

Council accepts comments on agenda items during the meeting. Please fill out a form identifying the item(s) you wish to speak on prior to the meeting starting, if possible, or prior to the agenda item beginning and turn it into the City Recorder. (The exception is formal land use hearings, which requires a specific public hearing process.)

**CITY OF NEWBERG
CITY COUNCIL AGENDA
SEPTEMBER 21, 2009
7:00 P.M. MEETING
PUBLIC SAFETY BUILDING TRAINING ROOM
401 EAST THIRD STREET**

I. CALL MEETING TO ORDER*

II. ROLL CALL

III. PLEDGE OF ALLEGIANCE

IV. CITY MANAGER'S REPORT

V. PUBLIC COMMENTS

(30 minutes maximum which may be extended at the Mayor's discretion; an opportunity to speak for no more than 5 minutes per speaker allowed)

VI. CONSENT CALENDAR

VII. PUBLIC HEARING

Consider a motion approving [Resolution No. 2009-2870](#) adopting the findings for exemption from Local Contract Review Board rules for the repairs and improvements to the Wastewater Treatment Plant. (Pgs. 3-8)

VIII. NEW BUSINESS

1. Consider a motion approving [Resolution No. 2009-2866](#) appropriating current year debt payments to US National Bank for the Baker Rock Property purchase. (Pg. 9-22)
2. Consider a motion approving [Resolution No. 2009-2869](#) approving a fee refund to St. Peter Catholic Church for property located at 2315 North Main Street. (Pgs. 23-25)

IX. COUNCIL BUSINESS

X. ADJOURNMENT

*The Mayor reserves the right to change the order of items to be considered by the Council at their meeting. No new items will be heard after 11:00 p.m., unless approved by the Council.

INDEX OF ORDERS, ORDINANCES AND RESOLUTIONS:

ORDERS:

None

ORDINANCES:

None

RESOLUTIONS:

Resolution No. 2009-2866 appropriating the debt payments in the current fiscal year for the purchase of Baker Rock property, 1409 South Sandoz Road.

Resolution No. 2009-2869 approving a partial refund of a design review fee to St. Peter Catholic Church for an overflow parking lot expansion at 2315 N. Main Street, approved under file no. DR1-09-013.

Resolution No. 2009-2870 adopting the findings for exemption from Local Contract Review Board rules for the repairs and improvements to the Wastewater Treatment Plant.

ACCOMMODATION OF PHYSICAL IMPAIRMENTS: In order to accommodate persons with physical impairments, please notify the City Manager's office of any special physical or language accommodations you may need as far in advance of the meeting as possible and no later than 48 hours prior to the meeting. To request these arrangements, please contact Norma Alley, City Recorder, at (503) 537-1283.

*The Mayor reserves the right to change the order of items to be considered by the Council at their meeting. No new items will be heard after 11:00 p.m., unless approved by the Council.

REQUEST FOR COUNCIL ACTION

DATE ACTION REQUESTED: September 21, 2009

Order ____ Ordinance ____ Resolution XX Motion ____ Information ____
No. No. No. 2009-2870

SUBJECT: Resolution to Adopt the Findings For Exemption From Local Contract Review Board Rules For The Repairs And Improvements To The Wastewater Treatment Plant.

Contact Person (Preparer) for this Resolution: Howard Hamilton/Larry Fain

Dept.: Public Works - Engineering
File No.:

RECOMMENDATION:

Adopt **Resolution No. 2009-2870.**

EXECUTIVE SUMMARY: The City of Newberg Public Works Department is requesting an exemption to allow the use of Construction Manager/General Contractor (CM/GC) as an alternative contracting process for a public improvement contract for repairs and improvements to the City of Newberg Wastewater Treatment Plant and other wastewater facilities in accordance with the City's Wastewater Treatment Plant Facilities Plan Update (FPU).

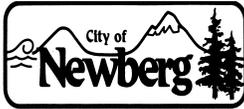
In 2007, the Mayor and City Council adopted Resolution No. 2007-2721, the City of Newberg FPU, to address needed repairs, upgrades and expansion of the City's wastewater treatment facility to meet the growing needs of the community. The project will need to be phased into smaller projects designed and constructed over a period of years in accordance with the availability of revenue and the priority of the needed improvements. The projects will overlap with each other and need to be performed while the plant remains in full operation. The CM/GC process will afford the City the best opportunity to maintain viability in the Clean Water State Revolving Fund's loan program to secure project revenue. As a part of the project development process and due to the specialized and technical nature of the construction and repair of existing facilities while maintaining full use of the facility, it is the recommendation of the City staff and our Consultant, HDR Engineering, to use an alternative contracting process for project management and construction.

The City of Newberg Local Contract Review Board (LCRB) Rules, Chapter 34 of the City Code, provide guidance regarding the use of alternative contracting methods for public improvement projects as may be directed by the LCRB under ORS 279C.335. The City rules in Chapter 34 and the ORS allow the LCRB to enter into public improvement contracts without competitive bidding if the contracts involve design or construction management or expertise beyond normal construction work. This allows flexibility in both proposal evaluation and contract negotiation. The City may select a person or firm to act as a CM/GC to construct public improvements by means of a competitive proposal process. A CM/GC performs specified construction manager services in addition to traditional general contractor services.

In support of this CM/GC procurement method the City staff and HDR Engineering have prepared the Draft Findings for Exemption from Local Contract Review Board Rules for the Repairs and Improvements to the Wastewater Treatment Plant (Exhibit "A"). The required notices of those findings have been published in the Daily Journal of Commerce (8/25/09), the Oregonian (8/31/09), and the Newberg Graphic (8/29/09). The rules require the City to hold a public hearing to receive comment on the findings before taking action on granting an exemption to a public improvement contract from the requirement of competitive bidding. That hearing will be part of the Council's meeting on September 21, 2009.

