

CITY OF NEWBERG COUNCIL AGENDA

MAY 2, 2011

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. COUNCIL APPOINTMENTS

Consider a motion filling a Budget Committee vacancy with the most qualified candidate.
(TO BE PROVIDED UNDER SEPARATE COVER)

VI. PUBLIC COMMENTS

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

VII. CONSENT CALENDAR

1. Consider a motion approving **Resolution No. 2011-2944** authorizing competitive bids for the improvement of Crestview Drive. (Pgs. 3-5)
2. Consider a motion approving **Resolution No. 2011-2945** authorizing the city manager to execute an agreement with the State of Oregon allowing travel information signs on city streets. (Pgs. 7-10)
3. Consider a motion approving **Resolution No. 2011-2946** authorizing the city manager to execute an agreement with the State of Oregon for pedestrian improvements to N. College Street. (Pgs. 11-31)
4. Consider a motion approving a proclamation recognizing May 1-7, 2011, as Public Service Recognition Week. (Pgs. 33-34)
5. Consider a motion to approve April 4, 2011, City Council minutes. (Pgs. 35-39)

VIII. PUBLIC HEARINGS

Consider a motion approving **Ordinance No. 2011-2739** expanding the Old Fashioned Festival Zone to include area around Chehalem Cultural Center and clarify the rules. (Pgs. 41-44)
(Legislative Hearing)

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.

IX. COUNCIL BUSINESS

Presentation from Oregon Department of Transportation on Property Right-of-Ways

X. ADJOURNMENT

City of Newberg Mission Statement

The City of Newberg serves its citizens, promotes safety, and maintains a healthy community.

Vision Statement

Newberg will cultivate a healthy, safe environment where citizens can work, play and grow in a friendly, dynamic and diverse community valuing partnerships and opportunity.

ACCOMMODATION OF PHYSICAL IMPAIRMENTS: In order to accommodate persons with physical impairments, please notify the City Recorder'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 the City Recorder at (503) 537-1283. For TTY services please call (503) 554-7793

Council accepts comments on agenda items during the meeting. Fill out a form identifying the item you wish to speak on prior to the agenda item beginning and turn it into the City Recorder. The exception is land use hearings, which requires a specific public hearing process. The City Council asks written testimony be submitted to the City Recorder before 5:00 p.m. on the preceding Thursday. Written testimony submitted after that will be brought before the Council on the night of the meeting for consideration and a vote to accept or not accept it into the record.

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: May 2, 2011

Order ___ Ordinance ___ Resolution XX Motion ___ Information ___
No. No. No. 2011-2944

SUBJECT: A resolution authorizing competitive bids for the improvement of Crestview Drive through the Oxberg Lake Estates Subdivision and rescinding Resolution No. 2008-2810 which authorized the city manager to enter into a contract for the improvement using a sole-source exemption from normal competitive bidding.

Contact Person (Preparer) for this Motion:
Rob Charles, Public Works Director
Paul Chiu, Senior Engineer/Project Manager

Dept.: Public Works Department – Engineering

RECOMMENDATION:

Adopt **Resolution No. 2011-2944.**

EXECUTIVE SUMMARY:

Resolution No. 2008-2810 adopted on October 6, 2008, authorized the city manager to enter into a contract with The Saunders Company, Inc. (Saunders) to design the Crestview Drive Improvements through Oxberg Lake Estates Subdivision. Furthermore, that resolution authorized the City to enter into contract with Saunders to complete the roadway through a design-build process versus a competitive formal bidding process. Resolution No. 2008-2810 is shown in Exhibit “A”.

At the time of this resolution, it was believed to be most efficient and cost effective to have Saunders perform the work since they were going to construct an adjacent private development, “Crestview Crossing Subdivision”. That project has been stopped due to the economic crisis; therefore, it is no longer efficient or cost effective to continue the “build” portion of the original contract.

Due to the current economy, the City expects to receive more competitive bids if the project is publicly bid. Resolution No. 2008-2810 has language which authorizes the City to complete the project through a design-build process with Saunders. With this action, that authorization would be rescinded, and the City would publicly bid the project. In February 2009, the City paid Saunders for costs of survey and engineering design which will be used in the public bidding process.

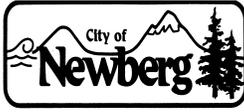
The Crestview Drive project will be advertised for construction bids with bids closing in May 2011.

FISCAL IMPACT:

This majority of the project is to be funded by transportation, water, and stormwater system development charges. The funding to cover the construction is currently proposed in the fiscal year 2011/12 budget as Account Number 18-5150-702167 for \$1,000,000.00; Account Number 4-5150-707607 for \$80,000.00; and Account Number 4-5150-717727 for \$110,000.00.

STRATEGIC ASSESSMENT:

This project provides a much needed segment of the City’s northern arterial network. Proceeding with the project at this time allows the City to take advantage of the highly competitive construction climate.



RESOLUTION No. 2011-2944

A RESOLUTION AUTHORIZING COMPETITIVE BIDS FOR THE IMPROVEMENT OF CRESTVIEW DRIVE THROUGH THE OXBERG LAKE ESTATES SUBDIVISION AND RESCINDING RESOLUTION NO. 2008-2810 WHICH AUTHORIZED THE CITY MANAGER TO ENTER INTO A CONTRACT FOR THE IMPROVEMENT USING A SOLE-SOURCE EXEMPTION FROM NORMAL COMPETITIVE BIDDING

RECITALS:

1. Resolution No. 2008-2810 authorized the city manager to enter into a contract with The Saunders Company, Inc. (Saunders) for the improvement of Crestview Drive through the Oxberg Lake Estates Subdivision.
2. The contract promoted quality control and efficiency as Saunders also planned to construct an adjacent private "Crestview Crossing Subdivision" for its developer, J.T. Smith Companies (Smith) in 2008. However, the construction and installation of the infrastructure for Crestview Drive was shelved due to the current economic crisis.
3. Saunders had entered into a design-build agreement with Smith for the improvements, which included both Crestview Crossing Subdivision and Crestview Drive through the Oxberg Lake Estates Subdivision with the City reimbursing the developer for all costs outside the development obligations.
4. The City made full payment to Saunders for all work done by Saunders pursuant to the improvement, which included costs of survey and engineering design. Such payment was made in February of 2009.
5. It was determined that it would be better practice to have the City enter into a separate agreement with Saunders for the construction of the improvement of Crestview Drive through the Oxberg Lake Estates because that improvement would take place in the county and was clearly a public improvement. In order to accomplish this, the previous Resolution No. 2008-2810 was passed. All work was placed on hold due to the economic crisis, as indicated in paragraph 2.
6. The city manager did not enter into a contract with Saunders pursuant to his authority in Resolution No. 2008-2810 when the work was placed on hold.
7. The current economic crisis has created construction savings for public agencies as bids are reported to be much lower than engineer's estimates.
8. It is to the advantage of the City that the Crestview Drive project be advertised for construction bids with bids closing in May 2011. The City will use the design work prepared by Saunders.

THE CITY OF NEWBERG RESOLVES AS FOLLOWS:

1. The City Council, acting as Contract Review Board for the City, does hereby rescind the authority granted to the city manager in Resolution No. 2008-2810 to enter into a contract for the improvement of Crestview Drive through the Oxberg Lake Estates Subdivision.
2. The City Council, acting as Contract Review Board for the City, authorizes the city manager to obtain competitive bids through a public solicitation process and present a recommendation to award the project for a construction in summer 2011.

➤ **EFFECTIVE DATE** of this resolution is the day after the adoption date, which is: May 3, 2011.

ADOPTED by the City Council of the City of Newberg, Oregon, this 2nd day of May 2011.

Norma I. Alley, City Recorder

ATTEST by the Mayor this 5th day of May 2011.

Bob Andrews, Mayor

LEGISLATIVE HISTORY

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

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REQUEST FOR COUNCIL ACTION

DATE ACTION REQUESTED: May 2, 2011

Order ___ Ordinance ___ Resolution XX Motion ___ Information ___
No. No. No. 2011-2945

SUBJECT: Authorize the city manager to execute an Intergovernmental Agreement with the State of Oregon that allows the Oregon Travel Information Council to install, repair, maintain and replace travel information signs on City streets, subject to City's approval.

Contact Person (Preparer) for this Motion:
Rob Charles, Public Works Director
Paul Chiu, Senior Engineer/Project Manager

Dept.: Public Works Department - Engineering
File No.:
(if applicable)

RECOMMENDATION:

Adopt **Resolution No. 2011-2945.**

EXECUTIVE SUMMARY:

The Oregon Travel Information Council (OTIC) received a request to install travel information signs on Highway 99W for the Allison Inn and its restaurant. Two directional signs will be located along Highway 99W east and west of N. Springbrook Road. Due to the Allison Inn being over a mile from Highway 99W, a third directional sign will be installed on N. Springbrook Road to meet OTIC requirements. The City and OTIC have agreed that it would be prudent to execute an Intergovernmental Agreement (IGA) establishing maintenance responsibilities for the third sign.

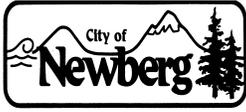
The proposed IGA is shown in Exhibit "A". Exhibit "A" is attached and by this reference incorporated. The IGA identifies the roles and responsibilities of OTIC and the City when a travel information sign needs to be installed on a City street, including the ability for OTIC to collect fees from the sign customer.

FISCAL IMPACT:

There is no budgetary impact to the City for allowing the installation of travel information signs on City streets.

STRATEGIC ASSESSMENT:

The travel information signs assist all travelers by informing them about local tourist attractions and local businesses that cater to their needs. This promotes local economy and tourism which is advantageous to the community.



