



AGENDA for City Council Meeting

The City Council of the City of Newport will hold a City Council meeting on Monday, August 5, 2013, at 6:00 P.M., in the Council Chambers at the City Hall, located at 169 S.W. Coast Highway, Newport, Oregon 97365. A copy of the agenda follows.

The meeting locations 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 541.574.0613.

COUNCIL MEETING AGENDA **Monday, August 5, 2013 - 6:00 P.M.** **Council Chambers**

Anyone wishing to speak 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 Chamber. 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. **Additions/Deletions and Approval of Agenda**
- IV. **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 other.
- 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 City Council Minutes from the Executive Session, Work Session and Regular Meeting of July 15, 2013 and Special City Council Meeting of July 18, 2013 and July 26, 2013 and Town Hall Meeting of July 29, 2013 (Hawker)

- B. OLCC - Shunk's (Miranda)
- C. OLCC - Panini (Miranda)
- D. OLCC - Ocean Bleu/Gino's (Miranda)
- E. OLCC - Bridges (Miranda)

VI. Officer's Reports

- A. Mayor's Report
- B. City Manager's Report
 - i. Project Management Report

VII. Discussion Items and Presentations

Items that do not require immediate Council action, such as presentations, discussion of potential future action items.

- A. Big Creek Dams-Keith Mills

VIII. Public Hearings - 7:00 P.M.

- A. Public Hearing and Consideration of Ordinance No. 2056 amending the Port Facilities Section of the Newport Comprehensive Plan (Tokos)

IX. Action Items

Citizens will be provided an opportunity to offer comments on action items after staff has given their report and if there is an applicant, after they have had the opportunity to speak. (Action items are expected to result in motions, resolutions, orders, or ordinances.)

- A. Consideration of Resolution No. 3643 - Approval of ODOT Fund Exchange Agreement No. 29489 (Gross)
- B. Consideration and Potential Approval of a Special Public Works Fund Grant IFA (Gross)
- C. Intent to Award Big Creek Road Landslide Project (Gross)
- D. Consideration and Potential Approval of Lease Agreement with California Shellfish (Tokos)
- E. Consideration and Potential Approval of Fire Implementation Plan (Paige)
- F. Consideration of Firefighter Grant (Paige)
- G. Consideration of Resolution No.3644 - Supplemental Budget for FY2013/2014
- H. Recommendation from Destination Newport Committee for Approval of a Vinyl Wallscape for Advertising Newport in Portland (Smith)
- I. Consideration and Potential Approval of Intergovernmental Agreement between City of Newport and Oregon Department of Aviation

X. Council Reports and Comments

XI. Public Comment (Additional time for public comment - 5 minutes per speaker)

XII. Adjournment

July 15, 2013
Noon
Newport, Oregon

CITY COUNCIL WORK SESSION

Councilors present: Beemer, Busby, Saelens, Roumagoux, and Allen. Swanson and Sawyer were excused.

Staff present: Smith, Hawker, Tokos, and Roman (during work session discussion of airport project).

Media present: Dave Morgan from News Lincoln County and Larry Coonrod from the Newport News-Times.

Roumagoux called the meeting to order and the roll was taken.

1. Roumagoux asked for additional work session items that are not listed on the agenda, for this or future work sessions. Allen noted that he wished to add an item on the disclosure of public records to Council and the public. Roumagoux noted that she had an item that she would bring up at the end of the meeting.
2. MOTION was made by Beemer, seconded by Allen, to enter executive session pursuant to ORS 192.660(2)(h) regarding litigation or litigation likely to be filed, and ORS 192.660(2)(e) pertaining to real property transactions. The motion carried unanimously in a voice vote, and Council entered executive session at 12:02 P.M.
3. MOTION was made by Beemer, seconded by Allen, to leave executive session and return to the City Council work session. The motion carried unanimously in a voice vote, and Council returned to its work session at 12:25 P.M.
4. Roman discussed grant assurances relative to the airport. She reviewed duration and applicability of grant assurances relative to AIP projects. She noted that she would provide a copy of the grant assurances to Council. She reported that the FAA had sent an e-mail to make sure the city was aware of grant assurances. She noted that if the city is found out of compliance with the grant assurances, it could risk losing all AIP funding in the future, and that further, the FAA has the right to request reimbursement of ongoing projects. She stated that the city must conform to plans and specifications of the FAA circulars. She added that one of the issues the city has become aware of is the need for minimum standards at the airport. Allen asked that the City Attorney be consulted regarding potential conflicts of interest of the Airport Committee and City Council in making decisions regarding the airport since many members are also airport users. Smith noted that the minimum standards will be vetted through the City Attorney. Roman noted that the Airport Committee will receive a draft of the minimum standards. Roman noted that a safety and protection plan for the airport will be tied

into the minimum standards. Busby asked what grant assurance requires minimum standards. Roman noted that this requirement is under federal regulations and management. Roman also noted that compliance with the Part 139 certificate is also required. Busby noted that the minimum standards may evoke a lively discussion at the Airport Committee. A discussion ensued regarding the city match for the Runway 16/34 Rehabilitation Project. Roman noted that, to date, the city match is budgeted for, but that it is difficult to manage the budget as variables may arise that impact the budget. Roman reviewed the status of the Runway 16/34 Rehabilitation project.

5. A discussion ensued regarding the City Council and Mayor's budget. Busby asked how Council will manage the budget assigned to it, and what the intentions are relative to spending it. Busby inquired about the following line items: audit; legal services; financial services; advertising and marketing; elections; allocated expenses; garbage; heating; travel; printing; maintenance agreements; membership dues, fees, etc.; shipping; training; and audio-visual services. He stated that next year, the City Council needs to have input into the development of its budget. Busby added that what remains at the end of the year, from these line items, should be placed in reserve. Smith noted that he would obtain information from Linda Brown regarding how much of these line items is discretionary that could be saved or used for something else.
6. Allen stated that until David Marshall left, Council had been receiving the monthly Speer Hoyt invoices in their entirety. He noted that he asked whether the June invoice had arrived, and that apparently, there is some issue in providing it. He noted that there should not be an issue in providing both the summary and entire invoice to the City Council. He asked that this matter be added to the evening agenda.
7. Council agreed to reassess legal services at an upcoming meeting.

Having no further business, the meeting adjourned at 1:58 P.M.

July 15, 2013
6:17 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, Beemer, Allen, Roumagoux, Saelens, and Busby were present. Swanson and Sawyer were excused.

Staff present was Interim City Manager Smith, City Recorder Hawker, Community Development Director Tokos, Assistant Fire Chief Murphy, Police Chief Miranda, Parks and Recreation Director Protiva, and Assistant Finance Director Brown.

PLEDGE OF ALLEGIANCE

Council and the audience participated in the Pledge of Allegiance.

ADDITIONS/DELETIONS AND APPROVAL OF THE AGENDA

Smith requested that the presentation on the Big Creek Dams be removed from the agenda.

Roumagoux asked that an item regarding public records and City Attorney-related services be placed on the agenda as a discussion item.

CONSENT CALENDAR

The consent calendar consisted of the following items:

- A. Approval of City Council minutes from the executive session, work session, and regular meeting of July 1, 2013, and the special meeting and executive session of July 10, 2013;
- B. Acknowledgement of accounts paid for June 2013.

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

OFFICER'S REPORTS

Mayor's Report. Roumagoux thanked all the city departments and volunteers who assisted in presenting the July 4th fireworks display.

Roumagoux reported that she, and three Port Commissioners, had toured the dredge, Yaquina.

Roumagoux reported that she attended a presentation on the Highway 101 crosswalk improvements project.

Roumagoux reported that she was the speaker at the July 8 Kiwanis Club meeting.

Roumagoux reported that she had attended a retirement coffee for Greg Schaecher. She thanked Schaecher for his 34 years of dedicated service to the city.

City Manager's Report. Smith reported that the monthly departmental reports; public works project update; and the suggestion/concern/complaint update are included in the packet.

Smith reported that he is continuing to meet with various community groups.

Smith reported that the packet includes a letter from the Aquarium noting that the pinniped exhibit renovation was completed on time and on budget.

Smith responded to Allen's question from the prior meeting regarding an expenditure of \$22,000 for brochures. Allen noted that on June 18, 2013, the Destination Newport Committee recommended the purchase of these brochures at a cost of \$22,000. Allen asked about the authority of the DNC to approve expenditures, and whether this expenditure should have been approved by Council prior to payment. Smith noted that Council approval of the last contract occurred around this time last year, and the money was presumably budgeted last year, and a new printing was needed as the supply of brochures was low. Smith noted that he would check documentation after this meeting.

Allen noted that an agreement was presented to the City Council from the News-Times and was tabled until further clarification. Allen reported that he had written a letter to the editor of the News-Times, addressing the contract issue, and had spoken with the publisher afterward. He added that some things were clarified including what appeared to be an overlap in payment and the new agreement. He noted that this was a misunderstanding in what was proposed by the former City Manager and what the publisher understood. He stated that the lack of providing monthly reports was due to a lack of clarification between the publisher and the former City Manager. Allen stated that he thought the agreement was not as detailed as it should have been, but that document was what was provided at the request of the DNC. Allen suggested improved direction and clarification on the scope of services, when payment is due, and overall better communication between parties to the agreement.

DISCUSSION ITEMS AND PRESENTATIONS

Public Records Requests and Legal Services. Allen noted that a lengthy discussion regarding public records requests, and particularly the release of the Speer Hoyt invoices, had occurred at the work session. He stated that the former Finance Director had provided copies of the entire Speer Hoyt invoice to the City Council and department heads. He noted that he had requested the June invoice from Speer Hoyt and was advised that the City Attorney had an issue with releasing those invoices both internally and externally. He stated that he strongly disagreed with the City Attorney's belief that the City Council is not entitled to these documents. He noted that the June invoice had been released by the City Recorder earlier, and that, in the future, if certain items needed to be redacted; they would be redacted in accordance with ORS 192.505. Council expressed support of the City Recorder's decision in releasing this document.

Allen added that he had had recent issues with the City Attorney's advice that seem to show that differences that have arisen. He noted Council should periodically review legal services, and that he would like to talk about legal services at a work session in

August and include department head involvement, particularly Tokos, Gross, and Miranda. It was agreed to hold this internal discussion on August 19.

ACTION ITEMS

Consideration of Ordinance No. 2053 Approving a Franchise Agreement with CoastCom, Inc. Tokos reported that the issue before Council is consideration of Ordinance No. 2053 granting a telecommunication franchise and approving a franchise agreement with CoastCom, Inc. He added that the agreement has expired and a new agreement is needed for construction in rights-of-way. Tokos reviewed the agreement. MOTION was made by Beemer, seconded by Allen, to read Ordinance No. 2053, granting a telecommunication franchise and approving a franchise agreement with CoastCom, Inc., by title only, and place for final passage. The motion carried unanimously in a voice vote. Hawker read the title of Ordinance No. 2053. Voting aye on the adoption of Ordinance No. 2053 were Beemer, Allen, Roumagoux, Saelens, and Busby.

Consideration and Possible Approval of a Land Exchange Agreement between the City of Newport and Newport Assisted Living, LLC, and Newport Cottages, LLC. Tokos reported that the issue before Council is consideration of an agreement between the city and Newport Assisted Living, LLC and Newport Cottages, LLC to exchange property in the vicinity of NE 71st Street. He added that this exchange, along with separate right-of-way acquisitions that the city is pursuing, will extend the public street to a point immediately east of the Salmon Run Apartments and Oceanview Senior Living, improving access to city-owned property where a municipal water storage tank is to be constructed. MOTION was made by Beemer, seconded by Saelens, to approve the land exchange agreement, subject to review by the City Attorney as to form, and authorize the City Manager to sign the document and any related materials needed to complete the transaction. The motion carried unanimously in a voice vote.

Consideration of Notices of Intent to Award Bids for an ARFF Truck and Truck Procurement. Murphy and Roman appeared before Council on this issue. Roman reported that the issue before Council is consideration of notices of intent to award the bids for an ARFF truck and ARFF truck equipment. MOTION was made by Allen, seconded by Beemer, to authorize the Public Works Department to issue a Notice of Intent to Award the Newport Municipal Airport (ONP) 2013 AARF Truck Procurement contract to Rosenbauer Minnesota in the amount of \$236,042.00, and contingent upon no protest, and award of FAA AIP discretionary grant funds for procurement of said ARFF truck, authorize award and direct the City Manager to execute the contract on behalf of the City of Newport. The motion carried unanimously in a voice vote.

MOTION was made by Allen, seconded by Beemer, to authorize the Public Works Department to issue a Notice of Intent to Award the Newport Municipal Airport (ONP) 2013 ARFF Truck Equipment Procurement contract to L.N. Curtis and Sons, in the amount of \$25,223.50, and contingent upon no protect and award of FAA AIP discretionary grant funds for procurement of said ARFF truck equipment, authorize award and direct the City Manager to execute the contract on behalf of the City of Newport. The motion carried unanimously in a voice vote.

Consideration of Resolution No. 3633 Calling for an Election on the Issuance of General Obligation Bonds to Provide for a New Municipal Swimming Pool and Adopting a Ballot Title and Explanatory Statement. Protiva reported that the issue before Council is consideration of Resolution No. 3633 calling for an election on the issuance of General Obligation bonds to finance a new municipal swimming pool. Protiva addressed the draft plans for the facility, noting that the plans attempt to meet the needs of the community and provide for the future. A discussion ensued regarding whether certain components of the pool should be included. Protiva noted that the water slide and green roof deck were eliminated from the plan, although there is sufficient money to add these components if the project comes in on budget. He stated that \$125,000 was added for parking after the discussion at the last City Council meeting.

Protiva noted that the resolution was reviewed by the City Attorney's office and determined to be fundamentally acceptable. He reviewed suggestions made by the legal staff and noted that the resolution will undergo a final legal review before signature.

Protiva reported that at \$.45 per thousand dollars of assessed value, the impact to a \$200,000 property would be approximately \$90 - \$94 annually.

Allen asked about the roof deck, and Protiva reported that the Parks and Recreation Advisory Committee was concerned about park space being consumed, and that a green, or living roof, would provide approximately the same amount of green space that would be eliminated due to construction of the pool. Allen asked whether other roof deck structures exist in Lincoln County, and Protiva noted that he is not familiar with others. Protiva reiterated that the slide and roof deck are enhancements that will only be included if the project comes in sufficiently under budget. Allen suggested that if the project comes in under budget, the money could be saved rather than automatically being spent on project enhancements. He noted that this would allow Council to make a decision on the enhancements at a later date. Protiva noted that this could be done, but suggested that certain project enhancements, including the slide, would be desirable features and a selling point.

A discussion ensued regarding how to prioritize the enhancements. Allen noted that he was referring to actually funding the enhancements, and added that if Council is doing its job, it needs to determine whether it wants to save money. He suggested waiting and making policy decisions on the enhancements in the future. Protiva stated that the Parks and Recreation Advisory Committee had made list of enhancements that it believed to be important, and at this point, those are not prioritized due to fiscal reasons. Allen noted that he did not mind listing the project enhancements, but the decision to fund the enhancements should be made in the future. Saelens asked when the decision was made that eight million dollars is the amount that could be spent on the facility, and Protiva noted that the decision was made in conjunction with the City Manager. Saelens noted that he is concerned with showing the slide as a project enhancement as 60 percent of the people supported having a slide at the pool. It was noted that the community appreciates that the city is moving forward with some minor elements of an aquatic park in a new municipal pool. Saelens noted that it seems as if parking has a higher priority than the water slide which is a feature that the community would like to see in a pool. He added that this may cause a lack of support if the city eliminates the slide. Saelens asked at what point, during construction, the staff would know whether the contingency money is available, and whether the cost of the slide

would be greater at that time than if included in the project at the outset. Protiva reported that the slide will be surface mounted and that preparation can be included at the time of construction with the slide installation occurring later. Protiva noted that this appears to be the most reasonable compromise. Saelens stated that the addition of future parking is smart, and that the next best step would be to clearly prioritize for a water slide if there is contingency money available. Saelens noted that some underlying work must be done for a green roof. Allen noted that he would agree to prioritize the water slide over the roof deck. MOTION was made by Beemer, seconded by Saelens, to adopt Resolution No. 3633 calling for an election on the issuance of General Obligation bonds for a new municipal swimming pool and adopting a ballot title and explanatory statement with the amendment to Attachment C to reflect that the bonds are for a "New Indoor Municipal Swimming Pool." The motion carried unanimously in a voice vote.

COUNCIL REPORTS AND COMMENTS

Beemer reported on a recent meeting of the Port of Newport. He noted that the international terminal project is winding down, and that the Teevin Brothers agreement with the Port is under negotiation.

Busby reported on a recent meeting of the Airport Committee. He noted that the Committee received a detailed report on the Runway 16/34 Rehabilitation Project. He noted that the issue of minimum standards arose, and that minimum standards are not legal requirements, but the FAA likes them because it makes their job easier. He added that the issue of minimum standards could be contentious. A discussion ensued regarding the need for minimum standards. Smith will ask the FAA for clarification on this issue.

Saelens reported on a recent meeting of the Bicycle/Pedestrian Advisory Committee. He noted that the members are adjusting to operating under the new structure. He added that the Committee is working on a small citizen-led project in South Beach. Smith noted that staff has ordered bicycle icons and will install them on Bay Boulevard and Harney Street. He noted that the Committee will be outlining the need for sharrows on the bridge for Gross to present to ODOT. Tokos noted that there is a bicycle/pedestrian component of the Transportation Safety Plan that includes recommendations for sharrows, and if the Committee is looking for something different than what is contained in the plan, with an eye toward state funding; the plan should be revisited.

ADJOURNMENT

Having no further business, the meeting adjourned at 7:27 P.M.

Margaret M. Hawker, City Recorder

Sandra N. Roumagoux, Mayor

July 18, 2013
4:30 P.M.
Newport, Oregon

The City Council of the City of Newport, acting as the Local Contract Review Board, met in a Special Meeting, on the above date, in Conference Room A of the Newport City Hall. Allen, Roumagoux, Saelens, and Sawyer (via telephone), were present. Busby, Beemer, and Swanson were excused.

Staff attending was as follows: Smith, Hawker, and Roman (Engineering Technician).

Also in attendance was Dave Morgan from News Lincoln County and Larry Coonrod from the Newport News-Times.

Following roll call, Roumagoux reported that an additional item would be discussed at the end of the meeting.

NOTICE OF INTENT TO AWARD BID - RUNWAY 16/34 REHABILITATION PROJECT

Roman reported that the bids for the rehabilitation of Runway 16/34 had been received and reviewed by the city's engineer of record. She stated that High Desert Aggregate and Paving, Inc. was the low bidder with a bid of \$6,691,254, including all additives. She added that this is two million dollars below the highest bid. She noted that contingencies to award of the bid are that the city receives the FAA AIP discretionary grant funds, and that no protest is received. Sawyer suggested that Smith write to the congressional delegation, and Allen noted that Kurt Schrader is usually supportive of such requests.

MOTION was made by Allen, seconded by Saelens, to authorize the Public Works Department to issue a Notice of Intent to Award the Newport Municipal Airport Runway 16/34 Rehabilitation Project to High Desert Aggregate and Paving, Inc., in the amount of \$6,691,254.00, and contingent upon no protest, and award of FAA AIP discretionary grant funds for construction of the Runway 16/34 Rehabilitation Project, authorize award and direct the City Manager to execute the contract on behalf of the City of Newport. The motion carried unanimously in a voice vote.

AIRPORT PERSONNEL INVESTIGATION SUMMARY

Allen asked Hawker for clarification on several points related to the preparation of a draft summary of the findings of the airport personnel investigation. He asked about the status of the summary that Hawker was directed to draft. Hawker reported that a draft had been prepared and sent to Speer Hoyt for a legal review. Hawker noted that she was advised that Christy Monson had instructed the Speer Hoyt staff that she wanted to review the draft on her return, and that she would return on July 30. Allen stated that he hoped to have the summary completed as quickly as possible.

Allen asked Hawker how long the draft summary was. Hawker reported that it is a one page document that contains three or four paragraphs.

Allen asked Hawker whether the draft summary included the political perspective that Council had directed at its meeting of July 10. Hawker reported that the draft summary does include the political perspective.

Allen asked why another Speer Hoyt attorney could not review the draft since its release is time sensitive. He stated that he is curious why Monson directed her colleagues not to perform the review.

MOTION was made by Allen, seconded by Saelens, to direct LGLG (Speer Hoyt) to perform the legal review of the draft summary, as soon as possible, using another attorney, so that Hawker can get the summary distributed. The motion carried unanimously in a voice vote.

ADJOURNMENT

Having no further business, the meeting adjourned at 4:44 P.M.

Margaret M. Hawker, City Recorder

Sandra N. Roumagoux, Mayor

July 26, 2013
10:00 A.M.
Newport, Oregon

The City Council of the City of Newport met in a Special Meeting, on the above date, in Conference Room A of the Newport City Hall. Allen, Swanson, Sawyer, Beemer, Saelens, and Busby were present. Roumagoux was excused.

Staff attending was as follows: Smith and Hawker.

Also in attendance was Dave Morgan from News Lincoln County.

HIRING OF AN INTERIM FINANCE DIRECTOR - DISCUSSION AND POTENTIAL AUTHORIZATION

Smith distributed a document that contained a proposal from Bob Gazewood regarding Interim Finance Director services, and a chart showing the potential costs for a four-week period. Smith reported that he had talked with Gazewood who has looked at the city's budget and Finance Department, and believes he could work three days in City Hall and two days from his home. Smith noted that the total costs for a four-week period are approximately \$11,490. Smith reported that Gazewood would be available to continue this arrangement for approximately six months, but that Gazewood recommended the city move forward in the recruitment of a permanent Finance Director. He noted that this would allow Gazewood to work with the new Finance Director during a transition period at the outset of the budget preparation process.

Allen noted that he had asked for David Marshall's ending salary with benefits. Smith reported that this was \$10,807 monthly. Allen noted that Gazewood's proposal would cost approximately \$700 more, per month, than Marshall's ending salary and benefits. Sawyer suggested the recruitment of a new Finance Director begin now and that the city continue with the current interim. Saelens noted that he understands the costs, but is concerned about having a new City Manager and Finance Director without time to prepare for the budget. Allen noted that Linda Brown has stepped in. He discussed his experience with Bob Gazewood when he served as Interim Finance Director in the past. He added that Patricia Patrick had worked with and thought highly of Gazewood. He noted that given the transitional period, he believes that someone with Gazewood's experience and skill will be an asset in the transition.

MOTION was made by Beemer, seconded by Allen, to support and accept Bob Gazewood's proposal and to authorize the City Manager to enter into an agreement with Gazewood. The motion was amended and seconded to add that a legal review of the agreement was authorized at the discretion of Smith. The amended motion carried unanimously in a voice vote.

POSSIBLE CONSIDERATION OF WAIVER OF ATTORNEY/CLIENT PRIVILEGED DOCUMENT

Hawker explained that she was directed to prepare a summary of the airport personnel investigation. She added that the City Attorney had expressed concern about the potential to waive attorney/client privilege. She stated that a teleconference had been held with Roumagoux, Allen, Hawker, and legal staff, to discuss this issue. Allen noted that there is no issue with the content of the draft, but that the attorney was concerned that there was some potential risk of a waiver of attorney/client privilege if it was released. He noted that he plans to make a motion regarding the release of the investigation summary to protect the City Recorder and cover all bases.

MOTION was made by Allen, seconded by Beemer, to authorize release of the one-page summary of the airport-related personnel investigation and, if any information in the summary is later determined subject to attorney/client privilege, to waive attorney/client privilege only as to that specific information. The motion carried unanimously in a voice vote.

Allen noted that he had an additional motion related to the airport personnel investigation. MOTION was made by Allen, seconded by Beemer, to have the City Recorder obtain and release the total estimated cost of this investigation as to fees charged by the Barran Liebman firm and the City Attorney (LGLG attorneys) in this matter. The motion carried unanimously in a voice vote.

ADJOURNMENT

Having no further business, the meeting adjourned at 10:20 A.M.

Margaret M. Hawker, City Recorder

Dean Sawyer, Council President

July 29, 2013
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 Pacific Maritime Heritage Center on the Bayfront. Present were Beemer, Allen, Roumagoux, Swanson, Busby, and Saelens. Sawyer was excused.

Staff present was Interim City Manager Smith, City Recorder Hawker, Community Development Director Tokos, Public Works Director Gross, Police Lieutenant Malloy, and Police Sergeant Garbarino.

Public in attendance was: Steve Wyatt, Sutta White, Lee Fries, Wayde Dudley, Delores Williams, Oly Olson, Dee Shannon, L. Shubert, L. Seager, Jackie Charles, Bob Ward, and others.

Media present: Dave Morgan, News Lincoln County and Larry Coonrod, Newport News-Times.

WELCOME AND INTRODUCTIONS

Mayor Roumagoux called the meeting to order and welcomed everyone.

Council and staff introduced themselves.

Steve Wyatt, Executive Director of the Lincoln County Historical Society, welcomed everyone to the facility and updated the group on continuing work at the Center.

UPDATE ON TEEVIN BROTHERS LOG EXPORTING PROPOSAL

Tokos updated the group on the status of the Teevin Brothers log exporting proposal. He reported that the city has issued a decision approving the traffic impact analysis, and that decision was appealed to LUBA. He added that the record was prepared and submitted; motions have been filed; a records objection was addressed; and the city is waiting for a timeline on the filing of briefs. He noted that Teevin Brothers has filed a motion to intervene in the matter. He stated that Teevin Brothers continue to negotiate leases with the Port and the Hall family.

Tokos responded to questions regarding: an alternate route to Moore Drive; dredging in front of the international terminal; whether the Port might be negotiating with other potential lessees; whether the Port's Pedestrian Safety Task Force is planning to meet soon; jurisdictional responsibilities regarding any alternate route; and stakeholders.

Beemer, as the City Council liaison to the Port of Newport, noted that the City Council has little to say about the Teevin Brothers proposal, as it is an outright use. He noted that

regardless of how many times the Task Force meets, the possibility of an alternate route in the next eight to ten years is remote.

Allen noted that he will try to schedule the next Task Force meeting; contact stakeholders; and engage in a discussion of standards and criteria for an alternate route, which will ultimately determine the location of any proposed alternate route.

A discussion ensued regarding the transparency of Teevin Brothers, particularly related to its finances; the fact that Newport is a commercial port and it has to have enough activity to keep it open; the noise ordinance and enforcement; and whether Olson has been replaced as a public representative on the Task Force since his election to the Port Commission.

Tokos reported that future commerce will also tie into a discussion of the future of the Yaquina Bay Bridge.

TSUNAMI SIGN AND MAP PRESENTATION

Garbarino reported that DOGAMI has released a new tsunami inundation map, and that the inundation zone had increased from 50 feet to 80 feet. He reported that maps are available at the Police Department, Fire Department, and Library. He noted that they can be downloaded from the DOGAMI website to be placed in hotel rooms, vacation rentals, etc. Regarding tsunami evacuation signage, Garbarino noted that it is excellent in South Beach, but work needs to be done in Nye Beach, City Center, and other areas.

It was asked whether the city conducts tsunami evacuation drills, and Garbarino noted that there are drills, and that personnel have distributed evacuation packets door-to-door. He added that he would like to plan a drill for the Bayfront, and is working on logistics so that businesses do not have to close.

Dudley asked whether the red and blue tape on stop signs will be moved to higher ground, and Garbarino noted that this method of high ground notification will no longer be used.

Busby asked whether there is a standard tsunami sign, and Garbarino noted that he believes the DOGAMI signs are the standard.

Ward reported that he had requested a DOGAMI map from the city and was told that he could only receive either the north or south map depending on where he lived. A discussion ensued regarding the fact that particularly residents go from north to south for work or otherwise and would need both maps. Olson suggested reaching out to stakeholders in workplaces. Ward noted that the greatest problem is visitors, and how to deal with people who are not ambulatory. It was added that when the Japanese visited during the dedication of the tsunami memorial, they noted that their great concern is how to deal with people who do not walk or do not walk well. Saelens suggested adding a QR code to displays and maps so that people could have tsunami evacuation information on their phones. Garbarino discussed the IPAWS systems that sends alerts to cell phones, and noted that the Everbridge system that the city uses will be included with IPAWS.

BAYFRONT PARKING REVIEW

Tokos reviewed the funding and activities of the Bayfront Parking District. He noted that there is approximately \$200,000 to \$250,000 in this parking fund from the prior parking assessment system, and that approximately \$20,000 annually is collected under the current system. He added that he and Gross have worked on a conceptual plan to restructure the parking about WaxWorks and the adjacent city parking lot.

PUBLIC COMMENT

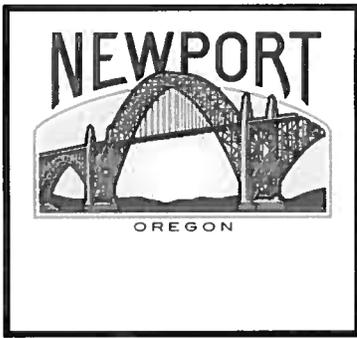
Olson asked for an update on the planned improvements to the Bay Boulevard and Moore Drive intersection. Gross noted that a preliminary engineering study had been completed, and that the primary focus is the stormwater system. He added that the improvements were to be funded through the SDC's paid by Teevin Brothers, but those monies have not been received. He noted that he has found other grant monies that can be used for engineering design. He stated that the design will occur this summer/fall with bidding in the spring, and construction to follow. He noted that he anticipates construction will take three to six months. He added that he expects the road to remain open at some level throughout the construction, but that a traffic control plan will be included as part of the design. He noted that there will be public meetings throughout the process.

ADJOURNMENT

Having no further business, the meeting adjourned at 7:05 P.M.

