



CITY COUNCIL AND LOCAL CONTRACT REVIEW BOARD AGENDA
Monday, April 7, 2014 - 6:00 P.M.
Council Chambers

The City Council of the City of Newport will hold a City Council meeting and the Local Contract Review Board on Monday, April 7, 2014, at 6:00 P.M. The City Council and Local Contract Review Board Meetings will be held in the Council Chambers, City Hall, located at 169 S.W. Coast Highway, Newport, Oregon 97365. A copy of the agenda follows.

The meeting location is accessible to persons with disabilities. A request for an interpreter for the hearing impaired, or for other accommodations for persons with disabilities, should be made at least 48 hours in advance of the meeting to Peggy Hawker, City Recorder at 541.574.0613.

The City Council reserves the right to add or delete items as needed, change the order of the agenda, and discuss any other business deemed necessary at the time of the meeting.

Anyone wishing to speak at a Public Hearing or on an agenda item should complete a Public Comment Form and give it to the City Recorder. Public Comment Forms are located at the entrance to the City Council Chambers. Anyone commenting on a subject not on the agenda will be called upon during the Public Comment section of the agenda. Comments pertaining to specific agenda items will be taken at the time the matter is discussed by the City Council.

- I. **Pledge of Allegiance**
- II. **Call to Order and Roll Call**
- III. **Public Comment**
This is an opportunity for members of the audience to bring to the Council's attention any item not listed on the agenda. Comments will be limited to three (3) minutes per person with a maximum of 15 minutes for all items. Speakers may not yield their time to others.
- IV. **Proclamations, Presentations, and Special Recognitions**
Any formal proclamations or recognitions by the Mayor and Council can be placed in this section. Brief presentations to the City Council of five minutes or less are also included in this part of the agenda.
 - A. Proclamation - Honoring National Service Recognition Day
 - B. Proclamation - National Public Health Week 2014
 - C. Proclamation - National Library Week 2014

- D. Proclamation - Child Abuse Awareness and Prevention Month
- E. Swearing in of City of Newport Police Officer

V. Consent Calendar

The consent calendar consists of items of a repeating or routine nature considered under a single action. Any Councilor may have an item on the consent agenda removed and considered separately on request.

- A. Approval of Minutes from the City Council Special Work Session of March 11, 2014; Joint Meeting with Urban Renewal Agency, Audit Committee, and City Council of March 17, 2014; Regular City Council Meeting and Local Contract Review Board Meeting of March 17, 2014; Special Meeting and Executive Session of March 24, 2014; and Town Hall Meeting of March 31, 2014 (Hawker)
- B. Authorization for Local Approval of OLCC License Renewals within the City of Newport
- C. Mayoral Committee Appointments
 - 1. Confirm the Mayor's Appointment of Evonne Mochon Collura to the Library Board for a Term Expiring 12/31/2014
- D. Approval of Special Event Permit Fee Waiver Requests for:
 - 1. Newport Marathon
 - 2. Loyalty Days
- E. Excuse Absence of the City Manager from the September 15, 2014 City Council Meeting

VI. Public Hearing

This is an opportunity for members of the audience to provide testimony/comments on the specific issue being considered by the City Council. Comments will be limited to three (3) minutes per person. Speakers may not yield their time to other.

- A. Public Comments and Possible Action on the Approval of Ordinance No. 2063 - Moratorium on Medical Marijuana Dispensaries

VII. City Manager Report

All matters requiring approval of the City Council originating from the City Manager and departments will be included in this section. This section will also include any status reports for the City Council's information.

- A. Consideration of Resolution No. 3665- Curbside Compostables Collection Program
- B. Consideration of Resolution No. 3668 Authorization a CWSRF Loan Agreement for Agate Beach Wastewater Improvements
- C. Approval of Oregon Water Resources Department (ORWD) Grant Award Contract- Big Creek Dams #1 and #2 Seismic Stability and Retrofit Feasibility Study
- D. Approval of Amendment No. 2 to ODOT Local Agency Flexible Funds Program Agreement for the Hwy 101 Pedestrian Crossing Improvements Project
- E. Initiation of Street Vacation for Portions of SW 31st Street, SW 32nd Street, SW 33rd Street, SW Coho Street, SW Brant Street, SW Abalone Street, and SW Anchor Way.
- F. Status Report on the Preparation of the 2014 -15 Fiscal Year Budget

VIII.

LOCAL CONTRACT REVIEW BOARD MEETING AGENDA

Monday, April 7, 2014
City Council Chambers

- A. Call to Order
 - B. Approval of Amendment No. 2 to Task Order No. 9 for Brown and Caldwell, Inc. for Construction Engineering Services for Big Creek Pump Station Force Main Project
 - C. Notice of Intent to Award the Big Creek Pump Station Force Main Project
 - D. Adjournment
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IX. **Report from Mayor and Council**

This section of the agenda is where the Mayor and Council can report any activities or discuss issues of concern.

X. **Public Comment**

This is an additional opportunity for members of the audience to provide public comment. Comments will be limited to five (5) minutes per person with a maximum of 15 minutes for all items. Speakers may not yield their time to others.

XI. **Adjournment**



CITY MANAGER'S REPORT AND RECOMMENDATIONS
CITY COUNCIL AND LOCAL CONTRACT REVIEW BOARD AGENDA
Monday, April 7, 2014
Council Chambers

This report is an executive summary of this agenda packet with recommended actions for the City Council. Detailed departmental reports, minutes and other supporting materials are provided within the full agenda packet where referenced.

AGENDA ITEMS

IV. Proclamations, Presentations, and Special Recognitions

- A. Mayor Roumagoux will be proclaiming April 1, 2014 to be National Service Recognition Day in the City of Newport.
- B. Mayor Roumagoux will be proclaiming April 7-13, 2014 to be National Public Health Week in the City of Newport.
- C. Mayor Roumagoux will be proclaiming April 13-19, 2014 to be National Library Week in the City of Newport.
- D. Mayor Roumagoux will be proclaiming April to be Child Abuse Awareness and Prevention Month in the City of Newport.
- E. Newport Police Department will be swearing in a City of Newport Police Officer.

V. Consent Calendar

Background:

The consent calendar consists of items of a repeating or routine nature considered under a single action. The recommended actions on the consent calendar are as follows:

- A. Approve the Minutes from the City Council Special Work Session of March 11, 2014; Joint Meeting with Urban Renewal Agency, Audit Committee and City Council of March 17, 2014 Regular City Council Meeting and Local Contract Review Board March 17, 2014; Special City Council Meeting and Executive Session of March 24, 2014; Town Hall Meeting of March 31, 2014.
- B. Authorization of Local Approval of OLCC License Renewals within the City of Newport. Annually OLCC considers renewal of various licenses within local jurisdictions across the state of Oregon. Police Chief Mark Miranda has indicated that no OLCC licenses have risen to a level that would warrant further investigation prior to the annual license approval by the City Council. Authorization by the Council will allow staff to act on these renewals when received by the OLCC. There are approximately 100 licenses issued within the City of Newport.
- C. Confirm the Mayor's Appointments to the Following Committees:
 - 1. Confirm the Mayor's appointment of Evonne Mochon Collura to the Library Board for a Term Expiring 12/31/2014.

- D. 1. Approval of Special Event Permit Fee Waiver Request from the Newport Marathon sponsored by the Newport Boosters for \$2925 in fees, with funds in the same amount being transferred from the Transient Room Tax Fund to the General Fund. On May 31, 2014, the Newport Boosters Club will be sponsoring the 16th annual Newport Marathon between the hours of 6 AM and 2 PM. This event anticipates 1200 participants and 2000 to 3000 spectators for the event. The Newport Marathon costs are estimated at \$2925 for police and public works accommodations for this event. In the past, The Newport Marathon has not paid event fees. Please note that at a staff level we are reviewing the special event permit policy that the city utilizes to evaluate these types of requests. At this time, I would recommend that the city continue, for 2014, to waive the special event permit fees for this event with the costs being appropriated from the Transient Room Tax Fund to the General Fund, due to the large number of people that are drawn to the community for this event, with no charge for spectators to view this event.

Alternative: If alternative action is desired, this item should be removed from the consent calendar.

The city has utilized a policy which would waive 35% of the city's total fiscal impact of the event with the event sponsors being charged the balance of the cost. In this case \$835.71 would be transferred from the Transient Room Tax Fund to the General Fund with the balance due to the city from the Newport Marathon in the amount of \$2089.29. (See City Records Proposed Motion include in the City Council agenda packet.)

Recommendation: I am recommending for 2014 that the City Council concur with past practices on this event and wave the special event fees for the Newport Marathon.

2. Approval of Special Event Permit Fee Waiver Request from the Newport Loyalty Days and Sea Fair Festival Association, Inc. for \$6,155 in fees, with past support by the General Fund and the other half by the Transient Room Tax Fund. Newport Loyalty Days and Sea Fair Festival Association, Inc. has scheduled a 58th annual Newport Loyalty Days Parade for Saturday, May 3, 2014. The events include the annual two-hour parade which will begin at 12 noon. Last year the cost for police services and public works services were waived by the City Council. Again this is a free event for spectators and is a significant community event. Based on past practice, I am recommending that the special event fees be waved for Loyalty Days. Again, at a staff level we are reviewing the special event permit policy that the city utilizes to review these particular projects.

Alternative: If alternative action is desired, this item should be removed from the consent calendar.

The city has utilized a policy which would waive 35% (\$2,154.25) of the city's total fiscal impact of the event with the event sponsors being charged the balance of the cost. In this case the city would transfer 50% (\$1077.13) from the Transient Room Tax Fund to the General Fund with the balance due to the city from the Loyalty Days Association \$4000.75. (See City Records Alternation Motion include in the City Council agenda packet.)

Recommendation: I am recommending for 2014 that the City Council concur with past practices on this event and wave the special event fees for the Loyalty Days.

- E. Excuse Absence of City Manager from the September 15, 2014, City Council meeting to attend the Annual ICMA Conference in Charlotte, North Carolina on September 13 - 17, 2014. This is the annual national conference that I have normally attended. Participation in the annual conference is an important part of maintaining my ICMA credential status. This year's conference will fall on the 2nd meeting in September of the City Council, and I respectfully request that the City Council consider excusing my attendance from this meeting. Please note that I will prepare all agenda background materials for the September 15, 2014, City Council meeting prior to my departure for this conference.

Recommended Action:

I recommend that the Council approve the following motion:

I move approval of the consent calendar for the April 7, 2014 City Council meeting.

Fiscal Effects:

None

Alternatives:

Any Councilor may have an item on the consent calendar removed and considered separately upon request.

Agenda Packet Reports:

Minutes from City Council Special Work Session of March 11, 2014; Joint Meeting with Urban Renewal Agency, Audit Committee, and City Council of March 17, 2014; Regular City Council Meeting and Local Contract Review Board Meeting of March 17, 2014; Special Meeting and Executive Session of March 24, 2014; and Town Hall Meeting of March 31, 2014.

Letter from Chief Miranda regarding OLCC Administrative Review

Application from Evonne Mochon Collura to serve on the Library Board are included in the full packet.

Agency Agenda Item Summaries from Peggy Hawker on Special Event Permit Fee Waiver Request for Newport Marathon and Loyalty Days.

VI. Public Hearing

Agenda Item: VI.A.

Consideration of Ordinance No. 2063 Creating a Moratorium on Medical Marijuana Dispensaries.

Background:

At the March 17, 2014, City Council meeting, the Council directed the City Attorney and City Administration to develop an ordinance to enact a moratorium under the provisions of SB1531 for consideration at the April 7, 2014, City Council meeting.

On March 7, 2014, SB 1531 was approved by the state legislature and forwarded to the Governor for signature. SB 1531 allows a city or county to adopt ordinances that impose reasonable regulations on the operations of medical marijuana dispensaries that are registered or applying for registration under ORS 475.314(12) which are located within that local unit's jurisdiction. These regulations include hours of operation, reasonable limitations on where medical marijuana dispensaries may be located within a city, and reasonable conditions on the manner in which the medical marijuana dispensaries may dispense medical marijuana.

In addition, this act allows the governing body of a City or County to adopt an ordinance enacting a moratorium on the operation of medical marijuana dispensaries through May 1, 2015, to allow for evaluating these regulatory options, if the moratorium is enacted no later than May 1, 2014. Prior to March 3, 2014, the city had received 2 applications for business licenses for opening medical marijuana dispensaries within the City of Newport. As you are aware in both cases business licenses were inadvertently issued by the finance department. After this was discovered, notices were sent to both applicants that the license they received prior to the legalization of medical marijuana dispensaries were invalid and that no medical marijuana dispensaries have been authorized within the City of Newport. We certainly apologize for any confusion that has resulted from the handling of the business license application process for these 2 businesses. The regulatory environment in dealing with medical marijuana dispensaries has been a constantly evolving process which certainly has created confusion at the local level and state level and private entrepreneurs wishing to enter this market. There are a number of new options that cities and counties can consider in the regulation of medical marijuana dispensaries. In order to allow for adequate time to evaluate these new regulatory tools, cities and counties, may now enact a moratorium on the licensing of medical marijuana dispensaries within their local jurisdictions. For those business entities that have preceded in registering their medical marijuana dispensary with the state, the act would allow the proposed dispensary to surrender registration under this subsection if a moratorium is imposed. It provides that the State Authority may refund any fee imposed by the authority pursuant to ORS 475.314(12).

City Attorney Rob Connell believes it would make sense for the city to consider imposing a moratorium through May 1, 2015 on medical marijuana dispensaries if the City Council would like to take additional time to review the new local regulatory options. This would give the City Council and staff adequate time to review changes in state law to consider what additional local controls may be appropriate for the City of Newport to impose. Please note that City Council could suspend a moratorium at any point prior to May 1, 2015, at the conclusion of the review of any local regulations to address the medical marijuana dispensary regulations for the City of Newport. It is likely that this review of the regulatory standards would take 3 to 6 months to complete.

Ordinance No. 2063 prevents the operation of any medical marijuana dispensaries through May 1, 2015, unless rescinded sooner. It authorizes the city manager to implement reasonable policies and procedures and ratifies previous actions taken in regards to medical marijuana dispensaries within the city. Furthermore, the ordinance provides for immediate effect upon adoption by the City Council.

I have included a number of communications received regarding the moratorium for your review in the agenda packet.

Recommended Action:

I recommend the City Council approve the following motion:

I move that Ordinance No. 2063, an ordinance declaring a moratorium on medical marijuana dispensaries and declaring an emergency, be read by title only and placed for final passage.

The Mayor will then ask for a voice vote on whether to read the ordinance by title only and place for final passage.

If approved, city recorder read the title of the ordinance.

A roll call vote on the final passage of the ordinance is requested by the Mayor and taken by the City Recorder.

If the 1st motion is approved, a 2nd motion is in order

I move that the Planning Commission be requested to review the regulatory options provided by SB1531 in the local regulation of medical marijuana dispensaries and that the City Attorney and City Manager review any local taxation issues for medical marijuana.

Fiscal Effects:

None by approving the ordinance.

Alternatives:

Do not impose a moratorium, modify the expiration date on the moratorium, do not explore for the local taxation issue for medical marijuana or as suggested by the City Council.

Agenda Packet Reports:

Proposed Ordinance No. 2063

SB 1531

Communication from Jim Whitfield and Jack O'Neill requesting consideration to open the facility at least until June 30, 2014, under the business license that have since been deemed invalid.

Other e-mail communications regarding moratorium

News article regarding Ashland, Oregon implementation of a moratorium.

VII. City Manager Report

Agenda Item: VII.A.

Consideration of Resolution No. 3665- Curbside Compostables Collection Program

Background:

At the March 17, 2014, City Council meeting, the Council voted unanimously to authorize the establishment of a curbside compostables collection program in accordance with section 9 of the Solid Waste Franchise Agreement with Thompson Sanitation Service with a limited opt out for customers electing to use a 24-gallon weekly roll cart for household garbage. The rates for all customers, except those using the 24-gallon weekly roll cart will be increased to \$6.59 per month at initiation of the service. It was noted that the final resolution would be considered at the April 7, 2014, City Council meeting. Since authorization, various adjustments have been made to the resolution to incorporate thoughts and ideas outlined at the March 17, 2014, City Council meeting. The resolution has also been reviewed by Thompson Sanitation Service and has been forwarded to City Attorney Rob Connell for his review as well.

Based on consideration of many comments made on the addition of the separate collection of compostable waste, the final plan provides that those customers utilizing a 24-gallon weekly roll cart service have the option of not participating in the curbside compostables collection program. This will help address many of the comments received by the City Council indicating that they had very little garbage that is placed out at curbside, and their solid waste did not justify having a 3rd container for compostable materials. Those customers who elect to use a 24-gallon weekly roll cart without the collection of compostable materials will pay \$19.50 per month. If a customer

chooses to use a 24-gallon weekly roll cart service with the separate compostables container, an amount of \$25.74 per month will be billed to them. In addition, to address the concerns over the size of the 95-gallon compostable container, Thompson's Sanitary Service will be providing an optional 65-gallon container for compostable materials.

I believe that with the extensive public discussions regarding this program, along with the willingness of Thompson Sanitary Service to modify the program to address a number of the concerns expressed for the curbside collection of compostable household waste, a significantly better service has been developed that will be introduced later in 2014. This service will meet the City Council's goal to divert compostable waste from landfills so that these materials can be utilized to generate a usable product in the way of compost and preserving valuable space in the landfills in Oregon.

I've also attached a copy of a letter from Cathie Rhoades with Oregon Department of Environmental Quality indicating that Lincoln County will qualify for a 2% credit for the addition of the Newport residential composting program.

Recommended Action:

I recommend that the City Council approve the following motion:

I move that the City Council approve Resolution No 3665 authorizing the establishment of a residential compostables collection program for the City of Newport.

Fiscal Effects:

The city receives a 5% franchise fee on the gross receipts from Thompson's Sanitary Service. Based on 2400 customers and no one opting out, the city would realize \$9489 per year in franchise fees based on the terms of the agreement.

Alternatives:

None recommended.

Agenda Packet Reports:

Resolution No. 3665

Information on "Free Composting Day!"

Information on the various options for garbage, recycling and compostables offered by Thompson Sanitary Service

Letter from Cathie Rhoades with Oregon Department of Environmental Quality

Agenda Item: VII.B.

Consideration of Resolution No. 3668 to Authorize a CWSRF Loan Agreement for Agate Beach Wastewater Improvements

Background:

Public Works Director Tim Gross has been working with Interim Finance Director Bob Gazewood to explore options for financing wastewater projects for the City of Newport. After evaluating a number of options, the best option for financing wastewater improvements in the Agate Beach area was through Oregon Department of Environmental Quality through the Clean Water State Revolving Fund (CWSRF). The Oregon Department of Environmental Quality has offered a loan

agreement for the City of Newport in the amount of \$8,906,800 for the Agate Beach Wastewater Collection System. The interest rate on this loan will be 2.54% per year. Please note that the work will include a number of projects including the Big Creek Forced Main, Big Creek Pump Station, the 48th Street Pump Station and force main, the Schooner Creek Pump Station and force main, as well as various portions of gravity sewer downstream of the force mains. The loan agreement has been reviewed by both legal counsel and the city Finance Department. One advantage of the SRF program is that repayment is not required to begin until 6 months after the project is completed. These funds, under this program, are dispersed to the city based on quarterly reimbursement for work completed on the eligible projects. Until the project is completed the city only pays interest on the funds disbursed. The city does not begin paying principal on these funds until all the projects have been completed.

Public Works Director Tim Gross has done an excellent job of pulling these projects together to address long-standing issues with the sanitary sewer system in the Agate Beach area. I have worked for many years with the SRF loan programs in Michigan and this program is an excellent source of funds with very favorable terms for these types of improvements. This program will save water and sewer rate-payers a significant amount of money during the development and construction of these projects through the life of these bonds.

Recommended Action:

I recommend the Council approve the following motion:

I move that Resolution No. 3668 authorizing a Clean Water State Revolving Fund (CWSRF) loan agreement with the Oregon Department of Environmental Quality for Agate Beach Wastewater Improvements in the amount of \$8,906,800 be approved by the City Council.

Fiscal Effects:

As described within this report.

Alternatives:

None recommended

Agenda Packet Reports:

Attached is the report prepared by Tim Gross, Public Works Director, on CWSRF Loan Agreement for Agate Beach Wastewater Improvements which include Resolution No. 3668 and the Clean Water Revolving Fund Loan Agreement.

Agenda Item: VII.C.

Approval of an Oregon Water Resources Department (ORWD) Grant Award Contract for Big Creek Dams #1 and #2 Seismic Stability and Retrofit Feasibility Study.

Background:

Public Works Director Tim Gross has been working with Chase Park Grants and the Oregon Water Resource Department (OWRD) to secure funding for continuation of the seismic stability and retrofit feasibility study on the Big Creek dams. The application submitted on behalf of the city was awarded a score of "84" which was the highest score of all applicants in this funding round. On March 10, 2014, the city received notification from OWRD that the city was awarded the grant for the full amount of \$250,000 to continue this evaluation.

This work was initiated following the city's construction of a new water treatment facility when it was discovered as part of that project that the soils under the Big Creek dam # 1 are unstable and have the potential for seismic failure. A preliminary study was conducted showing that both dam structures were at significant risk of failure during even a moderate seismic event. The Oregon Water Resource Department Dam Safety Division has evaluated the Big Creek Dams as the 2nd and 3rd most critical dam structures in the State of Oregon. In 2014 the city selected an engineer of record for dam study and design with a task order being issued in October of 2013 for phase 1 of a feasibility study. The addition of the \$250,000 grant will fund the remainder of the phase 1 study. OWRD is allowing previous expenditures on the phase 1 study to count as a match for this grant.

Recommended Action:

I recommend that the Council approve the following motion:

I move that the Mayor be authorized to execute an agreement with the Oregon Water Resource Department for the Water Conservation, Reuse and Storage Grant Program in the amount of \$250,000 for the Big Creek dams # 1 and # 2 Seismic Stability and Retrofit Feasibility Study.

Fiscal Effects:

This work will be included in the 2014-15 fiscal year budget with the support of the grant program funds.

Alternatives:

None recommended

Agenda Packet Reports:

Attached is the report prepared by Tim Gross, Public Works Director, on Water Resources Department (ORWD) Water Conservation, Reuse & Storage Grant Award Agreement with the attached grant agreement.

Agenda Item: VII.D.

Approval of Amendment No. 2 to the ODOT Local Agency Flexible Funds Program Agreement for the HWY 101 Pedestrian Crossing Improvements Project.

Background:

At the March 17, 2014, City Council meeting, the Council approved a right-of-way agreement with ODOT to move the Highway 101 Pedestrian Improvements Project forward based on a commitment of additional state funding to complete this project. Earlier the City Council had increased its contribution to this project by \$150,000 in order to keep this project alive. The project will improve crosswalks on US 101 at NW 15th Street, NE 10th Street, NW 3rd Street, SW Angle Street, SW Lee Street, SW Alder Street, SW Abbey Street, and SE Bayley Street. In addition, a crosswalk at SW Neff Way will be removed. The improvements vary on each of these intersections but the projects may include one or more elements of curb extensions, pedestrian islands, pedestrian warning signs and striping. As part of this amendment, the ODOT Bike and Pedestrian Program has agreed to contribute an additional \$250,000 to this project in order to

meet the current estimated project costs. It is anticipated that this project will be bid on November 20, 2014.

Recommended Action:

I recommend that the City Council approve the following motion:

I move that the City Council approve amendment No. 2 to the ODOT Local Agency Flexible Funds Program Agreement No. 28487 for the Highway 101 Pedestrian Improvements Project and authorize the Mayor and City Manager to sign the agreement on behalf of the City of Newport.

Fiscal Effects:

The City Council has previously authorized participation in this project for an additional amount of \$150,000. The \$250,000 of additional funds from the state will meet the additional costs as projected by ODOT to complete this project. Please note that there is some confidence in the new estimate for this work. In the event, the cost exceeds the current estimates, the parties will need to discuss cost share.

Alternatives:

None

Agenda Packet Reports:

Attached is the report prepared by Tim Gross, Public Works Director, on Amendment No. 2 to ODOT Local Agency Flexible Funds Program Agreement for the HWY 101 Pedestrian Crossing Improvements Project which includes Agreement Amendment No 2.

Agenda Item: VII.E.

Initiation of Street Vacation for Portions of SW 31st Street, SW 32nd Street, SW 33rd Street, SW Coho Street, SW Brant Street, SW Abalone Street, and SW Anchor Way.

Background:

Community Development Director, Derrick Tokos, has been working with the Oregon Museum of Science and Industry (OMSI), Investors XII, LLC and Dick Murry (Toby Murry Motors) to reconfigure road right-of-way adjoining various properties to facilitate the overall development of property and infrastructure within this area.

Much of the land impacted by possible street vacations and the re-designation of new rights-of-way in this area was part of Waggoner's Addition to South Beach which was platted in July 1892. The land was platted in a traditional grid format to meet the needs of the community at that time. Community Development Director Derrick Tokos has been working closely with property owners in this area in order to take a look at reconfiguring the rights-of-way in order to accommodate future growth and development of this site. Part of the proposed plan would be to vacate a series of existing platted streets with the development of new roadways to improve the access, maximize land use, and improve circulation to this area.

There are a number of important considerations that the City Council needs to make in determining whether the Council wishes to initiate these vacations. In 2008, the City Council adopted policies to govern when Council would initiate Street vacation options instead of private property owners. These policies require consideration of the extent the vacation would benefit the

public, the extent of current and future use of the right-of-way, environmental and geological impacts, financial factors, effect on other property owners, consistency with applicable plans and quality of information available on these to proceed with vacation. Included in Mr. Tokos' agenda summary report is an evaluation of how this request fits within these guidelines previously adopted by the City Council. I concur with Mr. Tokos that this analysis indicates that the rationale for the Council to initiate these vacations is meant for this comprehensive project.

A conceptual map has been included for the proposed Sunset Dunes subdivision which would include a new SW Abalone and SW 35th Street right-of-way to improve the circulation of traffic to these properties and allow for the larger scale project to move forward. Furthermore, the City of Newport has entered into a nonbinding Memorandum of Understanding with OMSI which indicates that the city would initiate street vacation proceedings for certain rights-of-way in exchange for the dedication of new rights-of-way for SW 30th Street and SW Abalone Street.

Furthermore, please note that the consideration of initiating street vacation would be coupled with the proposed subdivision plat that would position SW 31st Street, SW 35th Street, and SW Abalone Street right-of-way for future street improvements.

Finally, the various exchanges will facilitate the development of signalized intersection at SW 35th Street and Highway 101 to improve the safety and flow of traffic to various properties and attractions off Highway 101. Overall this is a very ambitious public and private endeavor that will help reshape the area surrounding Highway 101 in South Beach.

Recommended Action:

I recommend that the City Council approve the following motion:

I move that the City Council initiate street vacation proceedings for portions of SW 35th Street, SW 32nd Street, SW 33rd Street, SW Coho Street, SW Brant Street, SW Abalone Street and SW Anchor Way, as identified in the report from Community Development Director Derrick Tokos with public hearings scheduled to coincide with the hearing process for the subdivision plat that will reconfigure the SW 30th Street, SW 35th Street, and SW Abalone Street rights-of-way for future street and infrastructure improvements.

Fiscal Effects:

None by initiating this process

Alternatives:

Do not initiate the street vacations or as suggested by the City Council.

Agenda Packet Reports:

Agency Agenda Item Summary from Community Development Director, Derrick Tokos for the April 7, 2014, City Council meeting which includes an analysis of the 2008 policy for when the City Council initiates right-of-way vacation proceedings and includes an illustration of the conceptual development of the Sunset Dunes subdivision with the realignment of various street rights-of-way.

Agenda Item: VII.F.

Status Report on the Preparation of the 2014 -15 Fiscal Year Budget

Background:

Interim Finance Director Bob Gazewood and I continue to work on developing the proposed budget for the fiscal year that will begin July 1, 2014. We have collected the various requests for operational and capital outlay expenditures by the city's various departments. This information has been compiled by the Finance Department staff and we are currently reviewing these requests to develop a proposed budget for the next fiscal year. Please note that the First Budget Committee meeting is scheduled to be held on Wednesday, April 30, 2014, at 6 PM, with the 2nd Budget Committee meeting being held on Wednesday May 7, 2014, at 6 PM, and the final Budget Committee meeting scheduled for Wednesday, May 14, 2014, at 6 PM.

In evaluating our budget preparation schedule, we had intended to have the budget printed and delivered to the budget committee by Friday, April 18, 2014. In reviewing the status of our progress, we will likely need a few more days in order to complete this budget and I am proposing a revised budget delivery date of Thursday, April 24, 2014. This will provide the budget to the Budget Committee 6 days prior to the 1st Budget Committee meeting and 13 days prior to requesting any preliminary consensus on modifications to the budget. It is important to both Bob and myself to have a clean and accurate budget for consideration by the Budget Committee and this additional time will help to assure this end result. These additional days will ensure a better quality proposed budget for the committee's consideration. Please let me know if there are any objections to this modification.

One further note, budget committee member Don Huster has indicated that he is unable to meet on Wednesday evenings. If the budget committee schedule remains on Wednesdays he is requesting that he be excused from meetings if the meetings can't be rescheduled to a Tuesday or Thursday night. At this point, we have not modified the schedule from what was presented to the City Council and Budget Committee.

VIII. Local Contract Review Board

Agenda Item: VIII.B.

Approval of Amendment No. 2 to Task Order No. 9 for Brown and Caldwell, Inc. for Construction Engineering Services for Big Creek Pump Station Force Main Project.

Background:

The City of Newport has entered into an Engineering Services Agreement dated April 12, 2010 with Brown and Caldwell, Inc. for various services related to the city's wastewater system for activities relating to the bidding and engineering services during the construction of the new force main on NW Oceanview Drive and NW Nye Street. The cost for the construction phase engineering services included in this authorization would be \$65,784.

Recommended Action:

I recommend that the City Council, acting as the Local Contract Review Board, approve the following motion:

I move that the City Council, acting as the Local Contract Review Board, authorize City Manager to execute Amendment No. 2 to Task Order 9 with Brown and Caldwell, Inc. for construction phase engineering services related to the Big Creek Pump Station Force Main Project in an amount not to exceed \$65,784.

Fiscal Effects:

This project will utilize the Clean Water SRF Loan funding through the DEQ. This brings the total Task Order No. 9 contract value with Brown and Caldwell, Inc. to \$245,924.

Alternatives:

None recommended

Agenda Packet Reports:

Attached is the report prepared by Tim Gross, Public Works Director on Amendment No. 2 to Task Order No. 9 for Construction Engineering Services for Big Creek Pump Station Force Main Project which includes Amendment No. 2 to Task Order No. 9.

Agenda Item: VIII.C.

Notice of Intent to Award the Big Creek Pump Station Force Main Project

Background:

On Tuesday, April 1, 2014, 6 bids were received for the construction of a forced main that will be constructed beginning at the Agate Beach Wayside and extending south along Oceanview Drive to NW Nye Street and ending at NW 12th Street. This project is a prerequisite to allow for the replacement of the pump station located at Agate Beach Wayside Station. This project will substantially increase the capacity that will be required with a new pump station to handle wastewater and eliminate overflows into Big Creek. The engineers estimate for the base bid was \$1,678,374. The bids received range from a low of \$1,291,188.75 to a high of \$1,934,584 for this work. The city has scheduled an open house for the public to review this project on April 9, 2014 at City Hall in the City Council Chambers between the hours of 5:30 and 7 PM. Property owners along the route have been notified of this meeting. Construction is expected to start sometime around the end of this month and continue for a 4 month period of time.

Recommended Action:

I recommend that the City Council, acting as the Local Contract Review Board, approve the following motion:

I move that the City Council, acting as the Local Contract Review Board, authorize the City of Newport Public Works Department to issue a Notice of Intent to Award the Big Creek Pump Station Force Main Project to K&E Excavating in the amount of \$1,291,188.75; and authorized the City Manager to execute the contract after 7 days on behalf of the City of Newport contingent upon no protest related to the bidding and approval of the bid documents by the Oregon Department of Environmental Quality.

Fiscal Effects:

This project is being funded with the Clean Water SRF Loan being provided by the Department of Environmental Quality.

Alternatives:

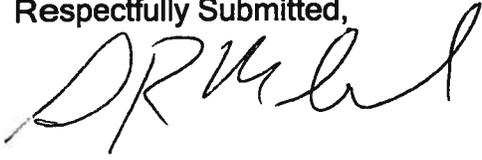
None recommended

Agenda Packet Reports:

Attached is the report prepared by Tim Gross, Public Works Director, on Intent to Award Big Creek Pump Station Force Main Project.

That concludes the City Manager's report and recommendations for the April 7, 2014, City Council meeting.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "SR Nebel", written in a cursive style.

Spencer R. Nebel
City Manager



A PROCLAMATION HONORING
NATIONAL SERVICE RECOGNITION DAY

WHEREAS, service to others is a hallmark of the American character, and central to how we meet our challenges; and

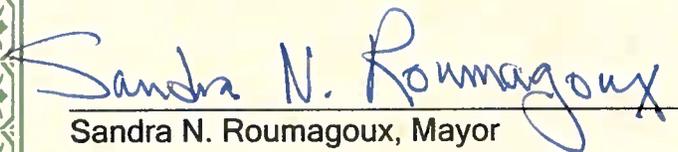
WHEREAS, the nation's mayors are increasingly turning to national service and volunteerism as a cost-effective strategy to meet city needs; and

WHEREAS, three national service volunteers are active in Newport under these programs, Foster Grandparent Program (FGP), the Retired and Senior Volunteer Program (RSVP), and Senior Companion Program (FGP); and

WHEREAS, national service participants address the most pressing challenges facing our cities, from educating students; to supporting veterans and military families; to providing health services; and helping communities recover from natural disasters; and

WHEREAS, national service represents a unique public-private partnership that invests in community solutions and leverages non-federal resources to strengthen community impact and increase the return on taxpayer dollars; and

NOW, THEREFORE, I, Sandra Roumagoux, Mayor of the City of Newport, do hereby proclaim April 1, 2014, as National Service Recognition Day, and encourage residents to recognize the positive impact of national service in our city; to thank those who serve; and to find ways to give back to their communities.


Sandra N. Roumagoux, Mayor





**National Public Health Week 2014
Proclamation**

WHEREAS, the week of April 7 - 13, 2014 is National Public Health Week, and the theme is "Public Health: Start Here;" and

WHEREAS, seven in 10 deaths in the U.S. are related to preventable diseases such as obesity, diabetes, high blood pressure, heart disease, and cancer, and that 27 percent of Lincoln County residents smoke compared to only 16 percent in Oregon; and

WHEREAS, 75 percent of our health care dollars are spent treating these chronic diseases and three percent is spent on prevention of such diseases; and

WHEREAS, foodborne contaminants cause an average of 5,000 deaths, 32,000 hospitalizations, 76 million illnesses, and cost billions of dollars annually. The five most common foodborne pathogens cost the U.S. economy more than \$44 billion each year in medical costs and lost productivity; and

WHEREAS, strong public health systems are critical for sustaining and improving community health and that the Lincoln County Health and Human Services Public Health Division has conducted a Community Health Assessment and is developing a Community Health Improvement Plan to address the health needs identified by the Community Health Assessment for the county residents;

NOW, THEREFORE, I, Sandra Roumagoux, Mayor of the City of Newport, Oregon, proclaim April 7 - 13, 2014 to be National Public Health Week in the City of Newport, and call upon all residents to observe this week by helping families, friends, neighbors, co-workers, and leaders better understand the value of public health, and adopt preventive lifestyle habits in light of this year's theme, "Public Health: Starts Here."

Sandra N. Roumagoux
Sandra N. Roumagoux, Mayor





**National Library Week 2014
Proclamation**

WHEREAS, libraries are the heart of their communities, campuses and schools; and

WHEREAS; librarians work to meet the changing needs of their communities, including providing resources for everyone and bringing services outside of library walls; and

WHEREAS, libraries and librarians bring together community members to enrich and shape the community and address local issues; and

WHEREAS, librarians are trained, tech-savvy professionals, providing technology training and access to downloadable content like e-books; and

WHEREAS, libraries offer programs to meet community needs, providing residents with resume writing classes, 24/7 homework help and financial planning services to teens applying for student loans to older adults planning their retirement; and

WHEREAS, libraries continuously grow and evolve in how they provide for the needs of every member of their communities; and

WHEREAS, libraries, librarians, library workers, and supporters across America are celebrating National Library Week.

NOW, THEREFORE, I, Sandra Roumagoux, Mayor of the City of Newport, Oregon, proclaim April 13 - 19, 2014 to be National Library Week in the City of Newport. I encourage all residents to visit the library this week to take advantage of the wonderful library resources available at your library. Communities matter at your library.

Sandra N. Roumagoux
Sandra N. Roumagoux, Mayor





**APRIL 2014
CHILD ABUSE AWARENESS AND PREVENTION MONTH
IN THE CITY OF NEWPORT**

WHEREAS, it is critical to Newport's future that our children be safe, protected, and nurtured; and

WHEREAS, the incidence of physical, emotional, and sexual abuse of children, as well as neglect of children, continues at an alarming level; and

WHEREAS, effects of child abuse and neglect are felt by the entire community and need to be addressed by the entire community; and

WHEREAS, child abuse and neglect are a nationwide problem, and finding solutions depends upon the involvement of people throughout the nation in every community; and

WHEREAS, it is essential that every citizen in Newport become involved in supporting the efforts of parents and guardians to raise their children in a safe, nurturing environment; and

WHEREAS, everyone must make a personal commitment to create and support the value that raising our children and supporting families is the responsibility of all citizens;

NOW, THEREFORE, I, Sandra Roumagoux, Mayor of the City of Newport, Oregon, do hereby proclaim April 2014 as Child Abuse Awareness and Prevention Month in the City of Newport, and encourage all citizens to join in the observance.

Sandra N. Roumagoux, Mayor



March 11, 2014
12:00 Noon
Newport, OR

CITY COUNCIL WORK SESSION

On Roll Call, Councilors present: Roumagoux, Beemer, Allen, Busby, Saelens, Sawyer, and Swanson.

Staff present: City Manager Nebel and executive assistant Haney.

Also in attendance were Ken Riley and Rob Thompson from Thompson's Sanitary Service (TSS) and Joe Cook, administrator for Western Oregon Waste.

Media present: Dave Morgan from News Lincoln County, Larry Coonrod from the Lincoln County Dispatch, and Dennis Anstine from the Newport News-Times

Roumagoux called the meeting to order at 12:08 p.m., and roll was taken.

1. Discussion and Review of Questions Related to the Curbside Compostables Program Proposed by Thompson's Sanitary Service. Roumagoux reminded the group that at the Council meeting they had promised to complete this session by 2:00 p.m. and added that she had a doctor's appointment and would be leaving at 1:45 p.m. Roumagoux then turned the meeting over to CM Nebel.

Nebel noted that at the last City Council meeting there was a report made to the Council in regards to a composting curbside collection program. At that meeting there were a number of questions that were raised, and as a result of the discussion it was felt that it would be good to have a work session before any sorts of decisions were made as to whether to go ahead or not with a compostable program at this particular time. The Council members were asked to submit any questions and comments to Nebel by a few days after the Council meeting. Nebel put together the questions that were raised by different Council members, and in order to structure the discussion he grouped them by several categories: 1.0 pertains to the service itself, 2.0 is performance and reporting, 3.0 is on the financial aspects of the program, 4.0 is on the contract issues with TSS, group 5.0 pertains to the decision-making process on this issue, and then there were some miscellaneous comments that were provided to him as well, which were attached to the end of this report. Nebel then sat down with TSS to review the questions and asked that they provide a response by Monday afternoon. In the black and white copy, the response is included in the lighter print; the 1.1.1 etc. are TSS's responses to the questions that were raised by the Council. That is the various information that has been compiled on the questions on this issue.

Nebel said that one thing that would be helpful in putting together a recommendation for Monday's Council meeting is to look at these various areas and determine where we are at collectively to the extent we can on the issue of the service as provided and what sorts of things would be included in a resolution. Similarly on performance and reporting. On the financial

issues there are responses to several issues, but he wondered if the Council wanted any other steps taken in that area. He wondered if on the contract issues the responses are acceptable or if there are additional discussions that need to occur there. Then on the decision-making process, he wondered what process the Council wanted to go through in order to make a final decision one way or another on this particular program.

Nebel said those seemed to be the categories for questions and he thought for purposes of reviewing these issues, unless the Councilors had other thoughts, that it made sense just to go right through starting with service. He noted that the scope of service as now proposed would allow for an opt-out provision for customers using a 24-gallon container for their weekly garbage, and the cost for that would be \$19.14. That would actually be a bit of a savings over what the cost is right now for the minimum service you can get from TSS as a homeowner. He said the issues from a service standpoint is if it were truly an opt-in/opt-out program for any containers, there is a legitimate issue as to the impact that the cost would have if it were strictly voluntary for those that opted in because the cost is going to go up. You are going to have the same rates, the same base costs. So Nebel thinks there is a legitimate issue with providing any opt-outs beyond what is provided here. It makes the system not really economically feasible in his opinion. He said this is the way the program is currently constructed. Nebel said that his question is if there are revisions to this mandatory program that the Council would like to consider or if the program as currently constructed is adequate for purposes of having something on the agenda for final vote one way or another.

Mayor Roumagoux noted for the audience members that she would like to have the Council discussion and then the public can ask questions at the end. Audience member Jebousek said that she would just like to have a copy of what is being discussed. It was noted that the materials were posted on the City's website. The media noted that they didn't have a copy either. For future reference, Saelens reminded everyone that they can get signed up for an email notification when something is posted to the City's website. Allen stepped out briefly to have copies made.

Nebel continued by noting that the first question is in regards to the service as proposed; and that is as a service with opt-out for those that choose to use a 24-gallon container, those would be the ones that could opt-out, and they would get a reduction in the current cost for the service and would not be required to have a compostable container. Otherwise it's a mandatory program for the balance of the customers for TSS. He asked if that was something that was acceptable or if there were some changes that the Council would like to discuss. Nebel said the other thing too is that the Council members should feel free to raise any questions about the answers provided by TSS.

Busby said that he understands why TSS doesn't want everybody to keep their 35-gallon container because it would probably lessen the people participating in the program; but he still thinks that's a subject that is a big point with people in town. He thought there are a lot of people that would like to be out of the program but maintain the 35-gallon capability. He thought that is a big question. The other question Busby had is that TSS says the 95-gallon container is the optimum for compostables, and they have subsequently allowed for a 65-gallon. One of the questions in the list was how about a 35-gallon; and in their answer, TSS said as they had before that that's not big enough to be optimum. Busby asked how about making it 95 and

35 instead of 95 and 65. He said that he is assuming that for TSS the cost difference is probably negligible. He said since there are so many 35-gallon containers out there already it might even be cheaper. As far as the pick-up goes, they are all the same. Busby said it's been brought up by several people because it's an issue of storage space for people living in condos and small places; and the 35-gallon container is considerably easier to store.

Saelens wanted to reply to Busby, but first stated for the record that he works for Lincoln County as the Solid Waste District Manager. However he is making statements based on his professional experience as the SWD Manager, and there is no financial or ethical conflict. Saelens said in regards to the size of the containers, in general this concept of if you want to call it "forcing" a particular size of containers on the public is a well-understood and purposeful mechanism used throughout the state to reinforce the whole idea of reduce, reuse, recycle. It's not like it's unique here. He said that DEQ might even question TSS as to why they selected an alternative as compared to the standard. Saelens said that he wasn't disagreeing that a 35-gallon should be an option for some people. But the issue he sees from a personal standpoint is that he knows in the past whenever he tried to stick anything very large, whether it be limbs or cardboard that's not tore up or whatever, into a 35-gallon can it's so tall and narrow that stuff jams in there really easily. Then what you end up with is basically the truck trying to shake the bejesus out of that container to get the stuff out of it. He said people complain that TSS didn't take all of their trash and then realize that they used 500 pounds of pressure to get all of that stuff in there; well then it doesn't come out. Saelens said that he's not saying that's not something to think about; but there is some reasonableness to having a certain size container for the type of material we are talking about.

Sawyer wanted to echo what Saelens said. He said that his sister lives in Sacramento, and he goes there often and does pruning at her house; and her bins are 95-gallon. He thought that's probably the industry standard. He added that it's nice when you are doing limbs and stuff to have a larger container because you don't have to cut them up as small.

Rob Thompson wanted to answer on one thing that hadn't been brought up; and that was on the process of purchasing containers if this does have support and it moves forward as a program they are going to offer. TSS has to buy carts. With the opt-out there is already some uncertainty as to how many customers will choose that as one of their options, so that changes the number of carts that need to be purchased. If we have even more options, that's additional carts. Rob said that Busby is right, the cost difference between carts is not that significantly different; but TSS has to have some level of inventory to be able to deliver the service that they say they are going to offer. Rob said there is also another cost factor in that they have a cart-route driver; and every time there is a different iteration of carts that provides additional labor on their behalf to manage those and supply those different desires to those customers. That's a potential increase in cost or inefficiency by having so many choices.

Busby said that was the answer he expected and that is why he said why not offer maybe a 95 and a 35 rather than 95 and 65. He thought we need to come up with something. He realized that not everybody is going to be happy. Ken Riley thought that ultimately the answer he would give is that when the 35-gallon carts are jammed full, the truck does have to do extra work, and it

does increase breakage, and that does increase costs. He said it's not out of the question, but there are certain reasons why that would be difficult.

Thompson drew everyone's attention to the cart he had brought. He said that is a 21-gallon roll cart, and he pointed out that there is a hump in the back on the inside. As he stated in their answers, originally they had a 20-gallon cart in mind. The cart he brought was an actual example of a 21-gallon. When Thompson asked for a quote from this manufacturer, they sent it for a 24. The reason for that is that the 21 has been replaced because of operational challenges with dumping the trash out of the vessel. He said that the hump in the back has been eliminated, the shape is different, and the size is slightly larger. It still only holds 21 gallons of liquid because the lip on the front is lower than the lid on the back; but it is 24-gallons in volume for bulky waste. Thompson said they do have some unknowns as far as operational abilities with a smaller cart; and that same concern would hold true with a 35-gallon compostable cart with limbs and bulky items. He said that also clarifies why they talked about 21 gallons to begin with and now it's a 24-gallon. The reason the manufacturer made the change is operational effectiveness so stuff falls out.

Busby said that he just thought people in condos and apartments would have an issue. Thompson said that condos and apartments are not part of the program. If they want to be, they can. But that would be because they see it working for them; and TSS would include them at the same rate. They are not part of the roll out. Busby asked when Thompson says that condos are not part of it, was he talking ones that have bulk pick up because there are condos that have individual pick up; and those are the ones Busby is thinking about. Riley said that's a good clarification. If you have individual service, you are part of the group. Busby said that would be an ideal candidate because they are going to have food waste, but little woody debris.

Swanson had a question about woody debris in the smaller carts and asked if TSS still does not want the lid up. She asked if there is still going to be a charge if the lid is up because they have branches that are too tall for the cart. Thompson said there is not. He said their industry charges based upon the garbage can and the volume of its size. Their industry has looked at this for a long time and if that is really the best mechanism to establish the cost of the one vessel. There's possibly a better way of doing this by total volume at the curb. It doesn't matter what you put out, the price is based on the total volume because as we do a better and better job of recycling, which is the state goal and local goal, the pressure on the garbage can to support the rate associated for all the different services becomes a lot on that. It's the same thing with funding services through solid waste tons only; as those tons shrink the funding pressure becomes greater and greater. There is not a lid-up charge because that's focused on the garbage can. Riley added that they obviously would prefer the lid down for various reasons.

Allen thought that what Busby said about individual condo users was a really good point. Allen thought that TSS should consider if we are going to have a compostable program with a 95 and 65 that TSS is offering as options, there will be folks that live in condos with individual pick-up that won't need it for yard debris; it's going to be for food waste only. The 35-gallon might be appropriate for them. Allen thought if we are going to put a program in place, we should try to tailor it for every situation possible within TSS's framework and maybe acknowledge it. Maybe it's not going to be a lot of people, but why not provide that service to them if we can do it. This

is a new service. If we move forward with it, it is going to cost more; let's try to address every issue possible. He acknowledged what Busby said about how for the individual condo owners in particular that 35-gallon compostable pick-up could be useful for them.

Nebel asked if there are two containers that TSS is willing to do for compostables, is the 35 and 95 an option instead of being 65 and 95. As he stated in his answers, Thompson said that he had indigestion over the 35 to be operationally functional for this purpose. He has a real concern that that will work well. He said that he understood what Allen had just said about the food. Thompson said that he is not saying no to that, but that just continues to lose the control of the cost of the program through having so many choices. Nebel said that you still have two choices. Thompson said that he thought the better choices are the 65 and 95, which is what they have already proposed originally and discussed. He thought that as far as alleviating space issues, the can doesn't have to be stored inside. It was noted that some places require they be stored inside.