RESOLUTION No. 2011-2945

A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AN INTERGOVERNMENTAL AGREEMENT WITH THE STATE OF OREGON ALLOWING THE OREGON TRAVEL INFORMATION COUNCIL TO INSTALL, REPAIR, MAINTAIN AND REPLACE TRAVEL INFORMATION SIGNS ON CITY STREETS, SUBJECT TO CITY’S APPROVAL

RECITALS:

1. Several local businesses in the hospitality (hotel, restaurant and wine) industries have requested the Oregon Travel Information Council (OTIC) install travel information signs on state highways in Newberg and one of them needs an additional sign to be located on a City street due to its business location being more than one mile from a state highway.
2. Public Works staff reviewed a request from OTIC for permission to install a sign on N. Springbrook Road and determined that the proposed sign is properly located and would promote local economy.
3. The sign requires a permit fee for the initial installation and payment of annual renewal fees. OTIC collects all fees from the sign customer, owns and maintains the sign and the City takes reasonable steps to protect the sign according to the proposed Intergovernmental Agreement, which is attached as Exhibit “A”. Exhibit “A” is hereby attached and by this reference incorporated.

THE CITY OF NEWBERG RESOLVES AS FOLLOWS:

The City Council authorizes the city manager to execute an IGA with OTIC that permits the state to install, repair, maintain and replace travel information signs on City streets with each sign subject to City’s review and approval.

➤ **EFFECTIVE DATE** of this resolution is the day after the adoption date, which is: May 3, 2011.

ADOPTED by the City Council of the City of Newberg, Oregon, this 2nd day of May.

Norma I. Alley, City Recorder

ATTEST by the Mayor this 5th day of May 2011.

Bob Andrews, Mayor

LEGISLATIVE HISTORY

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

**EXHIBIT "A" TO
RESOLUTION NO. 2011-2945**

INTERGOVERNMENTAL AGREEMENT

The CITY OF NEWBERG (Newberg) and the OREGON TRAVEL INFORMATION COUNCIL (TIC) enter into this agreement according to the below terms and conditions to establish the parties respective duties as to a TIC sign located on N. Springbrook Road, a road (as shown on "Exhibit A") that is under the jurisdiction of Newberg:

1. By authority granted in ORS 190.110 and 283.110, state agencies may enter into agreements with units of local government or other state agencies 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. Newberg agrees to take reasonable steps to protect the TIC sign from destruction or removal by an intentional act including construction activity by Newberg. Newberg retains authority for the sign location.
3. TIC shall have ownership authority over the TIC sign on the road segment. This ownership will include the ability to charge a permit fee to the sign customer, and the permit shall be automatically renewed upon receipt of the annual invoice. TIC and its contractors, or the Oregon Department of Transportation, will perform the installation, repair, maintenance and replacement of the sign covered by this agreement without issuance of individual or blanket permits from Newberg.
4. TIC shall notify Newberg of any requests for new signs and obtain permission from Newberg to place any new signs on Newberg streets.
5. The terms of this agreement may be terminated by mutual consent of the parties or by written notice from any party to the other with thirty days written notice. If the agreement is terminated, the existing sign will be allowed to remain in service until its one-year permit has come to the end of its term.

CITY OF NEWBERG

By: _____
City Manager

Date: _____

By: _____
Public Works Director

Date: _____

**APPROVED AS TO LEGAL
SUFFICIENCY**

By: _____
City Attorney

Date: _____

OR TRAVEL INFORMATION COUNCIL

By: _____
Sign Operations Director

Date: _____

TIC Contact:
Diane Cheyne
Sign Operations Director
Oregon Travel Information Council
1500 Liberty Street SE, Suite 150
Salem, OR 97302
Phone: 503.373.0871
Fax: 503.378.6282
Email: diane@oregontic.com

EXHIBIT "A" TO RESOLUTION NO. 2011-2945

City of Newberg / Oregon Travel Information Council - IGA

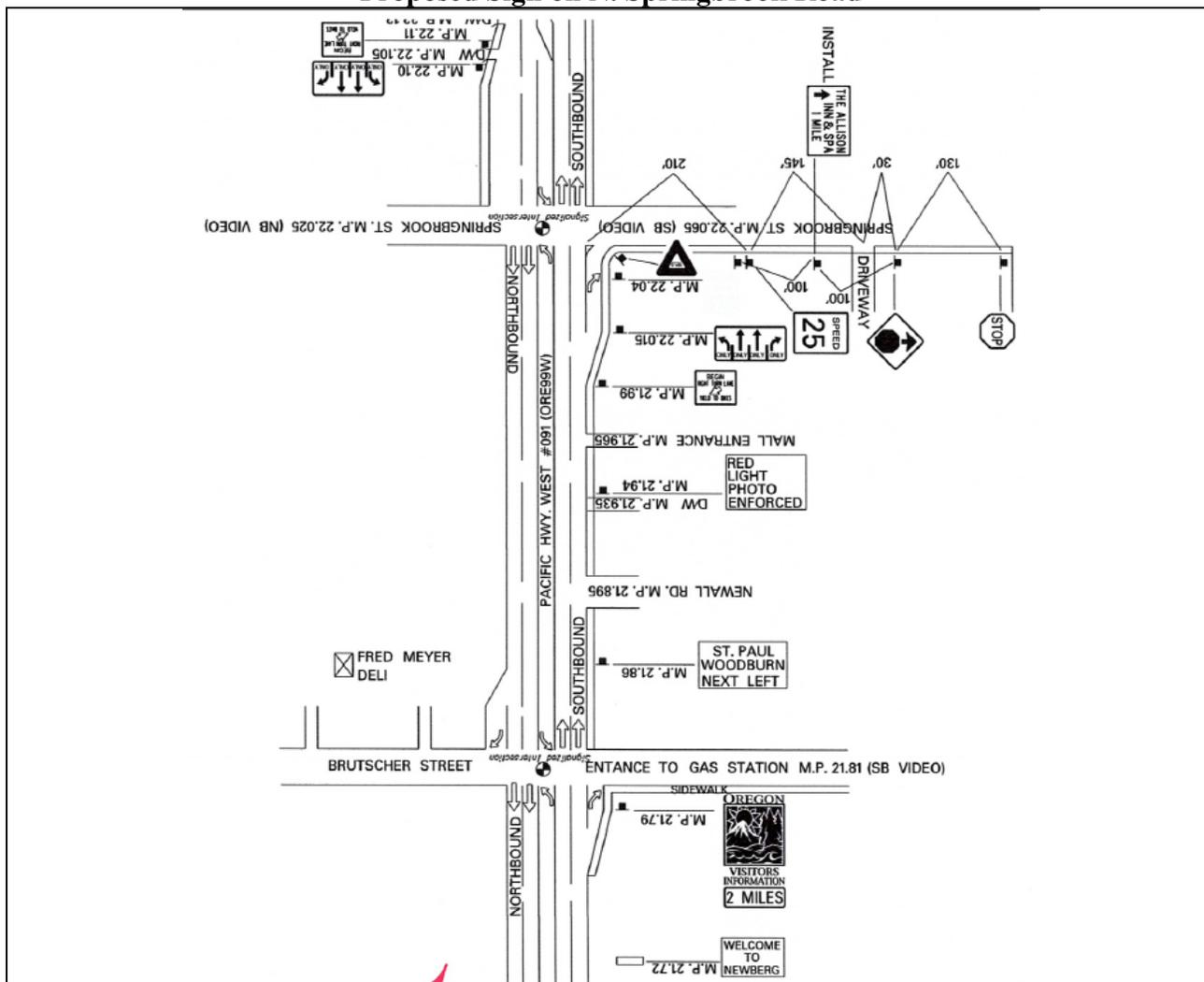
By: _____
Assistant Attorney General

Date: _____

City Contact:

Rob Charles, PE
Public Works Director
City of Newberg
414 East First Street
PO Box 970
Newberg, OR 97132
Phone: 503.537.1211
Fax: 503.537.1277
Email: Rob.Charles@newbergoregon.gov

EXHIBIT A Proposed Sign on N. Springbrook Road



REQUEST FOR COUNCIL ACTION

DATE ACTION REQUESTED: May 2, 2011

Order ___ Ordinance ___ Resolution XX Motion ___ Information ___
No. No. No. 2011-2946

SUBJECT: Authorize the city manager to execute an Intergovernmental Agreement (IGA) with the State of Oregon to provide \$600,000 through their Transportation Enhancement Funding Program for pedestrian improvements to N. College Street (Hwy 219) with a local match of \$95,000, and to further authorize the city manager to amend the agreement for an additional \$200,000 with an additional \$80,000 local match.

Contact Person (Preparer) for this Motion:
Rob Charles, Public Works Director
Paul Chiu, Senior Engineer/Project Manager

Dept.: Public Works Department - Engineering

RECOMMENDATION:
Adopt **Resolution No. 2011-2946.**

EXECUTIVE SUMMARY:
The City applied for the 2008 and 2010 Transportation Enhancement Grants that will fund the N. College Street (Highway 219) pedestrian improvements, which include bike lanes and sidewalks, within the limits of Vermillion Street and Aldercrest Drive. The current estimate of those improvements is near \$1,000,000.

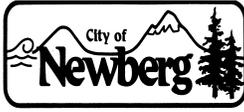
The Oregon Transportation Commission (OTC) approved a \$600,000 grant award for the City's project in October 2010 that requires a local match of approximately \$95,000. We agreed to proceed with a scaled down project and utilize the grant, with council approval. The IGA for \$600,000 is shown in Exhibit "A". Exhibit "A" is hereby attached and by this reference incorporated.

