



**CITY COUNCIL AGENDA  
JUNE 17, 2013  
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, with an opportunity to speak for no more than 5 minutes per speaker allowed)

**VI. APPOINTMENTS**

1. Consider appointing the best candidate to the Newberg City Council District #3 position. (Pg. 3)
2. Consider appointing Stuart Brown, Steve Comfort, and Terry Emery to the Affordable Housing Commission. (Pg. 5)

**VII. CONSENT CALENDAR**

1. Consider a motion adopting **Resolution No. 2013-3052** authorizing the city manager to execute an IGA with ODOT for College Street right-of-way services. (Pgs. 7-53)
2. Consider a motion adopting **Resolution No. 2013-3055** approving the purchase of a replacement crane truck with a Freightliner Chassis. (Pgs. 55-56)
3. Consider a motion adopting **Resolution No. 2013-3053** designating the assistant city manager to serve as city manager pro tem as circumstances warrant and establishing a subsequent chain of command. (Pgs. 57-60)
4. Consider a motion approving the May 20, 2013, City Council meeting minutes. (Pgs. 61-67)

**VIII. PUBLIC HEARINGS**

1. Consider a motion approving the Ninth Street vacation and directing staff to prepare an Ordinance for final approval. (Pgs. 69-88)  
**(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.

2. Presentation from Waste Management's results on their Dundee Curbside Glass Pilot Project.(P. 89-109)
3. Consider a motion adopting **Resolution No. 2013-3054** approving a rate increase request by Waste Management and establishing a curbside glass pick up for residential customers. (Pgs. 111-116) **(Legislative Hearing)**

## **IX. COUNCIL BUSINESS**

## **X. ADJOURNMENT**

*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 business hours prior to the meeting. To request these arrangements, please contact the City Recorder at (503) 537-1283. For TTY services please dial 711.*

**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 4:30 p.m. on the preceding Wednesday. 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: June 17, 2013

Order \_\_\_      Ordinance \_\_\_      Resolution \_\_\_      Motion XX      Information \_\_\_  
No.              No.                      No.

**SUBJECT: The City Council District No. 3  
Appointment for a term expiring December 31,  
2016.**

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

## RECOMMENDATION:

Consider a motion to appoint the most qualified candidate to fill the City Council District No. 3 vacant position for a term expiring December 31, 2016.

## EXECUTIVE SUMMARY:

On November 6, 2012, Spencer Haley was elected to fill the City Council District #3 seat by the electorate. Due to business conflict, he did not take the oath of office; therefore, the City declared the position vacant per Resolution No. 2013-3029 on February 4, 2013.

During the month of March, the position was advertised, a letter was drafted by Mayor Bob Andrews and sent to residents within the boundaries of District No. 3, and applications were accepted for the position. Fourteen applications were received. Two applicants did not meet the requirements and the remaining twelve were sent supplemental questions. From those twelve, only two returned the supplemental questionnaire showing continued interest in the position. Those two candidates are being interviewed tonight.

## FISCAL IMPACT:

None.

## STRATEGIC ASSESSMENT:

The council sets policy and direction for the City. It is critical for the city council to have a full complement of its membership in order to carry on the business of the City. The selecting the most qualified candidate to fulfill the District No. 3 vacant position is important to ensure the citizens within its boundaries are fairly represented.

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# REQUEST FOR COUNCIL ACTION

DATE ACTION REQUESTED: June 17, 2013

Order ___ No.	Ordinance ___ No.	Resolution ___ No.	Motion <u>XX</u>	Information ___
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**SUBJECT: Appoint Stuart Brown, Steve Comfort, and Terry Emery as initial members of an Affordable Housing Commission**

Contact Person (Preparer) for this Motion: Mayor Bob Andrews  
Dept.: Administration  
File No.: G-12-007

**RECOMMENDATION:** To consent to the appointment by the Mayor of Stuart Brown, Steve Comfort, and Terry Emery as initial members of an Affordable Housing Commission. Recommended terms of appointment are as follows: Terry Emery for 3 years; Stuart Brown for 2 years; and Steve Comfort for 1 year.

**EXECUTIVE SUMMARY:** On March 5, 2012, the Newberg City Council adopted Ordinance No. 2012-2749, establishing the Newberg Affordable Housing Trust Fund. On April 17, 2012, the Newberg City Council approved Resolution No. 2012-2988, establishing the policies and procedures for administration of the Newberg Affordable Housing Trust Fund. Section 5.7 of this resolution states the following:

*The City of Newberg shall form an affordable housing commission (AHC) that consists of three members appointed by the Mayor with the consent of the city council. Membership of the commission should reflect representative broad interests regarding affordable housing in the community. The commission shall review applications for Newberg Affordable Housing Trust Funds to determine project eligibility and evaluate the applications based on the selection criteria. The commission shall provide recommendations to the city council which shall make final award decisions. In addition, the commission shall meet annually to prepare the NAHTF's annual NOFA and RFP for consideration of approval by the city council. Otherwise, the commission will meet as necessary during the year.*

Terms for members appointed to the Affordable Housing Commission are not specified in Resolution No. 2012-2988. Therefore, the Mayor recommends the appointments be made in staggered, three year terms. This method will provide membership continuity for the Commission.

For privacy purposes, the proposed appointees' applications are retained in the City Recorder's Office. Please call 503-537-1283 to request a copy.

**FISCAL IMPACT:** None

**STRATEGIC ASSESSMENT:** The Affordable Housing Commission will provide thoughtful advice to the City Council on how to best serve the affordable housing needs of our community with the resources of the Newberg Affordable Housing Trust Fund.

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# REQUEST FOR COUNCIL ACTION

DATE ACTION REQUESTED: June 17, 2013

Order \_\_\_      Ordinance \_\_\_      Resolution XX      Motion \_\_\_      Information \_\_\_  
No.                      No.                      No. 2013-3052

**SUBJECT: Authorize the city manager to execute an amendment to an Intergovernmental Agreement (IGA) with the State of Oregon that provides right of way services for the N. College Street Sidewalks and Bike Lanes Improvement Project.**

Contact Person (Preparer) for this Motion: Paul Chiu, Senior Engineer  
Dept.:  
File No.:

## RECOMMENDATION:

Adopt Resolution No. 2013-3052 authorizing the city manager to execute an amendment to an Intergovernmental Agreement (IGA) with the State of Oregon that provides right of way services for the N. College Street Sidewalks and Bike Lanes Improvement Project.

## EXECUTIVE SUMMARY:

The existing Intergovernmental Agreement (IGA) No. 27928 for the College Street right of way services to be performed by the Oregon Department of Transportation (ODOT) was executed on April 17, 2012. This IGA, attached as Attachment "1", allows a maximum spending of \$117,000.00 from the Transportation Enhancement (TE) funds. The ODOT TE funding is guided by IGA No. 27316 and its amendment, which is attached as Attachment "2".

The original right of way and easement acquisition estimate was for 13 property files totaling 5,490 square feet of acquisition. To meet environmental regulations, stormwater detention and treatment utilizing rain gardens is proposed for the project, and the needed right of way files have increased to 18 totaling 7,927 square feet of acquisition. The additional acquisition is a 45% increase, or \$24,000.00 above the original estimate.

The increased compensation for impacts to the existing site improvements such as fences, trees, and landscaping is estimated at \$18,000.00 by ODOT. The original estimate for the ODOT acquisition labor cost was \$62,000.00, and the increase in the number of acquisition files adds another \$28,000.00. Adding a contingency, the total estimated cost to acquire the needed rights of way and easements for the project is amended to be \$198,000.00. The amendment to IGA No. 27928 is attached as Exhibit "A". Construction of this project is still planned for spring/summer of 2014.

## FISCAL IMPACT:

The amendment to the right of way services agreement for the Newberg TE project is considered by ODOT as a budget programming, or a financial plan adjustment, with no change in the total \$880,000.00 TE commitment from ODOT at this time. The City will see a reduction in the available construction funds for the project that equals the line item increase for right of way and easement acquisition. The costs for construction phase of the project will be re-evaluated when the final estimated construction costs for the 100% design plans are completed by the ODOT consultant in August, 2013. This summer an IGA amendment will be submitted to City Council, to extend the project deadline for the construction bid

solicitations from September 30, 2013, to March 31, 2014. Once the construction budget is finalized, the project limits will be affirmed or modified, and/or the funding commitments from ODOT and the City will be adjusted.

**STRATEGIC ASSESSMENT:**

Approval of this IGA amendment for the project allows the right of way and easement acquisition phase to be fully completed prior to the 2014 construction season. This project provides a critical pedestrian and bicyclist connection along a major arterial route in accordance with the City's Transportation System Plan and the Newberg ADA/Pedestrian/Bike Route Improvement Plan.

**INTERGOVERNMENTAL AGREEMENT  
FOR RIGHT OF WAY SERVICES**

OR 219: Vermillion - Aldercrest Sidewalk and Bike Lanes

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. By the authority granted in Oregon Revised Statute (ORS) 190.110, 283.110, 366.572 and 366.576, 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. By the authority granted in ORS 366.425, State may accept deposits of money or an irrevocable letter of credit from any county, city, road district, person, firm, or corporation for the performance of work on any public highway within the State. When said money or a letter of credit is deposited, State shall proceed with the Project. Money so deposited shall be disbursed for the purpose for which it was deposited.
3. That certain Vermillion Street and Aldercrest Drive are City Streets under the jurisdiction and control of Agency and Agency may enter into an agreement for the acquisition of real property.
4. Oregon Route 219 (OR 219), is a part of the state highway system under the jurisdiction and control of the Oregon Transportation Commission (OTC).
5. This Agreement shall define roles and responsibilities of the Parties regarding the real property to be used as part of right of way for road, street or construction of public improvement. The scope and funding may be further described in Local Agency Agreement, Transportation Enhancement Program Project Agreement number 27316. Hereinafter, all acts necessary to accomplish services in this Agreement shall be referred to as "Project."

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

**TERMS OF AGREEMENT**

1. Under such authority, State and Agency agree to perform certain right of way activities shown in Special Provisions - Exhibit A, attached hereto and by this reference made a part hereof. If the State performs right of way services on behalf of the Agency, under

no conditions shall Agency's obligations for said services exceed a maximum of \$117,000, including all expenses, unless agreed upon by both Parties.

2. The work shall begin on the date all required signatures are obtained and shall be completed no later than December 31, 2014, on which date this Agreement automatically terminates unless extended by a fully executed amendment.
3. The process to be followed by the Parties in carrying out this Agreement is set out in Exhibit A.
4. It is further agreed both Parties will strictly follow the rules, policies and procedures of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, ORS Chapter 35 and the "State Right of Way Manual".

### **STATE OBLIGATIONS**

1. State shall perform the work described in Special Provisions - Exhibit A.
2. With the exception of work related to appraisals, State shall not enter into any subcontracts for any of the work scheduled under this Agreement without obtaining prior written approval from Agency.
3. If the State performs right of way services on behalf of the Agency, State shall perform the service under this Agreement as an independent contractor and shall be exclusively responsible for all costs and expenses related to its employment of individuals to perform the work under this Agreement including, but not limited to, retirement contributions, workers compensation, unemployment taxes, and state and federal income tax withholdings.
4. State's right of way contact person for this Project is Melissa J. Mallott, Right of Way Project Manager, 455 Airport Road SE, Building A, Salem, Oregon 97301-5397; (503) 986-2772; email melissa.j.mallott@odot.state.or.us, or assigned designee upon individual's absence. State shall notify the other Party in writing of any contact changes during the term of this Agreement.

### **AGENCY OBLIGATIONS**

1. Agency shall perform the work described in Special Provisions - Exhibit A.
2. Agency certifies, at the time this Agreement is executed, that sufficient funds are available and authorized for expenditure to finance costs of this Agreement within Agency's current appropriation or limitation of current budget. Agency is willing and able to finance all, or its pro-rata share of all, costs and expenses incurred in the Project up to its maximum.
3. Agency may utilize its own staff or subcontract any of the work scheduled under this Agreement provided Agency receives prior written approval of any staff, consultant or contractor by the State's Region Right of Way office.

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27928

4. Agency represents that this Agreement is signed by personnel authorized to do so on behalf of Agency.
5. Agency's right of way contact person for this Project is Paul Chiu, Senior Engineer, PO Box 970, Newberg, Oregon 97132; (503) 554-1751; paul.chiu@newbergoregon.gov, or assigned designee upon individual's absence. Agency shall notify the other Party in writing of any contact information changes during the term of this Agreement.

**PAYMENT FOR SERVICES AND EXPENDITURES:**

1. In consideration for the services performed by State (as identified in the attached Exhibit A), Agency agrees to pay or reimburse State a maximum amount of \$117,000. Said maximum amount shall include reimbursement for all expenses, including travel expenses. Travel expenses shall be reimbursed to State in accordance with the current Oregon Department of Administrative Services' rates. Any expenditure beyond federal participation will be from, or reimbursed from, Agency funds. Payment in Agency and/or federal funds in any combination shall not exceed said maximum, unless agreed upon by both Parties.
2. Agency agrees to reimburse salaries and payroll reserves of State employees working on Project, direct costs, costs of rental equipment used, and per-diem expenditures.

**GENERAL PROVISIONS:**

1. This Agreement may be terminated by either Party upon thirty (30) days' notice, in writing and delivered by certified mail or in person, under any of the following conditions:
  - a. If either Party fails to provide services called for by this Agreement within the time specified herein or any extension thereof.
  - b. If either Party fails to perform any of the other provisions of this Agreement or so fails to pursue the work as to endanger performance of this Agreement in accordance with its terms, and after receipt of written notice fails to correct such failures within ten (10) days or such longer period as may be authorized.
  - 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 State is prohibited from paying for such work from the planned funding source.
2. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.

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3. Agency acknowledges and agrees that State, the Oregon Secretary of State's Office, the federal government, and their duly authorized representatives shall have access to the books, documents, papers, and records of Agency which are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of six (6) years after final payment. Copies of applicable records shall be made available upon request. Payment for costs of copies is reimbursable by State.
4. Agency shall comply with all federal, state, and local laws, regulations, executive orders and ordinances applicable to the work under this Agreement, including, without limitation, the provisions of ORS 279B.220, 279B.225, 279B.230, 279B.235 and 279B.270 incorporated herein by reference and made a part hereof. Without limiting the generality of the foregoing, Agency expressly agrees to comply with (i) Title VI of Civil Rights Act of 1964; (ii) Title V and Section 504 of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659A.142; (iv) all regulations and administrative rules established pursuant to the foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.
5. All employers, 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. Employers Liability insurance with coverage limits of not less than \$500,000 must be included. Both Parties shall ensure that each of its subcontractors complies with these requirements.
6. 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.
7. 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 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

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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.

8. 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.
9. 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.
10. If federal funds are involved in this Agreement, Exhibits B and C are attached hereto and by this reference made a part of this Agreement, and are hereby certified to by Agency.
11. If federal funds are involved in this Agreement, 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 shall 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.
12. The Parties hereto agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be invalid, unenforceable, illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.

13. This Agreement may be executed in several counterparts (facsimile or otherwise) all of which when taken together shall constitute one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of this Agreement so executed shall constitute an original.

14. This Agreement and attached exhibits constitute the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either Party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of State to enforce any provision of this Agreement shall not constitute a waiver by State of that or any other provision.

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

**Signature Page to Follow**

CITY OF NEWBERG, by and through its elected officials

By Bob Anderson  
Mayor

Date 4/3/12

By Terence D. Malin (acting)  
City Manager

Date 4/3/2012

**APPROVED AS TO LEGAL SUFFICIENCY**

By Terence D. Malin  
City Legal Counsel

Date 4/3/2012

**Agency Contact:**

Paul Chiu  
Senior Engineer  
PO Box 970  
Newberg, Oregon 97132  
(503) 554-1751  
paul.chiu@newbergoregon.gov

**State Contact:**

Melissa J. Mallott, SR/WA  
455 Airport Road SE, Building A  
Salem, Oregon 97301-5397  
(503) 986-2772  
melissa.j.mallott@odot.state.or.us

STATE OF OREGON, by and through its Department of Transportation

By PK Gray  
State Right of Way Manager

Date 4/17/12

**APPROVAL RECOMMENDED**

By [Signature]  
Region 2 Right of Way Manager

Date 4/13/12

By [Signature] for Carol Cartwright  
Region 2 Tech Center Manager

Date 4-13-12

**APPROVED AS TO LEGAL SUFFICIENCY**

By n/a  
Assistant Attorney General

Date \_\_\_\_\_

**APPROVED**

(If Litigation Work Related to Condemnation is to be done by State)

By n/a  
Chief Trial Counsel

Date \_\_\_\_\_

**SPECIAL PROVISIONS EXHIBIT A**  
**Right of Way Services**

THINGS TO BE DONE BY STATE OR AGENCY

1. Pursuant to this Agreement, the work performed on behalf of the Agency can be performed by the Agency, the Agency's consultant, or a State Flex Services consultant. The work may be performed by Agency staff or any of these representatives on behalf of Agency individually or collectively provided they are qualified to perform such functions and after receipt of approval from the State's Region 2 Right of Way Manager. Said approval must be obtained, in writing, prior to the performance of said activities.
2. With the exception of work related to appraisals, State shall not enter into any subcontracts for any of the work scheduled under this Agreement without obtaining prior written approval from Agency.
3. Both Parties will strictly follow the rules, policies and procedures of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, ORS Chapter 35 and the "State Right of Way Manual".

**Instructions:** Insert either: State, Agency, or N/A on each line.

**A. Preliminary Phase**

1. Agency shall provide preliminary cost estimates.
2. Agency shall make preliminary contacts with property owners.
3. Agency shall gather and provide data for environmental documents.
4. Agency shall develop access and approach road list.
5. Agency shall help provide field location and Project data.

**B. Acquisition Phase**

1. General:
  - a. When doing the Acquisition work, State shall provide Agency with a status report of the Project quarterly.
  - b. Title to properties acquired shall be in the name of the State.
  - c. Prior to the initiation of acquisitions, if title to the properties is to be acquired in the name of the Agency, the Agency shall adopt a resolution of intention and determination of necessity in accord with ORS 35.235 and ORS 35.610, authorizing acquisition and condemnation. If the Oregon Department of Justice

is to handle condemnation work, prior approval evidenced by Chief Trial Counsel, Department of Justice, signature on this Agreement is required; and authorization for such representation shall be included in the resolution adopted by the Agency. Prior approval by Oregon Department of Justice is required.

2. Legal Descriptions:

- a. Agency shall provide sufficient horizontal control, recovery and retracement surveys, vesting deeds, maps and other data so that legal descriptions can be written.
- b. Agency shall provide construction plans and cross-section information for the Project.
- c. Agency shall write legal descriptions and prepare right of way maps. If the Agency acquires any right of way on a State highway, the property descriptions and right of way maps shall be based upon centerline stationing and shall be prepared in accordance with the current "State Right of Way & Rail/Utility Coordination Manual", "Contractor Services Guide" and the "Right of Way Engineering Manual". The preliminary and final versions of the property descriptions and right of way maps must be reviewed and approved by the State.
- d. State shall specify the degree of title to be acquired (e.g., fee, easement).

