



**CITY COUNCIL AGENDA
MARCH 2, 2015, 7:00 PM**

PUBLIC SAFETY BUILDING TRAINING ROOM (401 EAST THIRD STREET)

Mission Statement

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

Vision Statement

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

I. CALL MEETING TO ORDER

II. ROLL CALL

III. PLEDGE OF ALLEGIANCE

IV. CITY MANAGER’S REPORT

Pages 1-6

V. PUBLIC COMMENTS (30 minutes maximum, which may be extended at the Mayor’s discretion, 5 minutes per speaker).

VI. PUBLIC HEARING

- 1. Order 2015-0036, An Order determining whether a shed built too near a property line constitutes a nuisance

Pages 7-23

VII. CONSENT CALENDAR

- 1. Minutes from February 23, 2015
- 2. Newberg Animal Shelter Contract

Pages 24-27

Pages 28-44

VIII. NEW BUSINESS

- 1. Green4Growth Grant Opportunity
- 2. Resolution 2015-3181 A Resolution establishing a program to allow waivers to the standard Enterprise Zone employment requirements consistent with ORS 285 C

Pages 45-51

Pages 52-57

IX. COUNCIL BUSINESS

X. EXECUTIVE SESSION

- 1. Pursuant to ORS 192.660 (2) (n) relating to Labor Negotiations

XI. NEW BUSINESS

- 1. Resolution 2015-3174 A Resolution approving the Collective Bargaining Agreement between the City and the Newberg-Dundee Public Safety Association (NDPSA); agreement will be effective retroactively to July 01, 2014; authorizing the Mayor and City Manager to execute the agreement; and delegating the authority to the City Manager to make amendments and interpretations of the agreement on behalf of the City.

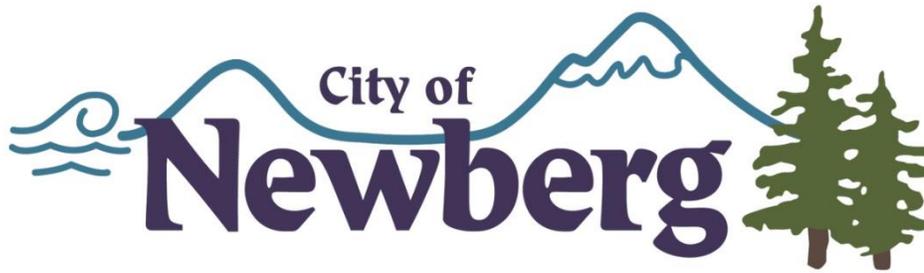
Pages 58-97

XII. 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 two business days 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. Speakers who wish the Council to consider written material are encouraged to submit written information in writing by 12:00 p.m. (noon) the day of the meeting.

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.



CITY MANAGER REPORT

Activities update Between February 9th and February 23rd, 2015 (which is the cut-off date for the packet)

Due to time constraints in relations to work commitments I was not able to produce a comprehensive City Manager Report by the deadline for the Council packet. Two items of importance worth mentioning and included as attachments are:

- 1) February 2015 Public Works Monthly Employee Newsletter (Exhibit A)
- 2) A memo from City Engineer Kaaren Hofmann on the Merchants Parking Lot (Second Street) Project Update (Exhibit B).

At the Council meeting I will provide a verbal report to Council on a couple noteworthy items and follow-up with additional written items in my March 16th report.

Thank you for the flexibility,

Jacque M. Betz
City Manager



Public Works Monthly Employee Newsletter

February 2015

Volume 1, Number 2

In This Issue

- PW Director Thoughts
- Engineering Update
- Maintenance Update
- Operations Update
- Staff News
- Employee Focus

Links and pages to visit:

Get Outdoors | Get Involved

View this page for great local areas to explore the outdoors. Also includes ways to volunteer or collaborate on projects in the Newberg area.

Maintenance Division Map

This interactive map shows Public Works Maintenance activities, projects, maintenance & call outs that happen during the month.

Free Medication Disposal

Education for all citizens about the free drop box at NPD to safely dispose of prescription and over the counter medications.

Anonymous and Free all year.

From the Director's desk:

You've probably heard the saying "into each life a little rain must fall". The rain that flooded City Hall has turned into a great opportunity for this PW Director. Now I am out at Operations and Maintenance; becoming familiar with the wide variety of skilled staff and many diverse programs that go on behind the scenes.

I have been heavily focused the last few weeks working on the budget process. We are pulling in all the key players including Kaaren Hofman, Russ Thomas, Vance Barton, Craig Pack, Dan Wilson and April Catan. The focus is keeping budgets approximately the same and reduce/reorganize/consolidate the 12+ micro funds to better track transfers, organize debt payments, capital projects and expenditures. Improving long term planning will work hand in hand with a smarter budget process and improve Public Works effectiveness.

The City is currently in negotiations to purchase the 4 acre Cal Portland site adjacent to the Maintenance yard on Third Street. We have outgrown our existing 2-acre maintenance yard and need the additional room to house equipment and materials and perform fleet maintenance work.