On May 18, 2011, OTC will consider a recommendation that may award an additional \$200,000 to this project. This will bring the project fully funded if the City agrees to provide an additional approximately \$80,000 for the required match. There is sufficient funding from Transportation System Development Charges to afford the matching funds of the original \$95,000 and the potential \$80,000.

City will provide staff support and solicit an ODOT approved consultant to acquire additional right-of-way and design the project. ODOT will solicit public bids in 2012 and construction is planned for 2013. All contractors and consultants will be in direct contract with ODOT.

FISCAL IMPACT:
The required matching funds are currently proposed in the fiscal year 2011/12 budget under account number 18-5150-702165.

STRATEGIC ASSESSMENT:
This project provides a much needed pedestrian and bicyclist connection along a major state and City route in accordance with the City's Transportation System Plan and the Newberg ADA/Pedestrian/Bike Route Improvement Plan.



RESOLUTION No. 2011-2946

A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AN INTERGOVERNMENTAL AGREEMENT WITH THE STATE OF OREGON TO PROVIDE \$600,000 THROUGH THEIR TRANSPORTATION ENHANCEMENT FUNDING PROGRAM FOR PEDESTRIAN IMPROVEMENTS TO N. COLLEGE STREET (HWY 219) WITH A LOCAL MATCH OF \$95,000 AND TO FURTHER AUTHORIZE THE CITY MANAGER TO AMEND THE AGREEMENT FOR AN ADDITIONAL \$200,000 WITH AN ADDITIONAL \$80,000 LOCAL MATCH

RECITALS:

1. Resolutions No. 2008-2778 and 2010-2919 supported the City's grant applications to the State of Oregon under the ODOT Transportation Enhancement (TE) Program.
2. The City's project was placed on the "Reserve List" with partial funding in 2009.
3. ODOT informed the City in a letter dated November 17, 2010, that the Oregon Transportation Commission had approved a \$600,000 award for the City's project which requires a local match of approximately \$95,000. The Intergovernmental Agreement (IGA) is shown in Exhibit "A".
4. On April 4, 2011, ODOT informed the City that the Oregon Transportation Commission will consider an additional \$200,000 award at their meeting on May 18, 2011. This additional amount will bring the original project to full funding. If approved, the City would be required to match with an additional approximately \$80,000.
5. City will provide staff support and solicit an ODOT approved consultant that will be in contract with ODOT for the design of the project.

THE CITY OF NEWBERG RESOLVES AS FOLLOWS:

1. The Newberg City Council does hereby authorize the city manager to execute an IGA with ODOT that provides \$600,000 in Transportation Enhancement Funds for pedestrian improvements, including bike lanes and sidewalks to N. College Street (Hwy 219), and also approves the required matching funding in the amount of \$95,000 from the City. The IGA is shown in the attached Exhibit "A", which is hereby adopted and by this reference incorporated.

2. The Newberg City Council does hereby authorize the city manager to negotiate and execute a potential amendment to the IGA with ODOT to provide an additional \$200,000 in Transportation Enhancement Funds for the same project, and also approves the required matching funding in the amount of approximately \$80,000 from the City.

➤ **EFFECTIVE DATE** of this resolution is the day after the adoption date, which is: May 3, 2011.

ADOPTED by the City Council of the City of Newberg, Oregon, this 2nd day of May 2011.

Norma I. Alley, City Recorder

ATTEST by the Mayor this 5th day of May 2011.

Bob Andrews, Mayor

LEGISLATIVE HISTORY

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

**Oregon Department of Transportation
LOCAL AGENCY AGREEMENT
TRANSPORTATION ENHANCEMENT PROGRAM PROJECT
OR219: Vermillion-Aldercrest Sidewalk & Bike Lanes
City of Newberg**

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

RECITALS

1. Oregon Route (OR) 219 (Hillsboro-Silverton Highway) is a part of the state highway system under the jurisdiction and control of the Oregon Transportation Commission (OTC). Vermillion Street and Aldercrest Drive are part of the city street system under the jurisdiction and control of Agency.
2. 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.
3. Under provisions of the Safe, Accountable, Flexible, Efficient, Transportation Equity Act: A Legacy for Users, (SAFETEA-LU) State is required to set aside federal funds for projects to address transportation enhancement activities, hereinafter referred to as Enhancement Funds.

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 said provisions, State and Agency agree to construct sections of sidewalk with curb/gutter and planter strip on the west side, and continuous bike lanes on both sides of OR 219, hereinafter referred to as "Project". The location of the Project is approximately as shown on the sketch map attached hereto, marked "Exhibit A," and by this reference made a part hereof.
2. The Project will be conducted as a part of the Transportation Enhancement Program under Title 23, United States Code, which incorporated SAFETEA-LU. The total Project cost is estimated at \$693,000, which is subject to change. The Enhancement Funds are estimated at \$600,000 with Agency providing the required match for the

*City of Newberg / State of Oregon – Dept. of Transportation
Agreement No. 27316*

Enhancement Funds, plus an additional \$24,000, and any non-participating costs, including all costs in excess of the available federal funds. Of Agency's additional \$24,000 contribution, up to a maximum of \$16,000 may go towards costs incurred by Agency for Agency's constructing the portion of the Project consisting of the sidewalk connection across the railroad tracks between Vermillion Street and Illinois Street. The Enhancement Funds will be used for all phases of the Project.

- a. Agency must obtain approval from State's Transportation Enhancement Program Manager for any additional funds beyond the amount in Paragraph number 2 above. For additional Enhancement Funds up to a total of \$660,000 (10 percent over the \$600,000 estimated Enhancement funding) Agency's matching share will be 10.27 percent of Enhancement eligible costs. For any approved Enhancement Funds above \$660,000 Agency's matching share will be fifty (50) percent of the Enhancement eligible costs.
 - b. Agency is not guaranteed the use of unspent funds for a particular phase of work. State will not release funds from any authorized phase of work for use on a subsequent phase unless specifically requested by Agency before obligating funds on the subsequent phase.
3. The federal funding for this Project is contingent upon approval by the Federal Highway Administration (FHWA). Any work performed prior to acceptance by FHWA or outside the scope of work will be considered nonparticipating and paid for at Agency expense.
 4. State considers Agency a subrecipient of the federal funds it receives as reimbursement under this Agreement. The Catalog of Federal Domestic Assistance (CFDA) number and title for this Project is 20.205, Highway Planning and Construction.
 5. The term of this Agreement will begin on the date all required signatures are obtained and will terminate on completion of the Project and final payment or ten (10) calendar years following the date all required signatures are obtained, whichever is sooner. The attached Special Provisions may contain additional termination conditions.
 6. This Agreement may be terminated by mutual written consent of both Parties.
 7. State may terminate this Agreement effective upon delivery of written notice to Agency, or at such later date as may be established by State, under any of the following conditions:
 - a. If Agency fails to provide services called for by this Agreement within the time specified herein or any extension thereof.
 - b. If Agency fails to perform any of the other provisions of this Agreement, or

*City of Newberg / State of Oregon – Dept. of Transportation
Agreement No. 27316*

- 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.
- c. If Agency fails to provide payment of its share of the cost of the Project.
 - d. 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.
 - e. If federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the work under this Agreement is prohibited or if State is prohibited from paying for such work from the planned funding source.
8. Any termination of this Agreement will not prejudice any rights or obligations accrued to the Parties prior to termination.
 9. The Special and Standard Provisions attached hereto, marked Attachments 1 and 2, respectively, are by this reference made a part hereof. The Standard Provisions apply to all federal-aid projects and may be modified only by the Special Provisions. The Parties hereto mutually agree to the terms and conditions set forth in Attachments 1 and 2.
 10. Agency, as a recipient of federal funds, pursuant to this Agreement with the State, shall assume sole liability for Agency's breach of any federal statutes, rules, program requirements and grant provisions applicable to the federal funds, and shall, upon Agency's breach of any such conditions that requires the State to return funds to the Federal Highway Administration, hold harmless and indemnify the State for an amount equal to the funds received under this Agreement; or if legal limitations apply to the indemnification ability of Agency, the indemnification amount will be the maximum amount of funds available for expenditure, including any available contingency funds or other available non-appropriated funds, up to the amount received under this Agreement.
 11. 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.
 12. This Agreement may be executed in several counterparts (facsimile or otherwise) all of which when taken together will constitute one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each

*City of Newberg / State of Oregon – Dept. of Transportation
Agreement No. 27316*

copy of this Agreement so executed will constitute an original.

13. This Agreement and attached exhibits constitute the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement will 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, will be effective only in the specific instance and for the specific purpose given. The failure of State to enforce any provision of this Agreement will 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.

This Project is in the 2010-2013 Statewide Transportation Improvement Program (Key No. 17382) that was approved by the Oregon Transportation Commission on December 16, 2010, or will subsequently be approved by amendment to the STIP.