3. Real Property and Title Insurance:

- a. State shall provide preliminary title reports, if State determines they are needed, before negotiations for acquisition commence.
- b. State shall determine sufficiency of title (taking subject to). If the Agency acquires any right of way on a State highway, sufficiency of title (taking subject to) shall be determined in accordance with the current "State Right of Way Manual" and the "Contractor Services Guide". Agency shall clear any encumbrances necessary to conform to these requirements, obtain Title Insurance policies as required and provide the State copies of any title policies for the properties acquired.
- c. Agency shall conduct a Level 1 Hazardous Materials Study within project limits to detect presence of hazardous materials on any property purchase, excavation or disturbance of structures, as early in the project design as possible, but at a minimum prior to property acquisition or approved design.
- d. Agency shall conduct a Level 2 Site Investigation of sufficient scope to confirm the presence of contamination, determine impacts to properties and develop special provisions and cost estimates, if the Level 1 Corridor study

indicates the potential presence of contamination that could impact the properties.

- If contamination is found, a recommendation for remediation will be presented to State.

e. Agency shall be responsible for arrangement of any necessary remediation.

f. Agency shall conduct asbestos, lead paint and other hazardous materials surveys for all structures that will be demolished, renovated or otherwise disturbed. Asbestos surveys must be conducted by an AHERA (asbestos hazard emergency response act) certified inspector.

4. Appraisal:

a. State shall conduct the valuation process of properties to be acquired.

b. State shall perform the Appraisal Reviews.

c. State shall recommend Just Compensation, based upon a review of the valuation by qualified personnel.

5. Negotiations:

a. State shall tender all monetary offers to land-owners in writing at the compensation shown in the appraisal review. Conveyances taken for more or less than the approved Just Compensation will require a statement justifying the settlement. Said statement will include the consideration of any property trades, construction obligations and zoning or permit concessions. If State performs this function, it will provide the Agency with all pertinent letters, negotiation records and obligations incurred during the acquisition process.

b. State and Agency shall determine a date for certification of right of way and agree to cosign the State's Right of Way Certification form. State and Agency agree possession of all right of way shall occur prior to advertising of any construction contract, unless appropriate exceptions have been agreed to by Agency and State.

c. State agrees to file all Recommendations for Condemnation at least seventy (70) days prior to the right of way certification date if negotiations have not been successful on those properties.

6. Relocation:

- a. State shall perform any relocation assistance, make replacement housing computations, and do all things necessary to relocate any displaced parties on the Project.
- b. State shall make all relocation and moving payments for the Project.
- c. State shall perform the relocation appeal process.

### **C. Closing Phase**

1. State shall close all transactions. This includes drawing of deeds, releases and satisfactions necessary to clear title, obtaining signatures on release documents, and making all payments. If Agency is handling the closing, State shall submit all signed Final Report packets, information required by the Uniform Act, and agreements to the Agency.
2. State shall record conveyance documents, only upon acceptance by appropriate agency.

### **D. Property Management**

1. State shall take possession of all the acquired properties. There shall be no encroachments of buildings or other private improvements allowed upon the State highway right of way.
2. State shall dispose of all improvements and excess land.

### **E. Condemnation**

1. State may offer mediation if the parties have reached an impasse.
2. State shall perform all administrative functions in preparation of the condemnation process, such as preparing final offer and complaint letters.
3. State shall perform all legal and litigation work related to the condemnation process. (If State agrees to handle legal and litigation work, prior approval evidenced by Chief Trial Counsel, Department of Justice, signature on this Agreement is required. Where it is contemplated that property will be obtained for Agency for the Project, such approval will be conditioned on passage of a resolution by Agency substantially in the form attached hereto as Exhibit D, and by this reference made a part hereof, specifically identifying the property being acquired.)
4. Where State shall perform legal or litigation work related to the condemnation process, Agency acknowledges, and agrees and undertakes to assure that no member of Agency's board or council, nor Agency's mayor, when such member or mayor is a practicing attorney, nor Agency's attorney nor any member of the law firm of Agency's attorney, board or council member, or mayor, will represent any party, except Agency, against the State of Oregon, its employees or contractors, in

any matter arising from or related to the Project which is the subject of this Agreement.

#### **F. Transfer of Right of Way to State**

If applicable, Agency agrees to transfer to the State all right of way acquired on the State highway which was acquired in the Agency's name. The specific method of conveyance will be determined by the Agency and the State at the time of transfer and shall be coordinated by the State's Region Right of Way Manager. Agency agrees to provide the State all information and file documentation the State deems necessary to integrate the right of way into the State's highway system. At a minimum, this includes: copies of all recorded conveyance documents used to vest title in the name of the Agency during the right of way acquisition process, and the Agency's Final Report or Summary Report for each acquisition file that reflects the terms of the acquisition and all agreements with the property owner(s).

#### **G. Transfer of Right of Way to Agency**

If applicable, State agrees to transfer and Agency agrees to accept all right of way acquired on the Agency's facility which was acquired in the State's name. The specific method of conveyance will be determined by the State and the Agency at the time of transfer and shall be coordinated by the State's Region Right of Way Manager. If requested, State agrees to provide Agency information and file documentation associated with the transfer.

For purposes of Exhibits B and C, references to Department shall mean State, references to Contractor shall mean Agency, and references to Contract shall mean Agreement.

**EXHIBIT B (Local Agency or State Agency)**

**CONTRACTOR CERTIFICATION**

Contractor certifies by signing this Contract that Contractor has not:

- (a) Employed or retained for a commission, percentage, brokerage, contingency fee or other consideration, any firm or person (other than a bona fide employee working solely for me or the above Contractor) to solicit or secure this Contract,
- (b) agreed, as an express or implied condition for obtaining this Contract, to employ or retain the services of any firm or person in connection with carrying out the Contract, or
- (c) paid or agreed to pay, to any firm, organization or person (other than a bona fide employee working solely for me or the above Contractor), any fee, contribution, donation or consideration of any kind for or in connection with, procuring or carrying out the Contract, except as here expressly stated (if any):

Contractor further acknowledges that this certificate is to be furnished to the Federal Highway Administration, and is subject to applicable State and Federal laws, both criminal and civil.

**DEPARTMENT OFFICIAL CERTIFICATION**

Department official likewise certifies by signing this Contract that Contractor or his/her representative has not been required directly or indirectly as an expression of implied condition in connection with obtaining or carrying out this Contract to:

- (a) Employ, retain or agree to employ or retain, any firm or person or
- (b) pay or agree to pay, to any firm, person or organization, any fee, contribution, donation or consideration of any kind except as here expressly stated (if any):

Department official further acknowledges this certificate is to be furnished to the Federal Highway Administration, and is subject to applicable State and Federal laws, both criminal and civil.

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Exhibit C  
Federal Provisions  
Oregon Department of Transportation

**CERTIFICATION OF NONINVOLVEMENT IN ANY DEPARTMENT AND SUSPENSION**

Contractor certifies by signing this Contract that to the best of its knowledge and belief, it and its principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any Federal department or agency;
2. Have not within a three-year period preceding this Contract been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (federal, state or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery falsification or destruction of records, making false statements or receiving stolen property;
3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
4. Have not within a three-year period preceding this Contract had one or more public transactions (federal, state or local) terminated for cause or default.

Where the Contractor is unable to certify to any of the statements in this certification, such prospective participant shall submit a written explanation to Department.

List exceptions. For each exception noted, indicate to whom the exception applies, initiating agency, and dates of action. If additional space is required, attach another page with the following heading: Certification Exceptions continued, Contract Insert.

**EXCEPTIONS:**

Exceptions will not necessarily result in denial of award, but will be considered in determining Contractor responsibility. Providing false information may result in criminal prosecution or administrative sanctions.

The Contractor is advised that by signing this Contract, the Contractor is deemed to have signed this certification.

**II. INSTRUCTIONS FOR CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS- PRIMARY COVERED TRANSACTIONS**

1. By signing this Contract, the Contractor is providing the certification set out below.
2. The inability to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The Contractor shall explain why he or she cannot provide the certification set out below. This explanation will be considered in connection with the Department determination to enter into this transaction. Failure to furnish an explanation shall disqualify such person from participation in this transaction.
3. The certification in this clause is a material representation of fact upon which reliance was placed when the Department determined to enter into this transaction. If it is later determined that the Contractor knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government or the Department may terminate this transaction for cause of default.
4. The Contractor shall provide immediate written notice to the Department if at any time the Contractor learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
5. The terms "covered transaction", "debarred", "suspended", "ineligible", "lower tier covered transaction", "participant", "person", "primary covered transaction", "principal", and "voluntarily excluded", as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the Department's Program Section (Tel. (503) 986-3400) to which this proposal is being submitted for assistance in obtaining a copy of those regulations.

6. The Contractor agrees by entering into this Contract that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transactions with a person who is debarred, suspended, declared ineligible or voluntarily excluded from participation in this covered transaction, unless authorized by the Department or agency entering into this transaction.
7. The Contractor further agrees by entering into this Contract that it will include the Addendum to Form FHWA-1273 titled, "Appendix B--Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transactions", provided by the Department entering into this covered transaction without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List published by the U. S. General Services Administration.
9. Nothing contained in the foregoing shall be construed to require establishment of a system of records to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government or the Department, the

Department may terminate this transaction for cause or default.

### III. ADDENDUM TO FORM FHWA-1273, REQUIRED CONTRACT PROVISIONS

This certification applies to subcontractors, material suppliers, vendors, and other lower tier participants.

- Appendix B of 49 CFR Part 29 -

#### **Appendix B--Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion--Lower Tier Covered Transactions**

##### Instructions for Certification

1. By signing and submitting this Contract, the prospective lower tier participant is providing the certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to which this Contract is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms "covered transaction", "debarred", "suspended", "ineligible", "lower tier covered transaction", "participant", "person", "primary covered transaction", "principal", "proposal", and "voluntarily excluded", as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this Contract is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this Contract that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this Contract that it will include this clause titled, "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transaction", without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the nonprocurement list.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction

originated may pursue available remedies, including suspension and/or debarment.

**Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion--Lower Tier Covered Transactions**

- a. The prospective lower tier participant certifies, by entering into this Contract, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any Federal department or agency.
- b. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall submit a written explanation to Department.

**IV. EMPLOYMENT**

1. Contractor warrants that he has not employed or retained any company or person, other than a bona fide employee working solely for Contractor, to solicit or secure this Contract and that he has not paid or agreed to pay any company or person, other than a bona fide employee working solely for Contractors, any fee, commission, percentage, brokerage fee, gifts or any other consideration contingent upon or resulting from the award or making of this Contract. For breach or violation of this warranting, Department shall have the right to annul this Contract without liability or in its discretion to deduct from the Contract price or consideration or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.
2. Contractor shall not engage, on a full or part-time basis or other basis, during the period of the Contract, any professional or technical personnel who are or have been at any time during the period of this Contract, in the employ of Department, except regularly retired employees, without written consent of the public employer of such person.

to be appropriate, including, but not limited to:

- a. Withholding of payments to Contractor under the agreement until Contractor complies; and/or
  - b. Cancellation, termination or suspension of the agreement in whole or in part.
6. Incorporation of Provisions. Contractor will include the provisions of paragraphs 1 through 6 of this section in every subcontract, including procurement of materials and leases of equipment, unless exempt from Regulations, orders or instructions issued pursuant thereto. Contractor shall take such action with respect to any subcontractor or procurement as Department or FHWA may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event Contractor becomes involved in or is threatened with litigation with a subcontractor or supplier as a result of such direction, Department may, at its option, enter into such litigation to protect the interests of Department, and, in addition, Contractor may request Department to enter into such litigation to protect the interests of the State of Oregon.

#### VI. DISADVANTAGED BUSINESS ENTERPRISE (DBE) POLICY

In accordance with Title 49, Code of Federal Regulations, Part 26, Contractor shall agree to abide by and take all necessary and reasonable steps to comply with the following statement:

##### **DBE POLICY STATEMENT**

**DBE Policy.** It is the policy of the United States Department of Transportation (USDOT) to practice nondiscrimination on the basis of race, color, sex and/or national origin in the award and administration of USDOT assist contracts. Consequently, the DBE requirements of 49 CFR 26 apply to this Contract.

**Required Statement For USDOT Financial Assistance Agreement.** If as a condition of assistance the Agency has submitted and the

US Department of Transportation has approved a Disadvantaged Business Enterprise Affirmative Action Program which the Agency agrees to carry out, this affirmative action program is incorporated into the financial assistance agreement by reference.

**DBE Obligations.** The Department and its Contractor agree to ensure that Disadvantaged Business Enterprises as defined in 49 CFR 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, Contractor shall take all necessary and reasonable steps in accordance with 49 CFR 26 to ensure that Disadvantaged Business Enterprises have the opportunity to compete for and perform contracts. Neither Department nor its contractors shall discriminate on the basis of race, color, national origin or sex in the award and performance of federally-assisted contracts. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of such contracts. Failure by the Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as Department deems appropriate.

The DBE Policy Statement and Obligations shall be included in all subcontracts entered into under this Contract.

**Records and Reports.** Contractor shall provide monthly documentation to Department that it is subcontracting with or purchasing materials from the DBEs identified to meet Contract goals. Contractor shall notify Department and obtain its written approval before replacing a DBE or making any change in the DBE participation listed. If a DBE is unable to fulfill the original obligation to the Contract, Contractor must demonstrate to Department the Affirmative Action steps taken to replace the DBE with another DBE. Failure to do so will result in withholding payment on those items. The monthly documentation will not be required after the DBE goal commitment is satisfactory to Department.

Any DBE participation attained after the DBE goal has been satisfied should be reported to the Departments.

**DBE Definition.** Only firms DBE certified by the State of Oregon, Department of Consumer & Business Services, Office of Minority, Women & Emerging Small Business, may be utilized to satisfy this obligation.

**CONTRACTOR'S DBE CONTRACT GOAL**

**DBE GOAL   0   %**

By signing this Contract, Contractor assures that good faith efforts have been made to meet the goal for the DBE participation specified in the Contract for this project as required by ORS 200.045, and 49 CFR 26.53 and 49 CFR, Part 26, Appendix A.

**VII. LOBBYING**

The Contractor certifies, by signing this agreement to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the 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.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress in connection with this agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into.

Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U. S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor also agrees by signing this agreement that he or she shall require that the language of this certification be included in all lower tier subagreements, which exceed \$100,000 and that all such subrecipients shall certify and disclose accordingly.

FOR INQUIRY CONCERNING  
DEPARTMENT'S DBE PROGRAM  
REQUIREMENT CONTACT OFFICE OF  
CIVIL RIGHTS AT (503)986-4354.

**RESOLUTION EXERCISING THE POWER OF EMINENT DOMAIN EXHIBIT D**  
**Right of Way Services**

*(Instructions, please delete before completing form)* Regions: This portion of the document is unlocked. The LPA should block and copy to incorporate this language into their own standard resolution form **OR** fill in an "attested to" line or signature line at the bottom and use this form.

WHEREAS (insert title of agency) may exercise the power of eminent domain pursuant to (Agency's charter) (statutes conferring authority) and the Law of the State of Oregon generally, when the exercise of such power is deemed necessary by the (insert title of agency)'s governing body to accomplish public purposes for which (insert title of agency) has responsibility;

WHEREAS (insert title of agency) has the responsibility of providing safe transportation routes for commerce, convenience and to adequately serve the traveling public;

WHEREAS the project or projects known as (insert Project name) have been planned in accordance with appropriate engineering standards for the construction, maintenance or improvement of said transportation infrastructure such that property damage is minimized, transportation promoted, travel safeguarded; and

WHEREAS to accomplish the project or projects set forth above it is necessary to acquire the interests in the property described in "Exhibit A," attached to this resolution and, by this reference incorporated herein; now, therefore

BE IT HEREBY RESOLVED by (Agency's Council, Commission, or Board)

1. The foregoing statements of authority and need are, in fact, the case. The project or projects for which the property is required and is being acquired are necessary in the public interest, and the same have been planned, designed, located, and will be constructed in a manner which will be most compatible with the greatest public good and the least private injury;
2. The power of eminent domain is hereby exercised with respect to each of the interests in property described in Exhibit A. Each is acquired subject to payment of just compensation and subject to procedural requirements of Oregon law;
3. The (insert title of agency)'s staff and the (Agency's Attorney, Counsel, or District's Counsel (or) (The Oregon Department of Transportation and the Attorney General) are authorized and requested to attempt to agree with the owner and other persons in interest as to the compensation to be paid for each acquisition, and, in the event that no satisfactory agreement can be reached, to commence and prosecute such condemnation proceedings as may be necessary to finally determine just compensation or any other issue appropriate to be determined by a court in connection with the acquisition. This authorization is not intended to expand the jurisdiction of any court to decide matters determined above or determinable by the (Agency's Council, Commission, or Board).
4. (insert title of agency) expressly reserves its jurisdiction to determine the necessity or propriety of any acquisition, its quantity, quality, or locality, and to change or abandon any acquisition.

DATED this \_\_\_\_ day of \_\_\_\_\_, 20\_\_

- 20 -

**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

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

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

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.

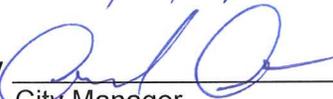
*Signature page to follow*

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

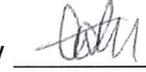
By   
Mayor

Date 5/12/11

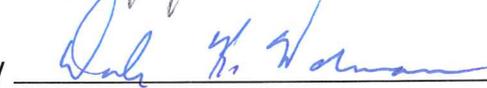
By   
City Manager

Date 5/12/11

**APPROVED AS TO LEGAL  
SUFFICIENCY**

By   
City Legal Counsel

Date 5/9/2011

By   
Assistant Attorney General

Date 5/24/11

**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](mailto:paul.chiu@newbergoregon.gov)

**STATE OF OREGON**, by and through  
its Department of Transportation

By   
Highway Division Administrator

Date 6/13/11

**APPROVAL RECOMMENDED**

By   
Technical Services Manager/Chief  
Engineer

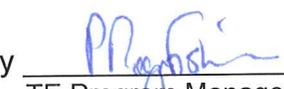
Date 6-8-11

By   
Region 2 Manager

Date 6/3/2011

By   
Region 2 Project Delivery Manager

Date 6-1-11

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

Date 6-June-2011

**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](mailto:mark.a.foster@odot.state.or.us)



## 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

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.

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.

**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.

**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

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.

### **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

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

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.

### **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.

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:

- 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.

**Oregon Department of Transportation  
AMENDMENT NUMBER 01  
LOCAL AGENCY AGREEMENT  
TRANSPORTATION ENHANCEMENT PROGRAM PROJECT  
OR 219: Vermillion – Aldercrest Sidewalk & Bike Lanes  
City of Newberg**

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," entered into an Agreement on June 13, 2011. Said Agreement covers the construction of sections of sidewalks with curb/gutter and planter strip on the west side, and continuous bike lanes on both sides of Oregon Route 219.

It has now been determined by State and Agency that the Agreement referenced above shall be amended to increase funding and update language. Except as expressly amended below, all other terms and conditions of the Agreement are still in full force and effect.

**TERMS OF AGREEMENT, Paragraph 2, Pages 1 and 2, which reads:**

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 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 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.

**Shall be deleted in its entirety and replaced with the following:**

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 \$908,000, which is subject to change. The Enhancement Funds are estimated at \$800,000, with Agency providing the required match for the Enhancement Funds, plus an additional \$16,000 and any non-participating costs, including all costs in excess of the available federal funds. Of Agency's additional 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 and Illinois Street, as governed by the terms of State's Walkway/Bikeway Project Agreement Number 26900. 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 \$880,000, Agency's matching share will be 10.27 percent of Enhancement-eligible costs. For any approved Enhancement Funds above \$880,000 (10 percent over the \$800,000 estimated enhanced funding), 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.