Saelens asked if we were to consider this 35-gallon option, could it be set up so it's only an option for condominiums and not an option for curbside. He said that he agrees that by already having a 65 and 95 option for curbside on your typical city lot, that's a reasonable break out. If what we're really concerned about are these condominium owners, then that 35 if it were to be part of the program should only apply to them and not be an option for every citizen. Saelens said that he would almost guarantee that everybody is going to underestimate the space they need for woody debris on a typical home lot and then you have the whole complication of everything that's been described so far.

Beemer said that having owned a large number of rentals and having done his own landscaping and chipping, he could speak to this. He didn't know how many condos have individual service but wouldn't expect that it's really a large number. He thought the fact that TSS has offered the 95 and 65, is pretty reasonable. He thought the need for anything less than 65 for compostables is pretty minimal. Beemer doesn't think the Council can expect TSS to go for three different sizes, so he would go with those two larger ones that they suggested. He said when it comes to trimming plants and so forth, you can fill a 65 up in a hurry with grass clippings, trimmings, etc. He thought that is the practical. He added that we know we are not going to make everybody happy. He doesn't think we are going to have that many people with indigestion over not having anything smaller than 65. In response to what Beemer said, Swanson said that she also thought that having a 95 and a 65 is appropriate. She understands what condo owners and some of the older people are saying. She said but there has to be a compromise and part of that compromise is that TSS is running a business as well as a service. Busby said that he understands you can't have a hundred sizes, and maybe three is too many; but if we do agree on doing it, he would hope it is a 35 and a 65 because of those issues.

Roumagoux questioned the procedure and if the Councilors wanted to take each item and come to some sort of consensus on them. Nebel said from his standpoint, in order to draft a recommendation, it would be helpful to know. He said we have two options to discuss here; one is a 35 and 95 and the other one is 65 and 95 as far as compostables containers. He asked if generally there was a direction that the Council was interested in pursuing as building a recommendation that the Council would consider going forward; was there a preference. Allen asked Thompson and Riley what the difference in the footprint size was between the 35 and the

65. Riley said very little as far as the footprint; it does taper wider near the top, but the footprint is pretty similar. It's not twice as big. Nebel noted that the Council is not voting on the issue until Monday night, but from a guidance standpoint it would be helpful to know. The consensus was to go with the 65 and 95 option; but a couple still would like to also see it with a 35 option. Sawyer said that if we had 40% of the customers that were condo owners, and they had issues with it, then he would want to look at the 35; but not if we only have 5% condo use. If we have a huge amount, then he would want to. Saelens said to keep in mind that when and if this program rolls out, there is nothing to stop us through the experience of the program to modify it later based on that experience. Sawyer said it may come to that. You might find that you have 35% condo owners that are upset, and then you could tailor it at that point. Riley said that they know that they don't have that but what they might find is that people do want the 35 as opposed to the 65. However, they don't think that is going to be the case, but they certainly don't know for sure.

Talking about the basic service, Nebel wondered if there were any other elements of the compostable curbside service that was something the Council wanted to discuss at the work session or if that was the primary issue. Saelens wanted to highlight basically how pleased he is over the last couple of weeks with all the various tweaks that have been made responding to what we have heard from the public and preferences for individual Councilors. Saelens told Nebel that he reads through this and it's like it's a masterpiece that responds to each and every issue as far as he is concerned. He said he is satisfied.

Moving on to the second group of questions related to performance and reporting, Nebel said this was an area that was discussed by a number of Councilors. He asked for comments or questions regarding what the Council would want incorporated into the resolution in regards to performance and reporting.

Busby said that first of all, it seems that TSS has been very agreeable to providing us with the reporting we asked them for. But he said the question is what we are going to do with it. We could have all kinds of reports; but if we don't set any standards and then act as a result of those reports, where are we at. If we say we get 10% participation, we are going to do this; if we get 50% participation, we are going to do that; if the cost goes up by this much, we will do this; if it goes up by that much, we will do that. Busby thought we need to put some tags on those things; set some targets other than just say we are going to get reporting. Roumagoux asked if that would be at the six-month interval. Busby said first of all, you set the interval; then you set what are we going to do with it. He thought you would decide the things you would measure such as participation, customer complaints, cost issues, all those different kinds of things. If the price goes up by 50% next year, what are we going to do? We can't just say that's okay. Maybe we say if the price goes up more than 10%, we revise the program or something to that effect. He didn't think that we just leave it open ended; we need to take those reports and measure them and do something with those measurements.

Swanson said when she was talking to TSS, she got the impression that when they did their annual reports there were benchmarks already set in. Thompson said he would be happy to respond at this juncture; but before he did, he thought it was important to recognize that Thompson and Riley looked at these questions and tried very hard to give the best possible

answers. What they noticed through the process of looking at all of the questions, is that there is a lot of questions that don't really have to do specifically with the new recycling program but more in general about how reporting occurs, what the allocation methodologies are, what the administration of the franchise consists of, and that kind of thing. Thompson said with that in mind, he introduced Joe Cook who they asked to attend today's meeting. He noted that Cook brings about 28 years' experience in administering franchise agreements for Western Oregon Waste, which is headquartered in McMinnville and was recently purchased by Recology, which is headquartered in San Francisco. Thompson said Cook brings to the table a lot of experience with the 21 different jurisdictions that he served to do the collection, analysis, reporting, and presentation to all of those jurisdictions for administering that piece of the franchise. Thompson thought it was also important to mention that Cook was one of the consultants that crafted their current franchise agreement that they are using. Thompson said that they invited Cook to come because they wanted him to be able to listen to the questions and future opportunities and challenges that the Council might want to evaluate. Thompson thought that Busby did a nice job of articulating what reports they will gather and how they utilize those reports to guide them as they move through analyzing the success of the program.

In response to Busby's question, Cook explained that basically the contract as it is currently drafted would cover any new services being proposed such as this one. He said if you wanted to look at some benchmarks each six months or each year, you would choose those such as participation, waste diversion. He said first you would have to look at your goals. Your goals are to divert waste he assumed to be environmentally responsible at a reasonable cost. Cook wasn't sure you could say we will discontinue the program if the cost goes up 10% because no one would be interested in a program that had a potential of a six-month or a one-year life in a regulated environment like that. He thought you would have to look at what you do to tweak or change the program if you see increases in costs or see less participation or don't see the kind of diversion you are expecting to see. He thought once the program is in place, it needs to run its course to go through and get to a spot where you reach those goals. He thought that is the job of the company and the city to work together to get to that point.

Beemer asked how they measure diversions. Cook said you measure diversion by taking the total tons you take to the alternate facility plus the tonnage you take to the landfill versus what those numbers were six month or a year ago. Thompson said it's an expression of the total tons; the tons on top that you have sent to the alternate facility. TSS sends dry recycling in the blue cart to Portland. He said that gets him back to cart sizes are an important thing in their industry. They know there is a direct effect between the cart size and the effectiveness of another cart. Someone will say they have a recycling cart and it's not quite full, so if they do a better job of recycling what's in the garbage can, there's no extra, it all fits in the cart they have. As a consequence, TSS's recovery goes up; they have better recycling numbers. He said it's a little bit off-topic discussion but felt it was consistent with cart sizes and measuring what their diversion is. Beemer said what has been preached here and rightfully so is cutting down on the amount of stuff going to the landfill. He said that seems like the most important thing. The reason he stated that is, do we reduce the amount going to the landfill? If we don't reduce what is going to the landfill versus the previous six months we will say how do we explain this. Thompson said that is data that they already collect, and it is pretty easy to express that.

Cook said also regarding cart size, if you went to a smaller 35-gallon or whatever, you run into some inefficiencies that are going to put upward pressure on that rate. For example, having to keep slamming the cart slows you down. Also with a larger container, somebody may not put it out every week; they might put it out every other week or once a month, which also increases efficiency. Smaller containers make programs like this less efficient he thinks.

Saelens said on the decision-making part, he wanted to share with everybody that we have a Solid Waste Advisory Committee back in action. He said that is public knowledge. But at their last meeting, one of the items that is proposed is an item regarding monthly or quarterly reporting of all the elements (disposal, recycling, recovery rate) throughout the year to the Solid Waste Advisory Committee. Each city will have a representative on the committee. That is just an additional piece of information that all of the cities will potentially be getting on a regular basis if it is approved. If this program is approved, the results from that will be incorporated into those numbers.

Roumagoux said that before continuing on, she noted that audience member Jebousek had passed her a note requesting public input on this because TSS is at the table and the expert witness is at the table, and they all had access to the City Manager's report before the meeting. Roumagoux said what she had told the audience is that the public will have a chance at the end to bring up any comments to add to Nebel's list for his recommendation, which he will bring back based on this work session. Jebousek said that if she is not allowed to comment per section, her comments are so far removed from the discussion that went on. Allen suggested that since this work session was set up so the Council's questions could be addressed, the Council should right now make a decision of how we want to incorporate public comment, if at all, at this work session; and let that be a group decision. Let that reaffirm what Roumagoux said earlier or revise it. He said just have the Council decide that now for procedural purposes. Beemer agreed with Allen because people's time is limited and we have to have an end in sight. Saelens said that he understands Jebousek's frustration, but given the size of the work load on this particular work session on such an important item, he said hopefully what people would do is make a note along the way of what you want to comment on. Swanson said another alternative is to submit your comments to Nebel. Jebousek said that she had sent him an email and it wasn't included in this material. The consensus was to continue on and hold the public comments at the end.

Roumagoux noted that the Lincoln County Solid Waste Advisory Committee recommended goals and priorities for 2014 were just handed out. Saelens said that was just to underscore what he said earlier about the committee. Thompson said that he had brought that.

Swanson said that as far as setting goals, she didn't know if setting goals right now is actually the purpose of this meeting. Perhaps a subcommittee could do that. Just note in the recommendation that we would like some benchmark measurements. Perhaps a subcommittee with a couple of Councilors and TSS. Allen said if we are going to move forward with this program, we need to have benchmarks and check in on an intermittent basis. Allen's question was if the Council wanted to know what those benchmarks are as part of the resolution we are adopting moving forward; or do we want to defer those benchmarks until later on. His preference was to make sure at least as best possible to have those benchmarks clarified at the beginning when we adopt this resolution, if we do in fact adopt something, so that everyone is on

the same page. He said he was looking for TSS as the ones handling this to let us know what they think would be appropriate benchmarks and then we can look at them. Thompson said he thought they did in 2.2.1. He said the footnote there is if there are opt-outs over 5%, these benchmarks won't hold true and they would need to have a subcommittee or some further discussion to analyze the effectiveness and success of the program. If the opt-outs are less than 5%, they are satisfied with what they submitted here for benchmarks. He wondered if that looked like something Nebel could work into the resolution. Nebel said the question for the Council is do those benchmarks outlined in 2.2.1 seem to be adequate to be incorporated in the resolution as far as this program. He thought the second part of it, we still haven't really discussed and that's what we do if they don't meet these benchmarks. Swanson thought this was such a new program that we are going to have to be flexible. She said she was comfortable with the benchmarks as listed at this point in time. Beemer and Allen agreed. The consensus was that the Council was comfortable with those benchmarks.

Busby said he thought all the benchmarks have been made readily available and have been mentioned in the questions, but he thought before we go forward he would also like to see what the results are going to be. If the cost goes up by 50%, what are we going to do. He thinks we need to spell those things out. Allen had a different perspective on this. He was promoting these benchmarks on perhaps a six-month interval check-in and then perhaps at the end of three years we then can make a decision is this program working or not. Allen told Busby that he would prefer that when we set these benchmarks whatever those results may be, he would like to leave it for the next Council next year to actually decide this is the information we have and what are we going to do with it. He doesn't want to make that decision ahead of time not even knowing what the information is that he is going to be looking at. He prefers to get the results on a six-month basis and then have that Council make a decision as to how it wants to adjust the program accordingly at that point in time. He doesn't want to do it ahead of time right now because he doesn't have the information. Swanson said that she also was for giving it a three-year run before we make a final decision. Beemer asked, but check in every six months; and that was confirmed. The consensus was that section 2.0 was acceptable with a run of three years with six month check-ins.

Moving on to group 3.0, Financial, Busby said this gets to one of the main benchmarks, and that's cost. He said that we have no projections of cost beyond the first year at all. So if you put a three-year tag on this, we're asking people to sign up for something for three years when they only know what the cost is for the first year. Busby said that he would like to see some contractual limit in there; on the second year you cannot exceed an amount or something; but he doesn't know what that something is. Just having this open-ended, this thing could go up by a significant amount. Before going any further, Busby asked for a clarification from TSS. He said they did a good job of answering most of the questions. He said the thing about the rates; TSS said the rates are good through 2015 for the first year. He asked when they say the word rates are they talking about only the \$6.59, or are they talking about the entire rate structure. Thompson said they are talking about the entire rate structure. He said currently they look at the rates as a composite. Busby said he wanted to make that clear because it could be interpreted either way. Thompson said the entire rate sheet that is adopted in resolution by the city and the county will stay intact.

Saelens said that he agreed with Busby that we should be concerned about whether there is going to be a rate increase or not; but he would look at it as that is why we do the rate reviews. If not composting, we could easily be in a situation like we were 3-4 years ago where all of a sudden fuel costs skyrocketed out of control. We couldn't predict that either. These rate reviews are designed to look at that composite overall cost and the various factors that may have contributed to why costs are up; not just composting. Saelens said he is agreeing with Busby, and we need to be ready to look at that; but he said he is comfortable that we have a mechanism in place to do that. He said he wouldn't necessarily discount what Swanson was saying about putting some kind of committee together to look at benchmarks and how to measure costs and all of that at some later time. He thought that would be fine as well.

Thompson wanted to make one other footnote as well that might provide some relief to that. He and Riley spent about an hour and a half with Nebel very specifically looking at the annual review from last year. Thompson said the nice thing about their rates currently is that they are very balanced or centered at that target rate of 88% operating ratio. So, if there were some unforeseen, they have some flexibility or a little cushion for rates. He said he thought the last thing anyone wants from either a policy standpoint or from the person paying the bill is the rates to be rambunctious or volatile. Thompson said they are positioned right now to where they can basically mitigate that because they are so balanced; they are right in the center of where they are supposed to be. He said this is a good time to endeavor in a new program where there may be a couple of unknowns; although he thinks that they have good data because they are using other jurisdictions' information about what they experienced. He doesn't expect there to be a ton of surprises. But he told Busby if there were a surprise, they have some flexibility; they have a little bit of cushion on each side where rates wouldn't change. They could make changes with the help of a subcommittee, stay inside those bounds, and keep rates stable while they worked out any sort of little kinks.

Roumagoux asked if there was consensus with what Thompson had explained. Busby said that he still would like to have some sort of solid stop on rate increases. He said since we can't forecast everything, he would like to see some way to guarantee to customers that it will not go beyond this. Swanson said that she understood what Busby was saying and that he doesn't want people to be blindsided; but she feels with the system that is in place right now where TSS is required by contract to keep their operating margin in a specific place and because there is an annual review, it's going to be okay. She didn't think we need to put a specific cut-off date because the system that is there works beautifully to keep everything balanced. Busby said if everyone is so confident on that, if we put a stop in there no one should be concerned then.

Allen thought that what Swanson was saying is something that is a good way forward. He recalled that in the last Council meeting Busby did bring up the question of what if rates increase for next year. Allen noted that his question is in here to TSS, can you commit right now that you will not increase the rates for fiscal year 2014-15 so for the next year and a half it's going to be the same rates. Obviously if we did a compostable program that would be on top, but they committed to that. He can't see them committing beyond one year like that. Allen does think that during the next fiscal year when the rates are in place at this level, maybe the Council can form a small group, meet with TSS, and maybe have a preliminary rate review as part of a

recommendation process for the full Council during its formal rate review process to evaluate. He said perhaps Busby should be on that subcommittee.

Sawyer had a question along the same lines. He asked if unforeseeable things happens, will there be a major rate increase overall or would it just be in the trash collection side as opposed to the compostable. Thompson said that he has had this conversation with Cook; not specific to this set of questions, but they have had this discussion for years. It was more specific to their contract here, the contracts that Cook administered on the north coast, as well as the state association, and how do you control costs or have stops in those. Thompson asked Cook to address that question because he thought it was a good question, and it has come up before. This isn't the first time we have heard that type of question. Cook said as it stands right now, as Thompson stated, it is a composite rate. You take all of your costs associated with service in Newport and look at how those are increasing or decreasing and come up with that percentage based on the operating margin or operating ratio. And you make a decision of how to spread that across the rate base without impacting buying patterns too much. That is largely a regulatory decision. He said the City of Portland has a hundred different variables that they move things into to incent people to do things. It's kind of a nightmare. So as it stands right now, a change in costs would impact across the board rates. He said that doesn't have to be the case, and that is discussed in the document in front of us at some point about keeping track of costs separately and how do we do that and what assumptions do we make. He said it certainly can be done.

Roumagoux asked if that was enough information to go on to 4.0. Allen said that he thought he perhaps heard a consensus that if we move forward with this program that the rates will be kept in place for next fiscal year but maybe put together a small group as part of a rate review process. Allen was just wondering if that sounded like a good direction that the Council could model into. Thompson said they are collecting data all the time; and they will collect some additional data before the potential roll out so that they have a baseline measure on some of these things. Thompson said the data collection is significant. It's adequate to do small samples and have meaningful results; but as Busby said earlier, what do you do with that data. How do you really want to make a change because there are two sides to every coin; if you make a change here there is potentially another unintentional consequence somewhere else.

Nebel said the other thing that he thought he heard from TSS was that if this program got sideways from a cost standpoint, he thought they indicated that they would sit down and talk about modifications to the program to keep costs in some sort of reasonable range. Nebel said the question is could that concept, not being specifically defined, be part of the resolution as well. Then in future years if costs were ahead, they would agree to sit down with this same group and discuss how they could modify the program to keep costs down. Thompson said he was agreeable with that. Riley said that they don't want to come back and ask for a \$4 rate increase either. They understand there is a sensitivity toward rate increases; and the last thing they want to do is come in with another rate increase. He said they are going to do their level best to make it work.

Cook said that these programs are run all over the state. The costs are in the equipment and disposal costs. Once they know those going forward, it's not very likely that anything would impact it so greatly that it would change 50%. There's not just huge swings in costs. Thompson

said what he was going to say a while ago was that they have experienced the commodities market for recycling going way up and way down. That's a global market place anymore. The international purchasing didn't use to have all that much impact domestically; now it really does. Thompson said what they are seeing is historical lows in the value of their recycling. He said that's okay because they have a range to operate in in this program of setting rates through the administration of the franchise that's been in place for over a decade now. They have the data, and it has smoothed out to where rates are not volatile. He said if a tremendous amount of revenue were to be injected because of the sale of recycling that would be something out of their control that would have a great impact on rates; pressure going down. Similarly, as Saelens brought up earlier, if fuel costs were to rise, while it's not a percentage based huge expense, it has an impact; and is something that is clearly out of their control. He thought that was an easy example to get a flavor for how they set an absolute maximum ceiling on fuel; they can't. They do with a lot of other things contractually keep a lid on costs.

There was consensus of approval on 3.0, financial, with Allen's suggestion and tweaking done by Nebel.

Moving on to group 4.0, contract issues, Nebel noted that there were various questions and comments here on a number of contract issues. Again, his question to the Council was if things were adequately answered or if there were some issues that the Council still needs to discuss prior to putting together the final recommendation for consideration by the Council.

Busby said that one thing that still concerns him is that he understands the contract with PRC and understands that there are certain things in contracts that are proprietary, but when you begin in a public forum for a franchise he thinks the public deserves to know certain things. Busby noted that TSS agreed to release tonnage and costs; so obviously you can compute rates. He said so in one place they said no and in another they indirectly said yes. He said that's only one part of it because he thinks the term of that contract is an issue. He said one of the things TSS sold this program on is the fact that we are going to get in front of the masses trying to use the licensed services of a limited service contractor, but we have no evidence that happened. We don't have a contract that says they have a 20-year deal. He is hesitant to agree to put into effect a program which has no end date and yet the disposal contract may very well have an end date, but he doesn't know what it is. The end date of that contract becomes important to him. The rates become important to him; although they indirectly said they would disclose those. Also the escalation factor; he doesn't know what those are on that contract. They could double the price next year. TSS would know that, but he wouldn't. How is that going to affect the rates next year? Thompson said that he has a lot of comfort because he knows exactly what the contract says and he knows what the franchise says and how those are completely tied together. He noted that Cook has experience in other jurisdictions that might shed some light on how they can ease that anxiety and who they could release that information to. Cook thought that most important is that TSS said they will give the major terms; so you'll have the term of the agreement and you'll know how many years. He guessed the only other way to deal with that issue is TSS could agree that your disclosure component would match whatever the terms are for "x" number of years.

Saelens had an observation that he understood the importance of having whatever length of contract with PRC, but in reverse why would PRC necessarily be willing to give more than "x"

number of years to TSS if they're observing lack of confidence going on here. He said it's a two-way street. If TSS has a three-year check-up point we're setting, PRC is going to look at that. Busby said it's all business. He thought we deserve some insight into what's in that contract because it affects what's going to happen with us. Busby said if TSS is willing to set forward pricing rates on a firm basis then we don't care. In other words if it's going to be fixed price contract, that's fine with us.

Allen offered a suggestion. He said it looks like TSS will provide the Council for public discussion the general terms of the agreement; it's clear, they've already said that. Using Busby as an example because it is an important point to him, Allen asked if Busby wanted more detail as far as what that agreement says, would Thompson have an issue sitting down in his office with Busby and going through that agreement with him to alleviate any concerns he may have and take care of it on an individual basis. TSS will still be providing the Council and the public the general terms. It would just allow Busby to look at that proprietary agreement in a little more detail. Thompson didn't think there was an issue there, and Busby said it would satisfy his concerns. Allen said then maybe that is resolved for the time being. Allen said this is not a subcommittee; this will be one individual Council member looking at the agreement.

With that, the consensus was that the Council was satisfied with section 4.0.

Moving on, Nebel introduced section 5.0, decision making, by noting that there were a number of thoughts that came out in the questions from Council members as far as what additional steps if any should be taken regarding this matter. Nebel said his basic question on this issue is if the Council is ready to make a decision either going forward or not going forward with the program on Monday, or are there additional steps the Council wants in the process. Swanson said she is comfortable with the information she has. Beemer agreed. He added that on the first one regarding whether the Council should do its own survey, etc., he thought that after six months the City should put something in the water bill about the fact that we've had curbside composting for six months and what do customers think. If we get 100% responses that it's making the biggest mess or whatever, he feels it would be worth it. It doesn't cost a lot; and that way you can get some input after six months.

Saelens agreed with Beemer. He wanted to run through these points really quickly and thought it would form a consensus for the Council. On number one, he agreed with Beemer and said it's unnecessary. On number two rather than hold a town hall meeting, he suggested that as part of the report from Nebel on decision night a little more time be spent on the opt-out because that has been a big concern to citizens. We could handle it there. On number three, the reaction to education for citizens, he noted as Beemer had said we've been at this for six months or a year. Once you implement the program there will be an education process that goes on with what this is all about. So he thought that is taken care of. Number 5.4 falls in that same category of education; although he thinks there should be some research there. Saelens disagreed with 5.5 and 5.6; they're not necessary.

Sawyer said that he knows we've been talking about this for a long time and the public has heard a lot of it, but his biggest concern on this is that the original plan has changed dramatically. He said that he appreciates TSS doing that. One of his concerns was that he has a 90-year-old

neighbor, and she doesn't put out a whole lot. TSS addressed that with the smaller cart; and he appreciates them doing that. The problem is with the opt-out plan from what he's heard from a lot of people is that they don't understand it; and it's coming up really close to decision time. He's glad we have the opt-out. Now it's changed from last week from 20 to 24. He thought the changes are happening way too fast for people to factor in all this stuff. He has heard a lot of people say the opt-out is they want to opt-out and still have their 35-gallon and still have the \$21 a month fee. Sawyer thought if we could hold off just a short period of time to put out what we now have before us today, the final plan, and give people time to look over that and if they have further questions to get answers so that they understand what the final is. He thought that once they understand that the opt-out is not just 20, but now it's 24, because he doesn't think anyone in town has really heard that before today when it is going to be put out to the public, he thought they might need a little more time. Allen said it's not just today, it's next Monday at the regular meeting in the evening. Sawyer said that he's not against doing the decision; but he thought perhaps we might want to wait a short period of time.

Allen asked if we were to wait on the decision, what would Sawyer like to see in place as far as certain steps we should take between now and decision time. He said if it's not next week, say Sawyer wanted to defer it until the meeting after next, so it's three weeks. He asked what Sawyer would like to see in that three-week period that needs to happen from his point of view to make this process better. Sawyer said the media is key in this; for them to put out the final product. That the final product is going to be an opt-out with a 24-gallon container; that you can have a 35-gallon but are going to pay the \$6.59; and we're going to have the 95-gallon. He thought we have been throwing all these different figures out to people; and when they hear this kind of stuff, they always go to the lowest denominator that they're going to lose and it's going to cost. He thought that once they understand the final specifics, it will filter better. Allen said if Sawyer's preference is to wait on voting on this program, which right now is scheduled for next week, if he wanted to defer it for maybe another couple of weeks after that and we would want the news media to get the word out to the public. Taking it one step further, he asked what Sawyer would want to see back from the public and in what fashion to help inform his decision. Allen asked if he would want to see more comments, another public forum, what does Sawyer want as a Council member to help inform him to help him make a decision that would be better in a few weeks rather than next week. Sawyer said that he would like to see the questions coming back to him that they fully understand the specifics of the program. Right now the questions he is getting are all over the board. He thought that once we tighten down the program, which we have, that it's 24 if you want to opt-out and what the opt-out is because he thinks a lot of people don't fully understand what that is. Sawyer said public education to him right now is the piece he thinks we are missing. Allen asked what procedure Sawyer wanted to have the Council put in place to get that public feedback; is it that he basically just wants to hear from people by word of mouth, or do you want a formal process. Sawyer said he would really like to see a water bill survey; but he knows that takes time. It could take a month to put it out and a month to get it back, which is two full months down the road and probably too long. He said but again, how long does it take the public to understand it. Once they understand it, then they either complain or compliment to us at some point. He said when we are going to be doing something, the public gets the information, and then they either agree to it or disagree and that information comes back to us.

Allen asked Sawyer if he would like to see another public forum/hearing at a regular Council meeting to get input on the program that we are now solidifying today before he makes a decision. Sawyer thought that would be a good measure because of the fact that allowing the public to have that comment period of time would give direct information back to us. He said we have been crafting this; it has been fluid and moving and changing. He thought a lot of the people don't know really what the final product is even as we speak. Allen asked Sawyer if then a delay to him would be a delay of perhaps one meeting; not another month or two. It would be like instead of next week; two weeks after. Sawyer said yes, and one final public hearing on the final product because we haven't really had a public hearing on what we are looking at today.

Saelens offered the observation that he respectfully disagreed with Sawyer. He said what if we take every major program that the City needs to do that is new and spend as much time as we have spent on this and then continue to delay. He thought the information that we have gotten from the public the last several weeks has been really good. There has been a lot of response. He thought there is nothing to be gained by delaying it again other than to continuously leave open that opportunity for "too many cooks in the broth." He said having said that, there will be adequate time to review things about this program that maybe aren't fine-tuned enough because we can always do a check-up. He thought we have done what we can do. The last comment he wanted to make was that there are numerous ways to get all of the information about this process including listening to the audio if you want to; but you cannot force people to read or listen to information. Sawyer agreed with that but thought that since the program has changed so much in the last four weeks, that information needs to go to the public; and they have the right to come to us and say whether they like it or not. He thought a lot of people would like it if they understand. Saelens said they can do that Monday night. Allen said he understood where Sawyer was coming from and thought it was a valid point. In trying to figure a way forward, he wondered if the Council agreed on the general concepts that will be part of this program; and he thought a consensus had been reached on that. He said Nebel will be preparing a report back to the Council and proposed resolution. He asked if we got that posted on the City's website before the end of this week and hopefully the news media would be able to at least get the word out in their different publications, would Sawyer at least feel a little bit more comfortable with that 4-5 day period. We would at least, before making a decision one way or another next Monday evening, allot a good chunk of the meeting to have public comments in response to this program before we vote on it. Sawyer said he just wants to make sure that the public's fully aware of the changes we have been making; so he would be.

Busby added that he supports Sawyer and also thought that the public doesn't know the full story yet. He said this is a chance for that to happen, and it also allows a little longer for the full resolution to be written up and it is a busy time for Nebel and staff. He said the resolution has to be very definitive; it's not just a two-liner like the original was. He thought we have to cover the size of the containers, we have to declare the review process and benchmark process, and a three-year end date. He thought that has to be in the resolution. So, he thought two weeks later is probably a better idea. Swanson said that she would rather go with Allen's suggestion. Allen said he is just trying to find the middle ground. Sawyer agreed in order to move it along quickly but get that input. Allen said at least to have some assurance that we will be able to get more public input Monday evening. He said to Nebel that if he felt he could get that resolution prepared sooner rather than later this week that would certainly help the Council determine

whether there will be enough time for the public to review this and give input Monday evening before the Council makes a decision. Nebel thought that materials will be ready by the end of the day on Thursday. He said the question would be whether that would be sufficient time or not. It couldn't be ready before Thursday. Sawyer said the only issue he has with that is there's one publication here today that he didn't know if they would have enough time to get it in before Monday night. Beemer agreed with Allen that we have been doing this for a year plus or minus; and he thought it was time to step up, make a decision, and move forward. Trying to find a compromise, Allen still thought at the Council's Monday evening meeting if we do move forward with a decision, he would at least like to acknowledge on the agenda that we are going to have some extra time for public comment to help inform the Council to make a decision one way or another Monday evening. He wanted to actually say that on the agenda. Beemer agreed with that. Sawyer gave an analogy that he doesn't want to make this like buying a used car, and the salesman is saying you have to sign on the dotted line today and the price of the car has changed two or three times during the negotiation. He also reiterated that he appreciated TSS making some of those changes in a positive manner because of some of the comments we have gotten from the public.

Roumagoux said we have two proposals more or less for the decision-making process. She asked which one received consensus. The consensus was to go with Allen's suggestion. Sawyer said that he would like another two weeks; but as long as the press puts it out that basically we are going to have a public hearing Monday night on the final changes, he would support that.

Nebel introduced the final group, which was 6.0, miscellaneous comments. He said he didn't know if there were any specific comments that people had. He thought it was more informational. Saelens asked if on these miscellaneous comments or responses if it would be appropriate just to include that as part of the Council packet. Nebel said that he would include this whole document as part of the packet. Sawyer had a question on 6.2.1 where TSS says that Salem did the curbside compostables; and he asked if Salem has an opt-out rate. Do they say 5%, 10%, or something opted out of the program? Thompson said they based their "not greater than 5% opt-out" on the information they got from Salem. Sawyer said so Salem has basically up to a 5% opt-out. Thompson also noted that Salem has a 20-gallon opt-out container. Sawyer thought that on 6.4.1 it's important for us to get information out that it's 24 and not 20 because a lot of people have heard 20 and think they are losing 11 instead of 4. He thought that was an important point.

Allen said there was one question that came up at the last regular Council meeting, and he asked TSS. Allen wondered if everyone was comfortable with the continuing franchise term. That is in that agreement, and we have been told through documentation that is pretty much common practice with all solid waste haulers around the state. Allen said that was a point that was brought up, and he just wanted to make sure it's not going to be a point that is still brought up on an on-going basis. Busby said he would like to see another kind of contract, but that's not an issue in regards to this. He said the only issue with regards to this in terms of that type of contract is that we do put some kind of end stop for review; and we talked about the three-year thing. He thought it was critical how that's written into the resolution. Not just say at the end of three years we are going to look, but at the end of three years we are going to look at what.

Sawyer thought that 6.6.1 regarding using garbage disposals for food waste had nothing to do with composting; that has to do with our water and sewer rates. Saelens pointed out that there is some interest going on right now on whether that really is a good practice and whether that stuff that goes down the drain might better be diverted to composting; so it is related. Sawyer said that maybe Gross could chime in on Monday night if that costs us extra wastewater. Nebel said that it's Gross's opinion on that issue that the way most people use their garbage disposal is not having a significant impact on the wastewater plant. When we had commercial garbage disposals where all the food was ground up and going into the sanitary sewer, that had a significant impact on the loading for the system. But the way most people utilize their garbage disposals and you're grinding whatever ends up in the bottom of the sink, it's a pretty minor amount. The commercial ones were a big issue. Sawyer noted that he would really like to see commercial site composting. He thought that's where you're going to see a lot of impact.

Allen asked Nebel if in his report to the Council for Monday evening's meeting with the draft resolution, which he noted the Council could perhaps still revise somewhat at the meeting, he will have a procedure for if the Council implements the program how that would impact any changes that will have to be made to the municipal code. Then at least the Council will know that perhaps this is just one step in several that will have to be taken to modify this. Nebel said that he will outline the steps that will need to go forward to fully implement if the Council approves a resolution to go forward. Allen asked, including any legal review from our city attorney at whatever appropriate time is necessary; and Nebel confirmed that.

Public Comment: Nyla Jebousek pointed out that the expert witness that we heard today said that smaller containers are less efficient. She said her issue is with forcing her as an opt-out person from the 35-gallon trash container to a smaller one. It was noted that it's 24. She said she has a 35-gallon container right now, and she was told that if she opts out of composting because she composts in her yard, she would be forced to a smaller container; and she objects to that. She said this expert just said smaller containers are less efficient; and that has been her personal experience. Sawyer said Cook was talking from an operational level. She said it doesn't matter, he just said it; and that has been her personal experience on her property.

Secondly, Jebousek said one of the questions she sent to the City Manager was did Salem force the smaller trash containers on opt-out customers. TSS replied that yes they did. Jebousek asked if there weren't any percentage that kept the 35-gallon container. She was told only if it became part of the program. Jebousek asked, but if they chose not to pay for composting because they had their own compost, they were forced to a smaller container; why? Cook replied to further the goals of waste reduction. Jebousek said that's ridiculous because she is already handling waste reduction on her own property. Cook said that Jebousek is probably the exception to the rule, but statewide that's the goal to get people to smaller containers for garbage and larger containers for recyclables and compostables. Jebousek said that doesn't change the amount of trash that she has. It just changes her to a different rate and a different schedule of calling for more service. Right now with her 35-gallon container, she fills up that container and her recycling container at the same time. That's how much more recycling she has than trash. She calls like maybe twice a year. Then she composts the rest. So forcing her to a smaller container is going to squirrel her all up and make her spend more money and have to call TSS more often. She said she has it going on right now; she is very, very efficient. She said that she doesn't

understand why she can be forced to change to a smaller container. She said it's not going to cost TSS any more money because she already has the 35-gallon container.

For clarification, Allen asked Cook when he spoke about small containers being less efficient, was he talking about from an operational standpoint, the trucking aspect, or what because there seems to be some ambiguity on that point. Cook said they are less efficient operationally. They are harder to empty, especially with yard debris or bulky materials in them. He said, taking it to the extreme, the most efficient way of serving a customer is to put a big drop box in front of their house and pick it up once a year; but no one is going to do that. If you have a 2-gallon container and pick it up every day, it's less efficient. So there is a happy medium there. It seems a reasonably larger container is more efficient operationally.

Jebousek continued that in 1.1 it says TSS estimates fewer than 5% opted for a 20-gallon cart without mixed compostables. Then under 1.3.1 it says if 35-gallon customers were allowed to opt-out, it has the potential for removing 80% of the customer base for mixed compostables program. She asked TSS to reconcile that. Thompson said that currently they have 80% of their customers in a 35-gallon cart; so potentially offering a 24 to that audience would represent that 80%. Jebousek said that she didn't follow that.

At this point, as it was 1:45 p.m., Roumagoux announced that she had to leave the meeting for her appointment; and Council President Swanson conducted the remainder of the meeting.

To further explain, Cook said that 80% of TSS customers have 35-gallon carts now. If you change the opt-out to the 35-gallon customers can opt-out, 80% of their customer base could opt-out. Jebousek said that is not what she is suggesting. What she is suggesting is that if you are already composting you can opt-out; not just if you are 35-gallon you can opt-out. Cook said that what Jebousek had asked was for him to reconcile these two statements. Allen said that he knows it still public comment, but a question was asked of our expert; so let him finish answering rather than interrupting him. That's just a courtesy we would expect from everyone in the room. Cook continued that the first one talks about if we allowed the 35-gallon customers to opt-out, how many could. The 1.1.1 talks about the experience in Salem with allowing opt-outs, and they experienced 5% opt-out going to a 20-gallon container. Jebousek said so Salem's experience of customers opting out was 5%; and you are estimating it will be 80%. Thompson said no. Saelens told Jebousek to think of it this way, set aside her own operation for the moment and imagine the average citizen out there. If they're allowed to as a whole continue with their 35-gallon can and opt-out. . . Jebousek asked why would you allow that? Saelens said that's what he's saying, we're not allowing it; that is why you go to the smaller can. Swanson asked Jebousek to please let Saelens finish his comment. Saelens continued that the reason we go to the smaller can is then we can stimulate the average customer to downsize their trash to fit that can and move what was in that can off to recyclables and to compostables.

Jebousek said that she is suggesting that you only want to let people opt-out if they can show that they are composters. She said other towns do that. If people can show that they are composting or that they don't have any storm water runoff, these others allow them to opt-out; but if people aren't doing that kind of contribution to the community, then they can't. She said we don't want to let everybody just opt-out because they don't want to do it. We want people to compost. She

said but you guys don't ever institute that kind of a measure to recognize when people are already doing what you want them to do. That's not what part of your programs incorporate. She said that's what she's been talking about the whole time; and that piece just keeps getting missed. When you don't consider that piece then these other things make sense. But in her opinion, we either want people to compost themselves or participate in the program. Not just opt-out because they don't want to compost.

Swanson reminded everyone that that the suggestion was that the Council not respond at this point in time as we do at the regular Council meetings. She is suggesting that Jebousek continue with her comments as she needs to; but the Council not respond; just listen. Swanson reminded that the meeting is done at 2:00 p.m.

Jebousek said that frankly she thought that it was more productive having a discussion and appreciated it. She continued that under 1.2 it says could the 20-gallon roll-out cart. She asked what that means; trash, compost, what is that? Riley said he wasn't sure if he should answer, but explained that it's garbage. Allen said that he thought Swanson's suggestion was a nice approach, but he also thought that with Thompson and Riley here if Jebousek has questions directed toward them, maybe we could allow them to respond. The consensus was that everyone was comfortable with that. Again, Swanson reminded that the meeting ends at 2:00 p.m.

Jebousek noted that 3.2.5 talks about opt-out rates will put upper pressure on the rates to cover the cost and achieve the goal of more recycling and she added also TSS's profit margin; so that needs to be included because that's the truth. She said this isn't a volunteer project for them; so let's be clear about it. She said that she doesn't see savings being passed to the rate payers in the form of downward pressure. She said she's never seen a rate decrease since she's been here since 1981.

Jebousek said down under decision making, point number 5.1, "should the Council do its own survey;" she said she is really disappointed because the Council came to consensus on everything before accepting any public input. She said not to mention the fact that TSS and their expert had a hard copy of the document that you are working on and were familiar with it before the meeting, and the public didn't. Nebel said that was posted and available to the public. Jebousek said not even a hard copy at the meeting for them to review and asked how long it was posted. Nebel said it was posted yesterday. Jebousek said so less than 24 hours. Nebel said this is a non-decision making meeting today. Jebousek said they just did consensus decisions. Nebel said they will make a decision at the meeting Monday night. Jebousek said she didn't want to have that discussion now. She said there's talk about a survey here; and she's a TSS customer and never got a survey. She is very disappointed that the City isn't doing a survey. She thought they could do one in the water bill. She thought at 5.4, it would be a good idea if the City could also add something about the negative impact of using garbage disposals on the water bills. She said there was talk about a town hall meeting and educating the public. Allen asked Jebousek if she gets an invoice from TSS on a monthly basis. She said no, she pays them as she calls them. Allen noted that the survey was included in their monthly invoice to customers so that's probably why she didn't get it. Sawyer added that it was on line as well. Allen said she could speak to Thompson and Riley about that.

Ellen Bristow said she came to this meeting to get an idea. She asked if opt-out is where she can get the 24-gallon container and will not be charged the \$6.59; and Thompson and Riley confirmed that. She suggested being careful with the word opt-out because back at one of the first meetings she was not concerned about paying the \$6.59 as long as she didn't have to have the can. So she was using the word opt-out and has heard other people using the word meaning they don't want the can. Where you are using opt-out to mean if you take the smaller garbage can, you don't have \$6.59 tacked on your bill. Thompson confirmed that. Bristow asked how she finds out how many residences are in Newport because she's speaking to a lot of people, and some don't even use garbage service at all. She said that would be a good thing for the general public to know. She asked if also residential customers could live in a condominium; but also they could not be a residential customer in condominiums. She wondered if there was any way to get a feel for how that is set up. She is thinking that in South Beach they built all those houses for students, and how does that affect your garbage measurements? There are all these variations in the way people handle their garbage; how does that affect your measurements.

Nebel said on the issue of the description, he thought that now that there is a general consensus of what the program will look like, we will get a description of that program together because he agrees with Bristow that a lot of people are confused. He is still getting emails from people that have very little garbage and they don't realize they have this option with this program. He said from the standpoint of going forward with a good description so the public knows what we are doing is an important item and something that Council asked to go forward with. Bristow again cautioned to be careful of that word opt-out. Sawyer said maybe we should just leave out the term opt-out and say here is plan number one or number two; participate or not participate. Allen thought that Bristow's suggestion to be clearer in terminology was a good point. Nebel said from a description standpoint, we certainly owe a solid description. He asked if TSS had the number of residents and the number of customers. Allen thought he recalled that they did have that at some point. Bristow said she would go to TSS for that later. Thompson said they can work with the City on how many water meters there are compared to how many garbage customers; they are similar. Sawyer thought TSS had said they have roughly about 4,000 residential customers. Thompson said it's closer to 3,000 in town, 4,000 total because it includes county and city.

Having no further business, the meeting adjourned at 1:50 p.m.

Wanda Haney, Executive Assistant

Sandra Roumagoux, Mayor

March 17, 2014
5:30 P.M.
Newport, Oregon

The City Council, Urban Renewal Agency, and the Audit Committee of the City of Newport met in a joint meeting on the above date in the Council Chambers of the Newport City Hall. On roll call, City Council and Urban Renewal Agency members present were: Beemer, Allen, Roumagoux, Sawyer, Saelens, Busby, and Swanson. Audit Committee members present were: Allen, Swanson, Springsteen, and Saelens (alternate).

Staff present was City Manager Nebel, City Recorder Hawker, Interim Finance Director Gazewood, and Police Chief Miranda.

COMMUNICATION

Audit Committee - Report and Acceptance of the Independent Auditor's Report of the Financial Statements for the Fiscal Year Ending June 30, 2013, for the City Council and the Newport Urban Renewal Agency. Allen reported that the Audit Committee had met four times since last year. He reviewed the "Communication to the Governing Body" for the city and Urban Renewal Agency audits. He noted that both audits contained an unmodified opinion of the financial statements, and that the audits were "clean." He added that there are some items that need to be corrected. Allen noted that the Committee had reviewed items identified as significant deficiencies with the auditors, and that these are not as significant as material weaknesses.

Gazewood reviewed the city's financial audited report and the URA's financial audited report. He reviewed the EMMA filings which are related to city debt issues.

Springsteen reviewed the capital assets portion of the financial statement.

Saelens addressed the exit conference document, and explained the definitions of material weaknesses and significant deficiencies. He reported that the auditors had found three significant deficiencies related to the timely reconciliation of cash, separation of duties, and account reviews.

Allen noted that a best practice would involve issuing an RFP for auditing services every five years or so, even if the city is satisfied with the current auditor. He added that the city has been using the same auditing firm for five or six years, but perhaps an RFP process could be instituted during the summer or late fall. He added that the LOC Bulletin contains a good article related to this issue. Swanson noted that the auditors supported the issuance of an RFP.

Allen noted that in smaller cities, internal controls and segregation of duties is more difficult due to small staff size.

Busby reported that Gazewood has made many financial corrections in the last six months.

Nebel noted that it is his recommendation to have the Urban Renewal Agency and the City Council accept the audit reports.

MOTION was made by Allen, seconded by Saelens, that the audited financial report from Pauly, Rogers and Company, P.C., for the Newport Urban Renewal Agency

be accepted for the fiscal year ending June 30, 2013. The motion carried unanimously in a voice vote.

MOTION was made by Swanson, seconded by Allen, that the audited financial report from Pauly, Rogers and Company, P.C., for the City of Newport be accepted for the fiscal year ending June 30, 2013. The motion carried unanimously in a voice vote.

Allen thanked Gazewood, Brown, the Finance Department staff, auditors, and the Audit Committee.

ADJOURNMENT

Having no further business, the meeting adjourned at 6:15 P.M.

Margaret M. Hawker, City Recorder

Sandra N. Roumagoux, Mayor

Richard Beemer, URA Chair

March 17, 2014
6:15 P.M.
Newport, Oregon

The City Council of the City of Newport met on the above date in the Council Chambers of the Newport City Hall. On roll call, Roumagoux, Saelens, Allen, Beemer, Busby, Sawyer, and Swanson were present.

Staff present was City Manager Nebel, City Recorder Hawker, Community Development Director Tokos, Public Works Director Gross, and Police Chief Miranda.

Roumagoux asked for a moment of silence in memory of Eric Eder, a local fisherman recently lost in the Bering Sea.

PLEDGE OF ALLEGIANCE

Council, staff, and the audience participated in the Pledge of Allegiance.

PUBLIC COMMENT

Jim Shaw, a South Beach resident, reported that the Lincoln County Pilots group hosts a barbecue every Saturday. He presented a certificate of appreciation from the Civil Air Patrol in recognition of outstanding assistance to the CAP, for allowing the group to participate in the Saturday barbecue during a CAP training exercise in July.

CONSENT CALENDAR

The consent calendar consisted of the following items:

- A. Approval of minutes from the City Council meeting of March 3, 2014;
- B. Confirm the Mayoral appointment of Donald Davis to the Budget Committee for a term expiring December 31, 2014;
- C. Conform the Mayoral appointment of Gretchen Havner to the Library Board for a term expiring December 31, 2017.

MOTION was made by Beemer, seconded by Sawyer, to approve the consent calendar with the changes to the minutes as noted by Allen and Roumagoux. The motion carried unanimously in a voice vote.

PUBLIC HEARING

Public Comment and Potential Action on the Approval of a Curbside Compostables Collection Program. Hawker read the title of the agenda item. Nebel reported that in April 2013, the City Council discussed the possibility of recycling food waste along with yard and woody debris in an effort to divert these items from the waste stream. He noted

that Council selected Councilors Allen and Saelens to work with Thompson's Sanitary Service to explore a further reduction of waste entering the landfills from the city. He stated that Allen and Saelens worked closely with Thompson's Sanitary Service to evaluate options for diverting food and yard waste from landfills as part of the city's solid waste management program. Nebel added that in early May, a tour of the Pacific Region Compost facility was conducted, and following that tour, Thompson's Sanitary Service retained the services of Harlan Business Consultants to design the parameters of a curbside compostables collection system. Nebel reported that Dr. Estle Harlan has provided services to this working group in evaluating the feasibility and cost of implementing this service in the city. He added that Lincoln County has also expressed an interest in participating in this same type of program.

Nebel stated that on November 18, 2013, the working group provided a report to the City Council on the status of this effort. He added that there was also a discussion at a joint meeting with the Lincoln County Commissioners regarding the compostables program. He noted that due to the county's smaller population within Thompson's service area, it has opted to wait until after the city makes a decision on the issue before evaluating it as a county program. Nebel reported that on February 3, 2014, the City Council held a work session with Thompson's Sanitary Service to discuss how this program will work in the city, and what the costs would be to city customers utilizing Thompson's Sanitary Service. He noted that the Council considered possible approval of the program at its March 3, 2014 meeting, but due to various questions and concerns from individual Councilors and members of the public, a City Council work session was held on March 11, 2014.

Nebel reported that in preparation for the work session, Councilors agreed to forward any questions they had about the program to the City Manager by March 5, 2014. He added that these questions were then compiled into various categories and forwarded to Thompson's Sanitary Service for their response. He noted that the responses were forwarded to the City Council and posted on the city's website on March 10, 2014 prior to the work session.