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

Signature page to follow

**EXHIBIT "A" to
Resolution No. 2011-2946**

*City of Newberg / State of Oregon – Dept. of Transportation
Agreement No. 27316*

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

CITY OF NEWBERG, by and through its
elected officials

By _____
Mayor

Date _____

By _____
City Manager

Date _____

**APPROVED AS TO LEGAL
SUFFICIENCY**

By _____
City Legal Counsel

Date _____

By _____
Assistant Attorney General

Date _____

Agency Contact:

Paul Chiu, PE
Senior Engineer/Project Manager
City of Newberg
414 East First Street
PO Box 970
Newberg, OR 97132
Phone: (503) 554-1751
Email: paul.chiu@newbergoregon.gov

STATE OF OREGON, by and through
its Department of Transportation

By _____
Highway Division Administrator

Date _____

APPROVAL RECOMMENDED

By _____
Technical Services Manager/Chief
Engineer

Date _____

By _____
Region 2 Manager

Date _____

By _____
Region 2 Project Delivery Manager

Date _____

By _____
TE Program Manager or Local Gov't.
Section Manager

Date _____

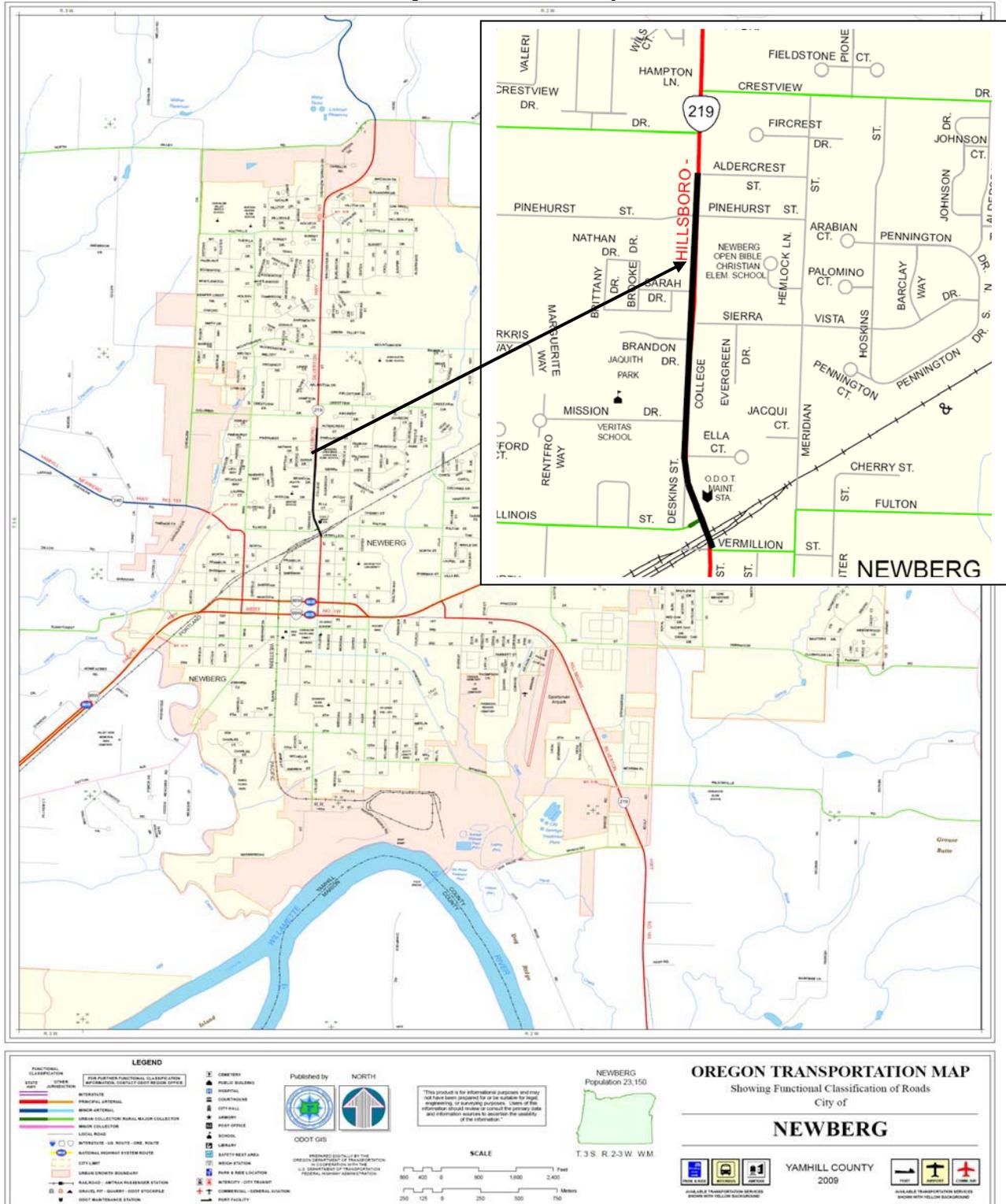
State Contact:

Mark Foster, Local Agency Liaison
ODOT, Highway Division, Region 2
455 Airport Road SE, Bldg. B
Salem, OR 97301-5395
Phone: (503) 986-2650
Email: mark.a.foster@odot.state.or.us

EXHIBIT "A" to Resolution No. 2011-2946

City of Newberg / State of Oregon – Dept. of Transportation
Agreement No. 27316

EXHIBIT A Project Location Map



*City of Newberg / State of Oregon – Dept. of Transportation
Agreement No. 27316*

ATTACHMENT NO. 1

SPECIAL PROVISIONS

1. The Parties agree that the target delivery date for the Project's "Plans, Specifications, and Estimates" (PS&E) package is August 2012. State may withdraw all Transportation Enhancement Funds that are not obligated on or before September 30, 2013, which is twelve (12) months after the target obligation date assigned by State. In that event, State may reassign any Transportation Enhancement Funds not yet obligated for the Project and will have no obligation to fund any remaining phases of work through the Transportation Enhancement Program.
2. 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; obtain all required permits; arrange for all utility relocations or reconstruction; perform all construction engineering, including all required materials testing and quality documentation; and prepare necessary documentation to allow State to make all contractor payments. Project plans will conform to the Oregon Highway Design Manual and the Oregon Bicycle and Pedestrian Plan.
3. Agency guarantees the availability of Agency funding in an amount required to fully fund Agency's share of the Project. Prior to award of the contract, Agency shall provide State its share of the Project cost upon receipt of request from State. The Project cost is defined as the Engineer's estimate plus ten (10) percent.
4. State may make available Region 2's On-Call PE, Design and Construction Engineering Services consultant for Local Agency Projects upon written request. If Agency chooses to use said services, they agree to manage the work done by the consultant and make funds available to the State for payment of those services. All eligible work will be a federally participating cost and included as part of the total cost of the Project.
5. Indemnification language in the Standards Provisions, Paragraphs 46 and 47, shall be replaced with the following language:
 - a. 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 Agency 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.
 - b. With respect to a Third Party Claim for which State is jointly liable with Agency (or would be if joined in the Third Party Claim), State shall contribute to the amount of

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- expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by Agency in such proportion as is appropriate to reflect the relative fault of State on the one hand and of Agency 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 Agency 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.
- c. With respect to a Third Party Claim for which Agency is jointly liable with State (or would be if joined in the Third Party Claim), Agency 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 Agency 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 Agency 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. Agency'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.
- d. 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.
6. Agency shall, at its own expense, maintain and operate the Project upon completion and throughout the useful life of the Project at a minimum level that is consistent with normal depreciation and service demand. Said maintenance responsibilities include maintenance and operation of all curbs, sidewalks, and planter strips constructed within the Project. State shall maintain and operate bike lanes within state highway right of way. State and Agency agree that the useful life of this Project is defined as twenty (20) years. State may conduct periodic inspections during the life of the Project to verify that Project is being properly maintained and continues to serve the purpose for which federal funds were provided.
7. If Agency fails to meet the requirements of this Agreement or the underlying federal regulations, State may withhold the Agency's proportional share of Highway Fund distribution necessary to reimburse State for costs incurred by such Agency breach. Agency will be ineligible to receive or apply for any Transportation Enhancement Funds until State receives full reimbursement of the costs incurred.

**EXHIBIT "A" to
Resolution No. 2011-2946**

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8. Maintenance responsibilities will survive any termination of this Agreement. However, Agency shall not bear the said maintenance responsibilities should funding be cancelled by the State, not because of Agency's action or inaction.

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**ATTACHMENT NO. 2
FEDERAL STANDARD PROVISIONS
JOINT OBLIGATIONS**

PROJECT ADMINISTRATION

1. State (ODOT) is acting to fulfill its responsibility to the Federal Highway Administration (FHWA) by the administration of this Project, and Agency (i.e. county, city, unit of local government, or other state agency) hereby agrees that State shall have full authority to carry out this administration. If requested by Agency or if deemed necessary by State in order to meet its obligations to FHWA, State will further act for Agency in other matters pertaining to the Project. Agency shall, if necessary, appoint and direct the activities of a Citizen's Advisory Committee and/or Technical Advisory Committee, conduct a hearing and recommend the preferred alternative. State and Agency shall each assign a liaison person to coordinate activities and assure that the interests of both parties are considered during all phases of the Project.
2. Any project that uses federal funds in project development is subject to plans, specifications and estimates (PS&E) review and approval by FHWA or State acting on behalf of FHWA prior to advertisement for bid proposals, regardless of the source of funding for construction.

PRELIMINARY & CONSTRUCTION ENGINEERING

3. State, Agency, or others may perform preliminary and construction engineering. If Agency or others perform the engineering, State will monitor the work for conformance with FHWA rules and regulations. In the event that Agency elects to engage the services of a personal services consultant to perform any work covered by this Agreement, Agency and Consultant shall enter into a State reviewed and approved personal services contract process and resulting contract document. State must concur in the contract prior to beginning any work. State's personal services contracting process and resulting contract document will follow Title 23 Code of Federal Regulations (CFR) 172, Title 49 CFR 18, ORS 279A.055, the current State Administrative Rules and State Personal Services Contracting Procedures as approved by the FHWA. Such personal services contract(s) shall contain a description of the work to be performed, a project schedule, and the method of payment. Subcontracts shall contain all required provisions of Agency as outlined in the Agreement. No reimbursement shall be made using federal-aid funds for any costs incurred by Agency or its consultant prior to receiving authorization from State to proceed. Any amendments to such contract(s) also require State's approval.
4. On all construction projects where State is the signatory party to the contract, and where Agency is doing the construction engineering and project management, Agency, subject to any limitations imposed by state law and the Oregon Constitution, agrees to accept all responsibility, defend lawsuits, indemnify and hold State harmless, for all tort claims, contract claims, or any other lawsuit arising out of the contractor's work or Agency's supervision of the project.