I am seeing communication and collaboration open up throughout Public Works and I look forward to continuing that trend throughout the entire Department - from whatever location I happen to be at. - *Jay Harris*

ENGINEERING UPDATE:

Mabel Rush Safe Route To School Project:

Bids for this project were opened by the Oregon Department of Transportation (ODOT) on January 29, 2015. A total of 3 bids were received. The preliminary bid results (all below the engineer's estimate) were as follow:

Brown Contracting, Inc., Eugene	\$151,594.00
Coral Construction Co., Sherwood	\$162,804.00
PCR, Inc., Oregon City	\$182,125.00

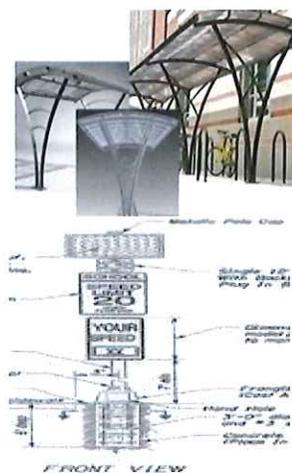
The selected contractor will begin once the notice to proceed is issued by ODOT when the school goes to summer break and should be completed August 2015.

PROJECT INFORMATION:

The project is funded by an ODOT grant with a required matching fund from the City of Newberg and contribution from the Newberg School District.

The scope of construction includes the installation of a pair of solar powered programmable school zone flashing and speed feedback signs on Deborah Road, and the construction of a bicycle facility for Mabel Rush Elementary School.

The project promotes school zone safety and also a healthy lifestyle and less motorized trips for students through biking to school.



Contacts:

Public Works Director:

Jay Harris x1211
Jay.harris@newbergoregon.gov

Engineering:

Kaaren Hofman x 1223
Kaaren.hofman@newbergoregon.gov
Brian Kershaw x1236
Paul Chiu x1751
Jason Wuertz x1631
Brittney Jeffries x7723

**Maintenance:
Streets & Sewers**

Russ Thomas x1233
Russ.thomas@newbergoregon.gov
Vance Barton x1234
Vance.barton@newbergoregon.gov
Jodie Hoogendam x0206

Fleet Maintenance:

Bryan Jones x 1232
Brian.jones@newbergoregon.gov

Operations:

Water Plant Backflow Springs

Dan Wilson x1239
Dan.wilson@newbergoregon.gov

**Wastewater Plant:
Reuse Water & Compost**

Craig Pack x0221
Craig.pack@newbergoregon.gov
Karen Tarmichael x0257

Industrial Pretreatment Program
April Catan x0224

Environment Programs/Stormwater
Sonja Johnson x1282

FOG Reduction Program
Ron Layne #971-246-6243

Compost Depot:
Recording 537-1252 #1
Weekdays 8-3:30

MAINTENANCE UPDATE:

The brief break in storms allowed for a lateral sewer replacement on Franklin and the sidewalk repairs needed after.



The manhole at N School & E Sherman Streets was worked on this month.

**Save the Date:
Public Works Day**

June 16th 2015 11:30-1:00 pm

This is a hugely popular community event and we look forward to another successful year.

OPERATIONS UPDATE:

Wastewater Plant:

The newly constructed Headworks system was started up January 30th. The system has 2 grit chambers and 2 dewatering sections allowing for 23 Million Gallons of flow. As the startup process continues to be fine-tuned; the older system will remain in standby as a backup.



In the May we will host an 'Open House' to share the changes and new technology at WWTP with everyone.

Personnel Personals:



Joey Rivera's little girl Ashton was born prematurely on December 9, 2014.

She weighed in at 2 lbs. 4 oz. Since then, she has gained weight and is now 4 lbs. 7 oz !

Ashton is in stable condition but still has several hurdles ahead of her. She is on high flow oxygen however, they hope to try and lower the oxygen next week.

"At this point, Ashton is headed in the right direction on a long journey."

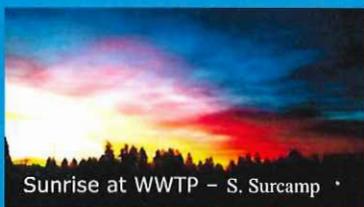
Joey would like to Thank everyone for their prayers, support and gifts. His new family is so grateful for your support through this difficult time.

Scott Foss and his wife are expecting a new baby in August 2015.

Karen Tarmichael has a new licensed driver in the family. She doesn't know if she should panic or celebrate.



Luke Hoogendam, son of Jodie Hoogendam, graduated from Marine Basic January 16, 2015 !



Sunrise at WWTP - S. Surcamp

What's new in your world? Share it with us for the next newsletter.

Water Plant:

The City is working with a group of spring's water system customers on the potential of transferring ownership of the spring system to the user group. Hyland Water has been contacted by the springs Customers to make a proposal for the management and operations of the Spring systems. The conversations have been very productive thus far and we are on track to finalize the transfer of ownership sometime this summer.

The work on well 5 has been completed. Now just waiting for the pump to be linked up to the VFD and programed to work with the different size pump later this month. The pump from well 4 has been rehabbed it waiting for reinstallation.

Employee Focus: Fleet Maintenance – keeping it all running!