Margaret M. Hawker, City Recorder

Sandra N. Roumagoux, Mayor



Agenda Item #
Meeting Date

V.B.
August 5, 2013

CITY COUNCIL AGENDA ITEM SUMMARY
City Of Newport, Oregon

Issue/Agenda Title OLCC License Approval

Prepared By: Newport Police Dept. Head Approval: Lt. Jason Malloy JM City Mgr Approval: _____

Issue Before the Council:

Shall the City Council recommend approval of the liquor license application for the Newport Brewery Company?

Staff Recommendation:

The Police Department recommends favorable action by the City Council.

Proposed Motion:

Handle as a consent calendar item

Key Facts and Information Summary:

The Newport Brewing Company, DBA Bier One, and located at 424 SW Coast Hwy, has made application to the Oregon Liquor Control Commission for a "Brewery Public House" with "Greater Privilege" license due to a change from a "Brewing" license. Such a license allows for the applicant to manufacture, export, store, and transport, malt beverages. The licensee may also sell malt beverages manufactured on or off the licensed premises at retail for consumption on or off the premises. The licensee may sell malt beverages in brewery-sealed packages at retail directly to the consumer for consumption on or off the premises. Plus, the licensee may sell wine and cider at retail for consumption on or off the premises.

A background check of the applicant revealed no disqualifying information. The applicants were approved for an OLCC license in June 2013. During that time, it was recommended that Newport Brewery obtain a City business license, submit a home occupation application and have a final building inspection. City records confirm The Newport Brewery has made application for a City business license and home occupation. The final building inspection is pending review with the City Planning Department.

ORS 471.166 requires an applicant to obtain a recommendation from the local governing body in the city where the business is located. The City Council may make a "Favorable Recommendation" or an "Unfavorable Recommendation" to OLCC. The Commission will then decide if granting a license is appropriate.

Other Alternatives Considered:

Not applicable.

City Council Goals:

Public Safety related.

Attachment List:

License Application

Fiscal Notes:

There is no fiscal impact on the City other than time to process the application





OREGON LIQUOR CONTROL COMMISSION LIQUOR LICENSE APPLICATION

Reset Form

Print Form

Application is being made for:

LICENSE TYPES

Full On-Premises Sales (\$402.60/yr)

Commercial Establishment

Caterer

Passenger Carrier

Other Public Location

Private Club

Limited On-Premises Sales (\$202.60/yr)

Off-Premises Sales (\$100/yr)

with Fuel Pumps

Brewery Public House (\$252.60)

Winery (\$250/yr)

Other: 2nd location/Brewery public house

ACTIONS

Change Ownership

New Outlet

Greater Privilege

Additional Privilege

Other: greater privilege

90-DAY AUTHORITY

Check here if you are applying for a change of ownership at a business that has a current liquor license, or if you are applying for an Off-Premises Sales license and are requesting a 90-Day Temporary Authority

APPLYING AS:

Limited Partnership

Corporation

Limited Liability Company

Individuals

CITY AND COUNTY USE ONLY

Date application received: 7/2/13

The City Council or County Commission: City of Newport
(name of city or county)

recommends that this license be:

Granted Denied

By: _____ (signature) _____ (date)

Name: _____

Title: _____

OLCC USE ONLY

Application Rec'd by: D. Green

Date: 6/21/13

90-day authority: Yes No

1. Entity or Individuals applying for the license: [See SECTION 1 of the Guide] **RECEIVED**

① Shunk's LLC ③ _____ JUL - 1 2013

② _____ ④ _____ NEWPORT POLICE

2. Trade Name (dba): Bier One

3. Business Location: 424 SW Coast Hwy Newport Lincoln OR 97365
(number, street, rural route) (city) (county) (state) (ZIP code)

4. Business Mailing Address: 424 SW Coast Hwy Newport OR 97365
(PO box, number, street, rural route) (city) (state) (ZIP code)

5. Business Numbers: 541-265-4630 none
(phone) (fax)

6. Is the business at this location currently licensed by OLCC? Yes No

7. If yes to whom: Shunk's LLC Type of License: Limited on-premise, off-premise

8. Former Business Name: _____

9. Will you have a manager? Yes No Name: _____
(manager must fill out an Individual History form)

10. What is the local governing body where your business is located? Newport
(name of city or county)

11. Contact person for this application: Christina Simonsen 541-265-4630
(name) (phone number(s))
424 SW Coast Hwy Newport, OR 97365 none cheers@bier-one.com
(address) (fax number) (e-mail address)

I understand that if my answers are not true and complete, the OLCC may deny my license application.

Applicant(s) Signature(s) and Date:

① [Signature] Date 6/10/13 ③ _____ Date _____

② _____ Date _____ ④ _____ Date _____



Agenda Item # _____ V.C. _____
Meeting Date _____ August 5, 2013 _____

CITY COUNCIL AGENDA ITEM SUMMARY
City Of Newport, Oregon

Issue/Agenda Title _____ OLCC License Approval _____

Prepared By: Newport Police Dept. Head Approval: Lt. Jason Malloy AM City Mgr Approval: _____

Issue Before the Council:

Shall the City Council recommend approval of the liquor license application for Panini's Wood Fire Oven.

Staff Recommendation:

The Police Department recommends favorable action by the City Council.

Proposed Motion:

Handled as a consent calendar item.

Key Facts and Information Summary:

Panini's Wood Fire Oven, 342 SW Bay Blvd., has made application to the Oregon Liquor Control Commission for a "Limited On-Premises Sales" and "Off-Premises Sales" as an added outlet. Such a license allows for the applicant to sell wine, malt beverages and cider 'by the drink.' These beverages must be consumed on the premises. Partially consumed bottles of wine that had been served with a meal may also be taken from the premises. In addition, the license allows for the applicant to sell factory sealed containers of wine, malt beverages and cider. Containers of malt beverages sold under the license may not hold more than two and one-quarter gallons

A background check of the applicant revealed no disqualifying information. Panini's Wood Fire Oven is located on SW Bay Blvd. in the Gear Shed Shops. There have been two police calls to this address within the last year; however there are many businesses located within the Gear Shed Shops. None of the police calls were associated with Panini's Wood Fire Oven.

ORS 471.166 requires an applicant to obtain a recommendation from the local governing body in the city where the business is located. The City Council may make a "Favorable Recommendation" or an "Unfavorable Recommendation" to OLCC. The Commission will then decide if granting a license is appropriate.

Other Alternatives Considered:

Not applicable.

City Council Goals:
Public Safety related.

Attachment List:
License Application

Fiscal Notes:
There is no fiscal impact on the City other than time to process the application





OREGON LIQUOR CONTROL COMMISSION LIQUOR LICENSE APPLICATION

Reset Form

Print Form

Application is being made for:

LICENSE TYPES

Full On-Premises Sales (\$402.60/yr)

Commercial Establishment

Caterer

Passenger Carrier

Other Public Location

Private Club

Limited On-Premises Sales (\$202.60/yr)

Off-Premises Sales (\$100/yr)

with Fuel Pumps

Brewery Public House (\$252.60)

Winery (\$250/yr)

Other: _____

ACTIONS

Change Ownership

New Outlet

Greater Privilege

Additional Privilege

Other _____

90-DAY AUTHORITY

Check here if you are applying for a change of ownership at a business that has a current liquor license, or if you are applying for an Off-Premises Sales license and are requesting a 90-Day Temporary Authority

APPLYING AS:

Limited Partnership

Corporation

Limited Liability Company

Individuals

RECEIVED

JUL 09 2013

NEWPORT POLICE

CITY AND COUNTY USE ONLY

Date application received: 7/12/13

The City Council or County Commission ~~City of Newport~~
City of Newport
(name of city or county)

recommends that this license be:

Granted Denied

By: _____
(signature) (date)

Name: _____

Title: _____

OLCC USE ONLY

Application Rec'd by: MC

Date: 07/08/13

90-day authority: Yes No

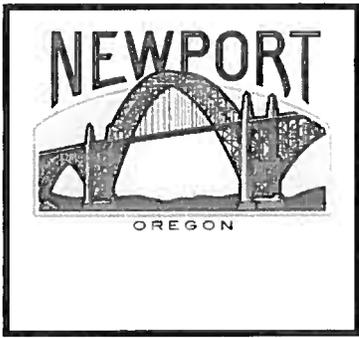
- Entity or Individuals applying for the license: [See SECTION 1 of the Guide]
① DANINI BAKEY LLC ② _____
③ _____ ④ _____
- Trade Name (dba): Panini's wood fire oven
- Business Location: 342 Sw Bay Blvd, Newport, Lincoln, Or. 97365
(number, street, rural route) (city) (county) (state) (ZIP code)
- Business Mailing Address: 232 NW coast st, suite C Newport, OR. 97365
(PO box, number, street, rural route) (city) (state) (ZIP code)
- Business Numbers: 541.265.5033
(phone) (fax)
- Is the business at this location currently licensed by OLCC? Yes No
- If yes to whom: _____ Type of License: _____
- Former Business Name: _____
- Will you have a manager? Yes No Name: Joseph Danna
(manager must fill out an Individual History form)
- What is the local governing body where your business is located? Newport
(name of city or county)
- Contact person for this application: Joseph Danna (541.961.5632)
(name) (phone number(s))
423 SE Bay Blvd Newport OR 97365 (joe.danna@hotmail.com)
(address) (fax number) (e-mail address)

I understand that if my answers are not true and complete, the OLCC may deny my license application.

Applicant(s) Signature(s) and Date:

① [Signature] Date 6/11/13 ③ _____ Date _____

② _____ Date _____ ④ _____ Date _____



Agenda Item # V.D.
Meeting Date August 5, 2013

CITY COUNCIL AGENDA ITEM SUMMARY
City Of Newport, Oregon

Issue/Agenda Title OLCC License Approval

Prepared By :Newport Police Dept Head Approval: Lt. Jason Malloy AM City Mgr Approval: _____

Issue Before the Council:

Shall the City Council recommend approval of the liquor license application for Ocean Bleu @ Gino's Fishmarket and Café?

Staff Recommendation:

The Police Department recommends favorable action by the City Council.

Proposed Motion:

Handled as a consent calendar item.

Key Facts and Information Summary:

Ocean Bleu @ Gino's, 808 SW Bay Blvd, has made application to the Oregon Liquor Control Commission for a "Limited On-Premises Sales" license due to a request for lessor privileges. Such a license allows for the applicant to sell wine, malt beverages and cider 'by the drink.' These beverages must be consumed on the premises. Partially consumed bottles of wine that had been served with a meal may also be taken from the premises.

A background check of the applicant revealed no disqualifying information. Ocean Bleu @ Gino's is located on the Bay Front between SW Bay Street and SW Fall Street. There have been no police calls to the business within the last year.

ORS 471.166 requires an applicant to obtain a recommendation from the local governing body in the city where the business is located. The City Council may make a "Favorable Recommendation" or an "Unfavorable Recommendation" to OLCC. The Commission will then decide if granting a license is appropriate.

Other Alternatives Considered:

Not applicable.

City Council Goals:

Public Safety related.

Attachment List:
License Application

Fiscal Notes:
There is no fiscal impact on the City other than time to process the application





OREGON LIQUOR CONTROL COMMISSION LIQUOR LICENSE APPLICATION

Reset Form

Print Form

Application is being made for:

LICENSE TYPES

- Full On-Premises Sales (\$402.60/yr)
 - Commercial Establishment
 - Caterer
 - Passenger Carrier
 - Other Public Location
 - Private Club
- Limited On-Premises Sales (\$202.60/yr)
- Off-Premises Sales (\$100/yr)
 - with Fuel Pumps
- Brewery Public House (\$252.60)
- Winery (\$250/yr)
- Other: _____

ACTIONS

- Change Ownership
- New Outlet
- Greater Privilege
- Additional Privilege
- Other Lessor privilege

CITY AND COUNTY USE ONLY

Date application received: 7/8/13

The City Council or County Commission:

City of Newport
(name of city or county)

recommends that this license be:

Granted Denied

By: _____
(signature) (date)

Name: _____

Title: _____

OLCC USE ONLY

Application Rec'd by: MC

Date: 07/01/13

90-day authority: Yes No

90-DAY AUTHORITY

Check here if you are applying for a change of ownership at a business that has a current liquor license, or if you are applying for an Off-Premises Sales license and are requesting a 90-Day Temporary Authority

APPLYING AS:

- Limited Partnership
- Corporation
- Limited Liability Company
- Individuals

1. Entity or Individuals applying for the license: [See SECTION 1 of the Guide]

① Ocean Bleu Seafoods LLC ③ _____

② _____ ④ _____

2. Trade Name (dba): Ocean Bleu @ GINO'S Fishmarket + Cafe

3. Business Location: 808 S.W. Bay Blvd. Newport Lincoln OR. 97365
(number, street, rural route) (city) (county) (state) (ZIP code)

4. Business Mailing Address: P.O. Box 1225 Newport OR. 97365
(PO box, number, street, rural route) (city) (state) (ZIP code)

5. Business Numbers: 541-265-2424
(phone) (fax)

6. Is the business at this location currently licensed by OLCC? Yes No

7. If yes to whom: Ocean Bleu Seafoods LLC Type of License: Off-Premises Sales

8. Former Business Name: _____

9. Will you have a manager? Yes No Name: _____
(manager must fill out an Individual History form)

10. What is the local governing body where your business is located? Newport / Lincoln
(name of city or county)

11. Contact person for this application: Mercedes Luessa Donovan 541-272-9158
(name) (phone number(s))

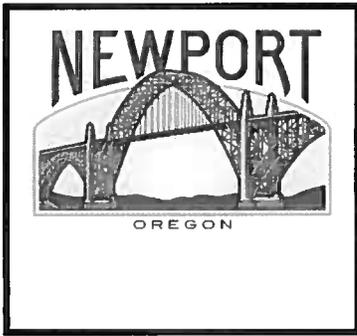
5180 NW Rockyway Newport OR 97365 oceanbleuseafoods@gmail.com
(address) (fax number) (e-mail address)

I understand that if my answers are not true and complete, the OLCC may deny my license application.

Applicant(s) Signature(s) and Date:

① MDonovan Date 6/13/13 ③ _____ Date 6/18/13

② _____ Date _____ ④ _____ Date _____



Agenda Item # V.E.
Meeting Date August 5, 2013

CITY COUNCIL AGENDA ITEM SUMMARY
City Of Newport, Oregon

Issue/Agenda Title OLCC License Approval

Prepared By: Newport Police Dept. Head Approval: Lt. Jason Malloy CM City Mgr. Approval: _____

Issue Before the Council:

Shall the City Council recommend approval of the liquor license application for Bridges Restaurant and Lounge.

Staff Recommendation:

The Police Department recommends favorable action by the City Council.

Proposed Motion:

Handled as a consent calendar item

Key Facts and Information Summary:

Bridges Restaurant and Lounge, 1000 SE Bay Blvd., has made application to the Oregon Liquor Control Commission for a "Full On-Premises Sales" license, and "Off-Premises Sales" license due to a change in ownership. Such a license allows for the applicant to sell 'by the drink' wine, malt beverages, cider and distilled liquor. These beverages must be consumed on the premises. Partially consumed bottles of wine that had been served with a meal may also be taken from the premises. The Off-Premises license allows for the applicant to sell factory sealed containers of wine, malt beverages and cider. Containers of malt beverages sold under the license may not hold more than two and one-quarter gallons.

A background check of the applicant revealed no disqualifying information. Bridges Restaurant and Lounge is located in the Embarcadero Resort complex. There has been two police calls to the restaurant and lounge within the last year. One call resulted in a Disorderly Conduct arrest with an intoxicated subject. The second call was for a theft from the lounge.

ORS 471.166 requires an applicant to obtain a recommendation from the local governing body in the city where the business is located. The City Council may make a "Favorable Recommendation" or an "Unfavorable Recommendation" to OLCC. The Commission will then decide if granting a license is appropriate.

Other Alternatives Considered:

Not applicable.

City Council Goals:
Public Safety related.

Attachment List:
License Application

Fiscal Notes:
There is no fiscal impact on the City other than time to process the application





OREGON LIQUOR CONTROL COMMISSION LIQUOR LICENSE APPLICATION

Application is being made for:

LICENSE TYPES

- Full On-Premises Sales (\$402.60/yr)
 - Commercial Establishment
 - Caterer
 - Passenger Carrier
 - Other Public Location
 - Private Club
- Limited On-Premises Sales (\$202.60/yr)
- Off-Premises Sales (\$100/yr)
 - with Fuel Pumps
- Brewery Public House (\$252.60)
- Winery (\$250/yr)
- Other: _____

ACTIONS

- Change Ownership
- New Outlet
- Greater Privilege
- Additional Privilege
- Other _____

90-DAY AUTHORITY

Check here if you are applying for a change of ownership at a business that has a current liquor license, or if you are applying for an Off-Premises Sales license and are requesting a 90-Day Temporary Authority

APPLYING AS:

- Limited Partnership
- Corporation
- Limited Liability Company
- Individuals

CITY AND COUNTY USE ONLY

Date application received: 7/26/13

The City Council or County Commission:

City of Newport
(name of city or county)

recommends that this license be:

- Granted
- Denied

By: _____
(signature) (date)

Name: _____

Title: _____

OLCC USE ONLY

Application Rec'd by: Jah

Date: 7-26-13

90-day authority: Yes No

1. Entity or Individuals applying for the license: [See SECTION 1 of the Guide]

① Embarcadero Restaurant and Lounge LLC ③ _____
② _____ ④ _____

2. Trade Name (dba): Bridges Restaurant and Lounge

3. Business Location: 1000 SE Bay Blvd. Newport Lincoln OR 97365
(number, street, rural route) (city) (county) (state) (ZIP code)

4. Business Mailing Address: SAME
(PO box, number, street, rural route) (city) (state) (ZIP code)

5. Business Numbers: 541-265-8135
(phone) (fax)

6. Is the business at this location currently licensed by OLCC? Yes No

7. If yes to whom: Zach Wayne Poole Type of License: full on premises & off premises

8. Former Business Name: Embarcadero Resort Service Provider, LLC

9. Will you have a manager? Yes No Name: Sunnetta Ransom or Teyre Crowell
(manager must fill out an Individual History form)

10. What is the local governing body where your business is located? City of Newport
(name of city or county)

11. Contact person for this application: Sunnetta Ransom 541-265-8135
(name) (phone number(s))

1000 SE Bay Blvd. Newport, OR 97365 541-265-7844 sunnetta@embarcaderorouo.com
(address) (fax number) (e-mail address)

I understand that if my answers are not true and complete, the OLCC may deny my license application.

Applicant(s) Signature(s) and Date:

① Sunnetta Ransom Date 7/25/13 ③ _____ Date _____
② _____ Date _____ ④ _____ Date _____



Memo

To: Ted Smith, Interim City Manager and City Council
From: Ted Jones, PE, Senior Project Manager
Date: August 5th, 2013
Re: Capital Projects Status Update

Project: **Ash Street Design and Construction**
Project Number: 2010-003
Status: Storm sewer installation complete. Curb and gutter constructed.
Next Task: Install lighting conduit and start driveway reconstruction.
Budget: \$557,000
Description: Design and construct Ash Street between SE 40th St. and SE Ferry Slip Road.

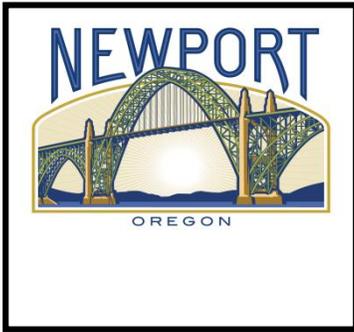
Project: **Hwy 101 Crosswalk Improvements**
Project Number: 2012-001
Status: Design Acceptance Package (DAP) meeting with ODOT 26 July 2013
Next Task: Site walk through with ODOT staff and schedule a Public Meeting for the Preliminary Design package review in mid-August.
Budget: \$502,000
Description: This project will improve the visibility and safety of multiple crosswalks on Highway 101 between 15th Street and the bridge. Proposed improvements include curb extensions and/or pedestrian safety islands, improved signage and pavement markings, and in one location pedestrian activated warning lights.

Project: **Big Creek Road Landslide Repairs**
Project Number: 2011-003
Status: Bids opened 01 August 2013, issuing Notice of Intent to Award
Next Task: Issue Notice of Award
Budget: \$750,000
Description: This project will restore Big Creek Road. A January of 2011 storm caused portions of the road to slide away, making the road unsafe for vehicles and jeopardizing a buried water main and electrical and telecommunications overhead transmission lines. This project is 75% funded through FEMA.

Project: Lower Big Creek Reservoir Drawdown Pipe Repair
Project Number: 2012-012
Status: Sandbags for cofferdam being installed.
Next Task: Complete outfall isolation and prepare pipe for rehabilitation.
Budget: \$160,000
Description: Repair a structurally deficient and functionally obsolete 30-inch corrugated metal outfall pipe with a 24-inch HDPE Liner and structural grout.

Project: Hwy 101 Sewer & Water Improvements
Project Number: 2011-008
Status: City staff completed punch list walkover 01 August 2013.
Next Task: Laskey-Clifton to complete the punch list items for project closeout (estimated 2 days of work).
Budget: \$1.3 MM
Description: This project replaces undersized and aging water pipes in the South Beach area, improving water capacity and pressure. In addition, sanitary sewer pipes are being extended allowing adjacent properties to connect to City services, thereby abandoning aging septic systems.

Project: Agate Beach/NE 71st Waterlines and Lakewood Hills Pump Station
Project Number: 2011-018 and 2012-013
Status: Advertised for bid with a pre-bid meeting held on 01 August 2013.
Next Task: Open bids 13 August 2013.
Budget: \$1.3 MM
Description: Installing a new water distribution pipeline along US-101 in the Agate Beach area and along NE 71st St for Phase 1 of the NE 71st St. Water System Improvements Project. The Lakewood Hills Pump Station which will improve performance and reliability for pressure and fire flow.



Agenda Item # VIII.A. _____
Meeting Date August 5, 2013 _____

CITY COUNCIL AGENDA ITEM SUMMARY
City of Newport, Oregon

Issue/Agenda Title Public hearing and possible adoption of Ordinance No. 2056 amending the Port Facilities section of the Newport Comprehensive Plan

Prepared By: Derrick Tokos Dept Head Approval: DT City Mgr Approval: _____

ISSUE BEFORE THE COUNCIL: Consideration of whether or not it is in the public interest to rewrite the Port Facilities section of the Public Facilities element of the Newport Comprehensive Plan to align with the Port of Newport’s Strategic Business and Capital Improvement Plans, dated January 2013, and to establish that it is a City priority to collaborate with the Port in the implementation of its plans. At its July 8, 2013 meeting, the Planning Commission voted unanimously to recommend adoption of the changes.

STAFF RECOMMENDATION: Staff recommends the Council accept the Planning Commission’s recommendation and adopt the ordinance.

PROPOSED MOTIONS: I move for reading, by title only, of an ordinance that repeals and replaces the Port Facilities section and amends the Public Facilities Goals and Policies section of the Newport Comprehensive Plan and for adoption by roll call vote.

KEY FACTS AND INFORMATION SUMMARY: Port of Newport facilities are part of the City’s infrastructure, and there is a Port section in the Public Facilities element of the Newport Comprehensive Plan. This section of the Plan was last updated in 1986 and is outdated. The Port of Newport updated its Strategic Business Plan and Capital Improvement Plan in January of 2013. These documents are posted on the Port of Newport’s website at: <http://www.portofnewport.com/>

The City of Newport and Port of Newport have had a longstanding collaborative working relationship. Both organizations promote economic development and maintain infrastructure critical to such development. Incorporating the Port’s business and infrastructure priorities into the Newport Comprehensive Plan allows the City to assess how those priorities align with its other capital needs. This promotes the timely, orderly, and efficient provision of public facilities and services. Establishing as a matter of policy that it is a City priority to coordinate with the Port on infrastructure projects and to support the Port’s capital improvement plan will assist the Port and City in securing outside funds for projects. This is critical in a time where there is limited federal and state resources for maintaining and upgrading infrastructure needed to support economic growth.

The Newport Planning Commission reviewed the proposed changes at work sessions on April 8, 2013 and May 28, 2013. The Planning Commission held a public hearing on July 8, 2013, and voted to recommend adoption of the amendments.

Notification for the proposed amendments was provided to the Department of Land Conservation & Development (DLCD) on June 3, 2013. Notice of the Planning Commission and City Council hearings was published in the Newport News-Times on July 3, 2013 and July 26, 2013, respectively.

As this is a legislative item, there are no approval criteria.

OTHER ALTERNATIVES CONSIDERED: None.

CITY COUNCIL GOALS: The amendments further the Council's goal of maintaining and implementing economic development strategies by ensuring that the City's infrastructure policies are closely coordinated with the Port of Newport.

ATTACHMENT LIST:

- Proposed Ordinance
- Existing (outdated) Port Section of the Comprehensive Plan
- Minutes from the July 8, 2013 Planning Commission Hearing
- Notice for the City Council Hearing

FISCAL NOTES: None. The proposed changes do not commit the City to making any specific financial decisions.

CITY OF NEWPORT

ORDINANCE NO. 2056

**AN ORDINANCE AMENDING THE PUBLIC FACILITIES ELEMENT OF THE CITY OF NEWPORT COMPREHENSIVE PLAN TO REMOVE AND REPLACE THE PORT FACILITIES SECTION AND TO AMEND THE GOALS AND POLICIES SECTION TO ADD PROVISIONS FOR THE PORT OF NEWPORT
(Newport File No. 1-CP-13)**

Summary of Findings:

1. On May 28, 2013 the Newport Planning Commission initiated amendments to the “Public Facilities” element of the Newport Comprehensive Plan. The Port Facilities section of the Plan has been rewritten so that it aligns with the Port of Newport’s Strategic Business and Capital Improvement Plans, dated January 2013. Further, the Goals and Policies section of the Plan has been amended to establish that it is a City priority to assist the Port in the implementation of its plans.
2. Port of Newport and its appurtenant waterfront facilities support commercial fishing fleets, recreational fishing, tourism, marine research, and international commerce all of which are vital to the economic health of the City of Newport.
3. In order to effectively serve these industries the Port of Newport must creatively leverage limited resources to maintain and expand upon its facilities and infrastructure. To this end, the Port has updated its strategic business plan and capital improvement plans to identify its most critical infrastructure needs and funding strategies for meeting those needs.
4. City similarly maintains waterfront infrastructure, along with a network of streets, sewer, water and storm drainage improvements that support Port activities. It is therefore essential that the City and Port coordinate capital investments so that they are mutually beneficial and best leverage limited resources.
5. Updating the Port Facilities section of the Newport Comprehensive Plan ensures that the City has current information on the Port’s infrastructure priorities and how those priorities relate to the City’s other capital needs.
6. City and Port have historically worked closely together to coordinate infrastructure projects and to facilitate economic growth within the community. Memorializing this relationship as a matter of policy provides both organizations with a competitive edge when seeking to secure outside funds for projects.
7. These amendments to the “Public Facilities” element of the Newport Comprehensive Plan are consistent with applicable Statewide Planning Goals in that the changes:
 - a. Have been developed and vetted with the City of Newport Planning Commission and its Advisory Committee consistent with Statewide Planning Goal 1, Public Involvement; and

- b. Update the Newport Comprehensive Plan’s technical inventory with respect to the condition of Port facilities, infrastructure investment priorities, and funding strategies that will facilitate fact based land use decision making processes consistent with Statewide Planning Goal 2, Land Use Planning; and
- c. Recognize the importance of upgrading Port facilities, as envisioned in the capital improvement plan, so that structures located within low lying areas are more resilient to flood damage, consistent with Statewide Planning Goal 7; and
- d. Complement economic development strategies contained in the Comprehensive Plan that call for the City to coordinate with the Port of Newport on waterfront related development and to help facilitate growth of employment in commercial fishing, tourism, international commerce, and marine research, consistent with Statewide Planning Goal 9; and
- e. Provide for the timely, orderly, and efficient arrangement of public facilities and services by ensuring the Port infrastructure priorities are identified in conjunction with the City’s other capital project needs, as encouraged by Statewide Planning Goal 11; and
- f. Have been evaluated to ensure that the scope and extent of planned improvements to Port facilities, both in terms of upland and in-water areas, will occur on lands designated for development on the City’s adopted shoreland and estuarine resource maps, consistent with Statewide Planning Goals 16 and 17.

8. No other Statewide Planning Goals are applicable to the proposed changes to the “Public Facilities” element of the Newport Comprehensive Plan.

9. The Newport Planning Commission reviewed the proposed changes to the “Public Facilities” element of the Newport Comprehensive Plan, as they were being developed, at work sessions on April 8, 2013 and May 28, 2013. The Planning Commission held a public hearing on July 8, 2013, and voted to recommend adoption of the amendments.

10. The City Council held a public hearing on August 5, 2013 regarding the question of the proposed revisions, and voted in favor of their adoption after considering the recommendation of the Planning Commission and evidence and argument in the record.

11. Information in the record, including affidavits of mailing and publication, demonstrate that appropriate public notification was provided for both the Planning Commission and City Council public hearings.

THE CITY OF NEWPORT ORDAINS AS FOLLOWS:

Section 1. The entire Port Facilities section of the Public Facilities element of the City of Newport Comprehensive Plan is removed and replaced with the text set out in Exhibit "A".

Section 2. The Goals and Policies section of the Public Facilities element of the City of Newport Comprehensive Plan is amended to remove the underlining beneath “Water, Implementation Measure 3” and to include a new subsection titled “Port of Newport” with a goal and two policies as set out in Exhibit "B".

Section 3. This ordinance shall take effect 30 days after passage.

Date adopted and read by title only: _____

Signed by the Mayor on _____, 2013.

Sandra Roumagoux, Mayor

ATTEST:

Margaret M. Hawker, City Recorder

PORT FACILITIES¹

BACKGROUND

The Port District was formed in 1910 to promote water-related commerce in Lincoln County. The Port is located on the central Oregon coast and encompasses the Yaquina Bay estuary. The Port boundaries extend north to Otter Rock, east up to six miles inland, south to Seal Rock, and west to the Pacific Ocean. The Port of Toledo is adjacent to the Port of Newport's eastern boundary and the Port of Alsea adjoins the Seal Rock boundary.