Nebel reported that during the work session, the Mayor reviewed each of the general categories of questions and responses to determine what potential modifications should be made to the program, as well as incorporating certain items in the resolution for Council consideration. He added that as a result, the following modifications have been made to the curbside compostables program:

1. The curbside compostables collection program will provide customers receiving residential curbside garbage collection services from Thompson's Sanitary Service a 96-gallon weekly roll cart for the placement of compostable food waste and woody debris. If a customer requests a smaller cart, a 65-gallon unit will be provided.
2. Thompson's Sanitary Service will initiate a 24-gallon weekly roll cart service for customers with limited household garbage. These customers will have the option of not participating in the curbside compostables collection program. Customers opting for the 24-gallon weekly roll cart service without compostables will pay \$19.15 per month while the customers utilizing the 24-gallon weekly roll cart service with compostables will pay \$25.74 per month.
3. All other customers will pay \$26.94 for a 35-gallon weekly roll cart and \$46.84 for a 65-gallon weekly roll cart, per month, which reflects the increase in cost for providing the curbside compostables collection program of \$6.59 per month.

4. Thompson's Sanitary Service has agreed to keep the costs as outlined in paragraph 3 the same through June 30, 2015.
5. Thompson's Sanitary Service has agreed to provide benchmark reports at six-month intervals for the first three years of the program. The program will establish the benchmark for customer participation based on: 85% of the customers receiving the compostables service, placing compostables at curbside at least once per month on average, and 25% to 30% of the total effective waste stream being diverted as mixed compostable waste, if less than 5% of Thompson's Sanitary Service customers utilize the 24-gallon weekly roll cart option and opt out of the curbside compostables collection program.
6. Thompson's Sanitary Service assumes all of the financial risk for the \$6.59 cost increase for this program through June 30, 2015.
7. Thompson's Sanitary Service will meet annually with the city to review the performance of this program to determine whether benchmarks are being met. If costs exceed normal inflationary amounts as a result of the curbside compostables collection program, then Thompson's Sanitary Service would agree to discuss program modifications with the city.

Nebel reported that other issues discussed and agreed to at the work session were that if any Councilor wished to review Thompson's agreements with PRC; this could be done provided that the business financial information is treated confidentially. He added that there was discussion on the type of contract the city has with Thompson's Sanitary Service. He noted that ORS 459A.085 allows a city to recognize an existing collection service and renew a franchise for collection services with or without bids. He added that more than 80 cities and counties utilize a rolling contract similar to the city's contract. Nebel stated that state law provides this option since waste disposal, recycling, and nuisance abatement are standards that are contained in the solid waste management plan for each government that can be easily referenced and implemented. He added that with the capital investment in trucks, equipment, transfer stations, and other components of the solid waste management stream, these types of systems are treated by state law more like a utility than a contractual service.

Nebel reported that the City Council considered the possible adoption of this program at this meeting, including giving residents an opportunity to comment on the revised curbside compostables collection program. He stated that following the public comment session, the City Council could proceed with approval after considering any final comments.

Nebel reported that this has been a very publicly discussed proposal. He added that it is his opinion that the most significant concerns expressed by the public, primarily those who have a very small amount of household garbage and did not want to deal with the third container, have been addressed by the revisions negotiated by the City Council and Thompson's Sanitary Service. He stated that this concern could be addressed by providing an option to any residents that utilize a 24-gallon cart for weekly service to opt out of the curbside compostables collection program. He noted that by offering a 65-gallon alternative container versus the 96-gallon compostable container, those with concerns regarding space will have some relief. He added that in evaluating this proposal there are a number of things that Council needs to keep in mind. He stated that the development of a program to reduce the amount of waste going into landfills is a goal of the City Council, and that Chapter 7.05.005 of the Municipal Code includes the

following provisions: 1) Reduce the amount of solid waste generated; and 4) Resource recover material were possible. Nebel stated that implementing a curbside compostables collection program is consistent with these goals.

Nebel stated that the city does not require residents use curbside household garbage services, and that if someone chooses to opt out of the curbside collection they can dispose of waste at one of the area transfer stations. He noted that this provides a choice of not participating in any of the curbside programs.

Nebel reported that following Tuesday's work session, Allen suggested including a city survey in a future water bill after six months of the curbside compostables collection program service to gauge how residents are using this program. It was noted that the information could be incorporated in Section 8 of the resolution to evaluate the success of the program. Nebel added that the resolution has been reviewed by City Attorney, Rob Connell and Thompson's Sanitary Service.

Nebel noted that a number of questions and comments have been received since the last meeting. He added that questions include: (1.) whether the city makes money from the service, and he noted that there is a five percent franchise fee paid by the hauler; (2.) whether Thompson's makes money from the recyclables, and he noted that the proceeds from the sale of recyclables are factored into the cost that residents are paying for service; (3.) whether it is mandatory, in Salem, to use a 20-gallon cart in order to opt out of the program, and it was noted that this is a requirement; (4.) what percentage of Salem customers participate in the curbside compostables program, and it was noted that the number is greater than 95%; and (5.) whether smaller containers are available, and it was noted that Newport customers could opt out with a 24-gallon container. Nebel recommended that the Mayor take public comment on this issue.

Roumagoux asked for public comment.

Nyla Jebousek stated that she supports composting, but that she favors the status quo service.

Richard Hart stated that he is satisfied with the current service, and that it is the needs of the people that should be served rather than the dreams and hopes of the haulers.

Gary Lahman thanked Council and Thompson's for their time and effort. He suggested a bullet point summary of the issue rather than having to review a 274-page document. He added that he was looking forward to Beemer's comments on this topic.

Nebel noted that staff may analyze whether to place an executive summary at the beginning of the packet. He added that staff is also looking at agenda management software to help with readability. Swanson noted that the packet is also bookmarked.

Busby suggested deleting from the comma forward in Section 3 of the resolution. He suggested adding the words "and implement" to the last line of Section 8 between the words "identify" and "ways."

Allen suggested adding the word "residential" throughout the resolution so it will be consistent with the reference in the title.

Saelens noted that a survey could be utilized for a mid-course correction if necessary. He added that part of the size of the packet is an attempt to be transparent and react to public comment. He spoke regarding the importance of getting materials out of the landfill on a worldwide basis. He added that Newport customers pay some of the least expensive solid waste rates. Saelens noted that in Section 3, he wanted to strike the reference to all customers participating in the compostable program, because

if someone keeps the 35-gallon can along with the compostable program, there is no incentive, and the point is that even someone doing well could make the effort to downsize to the 24-gallon can and save money.

Allen suggested that Section 3 read “opt out of curbside compostables collection program” rather than service. He noted that Section 7 should read “co-mingled.” He recommended adding 96-gallon roll carts to the list of residential rates as some residential customers are using this size cart. Thompson reported that the number of customers using 96-gallon carts is fluid, and currently at three. He added that the monthly rate for the 96-gallon cart, plus the curbside compostables collection program would be \$65.64 monthly.

Allen noted that some of the suggested changes might require some language that has not yet been formalized. Nebel stated that staff needs to know whether to bring a final resolution back to Council. Council concurred that staff should bring a new draft to Council for review and action at the next meeting, and that no more testimony would be taken on the issue.

MOTION was made by Allen, seconded by Beemer, to approve Resolution No. 3665, with the changes as noted tonight by the City Council, with the revised resolution to be brought back to the April 7 meeting for a final vote on the resolution itself, which authorizes the establishment of a curbside compostables collection program in accordance with Section 9 of the solid waste franchise agreement with Thompson’s Sanitary Service with a limited opt out for customers electing to use a 24-gallon weekly roll cart for household garbage with the rates being increased by \$6.59 per month on all other customers upon initiation of the service. It was noted that bringing the resolution to the next meeting will be to approve the revised language. The motion carried unanimously in a voice vote. Sawyer requested additional information from Thompson’s regarding the opt-out provision.

Public Comment and Potential Action on the Approval of the Fiscal Year 2014/2015

City Council Goals. Hawker introduced the agenda item. Nebel reported that on February 24, 2014, the City Council spent the day hearing various departmental goals and identifying City Council goals for the fiscal year beginning July 1, 2014. He noted that the Council identified two community development goals; three infrastructure goals; four water and sewer improvement goals; six operations goals; and three public safety goals as part of the Council’s goals for the coming year. He stated that each of these goals will be reviewed during the budget preparation process and a part of the budget message will discuss the disposition of these items in the recommended budget. Nebel stated that the Budget Committee will be able to review how each goal has been addressed in the upcoming budget and make any changes that it deems appropriate. He added that public comment on the proposed goals was solicited, and none has been received.

Nebel reported that Beemer was unable to participate in the goal setting session and has requested that one item be added to the goals for the coming year. He noted that this request is that the city include work on establishing a South Beach wetlands trail that would tie into an extensive trail system being developed from Corvallis to the coast. Nebel reported that additionally, the goals for information technology were left out of the original goal setting packet, and suggested that Council incorporate these into the departmental goals for the information technology department.

Nebel recommended that the Mayor conduct a public comment session on the proposed goals for the fiscal year 2014/2015 City Council goals.

Roumagoux asked for public comment.

Nyla Jebousek reported that after attending the Infrastructure Task Force meetings and reviewing the goals on the website, that noticeably absent was a priority that she submitted in a letter on January 6, and attached to the letter was information from Portland and Albany about low income assistance programs for water and sewer rates. She stated that she thought that was to be included in the Council goals, but it is not. She added that she is here to advocate for a low income water, stormwater, and wastewater rate program, and expressed hope that Council will act on this issue.

Roumagoux asked for Council deliberation.

Saelens noted that not everything that was suggested as a goal made it to the final selection. He stated that at some point, he would like to see the city build a true SOS fund for a variety of infrastructure fees.

Beemer reported that the trail issue has been discussed in the past, noting that it would connect Chestnut Street to the trail at the Wilder development and ultimately to the Corvallis to Coast Trail. He reviewed progress at the Wilder development.

Allen referenced utility rate increases for the past years. He noted that he would like to review the Infrastructure Task Force recommendations as a part of the 2015/2016 goals, including the adjustment of utility rates and creation of a viable option for people needing assistance with utility bills.

MOTION was made by Allen, seconded by Sawyer, that the City Council established goals for the 2014-2015 fiscal year, as identified in the annual goal setting report from the February 24, 2014 Special City Council meeting, with the addition of the information technology goals being included in the departmental goals and the addition of the South Beach wetlands trail as Council goal 1.3 in the community development goals for the 2014-2015 fiscal year. The motion carried in a voice vote with Swanson abstaining.

COMMUNICATIONS

Presentation by Lorna Davis, Executive Director of the Greater Newport Chamber of Commerce, on the Tourism Promotion, Fulfillment, and Development Program for the 2013/2014 Fiscal Year. Hawker introduced the agenda item. Davis reported that she had made this report in January, and the request for clarification about allocations is included as the last page of the report. Davis reviewed the tourism promotion, fulfillment, and development services for the 2013/2014 fiscal year, including: visitor center; visitor web page - social media; Destination Newport Committee support and participation; tourism development and sales mission collaboration, media support and research; statistics; hospitality training; value season promotion; beautification program; Seafood and Wine Festival; Chamber Ambassador Program; and program allocations. Davis responded to Council questions.

Swanson requested that she receive copies of the Chamber monthly communication, "Communique."

Presentation by Lincoln County Land Trust - Workforce Housing Initiative - Bill Hall. Hawker introduced the agenda item. Bill Hall, Board Chair for the Lincoln County Land Trust, made a PowerPoint presentation and requested that the city support an executive

director's position, for the workforce housing initiative, at a cost of \$30,000 annually for three years. He reported that he will be making the same request to the City of Lincoln City at the end of April.

Allen suggested that language be included in an agreement that would provide for an equal distribution of houses among the participating entities. A discussion ensued regarding whether the position would be fiscally sustainable by the third year, and what might happen if it was not.

Swanson suggested that the LCLT consider the possibility of duplexes.

Sawyer asked whether the LCLT had talked with other cities about paying a lesser amount. Hall reported that the reason this was not done is that Newport, Lincoln City, and Lincoln County are the locations with the majority of the houses; greatest need; and the biggest budget capability to take on the fiscal commitment.

Busby stated that this would give value, land, and housing to a very limited number of people.

Beemer stated that he has a large number of rentals all for workforce housing people, and therefore will not be voting as he has a direct conflict of interest.

Tokos noted that when the concept was considered in September, there were reservations regarding the number of properties and investment, and at that time, it was asked whether the concept could be broadened. He added that this pool concept is in response to that request.

Allen asked whether Wayne Belmont, County Counsel, would be able to draft an intergovernmental agreement for the cities to review. The majority of Council concurred that having a draft IGA would be helpful. Allen recommended that the draft IGA include language that would ensure locations in the city, and protections in the event the fourth year was not sustainable.

Hall reported that Salishan operates as a land trust with individuals owning the houses with a 99-year lease on the property. He noted that the Portland Land Trust has built 133 houses. He agreed to return to Council with a draft IGA with no request for commitment.

Sawyer noted that workforce housing is a big problem, and if something is not done, it will just get worse.

CITY MANAGER REPORT

Approval of a Memorandum of Understanding Regarding the Transfer of Jurisdiction of Big Creek Road from Lincoln County to the City of Newport. Nebel reported that in May 2013, the City Council approved a 358-acre expansion of the urban growth boundary to include lands surrounding the reservoirs that provide drinking water for the city. He stated that one of the issues relates to the jurisdiction of Big Creek Road which is currently a county road. He added that Tokos and Gross have had discussions with Lincoln County regarding Big Creek Road, and that a memorandum of understanding has been drafted regarding the transfer of the road. Nebel stated that this will facilitate county action on the urban growth boundary amendment, legalize the right-of-way, allow the city to proceed with annexation of the property, and future jurisdictional transfer of the road from the county to the city. He added that the proposed agreement also addresses road maintenance responsibilities for Big Creek Road. Nebel stated that while the memorandum of understanding outlines the process that must be utilized to

accomplish this task, further authorization from the governing bodies will be necessary to accomplish each task. Nebel noted that under the terms of this agreement, if the transfer of the road is completed, the city would be responsible for reimbursing the county for ongoing maintenance costs that would be provided by the county on this section of road. He stated that this transfer would not take place until after the property has been annexed, and that the county will have certain responsibilities to make one-time minor improvements such as guard rail repairs and any other actions prior to the transfer of the road to the city. Nebel stated that once the city accepts jurisdiction of the road, the city would be responsible for those costs.

Roumagoux called for Council comment.

Allen noted that at the last work session Council wanted to see the road maintenance issues addressed, and that this draft contains a response to that request. Beemer noted that at the bottom of page seven, the word "except" should be "accept." MOTION was made by Beemer, seconded by Busby, that the City Council enter into an intergovernmental agreement with Lincoln County to establish the procedures and general timelines associated with the future transfer of Big Creek Road (County Rd., #402) from the county to the city and authorize the Mayor to sign said agreement as amended. The motion carried unanimously in a voice vote.

Approval of ODOT Right-of-Way Services Agreement - Highway 101 Pedestrian Safety Improvement Project. Hawker introduced the agenda item. Nebel reported that the city has been in negotiations with ODOT over significant cost escalations for the Highway 101 Pedestrian Safety Improvement Project. He noted that this project was initiated in July 2012 to fund eight pedestrian crossing improvements on Highway 101 between Bayley Street to the south and 15th Street to the north, and that ODOT's initial cost estimate for this project was \$502,000. He stated that since that time, the project cost estimate has increased to \$902,000. Nebel reported that at the February 3, 2014 City Council meeting, the Council agreed to fund an additional \$150,000 for this project provided that ODOT would secure funding for the balance of the increase. He stated that the ODOT Bike and Pedestrian Program has agreed to commit the remaining \$250,000 to complete the funding which is now estimated to complete the project. Nebel stated that as a result of the significant discrepancies between the original estimated costs and the final estimated costs, ODOT has changed its approach on these federally funded projects by engaging the local agencies earlier into the State Transportation Improvement Plan application process. He added that ODOT has conducted a complete review of this program to assure that the current estimate will encompass the necessary elements in order to complete the project. Nebel noted that Gross has had numerous conversations with ODOT to get this issue resolved. He stated that there is potential risk that under the standard ODOT agreements, the city could be responsible for costs over and above the new estimate. He added that while staff feels more confident with the revised cost estimates and the added financial support from ODOT for this project, it is important for the Council to be aware of this possibility. Nebel stated that if the city were to cancel the agreement today, the city would be obligated to reimburse all funds expended on this project to date which amounts to \$130,000. He added that the worst case scenario is that if costs escalated and the City Council canceled the project at the construction phase, the city could be responsible for total reimbursement of \$206,500 which would represent the total project costs, minus construction and construction

administration. Nebel stated that he believes that ODOT is working in good faith with the city to address this significant problem. He added that the safety issues that will be addressed with these crosswalk improvements are significant. He noted that if the city were to walk away from the project today, it would have an obligation to the state for \$130,000 and no improvement to the crosswalks. Nebel stated that he believes that it is in the city's best interest to proceed with this project with the new financial commitment that ODOT has made to the city.

MOTION was made by Busby, seconded by Sawyer, to approve the US Highway 101 Pedestrian Safety Improvement Project intergovernmental agreement for right-of-way services with the Oregon Department of Transportation and authorize the Mayor and City Manager of the City of Newport to execute said agreement. The motion carried unanimously in a voice vote.

Consideration of Resolution No. 3666 Authorizing the Oregon Parks and Recreation Department Grant Application for Updating the Parks Master Plan. Hawker introduced the agenda item. Nebel reported that the State of Oregon Parks and Recreation Department is currently offering local government grants for parks and recreation system master plans and improvements. He added that while funding statewide for planning grants is limited, this would be a timely request to the state based on Council goals. He stated that grant applications are due on May 16, 2014, with awards to successful applicants being made by September 17, 2014. He added that due to the competitiveness of the limited funds, the grant application participation by the city will include a robust public outreach and a comprehensive overhaul of the document and maps. He stated that the cost of the project is estimated at \$85,000, with \$60,000 coming from the city and \$25,000 coming from the state, and added that this will increase the chances of the city getting a portion of the \$90,000 that is available statewide for this purpose. Nebel noted that, if funded, the city would be required to commit \$60,000 in local funds in the proposed 2014/2015 fiscal year budget. He added that staff has recommended that the local share be paid by utilizing \$26,000 from System Development Charge fees; \$10,000 from the Transient Room Tax Fund; and the balance from the General Fund.

Roumagoux asked for Council deliberation.

Allen noted that this update falls in line with recommendations from the City Council and Infrastructure Task Force. MOTION was made by Saelens, seconded by Swanson, to adopt Resolution No. 3666, in support of an Oregon Parks and Recreation Department grant application for the updating of the city's 1993 Parks System Master Plan. The motion carried unanimously in a voice vote.

Discussion and Possible Action Regarding SB1531 Regulating Medical Marijuana Dispensaries. Hawker introduced the agenda item. Nebel reported that on March 7, 2014, SB1531 was approved by the state legislature and forwarded to the Governor for signature. He noted that SB1531 allows a city or county to adopt ordinances that impose reasonable regulations on the operation of medical marijuana dispensaries that are registered or applying for registration under ORS 475.314(12) which are located within that local jurisdiction. He added that these regulations include hours of operation, reasonable limitations on where medical marijuana dispensaries may be located within

a city, and reasonable conditions on the manner in which the medical marijuana dispensaries may dispense medical marijuana.

Nebel reported that this act would allow the governing body of a city or county to adopt an ordinance enacting a moratorium on the operation of medical marijuana dispensaries until May 1, 2015, if the moratorium is enacted no later than May 1, 2014. He stated that prior to March 3, 2014, the city had received two applications for business licenses for medical marijuana dispensaries. He added that the city has received one additional application since that time and there have been other inquiries regarding establishing dispensaries in the city. Nebel reported that with the changes in state law that will occur, barring a veto by the Governor, there are a number of new options that cities and counties can consider in the regulation of medical marijuana dispensaries. He stated that in order to allow for adequate time to evaluate these new regulatory tools, cities and counties may enact a moratorium on the licensing of medical marijuana dispensaries within their jurisdiction. He added that for business entities that have registered their medical marijuana dispensary with the state, the act would allow the proposed dispensary to surrender registration under this subsection if a moratorium is imposed. He stated that it provides that the authority may refund any fee imposed by the authority pursuant to ORS 475.314(12).

Nebel reported that in discussing this matter with City Attorney, Rob Connell, it would make sense for the city to consider imposing a moratorium through May 1, 2015 on medical marijuana dispensaries if the City Council would like to take additional time to review local regulatory options. He stated that this would give the City Council and staff adequate time to review changes in state law and to consider what additional local controls may be appropriate for the city to impose. He added that the City Council could suspend a moratorium at any point prior to May 1, 2015 at the conclusion of the review of any local regulations to address the medical marijuana dispensary regulations for the city.

Roumagoux asked for public comment.

Alisha Kern commented that there are two dispensaries that have applied in Newport that are closer than 1,000 feet to each other, and that state law provides that dispensaries must be more than 1,000 feet apart.

Roumagoux asked for Council deliberation.

Allen noted the provision regarding the placement of marijuana dispensaries within 1,000 feet of a school, and asked whether the proposed dispensaries are within 1,000 feet of Sam Case Elementary School. Sawyer and Swanson agreed to attend an upcoming workshop on marijuana dispensaries.

MOTION was made by Allen, seconded by Beemer, to direct the City Attorney and city administration to develop an ordinance enacting a moratorium on the operation of medical marijuana dispensaries in the City of Newport until May 1, 2015 with the ordinance being and acted upon by the City Council prior to the May 1, 2014 deadline. The motion carried unanimously in a voice vote.

LOCAL CONTRACT REVIEW BOARD

During the course of a regularly scheduled and noticed City Council meeting, Council convened as the Local Contract Review Board. On roll call, Roumagoux, Saelens, Allen, Beemer, Busby, Sawyer, and Swanson were present.

Staff present was City Manager Nebel, City Recorder Hawker, Community Development Director Tokos, Public Works Director Gross, and Police Chief Miranda.

ACTION ITEM

Authorization of Amendments #2 and #3 with Precision Approach Engineering, Inc. for Task Order #6 for Airport Apron Expansion and AGIS Survey. Hawker introduced the agenda item. Nebel reported that on March 18, 2010, the city entered into an engineer of record agreement with Precision Approach Engineering, Inc. for various airport projects. He stated that as part of the Runway Improvement Project, an engineering design cost of \$411,441.54, and construction services cost of \$628,302.02 were executed by the city as part of the \$9 million FAA funded runway rehabilitation project. He noted that since that time, the FAA has agreed to fund two additional components of this project which would include expansion of the apron area; realignment of the fence; and replacement of the lost large tie-down slot that will be removed with the completion of the Runway 2-20 Signage Project. He stated that the task order for design is \$52,968.05, and for construction services the cost will be \$40,941.20.

Nebel reported that the second component added by the FAA for this rehabilitation project at the airport includes the AGIS (Airport Geographic Information System) survey. He stated that this survey will require the consultant to locate all signs, lights, runways, buildings, and other items at the airport and provide that information be transmitted electronically to the FAA. He noted that additionally, the airport will have access to this information including all images for use in future planning. He added that the project will include the improvements that will be done as part of the rehabilitation project that will be accomplished this summer.

Nebel reported that these project costs are being paid for primarily by the FAA out of the significant grant funding for the runway rehabilitation project, and the city has appropriated the local share to match the grant funds. He added that these adjustments will not increase the city's contribution to this project.

Nebel reported that in reviewing this contract issue with City Attorney, Rob Connell, since this change is in excess of \$50,000 limit on the City Manager's authority, it is appropriate for the Council, acting as the Local Contract Review Board, to authorize this change order. He added that this is based on the assumption that there was no previous delegation of authority to the City Manager to act on a request in excess of \$50,000.

Nebel reported that the FAA has provided additional funding for these components.

MOTION was made by Beemer, seconded by Sawyer, that the Local Contract Review Board authorize the City Manager to sign amendment #2 and amendment #3 to task order #6 with Precision Approach Engineering for additional design and construction engineering services for the expansion and realignment of the airport apron that will be required with the completion of Runway 2-20 Signage Project and for the cost of AGIS survey as requested by the FAA. The motion carried unanimously in a voice vote.

CITY COUNCIL MEETING

At the conclusion of the Local Contract Review Board meeting, Council returned to its regular meeting.

REPORT FROM MAYOR AND COUNCIL

Roumagoux reported that she attended the Lincoln County Mayor's meeting on March 7 in Newport.

Roumagoux reported that she, Beemer, and Allen attended the recent Fire Department banquet.

Roumagoux reported that she and Beemer attended Don Mann's retirement party.

Roumagoux reported that she attended a meeting of the Lincoln County Ford Family Project which is a family literacy project for lending libraries.

Roumagoux reported that she will miss office hours tomorrow, and asked whether anyone would man the office in her stead. No one was available.

Sawyer reported that federal project funding is diminishing.

Sawyer reported that he saw two people using the electric car charging station.

Sawyer thanked the local media for distributing information relative to the DEQ approval for the razing of the Salvation Army building.

Sawyer reported that he had heard that O'Reilly's Auto Parts had begun work on its new store on Highway 101. Tokos reported that O'Reilly's is making changes to the sewer and stormwater design and resolving access easement issues.

Saelens reported on a recent meeting of the Bicycle/Pedestrian Advisory Committee. He noted that the meeting went well, and the Committee had asked for an alternate Council liaison when Saelens cannot attend. Roumagoux agreed to serve as alternate.

Swanson reported on a recent meeting of the Senior Center Advisory Board. She noted that items discussed included the Silver Sneaker contract; Wii bowling tournament; tax aid; center accreditation; Social Security Flexibility; and other programs.

Swanson reported that the Library has completed the building assessment and strategic planning, and that this will be the topic of the upcoming Town Hall meeting on March 31.

Busby reported that he had attended the Fire Department banquet.

Busby reported that he attended a recent meeting of the Airport Committee.

Busby reported that the business license work group will meet again on March 25. Allen discussed the noticing of the work group meetings.

Beemer addressed the razing of the Salvation Army building. He reported that a contractor from the valley had done this work, and was recycling wood and concrete.

Allen reported that the Audit Committee had met on March 6 to finalize tonight's presentation.

Allen reported that he had attended the Fire Department awards banquet.

Allen reported that he attended Representative Kurt Schrader's roundtable in Depoe Bay. He reviewed discussion from this event.

Allen reported that he attended ODF&W workshops regarding marine reserves and the implementation of marine reserves. He noted that there will also be a meeting at the Recreation Center regarding the Cascade Head Marine Reserve, and that a number of other workshops will occur before plans are finalized for the two marine reserves

PUBLIC COMMENT

Nyla Jebousek elaborated on the Silver Sneakers program. She suggested that the city consider coordinating a series of holiday events for visitors similar to what occurs at Shore Acres State Park.

Marletta Noe recommended that Council provide notice to Thompson's Sanitary Service that it is changing the franchise agreement to provide for a review every two years.

ADJOURNMENT

Having no further business, the meeting adjourned at 9:17 P.M.

Margaret M. Hawker, City Recorder

Sandra N. Roumagoux, Mayor

March 24, 2014
12:03 P.M.
Newport, Oregon

The City Council of the City of Newport met on the above date in Conference Room A of the Newport City Hall. Present were: Allen, Beemer, Roumagoux, Busby, Swanson, and Saelens. Sawyer was absent.

Staff attending was as follows: City Manager Nebel, City Recorder Hawker, and Community Development Director Tokos.

Also in attendance was Dennis Anstine of the Newport-News Times.

MOTION was made by Beemer, seconded by Allen, to enter executive session pursuant to ORS 192.660(2)(e) regarding a potential real estate transaction. The motion carried unanimously, and Council entered executive session at 12:04 P.M.

MOTION was made by Saelens, seconded by Swanson, to adjourn the special meeting. Council adjourned the special meeting at 12:43 P.M.

Margaret M. Hawker, City Recorder

Sandra N. Roumagoux, Mayor

March 31, 2014
6:00 P.M.
Newport, Oregon

The City Council of the City of Newport met on the above date in a Town Hall meeting at the Newport Library. Present were Roumagoux, Beemer, Allen, Swanson, Busby, and Saelens. Sawyer was absent.

Staff present was City Manager Nebel, City Recorder Hawker, Library Director Smith, Police Chief Miranda, Parks and Recreation Director Protiva, Library staff Rebecca Cohen and Stacy Johns.

Presenter in attendance: Ruth Metz.

Public in attendance was: Shelly Burnett, Patti Littlehales, Barb Burgess, Frances Clause, Gretchen Havner, Richard Kilbride, Sharon Beardsley, Autumn Belloni, Sue Fowler, Maryann Bozza, Alisha Kern, and others.

Media present: Dave Morgan, News Lincoln County and Dennis Anstine, Newport News-Times.

WELCOME AND INTRODUCTIONS

Mayor Roumagoux welcomed the audience and introduced Council and City Manager Nebel. Nebel introduced the staff in attendance.

Roumagoux read the Town Hall meeting guidelines.

PRESENTATION BY RUTH METZ, OF RUTH METZ ASSOCIATES REGARDING THE LIBRARY'S STRATEGIC PLAN AND BUILDING ANALYSIS

Smith reported that it was concluded that the Library's future needs had to be addressed, and toward that end, a consultant was retained to look at the workflow of the building and develop a strategic plan. He noted that the facility analysis looked at the existing building footprint with an eye toward identifying efficiencies. Smith introduced Ruth Metz.

Metz made a PowerPoint presentation encompassing an overview of her firm's analysis. She reported that the key elements are the strategic plan, the technical review, and the interior design. Metz reported that this was a community process that included lots of outreach. She noted that a purpose statement, vision statement, and value statement of staff were crafted for the Library.

Metz reported that Lucien Kress performed the technology review of the Library. He noted that the existing foundation is strong, and made some recommendations.

Metz reported that Kathy Page and Brenda Katz performed the facility assessment and developed future space needs recommendations.

Littlehales spoke in support of the Library and the work of staff and the consultants. Library Foundation members introduced themselves.

Metz and Smith responded to Council and audience questions. Metz concluded by recommending that a Library makeover be performed as soon as possible, and that the city begin to plan for an expansion to occur in seven to ten years.

ADJOURNMENT

Having no further business, the meeting adjourned at 6:58 P.M.



Noble
Professional
Dedicated

Newport Police Department
Memorandum

One Team - One Future

Date: April 2, 2014
To: Spencer Nebel, City Manager
From: Mark J. Miranda, Chief of Police *MJM*
Subject: Annual OLCC License Review

No OLCC licensees' activities have risen to the level, this last year, that warrants further investigation prior to the annual license approval by the City Council.

Cindy Breves

From: CommitteeApp@newportoregon.gov
Sent: Saturday, March 29, 2014 1:21 PM
To: Cindy Breves; Peavy Hawker
Cc:
Subject: Committee Application

Application for City Council - Email Application

Date: 3/29/2014

Commission/Committee of Interest: Library Board

Name: Evonne Mochon Collura

Address:

Newport, OR 97365

Workphone:

Homephone:

Email:

Occupation: Senior Aquarist

Employer: Oregon Coast Aquarium

Why do you want to serve on this committee/commission/board/task force, and how do you believe you can add value? I have a passion for connecting people to the library to promote literacy, creativity and personal success - for example, internet and printer use to find employment or complete school projects.

As a member of the Library Foundation and recently, the Strategic Planning Committee, I gained an insight into our library beyond acquiring books for my personal enrichment. I would like to actively participate in the library's mission statement, fostering the community's appreciation for reading and learning.

What is a difficult decision you have made concerning issues of bias and/or issues of conflict of interest? Given my involvement in many different areas, I am often asked to provide comment or opportunities that could conflict with my employment and my employer's policies or mission. At every instance, I consulted the policy manual and arranged a meeting with the appropriate supervisor with a goal of maintaining complete transparency, compliance, and a dedication to values that supersede written rules, such as safety for myself or the animals under my care. I apologize for speaking vaguely, but I cannot isolate any single situation where I can describe the details without exposing sometimes confidential information.

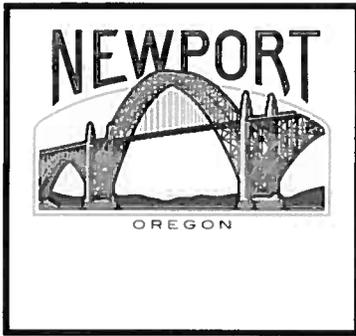
Describe the process of how you make decisions. I often begin the decision making process by listing all of the variables that I can imagine. I try to address all of the potential outcomes - from beneficial to catastrophic, looking for holes or obstacles that reach beyond my personal investment in the decision. When appropriate, I seek feedback or advice from others, especially if they have been in similar situations, but ultimately, I commit to a decision that I feel I can support as an individual.

What do you think about consensus decision making? What does the consensus decision making process mean to you? I value consensus decision making for the opportunity to consider issues against a background of many different life experiences and for the exchange of ideas in a respectful setting. A collaborative approach can be quite interesting as each individual contributes personal expertise and history to support a viewpoint. In my opinion, the process should always aim for complete agreement, but if that is not possible, the true goal should be a result or decision with minimal opposition. I believe that members in the discussion should feel as though they were able to express ideas clearly to a group that actively listened, questioned for clarification and respectfully considered all sides of the issue.

Describe all other pertinent information/background for this position. I have lived in Newport for 11 years and began my "settlement" at the library by using their resources to find employment here. I acquired teaching positions as a marine

science educator at HMSC, a biology instructor at OCCC and for the last 10 years, I have been an aquarist at the Oregon Coast Aquarium. Every setting allowed opportunities for building relationships within our community and strengthening troubleshooting and communication skills.

My daily job can be distilled down to the evaluation of needs and how to meet those needs. My academic and professional training is centered on marine science and has included research at a molecular level, education on global issues and animal medical care for fish and invertebrates. As a result, I have spent many years teaching topics to novice audiences to inspire enthusiasm and comprehension, and I find reward in helping someone gain confidence with new knowledge.



Agenda Item #

CC.V.D.1

Meeting Date

4/07/14

CITY COUNCIL AGENDA ITEM SUMMARY
City Of Newport, Oregon

Issue/Agenda Title: Special Event Fee Waiver Request - Newport Marathon

Prepared By: Hawker Dept Head Approval: ph City Manager Approval: _____

Issue Before the Council: The issue before Council is consideration of a special event fee waiver for the cost of services the city provides during the Newport Marathon. Those services include traffic control, placement of barriers, and sweeping of the race route.

Staff Recommendation: This is entirely a City Council decision.

Proposed Motion: I move to approve the special event permit request for the Newport Marathon for its event to occur on May 31, 2014, as the event complies with special event permit criteria and guidelines, and to transfer \$835.71 from the Transient Room Tax Fund to the General Fund to reimburse the Police and Public Works Departments, with a balance due to the city from the Newport Marathon of \$2,089.29.

OR

Alternate Motion: I move to approve the special event permit request from the Newport Marathon, in the amount of \$2,925, for its event to occur on May 31, 2014, as the event complies with special event permit criteria and guidelines, and to transfer \$2,925 from the Transient Room Tax Fund to the General Fund to reimburse the Police and Public Works Departments.

Key Facts and Information Summary: The Newport Marathon is in its 16th year, and is scheduled for May 31, 2014, between the hours of 6:00 A.M. and 2:00 P.M. This well received event brings nearly 2,000 visitors to Newport - many from out of state, Canada, and increasingly, from across the globe. It is organized by the Newport Booster Club, and has raised more than \$300,000 for local high school sports and activities. The event is planned to include 1,200 participants and 2,000 to 3,000 spectators and their families. Most runners stay in city lodging establishments for several nights and frequent local restaurants and shops.

The cost of police services is estimated to be \$2,500, and the public works crew costs are approximately \$425, for a total of \$2,925. Using the formula that has been applied to other special events, including the Celtic Festival and Seafood and Wine Festival, it is recommended that the city's contribution be 35% of the total fiscal impact to the city for a total fee waiver of \$835.71, leaving a balance due the city from the Newport Marathon of \$2,089.29.

Two motions are included in the event Council opts to waive the entire fees.

Section 9.80.015 of the Newport Municipal Code states:

- A. Applicants may request a full or partial fee waiver of special event permit fees. A request for a fee waiver must be submitted with a special event permit application. The city may, in its discretion, approve all, part, or none of a fee waiver request. The following will be considered in the city's review of a request for a fee waiver:
1. Whether the event is a benefit to the community.
 2. Whether the event creates positive publicity for the city.
 3. The city's cost of providing services for/to the event.
 4. Whether there are revenues that can be used to offset the impact of a fee waiver on the general fund.
 5. Whether the event promotes education, public health, or public safety.
 6. Whether the event is operated by a non-profit organization.
 7. Whether the event has in the past or is likely in the future to take action that, if taken by a governmental entity, would be unconstitutional. The city will not provide a fee waiver for any special event or entity that takes action in regard to the special event that, if taken by the city, would be unconstitutional.
- B. Unless waived, all fees required for the special event must be paid prior to the issuance of a permit. In no event, will the fee waiver be more than the city's cost of providing service to the event.

Other Alternatives Considered: None

City Council Goals: This request does not address a specific City Council goal.

Attachment List: Attached is the special event permit application request from the organizers of the Newport Marathon.

Fiscal Notes: Because the event attracts tourists, a portion of the waived fees may be offset by transient room tax revenues.

Rec'd 2/14/14

SPECIAL EVENT PERMIT APPLICATION

Submit to: City Recorder
City of Newport
169 SW Coast Highway
Newport, Oregon 97365
p.hawker@thecityofnewport.net
541.574.0613

This application must be completed, signed, and submitted far enough in advance of the event to allow staff time to properly analyze and determine the impacts on city services. It is recommended that applications be submitted at least 60 days prior to the scheduled event. Late applications may be accepted, but the city cannot assure that late applications will be processed in time to issue the permit.

Use Additional Sheets if Necessary

Event Name: Newport Marathon
Event Date: May 31, 2014 Time(s): 6 AM - 2 PM
Location: City streets in Nye beach and Bay Blvd (see attached map)
Facilities to be used: Park None
(Be specific) City Building: None
Sidewalk: Boardwalk along Bay Blvd
Street: (see map)
Other City Property: _____
Private Property: _____
Set-up Dates and Start Times: 5 AM 5/31/14 setup start 6 AM 5/31/14
Take-down Dates and End Times: 2 PM 5/31/14 for end time and takedown
Estimated Crowd Size: Participants (Including Vendors and Volunteers)
1200
Spectators 2-3000
Is this a New Event: No If not, Previous Dates/Years Held: This will be the 16th year.

Applicant: Tom Swmford - race director / Newport Boosters

Mailing Address: PO Box 1313
Newport, OR 97365

Telephone: 541-270-4250

E-Mail: run@newportmarathon.org

Fax: _____

Contact Person (must be authorized to sign for applicant): Tom Swmford

Contact Person Address, Phone(s), E-Mail: PO Box 681, Toledo, OR 97391
541 270 4250, run@newportmarathon.org

Applicant Status (Non-Profit/For Profit): NON PROFIT

DETAILED DESCRIPTION OF EVENT

Provide a detailed description of all activities associated with the event, including a detailed description of city services requested. In the description, state whether food, drink, and/or alcoholic beverages will be served. To the extent that the event involves use of parks, streets, or other city facilities, provide a description of how and when the facilities will be used and a diagram of the areas that the event will use. If applicable, provide a parking plan, security plan, medical assistance plan, litter control and disposal plan, and any other information that would be useful to the city. Use additional sheets as necessary to provide complete information.

For the City of Newport
Detailed Description of the event- Newport Marathon

Beginning at the Yaquina Bay State Park set up will begin at ~~5~~ ^{May 31, 2014} AM on ~~June 5, 2010~~. Runners will begin arriving and hanging out until race time. Volunteers will direct traffic from the south end of the park to drop off runners. Volunteers will stop traffic at the north end of the park and advise runners be dropped off there. This will control the safe flow of traffic as the ~~800~~ runners and spectators gather in the park for a ~~6~~ AM start.
1000

At 7AM runners will exit the north end of Yaquina Bay State Park and turn east on Government St.

They will proceed east until 9th St where they will turn north.

Runners will continue on 9th St. to Minnie St where they will turn west.

They will leave Minnie St. when they turn north on 8th St.

Runners will continue north on 8th St until they reach SW Bay St where they will turn west.

Runners will turn south onto 7th St from SW Bay St.

At the intersection of 7th and Elizabeth St, runners will turn north.

Runners will turn east where Elizabeth St meets SW 2nd St.

They will continue on SW 2nd St until they reach SW Coast St where they will turn north.

From SW Coast St runners will turn east at W. Olive St

Runners will turn north off of W. Olive St onto NW Brook St

Runners will turn west from NW Brook St onto NW 3rd St.

They will continue on NW 3rd St until they reach NW Cliff St. where they will turn south.

Runners will turn west on W. Olive St and continue south on Elizabeth St.

They will stay on SW Elizabeth St until they reach SW Government St where they will turn west and enter Yaquina Bay State Park.

Runners will continue through the park heading south and leaving at the south entrance of the park to pass under Yaquina Bay Bridge and onto SW Naterlin Dr.

They will leave SW Naterlin Dr when they reach SW Bay St where they will turn south and merge into SW Bay Blvd.

Runners will continue on Bay Blvd until it reaches the Boardwalk near Hatfield Dr.

Runners will be directed by volunteers onto the boardwalk where they will run until they reach Eads St.

They will be directed by volunteers from the boardwalk onto SW Bay Blvd where they will continue for about 11 miles.

At the turn around, approximately 11 miles up the Bay Rd, runners will be directed west back to Newport to finish at the Oregon Coast Bank's parking lot.

The Oregon Coast Bank will host the finish area. In this area, food and drink will be served, including beer.

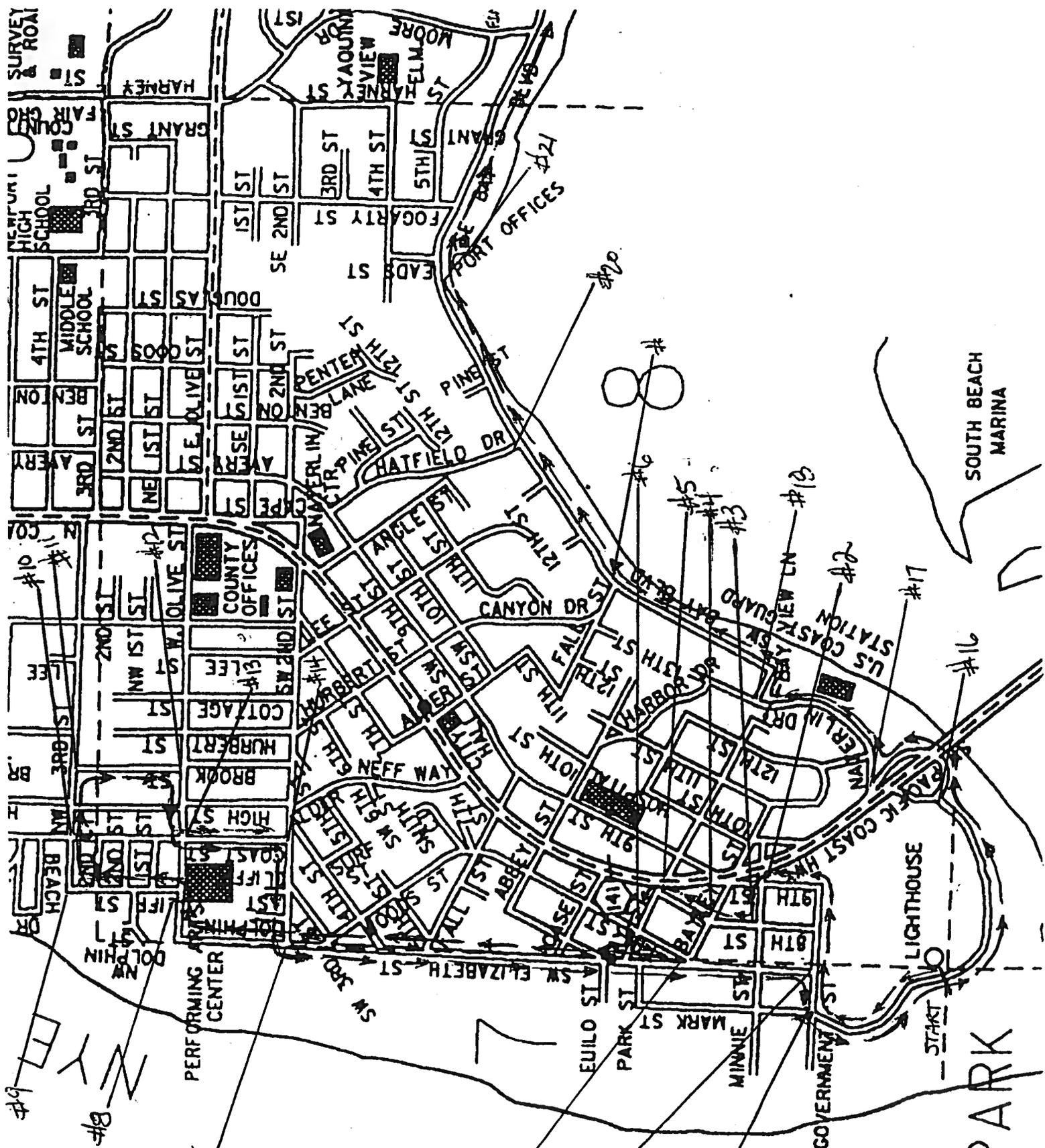
Parking will be along the streets and we are requesting that the NO PARKING signs be covered from Friday night (June 4) until 5PM on June 5. I don't think these signs are there anymore, however.

An ambulance will be parked in the Oregon Coast Bank parking lot during the event.

The aid station located in Yaquina Bay Park will be responsible for initial litter pick up.

Volunteers in the finish area will be responsible for all litter and trash pick up.

A volunteer group will drive the marathon route after the race and pick up any litter that may have been left by participants or spectators.
All trash will be placed in a dumpster near the Yaquina Yacht Club and will be picked up by Thompson's Sanitary Service.



AQUINA TATE PARK

Cindy Breves

From: Mark Miranda
Sent: Friday, March 14, 2014 2:34 PM
To: Cindy Breves
Cc: Jason Malloy
Subject: RE: Special Event Permit Newport Marathon

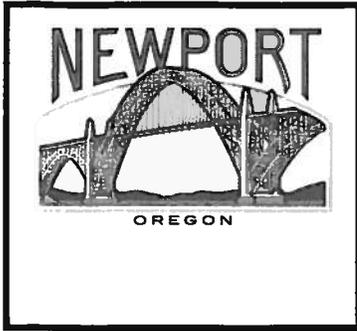
The cost estimate is \$2500

From: Cindy Breves
Sent: Friday, February 28, 2014 1:35 PM
To: Department Heads
Subject: Special Event Permit Newport Marathon

Attached is a special event permit application for Newport Marathon . Would you please let me know the fiscal impact to your department by March 7, 2014.

Cindy Breves

Executive Assistant/ Municipal Court Clerk
169 SW Coast Highway
Newport, OR 97365
541-574-0603
c.breves@newportoregon.gov



Agenda Item # CC.V.D.2
Meeting Date 4/7/14

CITY COUNCIL AGENDA ITEM SUMMARY
City Of Newport, Oregon

Issue/Agenda Title Consideration of a Request for a Special Event Fee Waiver - Loyalty Days

Prepared By: Hawker Dept Head Approval: ph City Mgr Approval: _____

Issue Before the Council: The issue before Council is the consideration of a request for a special event fee waiver for services provided by the city during Loyalty Days.

Staff Recommendation: This is entirely a City Council decision.

Proposed Motion: I move to approve the fee waiver requested by the Newport Loyalty Days and Sea Fair Festival Association, Inc., in the full amount of \$6,155, as the Newport Loyalty Days and Sea Fair Festival Association, Inc., is a non-profit entity.

OR

Alternate Motion: I move to approve the fee waiver requested by the Newport Loyalty Day and Sea Fair Festival Association, Inc., in the amount of \$2,154.25, which is equal to 35% of the city's total fiscal impact of this event, and that the general fund be reimbursed 50% of this amount, equal to \$1,077.13, by the room tax fund, and that the Loyalty Days Association be invoiced the balance of \$4,000.75.

Key Facts and Information Summary: The Newport Loyalty Days and Sea Fair Festival Association, Inc. has scheduled the 58th annual Newport Loyalty Day parade for Saturday, May 3, 2014. The association has requested the support it traditionally receives from the city which includes assistance from the Newport Police and Public Works Departments. The Police Department estimated costs are \$3,800, and the estimated costs of the Public Works Department are \$2,355.