**Insert new Attachment No. 1, Special Provisions, Paragraph 9, to read as follows:**

9. Workers' Compensation language in the Standards Provisions, Paragraph 49, shall be replaced with the following language:
  - a. 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. Employers Liability insurance with coverage limits of not less than \$500,000 must be included. Agency shall ensure that each of its contractors complies with these requirements.

This Amendment may be executed in several counterparts (facsimile or otherwise) all of which when taken together shall constitute one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of this Amendment so executed shall constitute an original.

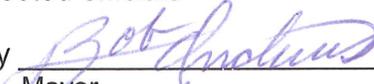
*City of Newberg / State of Oregon – Dept. of Transportation  
Agreement No. 27316, Amendment No. 1*

**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.

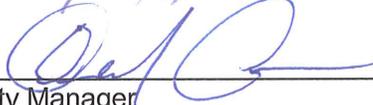
This Project is in the 2010-2013 Statewide Transportation Improvement Program, (Key No. 17382) that was approved by the Oregon Transportation Commission on December 16, 2010 (or subsequently approved by amendment to the STIP).

*Signature page to follow*

**CITY OF NEWBERG**, by and through its  
elected officials

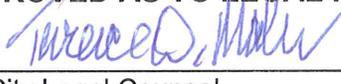
By   
Mayor

Date 7/26/11

By   
City Manager

Date 7/26/11

**APPROVED AS TO LEGAL FORM**

By   
City Legal Counsel

Date 7/25/2011

**Agency Contact:**

Paul Chiu, P.E.  
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](mailto:paul.chiu@newbergoregon.gov)

**State Contact:**

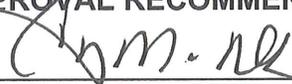
Mark Foster, Local Agency Liaison  
ODOT, Highway Division, Region 2  
455 Airport Road SE, Bldg. B  
Salem, OR 97301-5395  
Phone: (503) 986-2650  
Email: [mark.a.foster@odot.state.or.us](mailto:mark.a.foster@odot.state.or.us)

**STATE OF OREGON**, by and through  
its Department of Transportation

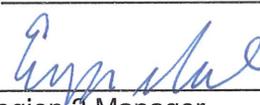
By   
Highway Division Administrator

Date 8/22/11

**APPROVAL RECOMMENDED**

By   
Technical Services Manager/Chief Engineer

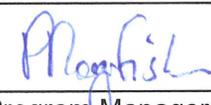
Date 8-16-11

By   
Region 2 Manager

Date 8/11/11

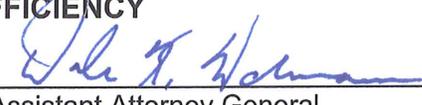
By   
Region 2 Project Delivery Manager

Date 8-10-11

By   
TE Program Manager or Local Government  
Section Manager

Date 15-Aug-11

**APPROVED AS TO LEGAL  
SUFFICIENCY**

By   
Assistant Attorney General

Date 8/13/11



## RESOLUTION No. 2013-3052

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**A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AN AMENDMENT TO AN INTERGOVERNMENTAL AGREEMENT (IGA) WITH THE STATE OF OREGON THAT PROVIDES RIGHT OF WAY SERVICES FOR THE N. COLLEGE STREET SIDEWALKS AND BIKE LANES IMPROVEMENT PROJECT**

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### RECITALS:

1. On April 17, 2012, the City executed Agreement No. 27928 with the Oregon Department of Transportation (ODOT) to receive the State's right of way services for the acquisition of rights of way and easements needed for the N. College Street Sidewalks and Bike Lane Improvement Project. This IGA provides a maximum of \$117,000.00 for the ODOT right of way services.
2. Due to the federal and state environmental determination that stormwater detention and treatment is required for the project to meet the joint permit application (JPA) requirements, the right of way and easement needs for the project have increased. The increased cost to acquire the rights of way and easements necessitates an amendment to IGA No. 27928, adjusting the estimated cost allocates to \$198,000.00 for the ODOT right-of-way services. The construction phase of the project will have a corresponding funding reduction. There is no change in the total Transportation Enhancement commitment from ODOT at this time, currently at \$880,000.00 for the project.
3. The costs for construction phase of the project will be re-evaluated in August, 2013, to affirm or modify the project limits and/or adjust the funding commitments from ODOT and the City.

### THE CITY OF NEWBERG RESOLVES AS FOLLOWS:

The Newberg City Council does hereby authorize the city manager to execute an IGA amendment with ODOT that provides the right of way services for the N. College Street Sidewalks and Bike Lanes Improvement Project. The amendment to IGA No. 27928 is shown in Exhibit "A", which is attached and by this reference hereby adopted.

- **EFFECTIVE DATE** of this resolution is the day after the adoption date, which is: June 18, 2013.

**ADOPTED** by the City Council of the City of Newberg, Oregon, this \_\_\_\_ day of June, 2013.

\_\_\_\_\_  
Norma I. Alley, MMC, City Recorder

**ATTEST** by the Mayor this 20th day of June, 2013.

\_\_\_\_\_  
Bob Andrews, Mayor

**Oregon Department of Transportation  
AMENDMENT NUMBER 01  
INTERGOVERNMENTAL AGREEMENT  
FOR RIGHT OF WAY SERVICES**

OR 219: Vermillion – Aldercrest Sidewalk and Bike Lanes  
City of Newberg

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,” entered into an Agreement on April 17, 2012. Said Agreement covers the roles and responsibilities of the Parties regarding the real property to be used as part of right of way for street improvements.

It has now been determined by State and Agency that the Agreement referenced above shall be amended to update language and increase the total funding for the right of way phase of the Project. Except as expressly amended below, all other terms and conditions of the Agreement are still in full force and effect.

**TERMS OF AGREEMENT, Paragraph 1, Page 1, which reads:**

1. Under such authority, State and Agency agree to perform certain right of way activities shown in Special Provisions – Exhibit A, attached hereto and by this reference made a part hereof. If the State performs right of way services on behalf of the Agency, under no conditions shall Agency’s obligations for said services exceed a maximum of \$117,000, including all expenses, unless agreed upon by both Parties.

**Shall be deleted in its entirety and replaced with the following:**

1. Under such authority, to accomplish the objectives in Agreement No. 27316, State and Agency agree to perform certain right of way activities shown in Special Provisions – Exhibit A, attached hereto and by this reference made a part hereof. If the State performs right of way services on behalf of the Agency, under no conditions shall Agency’s obligations for said services exceed a maximum of \$198,000, including all expenses, unless agreed upon by both Parties.

**PAYMENT FOR SERVICES AND EXPENDITURES, Paragraph 1, Page 3, which reads:**

1. In consideration for the services performed by State (as identified in the attached Exhibit A), Agency agrees to pay or reimburse State a maximum amount of \$117,000. Said maximum amount shall include reimbursement for all expenses, including travel expenses. Travel expenses shall be reimbursed to State in accordance with the current Oregon Department of Administrative Services’ rates. Any expenditure beyond federal participation will be from, or reimbursed from, Agency funds. Payment in Agency and/or federal funds in any combination shall not exceed said maximum, unless agreed upon by both Parties.

**Shall be deleted in its entirety and replaced with the following:**

1. In consideration for the services performed by State (as identified in the attached Exhibit A), Agency agrees to pay or reimburse State a maximum amount of \$198,000. Said maximum amount shall include reimbursement for all expenses, including travel expenses. Travel expenses shall be reimbursed to State in accordance with the current Oregon Department of Administrative Services' rates. Any expenditure beyond federal participation will be from, or reimbursed from, Agency funds. Payment in Agency and/or federal funds in any combination shall not exceed said maximum amount, unless agreed upon by both Parties.

**GENERAL PROVISIONS, Paragraph 14, Page 6, which reads:**

14. This Agreement and attached exhibits constitute the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either Party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of State to enforce any provision of this Agreement shall not constitute a waiver by State of that or any other provision.

**Shall be deleted in its entirety and replaced with the following:**

14. This Agreement and attached exhibits and Agreement No. 27316 constitute the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either Party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of State to enforce any provision of this Agreement shall not constitute a waiver by State of that or any other provision.

This Amendment may be executed in several counterparts (facsimile or otherwise) all of which when taken together shall constitute one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of this Amendment so executed shall constitute an original.

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

This Project is in the 2012-2015 Statewide Transportation Improvement Program, (Key No. 17382) that was adopted by the Oregon Transportation Commission on March 21, 2012 (or subsequently approved by amendment to the STIP).

**CITY OF NEWBERG**, by and through its  
elected officials

By \_\_\_\_\_  
Mayor

Date \_\_\_\_\_

By \_\_\_\_\_  
City Manager

Date \_\_\_\_\_

**APPROVED AS TO LEGAL FORM**

By \_\_\_\_\_  
City Legal Counsel

Date \_\_\_\_\_

**Agency Contact:**

Paul Chiu, P.E., Senior Engineer  
City of Newberg, Public Works-Engineering  
PO Box 970  
Newberg, OR 97132  
Phone: (503) 554-1751  
Email: [paul.chiu@newbergoregon.gov](mailto:paul.chiu@newbergoregon.gov)

**STATE OF OREGON**, by and through  
its Department of Transportation

By \_\_\_\_\_  
State Right of Way Manager

Date \_\_\_\_\_

**APPROVAL RECOMMENDED**

By \_\_\_\_\_  
Region 2 Manager

Date \_\_\_\_\_

By \_\_\_\_\_  
Region 2 Right of Way Manager

Date \_\_\_\_\_

By \_\_\_\_\_  
Region 2 Right of Way Program Manager

Date \_\_\_\_\_

**APPROVED AS TO LEGAL  
SUFFICIENCY**

By \_\_\_\_\_  
Assistant Attorney General

Date \_\_\_\_\_

**State Contact:**

Melissa J. Mallott, Program Manager  
ODOT, Region 2, Right of Way  
455 Airport Road, SE, Bldg. A  
Salem, OR 97301  
Phone: (503) 986-2772  
Email: [melissa.j.mallott@odot.state.or.us](mailto:melissa.j.mallott@odot.state.or.us)

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# REQUEST FOR COUNCIL ACTION

DATE ACTION REQUESTED: June 17, 2013

Order ___ No.	Ordinance ___ No.	Resolution <u>XX</u> No. 2013-3055	Motion ___	Information ___
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**SUBJECT: Resolution approving the purchase of a replacement crane truck with a Freightliner chassis from Carco Industries in the amount of \$177,526.00.**

Contact Person (Preparer) for this  
Motion: Russ Reed, Interim Operations  
Superintendent  
Dept.: Public Works Operations Division

## RECOMMENDATION:

Adopt Resolution No. 2013-3055 approving the purchase of a replacement crane truck with a Freightliner chassis from Carco Industries in the amount of \$177,526.00.

## EXECUTIVE SUMMARY:

The City of Newberg currently owns a 2002 Ford F-550 truck chassis with a manual crane. It is scheduled to be replaced this year.

When originally purchased as our first crane truck, it was assumed to be adequate for the type of duty and life-cycle requirements foreseen. Over the past twelve years, we have encountered numerous instances of where it is inadequate for its need. Some examples include a lack of extension and capacity when pulling rotors in the Wastewater Treatment Plant oxidation ditches, and a lack of adequate remote operation. There have been instances where we have had to rent larger, stationary cranes to do the work this new crane truck would easily handle.

The new influent pump station being installed during the current Wastewater Treatment Plant upgrade will have pumps which cannot be pulled and serviced with our existing crane truck. We have added three new remote sewage pump stations and one new remote pump station at the Water Treatment Plant, effectively doubling the number of pumps previously needing to be pulled.

The replacement 14,000 lb. crane truck/Freightliner chassis combination has numerous safety and operational improvements which will increase division efficiency, reduce operations and maintenance costs, enhance safety, and provide us with the ability to perform tasks our current equipment cannot handle.

## FISCAL IMPACT:

Pending approval of the 2013-2014 Budget, the purchase of a replacement crane truck and chassis will be fully funded from the equipment replacement reserve account 06-5131-610400 in the amount of \$177,526.00.

## STRATEGIC ASSESSMENT:

This purchase will allow the Public Works Operations Division to meet existing and future needs, lower vehicle operation and maintenance costs, and increase operator safety and efficiencies.



## RESOLUTION No. 2013-3055

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**A RESOLUTION APPROVING THE PURCHASE OF A REPLACEMENT  
CRANE TRUCK WITH A FREIGHTLINER CHASSIS FROM CARCO  
INDUSTRIES IN THE AMOUNT OF \$177,526.00**

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### RECITALS:

1. The City of Newberg PW Operations Division utilizes its crane truck to pull and maintain equipment at remote sewer and water pump stations within Newberg city limits.
2. The current 2002 crane truck is reaching the end of its serviceable life. Over the years, improvements have been made to crane trucks to increase their efficiency and improve operator safety. Replacement of the crane truck with a larger 14,000 lb. crane truck/Freightliner chassis combination will allow staff to realize these improvements and continue to meet the maintenance needs of the City of Newberg for the next fifteen years.
3. The PW Operations Division developed specifications for a new crane truck and solicited bids. Carco Industries was awarded the purchase contract for the crane truck and Freightliner chassis.
4. The City of Newberg selects Carco Industries to provide a new 14,000 lb. crane on a Freightliner chassis at a cost of \$177,526.00.

### THE CITY OF NEWBERG RESOLVES AS FOLLOWS:

1. The City Council, acting as the Contract Review Board, authorizes the city manager to enter into all contracts and agreements for the purchase of a replacement crane truck and Freightliner chassis. The city attorney will approve all contracts and agreements as to form and content.
2. The City of Newberg will purchase the crane truck and Freightliner chassis by using funds from the wastewater equipment replacement reserve account 06-5131-610400.

➤ **EFFECTIVE DATE** of this resolution is the day after the adoption date, which is: June 18, 2013.

**ADOPTED** by the City Council of the City of Newberg, Oregon, this 17<sup>th</sup> day of June, 2013.

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Norma I. Alley, MMC, City Recorder

**ATTEST** by the Mayor this 20<sup>th</sup> day of June, 2013.

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Bob Andrews, Mayor

# REQUEST FOR COUNCIL ACTION

DATE ACTION REQUESTED: June 17, 2013

Order \_\_\_      Ordinance \_\_\_      Resolution XX      Motion \_\_\_      Information \_\_\_  
No.              No.              No. 2013-3053

**SUBJECT:** Repealing Resolution No. 2005-2557, authorizing the city manager pro tem designation for short term absence of city manager, and designating subsequent chain of command.

Contact Person (Preparer) for this  
Motion: Lee Elliott, Assistant City Manager  
Dept.: City manager's Office  
File No.:

## RECOMMENDATION:

Adopt Resolution No. 2013-3053 Repealing Resolution No. 2005-2557, authorizing the city manager pro tem designation for short term absence of the city manager, and designating subsequent chain of command.

## EXECUTIVE SUMMARY:

In November 1982, the electorate approved a revision of the Newberg City Charter providing for a Mayor, Council, and City Manager form of government.

In accordance with that Charter amendment, which is attached, a manager pro tem shall be appointed by the City Council to serve in case of absence and temporary disability of the manager or whenever the office becomes vacant in accordance with the following section of the November, 2006, City Charter.

### Chapter VIII APPOINTIVE OFFICERS

Section 34 City Manager.

(h) When the manager is temporarily disabled from acting as manager or when the office of manager becomes vacant, the city council must appoint a manager pro tem. The manager pro tem has the authority and duties of manager, except that a pro tem manager may appoint or remove employees only with city council approval.

From time to time, the manager may be absent from the city for short durations on business, vacation, illness, or for other reasons. During these times, the Council wishes to provide for the uninterrupted functioning of city government by designating a public official who would act as the manager pro tem during these intervals.

## FISCAL IMPACT:

None

## STRATEGIC ASSESSMENT:

The purpose of this resolution is to ensure the uninterrupted functioning of the City government without needing to obtain approval of the City Council to appoint a manager pro tem for periods of short term absence of the City manager.

**City Charter Excerpt:**

**Chapter VIII**  
**APPOINTIVE OFFICERS**

Section 34 City Manager.

(a) The office of city manager is established as the administrative head of the city government. The city manager is responsible to the mayor and city councilors for the proper administration of all city business. The city manager will assist the mayor and city councilors in the development of city policies, and carry out policies established by ordinances, resolutions, and orders.

(b) A majority of the city council must appoint and may remove the manager. The appointment must be made without regard to political considerations and solely on the basis of education and experience in competencies and practices of local government management.

(c) The manager need not reside in the city or the state at the time of appointment.

(d) The manager may be appointed for a definite or an indefinite term, and may be removed at any time by a majority of the city council. The city council must fill the office by appointment as soon as practicable after the vacancy occurs.

(e) The manager must:

- (1) Attend all city council meetings unless excused by the mayor or city council;
- (2) Make reports and recommendations to the city council about the needs of the city;
- (3) Administer and enforce all city ordinances, resolutions, orders, franchises, leases, contracts, permits, and other city decisions;
- (4) Appoint, supervise and remove city employees;
- (5) Organize city departments and administrative structure;
- (6) Prepare and administer the annual city budget;
- (7) Administer city utilities and property;
- (8) Encourage and support regional and intergovernmental cooperation;
- (9) Promote cooperation among the city council, staff and citizens in developing city policies, and building a sense of community;
- (10) Perform other duties as directed by the city council;
- (11) Delegate duties, but remain responsible for acts of all subordinates.

(f) The manager has no authority over the city council, city attorney, or the judicial functions of the municipal judge.

(g) The manager, the city attorney, and other employees designated by the city council may sit at city council meetings but have no vote. The manager may take part in all city council discussions.

(h) When the manager is temporarily disabled from acting as manager or when the office of manager becomes vacant, the city council must appoint a manager pro tem. The manager pro tem has the authority and duties of manager, except that a pro tem manager may appoint or remove employees only with city council approval.

(i) No city council member may directly or indirectly attempt to coerce the manager or a candidate for the office of manager in the appointment or removal of any city employee, or in administrative decisions regarding city property or contracts. Violation of this prohibition is grounds for removal from office by a majority of the city council after a public hearing. In city council meetings, city councilors may discuss or suggest anything with the manager relating to city business.



## RESOLUTION No. 2013-3053

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**A RESOLUTION REPEALING RESOLUTION NO. 2005-2557,  
AUTHORIZING CITY MANAGER PRO TEM DESIGNATION FOR SHORT  
TERM ABSENCE OF THE CITY MANAGER, AND DESIGNATING A  
SUBSEQUENT CHAIN OF COMMAND**

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**RECITALS:**

1. In November of 1982, the electorate approved a revision of the Newberg City Charter providing for a Mayor, Council, and City Manager form of government. In accordance with the Charter amendment, the city manager is the administrative head of the government of the City.
1. A manager pro tem shall be appointed by the City Council to serve in case of absence and temporary disability of the manager or whenever the office becomes vacant in accordance with section 34(h) of the City Charter.
2. From time to time, the manager may be absent from the City for short durations on business, vacation, illness, or for other reasons. During these times, the Council wishes to provide a defined chain of command for the uninterrupted functioning of city government by designating a public official who would act as the manager pro tem during these intervals.

**THE CITY OF NEWBERG RESOLVES AS FOLLOWS:**

1. The City Council, in its sole discretion and in accordance with the City Charter Section 34(h), may designate any public official as the manager pro tem.
  2. The City Council designates the following public officials as the manager pro tem any time the city manager is absent from the city or temporarily disabled. The appointment of acting manager pro tem will be for a period of time not to exceed four (4) weeks. The manager pro tem, shall exercise all powers and duties provided for the manager pro tem in the following chain of command order as.
    - i. Assistant city manager.
    - ii. If the assistant city manager cannot act as manager pro tem, then the city attorney will act as the manager pro tem.
  3. The purpose of this resolution is to provide the efficient and continuous operation of the City government.
- **EFFECTIVE DATE** of this resolution is the day after the adoption date, which is: June 18, 2013.