Bryan Jones - Fleet Maintenance Chief

Bryan has lived in the Newberg area most of his life. He is married with three grown sons, a 4 year old granddaughter, 2 year old grandson and a dog named 'Bodie'.

Bryan has not always worked in mechanics. He worked for TCI Cable for approximately 10 years coming to the City in 1991. After working in several different departments he settled at Maintenance as street sweeper and the water/wastewater crews. He began assisting the Fleet Lead with repairs, and learning mechanics skills. He has his ASE Certification and certification in Welding. Due to a staff retirement in 2014, Bryan was unanimously chosen as our new Fleet Crew Chief.

Bryan enjoys working on police cars the most. He doesn't like to be surprised by bears – ask him for the story.

He enjoys hunting, fishing, camping and outdoor sports. His favorite spot is Canyon Creek. He goes each summer to camp and horseback ride. He enjoys time with his two grandchildren.

Bryan teaches Hunter's Education for the last 15 years. His favorite place to hunt is in Eastern Oregon.



Brian Reimer - Fleet Mechanic

Brian began working with the City in July 2014. A resident of Newberg since 2002 he is married with three children, a 16 year old son, 14 year old daughter, 3 year old son and a cat named Lily.

Brian became interested in mechanics at an early age. He went on to a trade school in Arizona in 1983, took a year of electrical engineering and also has a degree in computer networking.

He has an ASE Master Technician L1 advanced level certification in mechanics. He enjoys working on European cars and his favorite issues to work on are drivability and electrical problems.

When not working on cars he enjoys woodworking, finished carpentry and furniture repair.

Brian's favorite vacation spot is Maui, his favorite food is prime rib. He is also a bit of a history buff and at the age of 6 survived a tsunami in Lincoln City.



MEMORANDUM
ENGINEERING SERVICES DEPARTMENT

TO: Newberg City Council
FROM: Kaaren Hofmann, PE, City Engineer
C: Jay Harris, PE, Public Works Director; Jacque Betz, City Manager
SUBJECT: Merchants Parking Lot (Second Street) Project Update
DATE: February 23, 2015

Background:

The public parking lot on 2nd street is at the end of its service life and needs to be replaced in the near future. The existing 92 stall parking lot has a high level of day and nighttime use by surrounding businesses, schools, churches, city hall, and nearby residents.

At the City Council's January 20th meeting, direction was provided to complete a maintenance only project. Also, with the maintenance of the parking lot, it would be beneficial to the City to replace the aging water, stormwater and wastewater systems located within the alley and to reconstruct the existing alleyway.

Cost Estimate:

The estimated cost to repair, re-pave and stripe the existing parking lot in its current one-way configuration is approximately \$141,500.00. The cost for the utility and alley work is estimated to be \$175,000.00.

The proposed funding sources for this project will be:

<u>Item of Work</u>	<u>Funding Source</u>
Overlay the parking lot	Economic Development Funds
Overlay the alley	Gas Taxes
Waterline work	Water Funds
Stormwater work	Storm Funds
Wastewater work	Wastewater Funds

There are sufficient monies in each one of the funds listed above to complete this project as proposed.

Next Steps:

1. We will follow up with the appropriate stakeholders on the proposed scope of the project.
2. We will budget the appropriate amounts in the FY15/16 budget to complete the work and will plan on construction occurring this summer.

Please let me know if you have any questions regarding this memorandum.

Sincerely,

Kaaren Hofmann

City Engineer

City of Newberg

503-537-1223

kaaren.hofmann@newbergoregon.gov

REQUEST FOR COUNCIL ACTION

DATE ACTION REQUESTED: March 2, 2015

Order XX Ordinance ___ Resolution ___ Motion ___ Information ___
No. 2015 -0036 No. No.

**SUBJECT: Hearing of Protest of Nuisance
Abatement Action at 101 E Oxford St**

Contact Person (Preparer) for this
Motion: Brad Allen, Code Compliance Officer
Dept.: Legal
File No.: CC14-00330

HEARING TYPE: LEGISLATIVE QUASI-JUDICIAL NOT APPLICABLE

EXECUTIVE SUMMARY:

After having received a citizen complaint, the city sent a notice instructing the owners of the property located at 101 E Oxford St. to abate a nuisance on the property pursuant to the Uniform Nuisance Abatement Procedure outlined in the Newberg Municipal Code. The owners filed a written statement protesting that no nuisance exists. The statement is referred to the city council to determine whether or not a nuisance in fact exists.

The allegation of nuisance is that the property owners have built a storage shed too near a property line which is not in conformance with the Newberg Development Code.

FISCAL IMPACT:

None.



ORDER No. 2015-0036

**AN ORDER DETERMINING WHETHER A SHED BUILT TOO NEAR A
PROPERTY LINE CONSTITUTES A NUISANCE.**

This matter came before the Newberg City Council on March 2nd, 2015, pursuant to Newberg Municipal Code (NMC) 8.15.020 and Russ and Sandy Mitchell's written statement specifying the basis for protest. After considering the facts and the statements of the Code Compliance Officer and all interested parties,

THE CITY OF NEWBERG HEREBY ORDERS:

_____ No nuisance in fact exists.

_____ There exists a nuisance under NMC 15.05.100(B) and the Responsible Party shall abate the nuisance according to NMC 8.15.200.