VISION AND MISSION

Vision: The Port of Newport will serve as the premier Oregon coast port for the commercial fishing fleets, for recreational fishing and tourism, and for ocean observation and marine research support. We will be one of the top two Oregon coast ports for waterborne commerce while protecting and enhancing the beauty and integrity of the natural environment which is the foundation of our working waterfront community.

Mission: Build and maintain waterfront facilities, and promote/support projects and programs in cooperation with other community organizations and businesses that will retain and create new jobs and increase community economic development.

GOVERNANCE

The Port District is governed by a Board of Commissioners that is elected, at large, from the territory within the District and is responsible for policy setting and providing strategic direction to its professional staff. The Board is comprised of five members elected for four year terms. The terms are staggered.

EXISTING PORT FACILITIES

The Port of Newport was originally formed to promote water related commerce in Lincoln County and throughout its history has evolved and refined the provision of services to the commercial and recreational fishing fleets, to tourists, and for ocean observation and marine research support.

Port facilities are situated in three distinct areas bordering portions of the Yaquina Estuary. The South Beach facilities primarily support the recreational fleet, ocean observation and marine research and tourism activities. The Port's "Bay Front" facilities on the north shore of the bay primarily support the commercial fishing fleet along with some tourism. The Port's International Terminal is also located on the north shore of the Bay, to the east of the "Bay Front" facilities, adjacent to the Northwest Natural Gas LNG tank.

¹ Most of the information contained in this section is taken from the Port of Newport's Strategic Business and Capital Facilities Plans, prepared by the Northwest Port Planning Team, and dated January 2013.

Service Facilities

The South Beach Port facilities consist of a 600 berth recreational boat basin originally installed in 1978-79, a four lane boat launch facility with parking which was installed to replace the original marina launch facility in 2005, a 92 space RV Park installed in 2006, an older 52 space RV Park, the NOAA Marine Operations Center – Pacific (MOC-P) pier, office/operations building and Warehouse, completed in 2012, and several buildings leased to Oregon Brewing and other leased properties associated with ocean observation and marine research organizations (Oregon State Hatfield Marine Science Center, USA of Fish and Wildlife Service, Oregon Coast Aquarium, etc).

The Commercial Marina facilities consist of Port Docks 3, 5, 7, Swede’s Dock and the Hoist Dock along with upland dry storage and parking. The Port’s Bay Front facilities also include Port Dock 1, which is used for some transient vessel berthing along with providing a tourist platform for bay viewing and sea lion observation.

The International Terminal area contains facilities which consist of the Terminal Dock Facility (currently under complete reconstruction), along with some commercial fleet dry storage area and several leased properties and structures. A detailed map of existing leased facilities is included as Appendix A to Capital Facilities Plan for the Port of Newport, prepared by the Northwest Port Planning Team, dated January 2013.

A comprehensive inventory of Port owned facilities associated with all properties is presented in Appendix B of the same Capital Facilities Plan. The inventory includes an estimated current value of each facility along with an estimated replacement cost. The following table indicates a summary of Port owned facilities and estimated current values and replacement costs.

	Replacement Costs	Estimated Existing Value
Buildings	\$ 30,200,295	\$ 26,611,254
Docks/Piers	\$ 52,283,864	\$ 36,883,726
Parking	\$ 4,889,105	\$ 3,854,041
Other Facilities & Structures	\$ 787,000	\$ 338,999
Equipment	\$ 759,500	\$ 496,000
	<u>\$ 88,919,764</u>	<u>\$ 68,184,020</u>

While the numbers presented above are estimated, they give a perspective of the extent of what the Port owns and is responsible for.

Utilities

Along with the more visible Port owned facilities used for providing Port services and associated with leaseholds, there exists considerable utility infrastructure supporting the Port and its operations. Much of the utilities providing services to the Port are owned and operated by outside agencies (City of Newport, Central Lincoln PUD, etc) however, the Port does own and operate some underground utilities primarily associated with storm drainage and area lighting. Appendix C to the Capital Facilities Plan for the Port of Newport includes an inventory of utilities situated on Port properties that are necessary for Port Operations. It also identifies the controlling agency of the Utility. Appendix D to the Capital Facilities Plan contains maps of existing utilities serving the Port's various service areas.

DESIGN CRITERIA AND LEVEL OF SERVICE

Design Life of Improvements

The design life of the Port's infrastructure components is sometimes referred to as its useful life or service life. The selection of a design life is a matter of judgment based on such factors as the type and intensity of use, type and quality of materials used in construction, and the quality of workmanship during installation. The estimated and actual design life for any particular component may vary depending on the above factors. The establishment of a design life provides a realistic projection of service upon which to base an economic analysis of new capital improvements. The typical design life for system components is discussed below.

Floating Docks

Modern concrete floating docks are estimated to have a useful life of 35 to 50 years. Lightweight dock systems, such as timber, aluminum and steel typically have a life of 20 to 30 years.

Piling Supported Docks/Piers

On average, industry experts estimate that a galvanized, epoxy coated or galvanic protected steel pile has 8-10 years before it will require constant maintenance and up keep. These piles typically have a lifespan of 30 years. Steel pile lifespan can be significantly extended with the use of HDPE sleeves and caps. The service life of timber pile in a marine environment is dictated by the type of wood used and treatment. The life span of a treated timber pile in a marine setting ranges from 30-50 years. The disadvantage of timber pile is the limited diameter choices and difficulty in splicing for longer lengths needed for many applications.

Buildings, Upland Structures and Equipment

Major structures and buildings should have a design life of approximately 50 years. Mechanical equipment such as motors, pumps, lifts etc. usually have a useful life of about 15-20 years. The useful life of equipment can be extended when properly maintained.

Asphalt Surfaced Parking/Storage Areas

Asphalt surfaces for parking and storage areas typically have practical service lives of 15-20 years in the mild coastal climate. With the absence of base material failures (as typically represented by extensive cracking or “alligating” asphalt) surface life may be extended an additional 5-10 years through seal coating.

CAPITAL IMPROVEMENT PROJECTS

The term “capital improvement” refers to new or expanded physical facilities for the Port that are of relatively large size, are relatively expensive, and are considered permanent with respect to usefulness to service area customers. Large-scale replacement and rehabilitation of existing facilities also falls within this category.

In 2012 the Port Commission and its staff engaged stakeholders in the community to identify the District’s capital improvement needs. Projects were evaluated on a basis of physical need, desire, importance and availability of funding. The prioritization process placed the projects in three priority categories, Priority 1-3. The priority 1 projects are projects to be scheduled for work by 2018. Priority 2 projects are to be scheduled by 2023, and Priority 3 projects by 2028. The following is an initial cost and priority summary table of the identified projects for the Port:

Project Description	Priority	Estimated Cost of Improvement
Port Dock 7 Replacement	1	\$3,400,000
Wash down facility for South Beach Marina fish waste trash bins	1	\$40,000
Hoist Dock (Center Section) Replacement	1	\$637,500
Reconstruction of Recreational Marina Docks	1	\$130,000
Port Dock 5 Improvements	1	\$775,000
New Port Offices/Parking Area	1	\$878,149
Marina Dredging	1	\$4,732,302
SUBTOTAL -PRIORITY 1 PROJECTS		\$10,592,951
Renovate RV Park Annex	2	\$660,000
Rogue Brewery (Dry Moorage Building) North Wall/Siding Replacement	2	\$150,000
Electrical Load Center South Beach Marina	2	\$100,000
International Terminal Fire Water Line Loop	2	\$127,355

Wastewater Pump Station Replacement -South Beach	2	\$30,000
Port Dock 1 Replacement	2	\$750,000
SUBTOTAL -PRIORITY 2 PROJECTS		\$1,917,355
South Beach/Fishing Pier Storm Sewer Outfall Replacement	3	\$80,685
Picnic Bunker Rebuild	3	\$36,000
Pavement Reconstruction/Seal Coating (all areas)	3	\$400,030
Fishing Pier Replacement	3	\$1,567,000
Old Boat Ramp Fill	3	\$64,116
SUBTOTAL -PRIORITY 3 PROJECTS		\$2,147,831
TOTAL ALL PROJECTS		\$14,658,137

FINANCING

Grant and Loan Programs

The Port of Newport is eligible for federal and state funding assistance in the form of grants or low interest loans. Many of these programs are also available to the City of Newport. The following is a list of the major funding programs, which are typically utilized to assist qualifying ports in the financing of improvements.

- Oregon Business Development Department (OBDD) Community Development Block Grants. May be used for infrastructure or facilities development. The Port is only eligible if the grant is sponsored by the City of County on its behalf.
- OBDD Special Public Works Fund. Provides loan and grant funds for publically owned facilities that support economic and community development.
- OBDD Water/Wastewater Financing Program. A loan program that funds the design and construction of public infrastructure needed to ensure compliance with the Safe Drinking Water Act or the Clean Water Act.
- Connect Oregon. A multimodal transportation fund established by the Oregon Legislature. Subject to periodic reauthorization.
- Oregon Port Revolving Fund. A loan program to assist Oregon ports in the planning and construction of facilities and infrastructure.
- Oregon Port Planning and Marketing Fund. A grant program to help ports fund planning or marketing studies related to expanding their trade and commerce activities.
- Oregon Marine Navigation Improvement Fund. Provides grants and loans that fund either a federally authorized project that needs matching funds; or a non-federally authorized project that directly supports or accesses an authorized navigation improvement project.
- Oregon Marine Board Boating Facility Grant Program. Funds planning, design and construction, or rehabilitation of public recreational boat access and vessel waste collection facilities.
- Oregon Marine Board Boating Infrastructure Grants. Similar to the above, but larger scale and competitive nationally.
- Oregon Marine Board Clean Vessel Act Funds. A grant program that funds public and private vessel waste collection systems (pumpouts, dump stations, etc.)

Staff Note: If adopted, this language would replace the Port Facilities component of the Public Facilities Element of the Newport Comprehensive Plan (pages 175 to 181).

- Property Taxes. Includes taxes from permanent rates, local option levies, and bond levies.

Each of the government assistance programs has its own particular prerequisites and requirements. These assistance programs promote such goals as aiding economic development, benefiting areas of low to moderate-income families, and providing for specific community improvement projects. Not all ports or projects may qualify for all programs.

GOALS AND POLICIES PUBLIC FACILITIES ELEMENT

GENERAL

Goal: To assure adequate planning for public facilities to meet the changing needs of the City of Newport urbanizable area.

Policy 1: The city shall develop and maintain public facilities master plans (by reference incorporated herein). These facility plans should include generalized descriptions of existing facilities operation and maintenance needs, future facilities needed to serve the urbanizable area, and rough estimates of projected costs, timing, and probable funding mechanisms. Public facilities should be designed and developed consistent with the various master plans.

Policy 2: In order to assure the orderly and cost efficient extension of public facilities, the city shall use the public facilities master plans in the capital improvement planning.

Policy 3: The city shall work with other providers of public facilities to facilitate coordinated development.

Policy 4: Essential public services should be available to a site or can be provided to a site with sufficient capacity to serve the property before it can receive development approval from the city. For purposes of this policy, essential services shall mean:

- > Sanitary Sewers
- > Water
- > Storm Drainage
- > Streets

Development may be permitted for parcels without the essential services if:

- > The proposed development is consistent with the Comprehensive Plan; and
- > The property owner enters into an agreement, that runs with the land and is therefore binding upon future owners, that the property will connect to the essential service when it is reasonably available; and
- > The property owner signs an irrevocable consent to annex if outside the city limits and/or agrees to participate in a local improvement district for the essential service.

Policy 5: Upon the annexation of territory to the City of Newport, the city will be the provider of water and sewer service except as specified to the contrary in an urban service agreement or other intergovernmental agreement.

WATER

Goal: To provide the City of Newport with a high quality water system that will supply residents and businesses with adequate quantities for consumption and fire protection.

Policy 1: The city will comply with state and federal laws concerning water quality and will take appropriate steps consistent with those laws to protect and maintain drinking water source areas.

Implementation Measure 1: The City shall work to establish a source water protection buffer in the Big Creek Watershed. The City declares the Big Creek Watershed a public facility consistent with the definition of Public Facility Systems in OAR 660-011-0005(7)(a)(A). The City will work to establish a source water protection buffer that is consistent with the findings of the Oregon Department of Environmental Quality / Oregon Health Department source water assessment report (PWS #4100566).

Policy 2: The water system will be designed and developed to satisfy the water demand of the various users under normal and predictable daily and seasonal patterns of use, and at the same time provide sufficient supplies for most emergency situations.

Policy 3: The city may extend water service to any property within the city's urban growth boundary, and may extend water service beyond the urban growth boundary if the extension of service is not inconsistent with an urban service agreement or other intergovernmental agreement. The city may require a consent to annexation as a condition of providing water service outside the city limits.

Policy 4: The city will acquire lands within the municipal watershed when available or necessary to protect water quality or improve its water system.

Policy 5: The city will reconstruct its municipal raw water storage and distribution facilities to address identified structural deficiencies to Big Creek Dam #1 and Big Creek Dam #2.

Implementation Measure 1: The city shall conduct necessary and appropriate engineering studies to determine the safest and most cost-effective approach to ensure the integrity of the municipal water supply. The studies shall identify the cost and timing of needed capital projects to address identified structural deficiencies and comply with Policy 2 of this section.

Implementation Measure 2: The city shall explore financing mechanisms, and prepare a financing plan to fund construction needed to resolve the structural deficiencies by 2030.

Implementation Measure 3: The city shall use data and findings from Implementation Measures 1 and 2 of this section to update the Water Supply section of the Public Facilities element of the Newport Comprehensive Plan to reflect new information as a result of the engineering and finance studies.

WASTEWATER

Goal: To provide a wastewater collection and treatment system with sufficient capacity to meet the present and future needs of the Newport urbanizable area in compliance with State and Federal regulations.

Policy 1: On-site sewer systems shall not be allowed unless the city's sanitary sewer system is greater than 250 feet away. In any case, a subsurface permit from the Lincoln County Sanitarian must be obtained prior to any development that will rely on an on-site sewer system.

Policy 2: City wastewater services may be extended to any property within the urban growth boundary. Except for the very limited circumstances allowed by state law and regulations, the city will not generally provide wastewater services outside the urban growth boundary. The city may require a consent to annexation as a condition of providing wastewater service outside the city limits. Nothing in this policy obligates the City to provide wastewater services outside of the city limits. For property outside the city limits but within the urban growth boundary, wastewater services may be provided at the City's discretion only for:

- a) residentially zoned lands as allowed by county zoning without full services, and
- b) commercial and industrial zoned lands to existing lawful uses as of the date (9/4/07) of this amendment.

Policy 3: The city will design and develop the wastewater collection and treatment system in a way that addresses the demands of the various users under normal and predictable daily and seasonal patterns of use.

TRANSPORTATION

Transportation Goals and Policies repealed by Ordinance No. 1802 (January 4, 1999).

STORM WATER DRAINAGE

Goal: To provide a storm water drainage system with sufficient capacity to meet the present and future needs of the Newport urbanizable area.

Policy 1: The city will comply with state and federal laws concerning water quality.

Policy 2: The city will use existing, natural drainage systems to the greatest extent possible.

AIRPORT

Goal: To provide for the aviation needs of the City of Newport and Lincoln County.

Policy 1: The city will ensure through zoning and subdivision ordinance provisions that the airport will be able to operate safely and efficiently.

Policy 2: The city will cooperate with state and federal agencies in the development of the airport.

PORT OF NEWPORT

Goal: To collaborate with the Port of Newport on the implementation of its Capital Improvement Plan.

Policy 1: The city will coordinate with the Port of Newport when planning to upgrade or construct new public facilities within the Port District and will seek to partner on capital projects to achieve mutually beneficial outcomes.

Policy 2: The city will assist the Port of Newport in its efforts to secure funding for capital projects.

PORT FACILITIES

The upland areas adjacent to and development within Yaquina Bay are controlled by the City of Newport, Lincoln County, and the Newport Port Authority. The Newport Urban Renewal Agency has a significant development role on both sides of the bay. A brief listing and summary of Newport's major port facilities, their condition, where known, and plans for future development follows.

Existing Port Facilities:

An inventory of existing port facilities is provided in the document entitled "Update of Port Development Element of Comprehensive Plan" (hereinafter referred to as "Port Update").¹ Figures A-1 through A-5 show the location of the port facilities within the city.

The port consists of over 14,000 feet of waterfront property that borders the north and south shores of Yaquina Bay. Land uses on the north side of Yaquina Bay are primarily focused on tourism, commercial fishing and shipping, and support industries. The south side of the bay is used primarily for research and education facilities and marine-related recreation. Much of the area encompassed by the port is included in Unit 5 of the Yaquina Bay Estuary Management Plan, and approximately 250 acres of the area is undeveloped and zoned for water related/water dependent use. Table 9 on page 176 provides a list of existing port facilities and their condition.

The tourism, commercial fishing, and commercial shipping industries combine with research and educational interests to provide a very significant contribution to the local economy.

In 1987, the Port of Newport's International Terminals facility contributed more than \$8.5 million to the local economy, while providing 100 full-time jobs. In 1988, approximately 550,000 short tons of logs were exported on 33 ships calling at the facility. The Ship Berth One is used for the export of whole logs, while dimensioned lumber is loaded onto barges at the port's Barge Berth One at the International Terminals facility.

In 1986, the commercial fishing industry contributed approximately \$60 million in personal income and employed about 1,000

¹ This CH2M HILL report is a support document to the Comprehensive Plan but is not adopted by this reference as part of the plan itself.

Table 9
Port Facilities and Conditions

Existing Facilities	Condition
Port Dock One	Unknown
Public Rest Rooms	Adequate
Case Street Parking Facilities	Inadequate
U.S. Coast Guard Station	Unknown
Port Dock 3	Unknown
Port Dock 5	Inadequate
Army Corps Breakwater	Inadequate
Fuel Dock	Unknown
Maintenance Shop	Unknown
Port Office	Unknown
Swede's Dock	Unknown
Hoist Dock	Inadequate
Port Dock 7	Inadequate
Gear Storage	Inadequate
Embarcadero Marina	Adequate
International Terminals	
Ship Berth I	Inadequate
Barge Berth I	Inadequate
Ro/Ro Dock	Unknown
Private and Commercial Fishing Moorage	Inadequate
Staging for Log Export	Inadequate
Water Front Nature Trail	Unknown
Hatfield Marine Science Center	Adequate
HMSC Dock	Adequate
Seawater Intake	Adequate
Research Vessel Moorage	Adequate
EPA Facility	Inadequate
South Beach Moorage and Boat Launch	Inadequate
Light Marine Repair and Staging Station	Inadequate
Public Fishing Pier	Adequate
Idaho Point Marina	Unknown
Idaho Point Boat Launch and Parking	Adequate
Ore-Aqua Dock	Unknown
Fishing Vessel Moorage and Dockside Repair Area	Inadequate
Navigation Channel	Adequate
Industrial Park	Unknown

Source: Condition was determined based on whether improvements were needed and if the facility was able to serve 1989 needs. Information on existing facilities and conditions was derived from the 1989 Newport Urban Renewal Agency publication.

people. In addition, close to \$12 million was contributed by the processing industry, and almost \$6 million in personal income was attributed to support activities such as equipment sales and maintenance. Facilities used by the commercial fishing industry include the Hoist Dock for servicing ships, gear storage areas (Port Dock 7 and the Hoist Dock), boat haulouts, moorage, Port Dock One, and the Ore-Aqua Dock for dockside repairs. Lack of moorage for commercial fishing vessels was identified as the most significant deficiency in the Port of Newport's facilities.

The Hatfield Marine Science Center, with over 300 full-time employees, performs a variety of functions and contributes significantly to the Newport economy. Research and education facilities for Oregon State University comprise the majority of the existing facilities. The U.S. Department of Fish and Wildlife and the Environmental Protection Agency also have major offices in these buildings.

Recommended Port Improvements:

Based on a review of published literature and statistics, information obtained in public meetings, committee meetings, and personal interviews, deficiencies in port facilities were identified and development plans prepared. The development plans consider the wide variety of needs presented and acknowledge the competition between the marine-related industries for certain tracts of waterfront property.

After the various improvements and developments were identified, a schedule was prepared establishing a potential time frame for completing the proposed developments. Additionally, order of magnitude costs were prepared for each of the major projects that would require public financing. Limited funding and environmental regulations will be the most likely restrictions to developing the identified projects. Section 7 of the Port Update provides a detailed discussion of the recommended time frames for development projects.

Information concerning costs, development priority, and funding source is listed in Table 10 (page 179). The location of new or additional facilities is provided in Figures B-1 through B-7 of the Facilities Plan.

The proposed improvements and developments that may be appropriate for partial public funding include the following.

Fisherman's Investment Site: This project involves the development of the Fisherman's Investment Company property into a multi-use commercial fishing facility. This property includes approximately seven acres and is located in the lower bay outside the urban growth boundary. The proposed facility would relieve

identified deficiencies in permanent and transient moorage, service docks, work docks, dockside repair, gear storage and staging, and marine industrial space.

Port Docks 5X and 5D Expansion: Because the wooden floats for these docks are nearing their useful service life, they need to be replaced with heavy duty concrete float units and expanded. Expansion and rehabilitation of these facilities would provide moorage for boats in the 80 foot and above class.

Corps of Engineers' Breakwater Relocation: The existing bulkhead is nearing the end of its service life and needs to be expanded and relocated to provide for the expansion of commercial moorage. Rehabilitation should include replacing portions of the breakwater that have been destroyed by storms over the years, and a condition survey should be performed to determine what additional repairs are needed.

Port Dock 5 Fill and Redevelopment of Port Dock 7 Fill: Various identified needs could be met by constructing a fill on the tidelands owned by the port between Port Dock 3 and the Port Dock 7 fill. Construction of this fill would be an integral part of the redevelopment of approximately 2,500 feet of waterfront from Port Dock 3 to the Embarcadero. Specific elements of the redevelopment include:

- > Constructing a public waterfront park
- > Providing additional parking for commercial fishing fleet
- > Widening Bay Boulevard
- > Constructing additional staging and gear storage areas
- > Creating new marine-related commercial development areas
- > Relocating Port buildings
- > Constructing a boardwalk from Port Dock 3 to the Embarcadero
- > Creating permanent and transient moorage

Public Dock: The public dock would provide additional access to the waterfront and would be incorporated into the Port Dock 5 fill project. The dock would be very similar in size and type of construction to the Abbey Street Pier.

South Beach RV Park Expansion: The expansion of the South Beach RV Park would provide approximately 120 new spaces. The additional space would eliminate much of the congestion that occurs in the overflow parking areas.

Table 10
Recommended Improvement Projects

Projects	Cost (\$ x 1,000)	Funding Source
<u>Priority 1 (develop in next 5 years)</u>		
Development of Fisherman's Investment Site	\$ 6,000	Port*
Rehabilitation of Port Docks 5I and 5D	775,000	Port
Multi-level Parking Structure	2,000	UR
Additional Staging for International Terminals	Undetermined	Port
Rehabilitation of Existing Corps of Engineers Breakwater	125,000	Port
South Beach RV Park Expansion	860,000	Port
<u>Priority 2 (develop in 5 to 10 years)</u>		
Relocate Corps of Engineers Breakwater	2,600	Port
Port Dock Fill	Undetermined	Undetermined
Waterfront Park	200,000	Port
Commercial Fishing Center	Undetermined	Undetermined
Marine Commercial Lease Facility	Undetermined	Undetermined
Realignment of Port Docks 5 and 7	6,000	Port
Widening of Bay Boulevard	Undetermined	Undetermined
Public Viewing Dock	Undetermined	Undetermined
Transient Moorage	Undetermined	Undetermined
<u>Priority 3 (develop in next 10 to 15 years)</u>		
Second Ship Berth	32,000	Port
Second Barge Berth	5,800	Port

* "Port" refers to the Newport Port Authority and "UR" refers to the Newport Urban Renewal Agency.

Source: "Newport Urban Renewal Agency: Update of Port Development Element of Comprehensive Plan."
1989. Prepared by CH2M HILL, Inc.

South Beach Waterfront Park: The park would be located on the north end of the South Beach peninsula and would provide access to the waterfront and tide flats.

Commercial Fishing Fleet Moorage: The construction of this facility would provide much needed additional space. The most promising locations for these facilities are within the Port Dock 5 and 7 complex and at the Fisherman's Investment Site.

Dockside Repair Facility: The Port of Newport's Fishermen's Advisory Committee identified the lack of dockside facilities as one of several shortcomings limiting the growth of Yaquina Bay. The most favorable location for a new facility is at the Fisherman's Investment Site.

Ship Berth Two: Since 1982, there has been a steady increase in cargo movement through Ship Berth One. In 1988, 550,000 tons of short logs were moved through this facility. Because of the increasing demand, the existing facility is marginally adequate, and a second ship berth is needed. The most feasible location for this facility is on the southwest side of McLean Point.

Barge Berth Two: In 1988, there were 41 barge calls for approximately 235,000 short tons of lumber at Barge Berth Two. In 1989, approximately 60 barge calls were scheduled. If barge traffic continues to grow, or if an export cargo other than lumber materializes, a second barge berth will be needed. Suitable locations for this facility include the southwest corner of the International Terminals facility or between the International Terminals facility and McLean Point.

Rehabilitation of Corps of Engineers' Breakwater: If the existing breakwater is not relocated, it would need to be repaired to provide the originally intended protection.

Public Parking Structure: The public parking structure would be a multi-level facility and would accommodate approximately 400 cars. The entrance and exit for the structure would be located on an extension of S.W. 13th Street that would connect to existing streets near the intersection of Fall Street and Canyon Way.

Other Facilities: Other proposed facilities include boat haulout facilities, the expansion of the Hatfield Marine Science Center, a conference center, the construction of a surimi processing facility, and the development and expansion of the Oregon Coast Aquarium. The cost, potential funding sources, and development plans for these facilities were not included in the Port Update study.

Funding:

- 1.) The Port of Newport. The port funds many of its projects through a combination of federal, state, and local funding sources. Federal funds can be obtained through special appropriation acts of Congress. These funds are managed by the Economic Development Administration (EDA) and usually require a high percentage of matching local funds. State of Oregon funds can be obtained from either the Special Public Works Fund (which involves a 50% grant and 50% loan program) or from the port revolving loan fund, which is frequently used as a local match for federal programs. Local funds can be obtained through industrial revenue bonds or from general obligation bonds.

- 2.) Urban Renewal Funds. The Newport Development Commission administers the city urban renewal program, which provides monies through tax increment bonds. The commission administers two urban renewal districts located on the north and south sides of the bay.



Agenda Item #: IX.A.
Meeting Date: August 5, 2013

CITY COUNCIL AGENDA ITEM SUMMARY
City Of Newport, Oregon

Issue/Agenda Title: Consideration of Resolution No. 3643 Approving the ODOT Fund Exchange Agreement No. 29489

Prepared By: Schaecher Dept Head Approval: TG City Manager Approval: _____

Issue Before the Council: The issue before Council is consideration of Resolution No. 3643 approving the ODOT Fund Exchange Agreement No. 29489 and authorizing the Mayor to sign the agreement.

Staff Recommendation: Staff recommends adoption of Resolution No. 3643.

Proposed Motion: I move to adopt Resolution No. 3643 approving the ODOT Fund Exchange Agreement No. 29489 and authorize the Mayor to sign the agreement.

Key Facts and Information Summary: The city has submitted to ODOT, a request to use State Fund Exchange monies to overlay various city streets scheduled for this summer. ODOT has approved the request subject to City Council approval of the Local Agency Fund Exchange Agreement.

The federal government allocates the Safe, Accountable, Flexible, Efficient Transportation Equity Act: a Legacy for Users (SAFETY-LU, enacted August 10, 2005, by Public Law 109-59) monies to the transportation departments of all 50 states. ODOT sets aside a percent of this money and gives it to various counties and cities in the state. The Local Agency Fund Exchange Agreement allows ODOT to exchange these federal SAFETY-LU funds at an exchange rate of \$94 of state money for every \$100 of federal money. The state money does not have federal restrictions attached to it. Newport's share of the 2013 Fiscal Year dollars, through ODOT, is \$125,509. At the present exchange rate, Newport would receive \$117,978.46 of state dollars.

Other Alternatives Considered: Other alternatives are not recommended. Although the Fund Exchange Program monies could be used for other street related items, it is recommended that the city continue to use these funds for the purpose of street overlays only due to the fact that there is a backlog of streets needing to be overlaid.

City Council Goals: Streets and Transportation. Fiscal Year 2013/2014 - A. Provide consistent funding for street improvement projects, and D. Designate and develop gravel streets for paving, and develop a paving inventory and replacement program.

Attachment List: Resolution No. 3643
ODOT's 2013 Fund Exchange Agreement

Fiscal Notes: If Resolution No. 3643 is not adopted, the city will not receive this state funding. This fund greatly helps with the maintenance of the city's streets by the implementation of its street overlay program.

RESOLUTION NO. 3643

CITY OF NEWPORT

A Resolution Approving an Agreement with the State of Oregon
Regarding Administration of Federal Funds and
Authorizing Execution of the Agreement

WHEREAS, the City of Newport and the State of Oregon have, in the past, agreed to Local Agency Fund Exchange Agreements, that exchange federal funds granted to the city for state funds as a means of expeditious administration of the funds and recordkeeping; and

WHEREAS, the city and the state wish to enter into a similar agreement to exchange \$125,509.00 of 2013 federal funds for \$117,978.46 of state funds for improvements to various city streets, which consist of various street overlays; and

WHEREAS, the State of Oregon, acting by and through its Department of Transportation, has submitted a form of agreement, 2013 Fund Exchange Agreement (Misc. Contracts & Agreements No. 29489), for approval and execution by the City of Newport.