FISCAL IMPACT: The FY09/10 Budget supports this contract.

STRATEGIC ASSESSMENT: This action to allow the alternative procurement methodology of CM/GC contracting is in accordance with existing City Code, under ORS 279C.335.



RESOLUTION No. 2009-2870

A RESOLUTION ADOPTING THE FINDINGS FOR EXEMPTION FROM LOCAL CONTRACT REVIEW BOARD RULES FOR THE REPAIRS AND IMPROVEMENTS TO THE WASTEWATER TREATMENT PLANT

RECITALS:

1. The City of Newberg Local Contract Review Board (LCRB) Rules, Chapter 34 of the City Code, provide guidance regarding the use of alternative contracting methods for public improvement projects as may be directed by the LCRB under ORS 279C.335.
2. The City has prepared Draft Findings for Exemption from Local Contract Review Board Rules for Repairs and Improvements to the Wastewater Treatment Plant shown in Exhibit "A". Exhibit "A" is attached and by this reference incorporated. Those Findings support the use of the Construction Manager/General Contractor process for the construction of the repairs and upgrades of the Newberg wastewater treatment plant facility. Notices of those Findings have also been published in the Daily Journal of Commerce (8/25/09), the Oregonian (8/31/09), and the Newberg Graphic (8/29/09).
3. On September 21, 2009, the City Council held a Public Hearing as part of its regular Council Meeting to receive any and all oral testimony and written comments on the Findings.

THE CITY OF NEWBERG RESOLVES AS FOLLOWS:

1. To officially adopt the Draft Findings for Exemption from Local Contract Review Board Rules for Repairs and Improvements to the Wastewater Treatment Plant shown as Exhibit "A". Exhibit "A" is hereby adopted and by this referenced incorporated.
2. The City Council acting in its role as the Local Contract Review Board grants a special procurement exemption to allow the use of the Construction Manager/General Contractor process for the construction of the repairs and upgrades of the Newberg wastewater treatment plant facility.

➤ **EFFECTIVE DATE** of this resolution is the day after the adoption date, which is: September 22, 2009.

ADOPTED by the City Council of the City of Newberg, Oregon, this 21st day of September 2009.

Norma I. Alley, City Recorder

ATTEST by the Mayor this 24th day of September 2009.

Bob Andrews, Mayor

LEGISLATIVE HISTORY

By and through _____ Committee at ___ / ___ /200x meeting. Or, X None.

**EXHIBIT “A” TO
RESOLUTION NO. 2009-2870**

**CITY OF NEWBERG
PUBLIC WORKS DEPARTMENT
DRAFT FINDINGS FOR EXEMPTION
FROM LOCAL CONTRACT REVIEW BOARD RULES
FOR THE REPAIRS AND IMPROVEMENTS TO THE
WASTEWATER TREATMENT PLANT**

The City of Newberg Public Works Department is requesting an exemption to allow the use of an alternative contracting process for a public improvement contract for services to construct repairs and improvements to the City of Newberg Wastewater Treatment Plant and other wastewater facilities in accordance with the City’s Wastewater Treatment Plant Facilities Plan Update (FPU). A copy of the City’s FPU is available on the City of Newberg website at <http://ci.newberg.or.us/page.asp?id=43> on the Public Works Department’s Operations page.

Background

In 2007, the Mayor and City Council adopted the City of Newberg FPU to address needed repairs, upgrades and expansion of the City’s wastewater treatment facility to meet the growing needs of the community. Earlier this year, the City chose HDR Engineers Inc. to perform the design of the facility improvements and assist the City in the selection of a Construction Manager/General Contractor (CM/GC) firm to construct the facility improvements. The project will need to be phased in smaller projects designed and constructed over a period of years in accordance with the availability of revenue and the priority of the needed improvements. The projects will overlap with each other and need to be performed while the plant remains in full operation. The capital improvement projects identified in the FPU address existing and future system deficiencies.

As a part of the project development process and due to the specialized and technical nature of construction and repair of existing facilities while maintaining full use of the facility, HDR has concurred with the recommendation of the City regarding use of an alternative contracting process for management and construction of the FPU at the wastewater treatment plant.

Alternative Contracting Process

The City of Newberg Local Contract Review Board (LCRB) Rules, Chapter 34 of the City Code, provide guidance regarding the use of alternative contracting methods for public improvement projects as may be directed by the LCRB under ORS 279C.335. The City rules in Chapter 34 and the ORS allow the LCRB to enter into public improvement contracts without competitive bidding if the contracts involve design or construction management or expertise beyond normal construction work. This allows flexibility in both proposal evaluation and contract negotiation. The City may select a person or firm to act as a CM/GC to construct public improvements by means of a competitive proposal process. A CM/GC performs specified construction manager services in addition to traditional general contractor services.

In order to select a CM/GC using the Request for Proposal method, the LCRB must direct its use by exception to the traditional public contracting practices by approving findings submitted by the department

EXHIBIT “A” TO RESOLUTION NO. 2009-2870

seeking the exemption. The rules require that the City give public notice and hold a public hearing to receive public comment on the findings before taking action on granting an exemption to a public improvement contract from the requirement of competitive bidding. The resulting contract will be treated as a public contract for public improvement and will be subject to all requirements of public improvement contracts, including but not limited to hours of labor, retainage and payment, subcontractors, bonds, and prevailing wage requirements.

Findings

After review of the recommendations from City staff, and the City’s consultants, and after receiving public comment, the Local Contract Review Board finds that:

Design, construction and integration of new facilities into an existing and fully operational wastewater treatment plant requires a contractor experienced in similar projects that can work around the hazards, and operational constraints associated with modifications to wastewater treatment plant.