➤ **EFFECTIVE DATE** of this order is the day after the adoption date, which is: March 3, 2015.

ADOPTED by the City Council of the City of Newberg, Oregon, this 2nd day of March, 2015.

Sue Ryan, City Recorder

ATTEST by the Mayor this XX day of March, 2015.

Bob Andrews, Mayor

MEMORANDUM

to: Newberg City Council

CC: Truman Stone, City Attorney

from: Brad Allen, Code Compliance Officer

re: Citizen protest of nuisance abatement action at 101 E Oxford St;
Order 2015-0036; March 2, 2014; CC14-00330

date: 2/24/2014

Case Summary:

1. A citizen complaint was filed regarding a shed at 101 E Oxford St, a single-family dwelling in the R-1 district. The complaint is that the shed is too near the east property line, where Newberg Municipal Code (NMC) 15.410.030 requires an interior yard of not less than five feet.
2. A violation of required yard setbacks is declared to be nuisance by NMC 15.05.100.
3. After receiving a Notice of Violation requiring that the shed be moved, property owners Russ and Sandy Mitchell submitted a written statement specifying their basis for protesting that no nuisance exists (attached). The statement is referred to the city council.
4. Pursuant to NMC 8.15.200, if the council determines that a nuisance does in fact exist, the responsible party shall, within 10 days after city council determination, abate the nuisance.
5. An alternative remedy available to the property owners is to request a code adjustment to the interior yard setback of this property from the Community Development Director. However, a minimum distance of three feet must be maintained.

Brad Allen
Code Compliance Officer
City of Newberg
414 East 1st Street, PO Box 970
Newberg, OR 97132
brad.allen@nebwegoregon.gov
503-554-7709
Fax: 503-537-5013

Brad Allen

From: Sandy Mitchell <sandy@thekellygroup.net>
Sent: Saturday, January 31, 2015 4:49 PM
To: Brad Allen
Subject: RE: shed

Formal Statement by 2-2-15

No nuisance exists, the shed has been in the same location for 14 years without issue. This matter stems from a disgruntled neighbor who doesn't even live in his house, it's a rental. Moving the shed would create an undue hardship for us.

Thank you,

Sandy Mitchell

Licensed in Oregon, Broker/Realtor

The Kelly Group

Keller Williams Realty – Portland Premiere

Cell: 503-502-6408

Fax: 503-336-6708



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Sellers - Please obtain your copy of the Seller's Advisory Guide

From: Brad Allen [<mailto:Brad.Allen@newbergoregon.gov>]
Sent: Friday, January 30, 2015 2:45 PM
To: Sandy Mitchell
Subject: RE: shed

Mrs. Mitchell –

I can allow more time if your intention is to move the shed. Please propose a date by which the shed will be in compliance with the code.

If, however, you want the issue to be considered by the City Council, then we must stick to the deadline of **Feb 2nd, 2015**. That being said, all you need to do by Feb 2nd is to submit a statement (email works fine) specifying your basis for protesting that no nuisance exists. The item will be put on a council meeting agenda. Any evidence or arguments you wish to present can be submitted before or at the meeting.

Let me know if you have questions.

Regards,

Brad Allen

Code Compliance Officer

Ph: 503-554-7709

Fx: 503-537-5013

brad.allen@newbergoregon.gov

414 E First Street

P.O. Box 970

Newberg, OR 97132



<http://www.newbergoregon.gov/>

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From: Sandy Mitchell [<mailto:sandy@thekellygroup.net>]

Sent: Friday, January 30, 2015 1:33 PM

To: Brad Allen

Subject: shed

We request more time

Thank you,

Sandy Mitchell

Licensed in Oregon, Broker/Realtor

The Kelly Group

Keller Williams Realty – Portland Premiere

Cell: 503-502-6408

Fax: 503-336-6708



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Buyers - Please obtain your copy of the [Buyer's Advisory Guide](#)

Sellers - Please obtain your copy of the [Seller's Advisory Guide](#)

From: Russ Mitchell
101 E Oxford St.
Newberg, OR

To: City of Newberg Code Compliance Division
414 E First St.
Newberg, OR 97132

RE: Accessory building inside minimum interior yard setback at:
101 E Oxford St.
Newberg, OR

City Council Members:

1. The shed in question was built and placed in this location in 2000, in other words, this is the 15th year it's been in this location.
2. The shed is and has been located five feet off of the fence which borders the complainants property and is four feet off the neighbor to the East's property. If we removed the gutter from the shed, we'd be 4'6" off the neighbors to the East's property.
3. Jim and Julie Courson, the neighbors to the East have written a letter stating the shed is absolutely of no concern nor is it problematic to them. The shed hasn't caused any difficulty for them in any way whatsoever. (Please see exhibit seven)
4. This complaint is the direct result of a disgruntled vindictive neighbor (Jim Nichols) and this is how he is expressing his irritation. Jim Nichols doesn't live in his house, it's a rental. He stated to Brad Allen, the Code compliance Officer, he doesn't want to look at the shed, yet he doesn't live in the house and hasn't for two or more years. Note: There are full grown trees blocking the view of the shed.
5. The shed is not a nuisance, it's a nicely build shed (see pictures)
Definition of nuisance is as follows:
Any act, status, condition, thing, substance or activity which is detrimental to, injurious to, or constitutes a danger to the public health, safety or welfare or which is declared, defined, designated or denominated to be a nuisance by any ordinance of the city. Our shed is none of these things.
6. Because of the nature of our lot, our back yard is very narrow; there isn't another location in the back of the house the shed could go. The current location is the least obtrusive, least seen location there is. It would cause undo hardship for us to have to move it, especially since it's been there going on 15 years.