**ADOPTED** by the City Council of the City of Newberg, Oregon, this 17<sup>th</sup> day of June, 2013.

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Norma I. Alley, MMC, City Recorder

**ATTEST** by the Mayor this 20<sup>th</sup> day of June, 2013.

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Bob Andrews, Mayor

# REQUEST FOR COUNCIL ACTION

DATE ACTION REQUESTED: June 17, 2013

Order \_\_\_ Ordinance \_\_\_ Resolution \_\_\_ Motion XX Information \_\_\_  
No. No. No.

SUBJECT: Approve the May 20, 2013, City Council Meeting minutes.

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

## RECOMMENDATION:

Approve 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 COUNCIL MINUTES**  
**MAY 20, 2013**  
**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 was given from Nancy Boyer, Mid-Willamette Valley Council of Governments, regarding the city attorney recruitment process. No action was taken and no decisions were made. Councilors and the Mayor were present with Stephen McKinney arriving at 6:15 PM and Mike Corey being absent (excused).

**I. CALL MEETING TO ORDER**

Mayor Bob Andrews called the meeting to order at 7:00 PM.

**II. ROLL CALL**

Members Present: Mayor Bob Andrews Denise Bacon Ryan Howard  
Lesley Woodruff Bart Rierson  
Stephen McKinney [Arrived 6:15 PM]

Members Absent: Mike Corey (excused)

Staff Present: Daniel Danicic, City Manager Terrence Mahr, City Attorney  
Janelle Nordyke, Finance Director Barton Brierley, Planning & Building Director  
Lee Elliott, Assistant City Manager Jessica Nunley, Acting City Recorder  
Nicole Tannler, Minutes Recorder

Others Present: Lewis Schaad, Robert Dailey, Paul Bock, Rick Rogers, and Ernie Munch

**III. PLEDGE OF ALLEGIANCE**

The Pledge of Allegiance was performed.

**IV. CITY MANAGERS REPORT**

Mr. Daniel Danicic, City Manager, reported the City of Newberg participated in Waste Management's local hazardous waste program and 168 pounds of medication was collected. He is making progress on the goal setting meeting and will use an electronic poll to find a time in September for a meeting. There is a City Club presentation by the Mayor tomorrow for information on local taxes and Mr. Barton Brierley, planning and building director, will be discussing business license information.

**V. PUBLIC COMMENTS**

Mayor Andrews opened public comments.

Mr. Robert Dailey, Executive Director of Chehalem Cultural Center, and representing the Ford Family Foundation Leadership Cohort 3, asked for financial support from the City. Cohort 3's project for this year is a planetary path in Newberg. It will be an accurate representation of the solar system, with planets and art located throughout downtown and south Newberg. It is an art in public spaces project to put art out into the community with a solar system theme. They are asking for \$500.00 from the Community Support budget for this project. Councilor Ryan Howard asked staff if we have \$500.00 in the Community Support fund this year. Ms. Janelle Nordyke, finance director, responded for the 2013-2014 budget they have \$500.00.

Mr. Paul Bock, Newberg resident, wants reconsideration of the cost for the College Street improvements. He wants to ask Council to use funds for this project similar to the funds used for the Crestview Drive project, which is outside city limits. The properties in the College Street LID are middle to lower class residents of the community. As it stands now, the homeowners in the College Street LID will fully fund the improvements with no help from the city and they had little time to organize before the hearings. He stated they understand the improvements will add value to their homes but are still asking for help from the city. The issue is with their added financial obligations and having no support from the city. Mr. Bock asked if the city can pay for the College Street project from the same fund as paid for the Crestview Drive project, which is also paying for improvements to Sheridan Street in front of the Chehalem Cultural Center. Mr. Daniel Danicic said the Crestview Drive project used System Development Charges (SDC) funds. Councilor Howard responded he is a little put off by the implication residents would believe their socioeconomic status is reflected in this project. He does not think one neighborhood or another is more deserving.

Councilor Bart Rierson said at one time improvements like this were paid for by transportation funds and grants, but at a certain point in the past a councilor pushed the use of Waivers of Remonstrance for homeowners to pay for improvements. In certain circumstances an LID is good for appropriate situations, but he does not feel it is for this situation. He understands the waiver of remonstrance is usually found out in the middle of signing your mortgage payments, and may get lost in the shuffle of paperwork and not explained very well. He will not support this at the next hearing.

Mr. Louis Schaad, Newberg resident, stated he has some observations in relationship to the property the city owns on Corral Creek Road. The city has mowed a part of the property and it looks good at a glance but what neighbors would like to see is the yellow scotch broom and blackberry bushes removed. He asks the city to rid this area of the noxious weeds. Councilor Rierson said he would like to request the city manager look into this with staff. He mentioned the city encourages residents to take care of noxious weeds so the city should as well.

## VI. CONSENT CALENDAR

1. Consider a motion approving a sound permit for the Chehalem Valley Chamber of Commerce Tunes on Tuesday concert series.
2. Consider a motion approving the April 1, 2013, and April 15, 2013, City Council meeting minutes.

<p><b>MOTION: Bacon/ Howard</b> approving a sound permit for the Chehalem Valley Chamber of Commerce Tunes on Tuesday concert series and approving the April 1, 2013, and April 15, 2013, City Council meeting minutes. Motion carried (6 Yes/0 No/1 Absent [Corey]).</p>
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## VII. PUBLIC HEARING

TIME – 7:19 PM

1. Consider a motion adopting **Resolution No. 2013-3042** approving the sale of a portion of city property to A to Z Winery Works.

Mayor Andrews introduced the administrative hearing and called for any conflicts of interest or abstentions; none appeared.

Mr. Terry Mahr, city attorney, and Jay Harris, city engineer, presented the staff report (see official meeting packet for full report). Staff recommends approval of Resolution No. 2013-3042.

Mr. Ernie Munch, Owners Representative, added to the staff report with some drawings of the property and highlights of the pieces of property that would be purchased. 1.62 acres is in consideration for the sale.

Councilor McKinney asked how the city came to obtain ownership of Otis Springs. Mr. Danicic replied it was used for water at first, but now is for non drinking use only because it is no longer potable.

Mayor Andrews said he will be voting in favor of this resolution and feels it is good for the community. Councilor Rierson said he will also be voting in favor of this and feels staff gave a good presentation on it.

**MOTION: Howard/Rierson** adopting **Resolution No. 2013-3042** approving the sale of a portion of city property to A to Z Winery Works. Motion carried (6 Yes/0 No/1 Absent [Corey]).

2. Consider a motion adopting **Resolution No. 2013-3043** authorizing redevelopment and transfer of city property to Newberg Area Habitat for Humanity.

Mayor Andrews introduced the administrative hearing and called for any conflicts of interest or abstentions; Councilor Denise Bacon excused herself because she is on the board of Habitat for Humanity.

Mr. Barton Brierley, Building and Planning Director, presented the staff report (see official meeting packet for full report). Staff recommends approval of Resolution No. 2013-3043.

Mr. Mahr stated he talked with the chairman for Habitat for Humanity and believes it is best to leave the option to assist them with projects and allow authority to be delegated to the city manager. He stated when they started this project they did not know who would partner with them and now ownership can be transferred without any fees. He feels they are definitely doing themselves a favor by being flexible.

Councilor Howard said he is not yet convinced this is the best way to use the money. He is looking at it being developed into just two residential homes when they may be able to spread the money out to more developments. He feels the city could possibly use the funds from the sale of the property rather than build on it. Mr. Brierley replied the city had hired an appraiser that came up with the \$70,000.00 estimate. When Habitat for Humanity established their concept budget they came up with \$120,000.00 and he doesn't know the source of that amount. Mr. Mahr said the appraisal was done by city in 2005.

Rick Rogers, Habitat for Humanity, answered the question about the appraisal by stating they pegged a figure that was correct at the time for a developed lot, which this lot is not. Mr. Rogers explained they develop single family homes and the council felt that was the best use of the property in previous discussions. The city obtained the property by donation. Mayor Andrews asked if the city has anything invested in the land. Mr. Rogers said he believes the city was given the land and has not put any money into it. Mayor Andrews asked if this were to pass if the property were to get put on the tax rolls. Staff responded yes.

Councilor McKinney asked about the discussion to change this to three dwellings instead of two. Mr. Rogers said there was interest from the property owner behind the property to sell a small portion to allow some expansion. He said it has not been looked into recently, so there is still some potential for that.

Mayor Andrews stated he will be supporting this motion and particularly feels it is a beneficial move since the property was given to the city and can be put on the tax rolls. He said he is also a strong supporter of Habitat for Humanity. Councilor Rierson said he will support this as well and wanted to remind Council they are trying to create more affordable housing and he believes it is a valuable asset to the community. He mentioned Habitat for Humanity worked on the animal shelter as well and the city appreciated the help. Councilor

McKinney said he will also support this and feels it is a good way to pay it forward as far as the property being given to the city to begin with.

**MOTION: Rierson/Woodruff** adopting **Resolution No. 2013-3043** authorizing redevelopment and transfer of city property to Newberg Area Habitat for Humanity. Motion carried (5 Yes/0 No/1 Abstain [Bacon]/1 Absent [Corey]).

3. Consider a motion adopting **Ordinance No. 2013-2761** adopting revisions to the findings for the South Industrial UGB amendment and Economic Opportunities Analysis.

Mayor Andrews introduced the legislative hearing and called for any conflicts of interest or abstentions; none appeared.

Mr. Barton Brierley, Building and Planning Director, presented the staff report (see official meeting packet for full report). Staff recommends approval of Ordinance No. 2013-2761.

Mr. Brierley said they did receive a letter late and it is up to the council whether to accept the letter.

**MOTION: Bacon/McKinney** to accept the letter from Anne Wylie. Motion carried (6 Yes/0 No/1 Absent [Corey]).

**MOTION: Rierson/Bacon** adopting **Ordinance No. 2013-2761** adopting revisions to the findings for the South Industrial UGB amendment and Economic Opportunities Analysis. Read by title only.

**MOTION: McKinney/Rierson** waive first reading on Ordinance No. 2013-2761 Motion carried. (6 Yes/0 No/1 Absent [Corey]).

Councilor Woodruff stated she realizes they have adopted the Urban Growth Boundary (UGB) agreement, but will not be supporting the revisions. She is not comfortable with adding more infrastructure projects to an already problematic budget. Councilor Howard also stated he will be voting in opposition to these revisions due to the fact he wants a different approach. He feels rather than expanding the land supply, he thinks the city can do better with what we already have. He would like to see a little more inclusiveness in the city and wants the city to have a desire to do more than just expand.

Councilor Rierson said he was hoping they can explain funding mechanisms for the UGB to Councilor Woodruff. He said these kinds of expansions are paid through SDCs and owners of the property. It is fair to assume there are no funding mechanisms which are going to affect the city's budget and expansion will bring money into the city with taxes from the property owners. Mr. Danicic agreed on both accounts.

Mayor Andrews asked staff if they have a work plan for the infrastructure to relieve the burden that Councilor Woodruff is wrestling with. Mr. Brierley replied yes the land has development potential and it will generate jobs and construction of necessary infrastructure. Councilor Howard asked if funds will be coming from existing SDC's. Mr. Brierley responded yes there is a possibility for an advance.

Councilor McKinney said he wants to develop the best possible plan, similar to Councilor Howard.; however, any plan will end up looking much the same and they will still be jumping through the same hoops and still facing the same objections. He feels they have arrived at a time to move forward with this project; he would have liked to see more cooperation from all parties, appreciates the comments, and thinks they need to just clarify things for now and can define further in the future.

Mayor Andrews said this is not something that will be developed for at least the next 20-25 years into the future. If they do not pursue this approach they are denying the tools that are useful for tomorrow. They are not planning for the next 2-3 years. He said he will be supporting this ordinance.

**VOTE:** adopting **Ordinance No. 2013-2761** adopting revisions to the findings for the South Industrial UGB amendment and Economic Opportunities Analysis. Read by title only.  
Motion carried (4Yes/2 No [Howard, Woodruff]/1 Absent [Corey]).

4. Consider a motion adopting **Resolution No. 2013-3044** approving Supplemental Budget #4 for fiscal year 2012-2013.

Mayor Andrews introduced the administrative hearing and called for any conflicts of interest or abstentions; none appeared.

Ms. Janelle Nordyke, finance director, presented the staff report (see official meeting packet for full report). Staff recommends approval of Resolution No. 2013-3044.

Councilor Woodruff asked what the state revenues are from Dundee 911. Ms. Nordyke responded it is the landline bill for 911 calls. She explained from now on, Newberg is receiving the money for those funds from Dundee.

**MOTION: McKinney/Bacon** adopting **Resolution No. 2013-3044** approving Supplemental Budget #4 for fiscal year 2012-2013. Motion carried (6 Yes/0 No/1 Absent [Corey]).

## VIII. NEW BUSINESS

Consider adopting **Resolution No. 2013-3046** approving the Newberg Dundee Bypass Loan Agreement.

This item was removed from the agenda per Mayor Andrews.

## IX. COUNCIL BUSINESS

TIME – 8:31 PM

Councilor Rierson asked about the public comment from the Ford Family Foundation project requesting the \$500.00 contribution from the Community Support fund. Mr. Danicic stated Council has not expended the Community Support fund in fiscal year 2012-2013.

**MOTION: Howard/Rierson** allocate \$500.00 from Community Support fund to Cohort 3 for the planetary path project. Motion carried (6 Yes/0 No/1 Absent [Corey]).

Mr. Danicic said he is looking for some direction from council on the Villa Road sidewalk.

Councilor Rierson said he would certainly like to look at an engineers report before providing input. The least obtrusive sidewalk would be up against the curb and he suggested they approach these homeowners and see if they would work with the city. There is not a continuous sidewalk there, but in the end he would like to see a sidewalk there.

Councilor Howard said it is unfortunate the property owners have been unwilling to work with the city in the past. He then asked if they could put it in a LID for future repairs in the area. Councilor Woodruff stated she would like to have more information on this subject.

Mayor Andrews said one potential approach would be to build the right-of-way with the homeowner only paying for the sidewalk portion. There is a lot of pedestrian activity on this sidewalk and it is important to pursue this with the homeowners. Councilor McKinney stated on one or more occasion they have not wanted to work with the city and in this particular case they should set a precedent that the city is trying to make the area pedestrian friendly. Other property owners have met the obligation and he believes it is time for the city to pursue this issue.

**X. ADJOURNMENT**

The meeting adjourned at 8:47 PM.

**ADOPTED** by the Newberg City Council this 17<sup>th</sup> day of June, 2013.

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Norma I. Alley, MMC, City Recorder

**ATTEST** by the Mayor this 20<sup>th</sup> day of June, 2013.

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Bob Andrews, Mayor

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# REQUEST FOR COUNCIL ACTION

**DATE ACTION REQUESTED: June 17, 2013**

Order ___ No.	Ordinance ___ No.	Resolution ___ No.	Motion <u>XX</u>	Information ___
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**SUBJECT: Vacation of the Ninth Street right-of-way portion dedicated to the City between Industrial Parkway and Highway 219.**

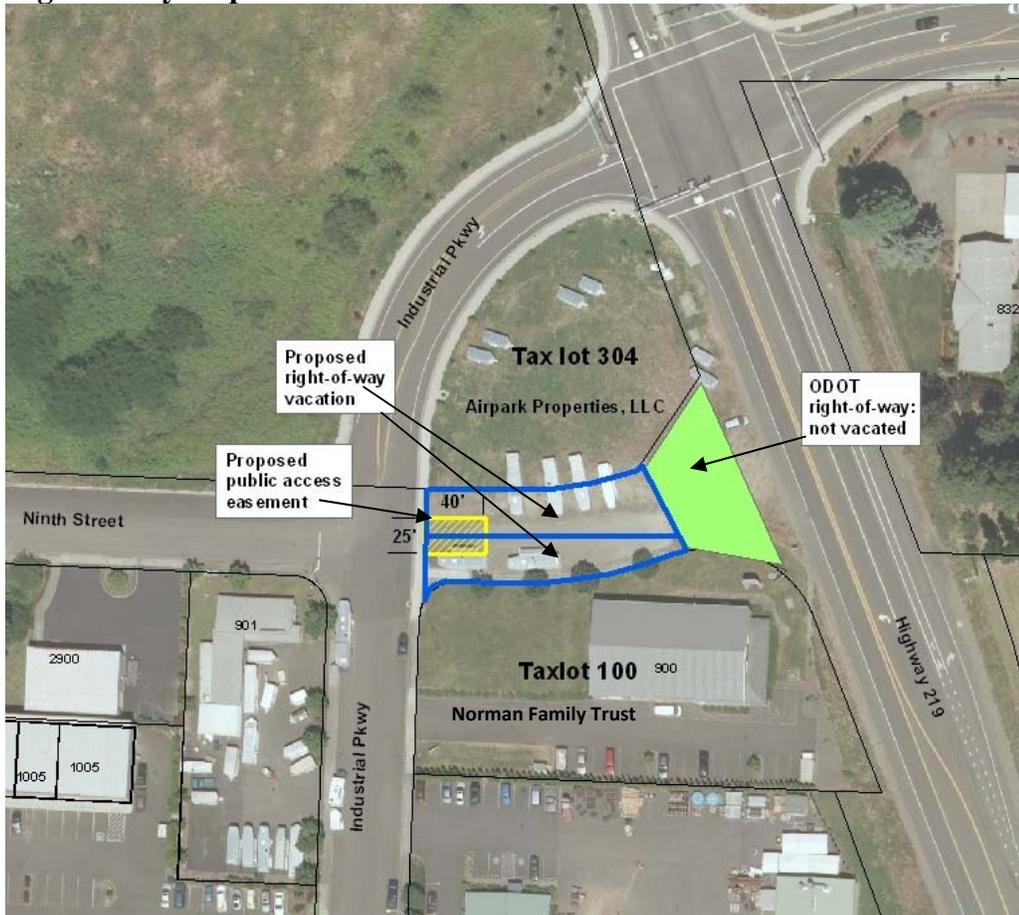
Contact Person (Preparer) for this Motion: Steve Olson, AICP  
 Dept.: Planning & Building  
 File No.: VAC-11-002

**HEARING TYPE:**     LEGISLATIVE     QUASI-JUDICIAL     NOT APPLICABLE

**RECOMMENDATION:** Take public testimony regarding support for or objections to the proposed vacation, and the effect the proposed vacation may have on the market value of abutting properties. Consider the merits of the vacation and the requirements of ORS 271.130. Based on the testimony received to date, staff recommends City Council make a motion to tentatively approve the vacation, conditional upon Airpark Properties, LLC, supplying by September 17, 2013, legal descriptions and exhibits prepared by a surveyor of the area to be vacated and any necessary utility and access easements as noted in the previous July 5, 2011, tentative approval. Direct staff to prepare an ordinance for final approval after the exhibits and utility easements have been reviewed by staff.