The phasing and staging of this project combined with the funding plan and duration of construction, make this a unique project that requires a contractor that can come in early and help the City develop and phase the work. The complexity of the project and the attendant need for close coordination during the project by required project participants will be best addressed through the use of the CM/GC contracting process. Optimal value for the City is to have the CM/GC participate early in the design process so that the design team can integrate ideas and methods into the design process.

Use of the CM/GC process is expected to accelerate the project schedule compared to a traditional procurement approach.

The RFP process will promote fair and unbiased competition among CM/GC firms. The RFP process allows the City to select the firm and its team members that are best-suited for the project based on factors such as experience, ability to respond to the technical complexity or unique character of the project, value engineering ideas, schedule enhancement, past performance, price and other factors specific to the project. Selection of the best proposal received via the RFP process will be based on a team review of weighted evaluation criteria.

The RFP will be publicly advertised to ensure an open and competitive process. Because in addition all major components of the project will be competitively solicited, the suggested process will not encourage favoritism in the awarding of public improvement contracts or substantially diminish competition for public improvement contracts.

Participation of the contractor in the design of the plant improvements, as provided in the CM/GC process, will more easily allow the incorporation of quality materials and equipment, selected on performance and life-cycle cost rather than the lowest initial price.

The CM/GC will make value engineering recommendations during the design process that will save costs in the overall construction of the Plant.

**EXHIBIT “A” TO
RESOLUTION NO. 2009-2870**

By selecting a qualified CM/GC through the RFP process, the City will benefit by proper construction of the new facilities successfully incorporating any new equipment and processes. This will improve the quality of the construction and installation of the equipment and increases life expectancy and total life cycle costs for the City’s new systems.

Recommendation

The Public Works Department recommends that the City of Newberg, acting as the Local Contract Review Board, grant a special procurement exemption to allow the use of the Construction Manager/General Contractor process for the construction of the repairs and upgrades of the Newberg wastewater treatment plant facility.

REQUEST FOR COUNCIL ACTION

DATE ACTION REQUESTED: September 21, 2009

Order ___ Ordinance ___ Resolution XX Motion ___ Information ___
No. No. No.2009-2866

SUBJECT:
To appropriate the debt payments in the current fiscal year for the purchase of Baker Rock property, 1409 South Sandoz Road.

Contact Person (Preparer) for this Resolution: Janelle Nordyke

Dept.: Finance

File No.:
(if applicable)

RECOMMENDATION:

Adopt **Resolution No. 2009-2866** which appropriates current year debt payments to US National Bank, lender, for the Baker Rock Property purchase.

EXECUTIVE SUMMARY:

With the progression of expanding the Wastewater Treatment Plant, the City purchased property from Baker Rock Resources after the 2009-2010 Budget was adopted. Therefore, the debt payments have not been appropriated in this fiscal year.

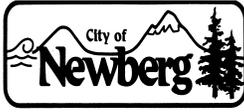
The first payment due October 1, 2009, on this loan is for interest only (\$18,914.00). The next payment is due April 1, 2010, of interest (\$40,530.00) and principal (\$193,000.00). Total due for this fiscal year is \$252,444.00.

The debt will be repaid by transfers from the Wastewater Fund (Fund 6) to the Proprietary Debt Service Fund (Fund 15).

FISCAL IMPACT: The total increase in appropriations equals \$252,444.00.

STRATEGIC ASSESSMENT:

The adoption of this resolution will allow the repayment of the loan for the purchase of Baker Rock Property for this fiscal year.



RESOLUTION No. 2009-2866

A RESOLUTION APPROPRIATING THE DEBT PAYMENTS IN THE CURRENT FISCAL YEAR FOR THE PURCHASE OF BAKER ROCK PROPERTY, 1409 SOUTH SANDOZ ROAD

RECITALS:

1. The City required additional property to expand the existing Wastewater Treatment Plant.
2. The 2009-2010 City Budget was adopted by Resolution No. 2009-2847 on June 1, 2009.
3. Resolution No. 2009-2856 was passed on June 16, 2009, authorizing the purchase of the Baker Rock Property at 1409 South Sandoz Road.
4. On July 7, 2009, financing was secured from US National Bank in the amount of \$1,930,000.00 with interest payable at the rate of 4.20% per annum for 10 years. Interest is payable in October and April and principal is payable in April, as outlined in the Agreement marked as Exhibit "A" which is hereby attached and by this reference incorporated.

THE CITY OF NEWBERG RESOLVES AS FOLLOWS:

To appropriate the debt payment to be made on October 1, 2009, (\$18,914.00) and April 1, 2010, (\$233,530.00), totaling \$252,444.00 from the Proprietary Debt Service Fund (Fund 15) for fiscal year 2009-2010.

➤ **EFFECTIVE DATE** of this resolution is the day after the adoption date, which is: Sept 22, 2009.

ADOPTED by the City Council of the City of Newberg, Oregon, this 21st day of September, 2009.

Norma I. Alley, City Recorder

ATTEST by the Mayor this 24th day of September, 2009.