Last year, Council opted to waive all fees because the requestor is a non-profit corporation which is why there is a proposed motion that reflects last year's action, and an alternate motion which reflects the formula used for other special event fee waiver requests.

Section 9.80.015 of the Newport Municipal Code states:

A. Applicants may request a full or partial fee waiver of special event permit fees. A request for a fee waiver must be submitted with a special event permit application. The city may, in its discretion, approve all, part, or none of a fee waiver request. The following will be considered in the city's review of a request for a fee waiver:

1. Whether the event is a benefit to the community.

2. Whether the event creates positive publicity for the city.
 3. The city's cost of providing services for/to the event.
 4. Whether there are revenues that can be used to offset the impact of a fee waiver on the general fund.
 5. Whether the event promotes education, public health, or public safety.
 6. Whether the event is operated by a non-profit organization.
 7. Whether the event has in the past or is likely in the future to take action that, if taken by a governmental entity, would be unconstitutional. The city will not provide a fee waiver for any special event or entity that takes action in regard to the special event that, if taken by the city, would be unconstitutional.
- B. Unless waived, all fees required for the special event must be paid prior to the issuance of a permit. In no event, will the fee waiver be more than the city's cost of providing service to the event.

Other Alternatives Considered: None

City Council Goals: This request does not address a specific City Council goal.

Attachment List: Attached is the special event permit application request from the organizers of the Newport Loyalty Days and Sea Fair Festival Association, Inc., and memo from the Police Department regarding costs.

Fiscal Notes: Because the event attracts tourists, a portion of the waived fees may be offset by transient room tax revenues.



**NEWPORT LOYALTY DAY and SEA FAIR FESTIVAL
ASSOCIATION, INC.**

P.O. Box 1531

Newport, Oregon 97365

The City of Newport
Attn: Mr. Spencer Nebel
169 So. Coast Hwy
Newport, OR 97365

RE: 58th Annual Newport Loyalty Days and Sea Fair Festival

Dear Mr. Nebel,

The Newport Loyalty Day and Sea Fair Festival Association, Inc. have begun preparations for the 58th annual Newport Loyalty Days & Sea Fair Festival. This year it has been scheduled for Thursday, May 1st through Sunday, May 4th, 2014. With this year's theme: Celebrating Community Traditions.

Among the weekend's activities is the annual two hour parade scheduled for Saturday, May 3rd beginning at 12:00 pm. As in years past this parade begins at the intersections of Hwy 101 and N.E. 20th street. The line of march follows Hwy 101 South and begins to disburse at or around Hwy 101 and Fall street.

We are formally requesting the support we have traditionally received from The City of Newport for the annual parade. This includes assistance from the Newport Police Department and Public Works Department. Along with this support we are also requesting a waiver of all fees which might be associated with this level of support.

We look forward to speaking before the Newport City Council in regards to our request if requested. Our insurance coverage has been submitted for renewal and our ODOT permit is pending, awaiting council approval and your signature.

Sincerely,

A handwritten signature in black ink, appearing to read "Patty", written over a horizontal line.

Patty Louisiana Co-Chair (541) 961-1466
Teena Power, Co-Chair (541) 336-0120
Newport Loyalty Days and Sea Fair Festival Assoc., Inc.

SPECIAL EVENT APPLICATION

Submit to: City Recorder
City of Newport
169 SW Coast Highway
Newport, OR 97365
Email: p.hawker@thecityofnewport.net
541.574.0613

This application must be completed, signed and submitted 60 days before the first day of the event. Late applications may be accepted, but the city cannot assure that late applications will be processed in time to issue the permit. Misrepresentation in the application is ground for denial or revocation of the permit. The city may withdraw the permit if the actual event differs from the description in the application materials.

If you cannot answer in the space provided, submit additional sheets

EVENT

Event Name: Newport Loyalty Day Parade

Event Date: Saturday, May 3rd 2014 Time: 12:00 - 2:00 pm

Location: ___Hwy 101 & NE 20th Street to Hwy 101 & S.W. Fall Street

Facilities to be used: Park _____N/A

(Be specific)

Street - See above

Sidewalk - Along parade route

Other City Property - N/A

Private Property - N/A

Set-up dates and start time: Saturday, May 3rd, 2010 9:00 am

Take-down dates and end time: Saturday, May 3rd, 2010 2:00 pm

Estimated crowd size: Parade Participants:1500

Parade Spectators; 10,000 - 15,000

Has event occurred previously? Yes What dates? Annually for 57 years

Any changes from previous events? No (If yes, list changes on separate sheet)

APPLICANT

Name: Newport Loyalty Day & Sea Fair Festival Assoc.

Mailing Address: PO Box 1531, Newport, Oregon 97365

Phone: (541) 961-1466

Email: lanorthwest@hotmail.com

Fax: N/ A

Contact Person (must be authorized to sign for entity):Patty Louisiana

Contact Person Address, Phones, Email (541) 961-1466

 lanorthwest@hotmail.com

Status of Applicant (Type of Entity, For Profit/Nonprofit) Non profit

DEPOSIT/REQUEST FOR WAIVER

The City of Newport requires payment for the services it provides to special events, unless a waiver is granted. To process an application, the city requires either submission of a \$25 deposit to be credited against the fees that will be charged or submission of a fee waiver request.

 A \$25 deposit is submitted with this application.

 X A fee waiver request is submitted with this application.

DETAILED DESCRIPTION OF EVENT

Provide a detailed description of activities associated with the event, including a detailed description of city services requested. In the description, state whether food, drink, and/or alcoholic beverages will be served. To the extent that the event involves use of parks, streets or other city facilities, provide a description of how and when the facilities will be used and a diagram of the areas that the event will use. To the extent applicable, provide a parking plan, security plan, medical assistance plan, litter control and disposal plan and any other information that would be useful to the city. Use additional sheets as necessary to provide complete information.

INSURANCE INFORMATION

If a special events permit is granted, evidence of insurance must be provided to the city at least 15 days before the event. A certificate of insurance showing the City of Newport as an additional insured is required in most situations, although the requirement can be waived. Minimum limit is \$1,000,000 commercial general liability or equivalent. The approval of the permit is tentative until the proof of insurance is submitted or waiver granted.

Patty Louisiana / Original signature / Original document sent under separate cover

Applicant's Signature: Patty Louisiana / Co-Chair NLD

Date: February 20th, 2014



NEWPORT LOYALTY DAY and SEA FAIR FESTIVAL ASSOCIATION, INC.

P.O. Box 1531

Newport, Oregon 97365

2014 Newport Loyalty Day Parade, Saturday, May 3rd , 2014

The Newport Loyalty Day and Sea Fair Festival Association, Inc. have scheduled the 58th annual Newport Loyalty Day parade for Saturday, May 3rd , 2014.

The Loyalty Day Festival has been a part of the City of Newport and its citizens for the past 54 years, with its inception dating back to the Crab Festival of the 1930's. First as a way to entice tourism during the slower months of the year and second to show our patriotic support for our veteran's, honoring those who have served and those who are currently serving their country. As a 501 c 3 non-profit we look to organize and implement certain events during this festival as we rely on the Newport businesses and citizen's to step forward and use this weekend for their own expression of Loyalty Days. Charity Auto Show's, Veteran's receptions, Service Medal Ceremonies, Field of Honor sites are some of the ways the citizens of Newport offer a way to simple say thank you for your service to our veteran's.

Along with the wide support this parade receives from its citizen's, the increase of visitors, some for the first time, spend the day or the weekend and enjoy the hospitality Newport and it's businesses are famous for. We estimate upwards of 1,500 participants in the parade itself with estimates of 10,000 -15,000 individuals lining the parade route come rain or shine.

As we do not charge to view this event, only to participate in the actual parade, it can be a bit difficult to determine the actual dollar amount which benefits the city and its businesses. However, we do know when an out of town band comes to Newport and spends the weekend, they budget \$20,000.00 for Newport hotel rooms and meals for their trip. When the many car club members drive over from the valley to attend, they normally reserve a block of rooms at one of Newport's fine hotels, host Show and Shines to benefit local charities and enjoy the area restaurants. I have personally heard many times over the years, how someone was "just driving through" on the day of the parade. They decided to stop to watch and ended up spending the entire day, playing tourist, shopping and eating in one of our many restaurants. The thousands of parade spectators have either picked up something to eat during the parade or head out to find a restaurant after the parade is finished. So, when the restaurants and shops are full, the hotels see an increase in room stays, when visitors come to see what Newport is all about on this weekend, we see this as a benefit to the entire Newport business community.

As in years past, we are implementing with your approval the following to insure a safe and fun parade for all;

The hwy closure request for the parade this year is the same, with the parade route beginning at NE 20th Street (Pacific Plaza Shopping Center) and Hwy 101 -- entries marching South down Hwy 101 with the parade entries being directed off Hwy 101 approximately at S.W. Fall Street. A map of the Newport area is enclosed with the parade route and detour route clearly marked.

The Newport Public Works Department established the detour route and traffic flow diagrams for all intersections. We ask that this plan continue to be used and the required barricades and cones be set out prior to the parade to assist the Newport Police Department personnel in implementing the traffic control plan. We also ask that the Newport Public Works Department makes available any additional barricades and cones the Newport Police Department determines it may need for this event.

Grandstands have in years past been erected on the corner of Hwy 20 (Olive Street) and Hwy 101 and in the parking lot of the Newport Armory. These serve as grandstands for our visiting and local dignitaries. At this time we are again asking for these grandstands to be erected at least one day prior with to the parade

with tear down after the event at the discretion of Newport Public Works Department personnel. Last year the Oregon National Guard 224th Engineers assisted in set up and offer their assistance once again.

We have requested a two hour closure with ODOT from 11:45 a.m. to 1:45 p.m. on parade day. We appreciate the leeway of 15 minutes on either side of this time frame they give us, though what we typically see is the Newport Police Department slows traffic and begins to reroute traffic at 11:30 am and by 1:30 p.m. Hwy 101 begins to open up behind the last of the parade entries under the direction of Newport Police Department with Hwy 101 fully opened to traffic before 2:00 p.m. We leave the actual closing and opening times of the hwy to the discretion of the Newport Police Department. By limiting the commercial entries to 90 as per our rules, we feel this gives us a great parade and keeps us within the ODOT Hwy closure timeframe.

Interagency cooperation;

As in the past the Newport Police Department will be heading up traffic control with interagency cooperation from the Lincoln County Sheriff's Department, Oregon State Police, and Newport's CERT personnel. The Lincoln County Search and Rescue team stages the beginning of the parade with the assistance of the Lincoln County Sheriff's Mounted Posse. All agencies do a tremendous job in conducting this annual event. The Newport Police Department has a traffic control procedure on file for this event and conducts a morning briefing the day of the parade. Upon receipt of the signed ODOT permit and our annual liability insurance coverage, copies are distributed to these agencies for their files.

Staging the parade;

We utilize a portion of the parking lots at Central Lincoln PUD, Fred Meyer for bands, Atonement Lutheran Church for large floats or oversized vehicles, behind Safeway/Rite Aid and also portions of the Wal-Mart parking lot. A portion of the front parking lot at Pacific Plaza is used as the Parade Check-in for all entries. We understand the need to keep customers and employees happy and each year we strive to minimize any congestion. The staging begins at 9:00 am with the parade starting at 12:00 p.m.; we anticipate the need for these lots until all entries are on the parade route. (9:00 am – 1:00 pm)

Letters are sent out and permission is received from these businesses along with a flyer going out to all businesses located in and around the staging area.

Medical Plan;

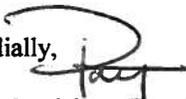
Safety has always been first and foremost a top priority. We stage all Newport Emergency Vehicles and visiting emergency agency vehicles directly behind the walking Color Guard who start off the parade. In case of any emergency, the required vehicles can exit the line of march quickly. An alternate traffic route North and South of the city has been established to allow drivers access in and around Newport during the temporary closure of Hwy 101.

Clean-up

As an extended courtesy, we also provide the services of a street sweeper to clean up all parking lots and place them as the last entry of the parade to clean up the parade route on hwy 101. We also request the use of the street sweeper from the City of Newport to work along side this vehicle. We request from each parade entity to not throw candy or any item during the parade. We also ask each equestrian unit to have a wheelbarrow and shovel at the ready. During this event, we do not host any vendors along the parade route and do not offer any food or drink for sale.

We look forward to assisting the City with any further questions you may have. We appreciate the assistance we have received in the past from the City of Newport's personnel and we again ask for a waiver of all City fees associated with this event. As in the past, we list the City of Newport as an additional insurer under our event insurance coverage.

Cordially,



Patty Louisiana, Parade Chair/ Festival Co-Chair (541) 961-1466
Teena Power, Festival Co-Chair (541) 336-0120
Newport Loyalty Days and Sea Fair Festival Association, Inc.

**APPLICATION AND PERMIT TO OCCUPY OR
PERFORM OPERATIONS UPON A STATE HIGHWAY**

See Oregon Administrative Rule, Chapter 734, Division 55

PERMIT NUMBER

CLASS :	KEY#
---------	------

GENERAL LOCATION				PURPOSE OF APPLICATION (TO CONSTRUCT/OPERATE/MAINTAIN)			
HIGHWAY NAME AND ROUTE NUMBER Oregon Coast Highway - Hwy. 101				<input type="checkbox"/> POLE LINE	TYPE		MIN. VERT. CLEARANCE
HIGHWAY NUMBER 009		COUNTY 21 = LINCOLN		<input type="checkbox"/> BURIED CABLE	TYPE		
BETWEEN OR NEAR LANDMARKS Between NE 20th Street and SW Alder Street				<input type="checkbox"/> PIPE LINE	TYPE		
HWY. REFERENCE MAP AML		DESIGNATED FREEWAY <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		IN U.S. FOREST <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		<input type="checkbox"/> NON-COMMERCIAL SIGN	FEE AMOUNT \$0.00
APPLICANT NAME AND ADDRESS Newport Loyalty Day and Sea Fair Festival PO Box 1531 Newport, OR. 97365				<input checked="" type="checkbox"/> MISCELLANEOUS OPERATIONS AND/OR FACILITIES AS DESCRIBED BELOW			
Contact: Patty Louisiana 541-961-1466				BOND REQUIRED <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		REFERENCE: OAR 734-55 035(2)	AMOUNT OF BOND \$0.00
				INSURANCE REQUIRED <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		REFERENCE: OAR 734-55 035(1)	SPECIFIED COMP. DATE

DETAIL LOCATION OF FACILITY (For more space attach additional sheets)

MILE POINT	TO	MILE POINT	ENGINEERS STATION	ENGINEERS STATION	SIDE OF HWY OR ANGLE OF CROSSING	DISTANCE FROM		BURIED CABLE OR PIPE		SPAN LENGTH
						CENTER OF PVMT	R/W LINE	DEPTH/VERT.	SIZE AND KIND	
139.32		140.73			BOTH					
NE 20th St.		SW Alder St.								

DESCRIPTION AND LOCATION OF NON-COMMERCIAL SIGNS OR MISCELLANEOUS OPERATIONS FACILITIES: Permit allows applicant to conduct the Newport Loyalty Day and Sea Fair Festival Parade upon portions of Highway 101, Saturday May 3 rd 2014 from 12:00 p.m. to 2:00 p.m. in accordance with all provisions and attachments.

SPECIAL PROVISIONS (FOR MORE SPACE ATTACH ADDITIONAL SHEETS)

- TRAFFIC CONTROL REQUIRED YES [OAR 734-55-025(6)] NO
- OPEN CUTTING OF PAVED OR SURFACED AREAS ALLOWED? YES [OAR 734-55-100(2)] NO [OAR 734-55-100(1)]
- ◆ AT LEAST 48 HOURS BEFORE BEGINNING WORK, THE APPLICANT OR HIS CONTRACTOR SHALL NOTIFY THE DISTRICT REPRESENTATIVE AT TELEPHONE NUMBER: 541-757-4211
- OR FAX A COPY OF THIS PAGE TO THE DISTRICT OFFICE AT: 541-757-4290 SPECIFY TIME AND DATE IN THE SPACE BELOW.
- ◆ A COPY OF THIS PERMIT AND ALL ATTACHMENTS SHALL BE AVAILABLE AT THE WORK AREA DURING CONSTRUCTION.
- ◆ ORS 757.54 TO 757.571 REQUIRES EXCAVATORS TO LOCATE AND PROTECT ALL EXISTING UNDERGROUND UTILITIES. YOU MAY BE HELD LIABLE FOR DAMAGES. CALL FOR UTILITY LOCATES. CALL BEFORE YOU DIG. 1-800-332-2344

COMMENTS - ODOT USE ONLY SEE ATTACHED ADDITIONAL PROVISIONS

IF THE PROPOSED APPLICATION WILL AFFECT THE LOCAL GOVERNMENT, THE APPLICANT SHALL ACQUIRE THE LOCAL GOVERNMENT OFFICIAL'S SIGNATURE BEFORE ACQUIRING THE DISTRICT MANAGER'S SIGNATURE.

LOCAL GOVERNMENT OFFICIAL SIGNATURE		TITLE		DATE
X				
APPLICANT SIGNATURE	APPLICATION DATE	TITLE	TELEPHONE NO.	
X				
When this application is approved by the Department, the applicant is subject to, accepts and approves the terms and provisions contained and attached; and the terms of Oregon Administrative Rules, Chapter 734, Division 55, which is by this reference made a part of this permit.			DISTRICT MANAGER OR REPRESENTATIVE	APPROVAL DATE
			X	

EVENT Newport Loyalty Day Parade DATE Saturday May 3rd, 2014
APPLICANT'S SIGNATURE Ray Lassians / co-chair
LOCAL JURISDICTION SIGNATURE _____

PROVISIONS FOR A PARADE PERMIT IN DISTRICT 4
(Call for locates before digging (1-800-332-2344))

1. The applicant shall provide complete traffic control by means of qualified police officers at each end of the parade and at street intersections. Applicant shall provide a description and map of the parade and detour routes including temporary sign placement. All temporary traffic control devices shall be in accordance with the Manual on Uniform Traffic Control Devices (MUTCD).
2. The applicant shall be responsible for all clean-up of debris deposited on or along the highway as a result of the parade.
3. It is the responsibility of the applicant to obtain written permission to use city streets and county roads for traffic detours, if required, from the respective Cities and Counties. The Oregon Department of Transportation has no authority to grant permission to detour traffic over city streets and county roads.
4. Parade Permits issued by ODOT will only cover that portion of a parade that takes place on a State Highway.
5. The applicant shall be responsible and liable for all accidents, damages, injuries to persons or property, that are a direct result of the parade.
6. Approval for the parade will be at the discretion of the District Manager.

Cindy Breves

From: Mark Miranda
Sent: Friday, March 14, 2014 2:32 PM
To: Cindy Breves
Cc: Jason Malloy
Subject: RE: Special Event Permit Loyalty Days

This cost estimate is \$3800

From: Cindy Breves
Sent: Friday, February 28, 2014 1:35 PM
To: Department Heads
Subject: Special Event Permit Loyalty Days

Attached is a special event permit application for Loyalty Days . Would you please let me know the fiscal impact to your department by March 7, 2014.

Cindy Breves

Executive Assistant/ Municipal Court Clerk
169 SW Coast Highway
Newport, OR 97365
541-574-0603
c.breves@newportoregon.gov

CITY OF NEWPORT

ORDINANCE NO. 2063

AN ORDINANCE DECLARING A MORATORIUM ON
MEDICAL MARIJUANA FACILITIES
AND DECLARING AN EMERGENCY

WHEREAS, the Oregon Legislature enacted House Bill 3460 (2013) which requires the Oregon Health Authority to develop and implement a process to register medical marijuana facilities; and

WHEREAS, HB3460 directed that persons who operate or are employed by a registered medical marijuana facility would enjoy immunity from state prosecution; and

WHEREAS, the issue of whether a local government believes a certain type of business should operate within its jurisdictional limits is a local government decision, the enforcement of which is subject to the general and police powers of that jurisdiction; and

WHEREAS, the Oregon Legislature enacted Senate Bill 1531 (2014) which removes immunity from state prosecution for a person who is responsible for or employed by a registered medical marijuana facility located in an area subject to the jurisdiction of a city or county that enacts a moratorium prohibiting the operation of a medical marijuana facility; and

WHEREAS, the City Council of the City of Newport believes it is in the best interests of the health, safety, and welfare of the citizens of Newport, to enact such a moratorium prohibiting the operation of medical marijuana facilities within the jurisdictional boundaries of the City of Newport;

THE CITY OF NEWPORT ORDAINS AS FOLLOWS:

Section 1. Moratorium Declared. The City of Newport hereby prohibits the operation of any medical marijuana facility in any area subject to the jurisdiction of the City of Newport. As used in this section, "medical marijuana facility" includes any facility that dispenses marijuana pursuant to ORS 475.314 or any other provision of Oregon law, including the provisions of Municipal Code Chapter 4.05 relating to business licenses.

Section 2. Duration of Moratorium. The moratorium imposed by this ordinance shall be effective until May 1, 2015 unless rescinded sooner.

Section 3. Administrative Procedures. The City Manager is directed to implement reasonable policies, procedures, administrative rules, or regulations to govern the administration of this Ordinance and as set forth in Municipal Code 4.05.045 concerning business licenses. The City Manager is authorized to determine the validity of all medical marijuana dispensary applications, and licenses, including, but not limited to, those applications and licenses that predate the effective date of SB1531. Actions taken by the City Manager pursuant to Municipal Code 4.05.045 in connection with medical marijuana

dispensary business licenses, prior to the effective date of this Ordinance, are hereby ratified.

Section 4. Enforcement. The City Manager and Police Chief of the City of Newport are charged with enforcement of the moratorium.

Section 5. Remedies Not Exclusive. The remedies available under SB1531 for a violation of the moratorium imposed by this ordinance are not exclusive of any other remedies available under any applicable federal, state, or local law. It is within the discretion of the City of Newport to seek cumulative remedies for a violation of the moratorium imposed by this ordinance.

Section 6. Severability. If any provision of this ordinance or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this ordinance that can be given effect without the invalid provision or application, and to this end, the provisions of this ordinance are severable.

Section 7. Emergency. This Ordinance being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this Ordinance takes effect immediately upon passage.

Adopted by the City Council on April 7, 2014.

Sandra N. Roumagoux, Mayor

ATTEST:

Margaret M. Hawker, City Recorder

APPROVED AS TO FORM:

Robert Connell, City Attorney

Enrolled
Senate Bill 1531

Sponsored by Senators HANSELL, MONROE, STARR; Senators BAERTSCHIGER JR, BOQUIST, CLOSE, FERRIOLI, GIROD, JOHNSON, KNOPP, KRUSE, MONNES ANDERSON, OLSEN, THOMSEN, WHITSETT, WINTERS, Representatives ESQUIVEL, JENSON, THATCHER, THOMPSON, WHISNANT, WITT (at the request of Association of Oregon Counties and League of Oregon Cities) (Pre-session filed.)

CHAPTER

AN ACT

Relating to marijuana facilities; creating new provisions; amending ORS 475.314; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

SECTION 1. Section 2 of this 2014 Act is added to and made a part of ORS 475.300 to 475.346.

SECTION 2. Notwithstanding ORS 633.738, the governing body of a city or county may adopt ordinances that impose reasonable regulations on the operation of medical marijuana facilities registered, or applying for registration, under ORS 475.314 that are located in the area subject to the jurisdiction of the city or county. For purposes of this section, "reasonable regulations" includes reasonable limitations on the hours during which a medical marijuana facility may be operated, reasonable limitations on where a medical marijuana facility may be located within a zone described in ORS 475.314 (3)(a) and reasonable conditions on the manner in which a medical marijuana facility may dispense medical marijuana.

SECTION 3. (1) Notwithstanding ORS 475.314 and section 2 of this 2014 Act, the governing body of a city or county may adopt an ordinance enacting a moratorium on the operation of registered medical marijuana facilities until May 1, 2015, in the area subject to the jurisdiction of the city or county if the moratorium is enacted no later than May 1, 2014.

(2) Notwithstanding ORS 475.309 (1)(b), a person who is responsible for or employed by a registered medical marijuana facility located in an area subject to the jurisdiction of a city or county that enacts a moratorium under this section is not excepted from the criminal laws of this state for possession or delivery of marijuana, aiding and abetting another in the possession or delivery of marijuana or any other criminal offense in which possession or delivery of marijuana is an element.

(3) The governing body of a city or county that enacts a moratorium under this section must notify the Oregon Health Authority, in a manner prescribed by the authority, of the moratorium.

(4) A registered medical marijuana facility that is located in an area subject to the jurisdiction of a city or county that enacts a moratorium under this section may choose to surrender the medical marijuana facility's registration. To surrender registration under this subsection, the medical marijuana facility must notify the authority, in a manner prescribed

by the authority, of the surrender. If a medical marijuana facility surrenders registration under this subsection, the authority may refund any fee imposed by the authority pursuant to ORS 475.314 (12).

SECTION 4. Section 3 of this 2014 Act is repealed on January 2, 2016.

SECTION 5. ORS 475.314 is amended to read:

475.314. (1) The Oregon Health Authority shall establish by rule a medical marijuana facility registration system to authorize the transfer of usable marijuana and immature marijuana plants from:

(a) A registry identification cardholder, the designated primary caregiver of a registry identification cardholder, or a person responsible for a marijuana grow site to the medical marijuana facility; or

(b) A medical marijuana facility to a registry identification cardholder or the designated primary caregiver of a registry identification cardholder.

(2) The registration system established under subsection (1) of this section must require a medical marijuana facility to submit an application to the authority that includes:

(a) The name of the person responsible for the medical marijuana facility;

(b) The address of the medical marijuana facility;

(c) Proof that the person responsible for the medical marijuana facility is a resident of Oregon;

(d) Documentation, as required by the authority by rule, that demonstrates the medical marijuana facility meets the qualifications for a medical marijuana facility as described in subsection (3) of this section; and

(e) Any other information that the authority considers necessary.

(3) To qualify for registration under this section, a medical marijuana facility:

(a) Must be located in an area that is zoned for commercial, industrial or mixed use or as agricultural land; *[and may not be located at the same address as a marijuana grow site;]*

(b) May not be located at the same address as a marijuana grow site;

[(b)] (c) Must be registered as a business or have filed a pending application to register as a business with the Office of the Secretary of State;

[(c)] (d) Must not be located within 1,000 feet of the real property comprising a public or private elementary, secondary or career school attended primarily by minors;

[(d)] (e) Must not be located within 1,000 feet of another medical marijuana facility; and

[(e)] (f) Must comport with rules adopted by the authority related to:

(A) Installing a minimum security system, including a video surveillance system, alarm system and safe; and

(B) Testing for pesticides, mold and mildew and the processes by which usable marijuana and immature marijuana plants that test positive for pesticides, mold or mildew must be returned to the registry identification cardholder, the cardholder's designated primary caregiver or the cardholder's registered grower.

(4)(a) The authority shall conduct a criminal records check under ORS 181.534 of a person whose name is submitted as the person responsible for a medical marijuana facility under subsection (2) of this section.

(b) A person convicted for the manufacture or delivery of a controlled substance in Schedule I or Schedule II may not be the person responsible for a medical marijuana facility for five years from the date the person is convicted.

(c) A person convicted more than once for the manufacture or delivery of a controlled substance in Schedule I or Schedule II may not be the person responsible for a medical marijuana facility.

(5) If a person submits the application required under subsection (2) of this section, the medical marijuana facility identified in the application meets the qualifications for a medical marijuana facility described in subsection (3) of this section and the person responsible for the medical marijuana facility passes the criminal records check required under subsection (4) of this section, the authority shall register the medical marijuana facility and issue the person responsible for the medical marijuana facility proof of registration. The person responsible for the medical marijuana facility

shall display the proof of registration on the premises of the medical marijuana facility at all times when usable marijuana or immature marijuana plants are being transferred as described in subsection (1) of this section.

(6)(a) A registered medical marijuana facility may receive usable marijuana or immature marijuana plants only from a registry identification cardholder, designated primary caregiver or person responsible for a marijuana grow site if the registered medical marijuana facility obtains authorization, on a form prescribed by the authority by rule and signed by a registry identification cardholder, to receive the usable marijuana or immature marijuana plants.

(b) A registered medical marijuana facility shall maintain:

(A) A copy of each authorization form described in paragraph (a) of this subsection; and

(B) Documentation of each transfer of usable marijuana or immature marijuana plants.

(7) A medical marijuana facility registered under this section may possess usable marijuana and immature marijuana plants in excess of the limits imposed on registry identification cardholders and designated primary caregivers under ORS 475.320.

(8)(a) A registered medical marijuana facility may not transfer any tetrahydrocannabinol-infused product that is meant to be swallowed or inhaled, unless the product is packaged in child-resistant safety packaging that meets standards established by the authority by rule.

(b) A registered medical marijuana facility may not transfer any tetrahydrocannabinol-infused product that is manufactured or packaged in a manner that is attractive to minors, as determined by the authority by rule.

[(8)] (9) The authority may inspect:

(a) The premises of an applicant for a medical marijuana facility or a registered medical marijuana facility to ensure compliance with the qualifications for a medical marijuana facility described in subsection (3) of this section; and

(b) The records of a registered medical marijuana facility to ensure compliance with subsection (6)(b) of this section.

[(9)(a)] **(10)(a)** A registry identification cardholder or the designated primary caregiver of a registry identification cardholder may reimburse a medical marijuana facility registered under this section for the normal and customary costs of doing business, including costs related to transferring, handling, securing, insuring, testing, packaging and processing usable marijuana and immature marijuana plants and the cost of supplies, utilities and rent or mortgage.

(b) A medical marijuana facility may reimburse a person responsible for a marijuana grow site under this section for the normal and customary costs of doing business, including costs related to transferring, handling, securing, insuring, testing, packaging and processing usable marijuana and immature marijuana plants and the cost of supplies, utilities and rent or mortgage.

[(10)] (11) The authority may revoke the registration of a medical marijuana facility registered under this section for failure to comply with ORS 475.300 to 475.346, [or] rules adopted under ORS 475.300 to 475.346 **or ordinances adopted pursuant to section 2 of this 2014 Act**. The authority may release to the public a final order revoking a medical marijuana facility registration.

[(11)] (12) The authority shall adopt rules to implement this section, including rules that:

(a) Require a medical marijuana facility registered under this section to annually renew that registration; and

(b) Establish fees for registering and renewing registration for a medical marijuana facility under this section.

SECTION 6. This 2014 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2014 Act takes effect March 1, 2014.

Spencer Nebel

From: Jswakefield@msn.com
Sent: Wednesday, March 26, 2014 8:38 AM
To: Spencer Nebel
Subject: Contact Us - Web Form

City of Newport, OR :: Contact Us - Web Form

The following information was submitted on 3/26/2014 at 8:38:23 AM

To: Spencer Nebel
Name: Jim Wakefield
Email: Jswakefield@msn.com
Subject: Medical marijuana dispensary

Message: As you determine how you will vote on the moratorium, please consider the patients and their need for access. A large percentage of patients are disabled. Many exist on disability or social security income only. The expense of driving out of town for medicine is a huge factor for these people. Newport has a significant population of the people just described.

Also, please take a close look at who uses medical marijuana and the people who close MMJ dispensaries. I was very moved when I discovered what is really happening in the world of medical marijuana patients. A very eye opening experience. Many people use MMJ to break the devastating hold of narcotic pain medication. The effect of MMJ for people with epilepsy or similar conditions is miraculous. I can go on and on.

Another aspect you might consider is tourism. I know from my research that MMJ patients often travel to local tourist destinations with dispensaries. Day trips are very pleasant for disabled people. These people need activities like inexpensive day trips to enhance their lives. In Colorado where I have friends and relatives involved with medical marijuana, tourist towns attract large numbers of medical marijuana patients.

(For the record, I'm not a proponent of recreational use of marijuana) I'm Jim Wakefield, the PRF of the proposed facility on NW 15th St. Newport is my original home in Oregon when I moved here in 1976. I hope move back to Newport soon. See you at the Town Hall meeting March 31st.

Spencer Nebel

From: Sharry Burwood <sharryneedscoffee@icloud.com>
Sent: Friday, March 21, 2014 8:21 AM
To: Spencer Nebel
Subject: Moratorium

Dear Mr. Nebel,

As a voting citizen, business owner, and medical cannabis user for treatment of epilepsy and pain, I'm asking you to please consider the needs and desires of the people rather than the politics when making a decision about the moratorium, and allow a dispensary to open in Newport. Consider putting a cap on the number of dispensaries you allow, rather than not allowing any. One or two dispensaries would save a lot of people having to drive to the valley for their medicine.

Thank you,
Sharry Burwood

Spencer Nebel

From: Inez Judy <seagurlnewport@gmail.com>
Sent: Wednesday, March 26, 2014 11:03 PM
To: Spencer Nebel
Subject: Medical marijuana in Newport

I heard today that you aren't going to allow the medical marijuana place on 15th to open. I'm very disappointed. I'm 74, disabled and I can't drive. My husband is also disabled and can't drive. We live near the place on 15th and have been looking forward to going there. My daughter lives in Woodburn and can only visit now and then. Since I got my OMMP card about two years ago my life is so much better. Please don't deny access in Newport.

Spencer Nebel

From: 5419615141@vzwpix.com
Sent: Saturday, March 29, 2014 7:33 PM
To: City Council

Sad to learn that our council places itself as God over those of us who suffer with cancer. Walk in our shoes and suffer our pain. I do not promote reckless usage. Medical usage should be allowed.

Spencer Nebel

From: Wickedspinsradio Owner <jetaway31@yahoo.com>
Sent: Saturday, March 29, 2014 7:52 PM
To: City Council
Subject: MEDICAL MARIJUANA

Dear Sirs,

I am curious as to why Newport wants to deny a OMMP in the city? It's more regulated than most bars and porno shops in the city? People who need the medical properties of this product are not able to travel far to get this medicine..I would plead with you to reconsider and to research before you deny!

KM Zegers

Sent from my Verizon Wireless 4G LTE smartphone

Proposal from Newport CannaMedicine

157 NW 15th St.

Allow Newport CannaMedicine to open as part of your observation process. Allow us to be open at least until June 30th when our business license expires.

This would allow you to observe how we do business and who we do business with. There seems to be much misinformation flowing into local governments regarding dispensaries. We have been open in Salem for over two years. We have absolutely no connection with the street market or any marijuana activities outside the medical marijuana program. We are dedicated to medical only.

If you consider what is driving this momentum behind medical marijuana, I think it is clearly patients benefiting tremendously from using cannabis as medicine. The driving force behind dispensaries is the fact that about 50% of people licensed to use cannabis as medicine cannot grow themselves for various reasons. Health, cost, no suitable facility, children or grandchildren at home, these are some of those reasons. Without dispensaries, these people have no easy access. Most are uncomfortable trying to acquire it on the street. Growers will not usually agree to grow for others under the original OMMP guidelines. It's like asking someone to pay to grow cannabis for you. This is largely corrected under the dispensary law. The dispensary law requires a patient to authorize the flow of his excess to dispensaries with the states transfer authorization form. This will help to stop much of the flow of cannabis into the street market from growers. Contrary to what some officials believe, dispensaries are part of the solution, not the problem.

There are many reasons I think you should allow dispensaries in Newport. Most important is the need for access right here in Newport. I'm getting numerous phone calls every day asking when we will be open. These people have been waiting long enough for local access. Please take a look at who these people are. They are mostly disabled, older, low to moderate income people. People who improve their lives by using cannabis as medicine.

When we approached Newport City Government about a dispensary in Newport, our objective was to be totally up front, transparent and begin a good, honest working relationship with the City of Newport. We presented ourselves and our plans at City Hall in early September of 2013 hoping to determine exactly where we stand in terms of how we will be accepted. We really wanted to avoid winding up exactly where we are now. We secured a facility, began paying rent, purchased equipment and services because we had a clear impression that Newport welcomed us. We were issued a business license and had zero negative feedback until you announced intentions to seek a moratorium. We were shocked. We had no idea that was coming. If we had known in September that The City objected, we would not have pursued this at that time. In light of this I think it is quite reasonable to allow us to help you evaluate where you want to go with this by allowing us to open and work with you to develop Newport's business model.

Jim Wakefield Jack O'Neil

Chronic Pain Treatment and Management with Medical Marijuana

Chronic pain treatment and management are challenging for patients and doctors, but [medical marijuana](#) may be able to provide chronic pain relief where many traditional chronic pain medications do not. Cannabinoids have well-documented analgesic properties that make medical marijuana an effective medicine to treat many cases of chronic pain syndrome. In scientific studies, most medical marijuana patients experience pain relief. **Medical marijuana as a chronic pain management tool can reduce patients' pain and improve quality of life, without the same serious side effects associated with use of some pharmaceutical pain relievers.**

Medical Marijuana Can Help with Chronic Pain Treatment and Chronic Pain Management

Pain relief is one of medical marijuana's most well-known benefits. In fact, the American Academy of Family Physicians, the American Public Health Association, the American Nurses Association, and even The New England Journal of Medicine **endorse the use of medical marijuana** for the treatment of severe chronic pain.

In a 2000 study, 70-80% of patients experienced pain relief when using medical marijuana. For chronic pain patients, **one of the most unpleasant aspects of traditional chronic pain treatment is the long-term use of opioids.** These drugs have many side effects in the short and long term. They can also be difficult for many people with chronic pain to obtain in sufficient quantities to provide adequate chronic pain management. Medical marijuana can replace or reduce the use of opioids in chronic pain treatment, as it did for a 47-year-old woman in a 2003 case study, who experienced less pain with reduced doses of three opioids and a small amount of medical marijuana, compared to large doses of opioids only.

The Institute of Medicine found in 1999 that, "THC is significantly superior to placebo and produces dose-related analgesia peaking at around 5 hours, **comparable to but out-lasting that of codeine.**" Side effects were minimal and dose-related, including slurred speech, sedation and mental clouding, blurred vision, dizziness and ataxia. By comparison, many opioids, including codeine, can have side effects including hallucination, seizures, difficulty urinating, and a rapid or irregular heartbeat. People with chronic pain can often manage their pain using medicinal marijuana while regulating their own dosage in order to avoid side effects.

Cannabis is even seen as an effective treatment for one of the most mysterious and challenging types of chronic pain, chronic neuropathic (nerve injury) pain. In 2006, medical marijuana was named the most promising treatment for neuropathic pain by a group of elite pain researchers convened at a MedPanel summit.

Using Medical Marijuana As Part of Your Chronic Pain Treatment and Management Plan

If you're interested in using medical marijuana to treat your chronic pain, you'll need to research your local [medical marijuana laws](#) and talk to a [medical marijuana doctor](#) about obtaining any license or recommendations needed in order to use cannabis legally for your chronic pain. **Come prepared for your visit to a medical marijuana doctor** with information on your current treatment, your medical history, and what you hope to accomplish by using medicinal marijuana to manage your chronic pain.

Ashland may seek pot dispensary moratorium

Some neighbors of proposed outlets voice concerns; city says it needs more time to consider additional business regulations

By Vickie Aldous

Mail Tribune

March 24, 2014 2:00 AM

Ashland City Council is considering a moratorium on medical marijuana dispensaries as the town faces six dispensary applications so far and mounting neighborhood opposition.

The council will discuss a temporary moratorium at 7 p.m. Tuesday, April 1, in the Ashland Civic Center Council Chambers, 1175 E. Main St.

Ashland has one of the most lenient stances on dispensaries among Southern Oregon cities and counties.

The Oregon Health Authority Medical Marijuana Dispensary Program has received six dispensary applications for Ashland so far, City Administrator Dave Kanner said this week.

People hoping to launch dispensaries in Oregon began submitting applications to the state on March 3 as part of a new medical marijuana regulatory system.

The state keeps dispensary applicant information confidential, but data is available about two applicants because they applied for and received Ashland business licenses.

Siskiyou Medical Supply is already dispensing marijuana inside Puff's Smoke Shop, a long-established business at 1908 Ashland St., between an Allstate office and an H&R Block office.

A proposed dispensary called Top Shelf Meds at 400 Williamson Way has yet to open, but neighbors are raising objections.

The dispensary is in a business zone that abuts a neighborhood.

"There's no buffer between our neighborhood and this medical marijuana dispensary," said Carol Kim, who lives with her family on a side street off Williamson Way.

The dispensary is separated from her home by a sparse hedge, and one of her daughter's bedrooms looks out on the dispensary.

Kim said it's ironic that state rules bar dispensaries within 1,000 feet of schools, but her daughters will come home from school and have to live near a dispensary.

In addition, Kim said groups of out-of-town schoolkids are often in the neighborhood because they stay at the Ashland Commons hostel while visiting the Oregon Shakespeare Festival.

Located at 437 Williamson Way, Ashland Commons serves groups, families and individuals who need affordable accommodations.

North Mountain Park, which hosts environmental education, and youth and adult sports events, is below Williamson Way on North Mountain Avenue.

Kim said Ashland needs to consider additional regulations governing dispensaries, including lighting, hours of operations, screening from neighboring properties and whether they can site near neighborhoods even if they are technically in business zones.

State law does not allow dispensaries in residential zones, but they are allowed in mixed use, commercial, industrial and agricultural zones.

"I want to see guidelines for Ashland," Kim said. "It's not just about our neighborhood. This will be an issue elsewhere."

She said some people do need medical marijuana to treat their health conditions, but dispensaries should be located in business zones.

Other neighbors have sent emails to councilors and Mayor John Stromberg registering their concerns.

Councilors had previously asked the Ashland Planning Commission to consider additional regulations for dispensaries, but several said that process is moving too slowly.

Councilors unanimously voted on Tuesday to ask the Planning Commission to fast-track review of regulations that would ban dispensaries in the downtown business district, require a more lengthy conditional use permit application process with the city for dispensaries in employment zones, and allow relatively streamlined approval in commercial and industrial zones.

The proposed dispensary on Williamson Way is located in an employment zone.

Under the Ashland Municipal Code, employment zones are meant to provide for a variety of uses that have a minimal impact on surrounding uses, such as office, retail and manufacturing. The zone is supposed to maintain an "aesthetic environment."

Conditional use permit fees range from \$998 to \$2,002, according to an Ashland Community Development Department fee schedule.

Dispensary applicants already pay \$4,000 to the state for state review and consideration of applications. An applicant who is rejected will receive \$3,500 back, according to the Oregon Health Authority.

The Planning Commission is considering other regulations, including limits on operating hours and whether dispensaries should be located a minimum distance from residential areas and various public places, such as parks and the Ashland library.

If councilors adopt a moratorium on April 1, it would be temporary and allow time for the Planning Commission and council to review and approve any added regulations, councilors said.

Mayor John Stromberg said because dispensaries must be at least 1,000 feet from each other under state rules, applicants have an incentive to get applications in early in order to secure a spot.

Those quick applications may not provide Ashland enough time to work out regulations to protect neighborhoods, he said.

"That's why we may need a moratorium," Stromberg said.

In a session earlier this year, the Oregon Legislature gave local jurisdictions the authority to implement dispensary moratoriums until May 2015 while they work out local rules for dispensaries.

City Attorney Dave Lohman said Ashland could adopt a moratorium retroactive to the beginning of March.

Dispensaries that continue operating in the face of moratoriums can be subject to state prosecution, he said.

A moratorium would effectively shut down dispensaries that are already in operation, Kanner said.

The operators of Siskiyou Medical Supply in Puff's Smoke Shop on Ashland Street and Top Shelf Meds on Williamson Way did not return phone calls for comment.

In a previous interview, Puff's Smoke Shop owner Mike Welch said legal dispensaries provide needed medicine to patients in a professional environment and will attract visitors to Ashland.

He said dispensaries will generate tax revenue and help turn marijuana into a legitimate industry, rather than a black-market activity.

The Planning Commission will hold a study session to discuss various proposed regulations on dispensaries at 7 p.m. on Tuesday in the Ashland Civic Center Council Chambers, 1175 E. Main St. The meeting is open to the public, but city panels rarely take public testimony during study session.

The city of Ashland will hold an informational meeting about dispensaries at 6 p.m. on Wednesday in the Otte Peterson Room at The Grove building, 1195 E. Main St.

The purpose is to have an open conversation about neighborhood concerns regarding the dispensary on Williamson Way and what the city's options are for addressing concerns, Kanner said.

The meeting is open to the public.

Reporter Vickie Aldous can be reached at 541-776-4486 or valdous@mailtribune.com. Follow her at www.twitter.com/VickieAldous.

CITY OF NEWPORT

RESOLUTION NO. 3665

A RESOLUTION AUTHORIZING
THE ESTABLISHMENT OF A RESIDENTIAL
COMPOSTABLES COLLECTION PROGRAM

WHEREAS, the City of Newport has authorized a franchise agreement with Thompson's Sanitary Service Inc., pursuant to Newport Municipal Code Chapter 7.05 to carry out the purpose and policies of that chapter; and

WHEREAS, the franchise agreement provides that Thompson's Sanitary Service, Inc. shall provide for the disposal of solid waste; provide the opportunity for recycling; and provide new additional services when proposed by the City of Newport or Thompson's Sanitary Service Inc.; and

WHEREAS, the city has engaged in discussions with Thompson's Sanitary Service, Inc. since April of 2013 concerning the provision of a new service to meet the goals of Chapter 7.05 of the Newport Municipal Code to reduce the amount of solid waste generated and to recover resource materials where possible; and

WHEREAS, the City of Newport has requested and obtained public comment at various steps in the review of a residential compostables collection program with those comments shaping and informing the final program that has been proposed for adoption; and

WHEREAS, Thompson's Sanitary Service, Inc. has established a commercial compostables collection pilot program with a limited number of commercial users in addition to the proposed residential compostables collection program.

THE CITY OF NEWPORT RESOLVES AS FOLLOWS:

Section 1. The City Council authorizes an additional service of a residential compostables collection program in accordance with section 9 of the franchise agreement between the City of Newport and Thompson's Sanitary Service, Inc.

Section 2. The residential compostables collection program will be funded through an increase of \$6.59 per month for residential household garbage and recycling collection customers of Thompson's Sanitary Service, Inc. starting with initiation of the residential compostables collection service through June 30, 2015.

Section 3. Thompson's Sanitary Service, Inc. will allow those customers who elect to utilize a 24-gallon household garbage cart for weekly pick-up service to opt out of the residential compostables collection program.

Section 4. Thompson's Sanitary Service, Inc. will provide a 96-gallon roll cart with weekly pickup service for all residential customers, except as provided for in Section 3. Upon request, and subject to a reasonable delivery schedule, Thompson's Sanitary Service,

Inc. will provide an optional 65-gallon roll cart for customers who prefer a smaller roll cart, at the same cost as a 96-gallon roll cart.

Section 5. The rates for residential service upon initiation of the program and through June 30, 2015 will be as follows:

Curbside Waste Disposal, Co-Mingled Recycling, and Mixed Compostables Recycling

24-gallon garbage picked up weekly roll cart	\$25.74
35-gallon garbage picked up weekly roll cart	\$26.94
35-gallon garbage picked up monthly roll cart	\$23.24
65-gallon garbage picked up weekly roll cart	\$46.84
65-gallon garbage picked up monthly roll cart	\$38.84
96-gallon garbage picked up weekly roll cart	\$65.64

Curbside Waste Disposal and Co-Mingled Recycling Only

24-gallon garbage picked up weekly roll cart	\$19.15
Any Non Curbside residential customers Additional fee for Mixed Compostable Recycling	\$ 6.59

All other residential collection rates previously approved will be increased by \$6.59 at the time that compostable collection service is initiated as part of those services.

Section 6. Benchmarks for the residential compostables collection program are established as follows:

- A. If program opt out is less than 5%, then 25% to 30% of the total affected waste stream will be diverted as mixed compostables waste. If the program opt out is 5% to 10%, then 20% to 24% of the total affected waste stream will be diverted as mixed compostables waste. If the program opt out is more than 10% but less than 15%, then 15% to 19% of the total affected waste stream will be diverted as mixed compostables waste.
- B. The benchmark for active participation is as follows: 85% of customers receiving mixed compostables service will place a roll cart at the curb at least once per month on average.

Section 7. Thompson's Sanitary Service, Inc. will provide separate tonnage amounts and disposal costs for solid waste, co-mingled recycling, and compostables waste. Thompson's Sanitary Service, Inc. will provide this information semi-annually to the City of Newport. Thompson's Sanitary Service, Inc. will account for the collection and disposal costs for these lines of business in such a way that a report can be provided to the City Council when requested.

Section 8. For the first three years of the residential compostables collection program, Thompson's Sanitary Service, Inc. will meet semi-annually with the City of Newport to review the performance, effectiveness, and cost of the program. The city will develop a customer survey within the first six months of the program, in consultation with Thompson's Sanitary Service, Inc., to be distributed through city utility bills and other methods at a time deemed appropriate to obtain the most useful information from customers. If program costs exceed normal inflationary amounts, or benchmarks are not met, Thompson's Sanitary Service, Inc. will meet with the city to identify and implement ways to reconstruct or modify the program to reduce the overall increases in cost to residential customers.