Pg. 2

I've attached photos in order for you to "see" the location of the shed and how the houses "lay out".

1. Exhibit One, Aerial photo: Please note the shed is behind trees which block the complainant's view of the shed. I've circled the shed
2. Exhibit Two: Photo showing we are five feet off the property line of the complainant. Please note trees blocking the view.
3. Exhibit Three: Picture of shed to show it's a nice looking shed, not an eye sore or a nuisance.
4. Exhibit Four: If we remove the gutter, the measurement between our shed and the neighbor to the East is 4' 6".
5. Exhibit Five: Jim Nichols (Complainant) is irritated because we asked him to trim his arborvitae's which were 20 feet tall. As you can see from the picture, he massacred them, making them look as ugly as possible. His Arborvitae intrude into our yard up to three feet. In the 15 years we've lived in our home, he's never trimmed his Arborvitae. He's complaining about our shed, even though its five feet off the property line yet his bushes intrude into our yard up to three feet.
6. Exhibit Six: Picture showing how far over the fence into our yard his arborvitae's intrude, (three feet) they're mostly in our yard.
7. Exhibit Seven: Letter of support from Jim Courson (Neighbor to the East)

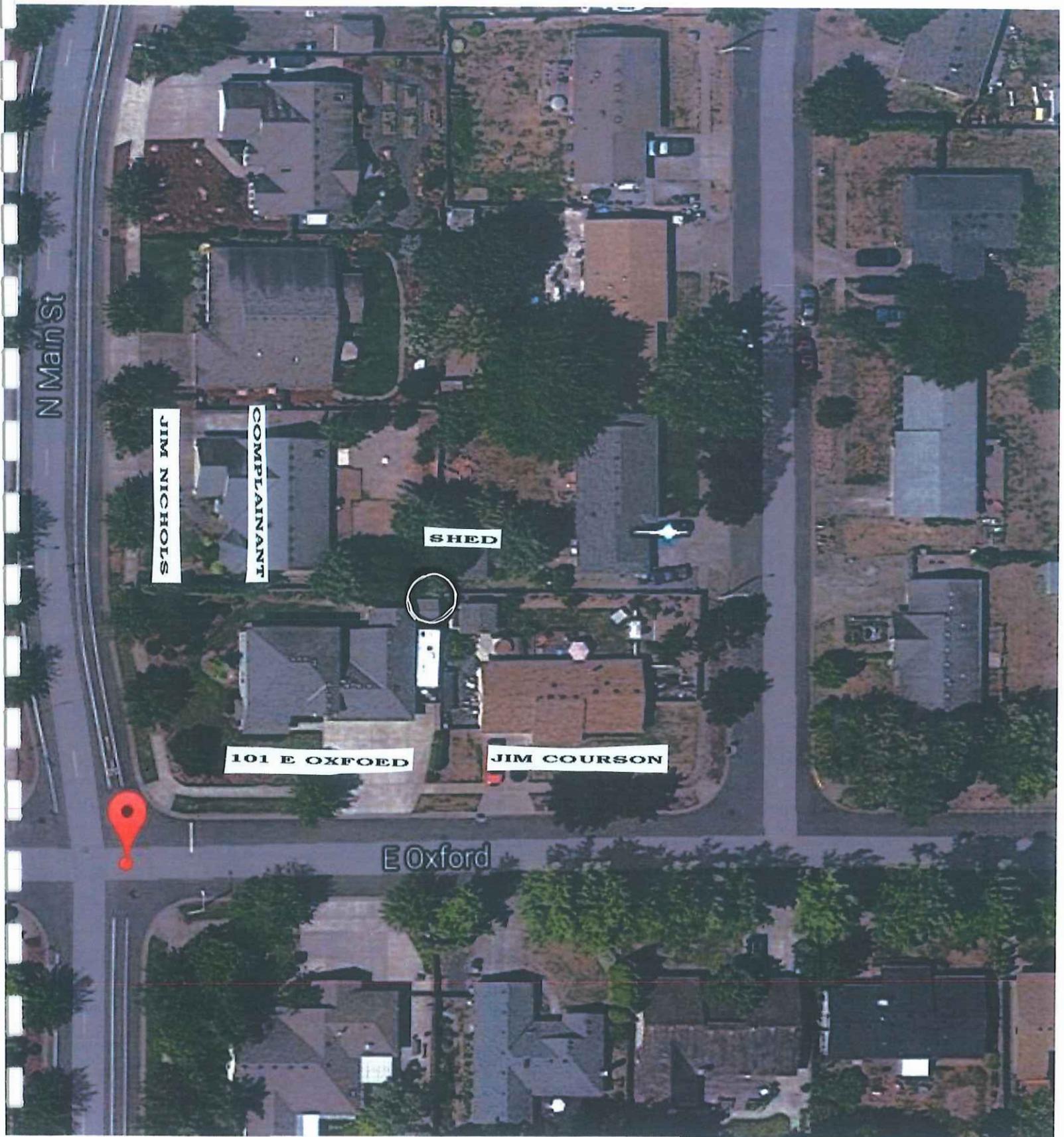
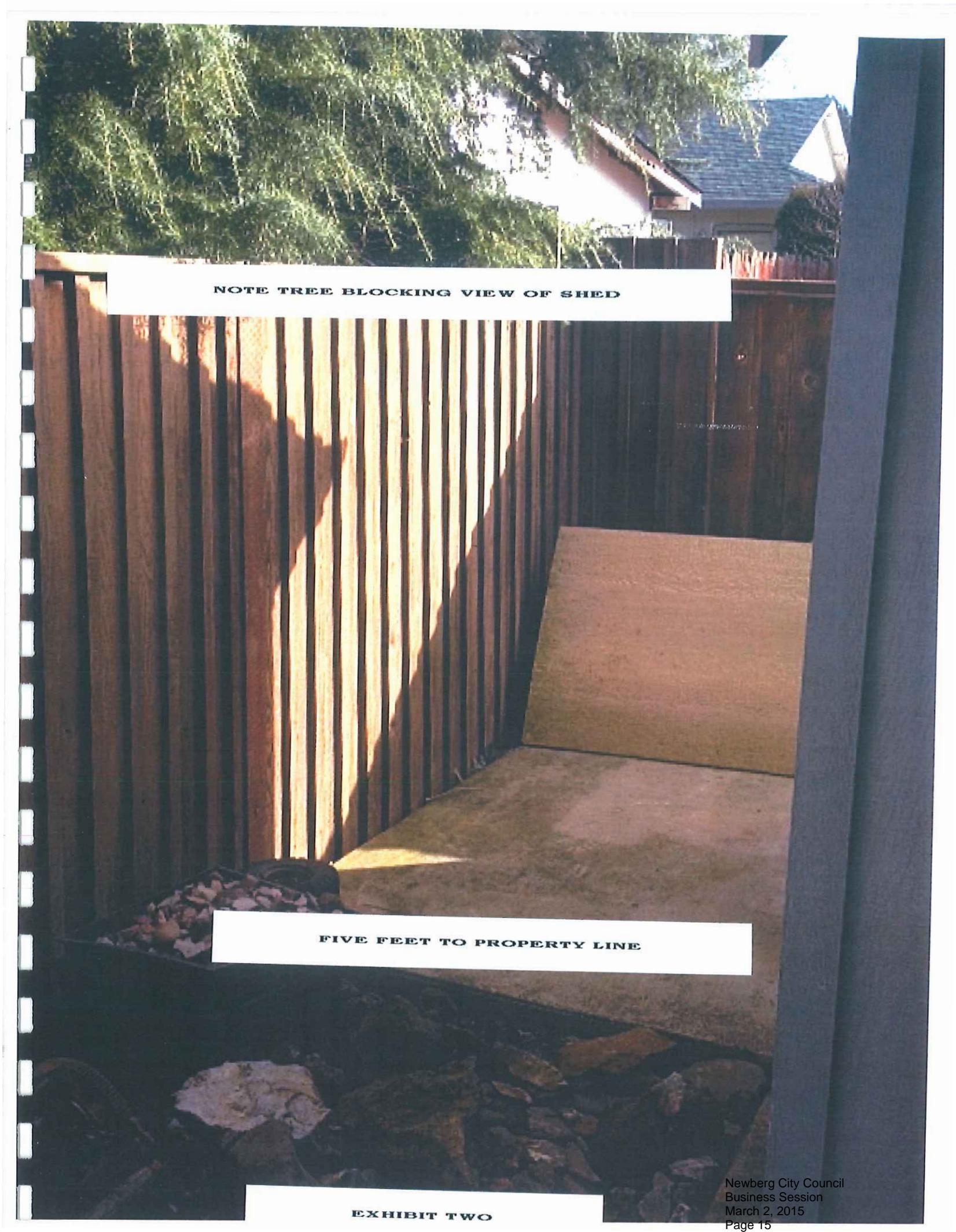