Bob Andrews, Mayor

LEGISLATIVE HISTORY

By and through _____ Committee at ____ / ____ /200x meeting. Or, X None.
(committee name) (date) (check if applicable)

FINANCING AGREEMENT

by and between

U.S. Bank National Association
as Bank

and the

City of Newberg, Oregon
as Borrower

Dated as of July 7, 2009

Table of Contents

1.	RECITALS, DEFINITIONS AND RULES OF CONSTRUCTION.....	1
1.1	RECITALS.....	1
1.2	DEFINITIONS.....	1
2.	THE FINANCING AND THE FINANCING PAYMENTS.	2
2.1	THE FINANCING.....	2
2.2	THE FINANCING PAYMENTS.....	2
2.3	NO PREPAYMENT.....	3
2.4	SECURITY.....	3
3.	REPRESENTATIONS, WARRANTIES AND COVENANTS.....	3
3.1	REPRESENTATIONS AND WARRANTIES OF THE CITY.....	3
3.2	CITY TAX COVENANTS.....	4
4.	DEFEASANCE.....	4
5.	GENERAL COVENANTS.....	4
5.2	REPRESENTATIONS AND WARRANTIES OF THE BANK.....	5
6.	FEES, COSTS AND EXPENSES.....	5
6.1	BANK FEE.....	5
6.2	CITY FEES AND COSTS.....	5
7.	TITLE AND SECURITY INTERESTS.....	5
8.	FINANCIAL STATEMENTS; NOTICE OF ADVERSE DEVELOPMENTS; BUDGETS.....	5
8.1	FINANCIAL STATEMENTS.....	5
8.2	NOTICE OF ADVERSE DEVELOPMENTS.....	6
8.3	BUDGETS.....	6
8.4	INVOICES.....	6
9.	CONDITIONS TO THE OBLIGATIONS OF THE BANK.....	6
10.	REMEDIES.....	7
10.1	AVAILABLE REMEDIES.....	7
10.2	WAIVERS.....	7
10.3	REMEDIES ARE NOT EXCLUSIVE.....	7
10.4	<i>FORCE MAJEURE</i>	7
11.	WAIVER OF JURY TRIAL.....	8
12.	ASSIGNMENT.....	8
13.	MISCELLANEOUS.....	9
13.1	NOTICES.....	9
13.2	BINDING EFFECT.....	9
13.3	SEVERABILITY.....	9
13.4	AMENDMENTS.....	9
13.5	EXECUTION IN COUNTERPARTS.....	9
13.6	APPLICABLE LAW.....	9
13.7	RULES OF CONSTRUCTION.....	10
13.8	HEADINGS.....	10

FINANCING AGREEMENT

This Financing Agreement is dated as of July 7, 2009, and is entered into by and between U.S. Bank National Association, as Bank (the “Bank”), and the City of Newberg, Oregon, as the borrower (the “City”). The parties hereby agree as follows:

1. Recitals, Definitions and Rules of Construction.

1.1 Recitals.

(A) The City recites that the City is authorized to finance real and personal property by executing a financing agreement pursuant to ORS 271.390, and executes this Financing Agreement to finance the costs of purchasing land that will be used by the City for a wastewater treatment plant and for other City purposes, and to pay costs related to this Financing Agreement.

(B) The Bank recites that the Bank desires to loan the Financed Amount to the City to finance the Project in accordance with this Financing Agreement.

1.2 Definitions.

Unless the context clearly requires otherwise, capitalized terms used in this Financing Agreement which are defined in this Section 1.2 shall have the following meanings:

“Bank” means U.S. Bank National Association.

“City” means the City of Newberg, Oregon.

“City Official” means the City Manager.

“Closing Date” means July 7, 2009.

“Code” means the Internal Revenue Code of 1986, as amended, including the regulations, rulings and judicial decisions interpreting that code.

“Event of Default” means the declaration by the Bank of an event of default as a result of a determination by the Bank that there has been: (i) a failure to pay the Financing Payments when due, as provided in this Financing Agreement; or (ii) a failure by the City to comply with any of its obligations or to perform any of its duties under this Financing Agreement or the Resolution for a period of 60 days after written notice to the City by the Bank, specifying such failure and requesting that it be remedied, unless the Bank shall agree in writing to an extension of such time prior to its expiration; provided however, that if the failure stated in the notice cannot be corrected within the applicable period, the Bank will not unreasonably withhold its consent to an extension of such time if corrective action is instituted by the City within the applicable period and diligently pursued until the failure is corrected; or (iii) a material misrepresentation by the City in this Financing Agreement or the Resolution.

“Financed Amount” means \$1,930,000.

“Financing Agreement” means this Financing Agreement, including any amendments to this Financing Agreement.

“Financing Payments” means the payments described in Section 2.2 of this Financing Agreement.

“Fiscal Year” means the period beginning on July 1 of each year and ending on the next succeeding June 30, or as otherwise defined by Oregon Law.

“Payment Date(s)” means April 1 and October 1 of each year.

“Project” means the purchase of real property located at 1409 South Sandoz Road in Newberg, Oregon.

“Resolution” means the City’s Resolution No. 2009-2856 that was adopted on June 15, 2009, authorizing this Financing Agreement.

2. The Financing and the Financing Payments.

2.1 The Financing.

(A) The Bank agrees to loan the City an amount equal to the Financed Amount on the date of this Financing Agreement or as soon thereafter as the City satisfies the conditions stated in Section 9.

(B) This Financing Agreement shall commence on the Closing Date and shall end on the date that all the Financing Payments have been paid.

2.2 The Financing Payments.

(A) The City agrees to borrow the Financed Amount from the Bank, and to repay that Financed Amount, plus accrued interest at the following rates, on the following dates:

<u>Payment Dates</u>	<u>Principal</u>	<u>Rate</u>	<u>Interest</u>	<u>Total Payments</u>
October 1, 2009		4.2000%	\$18,914.00	\$18,914.00
April 1, 2010	\$193,000.00	4.2000%	\$40,530.00	\$233,530.00
October 1, 2010		4.2000%	\$36,477.00	\$36,477.00
April 1, 2011	\$193,000.00	4.2000%	\$36,477.00	\$229,477.00
October 1, 2011		4.2000%	\$32,424.00	\$32,424.00
April 1, 2012	\$193,000.00	4.2000%	\$32,424.00	\$225,424.00
October 1, 2012		4.2000%	\$28,371.00	\$28,371.00
April 1, 2013	\$193,000.00	4.2000%	\$28,371.00	\$221,371.00
October 1, 2013		4.2000%	\$24,318.00	\$24,318.00
April 1, 2014	\$193,000.00	4.2000%	\$24,318.00	\$217,318.00
October 1, 2014		4.2000%	\$20,265.00	\$20,265.00
April 1, 2015	\$193,000.00	4.2000%	\$20,265.00	\$213,265.00
October 1, 2015		4.2000%	\$16,212.00	\$16,212.00
April 1, 2016	\$193,000.00	4.2000%	\$16,212.00	\$209,212.00
October 1, 2016		4.2000%	\$12,159.00	\$12,159.00
April 1, 2017	\$193,000.00	4.2000%	\$12,159.00	\$205,159.00
October 1, 2017		4.2000%	\$8,106.00	\$8,106.00
April 1, 2018	\$193,000.00	4.2000%	\$8,106.00	\$201,106.00
October 1, 2018		4.2000%	\$4,053.00	\$4,053.00
April 1, 2019	\$193,000.00	4.2000%	\$4,053.00	\$197,053.00

