: _____

CERTIFICATION OF COMPLIANCE WITH OREGON TAX LAWS

I, the undersigned, hereby swear or affirm under penalty of perjury: (Check one) _____ that I am, to the best of my knowledge, not in violation of any Oregon tax laws. _____ that I am authorized to act in behalf of (corporation, partnership, trust or estate), that I have authority and knowledge regarding the payment of taxes, and that (corporation, partnership, trust or estate) is, to the best of my knowledge, not in violation of any Oregon tax laws.

For purposes of this certificate, 'Oregon tax laws' means those programs listed in ORS 305.380(4).

Date: _____

Signature: _____

Printed Name/Title: _____

Name of Firm: _____

**EXHIBIT A
SCADA SYSTEMS LIST**

City of Ontario SCADA systems list by location (This information is meant to give the bidder a general overview of the quantity and types of systems that will be maintained under the service agreement. This is not a complete list. Bidder responsible for verifying the accuracy of the information provided).

NAME	ADDRESS	COM TYPE	RTU/PLC	SUPERVISORY SYSTEM	HMI	PROGRAMMING
8th Ave Lift Station	Beck Kiwanis Park - 455 NW 8th Ave	Radio Modem: Data-Linc Group SRM6000	PLC - Allen Bradley Micrologix Plus 1500	Operator Workstation	Rockwell Software - RS View 32	RS Logic 500
Regional Lift Station	NW 18th St/East of VWWTP	Radio Modem: Data-Linc Group SRM6000	PLC - Allen Bradley Micrologix Plus 1500	Operator Workstation	Rockwell Software - RS View 32	RS Logic 500
Malheur Lift Station	2148 Malheur Dr.	Radio Modem: Data-Linc Group SRM6000	PLC - Allen Bradley Micrologix Plus 1500	Operator Workstation	Rockwell Software - RS View 32	RS Logic 500
SRCI Lower Lift Station	NE 36th St/So of 4225 NW 36th St	Radio Modem: Data-Linc Group SRM6000	PLC - Allen Bradley Micrologix Plus 1000	Operator Workstation	Rockwell Software - RS View 32	RS Logic 500
SRCI Headworks Barscreen	777 Stanton Blvd - SRCI	Radio Modem: Data-Linc Group SRM6000	PLC - Allen Bradley Micrologix Plus 1500	Operator Workstation	Rockwell Software - RS View 32	RS Logic 500
Tapadera Lift Station	NE 3rd Ave/West of 1321 NE 3rd Ave	Radio Modem: Data-Linc Group SRM6000	PLC - Allen Bradley Micrologix Plus 1000	Operator Workstation	Rockwell Software - RS View 32	RS Logic 500
LID 44 Lift Station	WTP - 1900 SE 5th Ave	Radio Modem: Data-Linc Group SRM6000	PLC - Allen Bradley Micrologix Plus 1000	Operator Workstation	Rockwell Software - RS View 32	RS Logic 500
Murakami Lift Station	136 SE 13th Ave	Radio Modem: Data-Linc Group SRM6000	PLC - Allen Bradley Micrologix Plus 1500	Operator Workstation	Rockwell Software - RS View 32	RS Logic 500
Eastside Lift Station	SE 3rd Ave/west of 317 SE 3rd Ave	Radio Modem: Data-Linc Group SRM6000	PLC - Allen Bradley Micrologix Plus 1000	Operator Workstation	Rockwell Software - RS View 32	RS Logic 500
West Idaho Lift Station	W Idaho Ave, btwn NW 16th & 17th St	Radio Modem: Data-Linc Group SRM6000	PLC - Allen Bradley Micrologix Plus 1000	Operator Workstation	Rockwell Software - RS View 32	RS Logic 500
HMI/SCADA Master	Operations Shop - 1551 NW 9th St	Radio Modem: Data-Linc Group SRM6000 & Linc View V2.2.0	Allen Bradley SLC S/03 CPU & Link Coupler SLC 500	Operator Workstation	Rockwell Software - RS View 32, Intel Dialogic System Release 6.0 PCI, Symantec PC Anywhere	RS Logic 500
Water Treatment Plant - Adsorption Facility	1900 SE 5 th Ave.	Radio Modem: Quint Power Phoenix Contact	PLC - Allen Bradley Micrologix 1400 & SLC 500 w/ SLC 5/05 Processor	Operator Workstation	Rockwell Software - RS View 32	RS Logic 500
Water Treatment Plant - Operations Building	1900 SE 5 th Ave.	Radio Modem: Phoenix		Operator Workstation	Rockwell Software - RS View 32	RS Logic 500
Water Treatment Plant -	1900 SE 5 th Ave.	Radio Modem		Operator Workstation	Rockwell Software - RS	RS Logic 500