EXHIBIT ONE



NOTE TREE BLOCKING VIEW OF SHED

FIVE FEET TO PROPERTY LINE

EXHIBIT TWO

NICE LOOKING SHED, NOT A NUISANCE

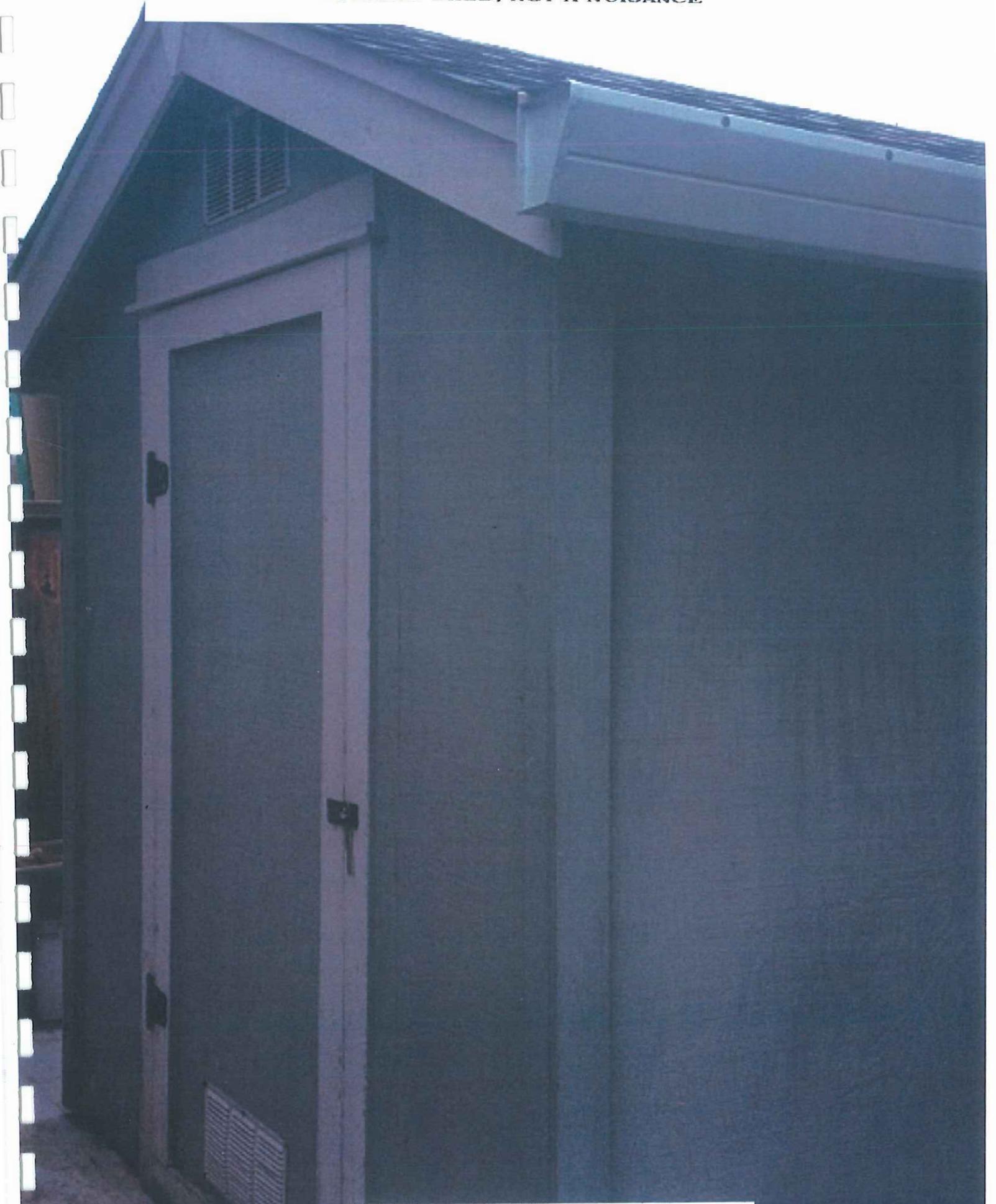


EXHIBIT THREE

**IF GUTTER WAS REMOVED, WE WOULD BE
FOUR FEET SIX INCHES FROM EAST
PROPERTY LINE**



EXHIBIT FOUR

**JIM NICHOLS
HOUSE**

**HIS TREES
OVER HANGING
INTO OUR YARD**

OUR HOUSE

SHED

**MASSACRED
ARBORVITAE**

**PROPERTY LINE
SHOWING HOW FAR HIS BUSHES
INTRUDE ONTO OUR PROPERTY**

EXHIBIT FIVE

COMPLAINANTS ARBORVITAE
EXTENDING THREE FEET
INTO OUR YARD

FENCE

EXHIBIT SIX

February 21, 2015

To whom it may concern--

This letter is written to let the appropriate parties know that the small shed-structure in the backyard of Russ & Sandy Mitchell is absolutely of no concern or problematic to us. We share a backyard property and fence-line with them and the shed is near that line. It has not caused any difficulty for us in any way whatsoever.

The Mitchells have been stellar neighbors. They and their home are a wonderful addition to our neighborhood. We count it a privilege to live next door to them.

If you have any more need for inquiry please feel free to contact us.

Sincerely,

A handwritten signature in blue ink that reads "Jim A. Courson & Julie A. Courson". The signature is written in a cursive style.

Jim & Julie Courson
213 E. Oxford St.
Newberg, OR 97132

phone-- 503-330-1088

From: Brad Allen
Sent: Tuesday, February 24, 2015 2:50 PM
To: Sue Ryan
Subject: FW: Information for city council meeting on Jim Nicol property(PDF below)
Attachments: 1817_001.pdf; ATT00001.htm

The email below as well as the attached letter were submitted by Jim Nicol in regards to Mar 2nd council agenda item (Order 2015-0036). Please include them in the packet.