Section 9. Thompson's Sanitary Service, Inc. assumes all of the financial risk of this program over and above the monthly program charge of \$6.59 through June 30, 2015.

Section 10. Upon approval of this resolution, the City Attorney is directed to draft necessary modifications to Chapter 7.05, Solid Waste, of the Newport Municipal Code to incorporate changes to definitions and other modifications necessary to reflect the intentions of the residential compostables collection program for the City of Newport, as reflected in this resolution.

Section 11. This resolution is effective upon adoption. The ordinance incorporating these provisions into the Newport Municipal Code will be effective upon the date specified therein.

Adopted by the Newport City Council on April 7, 2014.

Sandra N. Roumagoux, Mayor

ATTEST:

Margaret M. Hawker, City Recorder

Free In celebration of EARTH DAY Compost

*while supplies last

Day! April 19th

Self-Haul

9am-5pm @

{ Agate Beach Transfer Station
8096 NE Avery, Newport }

Kick-off your
gardening
season with
free compost



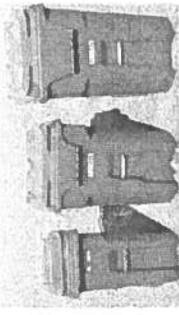
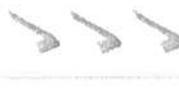
More info?
541.265.7249

Mixed Compostables

Thompson's Sanitary and the City of Newport are preparing to bring you a new service, designed to help our community decrease waste going to the Landfill. Newport Residents will now be able to Compost their Yard Debris (lawn clippings, leaves and small branches) as well as Kitchen Food Scraps all in one cart. Combined with your Comingled recycling container, much less waste should be going into your garbage cart destined for the landfill. The State of Oregon has adopted waste reduction goals for each County in the State, and Thompson's Sanitary is proud to assist City of Newport and Lincoln County in trying to reach this goal.

While there will be rate changes to provide this new service, we are committed to providing alternative service options that may make service level changes to help offset the rate changes.

You will now have 3 options to dispose of your waste curbside:

- ✓  Landfill (garbage)
- ✓  Co-Mingled Recycling
- ✓  Mixed Compostables Recycling

Example of cart sizes

Customers of Thompson's Sanitary will receive a new, 95 gallon cart specifically for Organic, Compostable waste as described above when the program begins (this summer). You will be notified of the actual schedule for distribution of the carts. For those customers with space limitations, an optional 65 gallon container will be provided. For customers with very limited household waste, an additional option is provided. Those customers will be able to elect to use a 24 gallon cart for weekly collection. If this option is selected, the customer will have a choice as to whether they want to participate in the curbside composting program or not.



The improved collection system will consist of three containers to separate waste with the goal of diverting 25% of the waste stream from the landfill to a processing facility, which will use the material to make a rich soil amendment making that waste 100% recyclable and sustainable.

Service Size/ Frequency	What it includes:	City Rate
24 gallon cart weekly	Includes weekly curbside collection of the following: 24 gal landfill, 65 gal co-mingled, & 95 gal mixed compostables recycling	\$25.74
24 gallon cart weekly (without compostables)	Includes weekly curbside collection of the following: 24 gal waste disposal and 65 gal co-mingled recycling.	\$19.15
35 gallon cart weekly	Includes weekly curbside collection of the following: 35 gal waste disposal, 65 gal co-mingled, & 96 gal mixed compostables recycling	\$26.94
35 gallon monthly	Includes monthly curbside collection of the following: 35 gal waste disposal and 65 gal co-mingled recycling. Weekly curbside collection of 96 gal mixed compostables recycling	\$23.24
65 gallon weekly	Includes weekly curbside collection of the following: 65 gal waste disposal, 65 gal co-mingled, & 96 gal mixed compostables recycling	\$46.84
65 gallon monthly	Includes monthly curbside collection of the following: 65 gal waste disposal and 65 gal co-mingled recycling. Weekly curbside collection of 96 gal mixed compostables recycling	\$38.84

*If space is an issue, a 65 gallon cart is available for mixed compostables



Oregon

John A. Kitzhaber, MD, Governor

Department of Environmental Quality

Western Region - Salem Office

750 Front St NE Ste 120

Salem, OR 97301-1011

Ph: (503) 378-8240

Fax: (503) 373-7944

OTRS 1-800-735-2900

www.oregon.gov/DEQ

March 31, 2014

Mark Saelens
Lincoln County Solid Waste
880 NE 7th Street
Newport, OR 97365

Re: Approval of Lincoln County's
2013 Opportunity to Recycle Programs

Dear Mark:

This letter acknowledges Lincoln County's notification to DEQ that there have been no changes to your watershed's Opportunity to Recycle programs in the last calendar year. You have indicated that the programs that were approved in 2012 were maintained in the 2013 year and therefore, your 2013 Opportunity to Recycle Programs for Lincoln County will be approved.

In addition, you indicated that the 2% credit program was also maintained in the 2013 calendar year. Therefore, Lincoln County will qualify for 2% credit for the Residential Composting Program.

We would like to thank Lincoln County, Dahl Disposal, North Lincoln Sanitary and Thompson's Sanitary Service for their efforts in expanding recovery programs in the watershed. If you have any questions regarding this letter please call me at (503) 378-5089.

Sincerely,

Cathie Rhoades
Waste Reduction Analyst
Western Region

cc: Dahl Disposal
North Lincoln Sanitary
Thompson's Sanitary Service
City Managers of Lincoln City and Newport





Agenda Item # CC.VII.B
Meeting Date April 7, 2014

CITY COUNCIL AGENDA ITEM SUMMARY
City Of Newport, Oregon

Issue/Agenda Title: Consideration of Resolution No. 3668 Authorizing a CWSRF Loan Agreement for Agate Beach Wastewater Improvements

Prepared By: TEG Dept Head Approval: TEG City Manager Approval: _____

Issue Before the Council: The issue before Council is consideration of Resolution No. 3668 authorizing a Clean Water State Revolving Fund (CWSRF) loan agreement with Oregon Department of Environmental Quality (ORDEQ) for the Agate Beach Wastewater Improvements.

Staff Recommendation: Staff recommends adoption of Resolution No. 3668.

Proposed Motion: I move to adopt Resolution No. 3668 approving a Clean Water State Revolving Fund loan agreement with Oregon Department of Environmental Quality for the Agate Beach Wastewater Improvements in the amount of \$8,906,800 and hereby authorize the Mayor to execute the agreement on behalf of the City of Newport.

Key Facts and Information Summary: This loan is to fund the Agate Beach Wastewater Improvements which include: the Big Creek Pump Station and force main, the 48th Street Pump Station and force main, the Schooner Creek Pump Station and force main, and various portions of gravity sewer downstream of the force mains.

The city has been working with ORDEQ, and the city's consultants Brown and Caldwell and Chase Park Grants since 2012 to acquire low interest financing through the CWSRF program. The CWSRF interest rate of 2.54% is lower than any currently available bond rate. The CWSRF program operates through a disbursement process, where the city fronts the cost of the project and then reimburses on a quarterly basis. The city is only charged interest on funds that are actually dispersed, and repayment of the loan is not required to begin until six months after the project is completed. Because the Agate Beach Wastewater Improvements will be constructed in multiple phases over several years, ORDEQ has verbally indicated that they would prefer if repayment begins at some intermediate timeframe, perhaps 50% of the way through the project schedule. The agreement however does not define this prepayment scenario, and the city and DEQ will need to work together at some time in the future if both parties agree a prepayment plan is mutually beneficial.

The loan agreement has been reviewed by both legal counsel and by the city's finance department.

Other Alternatives Considered:

- The City initially began pursuing a USDA grant and/or loan beginning in 2010. In 2011 the city was informed that because the City's population exceeded 10,000 the city was no longer eligible to receive a rural development grant through the USDA. The USDA loan terms were

extensive and the city was able to obtain better rates on the competitive market, so the City opted to discontinue the financing process with USDA.

- Revenue bonds - the rates for the CWSRF loan (2.54%) were more competitive than the current bond market rates (approximately 3.5%)

City Council Goals:

- Plan for funding for big wastewater system projects.
- Continue improvements to Agate Beach wastewater program.

Attachment List:

- Clean Water State Revolving Fund Loan Agreement No. R68933

Fiscal Notes:

See above.

CITY OF NEWPORT

RESOLUTION NO. 3668

A RESOLUTION APPROVING A CWSRF LOAN AGREEMENT
FOR AGATE BEACH WASTEWATER IMPROVEMENTS

FINDINGS:

1. The City of Newport has identified the Agate Beach Wastewater Improvements, which include: the Big Creek Pump Station and force main; the 48th Street Pump Station and force main; the Schooner Creek Pump Station and force main; and various portions of gravity sewer downstream of the force mains, as high priority projects and projects that could be funded through CWSRF loans; and
2. The CWSRF interest rate of 2.54% is lower than any currently available bond rate; and
3. The CWSRF program operates through a disbursement process, where the city fronts the cost of the project and is reimbursed on a quarterly basis;
4. The city is only charged interest on funds that are actually dispersed, and repayment of the loan is not required to begin until six months after the project is completed.

THE CITY OF NEWPORT RESOLVES AS FOLLOWS:

Section 1. The Mayor of the City of Newport is authorized to sign the loan agreement for CWSRF loan funding for the Agate Beach Wastewater Improvements, including: the Big Creek Pump Station and force main; the 48th Street Pump Station and force main; the Schooner Creek Pump Station and force main; and various portions of gravity sewer downstream of the force mains.

Section 2. This resolution will be effective on adoption.

Adopted by the Newport City Council on April 7, 2014.

Sandra N. Roumagoux, Mayor

ATTEST:

Margaret M. Hawker, City Recorder

**CLEAN WATER STATE REVOLVING FUND
LOAN AGREEMENT
No. R68933**

BETWEEN

**THE STATE OF OREGON
ACTING BY AND THROUGH ITS
DEPARTMENT OF ENVIRONMENTAL QUALITY**

AND

CITY OF NEWPORT

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THIS LOAN AGREEMENT is made and entered into as of the date it is fully executed by both parties (and in the case of the State, approved by the Attorney General's Office, if required) and is by and between the **State of Oregon, acting by and through its Department of Environmental Quality** ("DEQ"), and the **Borrower** (as defined below). Unless the context requires otherwise, capitalized terms not defined below shall have the meanings assigned to them by ARTICLE 9 of this Loan Agreement. The reference number for the Loan made pursuant to this Loan Agreement is Loan No. R68933.

DEQ agrees to make, and Borrower agrees to accept, the Loan on the terms and subject to the conditions set forth below.

ARTICLE 1: THE LOAN - SPECIFIC TERMS

DEQ agrees to make the Loan on the following terms and conditions:

- (A) **BORROWER:** City of Newport.
- (B) **BORROWER'S ADDRESS:** 169 SW Coast Highway
Newport, Oregon 97365
Fax 541-265-3301
- (C) **LOAN AMOUNT:** \$8,906,800.00
- (D) **TYPE AND PURPOSE OF LOAN.** The Loan is a "Revenue Secured Loan" made by DEQ pursuant to OAR Section 340-054-0065(2) for the purpose of financing the Project.
- (E) **PROJECT TITLE:** Agate Beach Wastewater Collection System
- (F) **DESCRIPTION OF THE PROJECT:** Upgrades to the Agate Beach wastewater collection system
- (G) **INTEREST RATE:** Two and 54/100 percent (2.54%) per annum. Calculation of interest is also discussed in ARTICLE 2(E) and in ARTICLE 2(F)(4) of this Agreement.
- (H) **REPAYMENT PERIOD:** Ending no later than (a) twenty (20) years after the Completion Date or (b) twenty years after the estimated Completion Date set forth in ARTICLE 3(A)(10), whichever date is earlier.
- (I) **TERMS OF REPAYMENT:** An interest-only payment within six months after the estimated Project Completion Date set forth in ARTICLE 3(A)(10) and thereafter semi-annual payments of principal and interest in accordance with APPENDIX A and ARTICLE 2(F) of this Agreement.

(J) PLEDGE: The Borrower hereby grants to DEQ a security interest in and irrevocably pledges its Net Operating Revenues to secure payment of and to pay the amounts due under this Loan Agreement. The Net Operating Revenues so pledged and hereafter received by the Borrower shall immediately be subject to the lien of such pledge without physical delivery or further act, and the lien of the pledge shall be superior to all other claims and liens whatsoever, to the fullest extent permitted by ORS 287A.310. The Borrower represents and warrants that the pledge of Net Operating Revenues hereby made by the Borrower complies with, and shall be valid and binding from the date of this Agreement pursuant to, ORS 287A.310. The Borrower covenants with DEQ and any assignee of this Agreement that except as otherwise expressly provided herein, the Borrower shall not issue any other obligations which have a pledge or lien on the Net Operating Revenues superior to or on a parity with the pledge herein granted without the written permission of DEQ. This Loan is a parity obligation with all other CWSRF loans between DEQ and the Borrower; provided however that this provision shall not affect the priority that prior CWSRF loans are entitled to in relation to any loans between Borrower and any third parties.

Amounts due under this Loan Agreement are payable from all legally available funds of the Borrower.

(K) ANNUAL FEE: An annual fee of 0.5% of the Outstanding Loan Amount (as determined prior to the posting of the payment due on that date) is due during the Repayment Period commencing with the second payment date hereunder and annually thereafter.

ARTICLE 2: GENERAL LOAN PROVISIONS

(A) AGREEMENT OF DEQ TO LOAN. DEQ agrees to loan the Borrower an amount not to exceed the Loan Amount, subject to the terms and conditions of this Loan Agreement, but solely from funds available to DEQ in the Water Pollution Control Revolving Fund for its Clean Water State Revolving Fund program. This Loan Agreement is given as evidence of a Loan to the Borrower made by DEQ pursuant to ORS Chapters 190, 286A, 287A, and 468, and OAR Chapter 340, all as amended from time to time, consistent with the express provisions hereof.

(B) AVAILABILITY OF FUNDS. DEQ's obligation to make the Loan described in this Agreement is subject to the availability of funds in the Water Pollution Control Revolving Fund for its CWSRF program, and DEQ shall have no liability to the Borrower or any other party if such funds are not available or are not available in amounts sufficient to fund the entire Loan described herein, as determined by DEQ in the reasonable exercise of its administrative discretion. Funds may not be available ahead of the estimated schedule of disbursements submitted by the Borrower, which is attached as APPENDIX B. This schedule may be revised from time to time by the parties without the necessity of an amendment by replacing the then current APPENDIX B with an updated APPENDIX B which is dated and signed by both parties.

(C) DISBURSEMENT OF LOAN PROCEEDS.

(1) Project Account(s). Loan proceeds (as and when disbursed by DEQ to the Borrower) shall be deposited in a Project account(s). The Borrower shall maintain Project account(s) as segregated account(s). Funds in the Project account(s) shall only be used to pay for Project costs, and all earnings on the Project account(s) shall be credited to the account(s).

(2) Documentation of Expenditures. The Borrower shall provide DEQ with written evidence of materials and labor furnished to and performed upon the Project and such receipts for the payment of the same, releases, satisfactions and other signed statements and forms as DEQ may reasonably require. DEQ will disburse funds to pay Project costs only after the Borrower has provided documentation satisfactory to DEQ that such Project costs have been incurred and qualify for reimbursement hereunder.

(3) Adjustments and Corrections. DEQ may at any time review and audit requests for disbursement and make adjustments for, among other things, ineligible expenditures, mathematical errors, items not built or bought, unacceptable work and other discrepancies. Nothing in this Agreement requires DEQ to pay any amount for labor or materials unless DEQ is satisfied that the claim therefor is reasonable and that the Borrower actually expended and used such labor or materials in the Project. In addition, DEQ shall not be required to make any disbursement which would cause the total of all disbursements made hereunder (including the requested disbursement) to be greater than the total estimated cost of the work completed at the time of the disbursement, as determined by DEQ.

(4) Contract Retainage Disbursement. DEQ will not disburse Loan proceeds to cover contractor retainage unless the Borrower is disbursing retainage to an escrow account and provides proof of the deposit, or until the Borrower provides proof that it paid retained funds to the contractor.

(D) AGREEMENT OF BORROWER TO REPAY. The Borrower agrees to repay all amounts owed on this Loan as described in ARTICLE 1(I) and ARTICLE 2(F) in U.S. Dollars in immediately available funds at the place listed for DEQ in ARTICLE 10(A). In any case, the Borrower agrees to repay all amounts owed on this Loan within the Repayment Period.

(E) INTEREST. Interest will accrue at the rate specified in ARTICLE 1(G) from the date that a disbursement hereunder is mailed or delivered to the Borrower or deposited into an account of the Borrower. Interest will accrue using a 365/366 day year and actual days elapsed until the Final Loan Amount is determined and the final repayment schedule is prepared and thereafter on a 360-day year basis and actual days elapsed.

(F) LOAN REPAYMENT.

(1) Preliminary Repayment Schedule; Interim Payments. The attached APPENDIX A is a preliminary repayment schedule based on the estimated date of the first

disbursement hereunder and Loan Amount. Until the final repayment schedule is effective, the Borrower shall make the payments set forth in the preliminary repayment schedule.

(2) Final Repayment Schedule. After the Borrower has submitted its final request for Loan proceeds and DEQ has made all required disbursements hereunder, DEQ will determine the Final Loan Amount and prepare a final payment schedule that provides for level semi-annual installment payments of principal and interest (commencing on the next semi-annual payment date), each in an amount sufficient to pay accrued interest to the date of payment and to pay so much of the principal balance as to fully amortize the then Outstanding Loan Amount over the remaining Repayment Period.

(3) Crediting of Scheduled Payments. A scheduled payment received before the scheduled repayment date will be applied to interest and principal on the scheduled repayment date, rather than on the day such payment is received. Scheduled payments will be applied first to fees due, if any, and then to interest, according to the applicable repayment schedule, and then to principal.

(4) Crediting of Unscheduled Payments. All unscheduled payments, including any prepayments and partial payments, will be applied first to fees due, if any, and then to accrued unpaid interest (which will be computed as otherwise provided in this Agreement, except that interest from the last payment date will be calculated using a 365/366 day year and actual days elapsed), and then to principal. In the case of a Loan prepayment that does not prepay all of the principal of the Loan, DEQ will determine, in its sole discretion, how it will apply such Loan prepayment to the Outstanding Loan Amount. After a partial payment, DEQ may, in its sole and absolute discretion, reamortize the Outstanding Loan Amount at the same interest rate for the same number of payments to decrease the Loan payment amount; provided, however, that nothing in this Agreement requires DEQ to accept any partial payment or to reamortize the Outstanding Loan Amount if it accepts a partial payment.

(5) Final Payment. The Outstanding Loan Amount, all accrued and unpaid interest, and all unpaid fees and charges due hereunder are due and payable no later than twenty (20) years after the Completion Date.

(G) PREPAYMENT.

(1) Optional Prepayment. The Borrower may prepay any amount owed on this Loan without penalty on any business day upon 24 hours prior written notice. Any prepayment made hereunder will be applied in accordance with ARTICLE 2(F)(4).

(2) Refinancing of Loan by the Borrower. If the Borrower refinances the portion of the Project financed by this Loan or obtains an additional grant or loan that is intended to finance the portion of the Project financed by this Loan, it will prepay the portion of the Loan being refinanced by the additional grant or loan.

(3) Ineligible Uses of the Project. If the Borrower uses the Project for uses that are other than those described in ARTICLE 1(F) ("ineligible uses"), the Borrower shall, upon demand by DEQ, prepay an amount equal to the Outstanding Loan Amount multiplied by the percentage (as determined by DEQ) of ineligible use of the Project.

Such prepayment shall be applied against the most remotely maturing principal installments and shall not postpone the due date of any payment(s) hereunder.

(H) LATE PAYMENT FEE. The Borrower agrees to pay immediately upon DEQ's demand a late fee equal to five percent (5%) of any payment (including any loan fee) that is not received by DEQ on or before the tenth (10th) calendar day after such payment is due hereunder.

(I) TERMINATION OF LOAN AGREEMENT. Upon performance by the Borrower of all of its obligations under this Loan Agreement, including payment in full of the Final Loan Amount, all accrued interest and all fees, charges and other amounts due hereunder, this Loan Agreement will terminate, and DEQ will release its interest in any collateral given as security under this Loan Agreement.

ARTICLE 3: GENERAL REPRESENTATIONS, WARRANTIES AND COVENANTS

(A) REPRESENTATIONS AND WARRANTIES OF THE BORROWER. The Borrower represents and warrants to DEQ that:

(1) It is a duly formed and existing public agency (as defined in ORS 468.423(2)) and has full power and authority to enter into this Loan Agreement.

(2) This Agreement has been duly authorized and executed and delivered by an authorized officer of the Borrower and constitutes the legal, valid and binding obligation of the Borrower enforceable in accordance with its terms.

(3) All acts, conditions and things required to exist, happen and be performed precedent to and in the issuance of this Agreement have existed, have happened, and have been performed in due time, form and manner as required by law.

(4) Neither the execution of this Loan Agreement, the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with any of the terms and conditions of this Loan Agreement will violate any provision of law, or any order of any court or other agency of government, or any agreement or other instrument to which the Borrower is now a party or by which the Borrower or any of its properties or assets is bound. Nor will this Loan Agreement be in conflict with, result in a breach of, or constitute a default under, any such agreement or other instrument, or, except as provided hereunder, result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the Borrower.

(5) This Loan Agreement does not create any unconstitutional indebtedness. The Loan Amount together with all of the Borrower's other obligations does not, and will not, exceed any limits prescribed by the Constitution, any of the statutes of the State of Oregon, the Borrower's charter, or any other authority.

(6) The Project is a project which the Borrower may undertake pursuant to Oregon law and for which the Borrower is authorized by law to borrow money.

(7) The Borrower has full legal right and authority and all necessary licenses and permits required as of the date hereof to own, operate and maintain the Facility and the Project, other than licenses and permits relating to the Facility or the Project which the Borrower expects to and shall receive in the ordinary course of business, to carry on its activities relating thereto, to execute and deliver this Agreement, to undertake and complete the Project, and to carry out and consummate all transactions contemplated by this Agreement.

(8) The information contained herein which was provided by the Borrower is true and accurate in all respects, and there is no material adverse information relating to the Project or the Loan, known to the Borrower, that has not been disclosed in writing to DEQ.

(9) No litigation exists or has been threatened that would cast doubt on the enforceability of the Borrower's obligations under this Loan Agreement.

(10) The estimated Completion Date of the Project is January 31, 2018. The Borrower agrees to complete the Project by the estimated Completion Date.

(11) The estimated total Costs of the Project are \$8,906,800.00.

(12) The Borrower is in compliance with all laws, ordinances, and governmental rules and regulations to which it is subject, the failure to comply with which would materially adversely affect the ability of the Borrower to conduct its activities or undertake or complete the Project or the condition (financial or otherwise) of the Borrower or the Project.

(B) CONTINUING REPRESENTATIONS OF THE BORROWER. The representations of the Borrower contained herein shall be true on the closing date for the Loan and at all times during the term of this Agreement.

(C) REPRESENTATIONS AND WARRANTIES OF DEQ. DEQ represents and warrants that the Director has power under ORS Chapter 468 and OAR Chapter 340, Division 54, to enter into the transactions contemplated by this Loan Agreement and to carry out DEQ's obligations thereunder and that the Director is authorized to execute and deliver this Loan Agreement and to make the Loan as contemplated hereby.

ARTICLE 4: CONDITIONS TO LOAN

(A) CONDITIONS TO CLOSING. DEQ's obligations hereunder are subject to the condition that on or prior to May 31, 2014, the Borrower will duly execute and deliver to DEQ the following items, each in form and substance satisfactory to DEQ and its counsel:

- (1) this Agreement duly executed and delivered by an authorized officer of the Borrower;
- (2) a copy of the ordinance, order or resolution of the governing body of the

Borrower authorizing the execution and delivery of this Agreement, certified by an authorized officer of the Borrower;

(3) Certification Regarding Lobbying, substantially in the form of APPENDIX G, duly executed and delivered by an authorized officer of the Borrower;

(4) an opinion of the legal counsel to the Borrower to the effect that:

(a) The Borrower has the power and authority to execute and deliver and perform its obligations under this Loan Agreement;

(b) This Loan Agreement has been duly executed and acknowledged where necessary by the Borrower's authorized representative(s), all required approvals have been obtained, and all other necessary actions have been taken, so that this Loan Agreement is valid, binding, and enforceable against the Borrower in accordance with its terms, except as such enforcement is affected by bankruptcy, insolvency, moratorium, or other laws affecting creditors rights generally;

(c) To such counsel's knowledge, this Loan Agreement does not violate any other agreement, statute, court order, or law to which the Borrower is a party or by which it or any of its property or assets is bound; and

(d) The Gross Revenues from which the Net Operating Revenues are derived and that are used as security for the Loan will not constitute taxes that are limited by Section 11b, Article XI of the Oregon Constitution; and

(5) such other documents, certificates, opinions and information as DEQ or its counsel may reasonably require.

(B) CONDITIONS TO DISBURSEMENTS. Notwithstanding anything in this Agreement to the contrary, DEQ shall have no obligation to make any disbursement to the Borrower under this Agreement if:

(1) An Event of Default or an event, omission or failure of a condition which would constitute an Event of Default after notice or lapse of time or both has occurred and is continuing;

(2) Any of the Borrower's representations and warranties in this Agreement is untrue or incorrect on the date of disbursement with the same effect as if made on such date;

(3) The Borrower does not submit a disbursement request to DEQ that complies with the requirements of ARTICLE 2(C);

(4) DEQ determines, in the reasonable exercise of its administrative discretion, there is insufficient money available in the SRF and CWSRF Program for the Project; or

(5) There has been a change in any applicable state or federal law, statute, rule or regulation so that the Project is no longer eligible for the Loan.

ARTICLE 5: COVENANTS OF BORROWER

(A) GENERAL COVENANTS OF THE BORROWER. Until the Loan is paid in full, the Borrower covenants with DEQ that:

(1) The Borrower shall use the Loan funds only for payment or reimbursement of the Costs of the Project in accordance with this Loan Agreement. The Borrower acknowledges and agrees that the Costs of the Project do NOT include any Lobbying costs or expenses incurred by Borrower or any person on behalf of Borrower and that Borrower will not request payment or reimbursement for Lobbying costs and expenses.

(2) If the Loan proceeds are insufficient to pay for the Costs of the Project in full, the Borrower shall pay from its own funds and without any right of reimbursement from DEQ all such Costs of the Project in excess of the Loan proceeds.

(3) The Borrower is and will be the owner of the Facility and the Project and shall defend them against the claims and demands of all other persons at any time claiming the same or any interest therein.

(4) The Borrower shall not sell, lease, transfer, or encumber or enter into any management agreement or special use agreement with respect to the Facility or any financial or fixed asset of the utility system that produces the Net Operating Revenues without DEQ's prior written approval, which approval may be withheld for any reason. Upon sale, transfer or encumbrance of the Facility or the Project, in whole or in part, to a private person or entity, this Loan shall be immediately due and payable in full.

(5) Concurrent with the execution and delivery of this Loan Agreement, or as soon thereafter as practicable, the Borrower shall take all steps necessary to cause the Project to be completed in a timely manner in accordance with all applicable DEQ requirements. Project construction must begin within five (5) years of the environmental determination required by OAR 340-054-0022(5)(c). Borrower shall take reasonable steps to begin using the Loan proceeds within two (2) years after execution of this Agreement, and if Borrower fails to do so, DEQ may terminate this Agreement.

(6) The Borrower shall take no action that would adversely affect the eligibility of the Project as a CWSRF project or cause a violation of any Loan covenant in this Agreement.

(7) The Borrower shall undertake the Project, request disbursements under this Loan Agreement, and use the Loan proceeds in full compliance with all applicable laws and regulations of the State of Oregon, including but not limited to ORS Chapter 468 and Oregon Administrative Rules Sections 340-054-0005 to 340-054-0065, as they may be amended from time to time, and all applicable federal authorities and laws and regulations of the United States, including but not limited to Title VI of the Clean Water Act as amended by the Water Quality Act of 1987, Public Law 100-4, the federal cross-cutters listed at APPENDIX D, the equal employment opportunity provisions in APPENDIX F, and the regulations of the U.S. Environmental Protection Agency, all as they may be amended from time to time.

(8) The Borrower shall keep the Facility in good repair and working order at all times and operate the Facility in an efficient and economical manner. The Borrower shall provide the necessary resources for adequate operation, maintenance and replacement of the Project and retain sufficient personnel to operate the Facility.

(9) Interest paid on this Loan Agreement is *not* excludable from gross income under Section 103(a) of the Internal Revenue Code of 1986, as amended (the "Code"). However, DEQ may have funded this Loan with the proceeds of State bonds that bear interest that is excludable from gross income under Section 103(a) of the Code. Section 141 of the Code requires that the State not allow the proceeds of the State bonds to be used by private entities (including the federal government) in such a way that the State bonds would become "private activity bonds" as defined in Section 141 of the Code. To protect the State bonds the Borrower agrees that it shall not use the Loan proceeds or lease, transfer or otherwise permit the use of the Project by any private person or entity in any way that that would cause this Loan Agreement or the State bonds to be treated as "private activity bonds" under Section 141 of the Code and the regulations promulgated under that Section of the Code.

(B) DEBT SERVICE COVERAGE REQUIREMENT; WASTEWATER RATE COVENANT; REPORTING.

(1) Debt Service Coverage Requirement. The Borrower shall maintain wastewater rates and charge fees in connection with the operation of the Facility that are adequate to generate Net Operating Revenues in each fiscal year sufficient to pay (i) all debt service (excluding debt service on the Loan), (ii) all other financial obligations imposed in connection with prior lien obligations of the Borrower, and (iii) an amount equal to the debt service coverage factor of 105% multiplied by the debt service payments due under this Loan Agreement in that fiscal year.

(2) Wastewater Rate Adjustments. The Borrower shall review its wastewater rates and fees at least annually. If, in any fiscal year, the Borrower fails to collect fees sufficient to meet the debt service coverage requirement described in ARTICLE 5(B)(1), the Borrower shall promptly adjust its wastewater rates and fees to assure future compliance with such coverage requirement. The Borrower's adjustment of the wastewater rates and fees does not constitute a cure of any default by the Borrower of the debt service coverage requirement set forth in ARTICLE 5(B)(1). The Borrower's failure to adjust rates shall not, at the discretion of DEQ, constitute a default if the Borrower transfers to the fund that holds the Net Operating Revenues unencumbered resources in an amount equal to the revenue deficiency to the Facility that produces the Net Operating Revenues.

(3) Reporting Requirement. By December 31 of each year the Borrower shall provide DEQ with a report that demonstrates the Borrower's compliance with the requirements of this ARTICLE 5(B). If the audit report described in ARTICLE 5(F) identifies the Net Operating Revenues and contains a calculation demonstrating the Borrower's satisfaction of the requirements of this ARTICLE 5(B), that audit will satisfy the requirements of this ARTICLE 5(B)(3).

(C) LOAN RESERVE REQUIREMENT; LOAN RESERVE ACCOUNT.

(1) Loan Reserve Requirement. The Loan reserve requirement equals 100% times one-half of the average annual debt service based on the final repayment schedule. Until the Final Loan Amount is calculated, the Loan reserve requirement is \$286,937. The Borrower shall deposit the Loan reserve requirement amount into the Loan Reserve Account no later than the date the first payment is due hereunder.

(2) Loan Reserve Account. The Borrower shall create a segregated Loan Reserve Account that shall be held in trust for the benefit of DEQ. The Borrower hereby grants to DEQ a security interest in and irrevocably pledges the Loan Reserve Account to pay the amounts due under this Loan Agreement. The funds in Loan Reserve Account so pledged and hereafter received by the Borrower shall immediately be subject to the lien of such pledge without physical delivery or further act, and the lien of the pledge shall be superior to all other claims and liens whatsoever, to the fullest extent permitted by ORS 287A.310. The Borrower represents and warrants that the pledge of the Loan Reserve Account hereby made by the Borrower complies with, and shall be valid and binding from the date of this Agreement pursuant to, ORS 287A.310. The Borrower shall use the funds in the Loan Reserve Account solely to pay amounts due hereunder until the principal, interest, fees, and any other amounts due hereunder have been fully paid.

(3) Additional Deposits. If the balance in the Loan Reserve Account falls below the Loan reserve requirement, the Borrower shall promptly deposit from the first Net Operating Revenues available after payment of the amounts due hereunder (unless the Borrower has previously made such deposit from other money of the Borrower) an amount sufficient to restore the balance up to the Loan reserve requirement.

(D) INSURANCE. At its own expense, the Borrower shall, during the term of this Agreement, procure and maintain insurance coverage (including, but not limited to, hazard, flood and general liability insurance) adequate to protect DEQ's interest and in such amounts and against such risks as are usually insurable in connection with similar projects and as is usually carried by entities operating similar facilities. The insurance shall be with an entity which is acceptable to DEQ. The Borrower shall provide evidence of such insurance to DEQ. Self insurance maintained pursuant to a recognized municipal program of self-insurance will satisfy this requirement.

(E) INDEMNIFICATION. *The Borrower shall, to the extent permitted by law and the Oregon Constitution, indemnify, save and hold the State, its officers, agents and employees harmless from and (subject to ORS Chapter 180) defend each of them against any and all claims, suits, actions, losses, damages, liabilities, cost and expenses of any nature whatsoever resulting from, arising out of or relating to the acts or omissions of the Borrower or its officers, employees, subcontractors or agents in regard to this Agreement or the Project.*

(F) THE BORROWER'S FINANCIAL RECORDS; FINANCIAL REPORTING REQUIREMENTS.

(1) Financial Records. The Borrower shall keep proper and complete books of record and account and maintain all fiscal records related to this Agreement, the Project, and the Facility in accordance with generally accepted accounting principles, generally accepted government accounting standards, the requirements of the Governmental Accounting Standards Board, and state minimum standards for audits of municipal corporations. The Borrower must maintain separate Project accounts in accordance with generally accepted government accounting standards promulgated by the Governmental Accounting Standards Board. The Borrower will permit DEQ and the Oregon Secretary of State and their representatives to inspect its properties, and all work done, labor performed and materials furnished in and about the Project, and DEQ, the Oregon Secretary of State and the federal government and their duly authorized representatives shall have access to the Borrower's fiscal records and other books, documents, papers, plans and writings that are pertinent to this Agreement to perform examinations and audits and make excerpts and transcripts and take copies.

(2) Record Retention Period. The Borrower shall retain and keep accessible files and records relating to the Project for at least six (6) years (or such longer period as may be required by applicable law) after Project completion as determined by DEQ and financial files and records until all amounts due under this Loan Agreement are fully repaid, or until the conclusion of any audit, controversy, or litigation arising out of or related to this Agreement, whichever date is later.

(3) Audit. Federal enabling legislation and applicable regulations require an audit of each CWSRF Loan. The Borrower agrees to provide to DEQ the following which DEQ agrees to accept as adequate to meet this federal audit requirement.

(a) As soon as possible, but in no event later than six (6) months following the Project Completion Date, a full and complete accounting of the Costs of the Project, including but not limited to documentation to support each cost element and a summary of the Costs of the Project and the sources of funding; and

(b) As soon as possible, but in no event later than nine (9) months after the end of each fiscal year, a copy of the Borrower's annual audit report, if requested by DEQ.

(4) Single Audit Act Requirements. The CWSRF Program receives capitalization grants through the Catalog of Federal Domestic Assistance ("CFDA") No. 66.458: Capitalization Grants for State Revolving Funds and is subject to the regulations of the U.S. Environmental Protection Agency ("EPA"). The CWSRF Program is subject to the U.S. Office of Management and Budget Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations" implementing the Single Audit Act of 1984, 31 U.S.C. §§7501-7507 (1994) *as amended* by Pub. L. 104-156, §§1-3, 110 Stat. 1397 (1996) ("Circular A-133"). As a sub-recipient of a federal grant, the Borrower is subject to Circular A-133 to the extent that Loan proceeds include federal capitalization grant funds. DEQ will notify the Borrower of the sources of the Loan funds at the end of

each fiscal year, and to the extent required, the Borrower is responsible for compliance with the requirements of Circular A-133.

(G) DBE GOOD FAITH EFFORT. Pursuant to the good faith efforts described in APPENDIX C, the Borrower shall make a good faith effort to promote fair share awards to Minority Business Enterprises (“MBE”), Women's Business Enterprises (“WBE”), and Small Businesses in Rural Areas (“SBRA”) on all contracts and subcontracts awarded as part of the Project. The Borrower agrees to include, in its contract(s) with its prime contractor(s), the following language, which must not be altered in any way:

“The contractor shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. The contractor shall carry out applicable requirements of 40 CFR part 33 in the award and administration of contracts awarded under EPA financial assistance agreements. Failure by the contractor to carry out these requirements is a material breach of this contract which may result in the termination of this contract or other legally available remedies.”

The Borrower also agrees to include, in its contract(s) with its prime contractor(s), and shall cause each contract awarded by its prime contractor(s) to include, language to the following effect (the exact language may vary):

- (1) A prime contractor must pay its subcontractor(s) no more than 30 days from the prime contractor’s receipt of payment from the Borrower.
- (2) The Borrower must be notified in writing by its prime contractor prior to any termination of a DBE subcontractor for convenience by the prime contractor.
- (3) If a DBE subcontractor fails to complete work under the subcontract for any reason, the prime contractor must employ the Six Good Faith Efforts as described in 40 C.F.R. 33.301 if soliciting a replacement subcontractor.
- (4) A prime contractor must employ the Six Good Faith Efforts even if the prime contractor has achieved its Fair Share Objectives under Subpart D of 40 C.F.R. Part 33.

(H) CONTRACT LANGUAGE. The Borrower shall include in all contracts (unless exempt) with its prime contractor(s) the language set forth in APPENDIX F. Further, the Borrower agrees to fully comply with Subpart C of 2 C.F.R. 180 and Subpart C of 2 C.F.R. 1532 regarding debarment and suspension and agrees to include or cause to be included in any contract at any tier the requirement that a contractor comply with Subpart C of 2 C.F.R. 180 and Subpart C of 2 C.F.R. 1532 if the contract is expected to equal or exceed \$25,000.

(I) PROJECT ASSURANCES. Nothing in this Loan Agreement prohibits the Borrower from requiring more assurances, guarantees, indemnity or other contractual requirements from any party performing Project work.

**ARTICLE 6: REPRESENTATIONS, WARRANTIES, COVENANTS AND CONDITIONS RELATING TO
CONSTRUCTION PROJECTS ONLY**

**(A) THE BORROWER'S REPRESENTATION AND WARRANTY REGARDING COSTS
ALREADY INCURRED.**

(1) The Borrower represents and warrants to DEQ that, as of the date of this Loan Agreement, the Costs of the Project actually incurred by the Borrower for construction, do not exceed \$300,000.

(2) The Borrower acknowledges that DEQ is relying upon the Borrower's representation regarding the amount of Costs of the Project incurred by the Borrower for construction prior to the date of this Loan Agreement as set forth in ARTICLE 6(A)(1) above to determine what portion of the Loan qualifies as a "refinancing" under the EPA's Clean Water State Revolving Fund regulations, 40 C.F.R. Part 35, that may be disbursed on a reimbursement basis.

(B) CONDITION TO DISBURSEMENTS. DEQ's obligation to make disbursements hereunder is further conditioned on the following:

(1) The Borrower's plans, specifications and related documents for the Project shall be reviewed and approved by DEQ, as required by OAR Chapter 340, Division 054.

(2) The Borrower has submitted documentation satisfactory to DEQ that the disbursement is for work that complies with plans, specifications, change orders and addenda approved by DEQ, in accordance with OAR Chapter 340, Division 054.

(3) The Borrower has submitted a copy of the awarded contract and bid documents (including a tabulation of all bids received) to DEQ for the portion of the Project costs that will be funded with the disbursement.

(C) GENERAL PROVISIONS. The Borrower covenants with DEQ that:

(1) Construction Manual. Unless stated otherwise in this Agreement, the Borrower shall comply with the requirements set forth in the Manual as in effect from time to time. DEQ will provide the Borrower with a copy of the Manual upon request.

(2) Plans and Specifications. The Borrower shall obtain DEQ's review and approval of the Borrower's plans, specifications, and related documents for the Project, as required by OAR Chapter 340, Division 054, prior to any disbursement of Loan proceeds hereunder.

(3) Change Orders. The Borrower shall submit all change orders to DEQ. The Borrower must submit prior to its execution any change order that exceeds \$100,000 or will alter Project performance. The Borrower shall not use any Loan proceeds to pay for costs of any change order that DEQ has not approved in writing. This ARTICLE 6(C)(3) shall not prevent the Borrower from using funds other than Loan proceeds to pay for a change

order before DEQ approves it, but the Borrower bears the risk that DEQ will not approve the change order.

(4) Inspections; Reports. The Borrower shall provide inspection reports during the construction of the Project as required by DEQ to ensure that the Project complies with approved plans and specifications. Qualified inspectors shall conduct these inspections under the direction of a registered civil, mechanical or electrical engineer, whichever is appropriate. DEQ or its representative(s) may enter property owned or controlled by the Borrower to conduct interim inspections and require progress reports sufficient to determine compliance with approved plans and specifications and with the Loan Agreement, as appropriate.

(5) Asbestos and Other Hazardous Materials. The Borrower shall ensure that only persons trained and qualified for removal of asbestos or other Hazardous Materials will remove any asbestos or Hazardous Materials, respectively, which may be part of this Project.

(6) Operation and Maintenance Manual. The Borrower shall submit to DEQ a draft Facility operation and maintenance manual before the Project is fifty percent (50%) complete. The Borrower shall submit to DEQ a final Facility operation and maintenance manual that meets DEQ's approval before the Project is ninety percent (90%) complete.

(7) Project Performance Certification. The Borrower shall submit to DEQ draft performance standards before the Project is fifty percent (50%) complete. The Borrower shall submit to DEQ final performance standards that meet DEQ's approval before the Project is ninety percent (90%) complete. The Borrower shall submit to DEQ the following done in accordance with the Manual: (i) no later than 10.5 months after the Initiation of Operation (as that term is defined in OAR 340-054-0010(26)), a performance evaluation report based on the approved performance standards; (ii) within one year after the Project's Initiation of Operation, Project performance certification statement; and (iii) within two (2) months of submission of such Project performance certification statement, a corrective action plan for any Project deficiencies noted in said statement.

(8) Alterations After Completion. The Borrower shall not materially alter the design or structural character of the Project after completing the Project without DEQ's written approval.

(9) Project Initiation of Operations.

(a) The Borrower shall notify DEQ of the Initiation of Operation no more than thirty (30) days after the actual Project Completion Date.

(b) If the Project is completed, or is completed except for minor items, and the Project is operable, but DEQ has not received a notice of Initiation of Operation from the Borrower, DEQ may assign an Initiation of Operation date.

(D) PROVISION APPLICABLE TO CONTRACTS AND SUBCONTRACTS AWARDED FOR THE PROJECT

(1) Davis-Bacon Requirements. All contracts and subcontracts awarded as part of the Project shall comply with (1) the wage requirements of the Davis-Bacon Act, as amended, 40 U.S.C. §§3141 to 3144, 3146 and 3147 (2002), and (2) the requirements of the *Prevailing Wage Rates for Public Works Projects in Oregon* established under ORS 279C.800 through 279C.870 and OAR 839-025-0000 through 839-025-0540. The Borrower agrees that it will insert into any contract in excess of \$2,000 for construction, and will cause its subcontractors to insert in any sub-contract in excess of \$2,000 for construction, the Davis-Bacon language set forth in Part 1 of APPENDIX E, and Part 2 of APPENDIX E as applicable.

(2) Retainage. The Borrower shall require a five percent (5%) retainage in all of its contracts related to the Project for an amount greater than One Hundred Thousand Dollars (\$100,000).

(E) BUY AMERICAN

(1) Requirement. All of the iron and steel products used in the Project must be produced in the United States if the Project is for the construction, alteration, maintenance, or repair of a "treatment works" as defined in the federal Water Pollution Control Act, 33 U.S.C. §1381 et seq.

(2) Definition. "Iron and steel products" means the following products made primarily of iron or steel: lined or unlined pipes and fittings, manhole covers and other municipal castings, hydrants, tanks, flanges, pipe clamps and restraints, valves, structural steel, reinforced precast concrete, and construction materials.

(3) Applicability. The requirement set forth in ARTICLE 6(E)(1) above applies if the Loan Agreement is fully executed on or after January 17, 2014 but before October 1, 2014, but does not apply if the engineering plans and specifications for the Project were approved by DEQ prior to January 17, 2014.

(4) Waiver. The requirement set forth in ARTICLE 6(E)(1) above does not apply if : (a) application would be inconsistent with the public interest; (2) iron and steel products that are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or (3) inclusion of iron and steel products produced in the United States will increase the cost of the overall project by more than 25 percent. Borrower may apply for a waiver of the requirement set forth in ARTICLE 6(E)(1) above by sending a waiver request directly to EPA with a copy to DEQ or by sending its waiver request to DEQ who will then forward it on to EPA.

(5) Subject to Change. Guidance is pending from EPA on the Buy American requirement set forth in this ARTICLE (6)(E), and so the current language in this ARTICLE (6)(E) is subject to change by DEQ.

ARTICLE 7: DISCLAIMERS BY DEQ; LIMITATION OF DEQ'S LIABILITY

(A) DISCLAIMER OF ANY WARRANTY. DEQ EXPRESSLY DISCLAIMS ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, REGARDING THE PROJECT, THE QUALITY OF MATERIALS SUPPLIED TO AND THAT BECOME A PART OF THE PROJECT, THE QUALITY OF THE WORKMANSHIP PERFORMED UPON THE PROJECT, OR THE EXTENT AND STAGE OF COMPLETION OF THE PROJECT. No such warranty or guarantee shall be implied by virtue of any inspection or disbursement made by DEQ. Any inspection done by DEQ shall be for its sole benefit.

(B) DISCLAIMER OF LIABILITY OF DEQ. DEQ EXPRESSLY DISCLAIMS LIABILITY OF ANY KIND OR CHARACTER WHATSOEVER FOR PAYMENT OF LABOR OR MATERIALS OR OTHERWISE IN CONNECTION WITH THE COMPLETION OF THE PROJECT OR CONTRACTS ENTERED INTO BY THE BORROWER WITH THIRD PARTIES FOR THE COMPLETION OF THE PROJECT. All Project costs of labor, materials and construction, including any indirect costs, shall be the responsibility of and shall be paid by the Borrower.

(C) NONLIABILITY OF STATE.

(1) The State and its officers, agents and employees shall not be liable to the Borrower or to any other party for any death, injury, damage, or loss that may result to any person or property by or from any cause whatsoever, arising out of any defects in the plans, design drawings and specifications for the Project, any agreements or documents between the Borrower and third parties related to the Project or any activities related to the Project. DEQ shall not be responsible for verifying cost-effectiveness of the Project, doing cost comparisons or reviewing or monitoring compliance by the Borrower or any other party with state procurement laws and regulations.

(2) The Borrower hereby expressly releases and discharges DEQ, its officers, agents and employees from all liabilities, obligations and claims arising out of the Project work or under the Loan, subject only to exceptions previously agreed upon in writing by the parties.

(3) Any findings by DEQ concerning the Project and any inspections or analyses of the Project by DEQ are for determining eligibility for the Loan and disbursement of Loan proceeds only. Such findings do not constitute an endorsement of the feasibility of the Project or its components or an assurance of any kind for any other purpose.

(4) Review and approval of Facilities plans, design drawings and specifications or other documents by or for DEQ does not relieve the Borrower of its responsibility to properly plan, design, build and effectively operate and maintain the Facility as required by law, regulations, permits and good management practices.