THE CITY OF NEWPORT RESOLVES AS FOLLOWS: 2013 Fund Exchange Agreement (Misc. Contracts & Agreements No. 29489) in the form of the attached Exhibit A is approved.

This resolution will become effective immediately upon its adoption.

Adopted by the City Council of the City of Newport, Oregon on August 5, 2013.

CITY OF NEWPORT

Sandra N. Roumagoux, Mayor

ATTEST:

Margaret M. Hawker, City Recorder

2013 FUND EXCHANGE AGREEMENT
Various City Street Overlay and Construction Projects
City of Newport

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

RECITALS

1. By the authority granted in Oregon Revised Statutes (ORS) 190.110, 366.572 and 366.576, State may enter into cooperative agreements with counties, cities and units of local governments for the performance of work on certain types of improvement projects with the allocation of costs on terms and conditions mutually agreeable to the contracting parties.

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

TERMS OF AGREEMENT

1. Agency has submitted a completed and signed Part 1 of the Project Prospectus, or a similar document agreed to by State, outlining the schedule and costs associated with all phases of various city street overlay and construction projects, hereinafter referred to as "Project."
2. State has reviewed Agency's prospectus and considered Agency's request for the fund exchange. State has determined that Agency's Project is eligible for the exchange of funds.
3. To assist in funding the Project, Agency has requested State to exchange 2013 federal funds, which have been allocated to Agency, for state funds based on the following ratio:

\$94 state for \$100 federal
4. Based on this ratio, Agency wishes to trade \$125,509.00 federal funds for \$117,978.46 state funds.
5. The term of this Agreement will begin upon execution and will terminate two (2) calendar years later, unless extended by an executed amendment.
6. The Parties agree that the exchange is subject to the following conditions:
 - a. The federal funds transferred to State may be used by State at its discretion.

- b. State funds transferred to Agency must be used for the Project. This fund exchange will provide funding for specific roadway projects and may also be used for the following maintenance purposes:
 - i. Purchase or Production of Aggregate. Agency shall ensure the purchase or production of aggregate will be highway related and used exclusively for highway work.
 - ii. Purchase of Equipment. Agency shall clearly describe how it plans to use said equipment on highways. Agency shall demonstrate that the equipment will only be used for highway purposes.
- c. State funds may be used for all phases of the Project, including preliminary engineering, right of way, utility relocations and construction. Said use shall be consistent with the Oregon Constitution and statutes (Section 3a of Article IX Oregon Constitution). Agency shall be responsible to account for expenditure of state funds.
- d. This fund exchange shall be on a reimbursement basis, with state funds limited to a maximum amount of \$117,978.46. All costs incurred in excess of the fund exchange amount will be the sole responsibility of Agency.
- e. State certifies, at the time this Agreement is executed, that sufficient funds are available and authorized for expenditure to finance costs of this Agreement within State's current appropriation or limitation of the current biennial budget.
- f. Agency, and any contractors, shall perform the work as an independent contractor and will be exclusively responsible for all costs and expenses related to its employment of individuals to perform the work including, but not limited to, retirement contributions, workers' compensation, unemployment taxes, and state and federal income tax withholdings.
- g. Agency shall comply with all federal, state, and local laws, regulations, executive orders and ordinances applicable to the work under this Agreement, including, without limitation, the provisions of ORS 279C.505, 279C.515, 279C.520, 279C.530 and 279B.270 incorporated herein by reference and made a part hereof. Without limiting the generality of the foregoing, Agency expressly agrees to comply with (i) Title VI of Civil Rights Act of 1964; (ii) Title V and Section 504 of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659A.142; (iv) all regulations and administrative rules established pursuant to the foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.
- h. Agency, or its consultant, shall conduct the necessary preliminary engineering and design work required to produce final plans, specifications and cost estimates;

purchase all necessary right of way in accordance with current state and federal laws and regulations; obtain all required permits; be responsible for all utility relocations; advertise for bid proposals; award all contracts; perform all construction engineering; and make all contractor payments required to complete the Project.

- i. Agency shall submit invoices to State on a monthly basis for actual costs incurred by Agency on behalf of the Project directly to State's Project Manager for review and approval. Such invoices will be in a form identifying the Project, the agreement number, the invoice or account number, or both, and will itemize all expenses for which reimbursement is claimed. Under no conditions shall State's obligations exceed \$117,978.46, including all expenses. Travel expenses will not be reimbursed.
- j. Agency shall, at its own expense, maintain and operate the Project upon completion at a minimum level that is consistent with normal depreciation and service demand.
- k. All employers, including Agency, that employ subject workers in the State of Oregon shall comply with ORS 656.017 and provide the required workers' compensation coverage unless such employers are exempt under ORS 656.126. Employers Liability insurance with coverage limits of not less than \$500,000 must be included. Agency shall ensure that each of its subcontractors complies with these requirements.
- l. This Agreement may be terminated by either Party upon thirty (30) days' notice, in writing and delivered by certified mail or in person.
 - i. State may terminate this Agreement effective upon delivery of written notice to Agency, or at such later date as may be established by State, under any of the following conditions:
 - A. If Agency fails to provide services called for by this Agreement within the time specified herein or any extension hereof.
 - B. If Agency fails to perform any of the other provisions of this Agreement, or so fails to pursue the work as to endanger performance of this Agreement in accordance with its terms, and after receipt of written notice from State fails to correct such failures within ten (10) days or such longer period as State may authorize.
 - ii. Either Party may terminate this Agreement effective upon delivery of written notice to the other Party, or at such later date as may be established by the terminating Party, under any of the following conditions:

- A. If either Party fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow either Party, in the exercise of their reasonable administrative discretion, to continue to make payments for performance of this Agreement.
 - B. If federal or state laws, regulations, or guidelines are modified or interpreted in such a way that either the work under this Agreement is prohibited or either Party is prohibited from paying for such work from the planned funding source.
- iii. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
- m. State and Agency agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be invalid, unenforceable, illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.
7. Agency acknowledges and agrees that State, the Oregon Secretary of State's Office, the federal government, and their duly authorized representatives shall have access to the books, documents, papers, and records of Agency which are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of six (6) years after final payment. Copies of applicable records shall be made available upon request. Payment for costs of copies is reimbursable by State.
8. Agency certifies and represents that the individual(s) signing this Agreement has been authorized to enter into and execute this Agreement on behalf of Agency, under the direction or approval of its governing body, commission, board, officers, members or representatives, and to legally bind Agency.
9. This Agreement may be executed in several counterparts (facsimile or otherwise) all of which when taken together shall constitute one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of this Agreement so executed shall constitute an original.
10. This Agreement and attached exhibits constitute the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either Party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of

State to enforce any provision of this Agreement shall not constitute a waiver by State of that or any other provision.

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

The funding for this Fund Exchange Program was approved by the Oregon Transportation Commission on March 21, 2012 as a part of the 2012-2015 Statewide Transportation Improvement Program (STIP).

The Program and Funding Services Manager approved the Fund Exchange on May 23, 2013.

SIGNATURE PAGE FOLLOWS

CITY OF NEWPORT, by and through its
elected officials

By _____
Mayor

Date _____

APPROVAL RECOMMENDED

By _____
City Manager

Date _____

APPROVED AS TO LEGAL FORM

By _____
City Legal Counsel

Date _____

STATE OF OREGON, by and through its
Department of Transportation

By _____
Region 2 Manager

Date _____

APPROVAL RECOMMENDED

By _____
Region 2 Planning and Development
Manager

Date _____

Agency Contact:

Greg Schaecher, Assistant City Engineer
City of Newport, Public Works Department
169 SW Coast Highway
Newport, OR 97365
Phone: (541) 574-3376
Email: GSchaecher@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



Agenda Item # IX.B.
Meeting Date August 5, 2013

CITY COUNCIL AGENDA ITEM SUMMARY
City Of Newport, Oregon

Issue/Agenda Title: Consideration and Potential Approval of a Special Public Works Fund Grant (IFA)

Prepared By: Tim Gross, Dir of PW/CE Dept Head Approval: _____ City Manager Approval: _____

Issue Before the Council:

Consideration and possible approval of a Special Public Works Fund Emergency Project Financing Contract through the State of Oregon Infrastructure Financing Agency (IFA).

Staff Recommendation:

Approve the contract and authorize the Mayor to execute the contract on behalf of the City of Newport.

Proposed Motion:

I move to approve and authorize the Mayor to execute the Special Public Works Fund Emergency Project Financing Contract in the amount of \$216, 702, as issued by the State of Oregon Infrastructure Financing Authority.

Key Facts and Information Summary:

Between January 13-21, 2011, the Oregon Coast experienced a severe winter storm with flooding, mudslides, landslides, and debris flows. Heavy precipitation saturated the subsoils on Big Creek Road causing slumping/landsliding of the fill/colluvial material underlying two segments of the road and shoulder. Shortly thereafter Lincoln County was included in a disaster declaration and became eligible for FEMA funding for repairs to damaged infrastructure. The Big Creek Road Landslide was designated as FEMA DR-156-PW65 and City staff engaged a geotechnical and civil engineer to design a repair.

The final repair scenario engineering estimate as determined by FEMA, is \$866,808. FEMA will fund 75% of this repair cost and the City is liable for 25%.

The City's Grant Consultant, Chase Park Grants, organized a one-stop luncheon in Newport on June 10th, 2013 which included representatives from the Infrastructure Finance Authority. During this meeting the City discovered that the City is an eligible recipient of the IFA's Special Public Works Fund Emergency Project Financing to cover match funds for FEMA declared disasters. Chase Park Grants immediately coordinated a grant application and the City received notice of award for this grant in the amount of \$216,702, or 25% of the estimated project cost, on July 16, 2013.

Bids for the Big Creek Road Landslide Repair project were opened at 2:00 pm on Thursday, August 1, 2013. A Notice of Intent to Award this project will be presented to Council later on the agenda of today's meeting.

Other Alternatives Considered:

Internally funding the City's 25% match. Please see fiscal notes below.

City Council Goals:

None.

Attachment List:

Special Public Works Fund Emergency Project Financing Contract

Fiscal Notes:

Funding for the project was initially proposed using Newport Gas Tax dollars. The Capital Improvement Plan and budget for Fiscal Year 2014 shows \$180,006 from Newport Gas Tax reserved to fund the City's 25% match. The reason these funds are less than the grant award is because the project costs were escalated in the last few months to account for a changed design due to right-of-way constraints. These funds will be reallocated to the SE Moore Road and Bay Boulevard Drainage and Road Improvements and will allow design for this project to be started earlier.

SPECIAL PUBLIC WORKS FUND EMERGENCY PROJECT
FINANCING CONTRACT

Project Name: City of Newport Big Creek Road Landslide Repairs (FEMA Match)

Project Number: L14001

This financing contract (“Contract”), dated as of the date the Contract is fully executed, is made by the State of Oregon, acting by and through the Oregon Infrastructure Finance Authority (“IFA”), and the City of Newport, OR (“Recipient”) for financing of the project referred to above and described in Exhibit B (“Project”). This Contract becomes effective only when fully signed and approved as required by applicable law. Capitalized terms not defined in Section 1 and elsewhere in the body of the Contract have the meanings assigned to them by Exhibit A.

This Contract includes the following exhibits, listed in descending order of precedence for purposes of resolving any conflict between two or more of the parts:

Exhibit A	General Definitions
Exhibit B	Project Description
Exhibit C	Project Budget

SECTION 1 - KEY TERMS

The following capitalized terms have the meanings assigned below.

“Estimated Project Cost”: \$866,808

“Grant Amount”: \$216,702

“Project Closeout Deadline”: 90 days after the earlier of the Project Completion Date or the Project Completion Deadline.

“Project Completion Deadline”: 36 months after the date of this Contract.

SECTION 2 - FINANCIAL ASSISTANCE

The IFA shall provide Recipient, and Recipient shall accept from IFA, a grant (the “Grant”) in an aggregate amount not to exceed the Grant Amount.

SECTION 3 - DISBURSEMENTS

- A. Reimbursement Basis. The Financing Proceeds shall be disbursed to Recipient on an expense reimbursement or costs-incurred basis. The Recipient must submit each disbursement request for the Financing Proceeds on an IFA-provided or IFA-approved disbursement request form (“Disbursement Request”).
- B. Financing Availability. The IFA’s obligation to make and Recipient’s right to request disbursements under this Contract shall terminate on the Project Closeout Deadline.

SECTION 4 - CONDITIONS PRECEDENT

- A. Conditions Precedent to Funding Commitment. The IFA's obligations are subject to the receipt of the following items, in form and substance satisfactory to IFA and its Counsel:
- (1) This Contract duly signed by an authorized officer of Recipient.
 - (2) Such other certificates, documents, opinions and information as IFA may reasonably require.
- B. Conditions to Disbursements. As to any disbursement, IFA has no obligation to disburse funds unless all following conditions are met:
- (1) There is no Default or Event of Default.
 - (2) The representations and warranties made in this Contract are true and correct on the date of disbursement as if made on such date.
 - (3) The IFA, in the reasonable exercise of its administrative discretion, has sufficient moneys in the Fund for use in the Project and has sufficient funding, appropriations, limitations, allotments and other expenditure authority to make the disbursement.
 - (4) The IFA (a) has received a completed Disbursement Request, (b) has received any written evidence of materials and labor furnished to or work performed upon the Project, itemized receipts or invoices for payment, and releases, satisfactions or other signed statements or forms as IFA may require, (c) is satisfied that all items listed in the Disbursement Request are reasonable and that the costs for labor and materials were incurred and are properly included in the Costs of the Project, and (d) has determined that the disbursement is only for costs defined as eligible costs under the Act and any implementing administrative rules and policies.
 - (5) Department receives and approves evidence of OR Emergency Management / FEMA approval of activities as described in the approved Project Worksheets and their payment of 75% of the requested reimbursement.
 - (6) Recipient has delivered documentation satisfactory to IFA that, in addition to the Financing Proceeds, Recipient has available or has obtained binding commitments for all funds necessary to complete the Project.
 - (7) Any conditions to disbursement elsewhere in this Contract are met.

SECTION 5 - USE OF FINANCIAL ASSISTANCE

- A. Use of Proceeds. The Recipient shall use the Financing Proceeds only for the activities described in Exhibit B and according to the budget in Exhibit C. Recipient may not transfer Financing Proceeds among line items in the budget without the prior written consent of IFA. Recipient may not use any of the Grant proceeds for costs that are not allowed under the FEMA Project Worksheets described in Exhibit B or not in the Project Budget.
- B. Costs of the Project. The Recipient shall apply the Financing Proceeds to the Costs of the Project in accordance with the Act, and Oregon law as applicable. Financing Proceeds cannot be used for costs in excess of one hundred percent (100%) of the total Costs of the Project and cannot be used for pre-Award Costs of the Project, unless permitted by Exhibit B. Total disbursements under this Grant shall not exceed the total local matching funds requirement for federal disaster relief or 25 percent of the total Costs of the Project, whichever is less.
- C. Costs Paid for by Others. The Recipient may not use any of the Financing Proceeds to cover costs to be paid for by other financing for the Project from another State of Oregon agency or any third party.

SECTION 6 - REPRESENTATIONS AND WARRANTIES OF RECIPIENT

The Recipient represents and warrants to IFA:

- A. Estimated Project Cost. A reasonable estimate of the Costs of the Project is shown in Section 1, and the Project is fully funded.
- B. Organization and Authority.
- (1) The Recipient is a “Municipality” under the Act, and validly organized and existing under the laws of the State of Oregon.
 - (2) The Recipient has all necessary right, power and authority under its organizational documents and under Oregon law to (a) execute and deliver this Contract, and (b) incur and perform its obligations under this Contract.
 - (3) This Contract, executed and delivered by Recipient has been authorized by an ordinance, order or resolution of Recipient’s governing body, and voter approval, if necessary, that was adopted in accordance with applicable law and requirements for filing public notices and holding public meetings.
 - (4) This Contract has been duly executed by Recipient, and when executed by IFA, is legal, valid and binding, and enforceable in accordance with its terms.
- C. Full Disclosure. The Recipient has disclosed in writing to IFA all facts that materially adversely affect the Project, or the ability of Recipient to perform all obligations required by this Contract. The Recipient has made no false statements of fact, nor has it omitted information necessary to prevent any statements from being misleading. The information contained in Exhibit B and Exhibit C is true and accurate in all respects.
- D. Pending Litigation. The Recipient has disclosed in writing to IFA all proceedings pending (or to the knowledge of Recipient, threatened) against or affecting Recipient, in any court or before any governmental authority or arbitration board or tribunal, that, if adversely determined, would materially adversely affect the Project or the ability of Recipient perform all obligations required by this Contract.
- E. No Defaults.
- (1) No Defaults or Events of Default exist or occur upon authorization, execution or delivery of this Contract.
 - (2) The Recipient has not violated, and has not received notice of any claimed violation of, any agreement or instrument to which it is a party or by which the Project or its property may be bound, that would materially adversely affect the Project or the ability of Recipient to perform all obligations required by this Contract.
- F. Compliance with Existing Agreements and Applicable Law. The authorization and execution of, and the performance of all obligations required by, this Contract will not: (i) cause a breach of any agreement, indenture, mortgage, deed of trust, or other instrument, to which Recipient is a party or by which the Project or any of its property or assets may be bound; (ii) cause the creation or imposition of any third party lien, charge or encumbrance upon any property or asset of Recipient; (iii) violate any provision of the charter or other document pursuant to which Recipient was organized or established; or (iv) violate any laws, regulations, ordinances, resolutions, or court orders related to Recipient, the Project or its properties or operations.

G. Governmental Consent. The Recipient has obtained or will obtain all permits and approvals, and has made or will make all notifications, declarations, filings or registrations, required for the making and performance of its obligations under this Contract, and undertaking and completion of the Project.

SECTION 7 - COVENANTS OF RECIPIENT

The Recipient covenants as follows:

A. Notice of Adverse Change. Recipient shall promptly notify IFA of any adverse change in the activities, prospects or condition (financial or otherwise) of Recipient or the Project related to the ability of Recipient to perform all obligations required by this Contract.

B. Compliance with Laws. The Recipient shall comply with all applicable laws, rules, regulations and orders of any court or governmental authority that relate to this Contract, the Project and the operation of the road system of which the Project is a component. In particular, but without limitation, Recipient shall comply with the following, as applicable:

- (1) State procurement regulations found in the Oregon Public Contracting Code, ORS Chapter 279A, 279B and 279C.
- (2) State labor standards and wage rates found in ORS Chapter 279C.
- (3) OAR 123-042-0165 (5) requirements for signs and notifications.

These laws, rules, regulations and orders are incorporated by reference in this Contract to the extent required by law.

C. Project Completion Obligations. Recipient shall:

- (1) Provide IFA with copies of all plans and specifications relating to the Project.
- (2) Provide a copy of the bid tabulation and notice of award to IFA.
- (3) Permit IFA to conduct field engineering and inspection of the Project at any time.
- (4) Complete the Project using its own fiscal resources or money from other sources to pay for any Costs of the Project in excess of the total amount of financial assistance provided pursuant to this Contract.
- (5) Complete the Project no later than the Project Completion Deadline.
- (6) No later than the Project Closeout Deadline, provide IFA with a final project completion report on a form provided by IFA, including Recipient's certification that the Project is complete, all payments are made, and no further disbursements are needed; provided however, for the purposes of this Contract, IFA will be the final judge of the Project's completion.
- (7) Obtain and maintain as-built drawings for all facilities constructed as part of the Project.

D. Ownership of Project. The Project is and will continue to be owned by Recipient for five years after the Project Completion Date. The Project will be operated by Recipient or by a person under a management contract or operating agreement with Recipient. Any such management contract or operating agreement will be structured as a "qualified management contract" as described in IRS Revenue Procedure 97-13, as amended or supplemented.

E. Operation and Maintenance of the Project. Recipient shall operate and maintain the Project in good repair and operating condition so as to preserve the long term public benefits of the Project, including making all necessary and proper repairs, replacements, additions, and improvements. On or before the Project Closeout Date, Recipient shall adopt a plan acceptable to IFA for the on-going

operation and maintenance of the Project without reliance on IFA financing and furnish IFA, at its request, with evidence of such adoption. The plan must include measures for generating revenues sufficient to assure the operation and maintenance of the Project during the usable life of the Project.

- F. Insurance, Damage. The Recipient shall maintain, or cause to be maintained, until five years after the Project Completion Date, insurance policies with responsible insurers or self insurance programs, insuring against liability and risk of direct physical loss, damage or destruction of the Project, at least to the extent that similar insurance is customarily carried by governmental units constructing, operating and maintaining similar facilities. Nothing in this provision precludes Recipient from exerting a defense against any party other than IFA, including a defense of immunity.
- G. Sales, Leases and Encumbrances. Unless specifically described in Exhibit B, Recipient shall not sell, lease, exchange, abandon, transfer or otherwise dispose of any substantial portion of or interest in the Project unless worn out, obsolete, or, in the reasonable business judgment of Recipient, no longer useful in the operation of the Project. Nevertheless, IFA may consent to such disposition if it has received 90 days' prior written notice from Recipient. Such consent may be conditioned upon receipt by IFA of an opinion of Bond Counsel to the effect that such disposition complies with applicable law and will not adversely affect the exclusion of interest on any Lottery Bonds from gross income for purposes of federal income taxation under Section 103(a) of the Code. The term "Bond Counsel" means a law firm determined by IFA to have knowledge and expertise in the field of municipal law and whose opinions are generally accepted by purchasers of municipal bonds.
- H. Records; Accounts. The Recipient shall keep accurate books and records for the use of all Financing Proceeds and the expenditure or utilization of all resources used in the Project, separate and distinct from its other books and records, and maintain them according to generally accepted accounting principles established by the Government Accounting Standards Board in effect at the time.
- I. Inspections; Information. The Recipient shall permit IFA and any party designated by IFA: (i) to inspect, at any reasonable time, the property, if any, constituting the Project; and (ii) at any reasonable time, to inspect and make copies of any accounts, books and records, including, without limitation, its records regarding receipts, disbursements, contracts, investments and any other related matters. The Recipient shall supply any related reports and information as IFA may reasonably require.
- J. Records Maintenance. Recipient shall retain and keep accessible all books, documents, papers, and records that are directly related to this Contract, the Project or the Financing Proceeds for a minimum of six years, or such longer period as may be required by other provisions of this Contract or applicable law, following the later of the Project Closeout Deadline, actual completion of the Project or final completion and satisfaction of all reporting requirements of Recipient under this Contract. If there are unresolved issues at the end of the six-year period, Recipient shall retain the books, documents, papers and records until the issues are resolved.
- K. Economic Benefit Data. The IFA may require Recipient to submit specific data on the economic development benefits of the Project and other information to evaluate the success and economic impact of the Project, from the date of this Contract until six years after the Project Completion date. The Recipient shall, at its own expense, prepare and submit the data within the time specified by IFA.
- L. Minority, Women & Emerging Small Business. ORS 200.090 requires all public agencies to "aggressively pursue a policy of providing opportunities for available contracts to emerging small businesses..." The IFA encourages Recipient in any contracting activity to follow good faith efforts as described in ORS 200.045, available at <http://www.leg.state.or.us/ors/200.html>. Additional resources are provided by the Governor's Advocate for Minority, Women & Emerging Small

Business at <http://egov.oregon.gov/Gov/MWESB/index.shtml>. Also, the Office of Minority, Women, and Emerging Small Business at the Oregon Business Development Department maintains a list of certified firms and can answer questions. Search for certified MWESB firms on the web at: <http://imd10.cbs.state.or.us/ex/dir/omwesb/>.

- M. Professional Responsibility. A professional engineer or architect, as applicable, registered and in good standing in Oregon, will be responsible for the design and construction of the Project. All service providers retained for their professional expertise will be certified, licensed, or registered, as appropriate, in the State of Oregon for their specialty. Recipient shall follow standard construction practices, such as bonding requirements for construction contractors, requiring errors and omissions insurance, and performing testing and inspections during construction.
- N. Notice of Default. The Recipient shall give IFA prompt written notice of any Default as soon as any senior administrative or financial officer of Recipient becomes aware of its existence or reasonably believes a Default is likely.
- O. Indemnity. To the extent authorized by law, Recipient shall defend (subject to ORS chapter 180), indemnify, save and hold harmless IFA and its officers, employees and agents from and against any and all claims, suits, actions, proceedings, losses, damages, liability and court awards including costs, expenses, and attorneys fees incurred related to any actual or alleged act or omission by Recipient, or its employees, agents or contractors; however, the provisions of this Section are not to be construed as a waiver of any defense or limitation on damages provided for under Chapter 30 of the Oregon Revised Statutes or under the laws of the United States or other laws of the State of Oregon.
- P. Further Assurances. The Recipient shall, at the request of IFA, authorize, sign, acknowledge and deliver any further resolutions, conveyances, transfers, assurances, financing statements and other instruments and documents as IFA reasonably determines may be necessary or desirable.
- Q. Exclusion of Interest from Federal Gross Income and Compliance with Code.
- (1) The Recipient shall not take any action or omit to take any action that would result in the loss of the exclusion of the interest on any Lottery Bonds used by IFA to fund the Financing Proceeds from gross income for purposes of federal income taxation, as governed by Section 103(a) of the Code. IFA may decline to disburse Financing Proceeds if it finds that the federal tax exemption of the Lottery Bonds cannot be assured.
 - (2) The Recipient shall not take any action (including but not limited to the execution of a management agreement for the operation of the Project) or omit to take any action that would cause any Lottery Bonds to be “private activity bonds” within the meaning of Section 141(a) of the Code. Accordingly, unless Recipient receives the prior written approval of IFA, Recipient shall not permit in excess of ten percent (10%) of either (a) the Financing Proceeds or (b) the Project financed or refinanced with the Financing Proceeds to be directly or indirectly used in any manner that would constitute “private business use” within the meaning of Section 141(b)(6) of the Code, including not permitting more than one half of any permitted private business use to be “disproportionate related business use” or private business use unrelated to the government use of the Financing Proceeds. Unless Recipient receives the prior written approval of IFA, Recipient shall not directly or indirectly use any Financing Proceeds to make or finance loans to persons other than governmental units, as that term is used in Section 141(c) of the Code.
 - (3) The Recipient shall not directly or indirectly use or permit the use of any of the Financing Proceeds or any other funds, or take any action or omit to take any action, which would cause any Lottery Bonds to be “arbitrage bonds” within the meaning of Section 148(a) of the Code.

- (4) The Recipient shall not cause any Lottery Bonds to be treated as “federally guaranteed” for purposes of Section 149(b) of the Code, as may be modified in any applicable rules, rulings, policies, procedures, regulations or other official statements promulgated or proposed by the Department of the Treasury or the Internal Revenue Service with respect to “federally guaranteed” obligations described in Section 149(b) of the Code. For purposes of this paragraph, any Lottery Bonds will be treated as “federally guaranteed” if: (a) all or any portion of the principal or interest is or will be guaranteed directly or indirectly by the United States of America or any agency or instrumentality thereof, or (b) five percent (5%) or more of the proceeds of the Lottery Bonds will be (i) used in making loans if the payment of principal or interest that is guaranteed in whole or in part by the United States of America or any agency or instrumentality thereof, or (ii) is invested directly or indirectly in federally insured deposits or accounts, and (c) none of the exceptions described in Section 149(b)(3) of the Code apply.
- (5) The Recipient shall assist IFA to ensure that all required amounts are rebated to the United States of America pursuant to Section 148(f) of the Code. Recipient shall, at the request of IFA, cooperate with IFA to provide information IFA may need to compute any arbitrage rebate payments which may be due in connection with the Lottery Bonds. Recipient shall, at the request of IFA, report any information on expenditure of amounts that are paid to the Recipient under this Agreement, which IFA reasonably requires to comply with the arbitrage compliance and rebate requirements which apply to the Lottery Bonds. The Recipient further shall reimburse IFA for the portion of any expenses it incurs related to the Financing Proceeds that is necessary to satisfy the requirements of Section 148(f) of the Code.
- (6) Upon IFA’s request, Recipient shall furnish written information regarding its investments and use of Financing Proceeds, and of any facilities financed or refinanced therewith, including providing IFA with any information and documentation that IFA reasonably determines is necessary to comply with the arbitrage and private use restrictions that apply to the Lottery Bonds.
- (7) Notwithstanding anything to the contrary, so long as is necessary to maintain the exclusion from gross income for purposes of federal income taxation of interest on any Lottery Bonds, the covenants contained in this subsection will survive the payment of the Lottery Bonds, and the interest thereon, including the application of any unexpended Financing Proceeds. The Recipient acknowledges that the Grant may be funded with the proceeds of the Lottery Bonds and that failure to comply with the requirements of this subsection could adversely affect any exclusion of the interest on the Lottery Bonds from gross income for federal income tax purposes.
- (8) The Recipient may use the Financing Proceeds to reimburse itself for Project expenditures made prior to the funding of the Grant only if permitted by Exhibit B and only if such reimbursement is allowed under one of the following four categories pursuant to 26 C.F.R. §1.150-2:
 - (a) Preliminary expenditures such as architectural, engineering, surveying, soil testing, bond issuance and similar costs that, in the aggregate, are not in excess of 20% of the proceeds of the Grant. Costs of land acquisition, site preparation and similar costs incident to commencement of construction are not preliminary expenditures.
 - (b) Expenditures for issuance costs.
 - (c) Expenditures that are described in a reimbursement resolution or other declaration of official intent that satisfies the requirements of 26 C.F.R. §1.150-2 and paid no earlier than 60 days prior to the adoption of such resolution or official intent.
 - (d) Expenditures paid within 60 days prior to the date the Grant is funded.

SECTION 8 - DEFAULTS

Any of the following constitutes an “Event of Default”:

- A. Any false or misleading representation is made by or on behalf of Recipient, in this Contract, or in any document provided by Recipient related to the Project, or in regard to compliance with the requirements of Section 103 and Sections 141 through 150 of the Code.
- B. Recipient fails to perform any obligation required under this Contract, other than that referred to in subsection A of this section 8, and that failure continues for a period of 30 calendar days after written notice specifying such failure is given to Recipient by IFA. The IFA may agree in writing to an extension of time if it determines Recipient instituted and has diligently pursued corrective action.