(B) Interest on the Financed Amount shall be repaid semi-annually on April 1 and October 1 of each year, commencing October 1, 2009, as provided above.

2.3 No Prepayment.

The City may not prepay the Financed Amount.

2.4 Security.

The City pledges its full faith and credit, and agrees to pay the amounts due under this Financing Agreement from any and all legally available funds of the City. The obligation of the City to pay the Financing Payments is not subject to annual appropriation.

3. Representations, Warranties and Covenants.

3.1 Representations and Warranties of the City.

The City represents, covenants and warrants for the benefit of the Bank and its assignees as follows:

(A) The City is duly created and existing under the laws of the State of Oregon, has all necessary power and authority to enter into this Financing Agreement and perform its duties under the Resolution and this Financing Agreement, and that the Resolution and this Financing Agreement will, when executed by the City Official, constitute legal, valid and binding obligations of the City which are enforceable in accordance with their terms, except to the extent that enforceability may be limited by or rendered ineffective by (i) bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and other similar laws affecting creditors' rights generally; (ii) the application of equitable principles and the exercise of judicial discretion in appropriate cases; (iii) common law and statutes affecting the enforceability of contractual obligations generally; and (iv) principles of public policy concerning, affecting or limiting the enforcement of rights or remedies against governmental entities such as the City.

(B) The City is authorized under ORS 271.390 to enter into this Financing Agreement and to perform all of its obligations under this Financing Agreement.

(C) The adoption of the Resolution and the execution and delivery of this Financing Agreement will not conflict in any material respect with, or constitute a material breach of or default under, any law, charter provision, court decree, administrative regulation, resolution, ordinance or other agreement to which the City is a party or by which it is bound.

(D) There is no action, suit, proceeding or investigation at law or in equity before or by any court or government, city or body pending or, to the best of the knowledge of the City, threatened against the City to restrain or enjoin the execution and delivery of this Financing Agreement or the adoption of the Resolution, or the collection and application of the funds

as contemplated by the Resolution and this Financing Agreement, which, in the reasonable judgment of the City, would have a material and adverse effect on the ability of the City to pay the amounts due under this Financing Agreement.

(E) To the extent permitted by law, the City agrees to indemnify and hold harmless the Bank and all of its agents and employees against any and all losses, claims, damages, liabilities and expenses arising out of any statement made by the City to the Bank, its agents or employees, which relates to the Resolution, this Financing Agreement, the City or the Project, and which is untrue or incorrect in any material respect.

3.2 City Tax Covenants.

(A) The City covenants to comply with the applicable provisions of the Code so that interest on the Financed Amount is excludable from gross income under the Code.

(B) All covenants of the City relating to the excludability of interest that are contained in the "Tax Certificate" and other closing documents for this financing that are hereby incorporated by reference.

(C) The City hereby designates this Financing Agreement as a "qualified tax-exempt obligation" pursuant to Section 265(b) of the Code.

4. Defeasance

The applicable portion of the Financing Agreement shall be deemed paid if the City places in irrevocable escrow noncallable, direct obligations of, or obligations guaranteed by, the United States which are calculated to be sufficient, without reinvestment, to pay Financing Payments as they become due.

5. General Covenants.

5.1 Representations and Warranties of the City.

(A) The City shall at all times maintain with responsible insurers all such insurance on the Project as is customarily maintained with respect to works and properties of like character against accident to, loss of or damage to such works or properties. Any such insurance must be in the form of policies or contracts for insurance with insurers of good standing and shall be payable to the City, or in the form of self-insurance by the City. The City shall establish such fund or funds or reserves as are necessary to provide for its share of any such self-insurance.

(B) The City covenants that it shall impose fees and taxes, subject to the applicable limits of Oregon law, that are sufficient to permit the City to conduct its required operations and pay the amounts due under this Financing Agreement.

5.2 Representations and Warranties of the Bank.

The Bank represents, covenants and warrants for the benefit of the City as follows:

- (A) The Bank is authorized to enter into this Financing Agreement.
- (B) The consummation of the transactions contemplated by this Financing Agreement will not violate the provisions of, or constitute a breach or default under, the articles of incorporation, charter or bylaws of the Bank or any agreement to which the Bank is a party.
- (C) The execution, delivery and performance by the Bank of this Financing Agreement and all related agreements, instruments and documents to which the Bank is a party have been duly authorized and constitute legal, valid and binding obligations of the Bank, enforceable against the Bank in accordance with their terms, except as such enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws or equitable principles relating to or limiting creditors' rights generally.

6. Fees, Costs and Expenses.

6.1 Bank Fee.

The City shall pay the Bank an origination fee of \$2,500. The Bank may deduct this fee from the Financed Amount before transferring the Financed Amount to the City.