ARTICLE 8: DEFAULT AND REMEDIES

(A) EVENTS OF DEFAULT. The occurrence of one or more of the following events constitutes an Event of Default, whether occurring voluntarily or involuntarily, by operation of law or pursuant to any order of any court or governmental agency:

(1) The Borrower fails to make any Loan payment within thirty (30) days after the payment is scheduled to be made according to the repayment schedule;

(2) Any representation or warranty made by the Borrower hereunder was untrue in any material respect as of the date it was made;

(3) The Borrower becomes insolvent or admits in writing an inability to pay its debts as they mature or applies for, consents to, or acquiesces in the appointment of a trustee or receiver for the Borrower or a substantial part of its property; or in the absence of such application, consent, or acquiescence, a trustee or receiver is appointed for the Borrower or a substantial part of its property and is not discharged within sixty (60) days; or any bankruptcy, reorganization, debt arrangement or moratorium or any dissolution or liquidation proceeding is instituted by or against the Borrower and, if instituted against the Borrower, is consented to or acquiesced in by the Borrower or is not dismissed within twenty (20) days;

(4) As a result of any changes in the United States Constitution or the Oregon Constitution or as a result of any legislative, judicial, or administrative action, any part of this Loan Agreement becomes void, unenforceable or impossible to perform in accordance with the intent and purposes of the parties hereto or is declared unlawful;

(5) The Borrower defaults in the performance or observance of any covenants or agreements contained in any loan documents between itself and any lender or lenders, and the default remains uncured upon the expiration of any cure period provided by said loan documents; or

(6) The Borrower fails to cure non-compliance in any material respect with any other covenant, condition, or agreement of the Borrower hereunder, other than as set forth in (1) through (5) above within a period of thirty (30) days after DEQ provides notice of the noncompliance.

(B) REMEDIES. If DEQ determines that an Event of Default has occurred, DEQ may, without further notice:

(1) Declare the Outstanding Loan Amount plus any unpaid accrued interest, fees and any other amounts due hereunder immediately due and payable;

(2) Cease making disbursement of Loan proceeds or make some disbursements of Loan proceeds and withhold or refuse to make other disbursements;

(3) Appoint a receiver, at the Borrower's expense, to operate the Facility that produces the pledged revenues and collect the Gross Revenues;

(4) Set and collect utility rates and charges;

(5) Pay, compromise or settle any liens on the Facility or the Project or pay other sums required to be paid by the Borrower in connection with the Project, at DEQ's discretion, using the Loan proceeds and such additional money as may be required. If DEQ pays any encumbrance, lien, claim, or demand, it shall be subrogated, to the extent of the amount of such payment, to all the rights, powers, privileges, and remedies of the holder of the encumbrance, lien, claim, or demand, as the case may be. Any such subrogation rights shall be additional cumulative security for the amounts due under this Loan Agreement;

(6) Direct the State Treasurer to withhold any amounts otherwise due to the Borrower from the State of Oregon and, to the extent permitted by law, direct that such funds be applied to the amounts due DEQ under this Loan Agreement and be deposited into the SRF; and

(7) Pursue any other legal or equitable remedy it may have.

ARTICLE 9: DEFINITIONS

(A) **“BORROWER”** means the public agency (as defined in ORS 468.423(2)) shown as the “Borrower” in Article 1(A) of this Agreement.

(B) **“COMPLETION DATE”** means the date on which the Project is completed. If the Project is a planning project, the Completion Date is the date on which DEQ accepts the planning project. If the Project is a design project, the Completion Date is the date on which the design project is ready for the contractor bid process. If the Project is a construction project, the Completion Date is the date on which the construction project is substantially complete and ready for Initiation of Operation.

(C) **“COSTS OF THE PROJECT”** means expenditures approved by DEQ that are necessary to construct the Project in compliance with DEQ's requirements and may include but are not limited to the following items:

(1) Cost of labor and materials and all costs the Borrower is required to pay under the terms of any contract for the design, acquisition, construction or installation of the Project;

(2) Engineering fees for the design and construction of the Project.

(3) The costs of surety bonds and insurance of all kinds that may be required or necessary during the course of completion of the Project;

(4) The legal, financing and administrative costs of obtaining the Loan and completing the Project; and

(5) Any other costs approved in writing by DEQ.

(D) **“CWSRF PROGRAM” or “CWSRF”** means the Clean Water State Revolving Fund Loan Program, a loan program administered by DEQ under ORS 468.423 to 468.440.

(E) **“DEQ”** means the Oregon Department of Environmental Quality.

(F) **“DIRECTOR”** means the Director of DEQ or the Director's authorized representative.

(G) **“FACILITY”** means all property owned or used by the Borrower to provide wastewater collection, treatment and disposal services, of which the Project is a part.

(H) **“FINAL LOAN AMOUNT”** means the total of all Loan proceeds disbursed to the Borrower under the Loan Agreement, determined on the date on which the Borrower indicates that no further Loan funds will be requested, all eligible expenditures have been reimbursed from the Loan proceeds, or all Loan proceeds have been disbursed hereunder, whichever occurs first.

(I) **“GROSS REVENUES”** means all fees and charges resulting from operation of the Facility and any interest earnings thereon; provided however, Gross Revenues does not include: the proceeds of any grants; the proceeds of any borrowings for capital improvements; the proceeds of any liability insurance; or the proceeds of any casualty insurance which the Borrower intends to and does utilize for repair or replacement of the Facility or a part thereof.

(J) **“HAZARDOUS MATERIALS”** means and includes flammable explosives, radioactive materials, asbestos and substances defined as hazardous materials, hazardous substances or hazardous wastes in the Comprehensive Environmental Response, Compensation, and Liability Act, as amended by the Superfund Amendments and Reauthorization Act (42 U.S.C. Section 9601, et seq.), the Hazardous Materials Transportation Act (49 U.S.C. Section 1801, et seq.) and the Resource Conservation and Recovery Act (42 U.S.C. Section 6901, et seq.), and regulations promulgated thereunder.

(K) **“LOAN”** means the loan made pursuant to this Loan Agreement.

(L) **“LOAN AGREEMENT” or “AGREEMENT”** means this loan agreement and its exhibits, appendices, schedules and attachments (which are by this reference incorporated herein), and any amendments thereto.

(M) **“LOAN AMOUNT”** means the maximum amount DEQ agrees to loan the Borrower hereunder.

(N) **“LOAN RESERVE ACCOUNT”** means the account described in ARTICLE 5(c)(2).

(O) **“LOBBYING”** means influencing or attempting to influence a member, officer or employee of a governmental agency or legislature in connection with the awarding of a government contract, the making of a government grant or loan or the entering into of a cooperative agreement with such governmental entity or the extension, continuation, renewal, amendment or modification of any of the above.

(P) **“MANUAL”** means the CWSRF Manual for Construction Projects.

(Q) “**NET OPERATING REVENUES**” means the Gross Revenues less the Operating Expenses for the Facility.

(R) “**OPERATING EXPENSES**” means all direct and indirect expenses incurred for operation, maintenance and repair of the Facility, including but is not limited to administrative expenses, legal, financial and accounting expenses, insurance premiums, claims (to the extent that monies are not available from insurance proceeds), taxes, engineering expenses relating to operation and maintenance, payments and reserves for pension, retirement, health, hospitalization, and sick leave benefits, and any other similar expenses to be paid to the extent properly and directly attributable to operations of the Facility. Operating expenses include an appropriate amount for reserves for repair and replacement of the Facility based on the expected life of the collection, treatment and disposal facilities.

(S) “**OUTSTANDING LOAN AMOUNT**” means, as of any date, the sum of all disbursements to the Borrower hereunder less the sum of all Loan principal payments received by DEQ.

(T) “**PROJECT**” means the facilities, activities or documents described in ARTICLE 1(E) and (F).

(U) “**REPAYMENT PERIOD**” means the repayment period ending on the date specified in ARTICLE 1(H) which date shall not in any event be later than twenty (20) years after the Completion Date.

(V) “**SRF**” means the Water Pollution Control Revolving Fund established under ORS 468.427, also known as the State Revolving Fund.

(W) “**STATE**” means the State of Oregon.

ARTICLE 10: MISCELLANEOUS

(A) NOTICES. All notices, payments, statements, demands, requests or other communications under this Loan Agreement by either party to the other shall be in writing and shall be sufficiently given and served upon the other party if delivered by personal delivery, by certified mail, return receipt requested, or by facsimile transmission, and, if to the Borrower, delivered, addressed or transmitted to the location or number listed in ARTICLE 1(B), and if to DEQ, delivered, addressed or transmitted to:

Clean Water State Revolving Fund Loan Program
Water Quality Division
Department of Environmental Quality
811 S.W. Sixth Avenue
Portland, Oregon 97204-1390
Fax (503) 229-6037

or to such other addresses or numbers as the parties may from time to time designate. Any notice or other communication so addressed and mailed shall be deemed to be given five (5) days after

mailing. Any notice or other communication delivered by facsimile shall be deemed to be given when receipt of the transmission is generated by the transmitting machine. To be effective against DEQ, such facsimile transmission must be confirmed by telephone notice to DEQ's CWSRF Program Coordinator. Any notice or other communication by personal delivery shall be deemed to be given when actually delivered.

(B) WAIVERS AND RESERVATION OF RIGHTS.

(1) DEQ's waiver of any breach by the Borrower of any term, covenant or condition of this Loan Agreement shall not operate as a waiver of any subsequent breach of the same or breach of any other term, covenant, or condition of this Loan Agreement. DEQ may pursue any of its remedies hereunder concurrently or consecutively without being deemed to have waived its right to pursue any other remedy.

(2) Nothing in this Loan Agreement affects DEQ's right to take remedial action, including, but not limited to, administrative enforcement action and action for breach of contract against the Borrower, if the Borrower fails to carry out its obligations under this Loan Agreement.

(C) TIME IS OF THE ESSENCE. The Borrower agrees that time is of the essence under this Loan Agreement.

(D) RELATIONSHIP OF PARTIES. The parties agree and acknowledge that their relationship is that of independent contracting parties, and neither party hereto shall be deemed an agent, partner, joint venturer or related entity of the other by reason of this Loan Agreement.

(E) No Third Party Beneficiaries. DEQ and the Borrower are the only parties to this Loan Agreement and are the only parties entitled to enforce the terms of this Loan Agreement. Nothing in this Loan Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right not held by or made generally available to the public, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Loan Agreement. Any inspections, audits, reports or other assurances done or obtained, or approvals or consents given, by DEQ are for its benefit only for the purposes of administering this Loan and the CWSRF Program.

(F) ASSIGNMENT. DEQ shall have the right to transfer the Loan or any part thereof, or assign any or all of its rights under this Loan Agreement, at any time after execution of this Loan Agreement upon written notice to the Borrower. Provisions of this Loan Agreement shall inure to the benefit of DEQ's successors and assigns. This Loan Agreement or any interest therein may be assigned or transferred by the Borrower only with DEQ's prior written approval (which consent may be withheld for any reason), and any assignment or transfer by the Borrower in contravention of this ARTICLE 10(F) shall be null and void.

(G) DEQ NOT REQUIRED TO ACT. Nothing contained in this Loan Agreement requires DEQ to incur any expense or to take any action hereunder in regards to the Project.

(H) FURTHER ASSURANCES. The Borrower and DEQ agree to execute and deliver any written instruments necessary to carry out any agreement, term, condition or assurance in this Loan Agreement whenever a party makes a reasonable request to the other party for such instruments.

(I) VALIDITY AND SEVERABILITY; SURVIVAL. If any part, term, or provision of this Loan Agreement or of any other Loan document shall be held by a court of competent jurisdiction to be void, voidable, or unenforceable by either party, the validity of the remaining portions, terms and provisions shall not be affected, and all such remaining portions, terms and provisions shall remain in full force and effect. Any provision of this Agreement which by its nature or terms is intended to survive termination, including but not limited to ARTICLE 5(E), shall survive termination of this Agreement.

(J) NO CONSTRUCTION AGAINST DRAFTER. Both parties acknowledge that they are each represented by and have sought the advice of counsel in connection with this Loan Agreement and the transactions contemplated hereby and have read and understand the terms of this Loan Agreement. The terms of this Loan Agreement shall not be construed against either party as the drafter hereof.

(K) HEADINGS. All headings contained herein are for convenience of reference only and are not intended to define or limit the scope of any provision of this Loan Agreement.

(L) ATTORNEYS' FEES AND EXPENSES. In any action or suit to enforce any right or remedy under this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs, to the extent permitted by law.

(M) CHOICE OF LAW; DESIGNATION OF FORUM; FEDERAL FORUM.

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

(2) Any party bringing a legal action or proceeding against any other party arising out of or relating to this Agreement shall bring the legal action or proceeding in the Circuit Court of the State of Oregon for Marion County (unless Oregon law requires that it be brought and conducted in another county). Each party hereby consents to the exclusive jurisdiction of such court, waives any objection to venue, and waives any claim that such forum is an inconvenient forum.

(3) Notwithstanding ARTICLE 10(M)(2), if a claim must be brought in a federal forum, then it must be brought and adjudicated solely and exclusively within the United States District Court for the District of Oregon. This ARTICLE 10(M)(3) applies to a claim brought against the State of Oregon only to the extent Congress has appropriately abrogated the State of Oregon's sovereign immunity and is not consent by the State of Oregon to be sued in federal court. This ARTICLE 10(M)(3) is also not a waiver by the State of Oregon of any form of defense or immunity, including but not limited to sovereign immunity and immunity based on the Eleventh Amendment to the Constitution of the United States.

(N) **COUNTERPARTS.** This Loan Agreement may be executed in any number of counterparts, each of which is deemed to be an original, but all together constitute but one and the same instrument.

(O) **ENTIRE AGREEMENT; AMENDMENTS.** This Loan Agreement, including all appendices and attachments that are by this reference incorporated herein, constitutes the entire agreement between the Borrower and DEQ on the subject matter hereof, and it shall be binding on the parties thereto when executed by all the parties and when all approvals required to be obtained by DEQ have been obtained. This Loan Agreement, including all related Loan documents and instruments, may not be amended, changed, modified, or altered without the written consent of the parties.

CITY OF NEWPORT

By: _____
Authorized Officer

Date

Printed Name: _____

Title: _____

**STATE OF OREGON ACTING BY AND THROUGH ITS
DEPARTMENT OF ENVIRONMENTAL QUALITY**

By: _____
David Livengood, Interim Operations Administrator

Date

APPENDIX A: PRELIMINARY REPAYMENT SCHEDULE

OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY
 CLEAN WATER STATE REVOLVING FUND LOAN PROGRAM
REPAYMENT SCHEDULE

BORROWER:	City of Newport	INTEREST RATE:	2.54%
SRF LOAN NO.:	R68933	Term in years	20
LOAN AMOUNT:	\$ 8,906,800	PMT AMOUNT:	\$ 291,006
		ANNUAL FEE:	0.50%

Due Date	Pmt#	PAYMENT				Principal Balance
		Principal	Interest	Fees	Total	
						8,906,800
2/1/2018	1	0	128,260	0	128,260	8,906,800
8/1/2018	2	177,890	113,116	44,534	335,540	8,728,910
2/1/2019	3	180,149	110,857	0	291,006	8,548,761
8/1/2019	4	182,437	108,569	42,744	333,750	8,366,324
2/1/2020	5	184,754	106,252	0	291,006	8,181,570
8/1/2020	6	187,100	103,906	40,908	331,914	7,994,470
2/1/2021	7	189,476	101,530	0	291,006	7,804,994
8/1/2021	8	191,883	99,123	39,025	330,031	7,613,111
2/1/2022	9	194,319	96,687	0	291,006	7,418,792
8/1/2022	10	196,787	94,219	37,094	328,100	7,222,005
2/1/2023	11	199,287	91,719	0	291,006	7,022,718
8/1/2023	12	201,817	89,189	35,114	326,120	6,820,901
2/1/2024	13	204,381	86,625	0	291,006	6,616,520
8/1/2024	14	206,976	84,030	33,083	324,089	6,409,544
2/1/2025	15	209,605	81,401	0	291,006	6,199,939
8/1/2025	16	212,267	78,739	31,000	322,006	5,987,672
2/1/2026	17	214,963	76,043	0	291,006	5,772,709
8/1/2026	18	217,693	73,313	28,864	319,870	5,555,016
2/1/2027	19	220,457	70,549	0	291,006	5,334,559
8/1/2027	20	223,257	67,749	26,673	317,679	5,111,302
2/1/2028	21	226,092	64,914	0	291,006	4,885,210
8/1/2028	22	228,964	62,042	24,426	315,432	4,656,246
2/1/2029	23	231,872	59,134	0	291,006	4,424,374
8/1/2029	24	234,816	56,190	22,122	313,128	4,189,558
2/1/2030	25	237,799	53,207	0	291,006	3,951,759
8/1/2030	26	240,819	50,187	19,759	310,765	3,710,940
2/1/2031	27	243,877	47,129	0	291,006	3,467,063
8/1/2031	28	246,974	44,032	17,335	308,341	3,220,089
2/1/2032	29	250,111	40,895	0	291,006	2,969,978
8/1/2032	30	253,287	37,719	14,850	305,856	2,716,691
2/1/2033	31	256,504	34,502	0	291,006	2,460,187
8/1/2033	32	259,762	31,244	12,301	303,307	2,200,425
2/1/2034	33	263,061	27,945	0	291,006	1,937,364
8/1/2034	34	266,401	24,605	9,687	300,693	1,670,963
2/1/2035	35	269,785	21,221	0	291,006	1,401,178
8/1/2035	36	273,211	17,795	7,006	298,012	1,127,967
2/1/2036	37	276,681	14,325	0	291,006	851,286
8/1/2036	38	280,195	10,811	4,256	295,262	571,091
2/1/2037	39	283,753	7,253	0	291,006	287,338
8/1/2037	40	287,338	3,649	1,437	292,424	0

TOTALS 8,906,800 2,570,675 492,218 11,969,693

REQUIRED LOAN RESERVE: \$ 286,937

3/10/2014

APPENDIX B: ESTIMATED CWSRF LOAN DISBURSEMENT SCHEDULE

Loan funds are expected to be available based on the following Project schedule:

Disb. Number	Disb. Amount	Disb. Date
1	890,680	8/1/2014
2	890,680	9/5/2014
3	890,680	10/10/2014
4	890,680	11/14/2014
5	890,680	12/19/2014
6	890,680	1/23/2015
7	890,680	2/27/2015
8	890,680	4/3/2015
9	890,680	5/8/2015
10	890,680	6/12/2015

APPENDIX C: DBE GOOD FAITH EFFORTS

At a minimum the Borrower or its prime contractor must take six affirmative steps (which apply to any procurement of construction, supplies, equipment or services) to demonstrate good faith effort to utilize minority (MBE), women-owned (WBE) and small (SBE) businesses. The six steps are:

- 1) To include qualified small, minority and women's businesses on solicitation lists;
- 2) To assure that small, minority, women's businesses are solicited whenever they are potential sources;
- 3) To divide total requirements, whenever economically feasible, into smaller tasks or quantities to permit maximum participation by small, minority or women's businesses;
- 4) To establish delivery schedules whenever the requirements of the work permit, which will encourage participation by small, minority and women's businesses;
- 5) To use the services and assistance of the Small Business Administration (<http://pro-net.sba.gov>) and the Office of Minority Business Enterprise of the U.S. Department of Commerce (<http://www.mbda.gov>) to identify appropriate small, minority and women businesses; and
- 6) To require subcontractors to take all of the affirmative action steps described above and set forth in 40 CFR 35.3145(d) in any contract awards or procurements.

The Borrower shall, and shall cause its contractors to, document compliance with the above requirements on forms found at Tab 6 of the Manual for Construction Projects.

Additional resources available to recipients and contractors include the following:

EPA Office of Small and Disadvantaged Business Utilization:

Phone: 206 – 553 – 2931

Web Site: www.epa.gov/osdbu

Oregon Office of Minority, Women and Emerging Small Business

350 Winter Street N.E., Room 300

Salem, OR 97301-3878

Phone: 503 – 947 – 7922

Web Site: www.cbs.state.or.us/omwesb

APPENDIX D: APPLICABLE FEDERAL AUTHORITIES AND LAWS (“CROSS-CUTTERS”)

ENVIRONMENTAL LEGISLATION:

Archaeological and Historic Preservation Act of 1974, PL 93-291.
Clean Air Act, 42 U.S.C. 7506(c).
Coastal Barrier Resources Act, 16 U.S.C. 3501, et seq.
Coastal Zone Management Act of 1972, PL 92-583, as amended.
Endangered Species Act 16 U.S.C. 1531, et seq.
Executive Order 11593, Protection and Enhancement of the Cultural Environment.
Executive Order 11988, Floodplain Management.
Executive Order 11990, Protection of Wetlands.
Farmland Protection Policy Act, 7 U.S.C. 4201, et seq.
Fish and Wildlife Coordination Act, PL 85-624, as amended.
National Historic Preservation Act of 1966, PL 89-665, as amended.
Safe Drinking Water Act, Section 1424(e), PL 92-523, as amended.
Wild and Scenic Rivers Act, PL 90-542, as amended.
Federal Water Pollution Control Act Amendments of 1972, PL 92-500.

ECONOMIC LEGISLATION:

Demonstration Cities and Metropolitan Development Act of 1966, PL 89-754, as amended.
Section 306 of the Clean Air Act and Section 508 of the Clean Water Act, including
Executive Order 11738, Administration of the Clean Air Act and the Federal Water
Pollution Control Act with Respect to Federal Contracts, Grants or Loans.

SOCIAL LEGISLATION:

The Age Discrimination Act of 1975, Pub. L. No. 94-135, 89 Stat. 713, 42 U.S.C. §6102 (1994).
Civil Rights Act of 1964, Pub. L. No. 88-352, 78 Stat. 252, 42 U.S.C. §2000d (1988).
Section 13 of PL 92-500; Prohibition against Sex Discrimination under the Federal Water Pollution
Control Act.
Rehabilitation Act of 1973, Pub. L. No. 93-1123, 87 Stat. 355, 29 U.S.C. §794 (1988), including
Executive Orders 11914 and 11250).
Executive Order 12898, Environmental Justice in Minority Populations
Exec. Order No. 11,246, 30 F.R. 12319 (1965), *as amended by* Exec. Order No. 11,375, 32 F.R.
14303 (1967), *reprinted in* 42 U.S.C. §2000e (1994), and its regulations at 41 C.F.R.
§§60-1.1 to 60-999.1.

MISCELLANEOUS AUTHORITY:

Uniform Relocation and Real Property Acquisition Policies Act of 1970, PL 92-646.
Executive Order 12549 and 40 CFR Part 32, Debarment and Suspension.
Disclosure of Lobbying Activities, Section 1352, Title 31, U.S. Code.

APPENDIX E: DAVIS-BACON PROVISION

Part 1

(1) Minimum wages.

(i) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

Subrecipients may obtain wage determinations from the U.S. Department of Labor's web site, www.dol.gov.

(ii)(A) The subrecipient(s), on behalf of EPA, shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The State award official shall approve a request for an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (2) The classification is utilized in the area by the construction industry; and
- (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the subrecipient(s) agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), documentation of the action taken and the request, including the local wage determination shall be sent by the subrecipient (s) to the State award official. The State award official will transmit the request, to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210 and to the EPA DB Regional Coordinator concurrently. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification request within 30 days of receipt and so advise the State award official or will notify the State award official within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the subrecipient(s) do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the award official shall refer the request and the local wage determination, including the views of all interested parties and the recommendation of the State award official, to the Administrator for determination. The request shall be sent to the EPA DB Regional Coordinator concurrently. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt of the request and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii)(B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) Withholding. The subrecipient(s), shall upon written request of the EPA Award Official or an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required

by the contract, the (Agency) may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records.

(i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly, for each week in which any contract work is performed, a copy of all payrolls to the subrecipient, that is, the entity that receives the sub-grant or loan from the State capitalization grant recipient. Such documentation shall be available on request of the State recipient or EPA. As to each payroll copy received, the subrecipient shall provide written confirmation in a form satisfactory to the State indicating whether or not the project is in compliance with the requirements of 29 CFR 5.5(a)(1) based on the most recent payroll copies for the specified week. The payrolls shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on the weekly payrolls. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the subrecipient(s) for transmission to the State or EPA if requested by EPA, the State, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the subrecipient(s).

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the State, EPA or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency or State may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and trainees--

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be

greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the EPA determines may be appropriate, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) Contract termination; debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and Subrecipient(s), State, EPA, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility.

(i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

4. Contract Provision for Contracts in Excess of \$100,000.

(a) Contract Work Hours and Safety Standards Act. The subrecipient shall insert the following clauses set forth in paragraphs (a)(1), (2), (3), and (4) of this section in full in any contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by Item 3, above or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed

on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (a)(1) of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (a)(1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (a)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The subrecipient, upon written request of the EPA Award Official or an authorized representative of the Department of Labor, shall withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (a)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (a)(1) through (4) of this section.

(b) In addition to the clauses contained in Item 3, above, in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in 29 CFR 5.1, the Subrecipient shall insert a clause requiring that the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the Subrecipient shall insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the Oregon Department of Environmental Quality and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

5. Compliance Verification

(a) The subrecipient shall periodically interview a sufficient number of employees entitled to DB prevailing wages (covered employees) to verify that contractors or subcontractors are paying the appropriate wage rates. As provided in 29 CFR 5.6(a)(6), all interviews must be conducted in confidence. The subrecipient must use Standard Form 1445 (SF 1445) or equivalent documentation to memorialize the interviews. Copies of the SF 1445 are available from EPA on request.

(b) The subrecipient shall establish and follow an interview schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. Subrecipients must conduct more frequent interviews if the initial interviews or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB. Subrecipients shall immediately conduct necessary interviews in response to an alleged violation of the prevailing wage requirements. All interviews shall be conducted in confidence.

(c) The subrecipient shall periodically conduct spot checks of a representative sample of weekly payroll data to verify that contractors or subcontractors are paying the appropriate wage rates. The subrecipient shall establish and follow a spot check schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, if practicable, the subrecipient should spot check payroll data within two weeks of each contractor or subcontractor's submission of its initial payroll data and two weeks prior to the completion date the contract or subcontract. Subrecipients must conduct more frequent spot checks if the initial spot check or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB. In addition, during the examinations the subrecipient shall verify evidence of fringe benefit plans and payments thereunder by contractors and subcontractors who claim credit for fringe benefit contributions.

(d) The subrecipient shall periodically review contractors and subcontractors use of apprentices and trainees to verify registration and certification with respect to apprenticeship and training programs approved by either the U.S Department of Labor or a state, as appropriate, and that contractors and subcontractors are not using disproportionate numbers of, laborers, trainees and apprentices. These reviews shall be conducted in accordance with the schedules for spot checks and interviews described in Item 5(b) and (c) above.

(e) Subrecipients must immediately report potential violations of the DB prevailing wage requirements to the EPA DB contact listed above and to the appropriate DOL Wage and Hour District Office listed at http://www.dol.gov/whd/contact_us.htm.

APPENDIX F

EQUAL EMPLOYMENT OPPORTUNITY

During the performance of this contract the contractor agrees as follows:

- (1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.
- (2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.
- (3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under Section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (4) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (5) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.
- (6) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(7) The contractor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: *Provided, however*, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

**APPENDIX G: CERTIFICATION REGARDING LOBBYING
(Contracts in Excess of \$100,000.00)**

The undersigned certifies, to the best of his or her knowledge and belief, that:

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

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

Signed _____

Title _____

Date _____

Recipient _____



Agenda Item # CC.VII.C
Meeting Date April 7, 2014

CITY COUNCIL AGENDA ITEM SUMMARY
City Of Newport, Oregon

Issue/Agenda Title: Approve Oregon Water Resources Department (OWRD) Water Conservation, Reuse & Storage Grant Award Agreement

Prepared By: TEG Dept Head Approval: TEG City Manager Approval: _____

Issue Before the Council:

In October of 2013 City staff, assisted by the City's consultant Chase Park Grants, applied for a \$250,000 Oregon Water Resources Department (OWRD) Water Conservation, Reuse & Storage grant to continue the seismic stability and retrofit feasibility study on the Big Creek dams. The City of Newport's grant application was awarded an "84", the highest score of all applicants and received a funding priority rating of "High." On March 10, 2014, the City received notification from OWRD that the City was awarded the grant for the full amount of \$250,000.

Staff Recommendation:

Approve the grant award agreement.

Proposed Motion:

I move to approve the Water Conservation, Reuse & Storage Grant Program grant agreement with the Oregon Water Resources Department, awarding the City of Newport \$250,000 for the Big Creek Dams #1 & 2 Seismic Stability and Retrofit Feasibility Study, and authorize the Mayor to execute the agreement on behalf of the City of Newport.

Key Facts and Information Summary:

In October of 2011, as part of the construction of the City's new water treatment facility, it was discovered that the soils under the Big Creek Dam #1 (lower dam) were very unstable, and had the potential for seismic failure. A change order was executed engaging the water treatment facility engineer, HDR Engineering, Inc., to conduct a preliminary geotechnical evaluation and seismic stability assessment for both the upper and lower dams. This preliminary study showed that both dam structures were at significant risk of failure during even a moderate seismic event. The results of this study resulted in the Oregon Water Resources Department Dam Safety Division elevating Big Creek Dams #1 and #2 to the 2nd and 3rd most critical dam structures in the State of Oregon.

In May of 2013 the City issued an RFP for the purpose of selecting an engineer of record for dam study and design. As a result of this exercise, HDR Engineering, Inc. was selected as the most qualified engineer to conduct this work. The first task order, developed in conjunction with Keith Mills,

Chief Dam Safety Engineer with Oregon Dam Safety, was issued in October of 2013 for Phase 1 of a two phase feasibility study. This initial phase would include conducting a detailed geotechnical and seismic evaluation of both dam structures, picking up where the previous study left off. The final deliverable of this phase will be a report and presentation to Council, identifying several remediation or replacement scenarios and order of magnitude costs. From this process, Council will select the top two or three scenarios for further study. Phase 2 will involve studying these scenarios in depth, including preliminary conceptual drawings, environmental and fish passage impacts, cost, timeframes, and impacts to operations and water quality.

In fiscal year 2013/14, the City budgeted \$300,000 for a portion of Phase 1 of this study. The grant award through OWRD requires a dollar for dollar match from the City. OWRD will allow the City to count the funds spent to date on Phase 1 as the City's match. The addition of the \$250,000 grant will fund the remainder of the Phase 1 study.

Financing for Phase 2 will be part of the FY14-15 budget process. There are remaining funds available through the Water Conservation, Reuse & Storage Grant Program that must be awarded and dispersed this biennium ending June 2015. The City is currently working with Chase Park Grants and HDR to submit another grant application to hopefully acquire an additional \$150,000.

Grant funds for Phase 1, and potentially Phase 2, must be spent by the end of the biennium ending June 30, 2015. It is staff's intent to have both of these studies completed by this date. This will allow the City to plan for whatever remediation options are selected beginning FY 15/16.

The grant agreement has been reviewed by legal counsel. Staff recommends that Council approve the grant agreement and authorize the Mayor to execute the agreement.

Other Alternatives Considered:

None.

City Council Goals:

- Plan for remediation or replacement of upper and lower Big Creek dams.

Attachment List:

- Water Conservation, Reuse & Storage Grant Program, Grant Agreement #GA-0062-15, Big Creek Dams #1 & 2 Seismic Stability and Retrofit Feasibility Study

Fiscal Notes:

See above

Water Conservation, Reuse & Storage Grant Program

GRANT AGREEMENT
#GA-0062-15

Big Creek Dams #1 & 2 Seismic Stability and Retrofit Feasibility Study
By: City of Newport

OREGON WATER RESOURCES DEPARTMENT



GRANT AGREEMENT

GA-0062-15

Big Creek Dams #1 & 2 Seismic Stability and Retrofit Feasibility Study

BETWEEN: State of Oregon, acting by and through its (Grantor)
Oregon Water Resources Department,

The Grantor's Coordinator for this Grant is
Nancy Pustis– Grant Program Specialist
Oregon Water Resources Department
725 Summer Street NE, Suite A
Salem, Oregon 97301-1266
Phone Number: (503) 986-0919
Facsimile Number: (503) 986-0903
E-Mail Address: nancy.n.pustis@wrд.state.or.us

AND: City of Newport (Grantee)
Attn: Sandra Roumagoux
Title: Mayor
169 SW Coast Highway
Newport, Oregon 97365-3806
Contact: Timothy Gross
Telephone Number: 541.574.3369
Facsimile Number: 541.265.3301
E-Mail Address: t.gross@newportoregon.gov
Federal Identification Number: 93-6002222

SECTION 1
LEGAL BASIS OF AWARD

Section 1.01 Legal Basis of Award. Pursuant to ORS 541.561 Grantor is authorized to enter into a Grant Agreement and to make an award, from the Water Conservation, Reuse and Storage Investment Fund, to Grantee for the purposes set forth herein.

Section 1.02 Agreement documents. This Agreement consists of the following documents, which are attached hereto and hereby incorporated into this Agreement by reference and are listed in descending order of precedence: this Grant, less all exhibits; Exhibit A (The Grant Budget); and Exhibit B (Statement of Work).

SECTION 2 GRANT AWARD

Section 2.01 Grant. In accordance with the terms and conditions of this Agreement, Grantor shall provide Grantee with a maximum of **\$250,000** (the “Grant”) from the Water Conservation, Reuse and Storage Grant Program to financially support development of feasibility or planning studies or activities designated within the Statement of Work set forth in Exhibit B attached hereto and incorporated herein by this reference. Grantee shall provide a dollar for dollar match of the amount of the Grant. Grantee agrees and acknowledges that Grantor may need to change the amount of the Grant based upon fluctuations in revenue, assessments to the Water Conservation, Reuse and Storage Grant Program or other factors. Changes to the Grant amount will be implemented through amendments to this Grant Agreement. The Grant Budget is allocated as identified on Exhibit A attached hereto and incorporated herein by this reference.

Section 2.02 Disbursement of Grant Moneys. Subject to Sections 2.03 and 2.04, Grantor shall disburse the Grant moneys to Grantee upon submission of a request for release of funds. The request for release of funds form must be completed and signed by the Grantee prior to approval and payout of any funds by Grantor. All tasks identified within the Statement of Work must be completed by Grant Availability Termination Date. The final 10% of grant moneys will be released for payment upon submission and approval of the Study Completion Report.

Section 2.03 Conditions Precedent to Each Disbursement. Grantor’s obligation to disburse Grant moneys to Grantee pursuant to Section 2.02 is subject to satisfaction, with respect to each disbursement, of each of the following conditions precedent:

- a. Moneys are available to the Water Conservation, Reuse and Storage Grant Program to finance the disbursement;
- b. Grantor has received sufficient funding, appropriations limitations, allotments, or other expenditure authorizations to allow Grantor, in the reasonable exercise of its administrative discretion, to make the disbursement;
- c. Grantee’s representations and warranties set forth in Section 4 are true and correct on the date of disbursement with the same effect as though made on the date of disbursement;
- d. Grantee is in compliance with all reporting requirements of all active or prior Water Conservation, Reuse and Storage Grant Program grants; and
- e. No default as described in Section 6.03 has occurred.

Section 2.04 Grant Availability and Termination Date. The availability of Grant moneys under this Agreement and Grantor’s obligation to disburse Grant moneys shall begin upon Grantor’s signature on Agreement and end on the Grant Availability Termination Date (the “GATD”) of **June 30, 2015** or upon exhaustion of limitation available to the Water Conservation, Reuse and Storage Grant Program, whichever occurs first. Grantee shall not submit any reimbursement request for expenditures that occur after the GATD.

SECTION 3 USES OF GRANT

Section 3.01 Eligible Uses of Grant. Grantee’s use of the Grant moneys is limited to those expenditures necessary for the purposes described in Exhibit B. Equipment purchases are hereby approved by the Grantor and limited to the list as shown in Exhibit A, the Grant Budget.

Section 3.02 Ineligible Uses of Grant. Notwithstanding Section 3.01, Grantee shall not use the Grant moneys to retire any debt, to reimburse any person or entity for expenditures made or expenses incurred prior to the date of this Agreement.

Section 3.03 Unexpended Grant Moneys. Any Grant moneys disbursed to Grantee, or any interest earned by Grantee on the Grant moneys, that are not expended by Grantee in accordance with this Agreement by the earlier of the Grant Availability Termination Date or the date this Agreement is terminated shall be returned to Grantor. Grantee shall return all unexpended funds to Grantor within fifteen (15) days after the Grant Availability Termination Date.

SECTION 4 GRANTEE'S REPRESENTATIONS AND WARRANTIES

Grantee represents and warrants to Grantor as follows:

Section 4.01 Existence and Power. Grantee has full power and authority to transact the business in which it is engaged and the legal right to execute and deliver this Agreement, and incur and perform its obligations hereunder.

Section 4.02 Authority, No Contravention. The making and performance by Grantee of this Agreement (a) have been duly authorized by all necessary action of Grantee, (b) do not and will not violate any provision of any applicable law, rule, or regulation or order of any court, regulatory commission, board or other administrative Grantor or any provision of Grantee's articles of incorporation or bylaws and (c) do not and will not result in the breach of, or constitute a default or require any consent under any other agreement or instrument to which Grantee is a party or by which Grantee or any of its properties are bound or affected.

Section 4.03 Binding Obligation. This Agreement has been duly authorized, executed and delivered on behalf of Grantee and constitutes the legal, valid, and binding obligation of Grantee, enforceable in accordance with its terms.

Section 4.04 Approvals. No authorization, consent, license, approval of, filing or registration with, or notification to, any governmental body or regulatory or supervisory authority is required for the execution, delivery or performance by Grantee of this Agreement.

SECTION 5 GRANTEE'S AGREEMENTS

Section 5.01 Study Completion Report. Grantee shall complete the Study by the end date in Section 2.04 (the "Grant Availability Termination Date") or such later date as the Grantor may designate, in Grantor's sole and absolute discretion, by written notice to Grantee; provided however, that if the total amount of the Grant is not available solely because one or more of the conditions set forth in Sections 2.03 (a) and (b) are not satisfied, Grantee will not be required to complete the Study.

Section 5.02 Quarterly Reports. No later than 30 days after the end of each calendar quarter, Grantee shall provide the Grantor with quarterly reports. The report must utilize the forms provided by the Grantor which will include information regarding the expenditure of Project and non-Project related funds, progress toward completion of the Study, and a narrative on the activities completed as part of the Study.

Section 5.03 Reporting. Grantee may be required to provide; a) additional reports on the Project as

deemed appropriate by Grantor, b) a commitment to supply future reports on the Project, and c) a commitment to provide a report of any future action taken as a result of the Project.

Section 5.04 Accounting for expenses. Grantee shall account for funds distributed by the Grantor using forms provided by the Grantor.

Section 5.05 Release of Reports. All reports that the Grantor determines to be final and complete may be made available to the public.

Section 5.06 Records and Inspection. Grantee shall keep proper books of account and records on all activities associated with the Grant including, but not limited to, books of account and records on expenditure of the Grant moneys and on the services financed with the Grant moneys. Grantee will maintain these books of account and records in accordance with generally accepted accounting principles and shall retain the books of account and records until the later of six years after the date set forth in Section 2.04 or the date that all disputes, if any, arising under this Agreement have been resolved. Grantee will permit Grantor, the Secretary of State of the State of Oregon, or their duly authorized representatives to inspect its properties, all work done, labor performed and materials furnished in connection with the activities financed with Grant moneys, and to review and make excerpts and transcripts of its books of account and records with respect to the receipt and disbursement of funds received from Grantor. Access to these books of account and records is not limited to the required retention period. The authorized representatives shall have access to records at any reasonable time for as long as the records are maintained.

Section 5.07 Compliance with Laws. Grantee shall comply with all applicable federal, state, and local laws, regulations, executive orders and ordinances related to expenditure of the Grant moneys and the activities financed with the Grant moneys. Without limiting the generality of the foregoing, Grantee expressly agrees to comply with (a) Title VI of the Civil Rights Act of 1964, (b) Section V of the Rehabilitation Act of 1973, (c) the Americans with Disabilities Act of 1990 and ORS 659A.142, (d) all regulations and administrative rules established pursuant to the foregoing laws, and (e) all other application requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.

Section 5.08 Work Product.

(a) The Grantor and Grantee each acknowledge that performance of this Agreement may result in the discovery, creation or development of inventions, combinations, machines, methods, formulae, techniques, processes, improvements, software designs, computer programs, strategies, specific computer-related know-how, data and original works of authorship (collectively, the "Work Product"). Grantee agrees that it will promptly and fully disclose to the Grantor any and all Work Product generated, conceived, reduced to practice or learned by Grantee or any of its employees, either solely or jointly with others, during the term of this Agreement, which in any way relates to the business of the Grantor. Grantee further agrees that neither Grantee or Grantee's employees, nor any party claiming through Grantee or Grantee's employees, will, other than in the performance of this Agreement, make use of or disclose to others any proprietary information relating to the Work Product. All Services performed hereunder will include delivery of all source and object code and all executables and documentation. Grantee agrees that the Grantor shall have a copy of the most recent source code at all times.

(b) As part of the Work Product, the Grantee shall produce a Study Completion Report documenting the findings of the feasibility study. The Study Completion Report shall describe the findings of each of the project planning study elements (also known as key tasks) as identified in the attached Statement of Work.

(c) Grantee agrees that, whether or not the Services are considered works made for hire or an employment to invent, all Work Product discovered, created or developed under this Agreement shall be and remain the sole property of the Grantor and its assigns. Except as specifically set forth in writing and signed by both the Grantor and Grantee, Grantee agrees that the Grantor shall have all copyright and patent rights with respect to any Work Product discovered, created or developed under this Agreement without regard to the origin of the Work Product.

(d) If and to the extent that Grantee may, under applicable law, be entitled to claim any ownership interest in the Work Product, Grantee hereby transfers, grants, conveys, assigns and relinquishes exclusively to the Grantor any and all right, title and interest it now has or may hereafter acquire in and to the Work Product under patent, copyright, trade secret and trademark law in perpetuity or for the longest period otherwise permitted by law. If any moral rights are created, Grantee waives such rights in the Work Product. Grantee further agrees as to the Work Product to assist the Grantor in every reasonable way to obtain and, from time to time, enforce patents, copyrights, trade secrets and other rights and protection relating to said Work Product, and to that end, Grantee and its employees will execute all documents for use in applying for and obtaining such patents, copyrights, trade secrets and other rights and protection with respect to such Work Product, as the Grantor may desire, together with any assignments thereof to the Grantor or persons designated by it. Grantee's and its employees' obligations to assist the Grantor in obtaining and enforcing patents, copyrights, trade secrets and other rights and protection relating to the Work Product shall continue beyond the termination of this Agreement.

(e) If and to the extent that any preexisting rights are embodied or reflected in the Work Product, Grantee hereby grants to the Grantor the irrevocable, perpetual, non-exclusive, worldwide, royalty-free right and license to (a) use, execute, reproduce, display, perform, distribute copies of and prepare derivative works based upon such preexisting rights and any derivative works thereof and (b) authorize others to do any or all of the foregoing.

SECTION 6 TERMINATION AND DEFAULT

Section 6.01 Mutual Termination. This Agreement may be terminated by mutual consent of both parties.

Section 6.02 Termination by Grantor. Grantor may terminate this Agreement, for any reason, upon 30 days advance written notice to Grantee. In addition, Grantor may terminate this Agreement effective immediately upon written notice to Grantee, or effective on such later date as may be established by Grantor in such notice, under any of the following circumstances: (a) Grantor fails to receive sufficient appropriations or other expenditure authorization to allow Grantor, in the reasonable exercise of its administrative discretion, to continue making payments under this Agreement, (b) there are not sufficient funds in the Water Conservation, Reuse, and Storage Investment Fund to permit Grantor to continue making payments under this Agreement, (c) there is a change in federal or state laws, rules, regulations or guidelines so that the Study funded by this Agreement is no longer eligible for funding, or (d) in accordance with Section 6.04.

Section 6.03 Default. Grantee shall be in default under this Agreement upon the occurrence of any of the following events:

(a) Grantee fails to perform, observe or discharge any of its covenants, agreements or obligations contained herein or in any exhibit attached hereto; or

(b) Any representation, warranty or statement made by Grantee herein or in any documents or reports relied upon by Grantor to measure progress on the activities funded by the Grant, the expenditure of Grant moneys or the performance by Grantee is untrue in any material respect when made; or

(c) Grantee (i) applies for or consents to the appointment of, or the taking of possession by, a receiver, custodian, trustee, or liquidator of itself or of all of its property, (ii) admits in writing its inability, or is generally unable, to pay its debts as they become due, (iii) makes a general assignment for the benefit of its creditors, (iv) is adjudicated a bankrupt or insolvent, (v) commences a voluntary case under the Federal Bankruptcy Code (as now or hereafter in effect), (vi) files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, (vii) fails to controvert in a timely and appropriate manner, or acquiesces in writing to, any petition filed against it in an involuntary case under the Bankruptcy Code, or (viii) takes any action for the purpose of effecting any of the foregoing; or

(d) A proceeding or case is commenced, without the application or consent of Grantee, in any court of competent jurisdiction, seeking (i) the liquidation, dissolution or winding-up, or the composition or readjustment of debts, of Grantee, (ii) the appointment of a trustee, receiver, custodian, liquidator, or the like of Grantee or of all or any substantial part of its assets, or (iii) similar relief in respect to Grantee under any law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, and such proceeding or case continues undismissed, or an order, judgment, or decree approving or ordering any of the foregoing is entered and continues unstayed and in effect for a period of sixty (60) consecutive days, or an order for relief against Grantee is entered in an involuntary case under the Federal Bankruptcy Code (as now or hereafter in effect).

Section 6.04 Remedies Upon Default. If Grantee's default is not cured within fifteen (15) days of written notice thereof to Grantee from Grantor or such longer period as Grantor may authorize in its sole discretion, Grantor may pursue any remedies available under this Agreement, at law or in equity. Such remedies include, but are not limited to, termination of this Agreement, return of all or a portion of the Grant moneys, payment of interest earned on the Grant moneys, and declaration of ineligibility for the receipt of future Water Conservation, Reuse and Storage Investment Fund awards. If, as a result of Grantee's default, Grantor demands return of all or a portion of the Grant moneys or payment of interest earned on the Grant moneys, Grantee may, at Grantee's option, satisfy such demand by paying to Grantor the amount demanded or permitting Grantor to recover the amount demanded by deducting that amount from future payments to Grantee from Grantor. If Grantee fails to repay the amount demanded within fifteen (15) days of the demand, Grantee shall be deemed to have elected the deduction option and Grantor may deduct the amount demanded from any future payment from Grantor to Grantee, including but not limited to, any payment to Grantee from Grantor under this Agreement and any payment to Grantee from Grantor under any other contract or agreement, present or future, between Grantor and Grantee.

SECTION 7 MISCELLANEOUS

Section 7.01 No Implied Waiver, Cumulative Remedies. The failure of Grantor to exercise, and any delay in exercising any right, power, or privilege under this Agreement shall not operate as a waiver thereof, nor shall any single or partial exercise of any right, power, or privilege under this Agreement preclude any other or further exercise thereof or the exercise of any other such right, power, or privilege. The remedies provided herein are cumulative and not exclusive of any remedies provided by law.

Section 7.02 Reserved

Section 7.03. Governing Law; Venue; Consent to Jurisdiction. This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit, or proceeding (collectively, "Claim") between Grantor (or any other Grantor or department of the State of Oregon) and Grantee that arises from or relates to this Agreement shall be

brought and conducted solely and exclusively within the Circuit Court of Marion County for the State of Oregon. GRANTEE, BY EXECUTION OF THIS AGREEMENT, HEREBY CONSENTS TO THE EXCLUSIVE JURISDICTION OF SUCH COURT, WAIVES ANY OBJECTION TO VENUE, AND WAIVES ANY CLAIM THAT SUCH FORUM IS AN INCONVENIENT FORUM.

Section 7.04 Notices. Except as otherwise expressly provided in this Agreement, any communications between the parties hereto pertaining to this Agreement or notices to be given hereunder shall be given in writing by personal delivery, facsimile, or mailing the same, postage prepaid to Grantee or Grantor at the address or number set forth on page 1 of this Agreement, or to such other addresses or numbers as either party may hereafter indicate pursuant to this section. Any communication or notice so addressed and mailed shall be deemed to be given five (5) days after mailing. Any communication or notice delivered by facsimile shall be deemed to be given when receipt of the transmission is generated by the transmitting machine. Any communication or notice by personal delivery shall be deemed to be given when actually delivered.

Section 7.05 Amendments. This Agreement may not be waived, altered, modified, supplemented, or amended in any manner except by written instrument signed by both parties.

Section 7.06 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of Grantor, Grantee, and their respective successors and assigns, except that Grantee may not assign or transfer its rights or obligations hereunder or any interest herein without the prior consent in writing of Grantor.

Section 7.07 Entire Agreement. This Agreement constitutes the entire agreement between the parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement.

Section 7.08 Indemnity. Grantee shall defend, save, hold harmless, and indemnify the State of Oregon and Grantor and their officers, employees and agents from and against all claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature resulting from or arising out of, or relating to the activities of Grantee or its officers, employees, Grantees, or agents under this Agreement.

Section 7.09 Time is of the Essence. Grantee agrees that time is of the essence under this Agreement.