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**REQUIRED STATEMENT FOR UNITED STATES DEPARTMENT OF
TRANSPORTATION (USDOT) FINANCIAL ASSISTANCE AGREEMENT**

5. If as a condition of assistance, Agency has submitted and the United States Department of Transportation (USDOT) has approved a Disadvantaged Business Enterprise Affirmative Action Program which Agency agrees to carry out, this affirmative action program is incorporated into the financial assistance agreement by reference. That program shall be treated as a legal obligation and failure to carry out its terms shall be treated as a violation of the financial assistance agreement. Upon notification from USDOT to Agency of its failure to carry out the approved program, USDOT shall impose such sanctions as noted in Title 49, CFR, Part 26, which sanctions may include termination of the agreement or other measures that may affect the ability of Agency to obtain future USDOT financial assistance.
6. **Disadvantaged Business Enterprises (DBE) Obligations.** State and its contractor agree to ensure that DBE as defined in Title 49, CFR, Part 26, have the opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with federal funds. In this regard, Agency shall take all necessary and reasonable steps in accordance with Title 49, CFR, Part 26, to ensure that DBE have the opportunity to compete for and perform contracts. Neither State nor Agency and its contractors shall discriminate on the basis of race, color, national origin or sex in the award and performance of federally-assisted contracts. Agency shall carry out applicable requirements of Title 49, CFR, Part 26, in the award and administration of such contracts. Failure by Agency to carry out these requirements is a material breach of this Agreement, which may result in the termination of this contract or such other remedy as State deems appropriate.
7. The DBE Policy Statement and Obligations shall be included in all subcontracts entered into under this Agreement.
8. Agency agrees to comply with all applicable civil rights laws, rules and regulations, including Title V and Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990 (ADA), and Titles VI and VII of the Civil Rights Act of 1964.
9. The parties hereto agree and understand that they will comply with all applicable federal, state, and local laws, regulations, executive orders and ordinances applicable to the work including, but not limited to, the provisions of ORS 279C.505, 279C.515, 279C.520, 279C.530 and 279B.270, incorporated herein by reference and made a part hereof; Title 23 CFR Parts 1.11, 140, 710, and 771; Title 49 CFR Parts 18, 24 and 26; 2 CFR 225, and OMB CIRCULAR NO. A-133 and NO. A-133 Title 23, USC, Federal-Aid Highway Act; Title 41, Chapter 1, USC 51-58, Anti-Kickback Act; Title 42 USC; Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970, as amended and provisions of Federal-Aid Policy Guide (FAPG).

STATE OBLIGATIONS

PROJECT FUNDING REQUEST

10. State shall submit a Project funding request to FHWA with a request for approval of federal-aid participation in all engineering, right-of-way acquisition, eligible utility relocations and/or construction work for the Project. **No work shall proceed on any activity in which federal-aid participation is desired until such approval has been obtained.** The program

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shall include services to be provided by State, Agency, or others. State shall notify Agency in writing when authorization to proceed has been received from FHWA. Major responsibility for the various phases of the Project will be as outlined in the Special Provisions. All work and records of such work shall be in conformance with FHWA rules and regulations.

FINANCE

11. State shall, in the first instance, pay all reimbursable costs of the Project, submit all claims for federal-aid participation to FHWA in the normal manner and compile accurate cost accounting records. Agency may request a statement of costs to date at any time by submitting a written request. When the actual total cost of the Project has been computed, State shall furnish Agency with an itemized statement of final costs. Agency shall pay an amount which, when added to said advance deposit and federal reimbursement payment, will equal 100 percent of the final total actual cost. Any portion of deposits made in excess of the final total costs of Project, minus federal reimbursement, shall be released to Agency. The actual cost of services provided by State will be charged to the Project expenditure account(s) and will be included in the total cost of the Project.
12. If federal funds are used, State will specify the Catalog of Federal Domestic Assistance (CFDA) number in the Agreement. State will also determine and clearly state in the Agreement if recipient is a subrecipient or vendor, using criteria in Circular A-133.

PROJECT ACTIVITIES

13. State shall, if the preliminary engineering work is performed by Agency or others, review and process or approve all environmental statements, preliminary and final plans, specifications and cost estimates. State shall, if they prepare these documents, offer Agency the opportunity to review and approve the documents prior to advertising for bids.
14. The party responsible for performing preliminary engineering for the Project shall, as part of its preliminary engineering costs, obtain all Project related permits necessary for the construction of said Project. Said permits shall include, but are not limited to, access, utility, environmental, construction, and approach permits. All pre-construction permits will be obtained prior to advertisement for construction.
15. State shall prepare contract and bidding documents, advertise for bid proposals, and award all contracts.
16. Upon State's award of a construction contract, State shall perform independent assurance testing in accordance with State and FHWA Standards, process and pay all contractor progress estimates, check final quantities and costs, and oversee and provide intermittent inspection services during the construction phase of the Project.
17. State shall, as a Project expense, assign a liaison person to provide Project monitoring as needed throughout all phases of Project activities (preliminary engineering, right-of-way acquisition, and construction). The liaison shall process reimbursement for federal participation costs.

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RIGHT OF WAY

18. State is responsible for proper acquisition of the necessary right of way and easements for construction and maintenance of the Project. Agency may perform acquisition of the necessary right of way and easements for construction and maintenance of the Project, provided Agency (or Agency's consultant) are qualified to do such work as required by the State's Right of Way Manual and have obtained prior approval from State's Region Right of Way office to do such work.
19. Regardless of who acquires or performs any of the right of way activities, a right of way services agreement shall be created by State's Region Right of Way office setting forth the responsibilities and activities to be accomplished by each party. State shall always be responsible for requesting project funding, coordinating certification of the right of way, and providing oversight and monitoring. Funding authorization requests for federal right of way funds must be sent through the State's Region Right of Way offices on all projects. All projects must have right of way certification coordinated through State's Region Right of Way offices (even for projects where no federal funds were used for right of way, but federal funds were used elsewhere on the Project). Agency should contact the State's Region Right of Way office for additional information or clarification.
20. State shall review all right of way activities engaged in by Agency to assure compliance with applicable laws and regulations. Agency agrees that right of way activities shall be in accord with the Uniform Relocation Assistance & Real Property Acquisition Policies Act of 1970, as amended, ORS Chapter 35, FHWA Federal-Aid Policy Guide, State's Right of Way Manual and the Code of Federal Regulations, Title 23, Part 710 and Title 49, Part 24.
21. If any real property purchased with federal-aid participation is no longer needed for the originally authorized purpose, the disposition of such property shall be subject to applicable rules and regulations, which are in effect at the time of disposition. Reimbursement to State and FHWA of the required proportionate shares of the fair market value may be required.
22. Agency insures that all Project right of way monumentation will be conducted in conformance with ORS 209.155.
23. State and Agency grants each other authority to enter onto the other's right of way for the performance of the Project.

AGENCY OBLIGATIONS

FINANCE

24. Federal funds shall be applied toward Project costs at the current federal-aid matching ratio, unless otherwise agreed and allowable by law. Agency shall be responsible for the entire match amount, unless otherwise agreed to and specified in the intergovernmental agreement.
25. Agency's estimated share and advance deposit.
 - a) Agency shall, prior to commencement of the preliminary engineering and/or right of way acquisition phases, deposit with State its estimated share of each phase. Exception may be made in the case of projects where Agency has written approval

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- from State to use in-kind contributions rather than cash to satisfy all or part of the matching funds requirement.
- b) Agency's construction phase deposit shall be 110 percent of Agency's share of the engineer's estimate and shall be received prior to award of the construction contract. Any additional balance of the deposit, based on the actual bid must be received within forty-five (45) days of receipt of written notification by State of the final amount due, unless the contract is canceled. Any unnecessary balance of a cash deposit, based on the actual bid, will be refunded within forty-five (45) days of receipt by State of the Project sponsor's written request.
 - c) Pursuant to ORS 366.425, the advance deposit may be in the form of 1) money deposited in the State Treasury (an option where a deposit is made in the Local Government Investment Pool, and an Irrevocable Limited Power of Attorney is sent to the Highway Finance Office), or 2) an Irrevocable Letter of Credit issued by a local bank in the name of State, or 3) cash.
 - d) Agency may satisfy all or part of any matching funds requirements by use of in-kind contributions rather than cash when prior written approval has been given by State.
26. If the estimated cost exceeds the total matched federal funds available, Agency shall deposit its share of the required matching funds, plus 100 percent of all costs in excess of the total matched federal funds. Agency shall also pay 100 percent of the cost of any item in which FHWA will not participate. If Agency has not repaid any non-participating cost, future allocations of federal funds, or allocations of State Highway Trust Funds, to that Agency may be withheld to pay the non-participating costs. If State approves processes, procedures, or contract administration outside the Local Agency Guidelines that result in items being declared non-participating, those items will not result in the withholding of Agency's future allocations of federal funds or the future allocations of State Highway Trust Funds.
27. Costs incurred by State and Agency for services performed in connection with any phase of the Project shall be charged to the Project, unless otherwise mutually agreed upon.
28. If Agency makes a written request for the cancellation of a federal-aid project; Agency shall bear 100 percent of all costs as of the date of cancellation. If State was the sole cause of the cancellation, State shall bear 100 percent of all costs incurred. If it is determined that the cancellation was caused by third parties or circumstances beyond the control of State or Agency, Agency shall bear all development costs, whether incurred by State or Agency, either directly or through contract services, and State shall bear any State administrative costs incurred. After settlement of payments, State shall deliver surveys, maps, field notes, and all other data to Agency.
29. Agency shall follow requirements of the Single Audit Act. The requirements stated in the Single Audit Act must be followed by those local governments and non-profit organizations receiving \$500,000 or more in federal funds. The Single Audit Act of 1984, PL 98-502 as amended by PL 104-156, described in "OMB CIRCULAR NO. A-133", requires local governments and non-profit organizations to obtain an audit that includes internal controls and compliance with federal laws and regulations of all federally-funded programs in which the local agency participates. The cost of this audit can be partially prorated to the federal

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program.