6.2 City Fees and Costs.

- (A) **Bank's Costs of Enforcement.** If the Bank incurs any expenses in connection with enforcing this Financing Agreement or if the Bank takes collection action under this Financing Agreement, the City shall pay to the Bank, on demand, the Bank's reasonable costs and reasonable attorneys' fees and expenses, whether at trial, on appeal or otherwise, including any allocated costs of in-house counsel.
- (B) The City shall pay the fees and costs of its legal counsel, and any other expenses and costs which the City incurs in connection with this Financing Agreement. The Bank shall pay all out-of-pocket expenses of the Bank and Bank's counsel, including travel and other expenses.

7. Title and Security Interests.

The City shall be entitled to unencumbered, fee simple title to the Project, and the Bank shall have no lien on, or security interest in, the Project.

8. Financial Statements; Notice of Adverse Developments; Budgets.

8.1 Financial Statements.

Within 270 days after the end of each of its Fiscal Years, the City shall provide the Bank with a copy of the City's final, annual audited financial statements while any amounts remain unpaid

under this Financing Agreement. Promptly upon request by the Bank, the City shall provide to the Bank such additional information as the Bank may reasonably request.

8.2 Notice of Adverse Developments.

While any amounts remain unpaid under this Financing Agreement, the City shall notify the Bank promptly of any litigation or proceeding in which the City is a party or the existence of a dispute between the City and any governmental authority or law enforcement authority which, in the reasonable judgment of the City, would have a material and adverse effect on the ability of the City to pay the amounts due under this Financing Agreement.

8.3 Budgets.

The City shall provide the Bank with each final, proposed budget for the City which is prepared, and each budget which is adopted, within 45 days after proposal or adoption, while any amounts remain unpaid under this Financing Agreement.

8.4 Invoices.

The Bank shall provide an invoice to the City for each payment due under this Financing Agreement, not less than fifteen business days prior to the date the payment is due.

9. Conditions to the Obligations of the Bank.

The Bank may refuse to advance funds under this Financing Agreement unless, on or prior to the date of closing, the Bank shall have received:

- (A) a certified copy of the duly authorized Resolution;
- (B) a signed original of this Financing Agreement;
- (C) an opinion of K&L Gates LLP, the City's bond counsel to the effect that: (i) the Resolution has been properly adopted; (ii) this Financing Agreement has been properly executed by the City and is a valid and legally binding obligation of the City, enforceable against the City in accordance with its terms (subject to customary exceptions and limitations); (iii) the interest payable on this Financing Agreement is excluded from gross income for federal income tax purposes under the Code and is exempt from Oregon personal income tax under existing state law; and (iv) noting that the City has designated this Financing Agreement as a "qualified tax-exempt obligation" under Section 265(b)(3)(B) of the Code.
- (D) a certificate of the City Official to the effect that:
 - (1) there is no action, suit, proceeding or investigation at law or in equity before or by any court or government, city or body pending or, to the best of the knowledge of the City, threatened against the City to restrain or enjoin the adoption of the Resolution or the execution and delivery of this Financing Agreement, or the collection and application of funds as contemplated by this Financing Agreement, which, in the reasonable judgment of the City, would have

a material and adverse effect on the ability of the City to pay the amounts due under this Financing Agreement, and

(2) the adoption of the Resolution and the execution and delivery of this Financing Agreement do not and will not conflict in any material respect with or constitute on the part of the City a breach of or default under any law, charter provision, court decree, administrative regulation, resolution, ordinance or other agreement or instrument to which the City is a party or by which it is bound; and,

(E) such additional legal opinions, certificates, proceedings, instruments or other documents as the Bank or its counsel may reasonably request to evidence compliance by the City with the legal requirements for execution and delivery of this Financing Agreement and the due performance or satisfaction by the City of all agreements then to be performed and all conditions then to be satisfied by the City.

10. Remedies.

10.1 Available Remedies.

If an Event of Default occurs, the Bank may exercise any remedy available at law or in equity. However, this Financing Agreement and the Financing Payments shall not be subject to acceleration. No remedy shall be exclusive.

10.2 Waivers.

The Bank may waive any Event of Default, but no such waiver shall extend to a subsequent Event of Default. No delay or omission of the Bank to exercise any right or power arising upon the happening of an Event of Default shall impair any right or power or shall be construed to be a waiver of any such Event of Default or to be an acquiescence therein; and every power and remedy given by this section to the Bank may be exercised from time to time and as often as may be deemed expedient by the Bank.

10.3 Remedies are not Exclusive.

No remedy referred to in this Section 10 is exclusive, but each shall be cumulative and in addition to any other remedy referred to herein or otherwise available to the Bank at law or in equity. In the event that the Bank exercises or begins to exercise any one or more of such remedies, such action shall not preclude the simultaneous or later exercise by the Bank of any other remedies. No express or implied waiver by the Bank of an Event of Default shall constitute a waiver of any other or subsequent Event of Default.

10.4 Force Majeure.

If by reason of *force majeure*, the City is unable in whole or in part to carry out its agreement herein contained, other than the obligation of the City to pay the Financing Payments when due, the City shall not be deemed in default during the continuance of such inability. The term "force majeure" as used herein shall mean, without limitation, any of the following: acts of God; strikes, lockouts or other industrial disturbances; acts of the public enemy; orders or restraints of any kind of the government of the United States of America or of the City wherein the City is located or any of their departments, agencies or officials, or any civil or military authority;

insurrections; riots; landslides; earthquakes; fires; storms; droughts; floods; explosions; breakage or accident to machinery, transmission pipes or canals; or any other cause or event not reasonably within the control of the City.

11. Waiver of Jury Trial

11.1 This Section concerns the resolution of any controversies or claims between the City and the Bank, including but not limited to those that arise from:

- (A) this Financing Agreement (including any renewals, extensions or modifications of this Financing Agreement),
- (B) the Resolution, the Financing Agreement and any document, agreement or procedure related to or delivered in connection with this Financing Agreement,
- (C) any default under this Financing Agreement, or
- (D) any claims for damages resulting from any business conducted between the City and the Bank relating to this Financing Agreement, including claims for injury to persons, property or business interest (torts).