Section 7.10 Survival. All provisions of this Agreement set forth in the following sections shall survive termination of this Agreement: Section 3.03, Unexpended Grant Moneys; Section 5.06, Records and Inspection; and Section 7, MISCELLANEOUS.

Section 7.11 Counterparts. This Agreement may be executed in several counterparts, all of which when taken together shall constitute one agreement binding on all parties, notwithstanding that all parties are not signatories to the same counterpart. Each copy of this Agreement so executed shall constitute an original.

Section 7.12 Severability. If any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if this Agreement did not contain the particular term or provision held to be invalid.

Section 7.13 Relationship of Parties. The parties agree and acknowledge that their relationship is that of independent contracting parties and neither party hereto shall be deemed an agent, partner, joint venture or related entity of the other by reason of this Agreement.

Section 7.14 Headings. The section headings in this Agreement are included for convenience only, they do not give full notice of the terms of any portion of this Agreement and are not relevant to the interpretation of any provision of this Agreement.

Section 7.15 No Third Party Beneficiaries. Grantor and Grantee are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the dates set forth below their respective signatures.

GRANTOR



STATE OF OREGON
acting by and through its **Water Resources Department**

By:
Name: Tracy Loudon
Title: Administrator, Administrative Services Division

Date: _____

GRANTEE

By:
Name: Sandra Roumagoux
Title: Mayor, City of Newport

Date: _____

**APPROVED AS TO LEGAL SUFFICIENCY IN ACCORDANCE WITH ORS 291.047
AND OAR 137-045-0030:**

Assistant Attorney General:

Date: _____

EXHIBIT A
The Grant Budget

The Grant Budget is as follows:

Budget Category	Approved Budget
Staff Salary/Benefits	0
Contractual	\$238,000
Equipment*	0
Other	0
Administration	\$12,000
Subtotal of Grant Funds	\$250,000
Match Funding - Expenditures from sources other than this grant program	\$352,403
Grand Total	\$602,403

* Specific Equipment purchases (include function, cost, relevance to project):

- 1) None
- 2)
- 3)

EXHIBIT B
Statement of Work

The grant application is hereby part of this Grant Agreement. Grant funds shall only be used to accomplish the following tasks, as fully identified in the application, in relation to the *Big Creek Dams #1 & 2 Seismic Stability and Retrofit Feasibility Study*:

- Task 1) Grant Management.
- Task 2) Update time histories and ground motion update for engineering evaluation.
- Task 3) Engineering analyses.
- Task 4) Engineering analysis technical memorandum.
- Task 5) Risk analysis decision matrix.
- Task 6) Corrective action alternatives development and evaluation
- Task 7) Preliminary environmental review
- Task 8) Planning report and presentation
- Task 9) Technical assistance

Supplemental Requirements for Storage Projects

For storage projects that meet the following criteria, an addendum is required in the final report that clearly describes the following:

OAR 690-600-0050(2)

This study concerns a proposed storage project that would impound surface water on a perennial stream, divert water from a stream that supports sensitive, threatened or endangered fish or divert more than 500 acre-feet of surface water annually. Therefore, the following items must be addressed:

- (a) Analyses of by-pass, optimum peak, flushing and other ecological flows of the affected stream and the impact of the storage project on those flows;
- (b) Comparative analyses of alternative means of supplying water, including but not limited to the costs and benefits of conservation and efficiency alternatives and the extent to which long-term water supply needs may be met using those alternatives;
- (c) Analyses of environmental harm or impacts from the proposed storage project; and
- (d) Evaluation of the need for and feasibility of using stored water to augment in-stream flows to conserve, maintain and enhance aquatic life, fish life and any other ecological values.
- (e) In addition, if the storage project is for municipal use, the grant agreement will require an analysis of local and regional water demand and the proposed storage project's relationship to existing and planned water supply projects.

It has been determined that OAR 690-600-0050 (2) applies to a project which will impound water in the future and requires certain analysis to determine what will change if the project being studied by the feasibility analysis is implemented. The Project identified in this grant agreement is concerning an impoundment that already exists; therefore the analysis listed in the OAR is not required at this time. Grantee acknowledges that substantive changes to the structure as a result of the Project will require additional compliance with current law to implement.



Agenda Item #
Meeting Date

CC.VII.D
April 7, 2014

CITY COUNCIL AGENDA ITEM SUMMARY
City Of Newport, Oregon

Issue/Agenda Title: Approve Amendment No. 2 to ODOT Local Agency Flexible Funds Program Agreement - Hwy 101 Pedestrian Improvements Project

Prepared By: TEG Dept Head Approval: TEG City Manager Approval: _____

Issue Before the Council:

Amendment No. 2 to ODOT Local Agency Flexible Funds Program Agreement - Hwy 101 Pedestrian Improvements Project

Staff Recommendation:

Approve the amendment

Proposed Motion:

I move to approve Amendment No. 2 to the ODOT Local Agency Flexible Funds Program Agreement No. 28487 for the Hwy 101 Pedestrian Improvements Project and authorize to the Mayor and the City Manager to sign the amendment on behalf of the City of Newport.

Key Facts and Information Summary:

This amendment memorializes the change in estimated project cost, contributions, and timeframe for this project. At the March 17, 2014 Council Meeting the Council agreed in concept to contribute an additional \$150,000, and the ODOT Bike and Pedestrian Program has also agreed to contribute an additional \$250,000 to meet the additional \$400,000 required to complete the project in accordance with the approved scope that was part of the 2012 STP. ODOT estimates that the project will bid on November 20, 2014.

Other Alternatives Considered:

None

City Council Goals:

N/A

Attachment List:

- Amendment No. 2 to ODOT Local Agency Flexible Funds Program Agreement - Hwy 101 Pedestrian Improvements Project

Fiscal Notes:

The total project cost is estimated as \$902,000. The project funding is comprised as follows:

- Federal-Aid Surface Transportation Program (STP) funds - \$450,000
- ODOT Bicycle and Pedestrian Program funds - \$250,000
- City of Newport funds- \$202,000
\$902,000

The initial \$52,000 contributed to this project by the City was funded \$5,611 from State Gas Tax and \$46,389 from Newport Gas Tax in FY12/13. The additional \$150,000 contribution to the project by the City will be identified in the FY14/15 budget, but a specific fund has not yet been identified.

**AMENDMENT NUMBER 02
LOCAL AGENCY AGREEMENT
FLEXIBLE FUNDS PROGRAM 2011
Non-Highway Transportation Projects
US 101 Pedestrian Safety Improvements
City of Newport**

The **STATE OF OREGON**, acting by and through its Department of Transportation, hereinafter referred to as "State;" and the **CITY OF NEWPORT**, acting by and through its elected officials, hereinafter referred to as "Agency," entered into an Agreement on July 19, 2012, and Amendment Number 1 on February 25, 2014. Said Agreement covers the improvement of crosswalks on US 101 north of Yaquina Bridge.

It has now been determined by State and Agency that the Agreement referenced above shall be amended to increase the total Project cost, add Bicycle and Pedestrian Program funds, and update the milestone dates identified in Exhibit B. Except as expressly amended below, all other terms and conditions of the Agreement are still in full force and effect.

Revised Exhibit B shall be deleted in its entirety and replaced with the attached Revised Exhibit B-2. All references to "Revised Exhibit B" shall hereinafter be referred to as "Revised Exhibit B-2."

Insert new RECITALS, Paragraphs 5 and 6, to read as follows:

5. By the authority granted in ORS 366.514, funds received from the State Highway Trust Fund are to be expended by the State and the various counties and cities for the establishment of footpaths and bicycle trails. For purposes of Article IX, Section 3(a), of the Oregon Constitution, the establishment and maintenance of such footpaths and bicycle trails are for highway, road, and street purposes when constructed within the public right of way.
6. State established a Bicycle and Pedestrian Program fund in the Statewide Transportation Improvement Program (STIP) to meet the minimum requirement of one (1) percent of State Highway funds to be spent on Pedestrian and Bicycle facilities. The 2012-2015 STIP programs \$29 million for the Bicycle and Pedestrian Program, allocated to three (3) programs: Grants, Sidewalk Improvement Programs, and Quick Fixes.

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

2. The Project will be conducted as a part of the Federal-Aid Surface Transportation Program (STP) under Title 23, United States Code. The total Project cost is estimated at \$502,000, which is subject to change. STP funds for this Project will be limited to \$450,000. The Project will be financed with STP funds at the maximum allowable

federal participating amount, with Agency providing the match and any non-participating costs, including all costs in excess of the available federal funds. The STP Flexible Funds are available for Preliminary Engineering and Construction phases of the Project.

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

2. The total Project cost is estimated at \$902,000. The Project estimate is subject to change.
 - a. A portion of the Project will be conducted as a part of the Federal-Aid Surface Transportation Program (STP) under Title 23, United States Code. The STP funds for this Project will be limited to \$450,000 and are for the Preliminary Engineering, Right of Way, and Construction phases of the Project.
 - b. A portion of the Project will be conducted as a part of the Bicycle and Pedestrian Program under the State Highway Trust Fund. The Bicycle and Pedestrian funds are limited to \$250,000 and are for the Construction phase of the Project.
 - c. The Project will be financed at the maximum allowable federal participating amount for the STP funds and 100 percent for the Bicycle and Pedestrian funds. Agency is responsible for the match for the federal STP funds and all non-participating costs, including all costs in excess of the available federal and Bicycle and Pedestrian funds.

This Amendment may be executed in several counterparts (facsimile or otherwise) all of which when taken together shall constitute one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of this Amendment so executed shall constitute an original.

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

This Project is in the 2012-2015 Statewide Transportation Improvement Program, (Key No. 18122) that was adopted by the Oregon Transportation Commission on March 21, 2012 (or subsequently approved by amendment to the STIP).

SIGNATURE PAGE FOLLOWS

CITY OF NEWPORT, by and through its
elected officials

By _____
Mayor

Date _____

By _____
City Manager

Date _____

APPROVED AS TO LEGAL FORM

By _____
City Legal Counsel

Date _____

Agency Contact:

Tim Gross, Public Works Director
City of Newport
169 SW Coast Highway
Newport, OR 97305
Phone: (541) 574-3369
Email: t.gross@newportoregon.gov

State Contact:

Michael Starnes, Local Agency Liaison
ODOT, Region 2
455 Airport Road SE, Bldg. B
Salem, OR 97301
Phone: (503) 986-6920
Email: michael.s.starnes@odot.state.or.us

STATE OF OREGON, by and through
its Department of Transportation

By _____
Director

Date _____

APPROVAL RECOMMENDED

By _____
Planning Section Manager

Date _____

By _____
Active Transportation Section Manager

Date _____

By _____
Bicycle and Program Manager

Date _____

**APPROVED AS TO LEGAL
SUFFICIENCY**

By _____
Assistant Attorney General

Date _____

State Contact:

Carol Olsen, Flexible Funds Program Manager
ODOT, Active Transportation Section
555 13th Street NE
Salem, OR 97301
Phone: (503) 986-3327
Email: carol.a.olsen@odot.state.or.us

REVISED EXHIBIT B-2
Progress Reports and Project Change Request Process
Agreement No. 28487
Application No.: BP-2-002
Project Name: US 101 Pedestrian Safety Improvements

1. **Project Description** – This Project will improve crosswalks at US 101 and NW 15th Street, NE 10th Street, NW 3rd Street, SW Angle Street, SW Lee Street, SW Alder Street, SW Abbey Street, and SE Bayley Street. The crosswalk at US 101 and SW Neff Way will be removed. Improvements include pedestrian islands, pedestrian warning signs, striping, and curb extensions.
2. This Project is subject to progress reporting and project change process as stated in Paragraphs 3 through 6 below.
3. **Monthly Progress Reports (MPR)** – Agency shall submit monthly progress reports using MPR Form 734-2862, attached by reference and made a part of this Agreement. The MPR is due by the 5th day of each month, starting the first full month after execution of this Agreement, and continuing through the first month after State issues Project Acceptance (Second Note) for the Project’s construction contract.

The fillable MPR form and instructions are available at the following web site:
http://www.oregon.gov/ODOT/TD/AT/Pages/Forms_Applications.aspx

4. **Project Milestones** – The Parties agree that the dates shown in Table 1 constitute the intended schedule for advancing and completing the Project. Project Milestones may only be changed through amendment of the Agreement, after obtaining an approved Project Change Request.

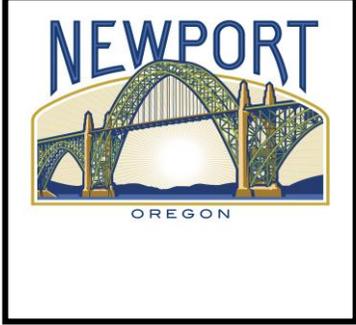
Table 1: Project Milestones

	Milestone Description	Completion Date
1	Obligation (Federal Authorization) of STP Flexible Funds for the Preliminary Engineering phase of Project	9/30/2012
2	Obligation (Federal Authorization) of STP Flexible Funds for the Right of Way phase of the Project	3/21/2014
3	Obligation (Federal Authorization) of STP Flexible Funds for the Construction phase of the Project	10/15/2014
4	Project Completion based on State issuing Project Acceptance or “Second Note”	12/31/2015

5. **Project Change Request (PCR) Process** – Agency must obtain approval from State’s contact and State’s STP Flexible Funds Program Manager for changes to the Project’s scope, schedule, or budget by submitting a PCR as specified in Paragraphs 5a and 5b, below. Agency shall be fully responsible for all costs attributable to changes to the established Project scope, schedule or budget and prior to an approved PCR. Amendments to this Agreement are required for all approved PCRs.
 - a. **Scope** – A PCR is required for a change in the scope of work described in the Project Description (Paragraph 1 of this Exhibit).
 - b. **Schedule** – A PCR is required if Agency or State’s contact anticipate that any Project Milestone will be delayed by more than ninety (90) days, and also for any change in schedule that will require amendment of the Statewide Transportation Improvement Program (STIP).
6. **PCR Form** – Agency must submit all change requests using PCR Form 734-2863, attached by reference and made a part of this Agreement. The PCR Form is due no later than thirty (30) days after the need for change becomes known to Agency. The PCR shall explain what change is being requested, the reasons for the change, and any efforts to mitigate the change. A PCR may be rejected at the discretion of State’s Flexible Funds Program Manager.

The fillable PCR form and instructions are available at the following web site:
http://www.oregon.gov/ODOT/TD/AT/Pages/Forms_Applications.aspx

7. **Consequence for Non-Performance** – If Agency fails to fulfill its obligations in Paragraphs 3 through 6 above, or does not assist in advancing the Project or perform tasks that the Agency is responsible for under the Project Milestones, State’s course of action through the duration of Agency’s default may include: (a) restricting Agency consideration for future funds awarded through State’s Active Transportation Section; (b) withdrawing unused Project funds; and (c) terminating this Agreement as stated in Terms of Agreement, Paragraphs 15a and 15b of this Agreement and recovery of payments pursuant to Special Provisions Paragraph 10.



Agenda Item #
Meeting Date

CC.VIIE.1
April 7, 2014

CITY COUNCIL AGENDA ITEM SUMMARY
City of Newport, Oregon

Issue/Agenda Title Council Initiated Street Vacation for portions of SW 31st Street, SW 32nd Street, SW 33rd Street, SW Coho Street, SW Brant Street, SW Abalone Street and SW Anchor Way

Prepared By: Derrick Tokos Dept Head Approval: DT City Mgr Approval: _____

ISSUE BEFORE THE COUNCIL: Whether or not the City wants to initiate the statutory process to vacate portions of SW 31st Street, SW 32nd Street, SW 33rd Street, SW Coho Street, SW Brant Street, SW Abalone Street and SW Anchor Way. The right-of-way at issue is located within the Harborton and Waggoner’s Addition to South Beach subdivision plats, in Section 17, Township 11 South, Range 11 West of the Willamette Meridian.

STAFF RECOMMENDATION: Staff recommends the City Council initiate the street vacation with instructions that the process move forward concurrent with the proposed subdivision plat that will position SW 30th Street, SW 35th Street, and SW Abalone Street rights-of-way for future street improvements.

PROPOSED MOTION: I move to initiate street vacation proceedings for portions of SW 31st Street, SW 32nd Street, SW 33rd Street, SW Coho Street, SW Brant Street, SW Abalone Street and SW Anchor Way, as presented. The public hearings for the street vacation are to be scheduled such that they coincide with the hearings process for the subdivision plat that will reconfigure SW 30th Street, SW 35th Street, and SW Abalone Street rights-of-way for future street improvements.

KEY FACTS AND INFORMATION SUMMARY: The Newport Urban Renewal Agency is coordinating with the Oregon Museum of Science and Industry (OMSI), Investors XII, LLC, and Dick Murry (Toby Murry Motors) to reconfigure road rights-of-way adjoining their properties in order to facilitate the extension of SW Abalone Street and the construction of portions of SW 30th Street and SW 35th Street. New rights-of-way need to be dedicated for this purpose. The Agency is proposing to create the rights-of-way with a subdivision plat that will need to be reviewed and approved by the Newport Planning Commission pursuant to Newport Municipal Code (NMC) Chapter 13 and Oregon Revised Statutes (ORS) Chapter 92.

Certain existing road rights-of-way on or adjacent to the OMSI, Investors XII, and Dick Murry properties are not needed for public purposes. These rights-of-way are proposed to be vacated in exchange for the rights-of-way that are being acquired. While rights-of-way proposed to be vacated can be depicted on a plat, the actual method of vacating the rights-of-way follows a separate process that requires hearings before the Planning Commission and City Council as provided in NMC Chapter 14.52 and ORS Chapter 271. In order to begin a street vacation, a petition must be filed indicating that nearby and abutting property owners want the rights-of-way to be vacated, or the Council may initiate the process on its own accord. On October 6, 2008, the City Council adopted policies to govern when it would utilize the Council initiated street vacation option. Those policies require consideration of (a) the extent of public benefit; (b) the extent of present and anticipated future use of the right-of-way; (c) potential environmental and geologic impacts; (d) financial factors; (e) effect on property owners; (f) consistency with applicable plans, ordinances and regulations; and (g) the amount and quality of the information provided by the person requesting the vacation. The Council may consider other factors as well. A memo prepared by staff, dated April 1, 2014, explains how these policies are satisfied. Specific rights-of-way subject to this proposal are depicted on Exhibit A to the staff memo.

OTHER ALTERNATIVES CONSIDERED: Requiring the property owners to vacate the rights-of-way independently. This would be a more cumbersome and complex process given the number of rights-of-way involved and would be difficult to correlate with rights-of-way the City is acquiring for future streets.

CITY COUNCIL GOALS: Initiating the street vacation process is consistent with the Council's objective of working with its community partners to facilitate economic development.

ATTACHMENT LIST:

- April 1, 2014 staff memo and rationale in support of the Council initiating the street vacation process, with attachments.
- Copy of ORS 271.080 through 271.230, outlining street vacation processes.

FISCAL NOTES: There will be a cost in terms of staff time to prepare meeting materials and the notice for the public hearing(s) if the Council initiates the street vacation. However, these costs and the value of rights-of-way the City may vacate are offset by the value of rights-of-way the City stands to acquire for future street improvements.

Memorandum

To: Newport City Council
From: Derrick Tokos, Community Development Director
Date: April 1, 2014
Re: Rationale in Support of Council Initiated Street Vacation for portions of SW 31st Street, SW 32nd Street, SW 33rd Street, SW Coho Street, SW Brant Street, SW Abalone Street and SW Anchor Way

The Newport Urban Renewal Agency is coordinating with the Oregon Museum of Science and Industry (OMSI), Investors XII, LLC, and Dick Murry (Toby Murry Motors) to reconfigure road rights-of-way adjoining their properties to facilitate the extension of SW Abalone Street and the construction of portions of SW 30th Street and SW 35th Street. New rights-of-way need to be dedicated for this purpose. The Agency is proposing to create the rights-of-way with a subdivision plat that will need to be reviewed and approved by the Newport Planning Commission pursuant to Chapter 13 of the Newport Municipal Code (NMC) and Chapter 92 of the Oregon Revised Statutes (ORS). The location of the new rights-of-ways are shown on a conceptual drawing of the proposed subdivision plat, titled "Sunset Dunes" (Exhibit A).

Existing road rights-of-way that are not needed are proposed to be vacated. While areas to be vacated can be depicted on a plat, as is the case here, the actual method of vacating the rights-of-way follows a separate process that requires hearings before the Planning Commission and City Council as provided in NMC Chapter 14.52 and ORS Chapter 271. In order to begin a street vacation, a petition must be filed indicating that nearby and abutting property owners want the rights-of-way to be vacated or the Council may initiate the process on its own accord. On October 6, 2008, the City Council adopted policies to govern when it would utilize the Council initiated street vacation option (Exhibit B). The following analysis briefly describes why vacating the above described rights-of-way is consistent with these policies.

In performing this analysis, the rights-of-way to be vacated are referred to generally as follows:

Area A (shown in yellow): Is 30,867 square feet in size, and includes portions of SW Coho Street and SW 31st Street that are situated within a coastal gully, the boundaries of which are depicted as Lot 1, Block 1 of the subdivision plat. There are no City utilities at this location.

Area B (shown in green): Is 113,335 square feet in size, consisting of portions of SW 32nd Street, SW 33rd Street, SW Coho Street, and SW Brant Street. These rights-of-way are internal to Lot 2, Block 1 of the subdivision plat and encompass areas where OMSI proposes to construct a youth camp. City would retain utility easements over public water and sewer mains located in portions of SW 33rd Street and SW Brant Street.

Area C (shown in red): Is 1,643 square feet in size, and includes a portion of SW Abalone Street that is south of where the roadway is planned to curve east into SW 35th Street. This small area falls within the boundary of the subdivision plat and the City would reserve an easement over water and sewer mains at this location.

Area D (shown in blue): Is 37,486 square feet in size, and consists of all but the most northerly portion of SW Anchor Way lying between SW 35th Street and US 101. A paved public roadway exists at this location, although it extends outside the right-of-way at several locations, encroaching onto the Investors XII and Dick Murry properties as depicted on the subdivision plat. This road would revert to a private drive and an access easement would be placed over it to ensure that properties that need to use the road to access a public street can continue to do so. The most northerly portion of Anchor Way will be retained and identified as SW 32nd Street. This will ensure that the Investors XII and Dick Murry properties can continue to access the 32nd and US 101 intersection using a public road approach. A small segment of abandoned storm drainage line is located within the right-of-way. There are no other City utilities at this location.

1. Policy 1: The extent of public benefit. The policy defines public benefit as including one or more of the following (a) the vacation is part of a trade of properties that results in a better street system “high benefit”; (b) elimination of responsibility and liability for an area that may not have a real public use or purpose; (c) increase in taxable property by facilitating development that would not otherwise occur; (d) the vacation facilitates development that improves the city by providing jobs, or improved appearance or character of the area; or (e) clears up confusion as to the exact location of the right-of-way and/or public street.

Vacating these rights-of-way provides a public benefit because it helps the City realize a better street system. Areas A, B, and C are unimproved rights-of-way that are not needed for future street development. Area D, while improved, effectively serves as an internal drive for two commercial properties and is; therefore, not needed as part of the public system. By trading these rights-of-way for land that the City needs to extend SW Abalone Street, and to construct portions of SW 30th Street and SW 35th Street consistent with its Transportation System Plan, the City improves its street system.

Further, elimination of Area B is necessary in order for OMSI to develop its planned coastal science camp, which will add jobs, improve the appearance of the undeveloped lot, and enhance the character of the area through its focus on being a complimentary marine research and educational venue. Vacating Area D will resolve a confusing situation where the as-traveled roadway was constructed partially outside of the dedicated right-of-way. A new access easement for this stretch of road will cover its entire extent.

2. The extent of present and anticipated future use of the right-of-way. Rights-of-way are property dedicated to the public for use as a street, path, trail, or utility corridor. This policy must also be read in concert with NMC 14.26.010 (and state law) which require rights-of-way be retained if they provide ocean access, unless adequately replaced. As noted, Areas A, B, and C are not needed for future public streets and the roadway within Area D need not be a public street since it will effectively serve two commercial properties. Areas A and B potentially provide access to the ocean through South Beach State Park. OMSI; however, will be dedicating right-of-way and improving SW 30th Street to provide alternative access along its northern boundary. They will also place Area A into a conservation easement that will provide for public access. The City has historically viewed the gully and wetland areas in Area A as part of its public storm drainage system (ref: 2004 South Beach Stormwater Master Plan); however, those plans were predicated upon the OMSI site being developed with high-density residential units. The 2012 Coho/Brant

Infrastructure Refinement Plan, which acknowledged the likelihood of the OMSI coastal camp development, established that Area A is not critical to the proper functioning of the City's storm drainage system. Areas B and C are not needed for utility purposes except where easements will be reserved over existing lines. Area D is not needed for utility purposes as the two commercial properties are adequately served by other adjoining rights-of-way.

3. Potential environmental and geologic impacts. This policy recognizes that certain rights-of-way should be retained to preserve sensitive environmental features such as wetlands or steep slopes that may be prone to landslides or erosion. Area A contains wetlands and is one of the few remaining natural coastal gully's in the area. The City and OMSI, in a non-binding Memorandum of Agreement (MOU), dated March 2013, acknowledge the value of this resource and express an intent to preserve it with a conservation easement that will be enacted through Lincoln County's Land Legacy Program (Exhibit C). Once the conservation easement is in place, it will not be necessary for the City to retain control over the right-of-way in order to preserve the gully. Areas B, C, and D do not contain City identified or inventoried environmental or geologic features.
4. Financial factors. This policy requires the City consider the cost to the public of initiating vacation proceedings, which would otherwise be borne by an applicant when filing a petition. When an applicant files a petition to vacate a street it is because they will be the primary beneficiary of the action. That is, if the street is vacated it becomes their property. In this case though, the street vacations are being pursued as part of a package that also includes rights-of-way being dedicated by all three property owners. The value of both the vacated right-of-way and new dedications is being taken into consideration and all parties, including the City, benefit from the new street and property alignments.
5. Effect on property owners. This policy gets at the difficulty an applicant may face in obtaining the consents required in order to file a petition. It is not a compelling factor in this case, although it is relevant to note that the abutting property owners are willing participants in the platting effort.
6. Consistency with applicable plans, ordinances, and regulations. This policy calls for street vacations to be consistent with the City's adopted Transportation System Plan. As noted, that is the case in the subject circumstances.
7. The amount and quality of the information provided by the person requesting vacation. This policy seeks to ensure that the City Council is provided with adequate information to evaluate whether or not these policy objectives are satisfied. This memo, and its accompanying attachments, provide an adequate basis for the Council to determine that the policies have been met.
8. Other factors. The non-binding MOU between the City of Newport and OMSI calls for the City to initiate street vacation proceedings for rights-of-way identified in Areas A and B in exchange for dedication of right-of-way for SW 30th Street and SW Abalone Street.

Attachments

Exhibit A, Conceptual "Sunset Dunes" Subdivision Plat

Exhibit B, Newport City Council Policy on Requests for City Initiated Right-of-Way Vacations

Exhibit C, Non-binding Memorandum of Understanding Between the City of Newport and OMSI, dated March 2013

PLAT OF:
SUNSET DUNES

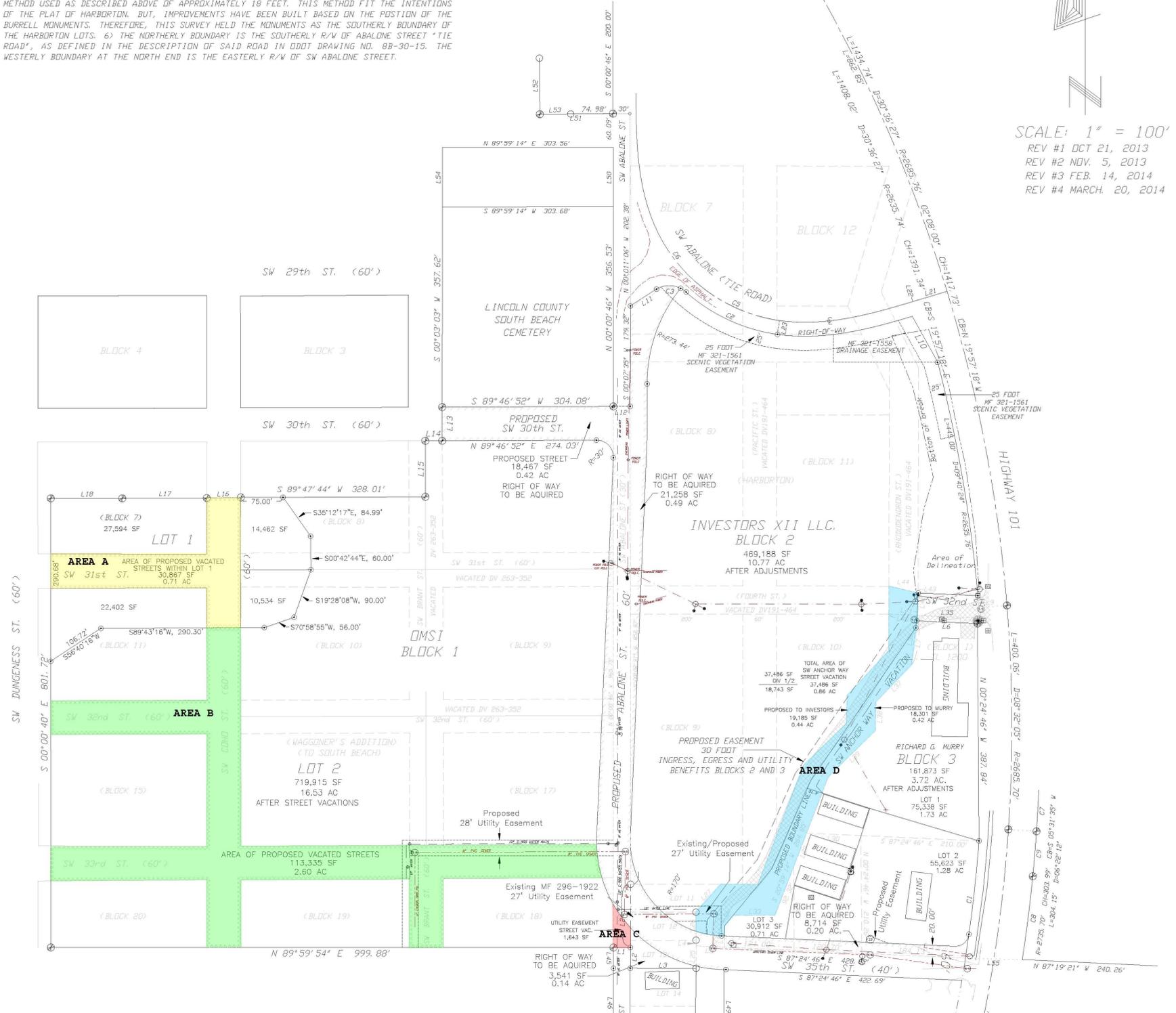
CONCEPT MAP FOR PROPOSED SUBDIVISION
AND PROPOSED SW ABALONE AND SW 35th STREET
CITY OF NEWPORT, LINCOLN COUNTY, OREGON
FOR THE CITY OF NEWPORT

SURVEYOR'S NARRATIVE:

THE PURPOSE OF THIS SURVEY IS TO ESTABLISH THE BOUNDARIES OF TRACTS AS DESCRIBED IN LOT BOOK REPORT NUMBER 79066, DATED AUGUST 12, 2013, BY WESTERN TITLE COMPANY. THIS SURVEY FOUND AND HELD THE MONUMENTS AT THE SOUTHEAST AND NORTHEAST CORNERS OF THE TRACT SURVEYED IN COUNTY SURVEY NO. 18864 BY THIS FIRM, FOR THE BASIS OF BEARING (N 00°00'46" W, 965.75'). THIS RESULTED IN A DIFFERENCE OF BEARING BETWEEN THE RECORD BEARINGS IN THE PLAT OF HARBORTON AND THE LINES AS ESTABLISHED IN THIS SURVEY BY 00°12'46". THE MONUMENTS THAT WERE ESTABLISHED AND FOUND IN SAID SURVEY WERE HELD FOR THE BOUNDARIES OF THE WESTERLY TRACT (DMSI). THE BOUNDARIES OF THE EASTERLY TRACTS WERE DERIVED BY THE FOLLOWING METHODS:

- 1) THE EASTERLY BOUNDARY (HIGHWAY 101) WAS DERIVED BY HOLDING THE MONUMENTS ALONG THE CENTERLINE OF THE HIGHWAY AT STATIONS PDC 253+30.39, PDC 247+00.00 AND PDC 243+00.00, AS INDICATED ON ODOT DRAWING NO. 48-26-19. 2) THE WESTERLY RIGHT OF WAY BETWEEN SW 32ND AND THE NORTH LINE OF TAX LOT 1300 APPEARS TO BE THE WESTERLY R/W OF TAYS AVE, PER THE PLAT OF HARBORTON. COUNTY SURVEYS 2217 (BURDETT) AND 9816 (FREDRICKSON) BOTH INDICATE THIS SCENARIO. THIS SURVEY HELD THE MONUMENT FOUND AT THE NORTHEAST CORNER OF TL 1200, AS ESTABLISHED IN SAID CS #9816 IN THE DETERMINATION OF SAID TAYS AVE. 3) THE RECORD DATA FROM SAID CS #9816, WAS HELD TO DERIVE THE NORTHERLY R/W OF SW 35th. THE EASTERLY LINE OF LOTS 11-13, BLOCK 9-HARBORTON WERE DERIVED BY HOLDING THE MONUMENTS ESTABLISHED IN CS #9893 (BURRELL). 4) THE R/W'S OF RHODODENDRON DRIVE WERE DERIVED BY HOLDING THE MONUMENT AT THE NORTHEAST CORNER OF TL 1200 AND THE RECORD ANGLES AND DISTANCES FROM THE PLAT OF HARBORTON. AFTER TRYING SEVERAL METHODS TO MATCH THE DATA ON THE PLAT, THIS SURVEY HAD TO CHANGE SOME OF THE DISTANCES ALONG RHODODENDRON TO MATCH THE ALIGNMENT OF SW 35th STREET. 5) THE NORTH END OF BLOCKS 9 AND 10, AS WELL AS THE CORNERS OF BLOCKS 7, 8, 11 AND 12 WERE CALCULATED FROM THE DATA DERIVED FROM THE MONUMENT FOUND AT THE NORTHEAST CORNER OF TL 1200 AND THE RECORD ANGLES FROM THE PLAT OF HARBORTON. THIS SURVEYOR DISCOVERED THAT THE TRANSITION FROM THE EAST AND WEST SIDES OF RHODODENDRON DO NOT COINCIDE. THEREFORE, THE CORNERS OF THE BLOCKS WERE CALCULATED AS DESCRIBED. THIS METHOD LEAVES A DIFFERENCE BETWEEN THE NORTHERLY LINE OF LOTS 11-13 AS ESTABLISHED IN CS #9893 (BURRELL) AND THE METHOD USED AS DESCRIBED ABOVE OF APPROXIMATELY 18 FEET. THIS METHOD FIT THE INTENTIONS OF THE PLAT OF HARBORTON. BUT, IMPROVEMENTS HAVE BEEN BUILT BASED ON THE POSITION OF THE BURRELL MONUMENTS. THEREFORE, THIS SURVEY HELD THE MONUMENTS AS THE SOUTHERLY BOUNDARY OF THE HARBORTON LOTS. 6) THE NORTHERLY BOUNDARY IS THE SOUTHERLY R/W OF ABALONE STREET 'TIE ROAD', AS DEFINED IN THE DESCRIPTION OF SAID ROAD IN ODOT DRAWING NO. 88-30-15. THE WESTERLY BOUNDARY AT THE NORTH END IS THE EASTERLY R/W OF SW ABALONE STREET.

SCALE: 1" = 100'
REV #1 OCT 21, 2013
REV #2 NOV. 5, 2013
REV #3 FEB. 14, 2014
REV #4 MARCH. 20, 2014



LINE TABLE

LINE	BEARING	DISTANCE	LINE	BEARING	DISTANCE
L1	S 89°57'46" E	30.00	L29	N 20°59'14" E	64.47
L2	S 00°12'38" W	36.99	L30	S 87°24'46" E	96.62
L3	S 89°57'46" E	116.99	L31	N 00°02'14" E	38.16
L4	N 00°06'51" W	10.26	L32	N 42°01'14" E	25.78
L5	S 87°24'46" E	50.18	L33	S 89°55'46" E	72.97
L6	N 87°24'46" W	108.09	L34	S 89°57'46" E	55.00
L7	S 07°02'14" W	77.78	L35	N 87°24'46" W	106.78
L8	N 05°09'32" E	28.47	L36	S 07°02'14" W	82.80
L9	N 89°20'58" E	50.00	L37	S 42°54'14" W	92.65
L10	N 28°56'17" W	93.40	L38	S 01°14'14" W	51.34
L11	S 57°00'11" W	55.25	L39	S 45°32'14" W	116.48
L12	S 89°46'50" W	30.00	L40	S 87°44'27" E	50.20
L13	S 00°03'03" W	60.08	L41	N 07°02'14" E	12.04
L14	S 89°51'23" W	30.00	L42	N 00°02'14" E	27.96
L15	S 00°01'10" E	99.92	L43	N 00°02'14" E	12.04
L16	S 89°56'01" W	60.55	L44	N 89°57'46" W	51.73
L17	S 89°47'53" W	150.06	L45	S 00°00'46" E	32.11
L18	N 89°59'41" W	127.12	L46	S 00°01'48" W	112.94
L19	S 54°44'31" W	50.00	L47	S 00°03'02" E	166.86
L20	S 69°12'29" E	30.00	L48	S 52°19'52" W	128.03
L21	S 73°14'24" W	54.81	L49	N 00°02'14" E	127.92
L22	S 73°17'42" W	17.19	L50	N 00°00'46" W	106.00
L23	N 08°14'24" E	25.00	L51	S 89°33'23" W	129.91
L24	S 00°12'38" W	113.02	L52	N 00°25'43" W	100.16
L25	N 00°06'51" W	39.87	L53	N 89°33'07" E	54.93
L26	N 00°07'34" W	49.96	L54	N 00°03'03" E	106.00
L27	N 41°53'38" E	67.02	L55	N 88°25'58" W	101.20
L28	N 00°12'46" W	148.98			

CURVE TABLE

CURVE	ARC	DELTA	RADIUS	CHORD LENGTH	CHORD BEARING
C1	210.56	04°34'41"	2635.32	210.50	N 06°38'17" E
C2	181.78	33°26'17"	311.48	175.21	N 65°02'28" W
C3	56.35	71°44'50"	25.00	52.74	N 84°13'09" W
C4	162.14	03°27'33"	2685.74	162.12	N 19°04'19" E
C5	167.19	33°26'17"	286.48	164.83	N 65°02'28" W
C6	114.96	22°59'32"	286.48	114.19	N 36°49'33" W
C7	73.67	01°32'35"	2735.70	73.67	N 03°06'46" E
C8	149.95	03°08'26"	2735.70	149.93	N 07°08'34" E
C9	80.51	01°41'10"	2735.71	80.51	N 04°44'28" E

- LEGEND:
- MONUMENTS FOUND - HELD FOR CONTROL
 - MONUMENTS FOUND AS SHOWN
 - CALCULATED POSITION ONLY
 - RECORD DATA FROM CS #2217
 - RECORD DATA FROM CS #18864
 - RECORD DATA FROM CS #12882
 - RECORD DATA FROM CS #9893
 - RECORD DATA FROM ODOT DRAWING NO. 48-26-19
 - RECORD DATA FROM ODOT DRAWING 88-30-15
 - DENOTES PROPOSED STREET ALIGNMENT
 - DENOTES PROPOSED STREET VACATION (DMSI)
 - EXISTING EDGE ASPHALT
 - DENOTES ROAD CENTERLINE
 - EQUIPMENT USED: WILD T1610 TOTAL STATION.

SURVEY BY:
DENISON SURVEYING, INC
720 SW ANGLE ST.
(541) 265-9308

REGISTERED
PROFESSIONAL
LAND SURVEYOR

OREGON
JULY 26, 1988
RUSSELL JOHNSON
2400

RENEWAL DATE:
JUNE 30, 2015



ADOPTED 10-6-08

NEWPORT CITY COUNCIL
POLICY ON REQUESTS FOR CITY-INITIATED RIGHT-OF-WAY VACATIONS

Background

State law provides for two ways of initiating right-of-way vacations:

1. Petition by adjacent property owners.
2. Motion by City Council.

The council has received many requests over the years to initiate right-of-way vacations. Over the years, the council's practice has shifted. At one time it granted most requests to initiate vacations, but then started a practice of denying all requests. Most recently, its practice has been to initiate vacations when in the City's interest, rather than solely in the interest of the adjacent property owners.

The council has decided to adopt a written policy regarding requests to initiate street vacations to guide its future decision-making. This document sets out the council's policy. The policy will consider the interests of the City, but only as one factor of several factors to be considered in making the decision whether to initiate a street vacation when requested to do so.

Vacations initiated by adjacent property owners provide protection for adjacent and nearby property owners by requiring consents of all adjacent property owners and of a percentage of nearby property owners. If the council initiates the vacation, a hearing will be held after notice to adjacent and nearby property owners and the council will consider the views of all property owners in making the final decision. Even if the council initiates, it cannot vacate if the majority of the property owners object, and it cannot vacate over the objection of an abutting property owner without paying any damages the property owner sustains from the vacation. The council is free at any time in the process to terminate the proceedings or to decide against vacation.

Initiation by the council is not a decision on the merits and should not be viewed as an expression of approval of the vacation, only as a willingness to consider the issue of vacation. Additional information will be provided after the process is initiated and the council will make its final decision only after consideration of all the evidence. Each decision applying this policy and each final decision on vacation is based on the specific circumstances of the situation and is not precedent for any subsequent decision. Whether vacation is initiated by petition of property owners or by motion of the council, the process includes review by the planning commission and a final decision by the council. In making its decision, the planning commission should not take into account that the matter was initiated by the Council.

This policy is an expression of the council's opinion at the time it is adopted and may be rescinded or amended at any time.

Basic Policy

The council will consider and balance the following factors in deciding a request to initiate a street vacation. In balancing the factors, one factor may outweigh all other factors.

1. The extent of public benefit.
2. The extent of present and anticipated future use of the right of way.
3. Potential environmental and geologic impacts.
4. Financial factors.
5. Burden on property owners.
6. Consistency with applicable plans, ordinances and regulations.
7. The amount and quality of the information provided by petitioner.
8. Other factors that the council determines to be relevant.

Many of these factors are similar to factors the council considers in making the final decision whether to vacate. There is no reason for the council to initiate a vacation if it is likely that the council would ultimately deny the vacation. But the fact that the council is likely to grant the vacation is not sufficient reason by itself for the council to initiate the vacation. The council's ultimate decision will be based on whether the public interest will be served by council initiation of the vacation and whether the person seeking vacation has presented a persuasive case that the balancing of the factors strongly favors council initiation.

Specific Considerations

1. The extent of public benefit.

In most ROW vacations, in addition to the benefit to the adjoining property owners, there is often some general public benefit. Public benefits may include one or more of the following:

- a. In some cases, the vacation is part of a trade of properties that results in a better street system. In these cases, the public benefit is very high.
- b. Elimination of responsibility and liability for an area that may or may not have a real public use or purpose.

- c. Increase in taxable property. While in many cases, this may be minor, in some cases, the vacation may allow development that would not otherwise occur in the same manner, resulting in substantially higher valuation and taxes.
- d. Development that improves the city. If the vacation allows development, expansion or redevelopment, the development may improve the city. Potential benefits to the city include additional housing, additional commercial or industrial development that provide jobs, or improved appearance or character of a neighborhood.
- e. In some cases, there may be confusion about the exact location of the right of way, or the constructed street may not align with the platted or recorded right of way. There may also be confusion regarding whether property is owned outright or is dedicated right of way. Cleaning up discrepancies and confusion is a strong factor in determining whether the council should initiate vacation.

The council's policy is to not initiate vacation unless the council determines that the public benefit from the vacation, if ultimately approved, would be substantial.

2. The extent of present and anticipated future use of the right of way.

In some cases, the ROW is in a location that it is not and never will be used for vehicular or pedestrian traffic. Rights of way are property dedicated to the public for use as a street, path, trail or utility corridor. If there will never be any public use of the property for these purposes, there is little reason to maintain the property as a right of way. Unless other factors favor non-initiation by the city, it is appropriate for the city to initiate vacations if it is obvious that the right of way will not be used for street, paths, roads, or trails. However, if the area serves some other public purpose, the city may want assurances that the adjacent property owners are willing to accept conditions to protect the public purposes, such as a condition requiring an easement (a utility easement, conservation easement or similar easement to protect public rights) as part of the vacation. Review of the document creating the easement may be needed to determine the extent of the rights dedicated to the public to determine the appropriateness of the vacation and any reservation of rights.

At the other extreme, if a right of way is currently developed with a street that serves not only the properties seeking vacation, but other properties that rely on that section of right of way, then the city should not initiate vacation. Similarly, if the vacation would land-lock other properties, vacation should not be initiated by the city.

The mere fact that a right of way has been developed with a street does not mean that the city must keep the right of way. If the street is used only to access properties seeking the vacation, it may be appropriate for the city to initiate the

vacation based on consideration of the other factors, so long as continued access to all properties is assured.

3. Potential environmental and geologic impacts

Many rights of way within the city actually serve non-transportation public purposes. There are storm drainage facilities in some undeveloped rights of way, vegetation in some rights of way is needed to retain slopes and avoid erosion, or slopes may be needed to prevent or limit the effects of landslides.

Potential environmental and geologic impacts are a reason not to initiate a right of way vacation. However, if the persons seeking vacation indicate that they are willing to accept conditions to protect against potential environmental and geologic impacts, the council can initiate the vacation if the other factors support council initiation.

4. Financial factors

a. The city incurs costs in processing a vacation proceeding, regardless of who initiates it. If the applicant is unwilling to pay the fee that is charged to applicants who initiate vacation by petition, this is a strong factor against city initiation.

b. Although most right of way was acquired at no cost to the city as a voluntary dedication in a plat or otherwise, some rights of way may have been acquired by purchase. Unwillingness of the person seeking vacation to refund the purchase price is a factor against city initiation. Any financial detriment to the city is a strong factor against vacation. Financial benefit to the city that would facilitate other rights of way is a factor in favor of vacation.

5. Effect on property owners

In some case, if the city does not initiate, the property owners may face extraordinary difficulties in obtaining the consents needed to petition for vacation. This may have the effect of precluding development or redevelopment of the property. The extent of absentee ownership and the often irregular layout of rights of way in the city make it difficult and time-consuming for property owners to petition for vacation. The council can consider the effect on the property owners in making its decision whether to initiate. In applying this factor, the council should consider the efforts the person seeking vacation made to obtain signatures on a petition to vacate. The council is aware that there are always difficulties in obtaining signatures, only extraordinary difficulty should be considered a factor in favor of vacation, and only if the applicant has made a good faith effort to obtain signatures or has demonstrated that attempts to obtain signatures would be futile.

6. Consistency with applicable plans, ordinances and regulations

The city has a transportation system plan that requires some streets and may call for vacation of other streets. A provision in the TSP calling for vacation of the street is a strong factor in favor of council initiation. Provisions in the TSP that either prohibit the vacation or expressly include the street as part of the plan are strong and probably conclusive factors against council initiation of the vacation.

The vacation may affect whether nearby properties continue to meet city standards, including access standards. The council will not normally initiate a vacation that would cause a lot to cease to comply with access requirements. However, the council can consider the property owners' plans for the property and willingness to commit to taking action (lot consolidation or reconfiguration) that would avoid landlocking any lot.

7. The amount and quality of the information provided by the person requesting vacation

The council will be able to evaluate the factors in this policy only if it has sufficient information to do so. The applicant is responsible for providing the justification for council initiation. Failure to provide sufficient information to support council initiation under these factors is a reason to deny the request for council initiation.

8. Other factors

It is difficult to anticipate all situations and all factors that may apply in a given request for a city-initiated vacation. The council can consider any factors it determines to be relevant to a decision to vacate.

Burden of Proof

The burden of proof is on the applicant to demonstrate that the public interest would be furthered by the Council's initiation of the vacation.