**EXECUTIVE SUMMARY:**

**Right of way map**



Background: In January, 2011, Airpark Properties, LLC, represented by Jerry Dale, and the Norman Family Trust, represented by Gerald and Sandra Norman, submitted an application (file # VAC-11-002) requesting the City vacate the portion of the Ninth Street right-of-way (ROW) between Industrial Parkway and Highway 219. Their properties are the only properties abutting the proposed vacation area. Both property owners consented to the vacation, as did other nearby property owners in the affected area of the vacation. The City Council held a public hearing on July 5, 2011, and concluded the right-of-way dedicated to the City was no longer necessary as a street and should be vacated, as long as necessary utility easements and access easements had been created. The Council made a motion tentatively approving Ordinance No. 2011-2742, vacating the right-of-way conditional upon the applicant supplying any necessary utility and access easements along with legal descriptions and exhibits prepared by a surveyor of the area to be vacated. Council directed staff to prepare an ordinance including the right-of-way and easement exhibits for final approval. The item was tabled.

In order to finalize the vacation, the property owners were required by the tentative approval to grant each other an access easement to Industrial Parkway over a portion of the vacated right-of-way. The two parties could not come to an agreement on the easement. On June 20, 2012, John Bridges, representing the Norman Family Trust, sent the City a letter withdrawing the Norman's consent for the vacation application (Exhibit "A"). On July 9, 2012, Jerry Dale, a member of Airpark Properties, LLC, sent the city a letter saying the vacation was still in the best interests of the city and asking the city to proceed with the vacation without the consent of the Normans (Exhibit "B").

On August 20, 2012, the City Council decided to take the vacation proposal off the table, and schedule a public hearing for October 15, 2012, to take public testimony and evaluate the proposal. Notice was mailed to property owners in the affected area. Letters have been received from two property owners objecting to the vacation (Exhibit "A", Norman and Swonger letters) and one letter has been received supporting the vacation (Exhibit "B", Airpark Properties, LLC, letter). On October 15, 2012, the City Council postponed the hearing until February 19, 2013, to allow the property owners additional time to discuss the proposal. Staff met with both parties on December 12, 2012, to see if an agreement could be reached. The discussions did not result in such an agreement. On February 19, 2013, the Council postponed the hearing to May 6, 2013, to allow the property owners additional time. On May 6, 2013, the Council postponed the hearing until June 17, 2013, because of a full agenda in May.

Process: Vacation without consent: ORS 271.130 allows a city to vacate public right-of-way without the consent of abutting property owners under certain conditions. However, the vacation cannot be completed if:

- The owners of a majority of the affected area, computed on the basis provided in ORS 271.080, object in writing to the vacation.
- The vacation will substantially affect the market value of the abutting property, unless the City provides for paying damages. Provisions for paying such damages may be made by a local assessment, or in such other manner as the city charter may provide.

***ORS 271.130: Vacation on city governing body's own motion; appeal.***

***(1) The city governing body may initiate vacation proceedings authorized by ORS 271.080 and make such vacation without a petition or consent of property owners. Notice shall be given as provided by ORS 271.110, but such vacation shall not be made before the date set for hearing, nor if the owners of a majority of the area affected, computed on the basis provided in ORS 271.080, object in writing thereto, nor shall any street area be vacated without the consent of the owners of the abutting property if the vacation will substantially affect the market value of such property, unless the city governing body provides for paying damages. Provision for paying such damages may be made by a local assessment, or in such other manner as the city charter may provide.***

(2) *Two or more streets, alleys, avenues and boulevards, or parts thereof, may be joined in one proceeding, provided they intersect or are adjacent and parallel to each other.*

(3) *No ordinance for the vacation of all or part of a plat shall be passed by the governing body until the city recording officer has filed in the office of the city recording officer or indorsed on the petition for such vacation a certificate showing that all city liens and all taxes have been paid on the lands covered by the plat or portion thereof to be vacated.*

(4) *Any property owner affected by the order of vacation or the order awarding damages or benefits in such vacation proceedings may appeal to the circuit court of the county where such city is situated in the manner provided by the city charter. If the charter does not provide for such appeal, the appeal shall be taken within the time and in substantially the manner provided for taking an appeal from justice court in civil cases. [Amended by 1995 c.658 §101]*

**271.080 Vacation in incorporated cities; petition; consent of property owners.**

*(excerpt) The real property affected thereby shall be deemed to be the land lying on either side of the street or portion thereof proposed to be vacated and extending laterally to the next street that serves as a parallel street, but in any case not to exceed 200 feet, and the land for a like lateral distance on either side of the street for 400 feet along its course beyond each terminus of the part proposed to be vacated. Where a street is proposed to be vacated to its termini, the land embraced in an extension of the street for a distance of 400 feet beyond each terminus shall also be counted.*

Staff expects the City Council will hear public testimony at the June 17, 2013, hearing regarding support for and objections to the proposed vacation and the effect the vacation may have on the market value of abutting properties.

Written objections criteria: If the owners of a majority of the affected area object in writing to the vacation then it cannot proceed (a map of the affected properties is shown in Exhibit “C”).

**Finding:** The city has received objections in writing from the Norman Family trust (12.5% of the affected area) and from Darlene Swonger (25% of the affected area). This means that owners of 37.5% of the affected area have objected in writing to the vacation as of the writing of this report. This is less than a majority of the affected area, so the written objections do not prevent the vacation from proceeding.

Market value criteria: If the vacation is determined to substantially affect the market value of the abutting properties then the vacation cannot proceed unless the City Council provides for paying damages.

**Finding:** The northern abutting property owner, Airpark Properties, LLC, is in favor of the vacation. The southern abutting property owner, the Norman Family Trust, has submitted testimony that the vacation would reduce the value of their property so this finding will focus on the impact to the Norman property.

- **Gain additional property:** If the ROW is vacated then the area reverts to the property that originally dedicated the ROW. The Norman's existing site is approximately 37,350 square feet, and the Yamhill County Tax Assessor's database estimates the market value of the land is \$214,053.00 (or \$5.73 per square foot). The vacation would add approximately 3,500 square feet to the site. Using the tax assessor's market value per square foot, this means that the additional property from the ROW vacation may be worth approximately \$20,000.00. Most of this additional property will have a utility easement over it, so that could affect the value. We don't

know how up to date the tax assessor's estimate is, so the actual value may be higher or lower than our calculation. It does seem clear that gaining approximately 3,500 square feet of property would increase the market value of the Norman's property.

- **Front yard setback eliminated:** The M-2 light industrial zone requires that buildings and parking areas be setback at least 20 feet from the front property line. There is no side setback requirement. The northern property line of the Norman's site is a front property line, so there is a 20 foot setback required from this line. The front setback is a significant restriction on the development of the site. The vacation would move the northern property line of the Norman's site north between 10-30 feet (it is curved), and change it from a front property line to a side property line. That means that there would no longer be a setback required from the northern property line, which removes a significant restriction. The vacation would remove the 20 foot setback from the existing property, which would increase the usable area and design flexibility of the site, improve the ability to maneuver around the site, and should increase the market value of the site.
- **Dual access:** The Norman's property currently has a driveway access on Industrial Parkway, and has the ability to add a driveway access on 9th Street. Some of the testimony that was submitted expressed concern that the 9th Street vacation would significantly reduce the value of the Norman's property by removing the ability to build a drive-through building on the site (essentially a showroom for large equipment, where the equipment could be driven into the building from the parking lot and then north out of the building onto 9th Street). The testimony seemed to assume the existing street improvements in the 9th Street ROW would be removed. The city would not remove the 9th Street improvements as part of the vacation, however, so the paving would remain unless removed by the property owner. The Norman's site could still add a drive-through building, where equipment could be driven north out of the building onto the paved portion of the Norman's property and out to Industrial Parkway through the public access easement. The vacation appears to have a neutral effect on this aspect of the Norman's property, as the property would retain the ability to have dual access.
- **Parking:** The existing 9th Street ROW has room for approximately 14 parallel parking spaces. These are not ideal parking spaces, since the street is not improved to its full width and is currently a dead end street without a turnaround. These spaces are not the property of either abutting property owner; they are public parking spaces that can be used by anyone, including both abutting property owners. Other businesses in the neighborhood sometimes park vehicles in the 9th Street ROW and use the area for vehicle storage and display. If the northern abutting property is developed then their driveway onto the 9th Street ROW will remove 2-3 on-street public parking spaces. If the southern abutting property develops a driveway onto the 9th Street ROW then their driveway will remove approximately 2-3 on-street public parking spaces.
  - If the 9th Street ROW is vacated then its public on-street parking would no longer exist, as the ROW would revert to private property. The half-street improvement would not be removed, however, so the paving and curb would remain. A public access easement (25 feet wide by 40 feet deep) would be placed over the center of the ROW to provide access to Industrial Parkway for both parcels. The vacation would increase the ability of the Norman's to develop additional private off-street parking on their site, since the vacation would increase the size of the site and eliminate the front setback from 9th Street. The effect of the vacation on parking appears to be neutral, as the loss of public on-street spaces that may be used by anyone is offset by gaining additional property and the elimination of the front setback from 9th Street, which allows the Norman's to develop more private parking on their site.
- **Buffer:** The existing 9th Street ROW does provide a 60 foot wide buffer between the properties to the north and south. If the ROW is vacated then some or all of the ROW will have a utility

easement over it. There are public and franchise utility lines in the ROW, though their exact locations have not yet been determined. Public utility easements are typically 15 feet wide. At a minimum, there would be a 15 foot wide public utility easement in the vacated ROW. It is more likely that the public utility easements will cover 30-40 feet of the width of the vacated ROW, and it may turn out to be simplest to place a public utility easement over the entire vacated area so that precisely locating the utility lines is not necessary. If the ROW is vacated then the public utility easement will continue to provide some buffer between the northern and southern properties. The effect of the vacation on the buffer appears to be neutral or slightly negative. While it is difficult to place a value on the potential difference in the buffer area, it seems less significant than the increase in value from the additional property and from the elimination of the front setback from 9th Street.

- **Sign:** The Norman's site has a freestanding sign near Highway 219, which has good visibility north and south on 219. The submitted testimony stated the sign was valuable to the business and helped bring in new customers, and there is no doubt that is true. It is hard to see, however, how the proposed vacation of the city's 9th Street ROW would reduce the visibility of the sign from Highway 219 (see the right of way map exhibit). The east end of the 9th Street right of way is owned by ODOT, and is not being vacated.
- **Maintenance:** The city is currently required to maintain the pavement in the 9th Street ROW, and the Norman Family Trust, as the adjacent property owner, is required to maintain the sidewalk along their 9th Street frontage. If the sidewalk developed a tripping hazard then the Normans would be required to repair that section of sidewalk. If the 9th Street ROW is vacated as proposed then the city would no longer maintain the pavement. The Normans, however, would then own the improvements in the ROW and could remove the sidewalk if they wished.

The Council should listen to public testimony, consider the merits of the vacation and the requirements of ORS 271.130, and make a motion to either: 1) Tentatively approve the vacation without the consent of one abutting property owner, conditional upon Airpark Properties, LLC supplying by September 17, 2013, legal descriptions and exhibits prepared by a surveyor of the area to be vacated and any necessary utility and access easements as noted in the previous July 5, 2011, tentative approval. Direct staff to prepare an ordinance for final approval after the exhibits and utility easements have been submitted and reviewed by staff; or 2) withdraw the July 5, 2011, tentative approval and end consideration of the vacation.

City staff recommends this segment of the Ninth Street right of way is no longer needed as a public street, and utility easements can protect the public interest in the existing utility lines. A public access easement can be created prior to the vacation to provide access to both properties from Industrial Parkway. Staff expects the vacation will slightly increase the market value of both abutting properties. The city would no longer need to maintain this section of Ninth Street if it was vacated. On the whole, city staff believes the proposed vacation is in the public interest.

**FISCAL IMPACT:** There is potential for a small positive impact if the vacated area is developed, as the City would collect development fees and property taxes. There is potential for a negative impact if the City were required to pay damages if the vacation substantially affected the market value of abutting properties. If the City Council decision is appealed then there would be some cost to the City to defend the decision.

**STRATEGIC ASSESSMENT:** The property is no longer needed as a public street, as ODOT has extended Industrial Parkway to the north and installed a traffic light to control access to Highway 219. Utility easements can protect the public interest in the existing utility lines, and a public access easement will provide access to both properties from Industrial Parkway. The Council previously heard testimony regarding the vacation (when it was initiated by the abutting property owners) and tentatively approved the

vacation. Vacation of the right-of-way will return the property to the abutting owners and allow them to develop the property in the future. The vacation will probably increase the market value of abutting properties, so the risk of the City needing to make provisions for paying damages is probably small. The City Council will have to weigh that risk against the public benefit of proceeding with the vacation.

**EXHIBIT "A"**  
**OBJECTIONS TO THE VACATION**

**BROWN, TARLOW, BRIDGES  
PALMER & STONE PC**  
Attorneys at Law

ALLYN E. BROWN  
JOHN T. BRIDGES  
STEPHEN C. PALMER  
TRUMAN A. STONE  
RICHARD P. BROWN

DONALD O. TARLOW  
Retired



RECEIVED

JUN 22 2012

Initial: \_\_\_\_\_

515 E. FIRST STREET  
NEWBERG, OREGON 97132  
TELEPHONE: (503) 538-3138  
FACSIMILE: (503) 538-9812  
[www.newberglaw.com](http://www.newberglaw.com)

June 20, 2012

City of Newberg  
414 East First Street  
P.O. Box 970  
Newberg, OR 97132

**Re: Vacation of Ninth Street Right-of-Way  
Motion #2011-2742**

To Whom it May Concern:

My client, Gerald Norman, as Trustee of the Norman Family Trust, was one of the applicants as well as persons consenting to the vacation of Ninth Street between Industrial Parkway and Highway 219. My client now withdraws his application and consent regarding the proposed street vacation.

If you have any questions, please do not hesitate to contact me.

Yours truly,

BROWN, TARLOW, BRIDGES, PALMER & STONE, P.C.

John T. Bridges

JTB:ao

cc: Gary Norman  
Jerry Dale of Airpark Properties, LLC

**BROWN, TARLOW, BRIDGES  
PALMER & STONE PC**  
Attorneys at Law

ALLYN E. BROWN  
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October 11, 2012

**\*Hand-Delivered and sent via email to [barton.brierley@newbergoregon.gov](mailto:barton.brierley@newbergoregon.gov)**

Barton Brierley, AICP  
City of Newberg  
P.O. Box 970  
Newberg, OR 97132

**Re: File No. VAC-11-002**

Dear Mr. Brierley:

As you are aware, our office represents the Norman Family Trust, owners of property located at 900 Industrial Parkway. Normal Floorcovering, and several tenant businesses operate out of a building on site. As you will note from a letter that I have enclosed with this letter, the Normans have been actively attempting to either build a stand-alone, separate building, or add on to their current building as a build to suit for additional tenants.

Some might initially believe, by vacating 9<sup>th</sup> Street, and giving the Normans an additional 2,800 square feet you would help them market their property. That is not the case. In fact 9<sup>th</sup> Street as it exists currently, provides many attributes that make the Norman property more flexible to lease. Many of those attributes are discussed in the attached letter of Mary Martin Miller who is the commercial listing agent.

If the City does desire to vacate the street, it will have a substantial negative impact on the value of the Normans' property. A current interested tenant, would be unable to use the property for a drive-thru storage facility for sophisticated agribusiness equipment of a mobile nature. The size of such a piece of equipment is approximately the size of a semi-truck. The tenant desires to park the vehicle inside a building, as a result of the need to maintain and protect the sophisticated equipment. However the size of such equipment, does not allow for it to easily maneuver backwards or around tight corners, so an entry through the current Norman parking lot with the capacity to exit onto 9<sup>th</sup> Street, or vice versa, is imperative to his consideration of the site.

Barton Brierley, AICP  
**Re: File No. VAC-11-002**  
October 11, 2012  
Page 2

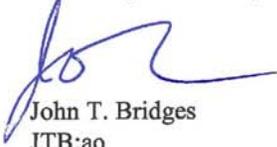
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The right-of-way has valuable improvements, and will have more when the neighbor improves their parcel. When the Normans built their building, they improved 9<sup>th</sup> Street's frontage with curbs, gutters and sidewalks along their frontage. As the neighbor develops their frontage, they will make the same improvements. This will add additional parking to benefit the Normans' property.

If the City deems it necessary to vacate this road, we will pay for and obtain an appraisal to precisely value the substantial change in value by elimination of the right-of-way and the improvements thereon. We have attempted to avoid that to this point, simply because commercial appraisals generally cost several thousand dollars. Effectively we would need to do two appraisals, one at its current size and attributes including the improved road, and a second one based upon the vacation of the road and the additional square footage attached to the Norman property. The cost of that appraisal would be additional damages, which would further reduce the value of the Norman property (\$2,000-\$3000 for each appraisal). We wish to avoid doing this, and would encourage the City Council to deny the vacation.

Yours truly,

BROWN, TARLOW, BRIDGES, PALMER & STONE PC



John T. Bridges

JTB:ao

cc: Gary Norman



October 8, 2012

Mr. and Mrs. Gary Norman  
Norman's Floorcovering  
900 Industrial Parkway,  
Newberg, Oregon 97132

CC: John Bridges, Attorney at Law,  
Brown, Tarlow, Bridges, Palmer and Stone, PC

Dear Gary:

You have asked me to let you know what I think as a commercial real estate professional regarding your property located at 900 Industrial Parkway in Newberg and the potential of a 9<sup>th</sup> Street extension vacation that is adjacent to your property.

As you know, we have been marketing your property for the last year to find a tenant for the addition to your building in a "build to suit" scenario as shown in the attached RMLS listing. We have done this without a real estate sign on the property, since you did not want any confusion to arise about the operation of your own business there. We are continuing to market the property and have had some interest. Through the course of that marketing effort, we have met with four potential tenants who were interested in the space. Two of these tenants have been agribusinesses.

We currently have one potential agribusiness tenant who is interested in the flexibility that you can give by providing some special door height on the addition, and the ability to allow for a door on both sides of the building so that they can have better access for their equipment to get in and out of the building. Essentially, they would like to drive their equipment through the building.

For this particular tenant, the 9<sup>th</sup> Street extension will be of benefit, since it meets their need. Without the road, their equipment will not be able to maneuver around the site.

The retention of the right of way, in general, provides value to you and your business and for any tenant as follows:

PO Box 1076  
Newberg, Oregon 97132-8076  
503.740.9200 | [mary@millerconsultinggroup.net](mailto:mary@millerconsultinggroup.net)  
[www.millerconsultinggroup.net](http://www.millerconsultinggroup.net)

## MILLER CONSULTING GROUP, LLC

- There may be more flexibility to attract a larger pool of potential tenants
- Maintenance of the property would be kept up by the City
- It provides additional off-site parking
- Dual accesses
- Additional frontage
- The right of way acts as a buffer
- Preserves sight line to signage that is major contributor to your business and can also provide value to tenants

It is estimated that the current half street improvement of the 9<sup>th</sup> Street extension gives you approximately 14 additional parking spaces along the street. If the interested party who wants the special doors installed were to take the space, we estimate that you may lose 2-3 parking spaces along the street if the extension stays there. Given that scenario, you would still have about 11-12 parking spaces along the street.

The "Build to Suit" also could be leased by more than one tenant, so the additional parking along the street could be of value to your tenants. The building could be partitioned so that one business faces the current parking lot, while the other could face 9<sup>th</sup> Street. Again, the flexibility adds value.

The right-of-way also provides a buffer and preserves sight line to the signage. You have mentioned to me that the sight line to your sign on the front side of your building is of critical importance to your business. You have demonstrated that you get more than 20% of your business from people finding your business through your current signage on your building.

The value of that signage and the ability for customers to see it from the road can be a value in perpetuity which I would think is a far greater value to you over time than any additional rent from a tenant.