**EXHIBIT B
SERVICE LOCATIONS**

Locations/buildings to be included in this contract shall be:

LOCATION/BUILDING	ADDRESS
City Hall	444 SW 4 th Street
Apartment Building	467 SW 3 rd Street
Fire Station 2	3288 SW 4 th Avenue
Ontario Aquatic Center & Recreation Center	790 SW 3 rd Avenue
Public Works Operations	1551 NW 9 th Street
Ontario Golf Club	1345 Golf Course Road
Evergreen Cemetery	1155 S Park Boulevard
Permit Application Center	458 SW 3 rd Street
Water Treatment Plant	1900 SE 5 th Avenue
Wastewater Treatment Plant	2405 Malheur Drive
Old Public Works Shop	55 NE 2 nd Avenue
8th Ave Lift Station	455 NW 8th Avenue
Regional Lift Station	NW 18th St/East of Wastewater Trtmnt. Plant
Malheur Lift Station	2148 Malheur Drive
SRCI Lower Lift Station	NE 36th Street/So of 4225 NW 36th Street
SRCI Headworks Barscreen	777 Stanton Boulevard - SRCI
Tapadera Lift Station	NE 3rd Avenue/West of 1321 NE 3rd Avenue
LID 44 Lift Station	1900 SE 5th Avenue – Water Trtmnt. Plant
Murakami Lift Station	136 SE 13th Avenue
Eastside Lift Station	SE 3rd Avenue/west of 317 SE 3rd Avenue
West Idaho Lift Station	W Idaho Avenue, btwn NW 16th & 17th Street
Westside Pump Station	1415 Sunset Drive
Westside Booster Station	1415 Sunset Drive
Eastside Booster Station	512 SE 5th Avenue
Canyon II Booster Station	Canyon 2 Road
Bench Reservoir Booster Station	Foothill Drive
Skyline Reservoir Irrigation Station	Heinz Boulevard

**** PLEASE NOTE: THE CITY RESERVES THE RIGHT TO ADD OR DELETE SERVICE LOCATIONS DURING THE TERM OF THIS AGREEMENT AS NEEDED.**

**ATTACHMENT A
SAMPLE CITY OF ONTARIO SERVICE AGREEMENT**

**TERM AGREEMENT FOR
(ENTER CONTRACT TITLE)**

THIS AGREEMENT made and entered into this (Day) of (Month), (Year) by and between the City of Ontario, a municipal corporation of the State of Oregon, hereinafter called City, and (Contractor's Name), hereinafter called Contractor.

RECITALS

WHEREAS, Contractor has submitted a bid or proposal to City to provide specific services; and

WHEREAS, Contractor is in the business of providing specific services and is aware of the purposes for which City requires the services; and

WHEREAS, City and Contractor wish to enter into a contract under which City shall purchase the services described in Contractor's bid or proposal;

THEREFORE, The parties agree as follows:

1. SERVICES TO BE PROVIDED

Contractor agrees to provide services related to (enter project title or brief description) as detailed in Exhibit A – Scope of Services and by this reference made a part hereof.

2. EFFECTIVE DATE AND DURATION

Contractor shall initiate services upon receipt of City's notice to proceed, together with an executed copy of this Agreement. This Agreement shall become effective upon the date of execution and shall expire, unless otherwise terminated or extended, on June 30, 2011. All services shall be completed prior to the expiration of this Agreement. The City and Contractor may agree upon executing one (1) two (2) year contract extension. The total length of this contract may not exceed four (4) years.

3. COMPENSATION

City agrees to pay Contractor an amount not exceeding (Amount in words) and (00-99)/100 dollars \$(Amount in numbers) for performance of those services described herein, which payment shall be based upon the following applicable terms:

- A. Payment will be made in installments based on Contractor's invoice, subject to the approval by the City, and not more frequently than monthly. Payment shall be made only for work actually completed as of the date of invoice.
- B. Payment by City shall release City from any further obligation for payment to Contractor, for services performed or expenses incurred as of the date of the invoice. Payment shall not be considered acceptance or approval of any work or waiver of any defects therein.
- C. Contractor shall make payments promptly, as due, to all persons supplying labor or materials for the prosecution of this work.
- D. Contractor shall not permit any lien or claim to be filed or prosecuted against the City on any account of any labor or material furnished.
- E. Contractor shall pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.
- F. If Contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to Contractor or a subcontractor by any person as such claim

becomes due, City may pay such claim and charge the amount of the payment against funds due or to become due the Contractor. The payment of the claim in this manner shall not relieve Contractor or their surety from obligation with respect to any unpaid claims.