SECTION 9 - REMEDIES

- A. Remedies. Upon any Event of Default, IFA may pursue any or all remedies in this Contract, and any other remedies available at law or in equity to enforce the performance of any obligation of Recipient. Remedies may include, but are not limited to:
 - (1) Terminating IFA’s commitment and obligation to make the Grant or disbursements under the Contract.
 - (2) Barring Recipient from applying for future awards.
 - (3) Withholding amounts otherwise due to Recipient for application to the payment of amounts due under this Contract, including as provided in ORS 285B.449; however, this provision is not to be construed in a way that Recipient’s obligations would constitute debt that violates Section 10, Article XI of the Oregon Constitution.
 - (4) Requiring repayment of the Grant and all interest earned by Recipient on those Grant funds.
- B. Application of Moneys. Any moneys collected by IFA pursuant to section 9.A will be applied first, to pay any attorneys fees and other fees and expenses incurred by IFA; second, as applicable, to repay any Grant proceeds owed; third, to pay any other amounts due and payable under this Contract.
- C. No Remedy Exclusive; Waiver; Notice. No remedy available to IFA is intended to be exclusive, and every remedy will be in addition to every other remedy. No delay or omission to exercise any right or remedy will impair or is to be construed as a waiver of such right or remedy. No single or partial exercise of any right power or privilege under this Contract shall preclude any other or further exercise thereof or the exercise of any other such right, power or privilege. The IFA is not required to provide any notice in order to exercise any right or remedy, other than notice required in section 8 of this Contract.
- D. Default by IFA. In the event IFA defaults on any obligation in this Contract, Recipient’s remedy will be limited to injunction, special action, action for specific performance, or other available equitable remedy for performance of IFA’s obligations.

- E. No Construction against Drafter. This Contract is to be construed as if the parties drafted it jointly.
- F. Severability. If any term or condition of this Contract is declared by a court of competent jurisdiction as illegal, invalid or unenforceable, that holding will not invalidate or otherwise affect any other provision.
- G. Amendments, Waivers. This Contract may not be amended without the prior written consent of IFA (and when required, the Department of Justice) and Recipient. This Contract may not be amended in a manner that is not in compliance with the Act. No waiver or consent is effective unless in writing and signed by the party against whom such waiver or consent is sought to be enforced. Such waiver or consent will be effective only in the specific instance and for the specific purpose given.
- H. Attorneys Fees and Other Expenses. To the extent permitted by the Oregon Constitution and the Oregon Tort Claims Act, the prevailing party in any dispute arising from this Contract is entitled to recover its reasonable attorneys fees and costs at trial and on appeal. Reasonable attorneys fees cannot exceed the rate charged to IFA by its attorneys.
- I. Choice of Law; Designation of Forum; Federal Forum. 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 Contract, including, without limitation, its validity, interpretation, construction, performance, and enforcement.

Any party bringing a legal action or proceeding against any other party arising out of or relating to this Contract 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.

Notwithstanding the prior paragraph, 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 paragraph 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 paragraph 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.

- J. Integration. This Contract (including all exhibits, schedules or attachments) constitutes the entire agreement between the parties on the subject matter. There are no unspecified understandings, agreements or representations, oral or written, regarding this Contract.
- K. Execution in Counterparts. This Contract may be signed in several counterparts, each of which is an original and all of which constitute one and the same instrument.

The Recipient, by its signature below, acknowledges that it has read this Contract, understands it, and agrees to be bound by its terms and conditions.



STATE OF OREGON
acting by and through the
Oregon Infrastructure Finance Authority
of the Business Development Department



CITY OF NEWPORT

By: _____
Paulina Layton, Manager
Program Services Division

By: _____
The Honorable Sandra Roumagoux
Mayor of Newport

Date: _____

Date: _____

APPROVED AS TO LEGAL SUFFICIENCY IN ACCORDANCE WITH ORS 291.047:

 /s/ Keith Kutler as per email dated 23 July 2013
Keith Kutler, Assistant Attorney General

EXHIBIT A - GENERAL DEFINITIONS

As used in this Contract, the following terms have the meanings below.

“Act” means ORS 285B.410 through 285B.482, as amended.

“Award” means the award of financial assistance to Recipient by IFA dated 14 November 2012.

“C.F.R.” means the Code of Federal Regulations.

“Code” means the Internal Revenue Code of 1986, as amended, including any implementing regulations and any administrative or judicial interpretations.

“Costs of the Project” means Recipient’s actual costs (including any financing costs properly allocable to the Project) that are (a) reasonable, necessary and directly related to the Project, (b) permitted by generally accepted accounting principles to be Costs of the Project, and (c) are eligible or permitted uses of the Financing Proceeds under applicable state or federal statute and rule.

“Counsel” means an attorney at law or firm of attorneys at law duly admitted to practice law before the highest court of any state, who may be of counsel to, or an employee of, IFA or Recipient.

“Default” means an event which, with notice or lapse of time or both, would become an Event of Default.

“Financing Proceeds” means the proceeds of the Grant.

“ORS” means the Oregon Revised Statutes.

“Project Completion Date” means the date on which Recipient completes the Project.

EXHIBIT B - PROJECT DESCRIPTION

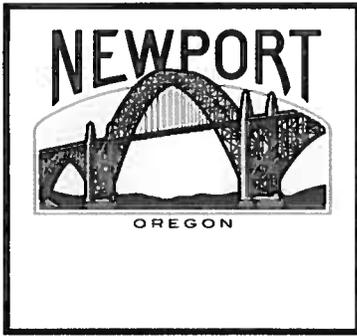
The Recipient will repair the two landslides on Big Creek Road and restore it to pre-disaster condition, according to Federal Emergency Management Agency Public Assistance program guidelines and Project Worksheet PW-00065(2). The Recipient will install a wall on the downhill slope of the southern slide and excavate the unstable material from behind the wall and replace and compact it with suitable material. The Recipient will install area drains to collect water and install a short section of storm drain to discharge the water in a more stable location down slope to prevent future slides. The Recipient will also install a traffic barrier along the top of the wall. The Recipient will install a retaining wall on the northern slide both above and below the road. The Recipient will install area drains, storm drain pipe and a traffic barrier similar to the southern slide site.

Oregon Business Development Department Budget



Recipient: City of Newport **Project Number:** L14001
Project Name: City of Newport Big Creek Road Landslide Repairs (FEMA Match)
Funding Programs: Special Public Works Fund

(A)	Department Funds				Other / Matching Funds				All Funds
	(B)	(C)	(D)	(E) = [B-C-D]	(F)	(G)	(H)	(I) = [F-G-H]	(J) = [C+D+G+H]
Activity	Approved Budget	Prior Disbursements	Current Request	Balance	Approved Budget	Expended To Date	Current Request	Balance	Disbursed & Expended
Engineering	\$26,902				\$80,706				
Construction	155,706				467,120				
Construction Contingency	7,640				22,920				
Legal	12,500				37,500				
Construction Management	10,800				32,397				
FEMA Cost Escalation Factor	3,154				9,463				
Total	\$216,702				\$650,106				



Agenda Item # IX.C.
Meeting Date 05 August 2013

CITY OF NEWPORT
AGENDA ITEM SUMMARY
City of Newport, Oregon

Issue/Agenda Title: Notice of Intent to Award: Roadway Reconstruction – NE Big Creek Rd.

Prepared By: Ted Jones **Dept Head Approval:**  **City Mgr Approval:** _____

Issue Before the Council:

Notice of Intent to Award the Roadway Reconstruction – NE Big Creek Rd., Project 2011-003

Staff Recommendation:

Staff recommends awarding Project No. 2011-003 Roadway Reconstruction – NE Big Creek Rd. to **Wildish Standard Paving**.

Proposed Motions:

I move that the City of Newport Public Works Department issue a Notice of Intent to Award the Roadway Reconstruction – NE Big Creek Rd. project to **Wildish Standard Paving** in the amount of **\$486,500.00** and contingent upon no protest, 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:

During the period of January 13-21, 2011, the Oregon Coast experienced a severe winter storm with flooding, mudslides, landslides, and debris flows. Heavy precipitation saturated the subsoils on Big Creek Road causing slumping/landsliding of the fill/colluvial material underlying two segments of the road and shoulder. Shortly thereafter Lincoln County was included in a disaster declaration and became eligible for FEMA funding for repairs to damaged infrastructure. The Big Creek Road Landslide was designated as FEMA DR-156-PW65 and City staff engaged a geotechnical and civil engineer to design a repair.

FEMA will fund 75% of this repair cost and the City is liable for 25%. The City's 25% balance is being funded by an Infrastructure Finance Authority (IFA) grant in an amount up to \$216,702 (or 25% of the project cost).

Bids were opened Thursday, August 1st, 2013, at 2:00 p.m. Please see the attached bid tabulation for details.

Engineers Estimate (base bid) **\$640,000**

<u>Contractor</u>	<u>Base Bid</u>
Wildish Standard Paving	\$486,500.00
West Coast Contractors	\$498,363.21
Legacy Contracting Inc.	\$536,045.00
Laskey-Clifton Inc.	\$619,150.00
Concrete Enterprises	\$630,092.33
Clackamas Construction	\$721,848.00

The apparent low responsive bidder is **Wildish Standard Paving** with a base bid amount of **\$486,500.00**.

Other Alternatives Considered:

Not applicable.

City Council Goals:

Streets and Transportation

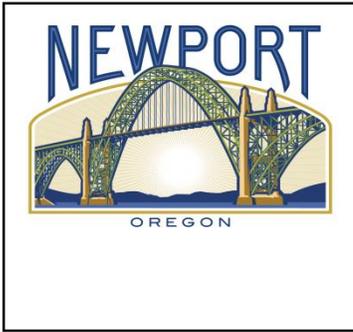
- Continue to support multi-modal forms of transportation in the City of Newport.

Attachment List:

None

Fiscal Notes:

This project is funded by a FEMA and an IFA grant.



Agenda Item # XI.D.
Meeting Date August 5, 2013

CITY COUNCIL AGENDA ITEM SUMMARY
City of Newport, Oregon

Issue/Agenda Title Lease of city dock and loading area at 459 SW Bay Boulevard.

Prepared By: Derrick Tokos Dept Head Approval: DT City Mgr Approval: _____

ISSUE BEFORE THE COUNCIL: Consideration of whether or not it is in the public interest for the City of Newport to execute a lease with California Shellfish Company, Inc. (dba Hallmark Fisheries) over property adjacent to the Fall Street parking lot. The property contains a paved loading area and dock.

STAFF RECOMMENDATION: Staff recommends the Council authorize the City Manager to execute the lease.

PROPOSED MOTION:

FOR APPROVAL: By order of the Newport City Council, I move to authorize the City Manager to execute a lease with California Shellfish Company, Inc. for use of loading and dock space at 459 SW Bay Boulevard, including the sublease of the in-water area identified in Department of State lands (DSL) lease #ML-10493, because doing so is in the public interest. Further, in leasing the property the Council finds that it is not needed for public purposes.

FOR DENIAL: I move that the Council forgo approving the lease because it is not in the public interest to do so.

KEY FACTS AND INFORMATION SUMMARY: The subject site has been used for fish processing purposes since 1957. It contains a dock, loading area, and security fence. The prior lease with California Shellfish expired in August of 2012 and the company has been operating under a month-to-month tenancy since that time. In addition to City owned property, this agreement will sublease to California Shellfish the in-water area that the City leases from the Department of State Lands. The monthly rental rate is \$2,436.10. This is an increase over the \$1,510.49 that is currently being paid. The difference represents changes to the CPI since the monthly rent was last adjusted. Given that this is only a three year lease, and that California Shellfish's has committed to restoring the dock to good working condition within that timeframe, the base rent will remain the same for the entire lease term. California Shellfish will also cover the cost of the City's state lease, including reimbursement to the City in the amount of \$1,209.86, which is what the City paid DSL for 2012-13 because the prior California Shellfish lease had expired. Additionally, California Shellfish is responsible for maintaining the facility during the term of the lease.

NMC 2.25.120 authorizes the Council to lease city-owned property if it determines that the property is not needed for public use and that it is in the public interest to enter into the lease.

OTHER ALTERNATIVES CONSIDERED: None.

CITY COUNCIL GOALS: No goals are directly applicable.

ATTACHMENT LIST:

- Draft lease agreement
- Lincoln County Assessor's Office Property Report
- Aerial map of the lease area

FISCAL NOTES: The lease will generate a little more than \$11,000 of additional General Fund revenue.

LEASE

This lease is between the City of Newport, an Oregon municipal corporation, ("City") as lessor and California Shellfish Company, Inc., a California corporation ("California Shellfish"), (dba Hallmark Fisheries) as lessee.

RECITALS

A. The City has the right to the property that is the subject of this lease by virtue of a lease with the State of Oregon, Division of State Lands ("State"), ML-10493/APP11874, for the period November 1, 1998 through October 31, 2018. The City has provided California Shellfish with a copy of the State Lease.

B. California Shellfish, formerly known as Point St. George Fisheries and Point Adams Packing Company, has been in exclusive possession of the premises and used them for fish processing since 1957.

1. **Leased Property.** Upon the following terms and conditions, the City leases to California Shellfish and California Shellfish rents from the following property (the premises):

Beginning at a point on the Southeasterly extension of the Southwesterly right-of-way line of SW Fall Street (said point also being the Northerly line of the Victor L. Bump property) that is 142.0 feet Southeasterly of the most easterly point of Block 3, Plan of Newport, a subdivision of record in Lincoln County, Oregon, thence Northeasterly 89.1 feet to a point on the Southwesterly line of that tract of land conveyed to Pt. St. George Fisheries, Inc., by deed, recorded April 1, 1982, in Book 131, Page 1328, microfilm records for Lincoln County, Oregon, said point being 121.0 feet Southeasterly and parallel to the Southeasterly line of Block 4, said Plan of Newport, thence Southeasterly along the Southwesterly line of said Pt. St. George Fisheries, Inc. tract to the mean low water line of the Yaquina Bay, then Southwesterly along said mean low water line to said Southeasterly extension of the Southwesterly line of SW Fall Street (said point also being on the Northerly line of the said Victor L. Bump property), and thence Northwesterly along said Southeasterly extension of the Southwesterly right-of-way line of SW Fall Street to the point of beginning;

SUBJECT TO:

a. The terms and conditions of the State lease, described above. California Shellfish agrees to perform and fulfill all of the City's obligations and duties, including any and all payment obligations, under the State lease, and shall do nothing which in any way impairs the City's rights under the State Lease.

b. The right of fishing, navigation, and commerce in the State of Oregon and the federal government and the rights of the public and governmental bodies in and to that portion thereof lying below the ordinary high water mark of the Yaquina Bay.

c. The mutual acknowledgment between the parties that the legal description used herein may not be a precise description of the premises leased and, therefore, the City shall not be held responsible or liable for damages or losses incurred as a result of any errors in the present description, so long as California Shellfish shall have substantial possession of the enclosed premises located thereon.

d. Easements, conditions, and restrictions of record, if any, and any interest or encroachment as might be disclosed by an inspection or survey of the premises.

e. The ownership interest of the State of Oregon, if any, in any portion of the property falling below the ordinary high water mark of the Yaquina Bay.

f. City's interest in the submerged and submersible land lying immediately adjacent to the southeasterly boundary of the property described above obtained by lease from the State of Oregon pursuant to Lease ML-10493.

2. **Term of Lease.** This lease shall be effective at 12:00:01 am on July 1, 2013 and shall remain in effect until midnight at the end of July 1, 2016.

3. **Rent.**

a. California Shellfish shall pay any amounts due or payable to the State of Oregon, Division of State Land for the use of any part of the leased premises, during the term of this lease or any renewal or extension thereof. In particular, California Shellfish shall pay all sums due to the State of Oregon pursuant to Lease No. ML-10493, between the City of Newport and the State of Oregon, or any subsequent or substitute lease to ML-10493.

b. California Shellfish shall reimburse the City \$1,209.86 for the State lease payment for 2012-13 which was due on November 1, 2012 and paid by the City.

c. The monthly rental rate for this lease shall be \$2,436.10.

4. **Premises "As Is."** California Shellfish takes the premises "as is," subject to all faults and defects. California Shellfish has been in possession of the premises since 1957 with the right and obligation to maintain the premises. California Shellfish acknowledges that part or all of the docks that are a portion of the premises may be in deteriorated condition. California Shellfish assumes all risks associated with the use of the premises in any manner. California Shellfish acknowledges that no representations or warranties of any kind have been made by the City.

5. **Use.** California Shellfish may use the premises for unloading and purchasing fish and seafood products, processing and preparing seafood products, and other activities or uses incidental to fish processing, consistent with all applicable laws and regulations and the State Lease, but may not use the premises for any other purposes. California Shellfish shall comply with all applicable governmental laws, regulations and other requirements.

a. California Shellfish shall not engage in any activity on the premises that would make it difficult or impossible to insure the premises or that would result in an increase in insurance premiums.

b. California Shellfish shall not store any hazardous substances on the premises or discharge any hazardous substances from the premises in violation of any federal, state, or local law or regulation.

6. **Inspection.** The City, its agents and representatives may enter and inspect the premises at any time, but shall not disrupt the operations of California Shellfish on the premises.

7. **Compliance with Laws, Licenses and Permits.** California Shellfish shall promptly comply with all federal, state and local laws, ordinances, rules and regulations in its use of the premises, including but not limited to the Oregon State Fire Marshal's rules and regulations applicable to and affecting the premises and California Shellfish's use and occupancy. California Shellfish shall also promptly comply with all orders, regulations, requirements and directives of such authorities and any insurance companies which have issued or are about to issue policies of insurance covering the premises and its contents, for the prevention of fire or other casualty, damage or injury, at its own cost and expense.

This lease does not give California Shellfish permission to conduct any use that is not in conformance with applicable land use requirements. California Shellfish shall obtain and comply with all land use approvals, occupancy or sign permits and other required licenses, permits and approvals its expense. City makes no warranties or representations regarding land use or building regulations and makes no warranties or representations regarding the suitability of the premises for any particular use.

California Shellfish shall obtain, maintain and keep current all required licenses and permits for its operation or use of the premises.

8. **Taxes, Utilities and Other Charges.** California Shellfish shall promptly pay for all water, heat, light, sewer, garbage, telephone, internet, cable, power and other services or utilities used in the leased premises during the term of this lease.

California Shellfish shall pay all real and personal property taxes and assessment imposed on the premises and personal property located on the premises, including any taxes imposed on the property during the term of the lease but which do not become payable until after termination of the lease.

California Shellfish may exercise its legal rights to contest appraisals or assessments. City will cooperate with California Shellfish regarding its legal rights, but California Shellfish shall reimburse the City for any costs incurred by the City in doing so.

9. **Care of the Premises, Repairs and Improvements.** California Shellfish will care for and maintain the property in a condition at least as good as its current condition and shall not intentionally destroy, damage or waste of the property..

California Shellfish shall maintain the premises in good order and repair at California Shellfish's expense. At the time of this lease, dock areas have deteriorated to the point where they are marginally suitable for dockage activities. California Shellfish has obtained bids for repairing the dock to a good condition suitable for unloading and loading of goods, and shall complete such improvements within the term of this agreement at their cost.

To the extent that repairs or replacement is required as a result of an insured event, the proceeds of any applicable insurance payment shall be used to defray the costs of the repairs or replacement.

California Shellfish shall promptly repair any intentional or unintentional damage to the premises.

10. Security Fence. California Shellfish shall maintain a security fence along the north boundary of the lease area, parallel to SW Bay Boulevard, sufficient to restrict the general public from accessing the docks.

11. Assignment, Transfer or Sublease. California Shellfish shall not assign or transfer this lease or sublease the premises without the prior written consent of the City, and if necessary under the State lease, the State. In the event the City grants written consent to an assignment or transfer, California Shellfish shall remain jointly and primarily liable with the assignee/sublessee under all the terms and conditions of this agreement, unless and until the assignee/sublessee has demonstrated good standing for twenty-four (24) consecutive months. The phrase "in good standing" as used in this section means that the assignee/sublessee has not violated, defaulted, or failed to comply with any term or condition of the lease, including timely payment of rent. After such uninterrupted good standing for twenty-four (24) consecutive months, the City shall sign a release of liability which releases California Shellfish from further rental payment obligations under this lease.

The City shall have the right to see, transfer, assign or encumber its interest in the Lease, or delegate any or all of its obligations hereunder, without obtaining the approval of California Shellfish.

12. Alternations, Fixtures and Equipment. Fixtures and equipment that were in place when California Shellfish or its predecessors in interest first acquired the property (1957) are part of the property and are owned by the City of Newport. Any fixtures or equipment installed by California Shellfish or its predecessors since 1957 at their own expense may be removed by California Shellfish at the termination of the lease, provided the removal can be accomplished without significant damage to the premises. California Shellfish shall repair and restore any insignificant damage resulting from removal of fixtures.

No alterations, additions or improvements shall be made, and no heavy equipment, apparatus and fixtures, shall be installed in or attached to the premises without the prior written consent of the City, which consent shall not be unreasonably withheld. All such alterations, additions, improvements, systems or fixtures, when made, installed, or attached to the premises shall belong to and become the property of the City upon termination of this

lease, subject to California Shellfish's right to remove fixtures without causing significant damage.

All fixtures or personal property of California Shellfish not removed by it upon termination of the lease, shall be considered abandoned and the City shall have the right, without notice to California Shellfish, to sell; or otherwise dispose of them at the expense of California Shellfish.

13. Signage. California Shellfish shall be responsible for obtaining any and all required municipal approval for signs. To the extent the existing signs have such required approval, the City consents to their remaining in place. California Shellfish shall not place or allow any signs on the premises without the required municipal approval and the City's consent to the design, structure and location, which consent shall not be unreasonably withheld. Such consent does not constitute the required municipal approval; California Shellfish must go through the municipal approval process.

14. Notices. Any notices under this lease shall be sent registered or certified mail and addresses as follows:

If to the City:

City Manager
City of Newport
169 SW Coast Highway
Newport, OR 97365

If to California Shellfish:

California Shellfish Company, Inc.
Attn: David Zeller
P.O. Box 2028
San Francisco, California 94126.

Notices shall be presumed to be delivered 48 hours after mailing. The parties are encouraged to send copies of notices by fax and/or e-mail to the regular contact person for the other party.

15. Liens. California Shellfish shall not allow any lien to be filed on the leased property, and California Shellfish may not file a lien on the property.

16. Default, Notice and Cure. A default by California Shellfish shall occur if any of the following occur and if the default shall continue and not be remedied within thirty (30) days after the City shall give notice specifying the breach, which notice shall be within ten (10) days of the breach, delinquency or failure to pay rent. If the non-compliance cannot reasonably be cured within the thirty (30) days, California Shellfish will not be in default if it starts taking action to cure the breach within ten (10) days of receipt of the notice and continues to diligently act until the breach is cured.

a. Delinquency or failure to pay rent or any required payments under this lease in the amounts or at the times specified. All rent and other sums due from California Shellfish shall bear interest at the legal rate for judgments in Oregon as of the date due. California Shellfish shall also pay the City a penalty of \$275 in addition to the rent or required payment and interest if it fails to make a payment when due.

b. Failure of California Shellfish to comply with any term or condition of the lease.

c. Failure of California Shellfish to use the premises for the purposes authorized under the lease.

d. Vacation or abandonment of the premises without written approval of the City.

d. California Shellfish maintaining a nuisance on the premises.

e. Insolvency of California Shellfish; an assignment by California Shellfish for the benefit of creditors; the filing by California Shellfish of a voluntary petition in bankruptcy; an adjudication that California Shellfish is bankrupt or the appointment of a receiver of the properties of California Shellfish; the filing of any involuntary petition of bankruptcy and the failure of California Shellfish to secure a dismissal of the petition within thirty (30) days after filing; attachment of or the levying of execution on the leasehold interest and failure of California Shellfish to secure discharge of the attachment or release of the levy of execution within ten (10) days.

f. Failure by California Shellfish to remove any lien or encumbrance placed upon the premises.

17. Termination.

a. In the event of a default by California Shellfish which is not cured within the time permitted under Section 18, the lease may be terminated at the option of the City by thirty days (30) advance written notice.

b. Either party may terminate the lease by giving written notice to the other at least six (6) months before the termination date.

c. In the event of a violation or breach of any provisions of the lease is causing damages to the premises or California Shellfish is using the premises in a manner not permitted by the lease, or in any case damages are occurring to the premises, the City may immediately enter upon the premises and take such action as necessary to cease such damages or use. California Shellfish shall be liable to the City for all reasonable and necessary costs incurred in correcting such violation. Such entry shall be in lieu of the notice and opportunity to cure provided in Section 18.

d. In the event the lease is terminated by either party, California Shellfish shall have thirty (30) days after the date of termination to remove all fixtures and personal property. Failure to remove such items within the thirty (30) day period will constitute abandonment,

and the City shall take title to the property after the expiration of the thirty (30) day period, in which event, the City may re-enter, take possession of the premises, and remove any persons or property by legal action or by self-help with the use of reasonable force and without liability for damages directly resulting from such use of reasonable force.

e. In the event of termination on default, the City shall be entitled to recover as damages: i) the loss of reasonable rental value from the date of default until a new lease has been, or with the exercise of reasonable care could have been, secured; ii) the reasonable cost of reentry and reletting, including the reasonable costs of any clean-up, refurbishing, removal of California Shellfish's property and fixtures, or any other necessary expense resulting from California Shellfish's failure to quit the premises upon termination and leave them in the required condition, including reasonable attorney's fees, court costs, brokers' commissions and advertising costs; and iii) any excess of the value of the rent and all of California Shellfish's other obligations under the lease over the reasonable expected return from the premises for the period beginning on the earlier of the date of trial or the date the premises are relet and continuing through the end of the term. The present value of future amounts will be computed using a discount rate equal to the prime loan rate of major Oregon banks in effect on the date of trial..

18. Surrender of Premises. When its right to possession of the premises ends, California Shellfish shall vacate the premises peaceably and leave the premises in good order and condition. Any furniture, equipment or other personal property left on the property after California Shellfish's right to possession ends shall be considered abandonment of that property and a donation of that property to the City.

19. Remedies. If California Shellfish does not immediately surrender possession of the premises when its right to possession terminates, the City may enter the premises without demand or notice, repossess and lock the premises, and expel California Shellfish's effects at the expense of California Shellfish. Any action by the City authorized by this section shall not constitute trespass or other wrongful act. City's rights under this section are without prejudice to any other right or remedy.

All of the City's rights and remedies authorized by law or this lease are cumulative.

20. Remedies upon Bankruptcy. In addition to any other rights provided herein, should California Shellfish be adjudicated as bankrupt, insolvent or placed in receivership, or should proceedings be instituted by or against California Shellfish for bankruptcy, insolvency, receivership, agreement of composition or assignment for the benefit of creditors, or if this lease or the estate of the California Shellfish shall pass to another by virtue of any court proceedings, writ of execution, levy, sale, or by operation of law, the City may terminate this lease and the term upon giving to California Shellfish or to any trustee, receiver, assignee or other person in charge or operating as custodian of the assets or property of California Shellfish, thirty (30) days written notice. Upon the giving of such notice, this lease and the term shall end on the date fixed in such notice as if the date was the date originally fixed in this lease for its expiration, and the City shall have the right to remove all persons, goods, fixtures and property, by force or otherwise, without liability for damages.

21. Holding Over. If California Shellfish remains in possession of the property after the expiration of this lease, the holding over shall not result in a renewal or extension of this lease but shall create a tenancy from month-to-month which may be terminated at will at any time by either party on not less than 30 days notice. If California Shellfish remains in possession of the premises without the City's consent, the tenancy shall be at sufferance. The City may eject California Shellfish from the premises and recover damages caused by the wrongful holdover.

22. Indemnification. California Shellfish shall defend, indemnify and hold City harmless from and against any and all claims arising out of any violation or alleged violation of, or failure or alleged failure of California Shellfish to comply with any applicable law, ordinance or regulation, including any environmental law or regulation, including costs of investigation, defense, compliance, remediation and any penalties imposed by any governmental body.

California Shellfish agrees to hold harmless, indemnify and defend City from and against any and all claims arising out of any hazardous substances on the premises or any other properties directly or indirectly resulting from any act or omission of California Shellfish or its agents or representatives, or from any activities on the property occurring during the term of this lease. However, California Shellfish is not required to hold harmless, defend or indemnify the City for any condition relating to hazardous substances on the premises that were on the premises prior to California Shellfish's or its predecessor in interest's first possession of the premises in 1957. "Expense" includes but is not limited to attorneys' fees, costs, and expenses of, or in preparation for, any administrative or judicial proceeding or review or appeal, and the cost of any remediation.

City shall not be responsible or liable in any way for the injury or death of any person or damage to any property in or about the premises, nor shall City be liable for any damage or loss suffered by California Shellfish arising or resulting from any accident or injury to goods or persons in or about the premises.

California Shellfish shall indemnify, defend and hold the City, its officers, agents and employees, against any and all actions, claims, losses, damages or liabilities, costs and expenses resulting from or arising out of any accident or injury on or about the premises, or in any manner arising from California Shellfish's use or occupancy of the premises or its operations, or any act or omission of California Shellfish or that of any employee, representative or invitee of California Shellfish. California Shellfish agrees at its own cost and expense to defend City against any action and any and all appeals and to satisfy and discharge any judgment which may be awarded against City arising from any accident or injury to goods or persons on or about the premises.

California Shellfish shall have no obligation to indemnify the City from or against any actions, claims, losses, damages or liabilities, costs and expenses attributable solely to the acts or omissions of the City or its officers, employees or agents.

California Shellfish shall also indemnify the State in the manner required of the City in the State leases.