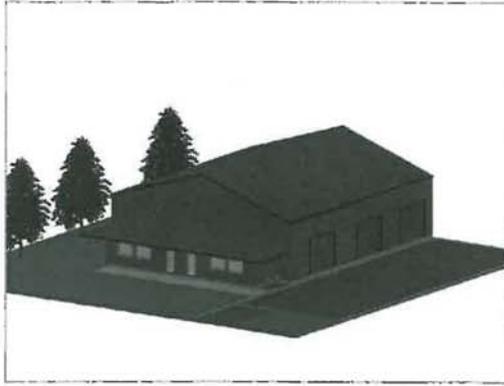
Vacating the street, however, will substantially impact your ability to attract and retain the type of tenants that we have been marketing for over the last year and will affect your property value.

Please consult a licensed commercial real estate appraiser to get the precise value impact that a street vacation could have on your property.

Sincerely,



Mary Martin Miller, CCIM  
Principal Broker/Owner  
Miller Consulting Group, LLC



**Presented By:** Mary Martin Miller **Agent Full**  
 Miller Consulting Group, LLC  
**Phone:** 503-740-9200 **E-mail:** [mary@millerconsultinggroup.net](mailto:mary@millerconsultinggroup.net)  
**COMMERCIAL LEASE** **Status:** ACT **10/5/2012** **7:12:00 PM**  
**ML#:** 11118520 **Area:** 156  
**Addr:** 900 INDUSTRIAL PKWY **Ste/Unit#:**  
**City:** Newberg **Zip:** 97132  
**Map Coord:** 713/E/7 **Zoning:** M2  
**County:** Yamhill **Tax ID:** R3220DD00100  
**PropType:** INDUSTR  
**Legal:** LOT 1 AIRPARK BUSINESS COMPLEX = .86 ACRES  
**Internet/Address/No Blog/No AVM:** Y/Y/I

**BUILDING INFORMATION**

**Apx Tot Avl SQFT:** 5300 **Divide Y/N:** Y **Min. Div. SQFT:** 2500 **Max. Contig. SQFT:** 5300 **SQFT Type:** RSF  
**Apx Ofc SQFT:** **Apx Whse SQFT:** **Apx Mfg SQFT:** **Apx Retail SQFT:**  
**Yr Built:** 2012 / **TO-SUIT** **Parking:** 6 **Parking Ratio:** **Parking Desc:** ON-SITE  
**#Stories / #Buildings:** 1 / 1 **Ceiling HT in FT:** 20 **Telecom. Access:** Available  
**Truck Dr:** 14 / **DOCK** **Dock Height:** **Door Height:** **Loading:**  
**Present Use:** WAREHSE, INDUSTR **Features:**

**LEASE INFORMATION**

**Perf Length of Lease:** 5-10YRS **Base Lease Rate:** \$8.40 **Coop Comm:** % 3 **Comm Differs:** N  
**Electric Incd:** N / **Gas Incd:** N /  
**Water/Sewer Incd:** N / **Janitorial Incd:** N /  
**Insurance Incd:** N / **RE Tax Incd:** N /  
**Cams Included:** N / **TI Allowance:** Negotialbe  
**Other Utilities Incd:** N / **Lessee Operating Exp:**  
**Pricing Comments:** Build to suit. \$8.40ann/sf for whse up to \$12.00 ann/sf office  
**For Sale:** NO // **Doc Avail:** **Lease Type:** 3NETLSE

**REMARKS**

**Xst/Dir:** Hwy 219 from Newberg toward St Paul, Industrial Pkwy on right  
**Private:** This build to suit can be what you need. Flex, office showroom or retail space. Pricing flexible depending on what you design.  
**Public:** Up to 5300 RSF (will demise to 2500 RSF) in this build to suit opportunity that offers design choices. High visibility with good access & parking. Proposed building w/20 ft eaves. Can have whse, showroom, office flex, your choice. Landlord has multiple choices for design with builder to custom build.

**LAND INFORMATION**

**Rd Surface:** PAVED **Lot Size:** 20K-.99AC **Rd Frontage:** 100  
**Lot Dimensions:** **Approx. Lot SQFT:** **Acres:** 0.86  
**Topography:** LEVEL **Soil Cond:** UNKNOWN

**UTILITIES INFORMATION**

**Heat:** **Cool:** **Volts:** **Amps:**  
**Utilities:** SWR-AVL, WATER

**BROKER / AGENT INFORMATION**

**BRCD:** MILR01 **Office:** Miller Consulting Group, LLC **Phone:** 503-740-9200 **Fax:** 503-336-6545  
**LPID:** MARTINMM **Agent:** Mary Martin Miller **Phone:** 503-740-9200 **Cell/Pgr:** 503-740-9200  
**Agent E-mail:** [mary@marymartinmiller.com](mailto:mary@marymartinmiller.com) **Agent Ext:**  
**Co-LPID:** **Co-BRCD:** **Co-Agent:** **CoPh:**  
**List:** 9/30/2011 **Exp:** 9/30/2013 **Show:** APTONLY, 24HR-NC  
**Tran:** 10/1/2012 **Owner:** **Phone:**

**LEASE INFORMATION**

<b>Leased:</b>	<b>Leased SQFT:</b>	<b>CoopAG:</b>	<b>CoopOF:</b>	<b>Phone:</b>
<b>Leased:</b>	<b>Leased SQFT:</b>	<b>CoopAG:</b>	<b>CoopOF:</b>	<b>Phone:</b>
<b>Leased:</b>	<b>Leased SQFT:</b>	<b>CoopAG:</b>	<b>CoopOF:</b>	<b>Phone:</b>
<b>Leased:</b>	<b>Leased SQFT:</b>	<b>CoopAG:</b>	<b>CoopOF:</b>	<b>Phone:</b>
<b>Leased:</b>	<b>Leased SQFT:</b>	<b>CoopAG:</b>	<b>CoopOF:</b>	<b>Phone:</b>

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 SQUARE FOOTAGE IS APPROXIMATE & MAY INCLUDE BOTH FINISHED & UNFINISHED AREAS - CONSULT BROKER FOR INFO.  
 SCHOOL AVAILABILITY SUBJECT TO CHANGE.

City Of Newberg  
Planning & Building Department  
PO Box 970  
Newberg, OR. 97132

**RECEIVED**

OCT 8 2012

File # VAC-11-002

Initial: \_\_\_\_\_

In regards to the City Of Newberg Planning & Building Dept  
proposed street vacation of Ninth St.  
I do object to the vacation of Ninth St without both adjacent  
property owners approval.

*Darlene M. Swonger* Oct 8, 2012  
signature Date

*832 S Springbrook Rd. Newberg*  
address

**EXHIBIT "B"**  
**SUPPORT FOR THE VACATION**

Airpark Properties LLC  
P O Box 248  
Newberg, OR 97132

RECEIVED

JUL 10 2012

Initial: BB

July 9, 2012

Barton Brierley  
Planning Director  
City of Newberg, OR

RE: 9th Street Vacation

Dear Barton:

In July of 2011 the City Council approved, with conditions, the vacation of East 9<sup>th</sup> Street that lies between Industrial Parkway and Highway 219. In trying to meet those conditions the Norman Family Trust (co-petitioner and owner of the south abutting property) has made what we believe are unreasonable demands of Airpark Properties LLC (co-petitioner and owner of the north abutting property) for completing the vacation. As a consequence of our refusal to meet their demands they have withdrawn their consent.

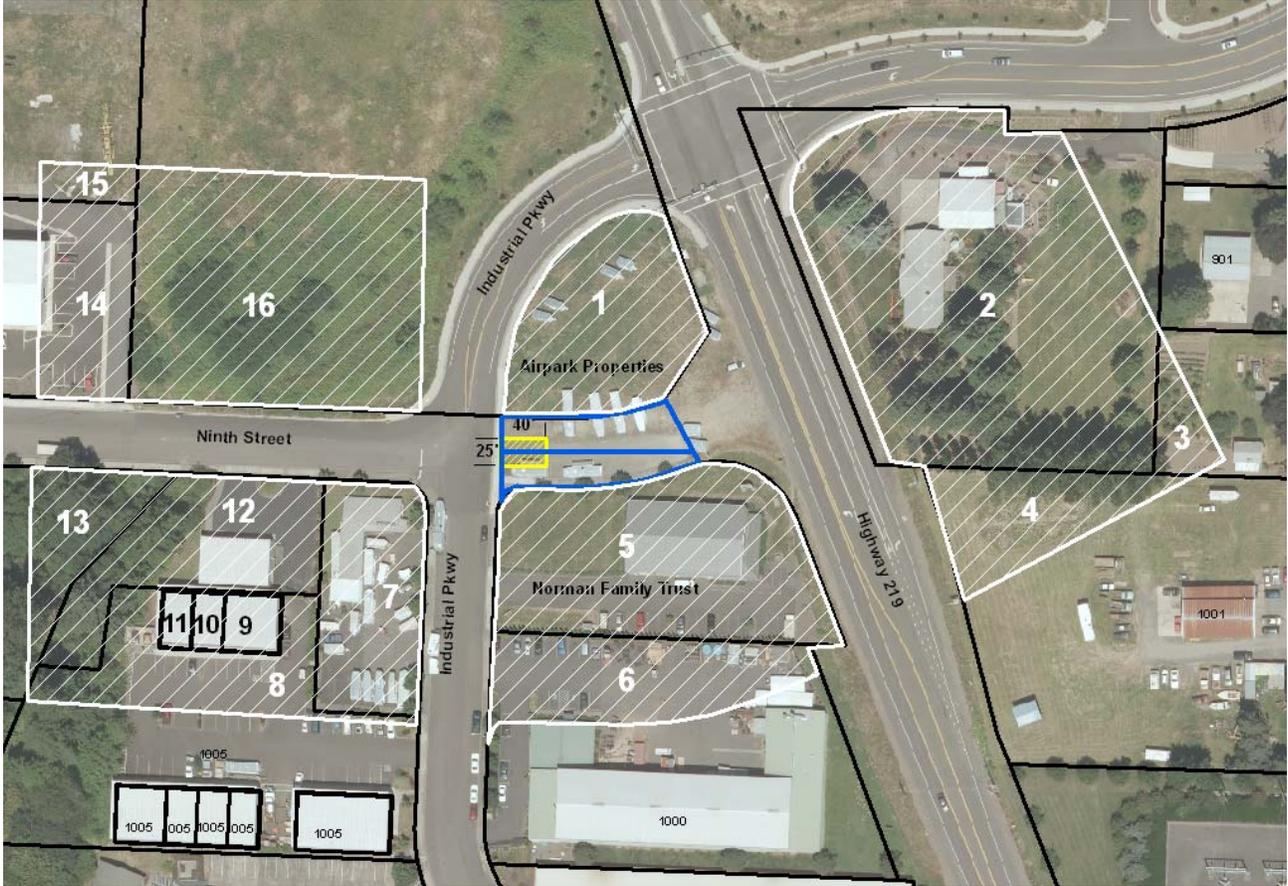
We believe the vacation of this portion of East 9<sup>th</sup> Street is in the best interest of the City and serves the public good. We therefore ask that the City initiate the vacation of that portion of East 9<sup>th</sup> Street that lies between Industrial Parkway and Highway 219 under the provisions of ORS 272.130. We further ask that the City reserve a 25 ft by 40 ft Public Access, east of Industrial Parkway and centered on East 9<sup>th</sup> Street, for the benefit of the public and to provide access to both abutting properties.

Yours Truly,  
AIRPARK PROPERTIES, LLC



Jerry Dale  
Member

**EXHIBIT "C"**  
**MAP OF THE AFFECTED AREA**



Ninth Street Vacation - affected area				
Number	Address	Owner	Affected area (square feet)	% of total affected area
1	2901 E. 9th St.	Airpark Prop. LLC	21,198	7.1%
2	832 S. Springbrook Rd.	Darlene Swonger Trust	74,802	25.0%
3	905 S. Wilsonville Rd.	Donald Brooks	3,562	1.2%
4	1001 S. Wilsonville Rd.	Cecil & Clara Brown Trust	11,850	4.0%
5	900 Ind. Pkwy	Norman Family Trust	37,350	12.5%
6	1000 Ind. Pkwy	Frank Harris	17,252	5.8%
7	901 Ind. Pkwy	William & Margaret Thurman	17,867	6.0%
8	1005 Ind. Pkwy	Jarrett Rose	15,914	5.3%
9	1005 Ind. Pkwy, C100	Lisa Shepherd	2,342	0.8%
10	1005 Ind. Pkwy, PO box 517	PC Electric LLC	1,261	0.4%
11	1005 Ind. Pkwy, PO box 517	NW Leasing & Aquis.	1,261	0.4%
12	2900 E. 9th St.	R. & S. Olson	20,051	6.7%
13	2800 E. 9th St.	Jamie L. Nibler Trust	8,607	2.9%
14	2771 E. 9th St.	Newberg Bus. Ctr. LLC	13,460	4.5%
15	2803 E. 9th St.	9th St. Hangars LLC	2,504	0.8%
16	2901 E. 9th St.	Airpark Prop. LLC	49,552	16.6%
<b>Total affected area =</b>			<b>298,833</b>	<b>100%</b>

VACATION

**271.080 Vacation in incorporated cities; petition; consent of property owners.** (1) Whenever any person interested in any real property in an incorporated city in this state desires to vacate all or part of any street, avenue, boulevard, alley, plat, public square or other public place, such person may file a petition therefor setting forth a description of the ground proposed to be vacated, the purpose for which the ground is proposed to be used and the reason for such vacation.

(2) There shall be appended to such petition, as a part thereof and as a basis for granting the same, the consent of the owners of all abutting property and of not less than two-thirds in area of the real property affected thereby. The real property affected thereby shall be deemed to be the land lying on either side of the street or portion thereof proposed to be vacated and extending laterally to the next street that serves as a parallel street, but in any case not to exceed 200 feet, and the land for a like lateral distance on either side of the street for 400 feet along its course beyond each terminus of the part proposed to be vacated. Where a street is proposed to be vacated to its termini, the land embraced in an extension of the street for a distance of 400 feet beyond each terminus shall also be counted. In the vacation of any plat or part thereof the consent of the owner or owners of two-thirds in area of the property embraced within such plat or part thereof proposed to be vacated shall be sufficient, except where such vacation embraces street area, when, as to such street area the above requirements shall also apply. The consent of the owners of the required amount of property shall be in writing. [Amended by 1999 c.866 §2]

**271.090 Filing of petition; notice.** The petition shall be presented to the city recorder or other recording officer of the city. If found by the recorder to be sufficient, the recorder shall file it and inform at least one of the petitioners when the petition will come before the city governing body. A failure to give such information shall not be in any respect a lack of jurisdiction for the governing body to proceed on the petition.

**271.100 Action by city governing body.** The city governing body may deny the petition after notice to the petitioners of such proposed action, but if there appears to be no reason why the petition should not be allowed in whole or in part, the governing body shall fix a time for a formal hearing upon the petition.

**271.110 Notice of hearing.** (1) The city recorder or other recording officer of the city shall give notice of the petition and hearing by publishing a notice in the city official newspaper once each week for two consecutive weeks prior to the hearing. If no newspaper is published in such city, written notice of the petition and hearing shall be posted in three of the most public places in the city. The notices shall describe the ground covered by the petition, give the date it was filed, the name of at least one of the petitioners and the date when the petition, and any objection or remonstrance, which may be made in writing and filed with the recording officer of the city prior to the time of hearing, will be heard and considered.

(2) Within five days after the first day of publication of the notice, the city recording officer shall cause to be posted at or near each end of the proposed vacation a copy of the notice, which shall be headed, "Notice of Street Vacation," "Notice of Plat Vacation" or "Notice of Plat and Street Vacation," as the case may be. The notice shall be posted in at least two conspicuous places in the proposed vacation area. The posting and first day of publication of such notice shall be at least 14 days before the hearing.

(3) The city recording officer shall, before publishing such notice, obtain from the petitioners a sum sufficient to cover the cost of publication, posting and other anticipated expenses. The city recording officer shall hold the sum so obtained until the actual cost has been ascertained, when the amount of the cost shall be paid into the city treasury and any surplus refunded to the depositor. [Amended by 1991 c.629 §1; 2005

**271.120 Hearing; determination.** At the time fixed by the governing body for hearing the petition and any objections filed thereto or at any postponement or continuance of such matter, the governing body shall hear the petition and objections and shall determine whether the consent of the owners of the requisite area has been obtained, whether notice has been duly given and whether the public interest will be prejudiced by the vacation of such plat or street or parts thereof. If such matters are determined in favor of the petition the governing body shall by ordinance make such determination a matter of record and vacate such plat or street; otherwise it shall deny the petition. The governing body may, upon hearing, grant the petition in part and deny it in part, and make such reservations, or either, as appear to be for the public interest.

**271.130 Vacation on city governing body's own motion; appeal.** (1) The city governing body may initiate vacation proceedings authorized by ORS 271.080 and make such vacation without a petition or consent of property owners. Notice shall be given as provided by ORS 271.110, but such vacation shall not be made before the date set for hearing, nor if the owners of a majority of the area affected, computed on the basis provided in ORS 271.080, object in writing thereto, nor shall any street area be vacated without the consent of the owners of the abutting property if the vacation will substantially affect the market value of such property, unless the city governing body provides for paying damages. Provision for paying such damages may be made by a local assessment, or in such other manner as the city charter may provide.

(2) Two or more streets, alleys, avenues and boulevards, or parts thereof, may be joined in one proceeding, provided they intersect or are adjacent and parallel to each other.

(3) No ordinance for the vacation of all or part of a plat shall be passed by the governing body until the city recording officer has filed in the office of the city recording officer or indorsed on the petition for such vacation a certificate showing that all city liens and all taxes have been paid on the lands covered by the plat or portion thereof to be vacated.

(4) Any property owner affected by the order of vacation or the order awarding damages or benefits in such vacation proceedings may appeal to the circuit court of the county where such city is situated in the manner provided by the city charter. If the charter does not provide for such appeal, the appeal shall be taken within the time and in substantially the manner provided for taking an appeal from justice court in civil cases. [Amended by 1995 c.658 §101]

**271.140 Title to vacated areas.** The title to the street or other public area vacated shall attach to the lands bordering on such area in equal portions; except that where the area has been originally dedicated by different persons and the fee title to such area has not been otherwise disposed of, original boundary lines shall be adhered to and the street area which lies on each side of such boundary line shall attach to the abutting property on such side. If a public square is vacated the title thereto shall vest in the city. [Amended by 1981 c.153 §58]

**271.150 Vacation records to be filed; costs.** A certified copy of the ordinance vacating any street or plat area and any map, plat or other record in regard thereto which may be required or provided for by law, shall be filed for record with the county clerk. The petitioner for such vacation shall bear the recording cost and the cost of preparing and filing the certified copy of the ordinance and map. A certified copy of any such ordinance shall be filed with the county assessor and county surveyor.

**271.160 Vacations for purposes of rededication.** No street shall be vacated upon the petition of any person when it is proposed to replat or rededicate all or part of any street in lieu of the original unless such petition is accompanied by a plat showing the proposed manner of replatting or rededicating. If the proposed manner of replatting or rededicating or any modification thereof which may subsequently be made meets with the approval of the city governing body, it shall require a suitable guarantee to be given for the carrying

out of such replatting or rededication or may make any vacation conditional or to take effect only upon the consummation of such replatting or rededication.

**271.170 Nature and operation of statutes.** The provisions of ORS 271.080 to 271.160 are alternative to the provisions of the charter of any incorporated city and nothing contained in those statutes shall in anywise affect or impair the charter or other provisions of such cities for the preservation of public access to and from transportation terminals and navigable waters.