- G. Contractor shall pay employees at least time and a half pay for all overtime worked in excess of 40 hours in any one work week except for individuals under the contract who are excluded under ORS 653.010 to 653.261 or under 29 USC sections 201 to 209 from receiving overtime.
- H. Contractor shall promptly, as due, make payment to any person, co-partnership, association or corporation, furnishing medical, surgical, hospital care or other needed care and attention incident to sickness or injury to the employees of Contractor or all sums which Contractor agrees to pay for such services and all moneys and sums which Contractor collected or deducted from the wages of employees pursuant to any law, contract or agreement for the purpose of providing or paying for such service.
- I. The City certifies that sufficient funds are available and authorized for expenditure to finance costs of this contract.

4. ASSIGNMENT/DELEGATION

Neither party shall assign or transfer any interest in or duty under this Agreement without the written consent of the other and any attempted assignment or transfer without the written consent of the other party shall be invalid.

5. SUBMITTING BILLS AND MAKING PAYMENTS

All notices and bills shall be made in writing and may be given by personal delivery, mail or fax. Payments may be made by personal delivery, mail, or electronic transfer. The following addresses shall be used to transmit notices, bills, payments, and other information:

Contract Manager for City	Contract Manager for Contractor
City of Ontario	Company: (Contractor's business name)
Attn: (City's contact person's name)	Attn: (Contractor's contact person's name)
444 SW 4 th St., Ontario, Oregon 97914	Address: (Contractor's mailing address)
Phone: (541) 889-7684	Phone: (Contact person's phone number)
Fax: (Contact person's fax number)	Fax: (Contact person's fax number)
Email Address: (Contact person's email)	Email Address: (Contact person's email)

6. TERMINATION

The parties agree that any decision by either party to terminate this Agreement before (day) of (month), (year) shall be accompanied by thirty (30) days written notice to the other party prior to the date termination would take effect. There shall be no penalty for early termination. If City terminates the contract pursuant to this paragraph, it shall pay Contractor for services rendered prorated to the date of termination.

7. ACCESS TO RECORDS

City shall have access to such books, documents, papers and records of Contractor as are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts and transcripts.

8. FORCE MAJEURE

Neither City nor Contractor shall be considered in default because of any delays in completion and responsibilities hereunder due to causes beyond the control and without fault or negligence on the part of the parties so disenabled, including but not restricted to, natural disaster, war, civil unrest, volcano, earthquake, fire, flood, epidemic, quarantine restriction, area-wide strike, freight embargo, unusually severe weather or delay of subcontractor or supplies due to such cause; provided that the parties so disenabled shall

within ten (10) days from the beginning of such delay, notify the other party in writing of the cause of delay and its probable extent. Such notification shall not be the basis for a claim for additional compensation. Each party shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon cessation of the cause, diligently pursue performance of its obligation under the Agreement.

9. NON-DISCRIMINATION

Contractor agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations. Contractor also shall comply with the Americans with Disabilities Act of 1990, ORS 659.425, and all regulations and administrative rules established pursuant to those laws.

10. INDEMNITY/HOLD HARMLESS

Contractor agrees to indemnify, defend and hold harmless the City and its officers, agents and employees against all liability, loss and costs arising from actions, suits, claims or demands for the acts or omissions of Contractor, and Contractor's officers, agents and employees, in performance of this contract.

In accordance with the Oregon Tort Claims Act and the Oregon Constitution, City agrees to indemnify, defend and hold harmless the Contractor and its officers, agents and employees against all liability, loss and costs arising from actions, suits, claims or demands for the acts or omissions of City and City's officers, agents and employees, in performance of this contract.

11. INSURANCE

Contractor shall maintain insurance acceptable to City in full force and effect throughout the term of this contract. Such insurance shall cover all risks arising directly or indirectly out of Contractor's activities or work hereunder.

The policy or policies of insurance maintained by the Contractor shall provide at least the following limits and coverages:

A. Commercial General Liability Insurance

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 on an "occurrence" form. This coverage shall include Contractual Liability insurance for the indemnity provided under this contract and Product and Completed Operations. Such insurance shall be primary and non-contributory. Coverage shall be a minimum of \$2,000,000 per occurrence, and \$2,000,000 aggregate.

B. Business Automobile Liability Insurance

Contractor shall also obtain, at contractor's expense, and keep in effect during the term of the contract, Commercial Automobile Liability coverage including coverage for all owned, hired, and non-owned vehicles. The Combined Single Limit per occurrence shall not be less than \$1,000,000. Said insurance shall name City as an additional insured and shall require written notice to City thirty (30) days in advance of cancellation. If Contractor hires a carrier to make delivery, Contractor shall ensure that said carrier complies with this paragraph.