23. Insurance. All insurance required below shall be with companies duly licensed to do business in the State of Oregon. Each insurer shall have a current A.M. Best rating of not less than "A-".

a. Fire Insurance Coverage. The premises, including personal property on the premises shall be insured for full replacement value, at California Shellfish's cost. California Shellfish shall obtain fire and other hazard extended coverage insurance in a form and with a company satisfactory to City, with coverage limits of at least \$1,000,000 per occurrence and \$2,000,000 aggregate. The policy shall name the City and California Shellfish as insureds.

b. City Property Insurance Coverage. City may, in City's discretion and at City's option, obtain a separate policy of insurance for the City's real and personal property. If City obtains a policy, California Shellfish shall not be obligated to obtain any other or additional casualty insurance for City's property, but California Shellfish shall reimburse to City the premiums for any such insurance coverage.

c. California Shellfish Property Insurance Coverage. California Shellfish shall maintain comprehensive personal property insurance to insure California Shellfish's personal property in the premises for losses and risks of direct physical loss and theft. The amount of the coverage shall be the replacement value of the personal property insured. .

d. Commercial General Liability Insurance Coverage. California Shellfish shall maintain liability insurance policies insuring the State, the City and the California Shellfish. The policy shall include coverage for bodily injury, broad form property damage, and personal injury. It shall contain a severability of interest provision, and shall not contain a sunset provision or commutation clause or any provision which would serve to eliminate third party action over claims. In the event it is written on a claims-made basis, coverage shall extend two years past completion of the lease. The policy shall have limits not less than \$1,000,000 per occurrence and \$2,000,000 aggregate. At no point shall it be less than the Oregon Tort Claims limits as applied to the State of Oregon.

e. Workers' Compensation Coverage. California Shellfish and any and all employers providing work, labor or materials under this lease are subject employers under Oregon Workers' Compensation Law and shall comply with all applicable statutory and regulatory requirements.

f. Owned, Non-owned, and Hired Automobile Coverage. California Shellfish shall maintain such coverage with at least \$1,000,000 per occurrence for any vehicle owned or used by California Shellfish and operated on or from the premises. At no point shall it be less than the Oregon Tort Claims limits as applied to the State of Oregon.

g. Additional Insured Endorsement. The liability insurance required for performance of the lease shall include the State of Oregon, the Division of State Lands, the City of Newport, and their sections, officers and employees as additional insureds but only with respect to California Shellfish's activities to be performed under the lease.

h. Certificates. California Shellfish shall obtain all described insurance at its own expense, and keep it in effect during the term of the lease. Upon execution of the lease, California Shellfish shall provide the City with a copy of the insurance policies or a certificate of insurance, executed by a duly authorized representative of the insurer, showing full compliance with the requirements of this lease. Each applicable insurance policy shall be written on a primary coverage basis, including any self insured retention, unless otherwise specified. If California Shellfish's liability policies do not contain a separation of insured's provision, or a substantially similar clause, they shall be endorsed to provide cross-liability coverage. The policies shall provide that the coverage shall not be canceled or amended without at least fifteen (15) days notice to City.

i. Failure to maintain the required insurance may result in termination of the lease.

24. Waiver of Liability. Neither party shall be liable to the other for losses arising out of damage to or destruction of the premises when the losses are covered insurance. Each party waives any claims it may have against the other party for claims for which the damaged party receives insurance proceeds.

25. Destruction of Premises. The City has no obligation to repair or replace any part or portion of the premises destroyed by fire or accident other than to make insurance proceeds available for repair or replacement. If available insurance proceeds are sufficient to pay the cost of the repairs, the City shall decide whether to repair the premises. The City shall provide California Shellfish written notice of City's decision within 30 days after the determination of the amount of insurance proceeds available. If the City decides not to repair, this lease shall be terminated as of the date of the damage. In the event of termination for this reason, City shall receive and retain insurance proceeds attributable to the loss or destruction of the real property and any City personal property on the premise, and California Shellfish shall be entitled to insurance proceeds attributable to California Shellfish's separate personal property or loss of occupancy (if California Shellfish has insurance covering loss of occupancy).

Any repair or restoration after damage shall be done with reasonable speed. California Shellfish shall not interfere with any repair or restoration by City and City shall attempt to conduct any repairs or restoration so as to minimize impact on California Shellfish's operations. The City's obligation to repair any damage or destruction to the premises shall be limited to the amount of available insurance proceeds. If thirty (30) percent or more of the usable area of the premises is damaged or destroyed, then the parties shall negotiate a reasonable reduction in the rent for the period of repair. If they cannot agree on the rent reduction within fifteen (15) days after the written notice provided above, then the lease shall be terminated.

26. Condemnation. If the land and premises, or any portion thereof, shall be taken under condemnation proceedings, or an action shall be instituted for the taken, or if in lieu of any formal condemnation proceeding, the City shall grant an option to purchase or shall sell or convey the premises or any part thereof, to any government or other public authority, agency, body or public utility seeking the premises, then at the City's option,

this lease shall terminate, and the term shall end as of the date the City fixes by notice in writing.

The entire award for such taking shall be the property of the City, and California Shellfish shall have no claim or right to any portion of any amount which may be awarded as damages or paid as a result of the proceedings or paid as the purchase price in lieu of formal condemnation proceedings, and all right of California Shellfish to damages, except for damage to its business, is hereby assigned to the City. Any claim of California Shellfish for damages to its business shall be reserved to California Shellfish. California Shellfish agrees to execute and deliver any documents as may be deemed necessary to expedite the condemnation proceedings or facilitate the property transfer of title to the public entity seeking to acquire the premises or portion thereof. California Shellfish shall vacate the premises, remove its personal property and deliver peaceable possession to the City or the party designated by the City as specified in the notice of termination. Failure by California Shellfish to comply shall subject it to such costs, expenses, damages and losses as the City may incur by reason of this breach.

27. Strict Performance; Waiver of Breach; Cumulative Rights. Strict performance, including compliance with deadlines, is of the essence of this agreement. The various rights, remedies, options and elections of the City are cumulative, and the failure of the City to enforce strict performance by California Shellfish of the conditions and covenants of this lease or to exercise any election or option or to resort or have recourse to any remedy or the acceptance by the City of any installment of rent after any breach by California Shellfish in any one or more instances, shall not be construed or deemed to be a waiver or relinquishment for the future by the City of any such conditions and covenants, options, elections or remedies, but they shall continue in full force and effect.

28. Quiet Enjoyment. City covenants that California Shellfish shall quietly and peaceably possess and enjoy the demised premises subject to and in accordance with this lease agreement during its term; subject to the provisions of this lease and the lease with the Oregon Division of State Lands.

29. Severability. The terms, conditions, covenants and provisions of this lease shall be deemed to be severable. If any clause or provision is adjudged to be invalid or unenforceable by a court of competent jurisdiction or by operation of any applicable law, it shall not affect the validity of any other clause or provision, but such other clauses or provisions shall remain in full force and effect

30. Amendment. No additions, changes or modifications, renewals or extensions hereof shall be binding unless reduced to writing and signed by the Landlord and Tenant.

31. Entire Agreement; Governing Law; Dispute Resolution Costs. This lease contains the entire contract between the parties. No representative, agent or employee of the City has been authorized to make any representations or promises with reference to the within letting or to vary, alter or modify the terms hereof.

If any arbitration, mediation, court proceeding, bankruptcy action or other action is

instituted to enforce or interpret any of the terms of this Agreement, such action shall be subject to the applicable Oregon law. Venue shall be in Lincoln County, Oregon. The party not prevailing shall pay the prevailing party's actual fees and expenses, costs, and disbursements, and any other such sums as the court or decision maker may determine, including in any appeal.

CITY OF NEWPORT

Ted Smith, Interim City Manager

Date: _____

CALIFORNIA SHELLFISH COMPANY, INC.

By: _____

Title: _____

Date: _____

Lincoln County Property Report

Account # & LEGAL DESCRIPTION	ACCOUNT DETAILS	OWNER AND ADDRESS
Account #: R182581 Map Taxlot: 11-11-08-DB-02101-00 Map: 11s11w08DB Legal: TOWNSHP 11, RNG 11, ACRES 0.04, MF131-1330 TaxCode: 107 Acres: 0.04	Neighborhood: <u>N277</u> PropertyClass: <u>301</u>	Owner: CITY OF NEWPORT Address: % POINT ST GEORGE FISHERIES INC, LEASE 505 BEACH ST SUITE 200 SAN FRANCISCO, CA 94133 Situs: 459 SW BAY BLVD

IMPROVEMENTS								VALUE AND SALES HISTORY				
Description	Area	Yr Built	Foundation	Heat	Plumbing	BDMS	Value	Value Year	Imp.	Land	Total Market	Total Assessed
MAIN AREA							12420	2012	12,420	20,250	32,670	32,670
								2011	13,230	20,250	33,480	33,480
								2010	13,400	20,250	33,650	33,650
								2009	14,540	24,300	38,840	38,840
								2008	14,120	100,420	114,540	97,810
								2007	16,360	90,880	107,240	94,970
								SaleDate	Price	Document	Type	Code
								NoSales				

LAND				RELATED ACCOUNTS	DISCLAIMER
Description	Acres	Market Value	Special Use Value	No Related Accounts	<i>This report was produced using the Lincoln County assessment information. This information is maintained by the county to support its governmental activities. The County is not responsible for errors, omissions, misuse or misinterpretation. Report created: 7/24/2013 using tax data exported 10/2012</i>
IND DEV BAYFRONT SITE	0.04	20,250			

California Shellfish Company
Lease Boundary Including Appurtenant
DSL In-water Lease Area (August 5, 2013)



Lincoln County government use only. Use for any other purpose is entirely at the risk of the user. This product is for informational purposes and may not have been prepared for, or be suitable for legal, engineering, or surveying purposes. Users should review the primary information sources to ascertain their usability.



Agenda Item #
Meeting Date

IX.E.
August 5, 2013

CITY COUNCIL AGENDA ITEM SUMMARY
City Of Newport, Oregon

Issue/Agenda Title: Central Coast Fire Authority Formation

Prepared By: Phil Paige, Fire Chief Dept Head Approval: PLP City Mgr Approval: _____

Issue Before the Council: Shall the Newport Fire Department proceed with the cooperative formation of the "Central Coast Fire Authority", prepare a draft inter-governmental agreement (ORS 190) for future Council consideration, and adopt the Central Coast Fire Authority Implementation Plan as a guideline?

Staff Recommendation: The Council should approve the Central Coast Fire Authority Implementation Plan as a guideline for proceeding with the formation of a shared Fire Department Administration, with Newport Fire Department, and Depoe Bay and Central Coast Fire Protection Districts. The goal is to prepare a draft intergovernmental agreement, under ORS 190, for Council consideration and approval by October 2013, with an effective date of January 1, 2014.

Proposed Motion:

I move that the Council approve the Central Coast Fire Authority Implementation Plan as a guideline for proceeding with the formation of a shared Fire Department Administration, serving the Newport Fire Department, and Depoe Bay and Central Coast Fire Protection Districts; and further move that staff help prepare a draft intergovernmental agreement, under ORS 190, for Council consideration and approval by October 2013, with an effective date of January 1, 2014.

Alternative Motion: I move that the formation of the Central Coast Fire Authority is not in the best interest of the City of Newport at this time, and that the Newport Fire Department Staff continue to function with a "stand-alone" Fire Department administration and management structure.

Key Facts and Information Summary: In 2012, the City participated, along with several other Lincoln County Fire Departments in a feasibility study that looked at opportunities for collaborative efforts in providing fire and emergency services. The study was conducted by Emergency Services Consulting International and received in June, 2012. The recommendations included individual department improvements, general collaboration concepts, and considered several strategies for collaboration between fire departments. "Strategy F" - a combination of Newport Fire Department, Newport Rural Fire Protection District, Depoe Bay Fire District and North Lincoln Fire and Rescue District was recommended.

Initial conversations between the “Strategy F” jurisdictions, led to further study of a new “Strategy G” - a combination of NFD, NRFPD, and DBRFD. The more detailed “Strategy G” recommendation suggested an ORS 190 agreement to form a “Fire Authority”.

At the meeting on July 6, 2012, the City Council directed Fire Department Staff to participate in a “collaboration committee” to work towards implementing the recommendations of these studies, and appointed Councilor Beemer as the Council representative, and Councilor Sawyer as alternate.

A Fire Services Collaboration committee was formed with representatives of many stakeholder groups, including the Newport City Council. The group met several times over the past year, and in the process, was expanded to include representatives of the Central Oregon Coast Fire District (Waldport).

A presentation on the collaboration committee process was discussed at a joint workshop of the full City Council, as well as the Boards of Directors of Depoe Bay Rural Fire Protection District, Newport Rural Fire Protection District and Central Oregon Coast Fire and Rescue District. The elected bodies reviewed and discussed the recommendations of the Fire Department collaboration committee, and received public comment.

The Newport Rural Fire Protection District and the City of Newport revised their contract for fire and emergency services effective July 1, 2013, whereby the District authorized the City to enter into agreements such as the proposed Central Coast Fire Authority Inter-governmental Agreement on their behalf, in order to provide services within their jurisdiction.

The collaboration committee continued to meet, and the three fire chiefs met with representatives of ESCI on June 12, 2013, and developed the Draft Central Coast Fire Authority Implementation Plan, and presented it to the collaboration committee on June 25, 2013. After further feedback from stakeholders, the organization chart and duties of Chief Officers (Appendix A) were slightly modified. The modified appendix A is provided as Attachment 2 and is now considered part of the Central Coast Fire Authority Implementation Plan.

Other Alternatives Considered: The City could maintain the status quo regarding fire and emergency services.

City Council Goals: One of the Council Goals for the Fire Department is to implement recommendations from the ESCI feasibility study, and another is to collaborate with other departments and agencies for improvements to service.

Attachment List:

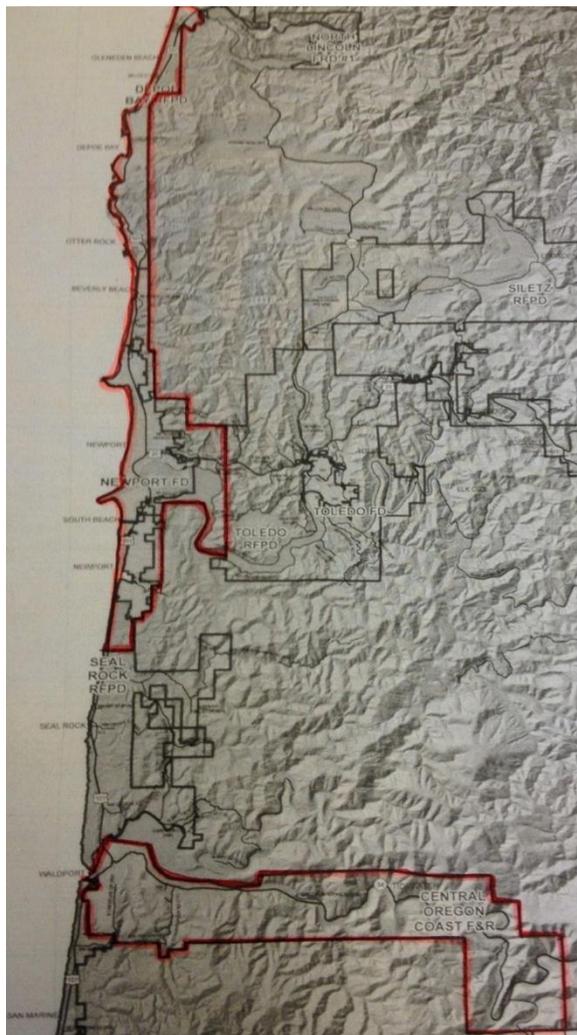
1. Central Coast Fire Authority Implementation Plan
2. Modified Appendix A

Fiscal Notes: One of the goals of the collaboration committee was to make improvements to service levels without causing increases in costs.

CENTRAL COAST FIRE AUTHORITY

IMPLEMENTATION PLAN

2014-2016



Preface

The effort to evaluate the potential efficiencies and opportunities which could be gained by combining some or all portions of the fire services in Lincoln County (OR) was initiated by six agencies. Those agencies included North Lincoln Fire & Rescue, Depoe Bay Fire & Rescue, Newport Fire Department (also representing Newport Rural Fire District under contract), Siletz Rural Fire District, Central Oregon Coast Fire & Rescue, and Yachats Rural Fire District. The agencies hired Emergency Services Consulting International (ESCI) in November 2011 to study the opportunities for greater collaboration up to and including full merger.

A subset of that original group has continued to meet and explore taking initial steps toward greater collaboration. Those agencies consist of Depoe Bay Fire & Rescue, Newport Fire Department (continuing to represent Newport Rural Fire District under contract), and Central Oregon Coast Fire & Rescue. The policy makers and the fire chiefs of that subset have met and reviewed the initial study and a subsequent, focused exploration of the three agencies taking the first step toward regionalization.

This implementation plan represents many months of work evaluating the initial steps of a regional approach to fire service delivery, an Interlocal Governmental Agreement (IGA) to combine administrative functions. A recommended structure is attached as Appendix A.

The policy makers and their fire chiefs have continued to meet to explore and gather information. The fire chiefs have engaged bargaining unit groups, employee groups and volunteer groups to conduct an environmental scan (SWOT Analysis) within the three agencies. Obtaining the various questions and concerns raised by these stakeholders, the chiefs responded to each in writing. The results are attached as Appendix B.

ESCI has developed this plan anticipating a January 1, 2014, effective date for approval and execution of an IGA combining administrative functions. It further presumes that this step is the first of what will ultimately become a multi-step process to create a full service regional fire agency among the participating agencies with opportunity for other local agencies to join at a later date if desired.

Upon execution of the aforementioned IGA on January 1, 2014, ESCI has developed the following implementation plan. Each initiative has a target completion date. The combined completion dates are plotted on a Gantt chart at the end of this plan.

Administration

Initiative #1 Establish a staffing plan for the utilization of career firefighters, volunteer firefighters, and shift volunteer firefighters.

- Identify specific functions that volunteer and career staff will perform.
- Develop a plan to enhance the recruitment, training, and retention of volunteer firefighters.
- Identify strategies that will maximize the utilization of on-duty career firefighters and shift volunteer firefighters.
- Identify strategies that will maximize the utilization of specialized and seasonal career and volunteer personnel.

Complete by July 2014

Initiative #2 Evaluate the feasibility of providing EMS transport services to one or more Ambulance Service Areas.

- Work cooperatively with willing agencies towards a partnership in a fire-based EMS transport proposal.
- Gather the necessary data for evaluation of the best opportunities.
- Prepare a competitive proposal that will improve service levels to the community.

Complete by November 2014

Initiative #3 Upgrade processes, policies and procedures.

- Review and combine Standard Operating Guidelines (SOG) manuals.
- Fully implement and coordinate ERS recordkeeping and reporting.
- Update organization chart.

Complete by January 2015

Initiative #4 Review and update training programs.

- Recruit Academy – coordinate regionally.
- Training schedule and documentation – combine on ERS.
- Specialty position training programs – develop an SOG for each.
- Regional training programs – develop regional training SOGs.

Complete by January 2015

Initiative #5 Review and update fire prevention programs.

- Implement company inspection programs.
- Implement ERS prevention recordkeeping and reports.
- Participate in the Lincoln County Fire Investigation team.
- Formalize public education and information programs.
- Review and update pre-incident planning and convert to ERS.
- Review, coordinate, and update CERT and disaster preparedness programs.

Complete by January 2015

Initiative #6 Establish Standard of Cover (SOC) and monitor performance.

- Develop and adopt combined SOC document.
- Implement the reporting in ERS to monitor SOC compliance.
- Revise staffing and deployment models to improve compliance.

Complete by July 2015

Initiative #7 Develop funding plan for long-term capital needs.

- Develop comprehensive plan with rough budget for each facility.
- Develop replacement plan with rough budget for apparatus and equipment.
- Complete comprehensive station location study
- Develop capital improvement plan for updating of fire stations 2200, 2300, 2400, 3300, 3400, 7200, 7300, and 7400
- Develop plan for replacement of Station 3200 and administrative offices
- Develop plan to upgrade training facility
- Evaluate funding options with CCFA Board and stakeholders.

Complete by January 2016

Initiative #8 Continue to evaluate regional collaborative opportunities.

- Hold annual planning retreat to review possibilities for further consolidation.
- Increase interoperability – standardize programs, processes, tasks.
- Maximize economies of scale, reduce duplication through partnerships.
- Increase joint training and automatic aid.

Ongoing annually

Initiative #9 Cooperate with other Fire Departments and OCCC to develop a local Fire Protection Academic Program.

- Encourage the college to create class offerings each quarter.
- Develop a resident/intern firefighter program for fire protection program students.

Ongoing

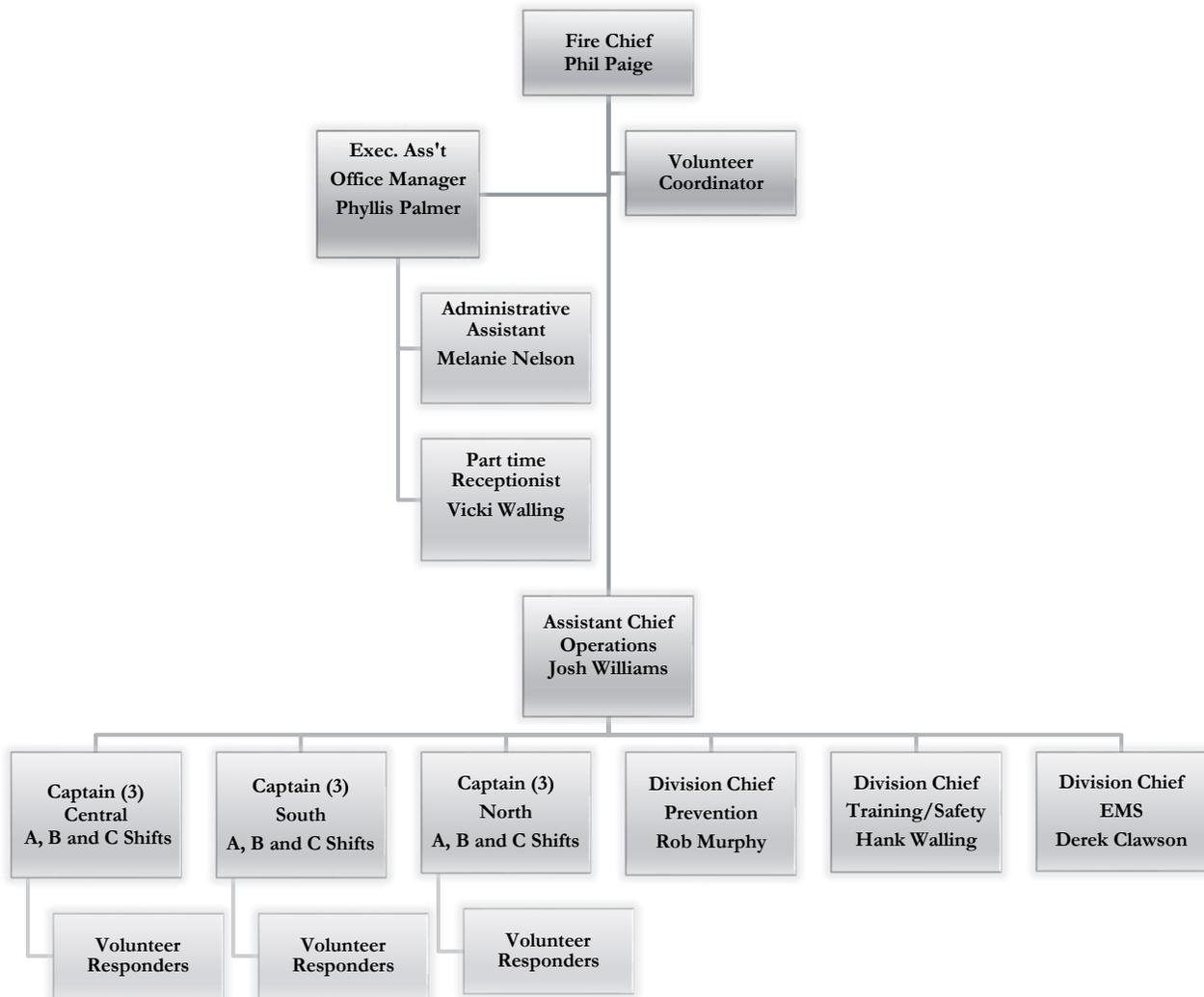
Implementation Gantt Chart

Central Coast Fire Authority Implementation Plan	1 thru 6, 2014				7 thru 12, 2014				1 thru 6, 2015				7 thru 12, 2015				1 thru 6, 2016				7 thru 12, 2016			
	1	2	3	4	1	2	3	4	1	2	3	4	1	2	3	4	1	2	3	4	1	2	3	4
Administration																								
#1 Establish a staffing plan for the utilization of career, volunteer, & shift volunteer FFs				Jul																				
#2 Evaluate providing EMS transport services to Ambulance Service Area(s)							Nov																	
#3 Upgrade processes, policies and procedures								Jan																
#4 Review and update training programs								Jan																
#5 Review and update fire prevention programs								Jan																
#6 Establish Standard of Cover (SOC) and monitor performance											Jul													
#7 Develop funding plan for long term capital needs																Jan								
#8 Continue to evaluate regional collaborative opportunities																								ONGOING
#9 Cooperate with other FD's & OCCC to develop Fire Protection Academic Program																								ONGOING
	2014								2015								2016							

Appendix A

Central Coast Fire Authority

Recommended Administrative Structure



Chief Officers - Administrative Duties

Fire Chief – Phil Paige

- Oversight of contractual services
- Provides leadership and direction to organization
- Sets fire department policy
- Budget development and management
- Collaborates and maintains partnerships with and supports other fire districts and city departments
- Implements the goals, strategies, programs and policies of the Central Coast Fire Authority Board
- Oversees development and implementation of the strategic plan
- Attends City Council and Board meetings
- Interacts with various community groups
- Supervise Assistant Chief, Executive Assistant/Office Manager and Volunteer Coordinator
- Monitors community fire protection risks

Assistant Chief / Operations – Josh Williams

- Operations (Fire, EMS, Hazardous Materials, Rescue)
- Personnel matters
- Employee relations
- Report management system coordinator
- Strategic plan implementation
- Operation Manual, SOG's
- Pre-Employment testing and evaluation
- Willamette Valley Dispatch Liaison
- Supervise Shift Captains and the Chiefs of Training, EMS and Prevention Divisions
- ISO Coordination

Division Chief / Fire Prevention - Rob Murphy

- Fire code administration
- Fire investigations
- Hazardous materials management
- Fire code review & adoption
- Inspection programs
- New development and construction plan review
- Public education and information programs
- Supervise: Senior Inspector & 2 Inspectors
- Strike Team Leader
- Attend District Meetings & Prepare Staff reports
- Disaster Preparedness and Emergency Management Programs
- CERT Team management and coordination

Division Chief / Training & Safety – Hank Walling

- In-service and specialized training coordination for career and volunteer personnel
- Training schedule and calendar
- Recruit testing
- DPSST certification coordination and recordkeeping
- Development and maintenance of training facilities
- Cadet Program
- Training records and report management
- Representative to Safety Committees
- Safety operations and procedures
- Promotional exam design and preparation
- COCTOA representative
- Wellness program coordinator
- Respiratory protection program coordinator
- Probationary education, training, testing, academy
- Training requests & reimbursement

Division Chief / EMS – Derek Clawson

- EMS Training Coordinator
- Quality Assurance Program
- Recruit EMS Evaluations
- Medical Supply, Equipment Specification and Purchase
- Ambulance Billing Coordinator
- EMS Report Management System, Records Custodian
- Hospital, County and State EMS Liaison
- EMS Public Education
- Privacy Officer (HIPAA)
- Designated Officer (Blood Borne Pathogens)
- Pre-employment Testing & Evaluation
- ASA coordination, management and budget
- Certification / recertification management
- Controlled substance manager
- Protocol & documentation compliance
- EMS system structure & oversight
- AED/CPR Programs

Appendix B

Central Coast Fire Authority

SWOT ANALYSIS

The three fire chiefs met on May 20, 2013 to review the comments received from the stakeholder groups regarding the bullet list of “SWOT” items developed at the last collaboration committee meeting. The following is a response to the various issues.

What does your group see as STRENGTHS that would be offered by the shared administration of the fire authority model that has been suggested?

1. EMS transport capabilities - *This would give us the capability of transport services, but could we feasibly do it? This is a big issue without enough information for an immediate answer.*
2. Reduces duplication in certain administrative positions - *Fire Chief, Training, some Operations functions.*
3. Standardized responses, SOGs and processes – *Training would improve standardized response and processes, SOG committee with a member from each department will work to standardize SOGs.*
4. Personnel better able to concentrate on specific jobs or job specialization – *See #2*
5. *Increasing /offering services in new areas – Fire prevention and EMS (but not necessarily transport).*
6. Standardized training programs – *COCTOA training plan will be used, ERS will maintain records, track certifications and standardize monthly reports, one training schedule.*
7. Depth of organizations (backup for positions)/easier to share resources – *This would not be immediate, but would slowly develop.*
8. Instructor resources/increased resources – *See #7*
9. Stability - Formal relationships would have long term stability than just “working together” - *Yes*
10. Savings through combined purchasing and standardized purchasing – *Much of this is in place, but would improve gradually (SCBA, hose, etc.).*
11. Unified vision (for long term goals) – *One Strategic Plan and one combined Standard of Cover will be developed for the CCFA, The staffing plans will not change significantly, but we will build on each component (community volunteers, stipend programs, career staff, seasonal employees, resident programs).*

What does your group see as WEAKNESSES that would be the result of the shared administration of the fire authority model that has been suggested, and do you have suggestions of how these might be addressed?