March 4, 2013

Memorandum of Understanding
among
City of Newport, Oregon ("City"),
Newport Urban Renewal Agency ("Agency")
and
Oregon Museum of Science and Industry ("OMSI")

Recitals

- A. The City and Agency have established an overall infrastructure plan for the South Beach area, as depicted in the Coho/Brant Infrastructure Refinement Plan, dated August 2012 (the "Plan"). All Parties desire to work collaboratively to implement the Plan in a coordinated and equitable fashion in order to further neighborhood improvement goals. Except where the context otherwise indicates, when used herein the term "Parties" means City, Agency, and OMSI.
- B. As OMSI contemplates development of its South Beach property as a world-class educational center and begins the fundraising process, OMSI requires a degree of certainty as to the cost and timing of infrastructure improvements in the area.
- C. In order to implement the Plan, the City and Agency require certain right-of-way and easement dedications from OMSI for SW 30th Street and SW Abalone Street.
- D. Internal to the OMSI property, there are currently unutilized rights-of-way that may interfere with the logical and/or efficient use of the property. City, Agency, and OMSI desire that these rights-of-way be vacated in order to allow OMSI development to proceed.
- E. Agency has identified funding for certain projects in the South Beach area, including for SW Abalone, SW 30th, a multi-use pathway along SW Abalone, and improvement of the Coastal Gully area on the northern portion of the OMSI property.
- F. The Funding Plan for SW Abalone and SW 30th relies on a combination of Agency (urban renewal) funding and private property owner funding. Cost sharing between private property owners should be equitable, based on the proportionate share of street frontage for each project, which may involve creation of an LID, as addressed within this MOU.
- G. The Coastal Gully areas on and adjacent to the OMSI property represent sensitive and treasured resources. The Parties intend to see these areas enjoy permanent protection with limited public access.
- H. Similar to SW Abalone and SW 30th, fully implementing the projects identified in the Plan will require the financial participation of property owners in the area, including OMSI. The parties

share the goal of determining the appropriate timing for these improvements and an equitable distribution of those costs among benefitted owners.

- I. Project costs referenced herein are derived from conservative estimates included in the Plan and represent OMSI's proportional share of the planned improvements to SW Abalone and SW 30th. The figures assume roughly \$1,000 per lineal foot to construct a half-street improvement, as opposed to the \$1,400 per lineal foot assumed in the Plan for full build-out of these streets.

Agreement

1. Property Dedications – Abalone Extension and SW 30th

- a. Agency shall pursue the subdivision or partitioning of property owned by OMSI and the City, as depicted in Exhibit A, for the purpose of establishing a final alignment for the extension of SW Abalone Street and SW 30th Street. Such application may include adjoining property owned by Investors XII, LLC and Richard Murry (dba Toby Murry Motors) provided they are willing to participate in the platting effort.
- b. OMSI and the City will collaborate to determine the best design approach for incorporating a shared-use pathway on the west side of SW Abalone and south side of SW 30th Street. OMSI will provide easements, as needed, to accommodate the pathway(s).
- c. Agency will incorporate into the subdivision or partition plat easements for the pathway(s), or any other services needed to facilitate development of the OMSI property, provided such information is available at the time the plat is prepared.
- d. City will initiate vacation proceedings as part of the platting process for the existing platted rights-of-way within the boundary of the OMSI property, including portions of SW Coho Street, SW Brant Street, SW 31st Street, SW 32nd Street, SW 33rd Street and 18-foot of residual road right-of-way that may exist along the south line of the OMSI property as shown on the plat of Waggoner's Addition to South Beach, as shown on the attached Exhibits A and B. Where needed, as determined by the City in its sole discretion, easements will be retained to accommodate existing and future utilities.
- e. OMSI agrees to dedicate a right-of-way for SW 30th Street and the extension of SW Abalone Street. The right-of-way width for the extension of SW Abalone Street and SW 30th Street shall be in substantial conformity with the recommended width depicted in the Plan, as illustrated on Exhibit D.
- f. In keeping with the timeline in 4.a., OMSI and Agency shall work together in good faith to determine the contribution value of the rights-of-way and easements to be dedicated by OMSI for the purposes of accommodating parks and transportation improvements in the area. In determining what credit, if any, OMSI should receive for these dedications, the parties will consider such elements as previous right-of-way dedications, rights-of-way to be vacated, Agency costs to subdivide or plat the property, and the December 2011 purchase price of the OMSI property. The parties may utilize an independent appraiser, paid for by the Agency, to assist in the determination of value.

- g. Based on the outcome of the valuation described in 1.f above, Agency shall, at its sole discretion, either compensate OMSI for the value, if any, of the right-of-way and easement dedications, or accept the value of the dedications as offsetting OMSI's required financial contributions to the SW Abalone and SW 30th projects as a benefitted property owner, per 3.c., below.
- h. Agency shall incur all costs attributed to the subdivision or partition process, including surveying, plat preparation, appraisal fees and permit and recording fees.

2. Coastal Gully Preservation

- a. OMSI and the City will collaborate on a program to preserve, in perpetuity, environmentally sensitive Coastal Gully areas on their respective properties, as generally depicted on Exhibit C, through the use of Lincoln County's Conservation Easement program or similar mechanism. The precise area to be included in the conservation easement will be mutually agreed by OMSI and the City. The goal of both Parties is for these areas to be managed in a manner that allows them to be used as part of OMSI's environmental education curriculum while providing for low impact public access to the areas as envisioned in the Plan.
- b. OMSI and the City recognize that this collaboration may result in their respective land ownership and rights-of-way within the Coastal Gully area being consolidated into a single lot or parcel through the platting process and that it may be necessary to put in place conservation easements over the affected areas.
- c. To the extent that OMSI has any Parks System Development Charge liabilities stemming from any permanent residential uses that may be developed on the site, it is anticipated by the parties that these charges may be offset by the value of the Coastal Gully areas that are permanently preserved by Conservation Easements or other similar means. Such offset is permissible because the City's Parks Capital Improvement Plan (CIP) calls for the acquisition and development of trails in South Beach, the Coho/Brant Infrastructure Refinement Plan envisions such trails at this location, and the System Development Charge methodology allows credits for qualifying public improvements or dedications for projects listed in the CIP. The value of these Coastal Gully areas will be established as part of the Conservation Easement process through the Lincoln Land Legacy Program. OMSI and the City will collaborate to define the conditions of public access to the Coastal Gully area taking into consideration the intended use of the OMSI property.

3. Cost Responsibilities - SW 30th Street and SW Abalone Extension Projects

- a. SW 30th Street, SW Brant to SW Abalone - OMSI's financial contribution shall be limited to 52.4% of the total project costs or \$165,000, whichever is less.
- b. SW Abalone Street Extension, SW 29th to SW 35th - OMSI's financial contribution shall be limited to 18.8% of the total project costs or \$335,000, whichever is less.
- c. To the extent that OMSI is due any payment or financial consideration for the value of the rights-of-way and/or easements to be dedicated for the SW 30th and SW Abalone projects as

described in 1.f above, such payment or consideration may, at Agency's discretion, be applied as a credit against OMSI's financial contributions as defined in 3.a and 3.b above.

- d. At OMSI's request, City will initiate a Local Improvement District ("LID") formation process for the SW 30th Street and/or the SW Abalone Extension project. The LID may be a single owner (e.g., OMSI only) LID or, at City's discretion, may include abutting owners who receive benefit from the projects. Should an LID be formed, City may require that SW Abalone Street be constructed to its full planned dimensions as described in the Plan. The City shall allow OMSI, at its request, to finance its LID assessment for a period of up to 30 years through an installment payment agreement per ORS 223.210 and 223.215, and NMC 12.05.055.

4. Project Timing – SW 30th Street and SW Abalone Extension Projects

- a. The Parties agree to work collaboratively to develop a Project Schedule for the phased development of the OMSI property and related infrastructure improvements in the area. The schedule will define the specific dates for infrastructure project delivery such that OMSI site preparation and construction activities may proceed by July 1, 2014 in order to achieve a camp opening by April 1, 2016.
- b. Consistent with the Project Schedule developed under 4.a above, the City and/or Agency will either:
 - i. Provide the necessary funding, in combination with OMSI's financial contributions, such that OMSI's Phase I development may proceed and open; or
 - ii. Revise the scope of required infrastructure such that OMSI's Phase I development may proceed and OMSI does not exceed the total amount of financial participation as described in 3.a and 3.b above.

5. Safe Haven Hill Tsunami Evacuation Route Enhancements

- a. City has constructed interim improvements that enhance access to the designated tsunami evacuation area immediately northeast of the OMSI property, known as Safe Haven Hill. City is committed to maintaining those improvements, which consist of a gravel access path and cleared assembly area at the top of the hill.
- b. City has further applied for and received preliminary approval from the Federal Emergency Management Agency (FEMA) to further enhance the assembly area with a paved shared-use path, sidewalks, trails, stairs and a disaster supply shed. City will construct the enhancements once FEMA obligates matching funds for the work.
- c. OMSI acknowledges that these enhancements are important to the success of its educational center, will continue to support implementation of the improvements, and will install wayfinding signage and provide informational materials to its guests so that they understand the purpose for, and route to, the evacuation assembly area.

6. Delivery Schedule

- a. The Parties will work in good faith to complete their respective responsibilities under this MOA in time to allow OMSI site preparation and construction activities to proceed on OMSI's property by July 1, 2014.

7. Non-Binding MOU

- a. It is the intent of the Parties to work together in good faith to implement the terms of this MOU such that development on the OMSI property may proceed and the infrastructure projects in the area are delivered in an efficient and equitable manner. However, this agreement is non-binding on the Parties and represents only the intent of the Parties with respect to the subjects herein.

IN WITNESS WHEREOF, the Parties hereto have executed this Memorandum on the dates show hereunder,

City of Newport by

Newport Urban Renewal Agency by

Signature: Sandra N. Roumagoux

Signature: Richard M. Beemer

Printed Name/Title:
Sandra Roumagoux, Mayor
169 SW Coast Hwy
Newport, Oregon 97365

Printed Name/Title:
Richard Beemer, Chair
169 SW Coast Hwy
Newport, Oregon 97365

Date: 3/8/13

Date: 3/8/13

Oregon Museum of Science and Industry by

pell

Signature: Nancy Stueber

Printed Name/Title:
Nancy Stueber, President and CEO
1945 SE Water Ave
Portland Oregon 97214

Date: 3/13/13

Exhibit A

Memorandum of Understanding
 Between the City of Newport,
 Newport Urban Renewal Agency,
 and Oregon Museum of Science
 and Industry

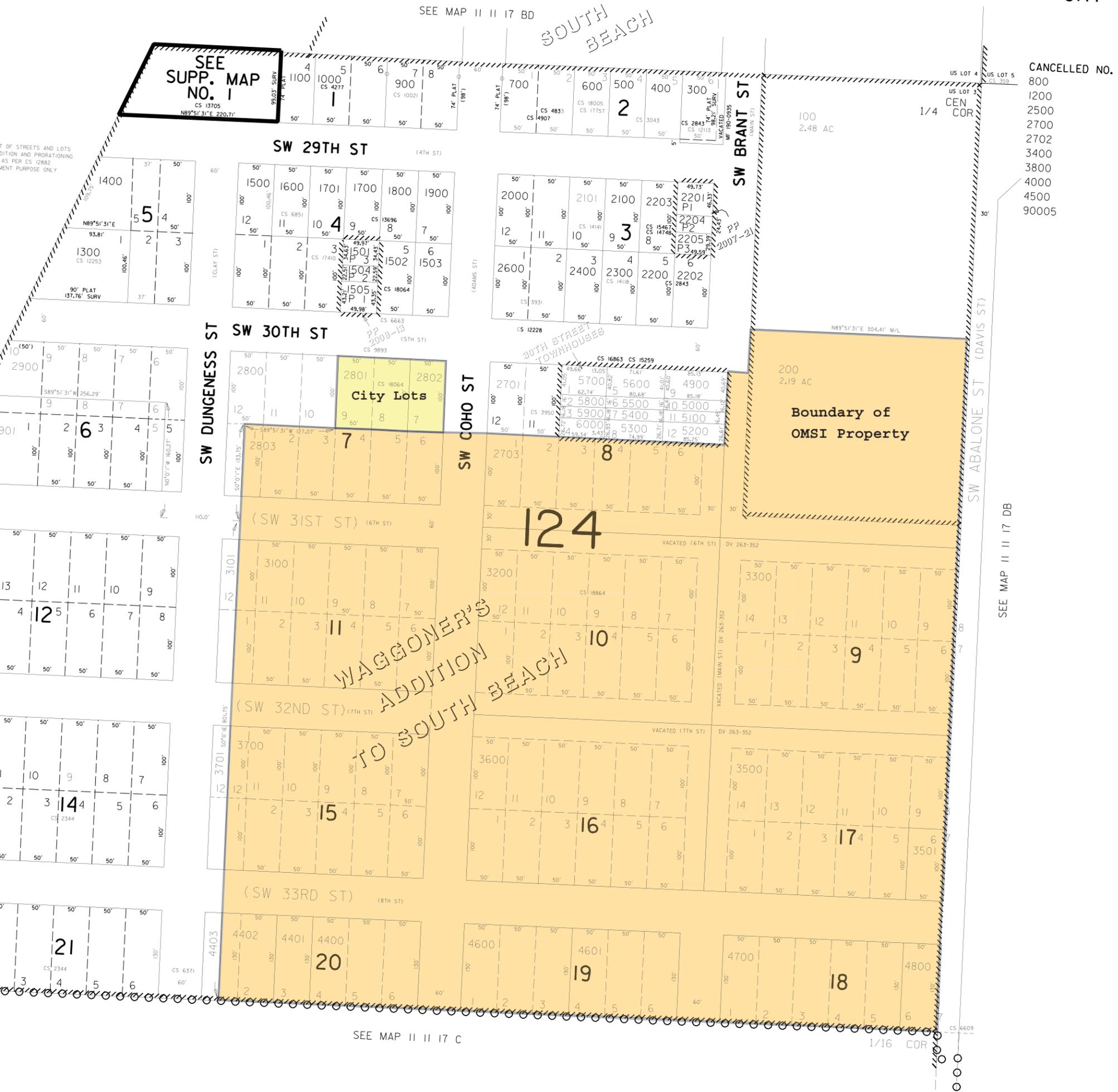
OR
 Y



NE 1/4 SW 1/4 SECTION 17 T11S R11W WM
 LINCOLN COUNTY

1" = 100'

II II 17 CA
 NEWPORT



- CANCELLED NO.
- 800
 - 1200
 - 2500
 - 2700
 - 2702
 - 3400
 - 3800
 - 4000
 - 4500
 - 90005

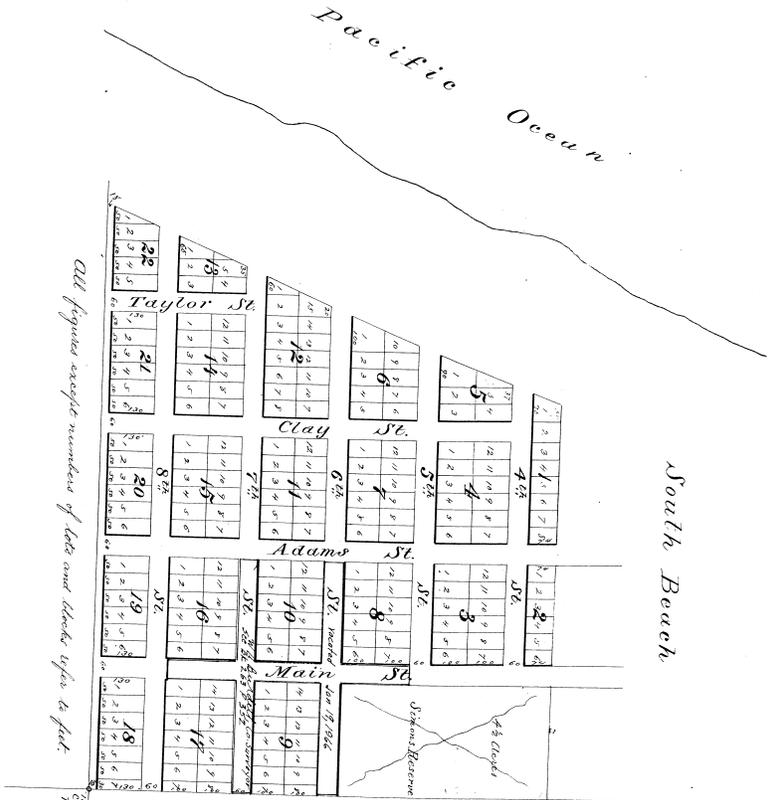
II II 17 CA
 NEWPORT

Exhibit B

Memorandum of Understanding
Between the City of Newport,
Newport Urban Renewal Agency,
and Oregon Museum of Science
and Industry

Haggen's Addition is the Town of South Beach, Benton County, Oregon. This document represents that J. O. Lee, W. J. Wells, and George F. Haggen, Thomas Graham, and G. R. Davis, hereby certify that they are the owners in fee simple of the tract of land designated in the accompanying plat that said tract has been surveyed and plotted by us for the purpose of having the same recorded in the public office of the County of Benton and State of Oregon, as an addition to the town of South Beach, to be known as Haggen's Addition to South Beach and we hereby declare to the use of the public the above as they are marked and designated in said plat. Dated Jan. 30th 1990
In presence of S. H. Gage
M. H. Deane

J. O. Lee
W. J. Wells
G. F. Haggen
Thomas Graham
G. R. Davis



Plan of
Haggen's Addition
to
South Beach
Benton County
Oregon.

State of Oregon } ss. On this 30th day of January, 1990
County of Benton } personally came before me the County Judge of said County
to within named J. O. Lee, W. J. Wells, George F. Haggen and
G. R. Davis and George Haggen to me personally known to
be the identical persons identified in and who executed the
foregoing instrument and acknowledged to me that they
executed the same freely and for the uses and purposes
therein set forth.
Witness my hand this 30th day of January, 1990
C. H. Gage, County Judge
Benton County, Oregon.

Received for Record Jan. 30, 1990 and Recorded
C. W. Wilson, Co. Clerk

124
S. H. Gage
M. H. Deane
J. O. Lee
W. J. Wells
G. F. Haggen
Thomas Graham
G. R. Davis

I certify that I have examined the foregoing plat and
find it to conform with the provisions of the
act in that respect. My commission expires 10-22-90
C. W. Wilson, Co. Clerk
Benton County, Oregon

Exhibit C

Memorandum of Understanding
Between the City of Newport,
Newport Urban Renewal Agency,
and Oregon Museum of Science
and Industry

PREFERRED ALTERNATIVE

Map 3-2. Coastal Gully Open Space Concept Plan

**CAMERON
MCCARTHY**
ARCHITECTURAL FIRM

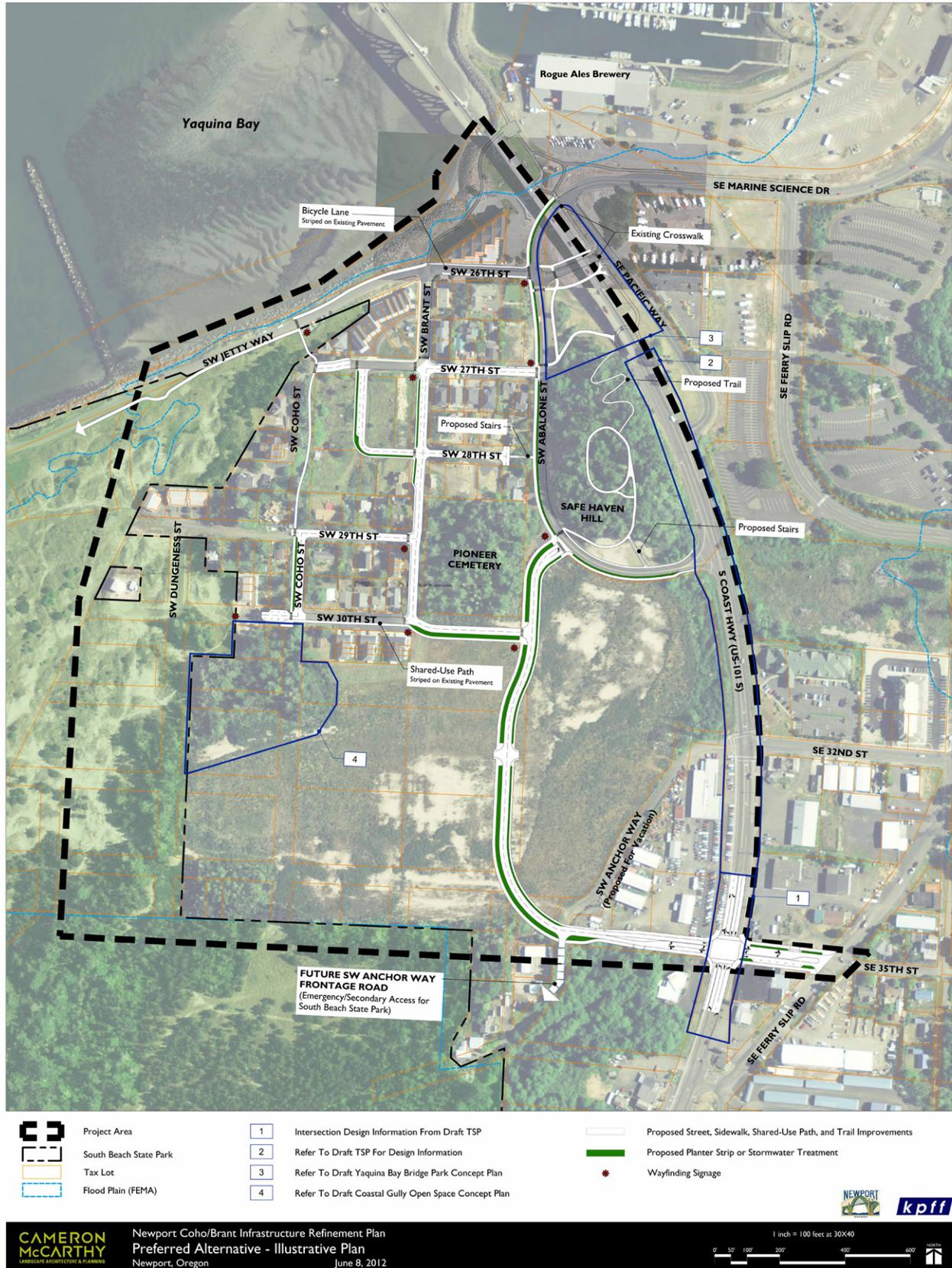
Newport Coho/Brant Infrastructure Refinement Plan
Coastal Gully Open Space Park Concept
Newport, Oregon
June 15, 2012

Graphic Scale: 0 5 10 20 30 40 Feet
North Arrow

City of Newport
KPIF



Map 3-8. Illustrative Plan



VACATION

271.080 Vacation in incorporated cities; petition; consent of property owners. (1) Whenever any person interested in any real property in an incorporated city in this state desires to vacate all or part of any street, avenue, boulevard, alley, plat, public square or other public place, such person may file a petition therefor setting forth a description of the ground proposed to be vacated, the purpose for which the ground is proposed to be used and the reason for such vacation.

(2) There shall be appended to such petition, as a part thereof and as a basis for granting the same, the consent of the owners of all abutting property and of not less than two-thirds in area of the real property affected thereby. The real property affected thereby shall be deemed to be the land lying on either side of the street or portion thereof proposed to be vacated and extending laterally to the next street that serves as a parallel street, but in any case not to exceed 200 feet, and the land for a like lateral distance on either side of the street for 400 feet along its course beyond each terminus of the part proposed to be vacated. Where a street is proposed to be vacated to its termini, the land embraced in an extension of the street for a distance of 400 feet beyond each terminus shall also be counted. In the vacation of any plat or part thereof the consent of the owner or owners of two-thirds in area of the property embraced within such plat or part thereof proposed to be vacated shall be sufficient, except where such vacation embraces street area, when, as to such street area the above requirements shall also apply. The consent of the owners of the required amount of property shall be in writing.
[Amended by 1999 c.866 §2]

271.090 Filing of petition; notice. The petition shall be presented to the city recorder or other recording officer of the city. If found by the recorder to be sufficient, the recorder shall file it and inform at least one of the petitioners when the petition will come before the city governing body. A failure to give such information shall not be in any respect a lack of jurisdiction for the governing body to proceed on the petition.

271.100 Action by city governing body. The city governing body may deny the petition after notice to the petitioners of such proposed action, but if there appears to be no reason why the petition should not be allowed in whole or in part, the governing body shall fix a time for a formal hearing upon the petition.

271.110 Notice of hearing. (1) The city recorder or other recording officer of the city shall give notice of the petition and hearing by publishing a notice in the city official newspaper once each week for two consecutive weeks prior to the hearing. If no newspaper is published in such city, written notice of the petition and hearing shall be posted in three of the most public places in the city. The notices shall describe the ground covered by the petition, give the date it was filed, the name of at least one of the petitioners and the date when the petition, and any objection or remonstrance, which may be made in writing and filed with the recording officer of the city prior to the time of hearing, will be heard and considered.

(2) Within five days after the first day of publication of the notice, the city recording officer shall cause to be posted at or near each end of the proposed vacation a copy of the notice, which shall be headed, "Notice of Street Vacation," "Notice of Plat Vacation" or "Notice of Plat and Street Vacation," as the case may be. The notice shall be posted in at least two conspicuous places in the proposed vacation area. The posting and first day of publication of such notice shall be at least 14 days before the hearing.

(3) The city recording officer shall, before publishing such notice, obtain from the petitioners a sum sufficient to cover the cost of publication, posting and other anticipated expenses. The city recording officer shall hold the sum so obtained until the actual cost has been ascertained, when the

amount of the cost shall be paid into the city treasury and any surplus refunded to the depositor.
[Amended by 1991 c.629 §1; 2005 c.22 §196]

271.120 Hearing; determination. At the time fixed by the governing body for hearing the petition and any objections filed thereto or at any postponement or continuance of such matter, the governing body shall hear the petition and objections and shall determine whether the consent of the owners of the requisite area has been obtained, whether notice has been duly given and whether the public interest will be prejudiced by the vacation of such plat or street or parts thereof. If such matters are determined in favor of the petition the governing body shall by ordinance make such determination a matter of record and vacate such plat or street; otherwise it shall deny the petition. The governing body may, upon hearing, grant the petition in part and deny it in part, and make such reservations, or either, as appear to be for the public interest.

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

(2) Two or more streets, alleys, avenues and boulevards, or parts thereof, may be joined in one proceeding, provided they intersect or are adjacent and parallel to each other.

(3) No ordinance for the vacation of all or part of a plat shall be passed by the governing body until the city recording officer has filed in the office of the city recording officer or indorsed on the petition for such vacation a certificate showing that all city liens and all taxes have been paid on the lands covered by the plat or portion thereof to be vacated.

(4) Any property owner affected by the order of vacation or the order awarding damages or benefits in such vacation proceedings may appeal to the circuit court of the county where such city is situated in the manner provided by the city charter. If the charter does not provide for such appeal, the appeal shall be taken within the time and in substantially the manner provided for taking an appeal from justice court in civil cases. [Amended by 1995 c.658 §101]

271.140 Title to vacated areas. The title to the street or other public area vacated shall attach to the lands bordering on such area in equal portions; except that where the area has been originally dedicated by different persons and the fee title to such area has not been otherwise disposed of, original boundary lines shall be adhered to and the street area which lies on each side of such boundary line shall attach to the abutting property on such side. If a public square is vacated the title thereto shall vest in the city. [Amended by 1981 c.153 §58]

271.150 Vacation records to be filed; costs. A certified copy of the ordinance vacating any street or plat area and any map, plat or other record in regard thereto which may be required or provided for by law, shall be filed for record with the county clerk. The petitioner for such vacation shall bear the recording cost and the cost of preparing and filing the certified copy of the ordinance and map. A certified copy of any such ordinance shall be filed with the county assessor and county surveyor.

271.160 Vacations for purposes of rededication. No street shall be vacated upon the petition of any person when it is proposed to replat or rededicate all or part of any street in lieu of the original

unless such petition is accompanied by a plat showing the proposed manner of replatting or rededicating. If the proposed manner of replatting or rededicating or any modification thereof which may subsequently be made meets with the approval of the city governing body, it shall require a suitable guarantee to be given for the carrying out of such replatting or rededication or may make any vacation conditional or to take effect only upon the consummation of such replatting or rededication.

271.170 Nature and operation of statutes. The provisions of ORS 271.080 to 271.160 are alternative to the provisions of the charter of any incorporated city and nothing contained in those statutes shall in anywise affect or impair the charter or other provisions of such cities for the preservation of public access to and from transportation terminals and navigable waters.

271.180 Vacations in municipalities included in port districts; petition; power of common council; vacating street along railroad easement. To the end that adequate facilities for terminal trackage, structures and the instrumentalities of commerce and transportation may be provided in cities and towns located within or forming a part of any port district organized as a municipal corporation in this state, the governing body of such cities and towns, upon the petition of any such port, or corporation empowered to own or operate a railroad, steamship or other transportation terminal, or railroad company entering or operating within such city or town, or owner of property abutting any such terminal, may:

(1) Authorize any port commission, dock commission, common carrier, railroad company or terminal company to occupy, by any structure, trackage or machinery facilitating or necessary to travel, transportation or distribution, any street or public property, or parts thereof, within such city or town, upon such reasonable terms and conditions as the city or town may impose.

(2) Vacate the whole or any part of any street, alley, common or public place, with such restrictions and upon such conditions as the city governing body may deem reasonable and for the public good.

(3) If any railroad company owns or has an exclusive easement upon a definite strip within or along any public street, alley, common or public place, and if the city governing body determines such action to be to the advantage of the public, vacate the street area between the strip so occupied by the railroad company and one property line opposite thereto, condition that the railroad company dedicates for street purposes such portion of such exclusive strip occupied by it as the city governing body may determine upon, and moves its tracks and facilities therefrom onto the street area so vacated. The right and title of the railroad company in the vacated area shall be of the same character as previously owned by it in the exclusive strip which it is required by the city governing body to surrender and dedicate to street purposes.

271.190 Consent of owners of adjoining property; other required approval. No vacation of all or part of a street, alley, common or public place shall take place under ORS 271.180 unless the consent of the persons owning the property immediately adjoining that part of the street or alley to be vacated is obtained thereto in writing and filed with the auditor or clerk of the city or town. No vacation shall be made of any street, alley, public place or part thereof, if within 5,000 feet of the harbor or pierhead line of the port, unless the port commission, or other bodies having jurisdiction over docks and wharves in the port district involved, approves the proposed vacation in writing.

271.200 Petition; notice. (1) Before any street, alley, common or public place or any part thereof is vacated, or other right granted by any city governing body under ORS 271.180 to 271.210 the applicant must petition the governing body of the city or town involved, setting forth the particular circumstances of the case, giving a definite description of the property sought to be vacated, or of the right, use or occupancy sought to be obtained, and the names of the persons to be particularly affected

thereby. The petition shall be filed with the auditor or clerk of the city or town involved 30 days previous to the taking of any action thereon by the city governing body.

(2) Notice of the pendency of the petition, containing a description of the area sought to be vacated or right, use or occupancy sought to be obtained, shall be published at least once each week for three successive weeks prior to expiration of such 30-day period in a newspaper of general circulation in the county wherein the city or town is located.

271.210 Hearing; grant of petition. Hearing upon the petition shall be had by the city governing body at its next regular meeting following the expiration of 30 days from the filing of the petition. At that time objections to the granting of the whole or any part of the petition shall be duly heard and considered by the governing body, which shall thereupon, or at any later time to which the hearing is postponed or adjourned, pass by a majority vote an ordinance setting forth the property to be vacated, or other rights, occupancy or use to be thereby granted. Upon the expiration of 30 days from the passage of the ordinance and the approval thereof by the mayor of the city or town, the ordinance shall be in full force and effect.

271.220 Filing of objections; waiver. All objections to the petition shall be filed with the clerk or auditor of the city or town within 30 days from the filing of the petition, and if not so filed shall be conclusively presumed to have been waived. The regularity, validity and correctness of the proceedings of the city governing body pursuant to ORS 271.180 to 271.210, shall be conclusive in all things on all parties, and cannot in any manner be contested in any proceeding whatsoever by any person not filing written objections within the time provided in this section.

271.230 Records of vacations; fees. (1) If any town or plat of any city or town is vacated by a county court or municipal authority of any city or town, the vacation order or ordinance shall be recorded in the deed records of the county. Whenever a vacation order or ordinance is so recorded, the county surveyor of such county shall, upon a copy of the plat that is certified by the county clerk, trace or shade with permanent ink in such manner as to denote that portion so vacated, and shall make the notation "Vacated" upon such copy of the plat, giving the book and page of the deed record in which the order or ordinance is recorded. Corrections or changes shall not be allowed on the original plat once it is recorded with the county clerk.

(2) For recording in the county deed records, the county clerk shall collect the same fee as for recording a deed. For the services of the county surveyor for marking the record upon the copy of the plat, the county clerk shall collect a fee as set by ordinance of the county governing body to be paid by the county clerk to the county surveyor. [Amended by 1971 c.621 §31; 1975 c.607 §31; 1977 c.488 §2; 1979 c.833 §30; 1999 c.710 §12; 2001 c.173 §5]



Agenda Item # CC.VII.B
Meeting Date April 7, 2014

CITY COUNCIL AGENDA ITEM SUMMARY
City Of Newport, Oregon

Issue/Agenda Title: Approval of Amendment No. 2 to Task Order No. 9 - Brown and Caldwell, Inc. - Construction Engineering Services - Big Creek Pump Station Force Main Project

Prepared By: TEG Dept Head Approval: TEG City Manager Approval: _____

Issue Before the Council:

Approval of Amendment No. 2 to Task Order No. 9 with Brown and Caldwell, Inc., for construction phase engineering services related to the construction of the Big Creek Pump Station Force Main Project.

Staff Recommendation:

Approve the task order amendment.

Proposed Motion:

I move to approve Amendment No. 2 to Task Order No. 9 with Brown and Caldwell, Inc. in the amount of \$65,784, for construction phase engineering services related to the construction of the Big Creek Pump Station Force Main Project and hereby authorize the City Manager to execute the task order on behalf of the City of Newport.

Key Facts and Information Summary:

The Big Creek Pump Station Force Main Project is the first of a multiphase project to replace the Big Creek Pump Station, 48th Street Pump Station, the Schooner Creek Pump Station, and the associated force mains and gravity sewer, all of which comprise what is referred to as the Agate Beach Wastewater System.

This amendment provides hours for the consultant to review submittals, provide bid services, review proposals, and address engineering related issues that come up during the construction phase of this project.

Other Alternatives Considered:

None.

City Council Goals:

- Continue improvements to Agate Beach wastewater program.

Attachment List:

- Amendment No 2 to Task Order No 9 for Engineering Services, Brown and Caldwell, Inc.
- Exhibit A, Scope of Services
- Exhibit B, Cost Estimate

Fiscal Notes:

This project budget is being funded through a low interest Clean Water SRF Loan through the DEQ approved earlier in this meeting. This Amendment No 2 in the amount of \$65,784, increases the total Task Order No. 9 contract value to \$245,924.

CITY OF NEWPORT
AMENDMENT NO. 2
TO TASK ORDER NO. 9
FOR ENGINEERING SERVICES

FOR THE BIG CREEK FORCE MAIN PROJECT

This AMENDMENT NO. 2 to Task Order No. 9 (dated January 9, 2013) performed under the Engineering Services Agreement dated April 12, 2010, hereinafter called Agreement, between the City of Newport, (CITY), and Brown and Caldwell, Inc., (ENGINEER).

A. SCOPE OF SERVICES

The purpose of this contract is to revise the scope of services adding Engineering Services During Bidding and Engineering Services During Construction to the original contract. Details of these additional scope items are shown in Exhibit A, entitled "Scope of Services", attached hereto.

B. COMPENSATION

CITY shall pay ENGINEER for actual time and materials in accordance with the rates listed in Exhibit B with a not to exceed amount of \$65,784 for the services listed above. The estimated cost for services is shown on Exhibit B, entitled "Cost Estimate", attached hereto. This brings the overall Task Order No. 9 amount to \$245,924.

All other terms and conditions shall remain unchanged and in full force and effect.

CITY OF NEWPORT:

By: _____

Title: _____

Date: _____

BROWN AND CALDWELL, INC.:

By: Burt Peaker

Title: Vice President

Date: 3-18-14

Exhibit A

Scope of Services

The Scope of Services summarized below describes the engineering services to be performed for the City of Newport's (City) Big Creek Force Main Project.

Phase 3. Engineering Services During Bidding/Award

Objective: To provide engineering services in support of the bid process for the new force main.

Task 1. Engineering Services During Bidding/Award

Activities: This task includes the following activities:

- Brown and Caldwell staff will assist City with answering questions from contractors and vendors.
- Contractor questions will be addressed through addendums to the contract documents.
- If necessary, up to two design revisions will be issued through addendums to the contract documents.
- Brown and Caldwell will participate with City in opening of construction bids.
- Brown and Caldwell will manage the quality control review of all work activities and project deliverables.

Phase 3 Deliverables: The deliverables included in Phase 3 are summarized below:

- Meeting notes as required.
- Addendum as required.
- Prepare and submit monthly invoice with invoice summary report.

City's Role in Phase 3:

- City to manage bid opening process, including the review and evaluation of bids.

Assumptions:

- No contractor prequalification.
- ORPIN will advertise bid package, provide electronic download of 1/2-size drawing and specifications, and maintain bidder list. Prospective bidders will be able to purchase full size bid sets from Willamette Print and Blueprint.

Phase 4. Engineering Services During Construction

Objective: To provide engineering services in support of the construction process for the new force main.

Task 1. Services During Construction

Activities: This task includes the following activities:

- Standard forms will be developed for use throughout the construction project for requests for clarifications, submittal reviews, and change orders.
- Throughout the life of the construction project, Brown and Caldwell's project manager will maintain regular communication with the City and City Representative.
- Brown and Caldwell design leaders will visit the site once per month to review construction compliance (4 visits).
- Brown and Caldwell's project manager or a design representative will participate via conference call bi-weekly project meetings, as required.
- Brown and Caldwell will review and respond to submittal information including shop drawings, diagrams, illustrations, catalog data, schedules and samples, results of tests and inspections, and other data that the construction contractor is required to submit. (Assumed that 23 submittals will be processed with 5 resubmittals evaluated.)
- Brown and Caldwell will respond to requests for clarification/interpretation of plans and specifications. (Assumed that 10 RFC/RFIs will be processed.)
- Brown and Caldwell will review change orders for extra compensation and requests for extension of time. (Assumed that one change order will be processed.)
- Record drawings will be prepared that reflect documented changes made during construction.

City's Role in Phase 4:

- City staff will perform construction management and construction inspection of the project, including filling the Project Representative position that is described in the bid documents. Brown and Caldwell will provide engineering services in support of construction activities.
- City and/or City's Project Representative will transmit construction information between contractor, City, and Brown and Caldwell.
- City will coordinate and contract directly with a testing company for any special testing and inspection services that are required. These requirements will be clearly stated in the final plans and specifications prepared for the construction project.

Assumptions:

- Five month construction period.

- Submittals and RFC/RFIs exceeding the assumed quantities shown above will be negotiated and added to the contract budget amount.

Deliverables: The deliverables for the project include:

- Meeting notes as required.
- Assumed that 23 submittals will be processed.
- Assumed that 10 RFC/RFIs will be processed.
- Construction project forms.
- Record drawings:
 - 1 set of full size (Engineer D)
 - 2 sets of 11 x 17 record drawings
 - 1 set of AutoCAD DWG electronic files (Version 2011)
 - 1 set of AutoCAD drawings in PDF format (Acrobat 10.0)

Exhibit B

Cost Estimate

City of Newport -- Big Creek Force Main - Task Order No. 9 - Amendment No. 2															
Phase	Phase Description	Hansen, James R.	Hogan, Lisa J.	Lough, Dale W.	Armans, Beter N.	Vasquez, Jesus F.	Rose, Deborah	Popescu, Inna	Total Labor Hours	Total Labor Effort	APC	Total ODCs	Foundation Engineering	AKS	Total Effort
		PM	PA										Cost	Cost	
003	Eng. Services During Bidding	\$205	\$84	\$190	\$98	\$84	\$98	\$114	79	\$13,234	\$632	\$180	\$500	\$250	\$14,834
004	Eng. Services During Construction	152	4	16	88	5	3	0	268	\$43,828	\$2,142	\$780	\$2,500	\$1,500	\$50,950
GRAND TOTAL		200	12	20	96	7	4	8	347	\$57,062	\$2,774	\$960	\$3,000	\$1,750	\$65,784



Agenda Item # CC.VII.C
Meeting Date April 7, 2014

CITY COUNCIL AGENDA ITEM SUMMARY
City Of Newport, Oregon

Issue/Agenda Title: Notice of Intent to Award Big Creek Pump Station Force Main Project

Prepared By: TEG Dept Head Approval: TEG City Manager Approval: _____

Issue Before the Council:

Notice of Intent to Award a contract to construct the Big Creek Pump Station Force Main Project, Project No. 2012-024

Staff Recommendation:

Staff recommends awarding Project No. 2012-024 Big Creek Pump Station Force Main Project to K&E Excavating.

Proposed Motion:

I move that the City of Newport Public Works Department issue a Notice of Intent to Award the Big Creek Pump Station Force Main Project to K&E Excavating in the amount of \$1,291,188.75 and contingent upon no protest and approval of bid documents by the Oregon Department of Environmental Quality, authorize award and direct the City Manager to execute the contract after 7 days on behalf of the City of Newport.

Key Facts and Information Summary:

The Big Creek Pump Station Force Main Project is the first of a multiphase project to replace the Big Creek Pump Station, 48th Street Pump Station, the Schooner Creek Pump Station, and the associated force mains and gravity sewer, all of which comprise what is referred to as the Agate Beach Wastewater System.

The Agate Beach Wastewater System has been chronically plagued with system failures and wastewater overflows due to age and capacity issues. The new project includes 5,019 FT of 14-in diameter HDPE force main, 7 air release vaults, and 1 lined manhole with a vortex insert for promoting laminar flow to avoid hydrogen sulfide off gassing.

Bids were opened Tuesday, April 1st, 2014 at 2:00 p.m.

Engineers Estimate (base bid) *\$1,678,374*

<u>Contractor</u>	<u>Base Bid</u>
James Fowler	\$1,934,584.00
Emery & Sons	\$1,668,832.00
Laskey-Clifton	\$1,423,101.26
K&E Excavating	\$1,291,188.75
Enterprises NW Inc.	\$1,621,695.25
Tapani Inc.	\$1,792,496.80

The apparent low responsive bidder is K&E Excavating with a base bid amount of \$1,291,188.75.

Other Alternatives Considered:

None

City Council Goals:

- Continue improvements to Agate Beach wastewater program.

Attachment List:

None

Fiscal Notes:

This project is being funded through a low interest Clean Water SRF Loan through the DEQ approved earlier in this meeting.

City of Newport Public Works

169 SW Coast Highway
Newport, OR 97365

Phone: 541-574-3366

Fax: 541-265-3301



www.newportoregon.gov

Coast Guard City, U.S.A.

Home Port of NOAA Pacific Fleet

Sister City: Mombetsu, Japan

March 24, 2014

NOTICE OF UPCOMING CONSTRUCTION PROJECT

This notice provides information about an upcoming City project that will occur in the neighborhood of your property, and may temporarily restrict access and/or on-street parking.

The Big Creek Force Main project will construct a new force main (pipe for pumping wastewater) for the Big Creek Pump Station, located at Agate Beach Wayside. This project will allow the Pump Station to be replaced in the near future, which will substantially increase its capacity and eliminate overflows into Big Creek.

For an overview map of the project, please see the back of this letter.

Access to your driveway may be blocked and pedestrian access may be restricted if work is occurring near your property. For most people, this would last for no more than one day. Contractor work hours are between 7:00am and 7:00pm, weekdays only. Driveway access will be restored each evening and for weekends and holidays.

On-street parking may be restricted at any time, including weekends and holidays.

Please notify us if you have any special circumstances. Examples of special circumstances include disabled access needs, or events that will require on-street parking. If you have questions or concerns, please contact me at o.sweetman@newportoregon.gov or 541-574-3376.

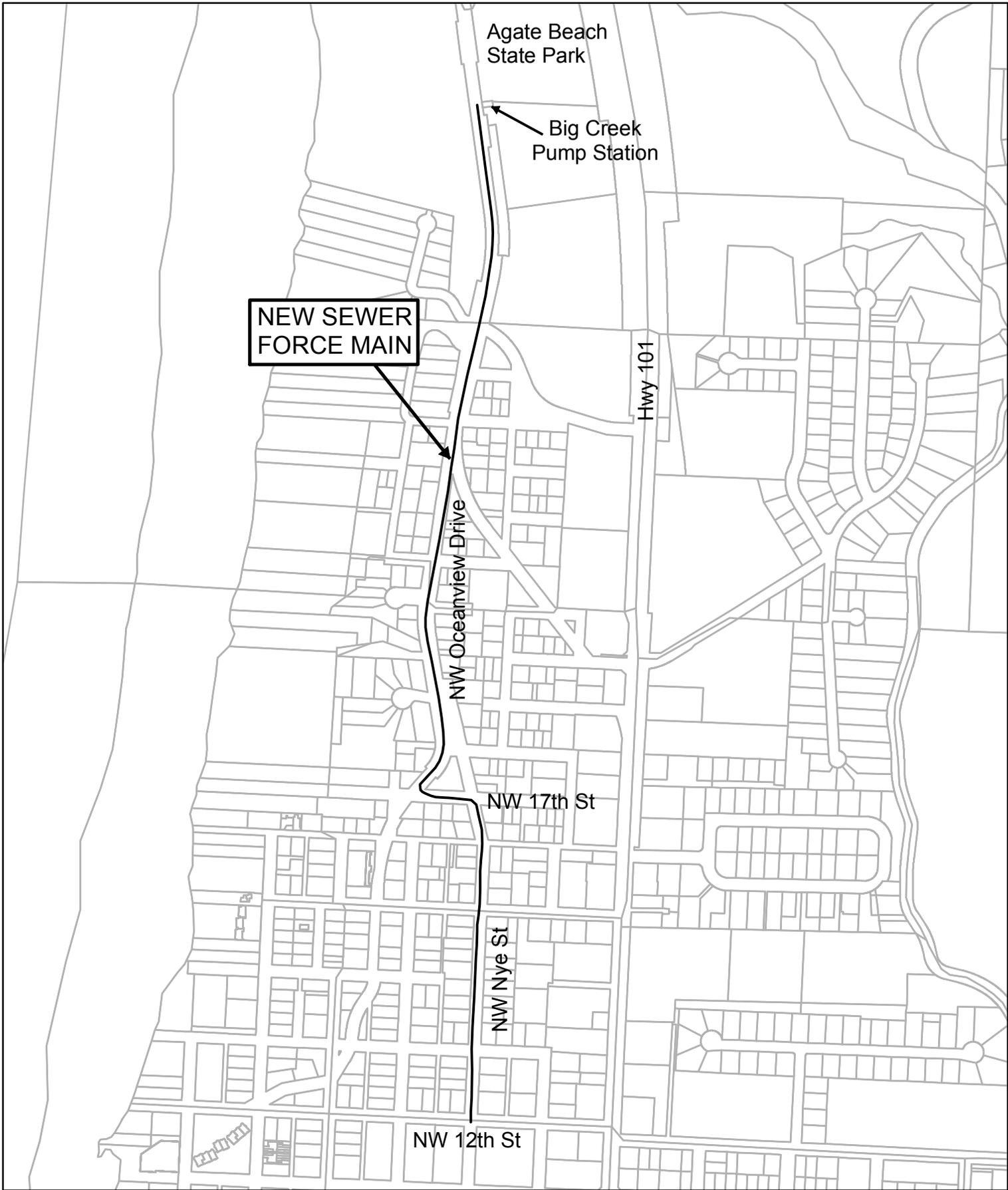
The City has scheduled an Open House to discuss the project, on April 9th at Newport City Hall in the Council Chambers, between 5:30 and 7:00pm. There won't be a formal presentation, so you'll be welcome to come and go at any time.

Construction is expected to start in late April or early May, and continue for 3-4 months. Additional notification will be provided as construction approaches or if circumstances change.

Sincerely,

A handwritten signature in black ink, appearing to read "Olaf Sweetman".

Olaf Sweetman, PE
Assistant City Engineer



**NEW SEWER
FORCE MAIN**

Agate Beach
State Park

Big Creek
Pump Station

Hwy 101

NW Oceanview Drive

NW 17th St

NW Nye St

NW 12th St



**City of Newport
Engineering Department**

169 SW Coast Highway
Newport, OR 97365

Phone: 541-574-3366
Fax: 541-265-3301

Overview Map

Big Creek Force Main Project



This map is for informational use only and has not been prepared for, nor is it suitable for legal, engineering, or surveying purposes. It includes data from multiple sources. The City of Newport assumes no responsibility for its compilation or use and users of this information are cautioned to verify all information with the City of Newport Engineering Department.