C. Workers' Compensation Insurance

The Contractor and all employers providing work, labor or materials under this Contract that are either subject employers under the Oregon Workers' Compensation Law and shall comply with ORS 656.017, which requires them to provide workers' compensation

coverage that satisfies Oregon law for all their subject workers or employers that are exempt under ORS 656.126. Out-of-state employers must provide Oregon workers' compensation coverage for their workers who work at a single location within Oregon for more than 30 days in a calendar year. Contractors who perform work without the assistance or labor of any employee need not obtain such coverage. This shall include Employer's Liability Insurance with coverage limits of not less than \$500,000 each accident.

D. Insurance Carrier Rating

All coverage provided by the Contractor must be underwritten by an insurance company deemed acceptable by the City. The City reserves the right to reject all or any insurance carrier(s) with an unacceptable financial rating.

E. Certificates of Insurance

As evidence of the insurance coverage required by the contract, the Contractor shall furnish a Certificate of Insurance to the City. No contract shall be effected until the required certificates have been received and approved by the City.

The procuring of such required insurance shall not be construed to limit contractor's liability hereunder. Notwithstanding said insurance, Contractor shall be obligated for the total amount of any damage, injury, or loss caused by negligence or neglect connected with this contract.

12. DRUG TESTING PROGRAM

Contractor shall, at all times, maintain and enforce an approved drug-testing program.

13. ATTORNEY'S FEES

In case suit or action is instituted to enforce the provisions of this contract, the parties agree that the losing party shall pay such sum as the court may adjudge reasonable attorney fees and court costs, including witness fees (expert and non-expert), attorney's fees and court costs on appeal.

14. COMPLIANCE WITH STATE AND FEDERAL LAWS/RULES

Contractor shall comply with all applicable federal, state and local laws, rules and regulations, including, but not limited to, the requirements concerning working hours, overtime, medical care, workers compensation insurance, health care payments, payments to employees and subcontractors and income tax withholding contained in ORS Chapter 279, the provisions of which are hereby made a part of this agreement.

15. CONFLICT BETWEEN TERMS

It is further expressly agreed by and between the parties hereto that should there be any conflict between the terms of this instrument in the proposal of the contract, this instrument shall control and nothing herein shall be considered as an acceptance of the terms of proposal conflicting herewith.

16. SEVERABILITY

In the event any provision or portion of this Agreement is held to be unenforceable or invalid by any court of competent jurisdiction, the validity of the remaining terms and provisions shall not be affected to the extent that it did not materially affect the intent of the parties when they entered into the agreement.

17. COMPLETE AGREEMENT

This Agreement, including the exhibits, is intended both as a final expression of the Agreement between the parties and as a complete and exclusive statement of the terms. In the event of an inconsistency between a provision in the main body of the Agreement and a provision in the Exhibit, the provision in the main body of the Agreement shall control. In the event of an inconsistency between Exhibit A and Exhibit B, Exhibit A shall control. No modification of this Agreement shall be effective unless and until it is made in writing and signed by both parties. No waiver, consent, modification, or change of terms of this Agreement shall bind either party unless in writing and signed by both parties. Such waiver, consent, modification, or change if made, shall be effective only in specific instances and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. Contractor, by the signature of its authorized representative, hereby acknowledges that Contractor has read this Agreement, understands it and agrees to be bound by its terms and conditions.

IN WITNESS WHEREOF, City has caused this Agreement to be executed by its duly authorized undersigned officer and Contractor has executed this Agreement on the date hereinabove first written.

CITY OF ONTARIO

CONTRACTOR

City Manager

Signature of Authorized Representative

Date

Date

ATTEST:

City Recorder

RFQ SUMMARY

SCADA & ELECTRICAL MAINTENANCE SERVICE

AUGUST 31, 2011 @ 2:00 PM

			Rate Form	Signature Page	Subcontractor Information Sheet	Reference Sheet	Bid Certifications	BASE BID
1	L & M Electric LLC. Caldwell, ID		X	X	X	X	X	33,000.00
2	Advanced Control Systems Boise, ID		X	X	X	X	X	29,521.35
3								

RFQ SUMMARY

SCADA & ELECTRICAL MAINTENANCE SERVICE

AUGUST 31, 2011 @ 2:00 PM

			Rate Form	Signature Page	Subcontractor Information Sheet	Reference Sheet	Bid Certifications	BASE BID
1	L & M Electric LLC. Caldwell, ID		X	X	X	X	X	33,000.00
2	Advanced Control Systems Boise, ID		X	X	X	X	X	29,521.35
3								