30. Agency shall make additional deposits, as needed, upon request from State. Requests for additional deposits shall be accompanied by an itemized statement of expenditures and an estimated cost to complete the Project.
31. Agency shall present invoices for 100 percent of actual costs incurred by Agency on behalf of the Project directly to State's Liaison Person for review and approval. Such invoices shall identify the Project and Agreement number, and shall itemize and explain all expenses for which reimbursement is claimed. Billings shall be presented for periods of not less than one-month duration, based on actual expenses to date. All billings received from Agency must be approved by State's Liaison Person prior to payment. Agency's actual costs eligible for federal-aid or State participation shall be those allowable under the provisions of Title 23 CFR Parts 1.11, 140 and 710, Final billings shall be submitted to State for processing within three (3) months from the end of each funding phase as follows: 1) award date of a construction contract for preliminary engineering (PE) 2) last payment for right of way acquisition and 3) third notification for construction. Partial billing (progress payment) shall be submitted to State within three (3) months from date that costs are incurred. Final billings submitted after the three months shall not be eligible for reimbursement.
32. The cost records and accounts pertaining to work covered by this Agreement are to be kept available for inspection by representatives of State and FHWA for a period of six (6) years following the date of final voucher to FHWA. Copies of such records and accounts shall be made available upon request. For real property and equipment, the retention period starts from the date of disposition (Title 49 CFR 18.42).
33. State shall request reimbursement, and Agency agrees to reimburse State, for federal-aid funds distributed to Agency if any of the following events occur:
 - a) Right of way acquisition or actual construction of the facility for which preliminary engineering is undertaken is not started by the close of the tenth fiscal year following the fiscal year in which the federal-aid funds were authorized;
 - b) Right of way acquisition is undertaken utilizing federal-aid funds and actual construction is not started by the close of the twentieth fiscal year following the fiscal year in which the federal-aid funds were authorized for right of way acquisition.
 - c) Construction proceeds after the Project is determined to be ineligible for federal-aid funding (e.g., no environmental approval, lacking permits, or other reasons).
34. Agency shall maintain all Project documentation in keeping with State and FHWA standards and specifications. This shall include, but is not limited to, daily work records, quantity documentation, material invoices and quality documentation, certificates of origin, process control records, test results, and inspection records to ensure that projects are completed in conformance with approved plans and specifications.

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RAILROADS

35. Agency shall follow State established policy and procedures when impacts occur on railroad property. The policy and procedures are available through State's appropriate Region contact or State's Railroad Liaison. Only those costs allowable under Title 23 CFR Part 646, subpart B and Title 23 CFR Part 140, subpart I, shall be included in the total Project costs; all other costs associated with railroad work will be at the sole expense of Agency, or others. Agency may request State, in writing, to provide railroad coordination and negotiations. However, State is under no obligation to agree to perform said duties.

UTILITIES

36. Agency shall follow State established Statutes, Policies and Procedures when impacts occur to privately or publicly-owned utilities. Only those utility relocations, which are eligible for federal-aid participation under, the FAPG, Title 23 CFR 645, Subpart A and B, shall be included in the total Project costs; all other utility relocations shall be at the sole expense of Agency, or others. State will arrange for utility relocations/adjustments in areas lying within jurisdiction of State, if State is performing the preliminary engineering. Agency may request State in writing to arrange for utility relocations/adjustments lying within Agency jurisdiction, acting on behalf of Agency. This request must be submitted no later than twenty-one (21) weeks prior to bid let date. However, State is under no obligation to agree to perform said duties.
37. The State utility relocation policy, procedures and forms are available through the appropriate State's Region Utility Specialist or State Utility Liaison. Agency shall provide copies of all signed utility notifications, agreements and Utility Certification to the State Utility Liaison.

STANDARDS

38. Agency agrees that design standards for all projects on the National Highway System (NHS) and the Oregon State Highway System shall be in compliance to standards specified in the current "State Highway Design Manual" and related references. Construction plans shall be in conformance with standard practices of State for plans prepared by its own staff. All specifications for the Project shall be in substantial compliance with the most current "Oregon Standard Specifications for Highway Construction".
39. Agency agrees that minimum design standards for non-NHS projects shall be recommended AASHTO Standards and in accordance with the current "Oregon Bicycle and Pedestrian Plan", unless otherwise requested by Agency and approved by State.
40. Agency agrees and will verify that the installation of traffic control devices shall meet the warrants prescribed in the "Manual on Uniform Traffic Control Devices and Oregon Supplements".
41. All plans and specifications shall be developed in general conformance with the current "Contract Plans Development Guide" and the current "Oregon Standard Specifications for Highway Construction" and/or guidelines provided.

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42. The standard unit of measurement for all aspects of the Project shall be English Units. All Project documents and products shall be in English. This includes, but is not limited to, right of way, environmental documents, plans and specifications, and utilities.

GRADE CHANGE LIABILITY

43. Agency, if a County, acknowledges the effect and scope of ORS 105.755 and agrees that all acts necessary to complete construction of the Project which may alter or change the grade of existing county roads are being accomplished at the direct request of the County.
44. Agency, if a City, hereby accepts responsibility for all claims for damages from grade changes. Approval of plans by State shall not subject State to liability under ORS 105.760 for change of grade.
45. Agency, if a City, by execution of Agreement, gives its consent as required by ORS 373.030(2) to any and all changes of grade within the City limits, and gives its consent as required by ORS 373.050(1) to any and all closure of streets intersecting the highway, if any there be in connection with or arising out of the project covered by the Agreement.

CONTRACTOR CLAIMS

46. Agency shall, to the extent permitted by state law, indemnify, hold harmless and provide legal defense for State against all claims brought by the contractor, or others resulting from Agency's failure to comply with the terms of this Agreement.
47. Notwithstanding the foregoing defense obligations under Paragraph 46, neither Agency nor any attorney engaged by Agency shall defend any claim in the name of the State of Oregon or any agency of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without the prior written consent of the Oregon Attorney General. The State of Oregon may, at anytime at its election assume its own defense and settlement in the event that it determines that Agency is prohibited from defending the State of Oregon, or that Agency is not adequately defending the State of Oregon's interests, or that an important governmental principle is at issue or that it is in the best interests of the State of Oregon to do so. The State of Oregon reserves all rights to pursue any claims it may have against Agency if the State of Oregon elects to assume its own defense.

MAINTENANCE RESPONSIBILITIES

48. Agency shall, upon completion of construction, thereafter maintain and operate the Project at its own cost and expense, and in a manner satisfactory to State and FHWA.

WORKERS' COMPENSATION COVERAGE

49. All employers, including Agency that employ subject workers who work under this Agreement in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage unless such employers are exempt under ORS 656.126. Agency shall ensure that each of its contractors complies with these requirements.

LOBBYING RESTRICTIONS

50. Agency certifies by signing the Agreement that:

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- a) No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- b) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, and contracts and subcontracts under grants, subgrants, loans, and cooperative agreements) which exceed \$100,000, and that all such subrecipients shall certify and disclose accordingly.
- d) This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Title 31, USC Section 1352.
- e) Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Paragraphs 36, 37, and 48 are not applicable to any local agency on state highway projects.

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REQUEST FOR COUNCIL ACTION

DATE ACTION REQUESTED: May 2, 2011

Order ___ Ordinance ___ Resolution ___ Motion XX Information ___
No. No. No. ___

**SUBJECT: Approve a proclamation recognizing
May 1-7, 2011, as Public Service Recognition Week.**

Contact Person (Preparer) for this
Motion: Bob Andrews, Mayor
Dept.: Administration
File No.:

RECOMMENDATION:

Approve a proclamation recognizing May 1-7, 2011, as Public Service Recognition Week.

EXECUTIVE SUMMARY:

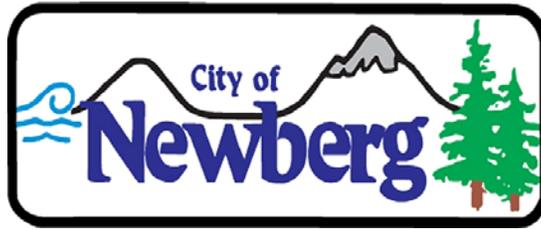
To recognize the hard work of public servants and Newberg employees, it is with gratitude the mayor brings forward this proclamation for your consideration.

FISCAL IMPACT:

None.

STRATEGIC ASSESSMENT:

This proclamation recognized the efforts City employees dedicated to supporting the adopted City mission statement by serving the citizens, promoting safety, and maintaining a healthy community.