1. Change is hard on people - *Yes*
2. It takes time to build trust in “new” chiefs/personnel - *Yes*
3. Perceptions (of people involved) / of service and personnel “dilution” – *The existing staffing configurations below the Chief Officer level would stay the same for the foreseeable future, the combined organization would be able to add new positions in the future that could be shared (in cost and function).*
4. Spreading specialties out to other areas might spread them too thin – *The ability to specialize would balance any “spreading” or dilution of the specialized service. For example, if Fire Marshal Murphy now spends half his time doing fire prevention in Newport (20 hrs/wk), and this changed to 24 hrs in Newport, 8 hrs in Waldport, and 8 hrs in Depoe Bay, he would still spend more time doing fire prevention work for Newport.*
5. Communications in a larger organization will be more difficult – *Yes. However, technology (conference calls, computers, etc.) can help compensate for this.*
6. Plans need more detail:
 - a) Need to develop a strategic plan & SOC, operating guidelines –*We will present a rough draft strategic plan outline for the CCFA to include plans addressing Administration, Staffing, Facilities, and Apparatus. The three Standards of Cover are currently in the same format. These will be combined so that they address each individual jurisdiction in one document. A SOG committee will be formed with a representative of each jurisdiction. They will meet monthly and develop one set of Standard Operating Guidelines, with input from all volunteer and employee groups. These SOGs will be used by all jurisdictions.*
 - b) Would like to see more detailed plan on staffing and deployment – *The staffing and deployment models will be outlined in the strategic plan. Each jurisdiction will remain the same to begin with.*

Depoe Bay uses career officers combined with stipend shift volunteers, and will try to expand the use of community based volunteers and resident volunteers.

Newport uses career staff (Officer, Engineer, and Firefighter) combined with stipend shift volunteers at night and on weekends. A strong core of community based volunteers and off duty career staff is encouraged to respond to the station, and some volunteers can respond directly to the scene. A new resident program may be expanded as facilities and funding allow. Temporary/seasonal firefighters are also utilized, particularly in the summer when call volume rises and response times are slower due to tourist traffic.

CC F&R uses career officers/paramedics combined with on call and part time paramedics, and stipend shift volunteers, and will try to expand the use of community based volunteers.

While these current staffing goals will not change, any new employees added to the mix could be added in ways that would maximize the benefits and minimize

the cost to each agency through sharing of cost and utilization of those new employees.

7. Lack of support by some groups will make success more difficult – *Yes, this is the reason for this collaboration committee’s attempts to involve all of the stakeholder groups in the planning process.*
8. Loss of identity and pride in individual fire departments - *Yes, this is a potential problem. However, the sharing of administrations through the CCFA should not be a major impact in loss of identity, but this will be a larger issue if a full consolidation of the fire departments is considered in the future.*
9. Newport Volunteers’ perception that stipend programs will replace community based volunteers – *This is apparently the perception of some individuals. However, it has been stated repeatedly that this is absolutely not the intent. This is repeated and elaborated upon in 6 (b) above.*
10. HR rules and disciplinary processes (management of employees of different employers) – *Yes, there will continue to be three sets of personnel rules and disciplinary processes in place (one for each employer). This will make these processes more complicated for the administration, but since these processes are relatively infrequent, it should be manageable. Over time, these processes, like many others, are expected to become more standardized.*
11. Increased administrative workload (Office administrators Palmer and Nelson) – *There may be some additional administrative workload due to the process of implementing a CCFA. The administrative staff is expected to keep mostly the same functions and same workplace locations for the foreseeable future. There may be an opportunity to utilize the part time position in Depoe Bay to also work part time in or for Waldport, for some of the functions that are currently contracted for by outside service providers.*
12. Time and distance between districts/fire stations – *Because of these factors, there are not immediate efficiencies to be gained in the response/operations – there is no overlap. If and when future growth occurs, these efficiencies may be realized.*
13. City/District differences – *Yes, there are some.*
14. Loss of people – *There may be some loss of people who do not agree with the direction of regional cooperation, or who are uncomfortable with change. We hope to minimize this attrition by including all of the stakeholder groups in the planning process and addressing the concerns that we can, ahead of time.*
15. Personalities of new bosses are different or unknown – *Yes, this is true.*

What OPPORTUNITIES could the fire authority model improve or provide for your community and /or your group?

Note: Many of these are restatements of the “Strengths” listed above.

1. Broader range of service (prevention, EMS & specialized training) – *See strength #5*
2. Transport (EMS) – *See strength #1*
3. “Big picture” long term planning – *See strength #11*
4. Information sharing and standardization (preplans, etc.) – *See strength #3*

5. Increased flexibility/opportunities for volunteers – *Yes, possibly additional training opportunities, too.*
6. Create a blueprint for possible involvement by other Fire Departments – *Yes, Seal Rock in particular would seem like a mutually beneficial partner.*
7. Increased opportunity for specialization – *See strength #4*
8. Career ladder for career staff – *Specialized positions and possible lateral opportunities.*
9. Increased efficiency of services – *Particularly in the areas of administration, training, SOGs, and pre-plans*
10. Political power/synergy/more control of our own destiny as a larger organization – *While this may increase in the region, it will be important to be to stay responsive locally, and maintain the support of the local communities and policy making groups.*

What challenges to your community or to your group would the fire authority model create and are there ways of addressing those challenges?

Note: Many of these are restatements of the “Weaknesses” listed above.

11. Communications will be harder – *See weakness #5*
12. Resistance to change - *See weakness #1*
13. Time and distance makes it hard to become familiar with new areas - *See weakness #12*
14. Earning trust and gaining familiarity with the people in other departments – *This will take time.*
15. Learning new jobs and processes – *This will take time.*
16. Labor/Management relationships (earning trust and familiarity) – *This will take time.*
17. Volunteer relationships (with management and with other volunteers) – *This, too, will take time.*
18. Management of training programs in larger organization – *ERS will greatly help in facilitating this.*
19. History of withdrawal or separation from joint programs - *There was considerable discussion at the last committee meeting about Depoe Bay’s withdrawal from the Regional Rope Team. As Chiefs we all agreed that the rationale for that decision should be explained to everyone on the committee. We asked Chief Williams to provide a description of the process leading to their decision. Here is the “other side of the story”:*

It is important to understand the rationale for the exiting of the Depoe Bay Fire District from the County rope team. This can be summed up in two words, training and deployment. Both of these went hand in hand when the decision to leave was made. It is no secret that DBFD has a unique program relying on out of district shift personnel for a majority of responses. Additionally, the career staff has transitioned to a shift schedule.

Our current deployment model is not practical at this time for my out of district volunteers to be able to maintain minimum requirements set forth by the Lincoln County rope team. It is important to me that these types of teams remain well trained and capable of meeting minimum standards. After several months of participation by Depoe Bay, in combination with a decline in

the ability to meet minimum standards, the decision was made to pull from the team until a time comes where we can be assured that our participation will allow us to meet the training requirements.

It is our hope that we will be able to rejoin the group very soon, as we see the value in cooperative efforts. However, I see no value in cooperative efforts when there are struggles to meet minimum expectations. This was clearly expressed in a letter signed by a majority of the South Division of the rope team. The letter was dated June 12, 2012 and contained the following:

“We desire that Depoe Bay Fire discontinue any association with the remainder of the LCRT, and return all equipment acquired under the pretense of membership in the LCRT for redistribution.”

Once I read this letter it was clear that we needed to part ways to give us time to re-evaluate our participation. I am disheartened by the fact that we (DBFD) have been accused of leaving this team because of a lack of desire to work in cooperative programs. The truth is the complete opposite. We understood that in order to be committed 100%, we needed the ability to train 100%, but we knew our limitations. However, as the South Division of the LCRT requested in the letter, Depoe Bay is not a functioning member of the team at this time.

The three of us felt that it was important to get the whole story out there, so there it is. Having aired this issue, we also think that the most important issue here is the question raised as to what would be different in a future “fire authority” scenario.

We feel that the more formal partnership of the CCFA arrangement should offer more stability than an informal partnership. A regional entity like the CCFA should also make it possible for smaller organizations to be involved in activities like the rope rescue team, where it is not feasible for a small organization to deal with the challenges. A more formal relationship should also help in the accountability of programs that utilize members from various smaller organizations.

- 20. Physician advisors (should have just one) – While having one physician advisor would be preferable (and probably essential if a full consolidation were pursued in the future). The most important thing for standardizing training would be to have one common set of EMS protocol. Chief Clawson will work with representatives of each department and the two physician advisors to standardize one set of protocol. Hopefully this could be adopted county-wide eventually.*
- 21. Community perceptions and support – While the general public and the local governing bodies have been generally supportive of regionalization efforts (the usual question seems to be, “why aren’t you already doing this?”), it will be important to keep the public informed, educated, and involved in the process as much as possible.*

The following issues were submitted by Newport Fire Department personnel (career and volunteer):

Issue No 1: Concern that Newport employees will be required to work shifts in other departments, directing resources away from Newport.

Solution: Add an addendum to the contract specifying that current Newport employees will not be assigned to work shifts at non-NFD stations, with the understanding that future employees may be hired into 'shared' positions, with funding coming from and time dedicated to districts across the CCFA.

This would seem like a reasonable outcome, with the addition of a "sunset clause" for the arrangement, so that eventually the organization could maximize its efficiency, and at some point, truly operate as one organization.

Issue No 2: A signed labor contract should be in place in Depoe Bay before the CCFA goes into effect.

This would alleviate concerns about labor/management issues in Depoe Bay affecting Newport. Developing an initial contract can be a stressful period for any department, as we know from recent experience in Newport. There is unanimous agreement that launching the CCFA while an initial contract is being negotiated could lessen the chances of success. It was also generally agreed that it would be good to have all three departments under similar contracts, which would ease a lot of concerns about working under different management from three different districts. This would remove a lot of uncertainty about working conditions, disciplinary and grievance issues, and hours and conditions of work across the CCFA.

This is really two issues. The first, having a completed labor contract in Depoe Bay prior to implementation of the CCFA, seems like a good idea for all parties.

The second issue, having a similar contract for CCF&R, assumes that their current arrangement is not satisfactory. The comments from the career staff at CCF&R indicate that they are happy with their current arrangement. Since the overall philosophy of this process has been to avoid unnecessary changes in the staffing configurations of the operations personnel, this seems counter-productive.

Issue No 3: Clarify issues in the contract regarding integrating management from several different districts into one chain of command.

The contract frequently references "the Chief or his designee" but was not negotiated with the possibility of the designee being from a different organization. Who will be allowed to take disciplinary action? Will people from outside our organization make decisions affecting our pay or work conditions? There would need to be some changes negotiated to the contract before putting the CCFA in place.

While the current NFD labor contract does frequently reference, "the Chief or his designee" and management rights, there is nothing in the contract that limits who the Chief, or his designee will be. That is up to the employer. Whomever the City assigns to the role of the Chief (or his designee), they must honor all of the disciplinary processes, pay, conditions of employment, etc. as specified in the contract.

The following issues were submitted by Central Oregon Coast Fire and Rescue personnel (summary):

The positive characteristics were very dispersed, with almost all of the individual items in "strengths" and "opportunities" receiving at least one vote. Some items did garner more attention. The first such item was enthusiasm about the proposition of offering a broader range of services. This was the most popular strength (5. Increasing/ offering services in new areas), and the most popular opportunity (1. Broader range of services). *– As mentioned earlier, these are probably long term benefits, and would take time to realize, but would be more feasible with a combined administration.*

The second popular theme to emerge in the positive categories of strengths and opportunities was the demonstration of a long term vision. "Unified vision for long term goals" was a near-unanimous choice, as was "Create a blueprint for possible involvement by other fire departments." *– Again, a combined strategic plan, SOC and common SOGs would be a big benefit of the CCFA model.*

The caveat to this enthusiasm is the recognition that these two benefits will not be immediately realized. A disconnect between the idea of consolidation, and the reality of the situation was frequently expressed. There was significant doubt about the possibility of these things ever coming to fruition. The current lack of a concrete plan was frequently cited as the reason for the doubt.

The negative points brought up in the categories of "weaknesses" and "threats" were much more uniform. COCFRD Career Staff are concerned about the aforementioned lack of a plan, lack of trust, and the potential of weakening of our EMS system due to a new physician advisor.

The lack of a plan is easily remedied. Drafting a rough strategic plan, timeline, SOC, and SOGs would begin to alleviate this concern. Furthermore, once these rough documents are created by the Chiefs/ Executive Officers, they could be distributed to junior Officers and rank-and-file personnel from each department for collaborative fine tuning. This would instill a sense of ownership in the Fire Authority, as well as facilitate an opportunity for interdepartmental teamwork. *– We agree that this is the best approach.*

The lack of trust issue does not appear to be as easily remedied. There were several concerns brought up that fall under the "lack of trust" umbrella. Some of the concerns were general, and related to the understandable angst that is universal when embarking on new endeavors. The solutions given for these issues were simply starting to work together over time. *– We agree that the only way that trust can be earned and built is through positive experiences over time. Increased communications for getting factual information out to everyone and aid in "rumor control" would also help.*

Other “lack of trust” concerns were not accompanied with solutions. Instead, they led to numerous unanswered questions. It is implicit that the solution to these issues is a forthright dialogue that answers the questions.

The career staff at COCFRD enjoy an open-door policy with management, and for this reason, have traditionally held unfavorable views regarding unionization. The prospect of collaboration with two unionized entities raises several important questions: Will we be forced to unionize? What was it about the labor-management relationship in DBFD that caused them to unionize recently? Will the change to a larger Fire Authority necessitate unionization by COCFRD career staff as access to and cooperation with management ceases? – *As discussed in NFD Issue #2, the intent of the CCFA unified administration model, is to leave the current operations staffing configurations in place and not to try to “fix what is not broken”. We would anticipate that in later years, this would have to be addressed and resolved should the fire authority decide to pursue a full consolidation of the jurisdictions.*

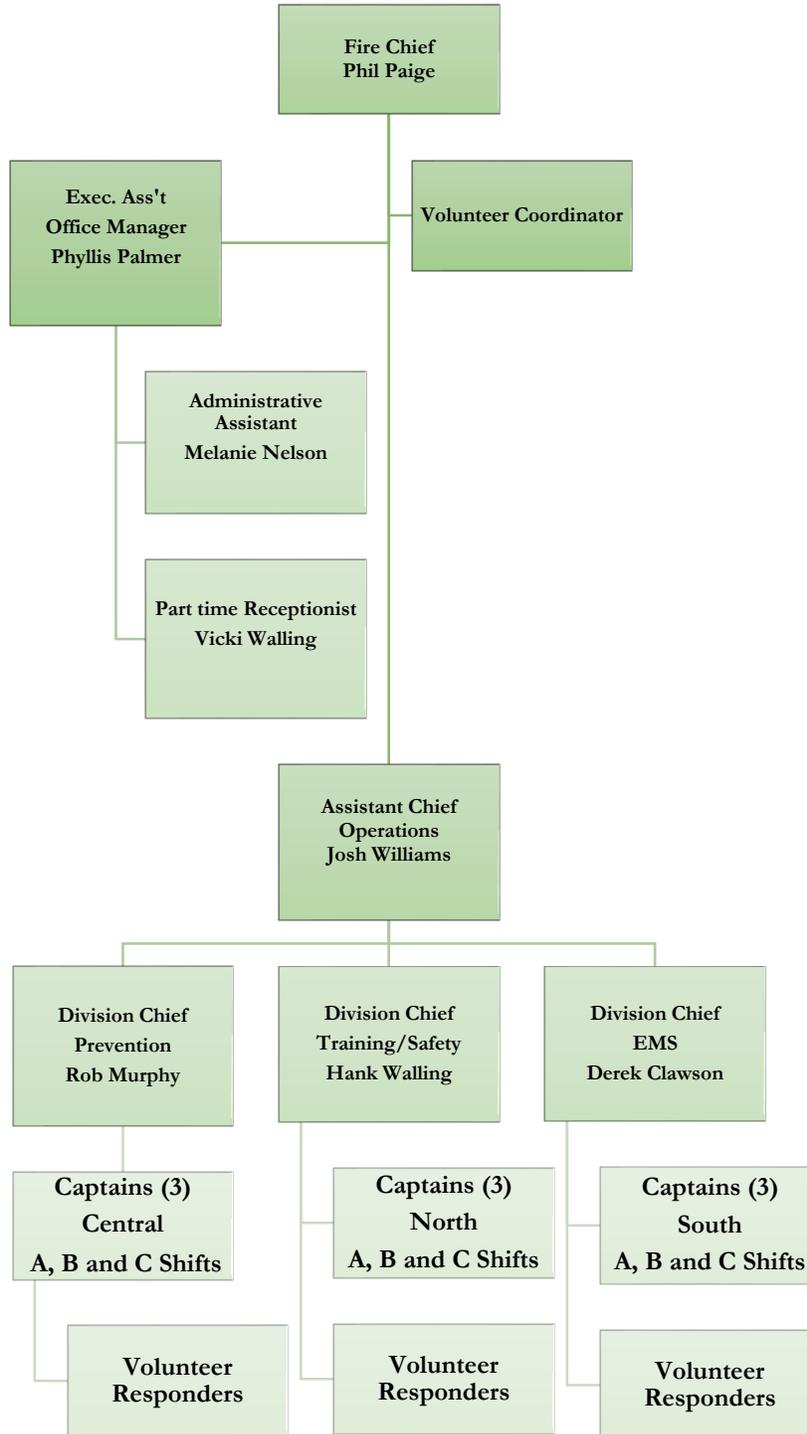
Another “lack of trust” issue that was frequently cited by COCFRD career staff was “history of withdrawal or separation from joint programs.” Again, several questions were raised. The spirit of these questions can be summed up with: how will this collaborative effort be different? – *As discussed under “challenge #9” above, the more formal partnership of the CCFA arrangement should offer more stability than an informal partnership. A regional entity like the CCFA should also make it possible for smaller organizations to be involved in activities like the rope rescue team, where it is not feasible for a small organization to deal with the challenges.*

The final negative point that COCFRD career staff were prevailingly concerned about was the physician advisor issue. COCFRD enjoys a responsive, proactive, and thoughtful physician advisor in Dr. North. Unfortunately, Dr. North has stated that he has no interest in taking on the responsibility of a large collaborative effort such as the proposed Fire Authority. COCFRD medical treatment protocols are different than the other agencies, at least in part due to the fact that we are the only transporting agency. COCFRD career staff is concerned that this collaborative effort would result in the loss of our physician advisor, and a subsequent loss of medical treatment protocols that we feel allow us to provide the best care possible to the citizens that we serve. – *As discussed under “challenge #10” above, we will work with representatives of each department and the two physician advisors to standardize one set of protocol. While desirable, having one physician advisor is less important than having a common protocol.*

Modified Appendix A

CENTRAL COAST FIRE AUTHORITY

Recommended Administrative Structure



Chief Officers - Administrative Duties

Fire Chief – Phil Paige

- Oversight of contractual services
- Provides leadership and direction to organization
- Sets fire department policy
- Budget development and management
- Collaborates and maintains partnerships with and supports other fire districts and city departments
- Implements the goals, strategies, programs and policies of the Central Coast Fire Authority Board
- Oversees development and implementation of the strategic plan
- Attends City Council and Board meetings
- Interacts with various community groups
- Supervise Assistant Chief, Executive Assistant/Office Manager and Volunteer Coordinator
- Monitors community fire protection risks

Assistant Chief / Operations – Josh Williams

- Operations (Fire, EMS, Hazardous Materials, Rescue)
- Personnel matters
- Employee relations
- Report management system coordinator
- Strategic plan implementation
- Operation Manual, SOG's
- Pre-Employment testing and evaluation
- Willamette Valley Dispatch Liaison
- Supervise the Chiefs of Training, EMS and Prevention Divisions
- ISO Coordination

Division Chief / Fire Prevention - Rob Murphy

- Fire code administration
- Fire investigations
- Hazardous materials management
- Fire code review & adoption
- Inspection programs
- New development and construction plan review
- Public education and information programs
- Supervise: Inspectors, Shift Captains and day to day operations in the Central Division
- Strike Team Leader
- Attend District Meetings & Prepare Staff reports
- Disaster Preparedness and Emergency Management Programs
- CERT Team management and coordination

Division Chief / Training & Safety – Hank Walling

- In-service and specialized training coordination for career and volunteer personnel
- Training schedule and calendar
- Recruit testing
- DPSST certification coordination and recordkeeping
- Development and maintenance of training facilities
- Cadet Program
- Training records and report management
- Representative to Safety Committees
- Safety operations and procedures
- Promotional exam design and preparation
- COCTOA representative
- Wellness program coordinator
- Respiratory protection program coordinator
- Probationary education, training, testing, academy
- Training requests & reimbursement
- Supervise instructor cadre, Shift Captains and day to day operations in the North Division

Division Chief / EMS – Derek Clawson

- EMS Training Coordinator
- Quality Assurance Program
- Recruit EMS Evaluations
- Medical Supply, Equipment Specification and Purchase
- Ambulance Billing Coordinator
- EMS Report Management System, Records Custodian
- Hospital, County and State EMS Liaison
- EMS Public Education
- Privacy Officer (HIPAA)
- Designated Officer (Blood Borne Pathogens)
- Pre-employment Testing & Evaluation
- ASA coordination, management and budget
- Certification / recertification management
- Controlled substance manager
- Protocol & documentation compliance
- EMS system structure & oversight
- AED/CPR Programs
- Supervise EMS instructors, Shift Captains and day to day operations in the South Division



Agenda Item # IX.F. _____
Meeting Date August 5, 2013

CITY COUNCIL AGENDA ITEM SUMMARY
City Of Newport, Oregon

Issue/Agenda Title: Acceptance of the FEMA Assistance to Firefighters Grant (AFG)

Prepared By: Phil Paige, Fire Chief Dept. Head Approval: PLP City Manager Approval:

Issue Before the Council: Should The City accept a FEMA Assistance to Firefighters Grant (AFG) award to help fund the replacement of obsolete self-contained breathing apparatus (SCBA) for the fire department?

Staff Recommendation:

Staff recommends that the City accept the award of a FEMA Assistance to Firefighters Grant (AFG) award to help fund the replacement of obsolete self-contained breathing apparatus (SCBA) for the fire department., and that the funds for the required 5% match and for related equipment not funded by the grant be appropriated from the Fire Department's Reserve for Future Capital (101.1090.9904) by way of a Resolution for Supplemental Budget.

Proposed Motion:

I move that the City accept the award to help fund the replacement of obsolete self-contained breathing apparatus (SCBA) for the fire department.

Key Facts and Information Summary:

The FEMA AFG program was created to provide funding directly to fire departments to protect the health and safety of the public and firefighting personnel against fire and fire-related hazards. FEMA considers SCBA equipment over ten years old to be obsolete. The Newport Fire Department SCBA equipment is over 10 years old. Newport Fire Department has also been working with neighboring fire departments and districts to better standardize training and equipment. This represents an opportunity to work towards further standardization in the area of SCBA equipment, which will further improve emergency inter-operability.

The replacement cost for 28 SCBA air packs and 28 spare air bottles was estimated at \$199,500 at the time of application. The grant will fund 95% of the cost, or \$189,525. There is a 5% match, or \$9,975 and there will be related costs that are not covered by the grant, such as additional face pieces, safety equipment, repair parts and technician training, and purchasing newer equipment to meet the 2013 NFPA standards. The total cost to the City, above the grant funds awarded are anticipated to be approximately \$35,000 including the 5% match.

Council action on June 19, 2012 authorized the application for the AFG. The grant restrictions only allowed for the purchase of the actual SCB air packs and one spare air bottle for each. Related equipment, repair parts and extra facemasks were not covered by the grant.

Other Alternatives Considered:

The City could decline the offered award.

Staff continues to recommend the combination of career and volunteer staffing increases as a way to increase staffing in the most cost-efficient manner, and maintaining the maximum involvement of volunteers in providing emergency services.

Attachment List:

Award Package for Grant No.EMW-2012-FO-03166

Fiscal Notes:

Anticipating the need to replace SCBA equipment, and other capital needs, the Fire Department requested funds under "Reserve for Future Capital", and \$100,000 is included in the current approved budget (101.1090.9904). The Reserve funds need to be transferred by a Resolution for Supplemental Budget, according to Oregon State Budget Law. This will be presented for Council approval as a subsequent agenda item.

The current SCBA equipment will be surplus and offered for sale, and some revenue may be realized to offset the costs. However, due to the age of the equipment, the amount is not expected to be enough to cover the costs.



FEMA

U.S. Department of Homeland Security
Washington, D.C. 20472

AGREEMENT ARTICLES

ASSISTANCE TO FIREFIGHTERS GRANT PROGRAM - Operations and Safety program

GRANTEE: Newport Fire Department

PROGRAM: Operations and Safety

AGREEMENT NUMBER: EMW-2012-FO-03166

AMENDMENT NUMBER:

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Article II	Grantee Concurrence
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Article I - Project Description

The purpose of the Assistance to Firefighters Program is to protect the health and safety of the public and firefighting personnel against fire and fire-related hazards. After careful consideration, FEMA has determined that the grantee's project submitted as part of the grantee's application, and detailed in the project narrative as well as the request details section of the application - including budget information - is consistent with the program's purpose and worthy of award. Therefore, the grantee shall perform the work described in the approved grant application as itemized in the request details section of the application and further described in the grant application's narrative. These sections of the application are made a part of these grant agreement articles by reference. The grantee may not change or make any material deviations from the approved scope of work outlined in the above referenced sections of the application without prior written approval from FEMA.

Article II - Grantee Concurrence

By providing the Primary Contact’s electronic signature and indicating acceptance of the award, the grantee accepts and agrees to abide by the terms and conditions of the grant as set forth in this document and the documents identified below. Grantees agree that they will use the funds provided through the Fiscal Year 2012 Assistance to Firefighters Grant Program in accordance with these Articles of Agreement and the program guidelines provided in the Fiscal Year 2012 Assistance to Firefighters Grant program guidance. All documents submitted as part of the application are made a part of this agreement by reference.

Article III - Period of Performance

The period of performance shall be from **11-JUN-13 to 10-JUN-14**.

Article IV - Amount Awarded

The amount of the award is detailed on the Obligating Document for the Award attached to these articles. Following are the budgeted estimates for each object class of this grant (including Federal share plus grantee match):

Personnel	\$0.00
Fringe Benefits	\$0.00
Travel	\$0.00
Equipment	\$199,500.00
Supplies	\$0.00
Contractual	\$0.00
Construction	\$0.00
Other	\$0.00
Indirect Charges	\$0.00
Total	\$199,500.00

NEGOTIATION COMMENTS IF APPLICABLE (max 4000 characters)

Any questions pertaining to your award package, please contact your GPD Grants Management Specialist Jacqueline Lee at Jacqueline.Lee@dhs.gov.

Article V - Financial Guidelines

The grantee and any subgrantee shall comply with the most recent version of the Administrative Requirements, Cost Principles, and Audit Requirements. A non-exclusive list of regulations commonly applicable to FEMA grants are listed below:

A. Administrative Requirements

1. 44 CFR Part 13, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments
2. 2 CFR Part 215, Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations (OMB Circular A-110)

B. Cost Principles

1. 2 CFR Part 225, Cost Principles for State, Local, and Indian Tribal Governments (OMB Circular A-87)
2. 2 CFR Part 220, Cost Principles for Educational Institutions (OMB Circular A-21)
3. 2 CFR Part 230, Cost Principles for Nonprofit Organizations (OMB Circular A-122)
4. Federal Acquisition Regulations (FAR), Part 31.2 Contract Cost Principles and Procedures, Contracts with Commercial Organizations

C. Audit Requirements

1. OMB Circular A-133, Audits of States, Local Governments, and Nonprofit Organizations

Article VI - Prohibition on Using Federal Funds

Recipient understands and agrees that it cannot use any federal funds, either directly or indirectly, in support of the enactment, repeal, modification or adoption of any law, regulation or policy, at any level of government, without the express prior written approval of FEMA.

Article VII - GPD Allocations

The recipient agrees that all allocations and use of funds under this grant will be in accordance with the FY 2012 Assistance to Firefighters Grant Program guidance and application kit.

Article VIII - Financial Reporting

Recipients of any Assistance to Firefighters Grants will be required to submit a semi-annual Federal Financial Report (FFR) via the automated system on the Standard Form 425. The FFR is intended to provide Federal agencies and grant recipients with a standard format and consistent reporting requirements throughout the government. The FFR, to be submitted using the online e-grant system, will be due semi-annually based on the calendar year beginning with the period after the award is made. Grant recipients will be required to submit a FFR throughout the entire period of performance of the grant.

The reporting periods for the FFR are January 1 through June 30 (Report due by July 31), and July 1 through December 31 (Report due by January 30).

At the end of the grant's period of performance, all grantees are required to produce a final report on how the grant funding was used and the benefits realized from the award. Grantees must submit a final financial report and a final performance report within 90 days after the end of the period of performance.

Article IX - FEMA Officials

Program Officer: Catherine Patterson is the Program Officer for the Assistance to Firefighters Grant Program. The Program Officer is responsible for the technical monitoring of the stages of work and technical performance of the activities described in the approved grant application.

Grants Assistance Officer: Andrea Day is the Assistance Officer for this grant program. The Assistance Officer is the Federal official responsible for negotiating, administering, and executing all grant business matters. If you have any questions regarding your grant please call ASK-GMD at 866-927-5646 to be directed to a specialist.

Grants Management Division POC: The Grants Management Specialist shall be contacted to address all financial and administrative grant business matters for this award. If you have any questions regarding your grant please call ASK-GMD at 866-927-5646 to be directed to a specialist.

Article X - Central Contractor Registration (CCR)

Recipients of an AFG grant are required Central Contractor Registration (CCR) in the SAM.gov system. Active registration in the Central Contractor Registry ensures grantees are compliant with Federal regulations under Federal Financial Accountability and Transparency Act (FFATA). CCR registration is free, and may take up to 5 to 10 business days to process. For help with registering in the CCR, please visit SAM.gov for more information.