**271.180 Vacations in municipalities included in port districts; petition; power of common council; vacating street along railroad easement.** To the end that adequate facilities for terminal trackage, structures and the instrumentalities of commerce and transportation may be provided in cities and towns located within or forming a part of any port district organized as a municipal corporation in this state, the governing body of such cities and towns, upon the petition of any such port, or corporation empowered to own or operate a railroad, steamship or other transportation terminal, or railroad company entering or operating within such city or town, or owner of property abutting any such terminal, may:

(1) Authorize any port commission, dock commission, common carrier, railroad company or terminal company to occupy, by any structure, trackage or machinery facilitating or necessary to travel, transportation or distribution, any street or public property, or parts thereof, within such city or town, upon such reasonable terms and conditions as the city or town may impose.

(2) Vacate the whole or any part of any street, alley, common or public place, with such restrictions and upon such conditions as the city governing body may deem reasonable and for the public good.

(3) If any railroad company owns or has an exclusive easement upon a definite strip within or along any public street, alley, common or public place, and if the city governing body determines such action to be to the advantage of the public, vacate the street area between the strip so occupied by the railroad company and one property line opposite thereto, condition that the railroad company dedicates for street purposes such portion of such exclusive strip occupied by it as the city governing body may determine upon, and moves its tracks and facilities therefrom onto the street area so vacated. The right and title of the railroad company in the vacated area shall be of the same character as previously owned by it in the exclusive strip which it is required by the city governing body to surrender and dedicate to street purposes.

**271.190 Consent of owners of adjoining property; other required approval.** No vacation of all or part of a street, alley, common or public place shall take place under ORS 271.180 unless the consent of the persons owning the property immediately adjoining that part of the street or alley to be vacated is obtained thereto in writing and filed with the auditor or clerk of the city or town. No vacation shall be made of any street, alley, public place or part thereof, if within 5,000 feet of the harbor or pierhead line of the port, unless the port commission, or other bodies having jurisdiction over docks and wharves in the port district involved, approves the proposed vacation in writing.

**271.200 Petition; notice.** (1) Before any street, alley, common or public place or any part thereof is vacated, or other right granted by any city governing body under ORS 271.180 to 271.210 the applicant must petition the governing body of the city or town involved, setting forth the particular circumstances of the case, giving a definite description of the property sought to be vacated, or of the right, use or occupancy sought to be obtained, and the names of the persons to be particularly affected thereby. The petition shall be filed with the auditor or clerk of the city or town involved 30 days previous to the taking of any action thereon by the city governing body.

(2) Notice of the pendency of the petition, containing a description of the area sought to be vacated or right, use or occupancy sought to be obtained, shall be published at least once each week for three successive weeks prior to expiration of such 30-day period in a newspaper of general circulation in the county wherein the city or town is located.

**271.210 Hearing; grant of petition.** Hearing upon the petition shall be had by the city governing body at its next regular meeting following the expiration of 30 days from the filing of the petition. At that time objections to the granting of the whole or any part of the petition shall be duly heard and considered by the governing body, which shall thereupon, or at any later time to which the hearing is postponed or adjourned, pass by a majority vote an ordinance setting forth the property to be vacated, or other rights, occupancy or use to be thereby granted. Upon the expiration of 30 days from the passage of the ordinance and the approval thereof by the mayor of the city or town, the ordinance shall be in full force and effect.

**271.220 Filing of objections; waiver.** All objections to the petition shall be filed with the clerk or auditor of the city or town within 30 days from the filing of the petition, and if not so filed shall be conclusively presumed to have been waived. The regularity, validity and correctness of the proceedings of the city governing body pursuant to ORS 271.180 to 271.210, shall be conclusive in all things on all parties, and cannot in any manner be contested in any proceeding whatsoever by any person not filing written objections within the time provided in this section.

**271.230 Records of vacations; fees.** (1) If any town or plat of any city or town is vacated by a county court or municipal authority of any city or town, the vacation order or ordinance shall be recorded in the deed records of the county. Whenever a vacation order or ordinance is so recorded, the county surveyor of such county shall, upon a copy of the plat that is certified by the county clerk, trace or shade with permanent ink in such manner as to denote that portion so vacated, and shall make the notation "Vacated" upon such copy of the plat, giving the book and page of the deed record in which the order or ordinance is recorded. Corrections or changes shall not be allowed on the original plat once it is recorded with the county clerk.

(2) For recording in the county deed records, the county clerk shall collect the same fee as for recording a deed. For the services of the county surveyor for marking the record upon the copy of the plat, the county clerk shall collect a fee as set by ordinance of the county governing body to be paid by the county clerk to the county surveyor. [Amended by 1971 c.621 §31; 1975 c.607 §31; 1977 c.488 §2; 1979 c.833 §30; 1999 c.710 §12; 2001 c.173 §5]

# REQUEST FOR COUNCIL ACTION

DATE ACTION REQUESTED: June 17, 2013

Order \_\_\_      Ordinance \_\_\_      Resolution \_\_\_      Motion \_\_\_      Information X  
No.              No.                      No.                      No.                      No.

**SUBJECT: Residential Curbside Glass Recycling effective August 1, 2013**

Contact Person (Preparer) for this  
Item: Maya Benham, Paralegal  
Dept.: City Attorney's Office  
File No.:

## EXECUTIVE SUMMARY:

Waste Management (WM) is presenting on residential only curbside glass recycling. Presentation from WM on their Dundee curbside glass pilot results. Power point presentation is attached as Attachment "A". If so desired by City Council, implementation of curbside glass recycling for residential customers and setting rates will be approved by City Council in Resolution No. 2013-3054.

## FISCAL IMPACT:

If approved, the rate would increase \$0.75 per resident to cover WM costs.

## STRATEGIC ASSESSMENT:

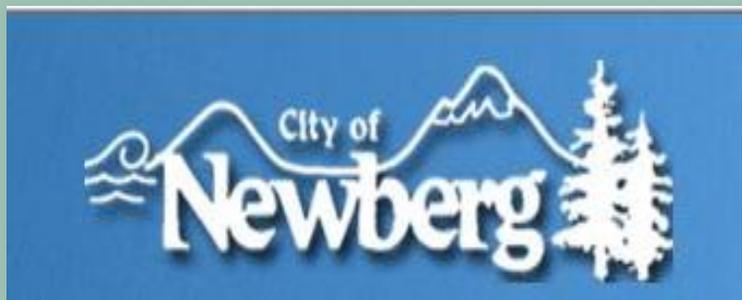
The City of Newberg strives to provide a clean and healthy environment for its citizens. WM has and continues to offer excellent garbage collection and recycling services to the community. It is necessary to set collection rates that are adequate to ensure these services continue to be delivered and improved upon. The addition of curbside glass recycling will enhance customer service.

# Curbside Glass Pilot Results

Dave Huber - WM District Manager

Mike Jefferies - WM PNW Pricing Manager

Dean Kampfer - WM Municipal Marketing Manager



June 17<sup>th</sup>, 2013



Attachment "1"  
to Glass Recycling Presentation

# Agenda Items

- 2012 - Newberg District update
- Single Stream Recycling
  - Glass Facts
  - Pilot Description
  - Pilot Summary
  - Proposed Rate for adding glass
- Review of 2012 Solid Waste Financials
- Questions and Answers
- Council Action

# 2012 Newberg District Updates

## Metrics

- WM provides service to 5,512 Residential, 433 Commercial and 48 Industrial customers within the City of Newberg
- Roughly 1,800 tons of residential garbage was collected, along with 928 tons of recycle and 2,000 tons of yard waste within the City
- WM's Newberg Hauling was injury free in 2012, first time in 3 years



# 2012 Newberg District Updates

## Key Events

- WM participated in the Yamhill County Hazardous Household Event in May
- Sponsored the Tunes on Tuesday Event in July
- We won an internal “Top Shop” award for key metrics related to our maintenance department



# Residential - Glass Collection Pilot Results



# Residential Services

## Residential Services - 5,512 Customers

- Current Collection Program:
  - Garbage - Weekly, various roll cart sizes (volume based rates)
  - Recycling - Every other week, roll cart provided by hauler
  - Yard Debris - Every other week, roll cart provided by hauler
  - Glass - Depot (no curbside collection)



# Glass Recycling



## Glass facts

- Glass is 100% recyclable
- Glass can be recycled endlessly without loss of quality
- DEQ 2009/2010 waste composition study found very low amounts of glass in the waste stream 2.4% Oregon (Metro, Lane, Marion)
- Oregon has a beverage deposit program
- Glass packaging shifting to lighter materials; plastics and aseptic packaging

# Single Stream Recycling “SSR”

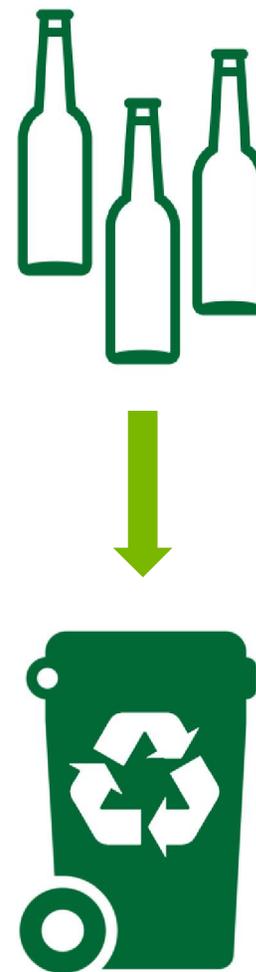
Started in the 1990’s in California

- In 2013, 75% of residential recycling collection programs in the US are Single Stream Recycling programs.
- State of Washington and California have many SSR programs in place today
- 2012 - Medford first Oregon community to implement SSR
- RockTen has agreed to process our material
  - Processing Facilities in Portland, Olympia, California, and other
- If implemented throughout our service area, this will solve your Curbside Glass collection needs

# Single Stream Recycling

- Benefits

- Ability to add glass to your curbside collection
- Increase recovery with environmental benefits
- Lowest system cost option for rate payer
- Convenient for customers
- Reduced traffic congestion, street maintenance, and fuel use
- Improve safety to the community



# Single Stream Recycling

- Glass Pilot in City of Dundee 974 customers
- Started February 2013 - three months



## GLASS RECYCLING PILOT YOUR FEEDBACK IS IMPORTANT

Residents of the City of Dundee are participating in a glass recycling pilot. From now until May 31, you are able to recycle glass bottles and jars in this roll cart.



## WE VALUE YOUR INPUT

The purpose of the pilot is to determine the feasibility of making this a permanent recycling program. Your feedback and input can help us evaluate the importance of including glass in the mixed recycling. Please visit [wmnorthwest.com/dundee](http://wmnorthwest.com/dundee) to submit feedback and take a brief survey.

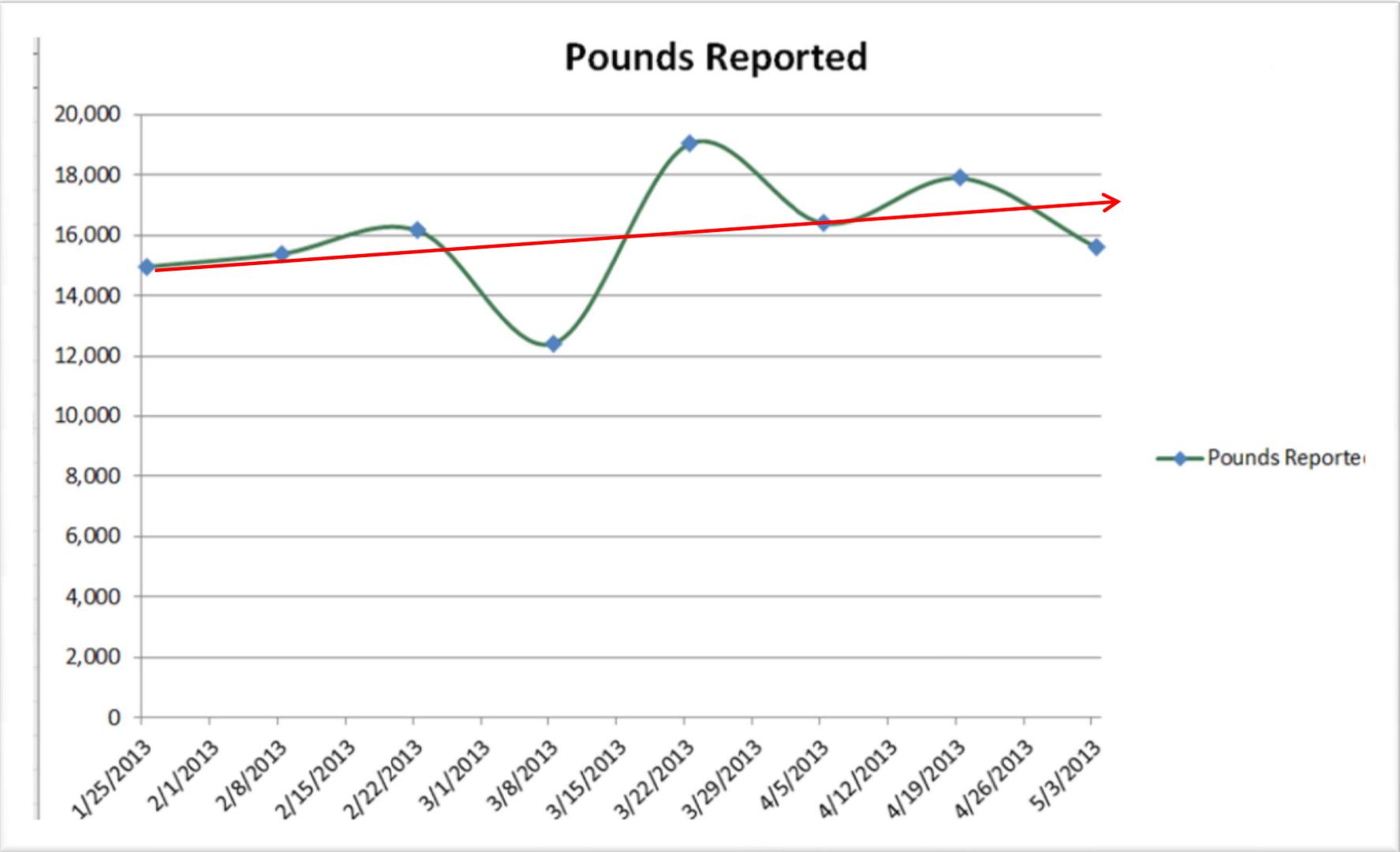
For more information:  
[wmnorthwest.com/dundee](http://wmnorthwest.com/dundee)  
1-800-808-5901



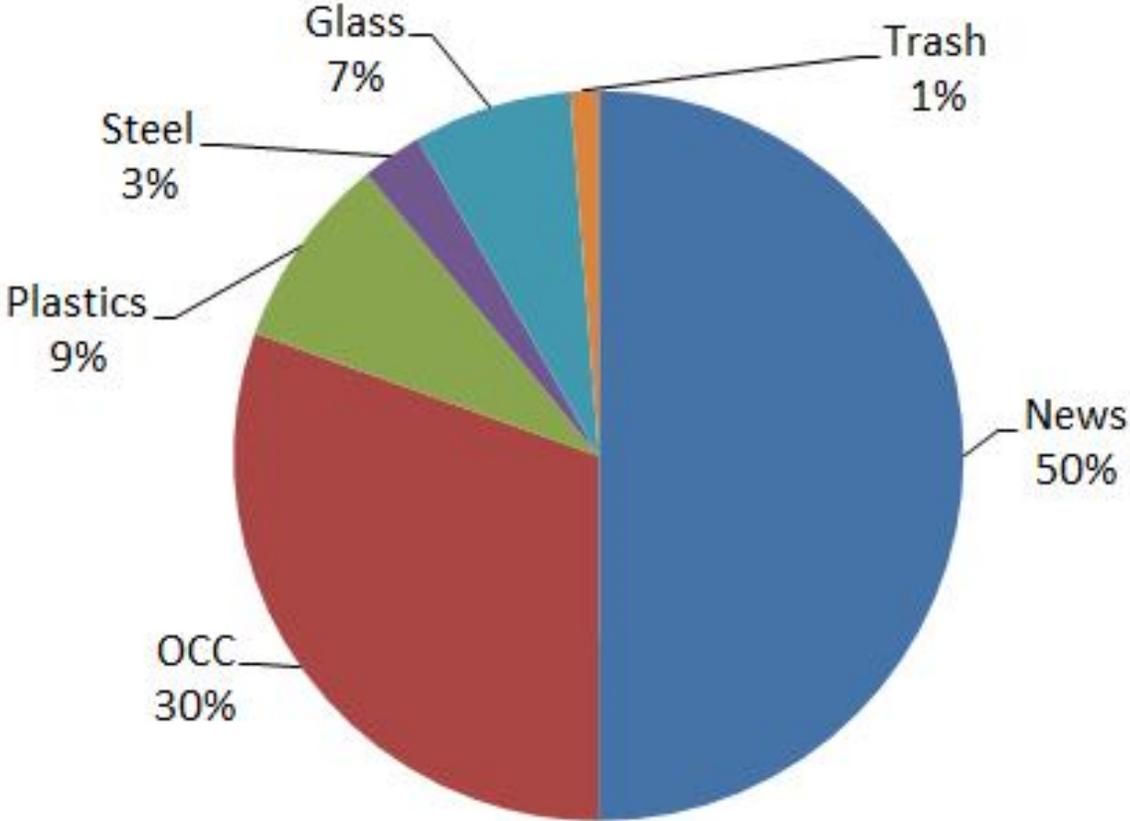
Dundee\_Survey\_GlassPilot\_2013



# Dundee Pilot Tonnage Tracker



# Recycling Material Composition



# Single Stream Recycling

## Customer Survey Results

13 Respondents

92.3% Glass recycling is important

92.3% Preferred to recycle glass in their cart

7.7% Don't recycle glass

Asked about;

Convenience

Conservation of Natural Resources

Cost

# Single Stream Recycling

Program cost evaluation:

Rate impacts to add glass to the commingle collection?

- Customers already have a cart - no added cost
  - Servicing the cart - no additional time or cost
  - Added operational costs to transport material to market
  - Reduced material value
    - More processing needed
    - Adding a material that has a negative material value
- 
- Added monthly cost to residential services ..... \$0.75/month

# Questions & Answers

# Review of 2012 Solid Waste Financials



# Rates Review

	Line	Allocation	Newberg	Adjustments	Projected
<b>Summary</b>	<b>#</b>	<b>Method</b>	<b>Total</b>	<b>%</b>	<b>Expense</b>
				<b>Amount</b>	<b>2013</b>
Total Allowable Cost			\$ 2,583,568		\$ 2,642,671
Commercial			\$811,348		\$811,348
Residential			\$1,484,385		\$1,484,385
Industrial			\$368,574		\$368,574
Other			\$126,282		\$126,282
Total Revenue			\$2,790,588		\$2,790,588
Operating Ratio			92.6%		94.7%

- 2012 report shows an operating ratio of 92.6%
- Projected operating ratio is 94.7% for 2013
- Current recycling material sales have dropped from 2012 and expected to decline further in 2013
- Last rate adjustment was July 1, 2011
- To achieve an acceptable Operating Ratio we are requesting a 4.7% rate adjustment

# Rate Review - Proposed Rate Comparison

Service Level	City of Newberg			Yamhill County		WaCo	ClkCo
	Current	Proposed at 4.7%	With Glass	New Rates	With Glass	Current	Current
35 Gallon	\$ 19.03	\$ 19.92	\$ 20.67	\$ 21.30	\$ 22.05	\$ 19.49	\$ 25.30
64 Gallon	\$ 23.40	\$ 24.50	\$ 25.25	\$ 25.90	\$ 26.65	\$ 29.24	\$ 36.40
96 Gallon	\$ 25.71	\$ 26.92	\$ 27.67	\$ 30.06	\$ 30.81	\$ 34.75	\$ 41.70
1 yard	\$ 78.23	\$ 81.91	N/A	\$ 82.94	N/A	\$ 93.23	\$ 104.75
3 yard	\$ 193.19	\$ 202.27	N/A	\$ 204.74	N/A	\$ 179.49	\$ 252.45

WaCo - Washington County includes monthly recycling only and no yard debris service

Yamhill County - Rates as of July 1, 2013

ClkCo - Clackamas County includes recycling but no yard debris service

# Questions & Answers

# Council Consideration

## City Council Direction

- Approve Rate Request of 4.7% on existing rate with an effective date of August 1, 2013
- Add Glass to the City of Newberg's Residential Commingled Recycling for an additional \$0.75 per month per customer?
- ❖ Implementation is contingent on all service areas of WM Newberg Hauling District adopting the program: Dundee, Newberg and Yamhill County.