PROCLAMATION

A PROCLAMATION RECOGNIZING MAY 1-7, 2011, AS PUBLIC SERVICE RECOGNITION WEEK TO HONOR THE MILLIONS OF PUBLIC EMPLOYEES AT THE FEDERAL, STATE, COUNTY, AND CITY LEVELS

WHEREAS, Americans are served every day by public servants at the federal, state, county, and city levels. These unsung heroes do the work that keeps our nation and our communities working; and

WHEREAS, public service is a noble calling involving a wide variety of challenging and rewarding professions that are essential to efficient and effective operation of government. Many public servants even risk their lives daily in service to the people of the community, the United States, and around the world; and

WHEREAS, these men and women contribute significantly to the quality of life for the citizens they serve—their commitment to excellence and diversity of skills are an invaluable resource for providing the various services expected by our citizens; and

WHEREAS, without these public servants, continuity would be impossible in a democracy that regularly changes its leaders and elected officials.

WHEREAS, Public Service Recognition Week strives to inform all citizens about the quality of people in government, their commitment to high ethical standards, and the value of the services they perform; to encourage excellence among public employees and to promote interest in civil service careers; and,

NOW, THEREFORE, IT IS PROCLAIMED by the Mayor and City Council of the City of Newberg, Oregon, the week of May 1-7, 2011, to be Public Service Recognition Week, and honor the men and women in public service whose dedication, diligence, and professionalism keep our city a thriving community.

IN WITNESS WHEREOF, I have hereunto set my hand and cause the Seal of the City of Newberg to be affixed on this 2nd day of May, 2011.

Bob Andrews, Mayor

REQUEST FOR COUNCIL ACTION

DATE ACTION REQUESTED: May 2, 2011

Order ___ Ordinance ___ Resolution ___ Motion XX Information ___
No. No. No.

SUBJECT: Approve the April 4, 2011, City Council Meeting minutes.

Contact Person (Preparer) for this Motion: Norma Alley, City Recorder
Dept.: Administration

RECOMMENDATION:

Approve the April 4, 2011, City Council minutes for preservation and permanent retention in the City's historical records.

EXECUTIVE SUMMARY:

The City of Newberg City Council held a public meeting and minutes were recorded in text. In accordance to Oregon State Records Management law, the City of Newberg must preserve these minutes in hard copy form for permanent retention.

FISCAL IMPACT:

None.

STRATEGIC ASSESSMENT:

None.

CITY OF NEWBERG CITY COUNCIL MINUTES
APRIL 4, 2011
7:00 P.M. MEETING
PUBLIC SAFETY BUILDING TRAINING ROOM (401 EAST THIRD STREET)

A Work Session was held prior to the meeting. A presentation on the Affordable Housing Ad-hoc Committee completed work was given. No decisions were made.

I. CALL MEETING TO ORDER

Mayor Bob Andrews called the meeting to order at 7:15 PM.

II. ROLL CALL

Members

Present: Mayor Bob Andrews Denise Bacon Ryan Howard Stephen McKinney
 Bart Rierson Marc Shelton Wade Witherspoon

Staff

Present: Daniel Danicic, City Manager Terrence Mahr, City Attorney
 Mary Newell, Support Services Manager Leah Griffith, Library Director
 Janelle Nordyke, Finance Director Norma Alley, City Recorder

Others

Present: Pat Haight, Roger Wiltshire, and Carole Joa Jennifer Nelson, Minutes Recorder

III. PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was performed.

IV. SPECIAL PRESENTATIONS & RECOGNITIONS

1. Consider a motion approving a proclamation declaring April as Child Abuse Preparedness Month.
2. Consider a motion approving a proclamation declaring April 11-17, 2011, as Public Safety Telecommunications Week.

MOTION: Rierson/Bacon approving two proclamations declaring April as Child Abuse Preparedness Month and April 11-17, 2011, as Public Safety Telecommunications Week. (7 Yes/0 No) Motion carried.

V. CITY MANAGER'S REPORT

Mr. Daniel Danicic, city manager, reported he and the mayor will be discussing the state of the city this Wednesday to the ministerial society, gave reminders about the Chamber Community Awards Banquet, spoke of the first coordination event for the Special Olympics this Tuesday evening, and announced he has been appointed to the LGPI board as the City's representative until 2012.

VI. PUBLIC COMMENTS

Mr. Roger Wiltshire expressed concerns about Resolution No. 2011-2942 for approval on the Consent Calendar. He said there was a reference to an exhibit he could not find and asked who prepared the meets and bounds and the legal description, if not the surveyor. He spoke of a prior issue he brought up regarding city

management expending funds for private enterprise activities and ordered a full accounting detail on all lockouts for the fire department dealing with man hours, wages, benefit costs, time costs, dispatch costs, gas mileage, insurance costs and city liability costs if someone sues the City for going out on a call like that. He asked the Council to fire the city manager for mismanagement of city resources, fraudulent reports to council, and failure to manage sub-departments. He also asked for the city attorney to be fired for violating citizens' rights and the planning and building director for attempting to circumvent and rob the citizens. He asked for the city recorder to be fired for inaccurate and fraudulent record keeping and requested a recall of Councilor Rierson for violation of public meeting law.

Councilor Ryan Howard spoke of asking Mr. Wiltshire previously for records of the improprieties which he was told he could not receive unless he paid Mr. Wiltshire for them. He said he could not look into the accounting details if there was not proof that these improprieties took place.

Councilor Stephen McKinney stated he was looking forward to the city manager's evaluation and reappointment and congratulated him on a job well done. He said it was unfortunate Mr. Wiltshire continues to call for his dismissal when he has served the council well. He stated all mentioned staff serves the city equally well and he looked forward to their continued service.

Ms. Pat Haight requested a correction to her comments from the February 22, 2011, minutes before they were approved. She spoke about Resolution No. 2011-2941 on the Consent Calendar regarding costs for preconstruction services and said she felt placing items like this on the Consent Calendar is deceitful and fraudulent because people do not have a chance to question them or hear what the councilors' positions are. She asked why these items are not on the agenda and how the people can be asked to spend money when they do not know what it is being spent on. She asked who is leading the council to believe these items need to be placed on the Consent Calendar.

Councilor Marc Shelton stated the council is able to pull any item out of the Consent Calendar for discussion in the regular agenda if they feel it is necessary.

VII. CONSENT CALENDAR

1. Consider a motion approving **Resolution No. 2011-2939** initiating a Development Code amendment pertaining to the Civic Corridor Sign Code.
2. Consider a motion approving **Resolution No. 2011-2940** authorizing the city manager to enter into an agreement with Group Mackenzie to provide design services for the Fire Station 20 Remodel Project.
3. Consider a motion approving **Resolution No. 2011-2941** authorizing the city manager to issue a task order providing pre-construction services for the secondary clarifier design in the amount of \$118,292.00 with M.A. Mortenson Construction for the Wastewater Treatment Plant Repair, Renovation, Expansion Project.
4. Consider a motion approving **Resolution No. 2011-2942** initiating a Development Code amendment pertaining to technical specifications and signature requirements for partition and subdivision plats.
5. Consider a motion approving Council minutes for February 7, 2011, and February 22, 2011.

MOTION: Shelton/McKinney approving the Consent Calendar including **Resolution No. 2011-2939, Resolution No. 2011-2940, Resolution No. 2011-2941, Resolution No. 2011-2942**, and the City Council minutes for February 7, 2011, and February 22, 2011, as amended. (7 Yes/0 No) Motion carried.

VIII. COUNCIL BUSINESS

TIME – 7:49 PM

Ms. Mary Newell, Support Services Manager, gave a presentation on Newberg-Dundee-911 (see official meeting packet for full report).

Ms. Carole Joa, Juliette’s House, gave a presentation about the Child Abuse Prevention Month and the “Pinwheels for Prevention” program (see official meeting packet for full report).

Ms. Leah Griffith, Library Director, presented the staff informational report and update on the children’s room remodel at the Library (see official meeting packet for full report).

Councilor Bart Rierson presented a request to borrow funds for the Chehalem Paddle Launch from either visitor funds or economic development funds (see official meeting packet for full report).

Councilor Wade Witherspoon expressed concern for citizens’ reactions to lending City funds for what may be seen as “pet projects”. He wondered if this was even legal, who the loan would be going to, and what kind of guarantee the city would be looking for to ensure the funds are returned.

Discussion continued about what kinds of things the Council would like to see if they were to entertain a proposal on this matter, such as what fund would be appropriate to use, the criteria and policies required by the Economic Development Revolving Loan Fund (EDRLF), who the loan would be going to, and contract terms.

MOTION: Shelton/Rierson to direct staff to evaluate the request and prepare a report with suggestions to accomplish this goal, but not to exceed \$20,000.00. (7 Yes/0 No) Motion carried.

Councilor Denise Bacon discussed her concerns for the Comprehensive Plan regarding the Newberg-Dundee Bypass Corridor regarding what is going to be done to replace affordable housing lost in the community as a result of this and to ensure people are being treated fairly. She said the Oregon Department of Transportation (ODOT) promised Newberg affordable housing and she wants to know where it is going to come from and where it will be built. It was suggested to draft a letter, but others felt more information should be gathered first.

MOTION: Witherspoon/Rierson to direct staff to contact ODOT to set up a meeting for discussion. (7 Yes/0 No) Motion carried.

Mayor Andrews asked for the Council’s support with an upcoming Mayor’s Contest, if they would consider being a local panel of judges to review the submissions, and if they would consider funding a monetary award for the winners; he suggested \$300.00.

Councilor Howard spoke on the posters and promotional material from the grant received from ACTS Oregon for the bicycle safety program he helped develop along with the Traffic Safety Commission. The event will be held on April 16, 2011, at Edwards Elementary School.

Mayor Andrews recessed briefly at 9:16 PM and reconvened into Executive Session.