Agenda Item # IX.G.
Meeting Date August 5, 2013

CITY OF NEWPORT AGENDA ITEM SUMMARY
City Of Newport, Oregon

Issue/Agenda Title: Resolution adopting a Supplemental Budget and making appropriations for the Fiscal Year 2013/2014

Prepared By: Brown Dept Head Approval: _____ City Mgr Approval: _____

Issue Before the Council: Consider amending the City's Fiscal Year 2013/2014 annual budget to address increased revenue and appropriation changes in the General Fund, due to the acceptance of the FEMA Assistance to Firefighters Grant (AFG). And increase revenue and appropriation changes in the Capital Projects Fund, due to the acceptance of the IFA-Big Creek Road Landslide Repairs (FEMA Match) Grant, Project Number L14001.

Staff Recommendation: Staff recommends to adopt a Supplemental Budget and make appropriation for the General Fund.

Proposed Motion: I move to adopt Resolution No. 3644, a resolution adopting a supplemental budget and make appropriations for Fiscal Year 2013/2014.

Key Facts and Information Summary: Oregon Budget Law requires a supplemental budget and revised appropriations whenever revenues and expenditures change from the originally approved budget. Upon Council accepting the FEMA Assistance to Firefighters Grant (AIG) and IFA-Big Creek Road Landslide Repairs (FEMA Match) Grant, the city will receive resources and have additional requirements which were not expected when the Fiscal Year 2013/2014 Budget was completed.

Other Alternatives Considered: None

Fiscal Notes: In the General Fund the Supplemental Budget will increase both resources and requirements an additional amount of \$189,525, the revised total resources and requirements for the General Fund will be \$12,900,669 for Fiscal Year 2013/2014. In the Capital Projects Fund the Supplemental Budget will increase both resources and requirement an additional amount of \$216,702, the revised total resources and requirements for the Capital Projects Fund will be \$5,175,523 for Fiscal Year 2013/2014

CITY OF NEWPORT

RESOLUTION NO. 3644

A RESOLUTION ADOPTING
A SUPPLEMENTAL BUDGET AND MAKING APPROPRIATIONS

WHEREAS, certain additional resources have become available because of the FEMA Assistance to Firefighters Grant, Grant Number EMW-2012-FO-03166; and IFA - Big Creek Road Landslide Repairs (FEMA Match) Grant, Project Number L14001 for Fiscal Year 2013/2014; and

WHEREAS, the appropriations for certain expenditures must be increased; and

WHEREAS, a public notice was issued in accordance with ORS Chapter 294;

The City of Newport resolves as follows; that the appropriations as outlined be hereby approved.

General Fund

Resources	Amount	Requirements	Amount
Non-Dept. - Grant Revenue	\$ 189,525	Fire - Reserve for Future	\$ (35,000)
		Fire - Grant Expenses	\$ 224,525
Revised Total Resources	\$ 12,900,669	Revised Total Requirements	\$ 12,900,669

Capital Projects Fund

Resources	Amount	Requirements	Amount
Grant Revenue	\$ 216,702	Capital Outlay	\$ 216,702
Revised Total Resources	\$ 5,175,523	Revised Total Requirements	\$ 5,175,523

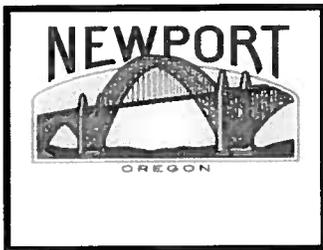
This resolution will become effective immediately upon adoption.

Adopted by the Newport City Council on August 5, 2013.

Sandra Roumagoux, Mayor

Attest:

Margaret M. Hawker, City Recorder



Agenda Item #: IX.H.
Meeting Date: 8-5-13

CITY COUNCIL AGENDA ITEM SUMMARY
City Of Newport, Oregon

Issue/Agenda Title: Consideration of Award for OnDisplay Advertising

Prepared By: cb Dept. Head Approval: _____ City Mgr. Approval: TS

Issue Before the Council: The issue before Council is the consideration of a billboard (building wall-scape) located on SW 4th and Oak in Portland for the months of February 2014 through June 2014. A proposal was submitted by OnDisplay Advertising, reviewed and recommended by the Destination Newport Committee.

Staff Recommendation: The current procedure requires a recommendation from the Destination Newport Committee to the City Council. The Destination Newport Committee is forwarding a positive recommendation to approve the posting of a vinyl billboard in Portland at the 4th and Oak Street location, which is a product of OnDisplay Advertising.

Proposed Motion: I move to approve the promoting of Newport by advertising on a billboard (building wall-scape) located at SW 4th and Oak Street in Portland, through a contract with OnDisplay Advertising. The billboard advertising will cost \$9,000 for a 4 week period with 5 4 week periods for a total of \$45,000 plus production/installation cost of \$3,595 for a total cost of \$48,595. The advertising period will begin February 3, 2014 and run through June 22, 2014 and will be charged against the FY14 budget.

Key Facts and Information Summary: The billboard (building wall-scape) which is a 90 foot high picture of the Yaquina Head Lighthouse with "Discovernewport.com" and our 800 number has been used for two previous postings. The recommendation is to post again starting on February 3, 2014 and continue through June 22, 2014. The contract cost is \$9,000 for a 4 week period with 5 4 week periods for a total of \$45,000 plus production/installation cost of \$3,595 for a total cost of \$48,595. The production and installation cost including production of a new vinyl. Depending on the condition of the current vinyl when it is removed will determine if this cost is necessary. If the vinyl is in good condition it will be reused and The City of Newport will not be charged the \$2600 for production.

Other Alternatives Considered: There are no comparable billboard opportunities in that area or within this price range. The location became available and the committee considers this (1) a good location; (2) the artwork was completed last year and there is a possibility that no further production costs will be needed; and (3) no other company has the same or nearby location with the same traffic pattern and visibility.

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

Attachment List: Attached is the contract from OnDisplay.

Fiscal Notes: If approved, this funding would come from budgeted marketing and advertising monies in the Room Tax Fund.

ADDITIONAL TERMS AND CONDITIONS OF ADVERTISING DISPLAY CONTRACT

1. THE TERMS 'ADVERTISER' AND 'ADVERTISING AGENCY' SHALL MEAN AND REFER TO THE FIRMS OR INDIVIDUALS SO DESIGNATED ON THE FACE PAGE OF THIS CONTRACT.
2. IF FOR ANY CAUSE OR CONTINGENCY WHATSOEVER BEYOND ONDISPLAY'S CONTROL, INCLUDING WITHOUT LIMITING THE GENERALITY OF THE INCLUSION, ACTS OF GOD, STRIKES, SHORTAGE OF LABOR OR MATERIALS, AND PRESENT OR FUTURE LAWS, ORDINANCES, RULES, ORDERS OR REGULATIONS, ONDISPLAY SHALL BE UNABLE TO ERECT AND MAINTAIN ANY OF THE SPACES COVERED HEREBY, THIS AGREEMENT SHALL NOT TERMINATE EITHER IN WHOLE OR IN PART, BUT ONDISPLAY SHALL ALLOW ADVERTISER CREDIT AT THE RATE SPECIFIED FOR THE PERIOD DURING WHICH SERVICE SHALL NOT BE FURNISHED, SUCH CREDIT TO BE RENDERED AT ONDISPLAY'S OPTION BY ADVERTISING SPACE ON OTHER SPACE OR SPACES APPROVED BY ADVERTISER, OR BY EXTENDING THIS CONTRACT AND ADVERTISING SERVICE FOR A PERIOD BEYOND THE TERMINATION DATE, SUCH APPROVED SUBSTITUTED SERVICE AND/OR EXTENDED SERVICE TO BE OF AT LEAST EQUAL VALUE WITH THE AMOUNT OF SUCH CREDIT.
3. ILLUMINATED DISPLAYS ARE AVAILABLE AT SOME LOCATIONS AT AN ADDITIONAL CHARGE. ILLUMINATED DISPLAYS ARE TO BE ILLUMINATED FROM DUSK TO MIDNIGHT. CREDIT WILL BE GRANTED FOR TEMPORARY LOSS OF ILLUMINATION, IN THE AMOUNT OF 15% OF THE PRORATED DAILY DISPLAY RATE FOR EACH DAY ILLUMINATION IS NOT PROVIDED.
4. FAILURE TO PAY ANY MONTHLY PAYMENT AS HEREIN PROVIDED SHALL, AT ONDISPLAY'S OPTION, BE DEEMED A COMPLETE BREACH BY ADVERTISER OF THIS AGREEMENT, AND UPON ANY SUCH FAILURE THE FULL AMOUNT OF THE REMAINING MONTHLY RENTAL INSTALLMENTS SHALL IMMEDIATELY BECOME DUE AND PAYABLE, AND IN THE EVENT OF FAILURE TO MAKE PAYMENT THEREOF ON DEMAND, ONDISPLAY IS AUTHORIZED BUT NOT OBLIGATED, TO TAKE POSSESSION OF THE OUTDOOR ADVERTISING DISPLAY OR ANY OR ALL OF THE SPACES AND REMOVE ALL ADVERTISING FROM ANY OR ALL OF THE SPACES, TO RELET THE SPACES OR ANY OF THEM FOR THE WHOLE OR ANY PART OF THE UNEXPIRED TERM OF THIS CONTRACT TO SUCH PERSON OR PERSONS AND UPON SUCH TERMS AND CONDITIONS AS ONDISPLAY MAY DETERMINE, AND TO COLLECT AND RECEIVE THE INCOME OR RENT FROM SUCH RELETTING OR RELETTINGS AND APPLY THE INCOME OR RENT SO RECEIVED FIRST TO ONDISPLAY'S COSTS OF REPLACING THE DISPLAY (INCLUDING BUT NOT LIMITED TO COSTS INCURRED FOR DESIGN, ART WORK, SELLING, PAINTING AND INSTALLING THE REPLACEMENT DISPLAY), AND THE BALANCE THEREOF TO SATISFACTION OF ANY AMOUNTS WHICH MAY THEN BE DUE ONDISPLAY FROM ADVERTISER UNDER THIS AGREEMENT. SUCH RE-ENTRY BY ONDISPLAY AND SUCH RELETTING SHALL NOT WORK A FORFEITURE OF ONDISPLAY'S RIGHT TO COLLECT THE RENT TO BE PAID AND TO ENFORCE THE COVENANTS TO BE PERFORMED BY ADVERTISER FOR THE FULL TERM OF THIS CONTRACT.
5. ADVERTISER SHALL INDEMNIFY AND HOLD HARMLESS ONDISPLAY AGAINST ANY LIABILITY TO WHICH ONDISPLAY MAY BE SUBJECTED BY REASON OF THE ADVERTISING MATERIAL DISPLAYED UNDER THIS CONTRACT, INCLUDING, BUT NOT LIMITED TO, LIABILITY FOR INFRINGEMENT OF TRADEMARKS, TRADE NAMES, COPYRIGHTS, INVASION OF RIGHTS OF PRIVACY, DEFAMATION, ILLEGAL COMPETITION OR TRADE PRACTICES, AS WELL AS ALL REASONABLE COSTS, INCLUDING ATTORNEY'S FEES, IN DEFENDING ANY SUCH ACTION OR ACTIONS.
6. IF THIS CONTRACT IS PLACED IN THE HANDS OF AN ATTORNEY FOR COLLECTION, ADVERTISER AGREES TO PAY ONDISPLAY'S REASONABLE ATTORNEY'S FEES, EVEN THOUGH NO SUIT OR ACTION IS FILED. IF A SUIT OR ACTION IS FILED, THE AMOUNT OF SUCH REASONABLE ATTORNEY FEES SHALL BE FIXED BY THE COURT OR COURTS IN WHICH THE SUIT OR ACTION, INCLUDING ANY APPEAL THEREIN, IS TRIED, HEARD OR DECIDED, AND SHALL INCLUDE AN AMOUNT ESTIMATED BY THE COURT AS THE REASONABLE COSTS AND FEES TO BE INCURRED IN COLLECTING ANY MONETARY JUDGEMENT OR ENFORCING ANY OTHER ORDER ENTERED IN THE SUIT OR ACTION.
7. THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES SHALL BE GOVERNED BY AND ENFORCED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF OREGON. ANY SUIT OR ACTION BASED UPON THIS AGREEMENT SHALL BE COMMENCED IN AND DECIDED BY EITHER THE DISTRICT COURT OR THE CIRCUIT COURT OF THE STATE OF OREGON FOR MULTNOMAH COUNTY, AND THE PARTIES CONSENT AND AGREE TO SUCH COURTS' PERSONAL JURISDICTION OVER THE PARTIES FOR THAT PURPOSE.
8. THIS CONTRACT IS NOT ASSIGNABLE BY THE ADVERTISER OR BY THE ADVERTISING AGENCY
9. ANY BILL RENDERED TO THE ADVERTISER OR TO THE ADVERTISING AGENCY SHALL BE CONCLUSIVE AS TO THE CORRECTNESS OF THE ITEMS THEREIN SET FORTH AND SHALL CONSTITUTE AN ACCOUNT STATED UNLESS WRITTEN OBJECTION IS MADE THERETO BY THE ADVERTISER OR ADVERTISING AGENCY WITHIN THIRTY (30) DAYS FROM THE RENDERING THEREOF.
10. ADVERTISER AND THE ADVERTISING AGENCY, IF ANY, ARE BOTH INDIVIDUALLY AND SEVERALLY RESPONSIBLE FOR PAYMENT UNDER THIS CONTRACT. THIS CONTRACT CONTAINS THE ENTIRE AGREEMENT BETWEEN THE PARTIES, AND NO REPRESENTATION OR PROMISE NOT SET FORTH HEREIN SHALL AFFECT THE OBLIGATIONS OF EITHER PARTY HEREUNDER.
11. THE ADVERTISING AGENCY, IF ANY, REPRESENTS AND WARRANTS THAT IT IS AUTHORIZED TO EXECUTE THIS AGREEMENT ON BEHALF OF THE ADVERTISER AND TO LEGALLY BIND THE ADVERTISER TO THE PAYMENT AND PERFORMANCE OF THE OBLIGATIONS PROVIDED IN THIS AGREEMENT.
12. ADVERTISER ACKNOWLEDGES AND AGREES THAT NO PAYMENT MADE TO THE ADVERTISING AGENCY SHALL CONSTITUTE SATISFACTION OF A PAYMENT OBLIGATION UNDER THIS AGREEMENT UNLESS AND UNTIL ONDISPLAY ACTUALLY RECEIVES THE PAYMENT.

INITIAL: _____

CONTACT: TED SMITH

PORTLAND: 1800 Blankenship Rd, Ste 200 • West Linn, Oregon 97068 • P: 503-650-7132 • F: 503-650-7134

CORPORATE: 245 Edison Rd, Ste 250 • Mishawaka, Indiana 46545 • P: 574-296-5684 • F: 574-296-5983

www.ondisplayads.com



Agenda Item # IX.I.
Meeting Date August 5, 2013

CITY COUNCIL AGENDA ITEM SUMMARY
City Of Newport, Oregon

Issue/Agenda Title: Consideration of Intergovernmental Agreement #29445 Between the City of Newport and Oregon Department of Aviation

Prepared By: Melissa Roman Dept. Head Approval: _____ City Manager Approval: _____

Issue Before the Council: The issue before Council is consideration of an intergovernmental agreement between the City and the Oregon Department of Aviation (ODA) for pavement maintenance work at the Newport Municipal Airport.

Staff Recommendation: Staff recommends approval of the intergovernmental agreement with the ODA.

Proposed Motion: I move to approve the intergovernmental agreement with the Oregon Department of Aviation, and to authorize the City Manager to sign the Intergovernmental Agreement #29445 Newport Municipal Airport 2013 Statewide Airport Pavement Maintenance Program Using Non-Primary Entitlement Funds for Local Match.

Key Facts and Information Summary: The Statewide Airport Pavement Maintenance Program (PMP) assist airports in undertaking pavement maintenance. This particular project will crack sealing existing pavement. Project cost is estimated at \$4,791.28 in Statewide Airport Pavement Maintenance Program (PMP) and FAA Entitlement funds. The State PMP funds are estimated at \$3,344.00. The City of Newport shall contribute twenty-five percent in Airport FAA Entitlement funds, estimated at \$1,197.82 toward the total project cost. The project had been scheduled for 2014 but has been moved to 2013.

Other Alternatives Considered: None.

City Council Goals: One of the Council goals is to implement the recommendations of the recent fire department study. This agreement will further the achievement of this goal.

Attachment List:

Fiscal Notes: The City's 25% match for this project is accounted for in the Airport FAA Entitlement budget. Three-quarters of the project is funded through the Oregon Department of Transportation.

INTERGOVERNMENTAL AGREEMENT
Newport Municipal Airport
2013 Statewide Airport Pavement Maintenance Program
Using Non-Primary Entitlement Funds for Local Match

THIS AGREEMENT is made and entered into by and between the STATE OF OREGON, acting by and through its Department of Transportation, on behalf of the Oregon Department of Aviation, hereinafter referred to as "State," and the City of Newport, acting by and through its elected officials, hereinafter referred to as "Airport Sponsor," both herein referred to individually or collectively as "Party" or "Parties."

RECITALS

1. By the authority granted in Oregon Revised Statute (ORS) 190.110, state agencies may enter into agreements with units of local government for the performance of any or all functions and activities that a party to the agreement, its officers, or agents have the authority to perform.
2. Pursuant to Oregon Laws 2011, Chapter 630, Section 29, the Oregon State Legislature authorized the Oregon Department of Transportation (ODOT) to provide central business operating services for the Oregon Department of Aviation (ODA), including purchasing, leasing and contracting services.
3. By the authority granted in Interagency Partnership – Program Administration Agreement No. 28067, between ODA and ODOT, incorporated herein and by this reference made a part hereof, ODOT may enter into this Agreement for the performance of work on Projects.
4. Newport Municipal Airport is a public use airport owned and operated by Airport Sponsor.
5. ORS 836.072 provides State the authority to establish and fund a program to maintain and preserve the pavements used for runways, taxiways, and aircraft parking areas at public use airports in this state.
6. The Statewide Airport Pavement Maintenance Program (PMP) is a state-funded program to assist airports in undertaking pavement maintenance needed for the following reasons:
 - a. To address stop gap maintenance projects for safety reasons.
 - b. There is limited or no funding available at many smaller airports to address pavement maintenance.
 - c. Pavement preventive maintenance is the most cost-effective means to helping preserve the system's airports pavements.

7. The PMP protects Oregon's airport investments by preserving airport pavement consistent with the goals of the 2007 Oregon Aviation Plan and funds non-Federal Aviation Administration (FAA) eligible pavement preventive maintenance projects, including crack sealing, patching and fog seals.
8. Newport Municipal Airport is identified by the 2007 Oregon Aviation Plan as a Category II airport. These airports support a business or high activity transportation need.
9. Airport Sponsor or its controlling jurisdiction has established airport overlay zoning as required per Oregon Administrative Rule (OAR) Chapter 660, Division 013, Airport Planning. If OAR 660-013 has not yet been implemented, Airport Sponsor or its controlling jurisdiction must provide an action plan to establish compliance within the next three (3) years to remain eligible for the PMP.

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

TERMS OF AGREEMENT

1. Under such authority, State and Airport Sponsor agree that State or its contractor shall perform pavement maintenance work at the Newport Municipal Airport, described in Exhibit A, hereinafter referred to as "Project." Project description and budget are further described in Exhibit A.
2. Project cost is estimated at \$4,791.28 in state PMP and FAA entitlement funds, which is subject to change. The state PMP funds are estimated at \$3,344.00. Airport Sponsor shall contribute twenty-five percent (25%) in FAA entitlement funds, estimated at \$1,197.82 toward the total Project cost.
3. For this Project, the Airport Sponsor's contribution of matching funds is provided by an FAA Non-Primary Airport Entitlement grant and Airport Sponsor hereby authorizes State to draw down those funds as provided in State Obligations, Paragraph 6 of this Agreement. Airport Sponsor and State agree that the FAA grant funds will be sufficient to fund the entire matching obligation and no local Airport Sponsor funds need to be contributed.
4. This term of this Agreement is effective on the date all required signatures are obtained and shall terminate upon completion of the Project and State receiving Airport Sponsor's required matching funds from the FAA, or two (2) calendar years following the date all required signatures are obtained, whichever occurs sooner.

AIRPORT SPONSOR OBLIGATIONS

1. Airport Sponsor has established and shall maintain a documented pavement maintenance program on a three (3) year inspection cycle in accordance with the State pavement inspection cycle.

2. In consideration for receipt of program funds, Airport Sponsor agrees to keep the airport open for public use for a minimum of twenty (20) years from the date of this Agreement. If this condition is not met, Airport Sponsor shall immediately reimburse all State funds used on Project to State. The amount reimbursed shall be the total amount of State funds divided by twenty (20), times the difference between twenty (20) and the number of years that the Airport remained open to the public after the funds were distributed.
3. The Project shall not provide pavement maintenance for any areas of Airport that are private or exclusive use areas.
4. Airport Sponsor shall communicate through State with State's contractor regarding contract administration and scope of the Project.
5. Airport Sponsor agrees that, if problems with State's contractor arise during construction, it shall communicate these concerns to State, which shall be responsible for resolving these concerns.
6. Airport Sponsor shall comply with all federal, state, and local laws, regulations, executive orders and ordinances applicable to the work under this Agreement, including, without limitation, the provisions of ORS 279B.220, 279B.225, 279B.230, 279B.235 and 279B.270 incorporated herein by reference and made a part hereof. Without limiting the generality of the foregoing, Airport Sponsor expressly agrees to comply with (i) Title VI of Civil Rights Act of 1964; (ii) Title V and Section 504 of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659A.142; (iv) all regulations and administrative rules established pursuant to the foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.
7. Airport Sponsor shall not enter into any subcontracts for any of the work to be performed by Airport Sponsor under this Agreement without obtaining prior written approval from State.
8. Airport Sponsor shall perform the service under this Agreement as an independent contractor and shall be exclusively responsible for all costs and expenses related to its employment of individuals to perform the work under this Agreement including, but not limited to, retirement contributions, workers compensation, unemployment taxes, and state and federal income tax withholdings.
9. All employers, including Airport Sponsor, that employ subject workers who work under this Contract in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. Employers Liability insurance with coverage limits of not less than \$500,000 must be included. Airport Sponsor shall ensure that each of its subcontractors complies with these requirements.

State/Airport Sponsor
Agreement No. 29445

10. Airport Sponsor representative shall be available on arrival of State's contractor work crews to meet with Project inspector to review work to be completed and to ensure appropriate NOTAMs (Notice to Airmen) have been issued prior to commencement of work.
11. Airport Sponsor acknowledges and agrees that State, the Oregon Secretary of State's Office, the federal government, and their duly authorized representatives shall have access to the books, documents, papers, and records of Airport Sponsor which are directly pertinent to the specific Agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of six (6) years after final payment (or completion of Project -- if applicable.) Copies of applicable records shall be made available upon request. Payment for costs of copies is reimbursable by State.
12. Airport Sponsor certifies and represents that the individual(s) signing this Agreement has been authorized to enter into and execute this Agreement on behalf of Airport Sponsor, under the direction or approval of its governing body, commission, board, officers, members or representatives, and to legally bind Airport Sponsor.
13. Airport Sponsor's Project Manager for this Project is Ted Jones, Senior Project Manager, City of Newport, 169 SW Coast Highway, Newport, OR 97365, 541-574-3375, t.jones@newportoregon.gov, or assigned designee upon individual's absence. Airport Sponsor shall notify the other Party in writing of any contact information changes during the term of this Agreement.

STATE OBLIGATIONS

1. State shall develop all contract specifications and bid documents for the Project.
2. State shall negotiate with a selected engineer for a contract with State that includes the required price and services necessary to complete the Project.
3. State shall advertise for construction bids and intends to award a construction contract with State based on the lowest responsible bid received.
4. State or its contractor shall design and construct the Project in accordance with applicable FAA and State design standards and regulations.
5. State's contracted engineer shall inspect Project to ensure conformity with specifications and to verify quantities for contract payments.
6. State shall draw down from Airport Sponsor's FAA (Federal Aviation Administration) Non-Primary Account to obtain Airport Sponsor's local matching funds based on initial and final construction and engineering costs. State shall pay the remainder of the construction and engineering costs required under the contract.
7. State's Project Manager for this Project is Heather Peck, Aviation Program Manager, ODA – 3040 25th Street SE, Salem, OR 97302, 503-378-3168,

Heather.PECK@state.or.us, or assigned designee upon individual's absence. State shall notify the other Party in writing of any contact information changes during the term of this Agreement.

GENERAL PROVISIONS

1. This Agreement may be terminated by mutual written consent of both Parties.
2. State may terminate this Agreement effective upon delivery of written notice to Airport Sponsor, or at such later date as may be established by State under any of the following conditions:
 - a. If Airport Sponsor fails to provide payment of its share of the cost of the Project.
 - b. If State fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow State, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement.
 - c. If federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the work under this Agreement is prohibited or State is prohibited from paying for such work from the planned funding source.
3. Any termination of this agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
4. If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third Party Claim") against State or Airport Sponsor with respect to which the other Party may have liability, the notified Party must promptly notify the other Party in writing of the Third Party Claim and deliver to the other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Each Party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by a Party of the notice and copies required in this paragraph and meaningful opportunity for the Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to that Party's liability with respect to the Third Party Claim.
5. With respect to a Third Party Claim for which State is jointly liable with Airport Sponsor (or would be if joined in the Third Party Claim), State shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by Airport Sponsor in such proportion as is appropriate to reflect the relative fault of State on the one hand and of Airport Sponsor on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as

any other relevant equitable considerations. The relative fault of State on the one hand and of Airport Sponsor on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. State's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if State had sole liability in the proceeding.

6. With respect to a Third Party Claim for which Airport Sponsor is jointly liable with State (or would be if joined in the Third Party Claim), Airport Sponsor shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by State in such proportion as is appropriate to reflect the relative fault of Airport Sponsor on the one hand and of State on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of Airport Sponsor on the one hand and of State on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. Airport Sponsor's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if it had sole liability in the proceeding.
7. The Parties shall attempt in good faith to resolve any dispute arising out of this Agreement. In addition, the Parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation.
8. This Agreement, and attached exhibit constitute the entire Agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either Party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of State to enforce any provision of this Agreement shall not constitute a waiver by State of that or any other provision.
9. This Agreement may be executed in several counterparts (facsimile or otherwise) all of which when taken together shall constitute one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of this Agreement so executed shall constitute an original.

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

State/Airport Sponsor
Agreement No. 29445

The Director of the Department of Aviation is authorized to act on behalf of State in approving and executing this Agreement.

City of Newport, by and through its
elected officials

By _____

Title _____

By _____

Title _____

Date _____

STATE OF OREGON, by and through its
Department of Transportation, on behalf of
the Oregon Department of Aviation

By _____
Director of Aviation

Date _____

Airport Sponsor Signatory:

Ted Smith, Interim City Manager
City of Newport
169 SW Coast Highway
Newport, OR 97365
541-574-0601
t.smith@newportoregon.gov

State Contact:

Heather Peck, Aviation Program Manager
ODA
3040 25th Street SE
Salem, OR 97302
503-378-3168
Heather.PECK@state.or.us

Airport Sponsor Contact:

Melisa Roman, Project Manager
City of Newport
169 SW Coast Highway
Newport, OR 97365
541-574-3377
m.roman@newportoregon.gov

State/Airport Sponsor
 Agreement No. 29445

**EXHIBIT A
 NEWPORT MUNICIPAL AIRPORT**

Technical Specifications of Project:

No.	Bid Item	Quantity	Unit	Unit Price	Extended Price
B1	Mobilization	1	LS	\$ 1,000.00	\$ 1,000.00
B2	Crack Sealing	2,344	LF	\$ 1.00	\$ 2,344.00
				\$	\$
				\$	\$
				\$	\$
	Subtotal				\$ 3,344.00
	Contingency -allow 10%	1	LS	\$ 334.40	\$ 334.40
	Engineering	1	LS	\$ 1,112.88	\$ 1,112.88
	Total				\$ 4,791.28

25% Match \$1,197.82

This Exhibit is the Engineer's opinion of probable cost for the subject Project at completion of Final Design. It will be updated at the following milestones: Bid Results (post bid) and Contract completion (post-construction). Until contract completion, it is only an estimate.



U.S. Department
of Transportation
**Federal Aviation
Administration**

AGREEMENT FOR TRANSFER OF ENTITLEMENTS

In accordance with section 47117(c)(2) of Title 49 U.S.C. (hereinafter called the "Act").
Newport Municipal Airport – City of Newport, Oregon

(Name of Transferor Sponsor)

Hereby waives receipt of the following amount of funds apportioned to it for each fiscal year specified under section 47114(c)(1) or 47114(d)(3)(A) of the Act.

	Amount	Fiscal Year
\$ 1,197		2013
\$		

TOTAL \$ 1,197

On the condition that the Federal Aviation Administration makes the waived amount available to:
State of Oregon – Department of Aviation – Pavement Maintenance Program (PMP) (*ORV)

(Name of Transferee Sponsor)

for eligible projects under section 47104(a) Act. This waiver shall expire on earlier of 9/30/2013 or when the availability of apportioned funds would lapse under section 47117(b) of the Act.

FOR THE UNITED STATES OF

AMERICA

FEDERAL AVIATION ADMINISTRATION

(Signature)

(Typed Name)

(Title)

(Date)

FOR City of Newport

(Signature)

Ted Smith

(Typed Name)

City Manager

(Title)

(Date)

CERTIFICATE OF SPONSOR'S ATTORNEY

I, _____, acting as Attorney for the Sponsor do hereby certify:

That I have examined the foregoing Agreement and find that the Sponsor has been duly authorized to make such transfer and that the execution thereof is in all respects due and proper and in accordance with the laws of the State of Oregon and the Act.

Dated at _____ this ____ day of ____, ____.

By: _____

(Signature of Sponsor's Attorney)