11.2 The City and the Bank each waive their respective rights to a trial by jury of any claim or cause of action based upon or arising out of or related to this Financing Agreement, any other document delivered in connection herewith, or the transactions contemplated hereby or in any action, proceeding or other litigation of any type brought by any of the parties against any other party or any related person, participant or assignee whether with respect to contract claims, tort claims, or otherwise. To the full extent permitted by law, the City and the Bank each further agree that any such claim or cause of action shall be tried in a court without jury and waive trial by jury in any action respecting this agreement or any of the related documents without limiting the foregoing, to the extent permitted by law, the parties further agree that their respective right to a trial by jury is waived by operation of this section as to any action, counterclaim or other proceeding which seeks, in whole or in part, to challenge the validity or enforceability of this Financing Agreement or any other document delivered in connection herewith or any provision hereof or thereof. This waiver shall apply to any subsequent amendments, renewals, supplements or modifications to this Financing Agreement and any other documents delivered in connection therewith.

12. Assignment.

The Bank may assign its rights under this Financing Agreement upon notice given to the City five business days in advance of the assignment. Such notice shall include information regarding the place and manner with which the City shall make subsequent Financing Payments, and such place and manner shall be reasonable to the City.

13. Miscellaneous.

13.1 Notices.

All notices and other communications required by the Financing Agreement shall be considered properly given if they are delivered or mailed by registered mail or certified form (return receipt requested), postage prepaid:

To the Bank at:

U.S. Bank National Association
111 S.W. Fifth Street, Suite 550
Portland, Oregon 97204
Attn.: Government Banking, PD-OR-T14G

To the City at:

City of Newberg
Attn: City Manager
414 E. First Street
Newberg, Oregon 97132

13.2 Binding Effect.

This Financing Agreement shall inure to the benefit of and shall be binding upon the Bank and the City and their respective successors and assigns.

13.3 Severability.

In the event any provisions of this Financing Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provisions hereof.

13.4 Amendments.

This Financing Agreement may be amended only by a writing signed by both parties.

13.5 Execution in Counterparts.

This Financing Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute the same instrument.

13.6 Applicable Law.

This Financing Agreement shall be governed by and construed in accordance with the laws of the State of Oregon. Any action regarding this Financing Agreement or the transactions contemplated hereby shall be brought in an appropriate court of the State of Oregon.

13.7 Rules of Construction.

References to section numbers in documents which do not specify the document in which the section is located shall be construed as references to section numbers in this Financing Agreement.

13.8 Headings.

The headings, titles and table of contents in this Financing Agreement are provided for convenience and shall not affect the meaning, construction or effect of this Financing Agreement. All references herein to sections and other subdivisions which do not specify the document in which the subdivision is located shall be construed as references to this Financing Agreement.

IN WITNESS WHEREOF, the Bank has executed this Financing Agreement in its corporate name by its duly authorized officer and the City has caused this Financing Agreement to be executed in its name by its City Manager all as of the date shown above.

Under Oregon law, most agreements, promises and commitments made by the Bank, concerning loans and other credit extensions which are not for personal, family or household purposes or secured solely by the borrower's residence must be in writing, express consideration and be signed by us to be enforceable.

U.S. Bank National Association



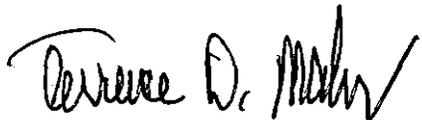
Ronald D. Howell, Vice President

City of Newberg, Oregon



Daniel Danicic, City Manager

APPROVED AS TO FORM & CONTENT:



Terrence D. Mahr, City Attorney

7/6/09
Date

REQUEST FOR COUNCIL ACTION

DATE ACTION REQUESTED: September 21, 2009

Order ___ Ordinance ___ Resolution XX Motion ___ Information ___
No. No. No. 2009-2869

SUBJECT: Request for a design review fee waiver by St. Peter Catholic Church. Located at 2315 N. Main Street, file # DR1-09-013.

Contact Person (Preparer) for this Resolution: Steve Olson, AICP

Dept.: Planning & Building

File No.: DR1-09-013
(if applicable)

RECOMMENDATION:

Consider the fee refund request and decide if a full refund, partial refund, or no refund is appropriate. If a full or partial refund is deemed appropriate then modify **Resolution No. 2009-2869** as needed and adopt.

EXECUTIVE SUMMARY:

St. Peter Catholic Church applied for design review approval for an overflow parking lot expansion on 8/26/09. The estimated cost of the project was \$10,000.00. A minor design review (Type 1) fee is 0.3% of the project cost, or \$340.00 minimum. The cost of the project was low, so the applicant paid the minimum fee. The design review was approved on 8/27/09.

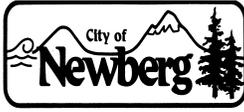
The applicant has requested that the fee be waived. Their letter states: "Since this project is fairly small, and only for infrequent use, and since we're a non-profit organization serving the Newberg area, especially through our support of Love, Inc., FISH, and Habitat for Humanity, we request that the design review fee for this project be waived."

The City does not normally waive development fees for non-profit organizations. The Church is to be commended for its support of charitable organizations. The parking lot expansion, however, is a fairly standard project.

One consideration could be that the design review fee is meant to recover the cost of processing, reviewing and inspecting the application. Staff estimates that a total of three hours will be spent on this project. We currently subcontract Planning staff to the City of Dundee at a rate of \$69 per hour. If we apply the same rate to this project then the fee would be \$207.00. If the Council decides to apply this cost-based fee to the project then the applicant would be refunded \$133.00 (\$340 - \$207 = \$133). The justification for this approach would be that the project is very small, and the minimum fee is therefore somewhat high.