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# REQUEST FOR COUNCIL ACTION

DATE ACTION REQUESTED: June 17, 2013

Order \_\_\_      Ordinance \_\_\_      Resolution XX      Motion \_\_\_      Information \_\_\_  
No.                      No.                      No. 2013-3054

**SUBJECT: Approving Adjusted Solid Waste and Recycling Service Rates for Waste Management and Adding Residential Curbside Glass Recycling effective August 1, 2013**

Contact Person (Preparer) for this Motion: Maya Benham, Paralegal  
Dept.: City Attorney's Office  
File No.:

**RECOMMENDATION:** Adopt Resolution No. 2013-3054 approving adjusted garbage and recycling service rates for Waste Management (WM) and to implement curbside glass recycling for residential customers effective August 1, 2013.

**EXECUTIVE SUMMARY:** The City has an exclusive franchise with WM for the hauling of garbage and the collection of recyclable materials within the City. The franchise agreement gives the City the right to regulate and fix rates.

Resolution No. 1999-2160 adopted January 19, 1999 requiring the garbage rates be reviewed every two (2) years.

History of approved rate increases:

- a. July 1999 - 3.39%
- b. July 2001 – 18.5%
- c. July 2003 – 0%
- d. July 2007 – 3.5%
- e. July 2009 – 4.23%
- f. July 2011 – 5.47%

WM is requesting a 4.7% general rate increase effective August 1, 2013. The proposed garbage and recycling rates for the Council's review and consideration is attached as Exhibit "A" to the resolution. WM will be present at meeting to answer any questions. Their presentation is included as Attachment 1. In addition, WM is prepared to implement curbside glass recycling for only residential customers based on their successful pilot project in Dundee. The cost to residential customers is a flat \$0.75 per month.

**FISCAL IMPACT:** If approved, garbage and recycling rates for customers within the City will increase by 4.7%. For the typical residential customer, the monthly rate would increase from \$19.03 to \$19.92 per month – an increase of \$.89 per month. Newberg assesses a franchise fee of 3% of gross annual revenue. The proposed FY 2012/2013 City budget estimated franchise revenue of \$80,704.00.

**STRATEGIC ASSESSMENT:** The City of Newberg strives to provide a clean and healthy environment for its citizens. WM has and continues to offer excellent garbage collection and recycling services to the community. It is necessary to set collection rates that are adequate to ensure that these services continue to be delivered and improved upon. The addition of curbside glass recycling will enhance customer service.



## RESOLUTION No. 2013-3054

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**A RESOLUTION ADOPTING ADJUSTED GARBAGE AND RECYCLING SERVICE RATES FOR WASTE MANAGEMENT, AND ADDING CURBSIDE GLASS RECYCLING FOR RESIDENTIAL CUSTOMERS ONLY EFFECTIVE AUGUST 1, 2013**

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**RECITALS:**

1. The City has an exclusive franchise with Waste Management (WM) for the hauling of garbage as well as the collection of recyclable materials within the City. Section 1 & 2 of the Franchise Agreement between WM and the City gives the City the right to regulate and fix rates. An excerpt from the Franchise Agreement outlining Authorized Rates is hereby attached as Exhibit "B" and by this reference incorporated.
2. WM acquired Newberg Garbage and Recycling Service, Inc. in the latter part of 2009. The Council approved the Consent to Transfer the franchise from Newberg Garbage and Recycling Service, Inc. to WM on January 18, 2010, pursuant to Resolution No. 2010-2882.
3. Resolution No. 1999-2160 adopted January 19, 1999, requiring the garbage rates be reviewed every two (2) years.

**THE CITY OF NEWBERG RESOLVES AS FOLLOWS:**

1. The garbage and recycling rates for individual services proposed by Waste Management (WM) is a 4.7% general rate increase as shown in Exhibit "A" is hereby attached and by this reference incorporated.
2. The 4.7% general rate increase will take effect on August 1, 2013.
3. WM is hereby directed to include curbside collection of glass recycling for residential customers only. The cost for this service to the customer shall be \$0.75 per month. Customers shall be notified a minimum of 30-days in advance of beginning the assessment of this fee.

➤ **EFFECTIVE DATE** of this resolution is the day after the adoption date, which is: June 18, 2013.

**ADOPTED** by the City Council of the City of Newberg, Oregon, this 17<sup>th</sup> day of June, 2013.

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Norma I. Alley, MMC, City Recorder

**ATTEST** by the Mayor this 20<sup>th</sup> day of June, 2013.

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Bob Andrews, Mayor

**Exhibit "A"**  
**to Resolution No. 2013-3054**

**City of Newberg Garbage and Recycling Rates**  
**Current and Proposed as of 7/1/2013**

<b>Residential Service</b>				
<b>Monthly Rate</b>				
<b>Weekly Curbside Service</b>	<b>Current Rate</b>	<b>Proposed Rate with 4.7%</b>	<b>Difference</b>	<b>Proposed Rate with Glass</b>
20 gallon cart	\$17.65	\$18.48	\$0.83	\$19.23
35 gallon cart	\$19.03	\$19.92	\$0.89	\$20.67
35 gallon cart - Each additional	\$12.95	\$13.56	\$0.61	\$14.31
35 gallon cart (Non-Curb garbage only)	\$20.90	\$21.88	\$0.98	\$22.63
64 gallon cart	\$23.40	\$24.50	\$1.10	\$25.25
96 gallon cart	\$25.71	\$26.92	\$1.21	\$27.67
additional Recycling / Yard Debris cart	\$2.97	\$3.11	\$0.14	\$3.86
Recycling only - Every other week	\$7.08	\$7.41	\$0.33	\$8.16
<b>Monthly Curbside Service</b>				
35 gallon cart	\$13.93	\$14.58	\$0.65	\$15.33

Every Other Week recycling & yard debris service is included with garbage service.

<b>Multiple Residential Units and Mobile Parks Service (Five or more units) Single Billing</b>				
<b>Monthly Rate</b>				
<b>Weekly Curbside Service</b>	<b>Current Rate</b>	<b>Proposed Rate with 4.7%</b>	<b>Difference</b>	<b>Proposed Rate with Glass</b>
20 gallon cart	\$15.88	\$16.63	\$0.75	\$17.38
35 gallon cart	\$17.33	\$18.14	\$0.81	\$18.89
35 gallon cart (Non-Curb garbage only)	\$19.03	\$19.92	\$0.89	\$20.67
96 gallon cart	\$25.71	\$26.92	\$1.21	\$27.67
Each additional 35 gallon cart	\$11.39	\$11.93	\$0.54	\$12.68
Recycling only	\$7.08	\$7.41	\$0.33	\$8.16
<b>Monthly Curbside Service</b>				
35 gallon cart	\$13.93	\$14.58	\$0.65	\$15.33

Every Other Week recycling & yard debris service is included with garbage service.

<b>Additional Rates</b>			
<b>Service</b>			
<b>Extra On Service Day</b>	<b>Current Rate</b>	<b>Proposed Rate</b>	<b>Difference</b>
Regular Customer - additional 32 gal equivalent can curbside	\$2.84	\$2.97	\$0.13
Regular Customer - additional 32 gal equivalent can non-curbside	\$3.46	\$3.62	\$0.16
On Call Customer - 32 gallon equivalent	\$7.60	\$7.96	\$0.36
Regular Customer - Yard Debris - 32 gal equivalent	\$3.12	\$3.27	\$0.15
<b>Extra - Non-Service Day</b>			
Go Back Charge - Per Cart	\$6.74	\$7.06	\$0.32
<b>Bulky Items - Hourly plus disposal</b>			
Truck - Hourly rate (one person)	\$75.52	\$79.07	\$3.55
Truck - Hourly rate (two people)	\$94.40	\$98.84	\$4.44
Weekly Walk in Rate - per foot after first 50 feet	\$0.01	\$0.01	\$0.00
Recycling Contamination Charge	\$10.24	\$10.72	\$0.48
Cart Exchange Fee	\$11.38	\$11.91	\$0.53
Overweight Charge	\$2.52	\$2.64	\$0.12
Restart Fee - Service stopped for Non-payment	\$11.38	\$11.91	\$0.53
NSF - Non Sufficient Funds	\$20.00	\$20.94	\$0.94

<b>Commercial</b>						
<b>Monthly Rate - Regular Service</b>	<b>Current Rate</b>		<b>Proposed rate</b>		<b>Difference</b>	
	<b>One Stop/Week</b>	<b>Each Additional Stop/Week</b>	<b>One Stop/Week</b>	<b>Each Additional Stop/Week</b>	<b>One Stop/Week</b>	<b>Each Additional Stop/Week</b>
Regular Weekly Service						
35 gallon cart	\$22.05		\$23.09		\$1.04	
64 gallon cart	\$24.53		\$25.68		\$1.15	
96 gallon cart	\$26.85		\$28.11		\$1.26	
1 yard container	\$78.23	\$59.18	\$81.91	\$61.96	\$3.68	\$2.78
1.5 yard container	\$106.27	\$93.36	\$111.26	\$97.75	\$4.99	\$4.39
2 yard container	\$135.58	\$121.04	\$141.95	\$126.73	\$6.37	\$5.69

**Exhibit "A"**  
**to Resolution No. 2013-3054**

**City of Newberg Garbage and Recycling Rates**  
**Current and Proposed as of 7/1/2013**

3 yard container	\$193.19	\$171.02	\$202.27	\$179.06	\$9.08	\$8.04
4 yard container	\$253.71	\$216.73	\$265.63	\$226.92	\$11.92	\$10.19
5 yard container	\$311.01	\$259.86	\$325.63	\$272.07	\$14.62	\$12.21
6 yard container	\$403.17	\$308.12	\$422.12	\$322.60	\$18.95	\$14.48
Yard Debris 96 gallon cart EOW	\$7.08		\$7.41		\$0.33	

Temporary Service	Current Rate		Proposed rate		Difference	
	One Stop/Week	Each Additional Stop/Week	One Stop/Week	Each Additional Stop/Week	One Stop/Week	Each Additional Stop/Week
1.5 yard container	\$35.41	\$25.41	\$37.07	\$26.60	\$1.66	\$1.19
2 yard container	\$44.92	\$34.26	\$47.03	\$35.87	\$2.11	\$1.61
3 yard container	\$60.08	\$48.61	\$62.90	\$50.89	\$2.82	\$2.28
4 yard container	\$74.88	\$64.14	\$78.40	\$67.15	\$3.52	\$3.01

Monthly Rate Commingled Recycling Service						
For Additional Commercial Recycling, Drop Box Recycling, and Recycling Only Customers						
Regular Weekly Service	Current Rate		Proposed rate		Difference	
	One Stop/Week	Each Additional Stop/Week	One Stop/Week	Each Additional Stop/Week	One Stop/Week	Each Additional Stop/Week
96 gallon cart	\$9.75	\$8.30	\$10.21	\$8.69	\$0.46	\$0.39
1 yard container	\$31.65	\$26.90	\$33.14	\$28.16	\$1.49	\$1.26
1.5 yard container	\$41.35	\$35.15	\$43.29	\$36.80	\$1.94	\$1.65
2 yard container	\$51.80	\$44.05	\$54.23	\$46.12	\$2.43	\$2.07
3 yard container	\$72.10	\$61.30	\$75.49	\$64.18	\$3.39	\$2.88
4 yard container	\$94.00	\$79.90	\$98.42	\$83.66	\$4.42	\$3.76
5 yard container	\$114.10	\$97.00	\$119.46	\$101.56	\$5.36	\$4.56
6 yard container	\$153.40	\$130.40	\$160.61	\$136.53	\$7.21	\$6.13

Commingled recycling is included with regular service up to two times the garbage volume.

Dropbox						
Disposal Rates	Current Rate		Proposed rate		Difference	
	Loose Rate	Compacted Rate	Loose Rate	Compacted Rate	Loose Rate	Compacted Rate
10 yard	\$187.67	\$299.69	\$196.49	\$313.78	\$8.82	\$14.09
15 yard		\$400.48		\$419.30	\$0.00	\$18.82
20 yard	\$309.60	\$492.73	\$324.15	\$515.89	\$14.55	\$23.16
25 yard		\$618.36		\$647.42	\$0.00	\$29.06
30 yard	\$456.38	\$710.61	\$477.83	\$744.01	\$21.45	\$33.40
40 yard	\$595.08	\$920.43	\$623.05	\$963.69	\$27.97	\$43.26

Permanent Drop box Rental Rates			
Container Size	Current Rate	Proposed Rate	Difference
20 yard	\$50.92	\$53.31	\$2.39
30 yard	\$63.94	\$66.95	\$3.01
40 yard	\$68.15	\$71.35	\$3.20
Screen Lid	\$12.23	\$12.80	\$0.57
Metal Covered Lid	\$15.41	\$16.13	\$0.72
Demurrage - daily fee	\$5.02	\$5.26	\$0.24

Additional Rate Information	Current Rate	Proposed Rate	Difference
Delivery Charge - First Box	\$18.88	\$19.77	\$0.89
One drop box truck (one person) hourly rate	\$81.81	\$85.66	\$3.85
One drop box truck & trailer (one person) hourly rate	\$100.69	\$105.42	\$4.73
Mileage - per mile over 10 miles round trip	\$2.08	\$2.18	\$0.10

**Note;**

Drop boxes must be loaded to the point where the loaded vehicle will not exceed truck weight laws, or to the point where the drop box can not be dumped by normal dumping methods. Additional fees may apply for cost of penalties that are incurred due to overweight drop boxes.

**Exhibit "A"**  
**to Resolution No. 2013-3054**

**City of Newberg Garbage and Recycling Rates**  
**Current and Proposed as of 7/1/2013**

Drop boxes shall not be loaded above the top of the box.

Weekend service for drop boxes shall be at 1.5 times the regular rate and shall be arranged prior to the service

<b>Other Special Rates</b>				
<b>Additional Rate Information</b>				
<b>Tires</b>	<b>Current Rate</b>	<b>Proposed Rate</b>		<b>Difference</b>
Car tire - on or off rim	\$2.89	\$3.03	plus processing fee	\$0.14
Truck tire - on or off rim	\$2.89	\$3.03	plus processing fee	\$0.14

**Note;**

Tenants are responsible for waste collection fees (unless separate payment arrangements are made by the landlord).

Definition of extra; bundles, bags, sacks, and other - based on volume, securely tied and limited to 60 lbs. (1.5 x 1.5 x 4 feet will be equivalent to a full garbage carts

Plastic Bags securely tied and limited to 30 lbs. will be equivalent to a full garbage can. Plastic bags to be used for occasional additional garbage, not as full-time garbage service container.

<b>Medical - Commercial Customers Only</b>						
<b>Container Sales</b>	<b>Current Rate</b>		<b>Proposed rate</b>		<b>Difference</b>	
	<b>1 - 2 Containers</b>	<b>3 or More</b>	<b>1 - 2 Containers</b>	<b>3 or More</b>	<b>1 - 2 Containers</b>	<b>3 or More</b>
17 gallon tub	\$34.32	\$25.59	\$35.93	\$26.79	\$1.61	\$1.20
23 gallon box	\$36.88	\$27.63	\$38.61	\$28.93	\$1.73	\$1.30
31 gallon tub	\$38.10	\$28.55	\$39.89	\$29.89	\$1.79	\$1.34
43 gallon tub	\$42.96	\$33.29	\$44.98	\$34.85	\$2.02	\$1.56
30 gallon box	\$45.96	\$32.90	\$48.12	\$34.45	\$2.16	\$1.55

Excerpt from Franchise Agreement outlining Authorized Rates. Entire Agreement will be furnished upon request.

AN EXCLUSIVE FRANCHISE AGREEMENT  
TO PROVIDE SOLID WASTE SERVICES  
WITHIN THE CITY OF NEWBERG

This EXCUSIVE FRANCHISE AGREEMENT ("Franchise") is made and entered into between THE CITY OF NEWBERG ("City") and WASTE MANAGEMENT OF OREGON, INC. ("Franchisee"). The parties will be collectively referred to herein as the "Parties" and individually as a "Party," unless specifically identified otherwise. This Franchise will be effective upon the "Effective Date," as defined below.

**1. AUTHORIZED RATES.** The City expressly reserves the right to set and regulate the rates for the Services to be rendered hereunder by the Franchisee such that the rates are reasonable and in the public's interest. Franchisee will provide the Services under this Franchise for the rates set forth in the Service Rate Schedule attached hereto and incorporated herein as *Exhibit B*, as the same may be adjusted in accordance with this Section and Section 2 below. City may require changes in the Services or the addition of new services and Franchisee will comply with such changes, provided that if such changes result in increases in cost to Franchisee, Franchisee will have the right to receive a special rate adjustment pursuant to Section 2 of this Franchise.

**2. REVISIONS TO AUTHORIZED RATES.**

2.1. The Council may, from time to time, by resolution, revise the Service Rate Schedule, *Exhibit B*. The City or the Franchisee may request a rate revision whenever a significant change in revenue or expenses occurs or is anticipated. In the event the Franchisee requests a rate revision, the City will consider such request in good faith and will act upon the request without undue delay, but in no case later than 120 days from the date the request was made.

2.2. In determining reasonable rates, Council will consider all relevant factors, and the Parties will work in good faith to develop and adjust rates, as necessary, to allow Franchisee to earn a reasonable rate of return. Council will give due consideration to current and projected revenue and allowable expenses; the cost of acquiring and replacing equipment; the net cost of reuse and recycling; and such other factors as the Council deems relevant. Council may consider rates established by other jurisdictions for similar service under the same or similar service conditions. Council will provide the public opportunity to comment on a proposed rate increase as required by ORS 294.160.

2.3. Franchisee will be entitled to increase the rates and City will approve such increases if the City increases the Franchise Fee as provided in Section 8.2 below. Franchisee will be entitled to an increase in rates sufficient to recover the increase in the Franchise Fee.

2.4. When a new or unusual solid waste service, not included in the Service Rate Schedule, is requested, the Franchisee may establish a reasonable rate for providing such service. However, if such service is provided for more than six (6) months, the Franchisee will obtain the approval of the City Manager.

2.5. All books, records, accounts and data relating to collection service operations conducted within the city by the Franchisee are subject to inspection and audit by the city.

2.6. All revisions to the Service Rate Schedule, *Exhibit B*, will be approved by resolution of Council and a minimum of a 30-day notice will be provide by Franchisee to the customers.