IX. EXECUTIVE SESSION

Executive Session pursuant to ORS 192.660(2)(I) relating to performance review of the city manager.

Executive Session was held for the purpose of discussions only. No decisions were made or action taken. The Mayor closed the Executive Session at 10:03 PM.

X. ADJOURNMENT

The meeting adjourned at 10:03 PM.

ADOPTED by the Newberg City Council this 2nd day of May, 2011.

Norma I. Alley, City Recorder

ATTEST by the Mayor this 5th day of May, 2011.

Bob Andrews, Mayor

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REQUEST FOR COUNCIL ACTION

DATE ACTION REQUESTED: May 2, 2011

Order ___ Ordinance XX Resolution ___ Motion ___ Information ___
No. No. 2011-2739 No.

SUBJECT: Expanding the Old Fashioned Festival Zone to Include Area Around Chehalem Cultural Center and Parade Route, and Clarifying Rules

Contact Person (Preparer) for this
Motion: Barton Brierley
Dept.: Planning and Building
File No.: G-09-006

HEARING TYPE: LEGISLATIVE QUASI-JUDICIAL

RECOMMENDATION:

Adopt **Ordinance No. 2011-2739** expanding the Old Fashioned Festival Zone to include the area around the Chehalem Cultural Center and parade route, and clarifying rules.

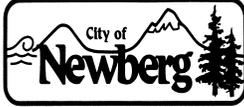
EXECUTIVE SUMMARY: In 2009, the City Council passed Ordinance No. 2009-2717, which adopted an Old Fashioned Festival Zone. The zone restricts temporary merchants and street vendors from operating within the zone during Newberg Old Fashioned Festival, except those operating under the authority of the Old Fashioned Festival committee. The purpose of the zone is to insure proper coordination of activities during the festival, and to insure that temporary vendors who benefit from the significant community contributions also contribute to the success of the festival. The zone extends from Blaine Street to Meridian Street, and from Ninth Street to First Street.

This year the Chehalem Cultural Center has chosen to participate as a member of the festival. Several events are planned on the center's grounds. Accordingly, the Old Fashioned Festival Committee is requesting the festival zone be expanded to include the lands near the Cultural Center. In addition, the current zone does not include a portion of the parade route along Second Street and Third Street to Main Street. The committee also requests this to be included.

In addition, the Festival Committee is requesting clarification of the rules for the zone. There have been some persons selling food or merchandise at yard sales in the areas that are in direct competition of vendors at the park whom have paid a booth fee. Also, some non-profit groups have sold items along the parade route or near the park that are in competition with paying vendors. The current rules restrict "temporary merchants or street vendors" operating within the zone and these activities don't necessarily fit those definitions. The committee would like to clarify the rules to include such activities. This would not necessarily prohibit such activities; it would simply require that those activities be coordinated and approved through the Old Fashioned Festival committee. For example, last year the VFW had a hot dog sale that was approved by and coordinated with the committee. Also, the ordinance exempts yard sales where an individual is selling personal household items.

FISCAL IMPACT: No direct effect on City finances.

STRATEGIC ASSESSMENT: The Old Fashioned Festival is very important to maintaining the culture and character of the community. This ordinance would show increased support to the festival.



ORDINANCE No. 2011-2739

**AN ORDINANCE AMENDING ORDINANCE NO. 2009-2717 EXTENDING
THE OLD FASHIONED FESTIVAL ZONE TO INCLUDE LANDS NEAR
THE CHEHALEM CULTURAL CENTER AND CLARIFYING RULES**

RECITALS:

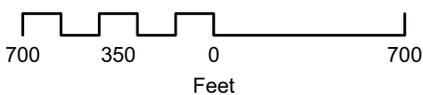
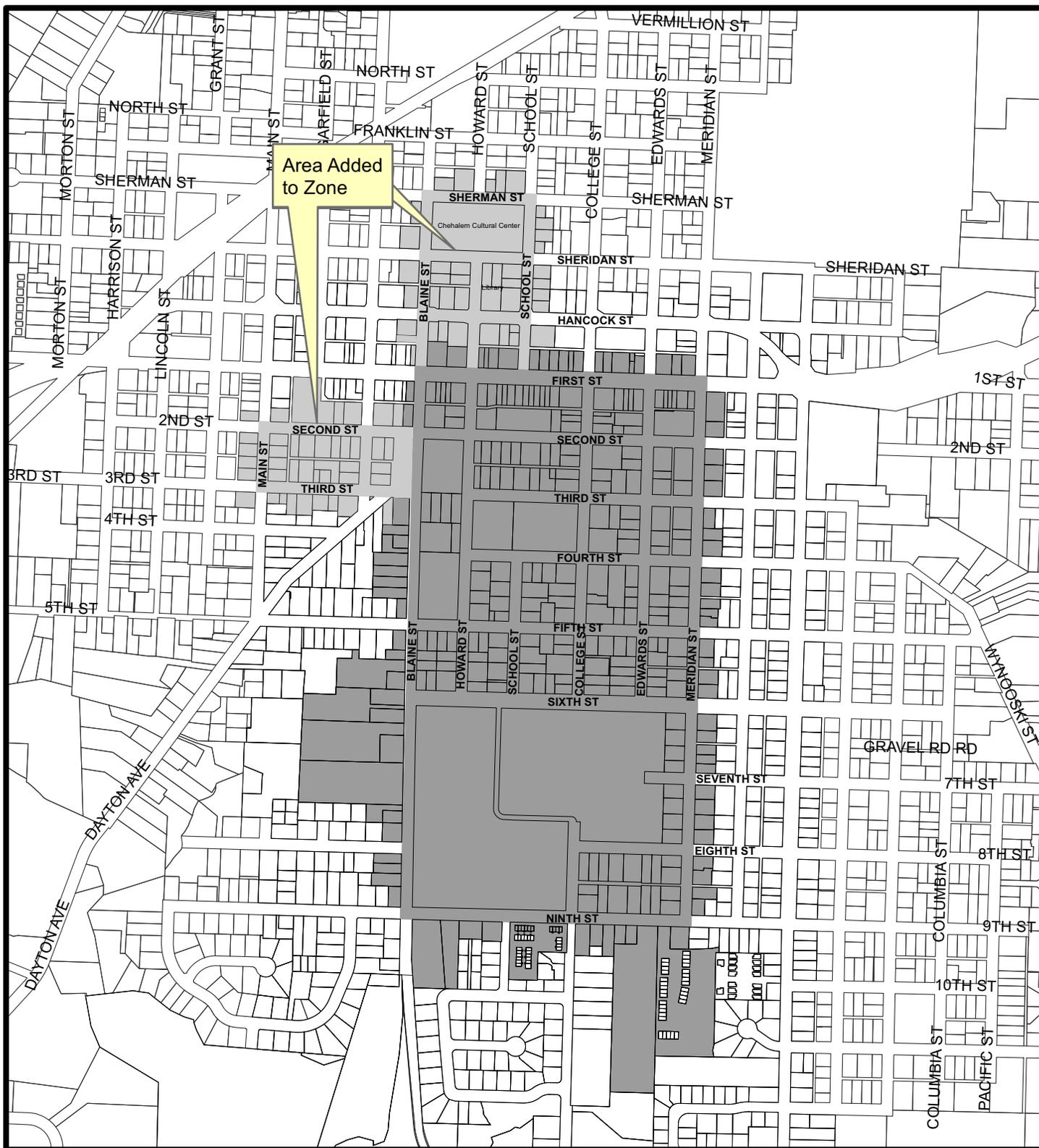
1. Each year in July the City of Newberg and community participate in celebrating community spirit and cooperation known as the Old Fashioned Festival. The City of Newberg is a participant in many ways and welcomes the community to join them in the Old Fashioned Festival activities.
2. In 2009, the City Council passed Ordinance No. 2009-2717, which adopted an Old Fashioned Festival Zone. The zone restricts temporary merchants and street vendors from operating within the zone during Newberg Old Fashioned Festival, except those operating under the authority of the Old Fashioned Festival committee. This ensures coordination of activities and community support for the festival.
3. The Chehalem Cultural Center has chosen to participate as a member of the festival, and the City desires to extend the festival zone to include the area around the center.
4. The current zone does not include the portion of the parade route between Blaine Street and Main Street. This also should be included.
5. The City wishes to clarify rules for outdoor sales by expanding the definition of temporary merchants or street vendors and clarifying individuals selling personal household items at their residence during the festival.

THE CITY OF NEWBERG ORDAINS AS FOLLOWS:

That portion of the Code of Newberg added by Ordinance No. 2009-2717 shall be amended as follows:

Old Fashioned Festival Zone. During the Old Fashioned Festival, as proclaimed by the Mayor and City Council, an Old Fashioned Festival Zone shall be in effect. ~~The festival zone shall be bounded by and shall specifically include properties abutting both sides of South Blaine Street on the west, East First Street on the north, East Ninth Street on the south, and South Meridian Street on the east.~~ The perimeter of the festival zone shall start Blaine Street at Ninth Street, and go north to Third Street, west to Main Street, north to Second Street, east to Blaine Street, north to Sherman Street, east to School Street, south to First Street, east to Meridian Street, south to Ninth Street, and west to Blaine Street, and specifically shall include properties abutting either side of the above perimeter streets. During the Old Fashioned Festival, no short term temporary merchant or street vendor shall operate, ~~nor shall any business, group, or individual conduct temporary outdoor sales of merchandise within the Festival Zone, except those operating under authority of the official Old Fashioned Festival committee.~~ This limit does not apply to individuals selling personal household

Old Fashioned Festival Zone



scale

Revised May 2011