FISCAL IMPACT: Zero if no refund is granted. \$133.00 if the cost-based fee is adopted. \$340.00 if a full refund is granted.

STRATEGIC ASSESSMENT: The City Council does not normally waive or reduce fees unless the project targets an identified City goal and the fiscal impact can be sustained. The parking lot project is a fairly typical development project. It is a very small project, however, and will require less staff time than other larger projects that also pay the minimum design review fee.



RESOLUTION No. 2009-2869

A RESOLUTION APPROVING A PARTIAL REFUND OF A DESIGN REVIEW FEE TO ST. PETER CATHOLIC CHURCH FOR AN OVERFLOW PARKING LOT EXPANSION AT 2315 N. MAIN STREET, APPROVED UNDER FILE NO. DR1-09-013

RECITALS:

1. St. Peter Catholic Church applied for design review approval for an overflow parking lot expansion at the church under file # DR1-09-013 and paid the \$340.00 minimum design review fee. Their letter of July 24, 2009, included as Exhibit A, requested a refund of the design review fee based on the small size of the project, the church’s non-profit status, and the church’s support of local charitable organizations. Exhibit “A” is hereby attached and by this reference incorporated.
2. The City Council has on occasion waived or reduced development fees for projects that target specific City goals, such as affordable housing projects, if the fiscal impact can be sustained by the City. This project, however, is a fairly typical development.
3. The minimum design review of \$340.00 was set to recover the cost of processing, reviewing and inspecting minor design review projects. This project is very small and it is estimated that the total staff cost is \$207.00 (three hours staff time).

THE CITY OF NEWBERG RESOLVES AS FOLLOWS:

The City of Newberg refunds \$133.00 of the design review fee to the applicant based on the small size of the project and corresponding lower cost to process, review and inspect.

➤ **EFFECTIVE DATE** of this resolution is the day after the adoption date, which is: September 22, 2009.

ADOPTED by the City Council of the City of Newberg, Oregon, this 21st day of September, 2009.

Norma I. Alley, City Recorder

ATTEST by the Mayor this 24th day of September, 2009.

Bob Andrews, Mayor

LEGISLATIVE HISTORY

By and through _____ Committee at ____ / ____ / ____ meeting. Or, X None.
(committee name) (date) (check if applicable)



st. peter parish
2315 n. main street
NEWBERG, OR 97132-6081

Exhibit A

Barton Brierley
Planning and Building Director
City of Newberg
P.O. Box 970
Newberg, OR 97132

July 24, 2009

Dear Mr. Brierley,

St. Peter Catholic Church wishes to request a permit to construct a temporary parking area for infrequent overflow parking. The need for this additional parking occurs occasionally during our 10:30 Sunday Mass for about an hour and on occasional special religious holidays.

Our plan is to add about 38 parking spaces by graveling a 60' x 150' area with 6" of compacted rock over a geo fabric. This would be a temporary parking lot, used infrequently, to help eliminate the safety hazard of cars parking on busy Mountain View and Main Streets. Within a few years we plan to build our new bigger church and large paved & landscaped parking lot according to our approved Master Plan (attached, see page 2). We can't afford to do that at this time. People are already occasionally parking in the field area and we want to eliminate it becoming an unsightly mudhole when the winter rains come. We feel a temporary simple gravel parking area that is used infrequently would eliminate the safety problem with people parking on the busy streets and eliminate the possibility of having an unsightly muddy, rutted field that local residents have to look at.

*

Since this project is fairly small, and only for infrequent use, and since we're a non-profit organization serving the Newberg area, especially through our support of Love Inc, FISH, and Habitat for Humanity, we request that the design review fee for this project be waived.

We have discussed this project with Steve Olson of your office and he suggested that we meet with you to tour our location and to discuss our plans for this temporary parking area increase. Please contact us to let us know what our next step should be.

Thank you for your consideration.

Sincerely,

Fr. Don Gutmann
Pastor

NEWBERG CITY COUNCIL MEETING INFORMATION

DATE of Meeting: September 21, 2009

Prepared by: Norma Alley

Councilors	Roll Call	RESOLUTION NO. 2009-2870 Topic: Wastewater Treatment Plant Improvements	RESOLUTION NO. 2009-2866 Topic: Baker Rock Purchase	RESOLUTION NO. 2009-2869 Topic: PARTIAL Fee Refund of (\$133.00) for St. Peter Catholic Church	MOTION Topic: Direct Staff to Prepare an RFP for Judicial Services	Res/Ord/Order # _____ Topic:	Res/Ord/Order # _____ Topic:	Res/Ord/Order # _____ Topic:
ANDREWS, Bob, Mayor	X	YES	YES	NO	YES			
BACON, Denise	X	YES	YES	YES	YES			
LARSON, Bob	X	YES	YES	NO	YES			
McKINNEY, Stephen	X	YES	YES	YES	YES			
RIERSON, Bart	X	YES	YES	YES	YES			
SHELTON, Marc	X	YES	YES	YES	YES			
WITHERSPOON, Wade	X	YES	YES	NO	YES			
ROLL CALL VOTES		YES: 7 NO: 0 Absent: 0 Abstain: 0	YES: 7 NO: 0 Absent: 0 Abstain: 0	YES: 4 NO: 3 Absent: 0 Abstain: 0	YES: 7 NO: 0 Absent: 0 Abstain: 0	YES: NO: Absent: Abstain:	YES: NO: Absent: Abstain:	YES: NO: Absent: Abstain:
Department:		Engineering	Finance	Planning	Legal			
CHANGES: (Yes/No)								
MOTION (1st/2nd):		Larson/ Rierson	Larson/ Shelton	Shelton/ McKinney	McKinney/ Larson			