Thanks,

Brad Allen
Code Compliance Officer
503-554-7709

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From: Jim Nicol [<mailto:jnicolfishon@hotmail.com>]
Sent: Tuesday, February 24, 2015 12:59 PM
To: Brad Allen
Subject: Information for city council meeting on Jim Nicol property(PDF below)

I'm sorry I can't be at this meeting, I'm scheduled to be working out of town most of March. I have listed some of my concerns and history with Mr. Mitchell.

Here is my concern. I bought this property in 1998. The Michell's home was not built. The yellow home to the east of Mr. Mitchell had a outbuilding with a five foot set back and the home directly east of mine had a shed with a again a five foot set back. I wasn't crazy about having two sheds in my backyard, but they did comply with code and I new I could cover up the shed to the east through the planting of the right tree. Leaving me only one shed in my backyard that would be visible. Then Mr. Mitchell builds on the lot and puts a shed that requires me to put up additional trees that now looks over grown for the given area. All of this too try and protect the value and appearance of my backyard. I don't believe I should be forced to plant multiple trees to protect the view in my backyard. Three sheds with ONE not being to code effects the value of my investment. Based on code I don't see how Mr. Mitchell's shed and RV can both be located in that small area. As I understand, codes are to protect the Homeowner on a property value as well as the community from a unsafe situation where possible hazards of having a outbuilding too close to a fence line. At no point have I read that any complaint must be filed by and only by the direct property line owner. This shed has forced me too plant multiple trees in areas I never intended on and currently I want to change my landscape but I'm handicapped by a shed that

violates city code and diminishes the value of my property.

Imagine having to look at three sheds in your backyard and knowing one is not conforming to city code. This being the same city code that I've been required to abide by in four different incidents in the last 17 years.

In closing I think it's important to know that the Mr. Mitchell has threatened to file a lawsuit against me for my arborvitae not conforming to CCR (letter in PDF below). Once I realized they were not conforming to CCR, vs city code, I cut them to conforming height. Also approximately 8 years ago I tried to put an outbuilding up the same distance from his property line. I had bought the gutters and all the sides and was putting up the roof when he told me that my shed was in violation of city code being too close to property line. I lost all the money I put into that project. Unless I wanted four sheds in my backyard.

I share this bit of information with you because it seems Mr. Mitchell is serious about me conforming to codes but feels code doesn't apply to him, even when asked to move his outbuilding by the city code enforcer.

I don't think we can pick and choose what city codes to enforce and who we want to enforce them upon.

I do appreciate all your time and consideration on this matter.

Jim Nicol
Nicol Guide Service
[503-550-3166](tel:503-550-3166)
Sent from my iPad

Jim Nicol
Nicol Guide Service
503-550-3166
Sent from my iPad

Subject: Attached Image

October 1, 2014

authority to prosecute any proceeding at law or in equity against the person or persons violating or attempting to violate any of said covenants, either to prevent the doing of such, or to recover damages sustained by reason of such violation. Failure by any owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 3, Expenses and Attorney's Fees:

In the event any person or persons owning any real property embraced within the plat of Cottonwood Meadows including the Declarant, shall bring any suit or action to enforce these covenants, the prevailing property shall be entitled to recover all costs and expenses incurred by him in connection with such suit or action, including such amounts as the court may determine to be reasonable attorney's fees at trial and upon any appeal thereafter.

Sandy and I have talked to you three to four times over the last three years in regards to your Arborvitae and it is clear you have no intention of trimming them as required within the CCR's you agreed to abide by. The trees you planted in the back yard are lifting our fence and they need to be dealt with before further damage is done. The branches hanging over into our yard need to be trimmed. Since you've refused to abide by the CCR's, you leave me no alternative but to turn this matter over to an attorney.

You have until November 3, 2014 to trim your shrubs and trees to meet compliance of the CCR's for Cottonwood Meadows or I will file a lawsuit against you.

Sincerely,



James R. Mitchell

REQUEST FOR COUNCIL ACTION

DATE ACTION REQUESTED: March 2, 2015

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

SUBJECT: Minutes

**Contact Person (Preparer) for this
Motion: Sue Ryan, City Recorder
Dept.: Administration
File No.:**

RECOMMENDATION:

Approve City Council minutes from February 17, 2015.

**NEWBERG CITY COUNCIL MINUTES
FEBRUARY 17, 2015, 7:00 PM
PUBLIC SAFETY BUILDING (401 E. THIRD STREET)**

A work session was held at 6:00 p.m. preceding the meeting. Present were Mayor Bob Andrews, Councilor Tony Rourke, Councilor Lesley Woodruff, Councilor Mike Corey, Councilor Scott Essin, and Councilor McKinney. Councilor Denise Bacon was excused. Also present were City Manager Jacque Betz, City Recorder Sue Ryan and City Attorney Truman Stone, Associate Planner Jessica Pelz, City Engineer Kaaren Hofman and Library Director Leah Griffith.

AP Pelz introduced the Transportation System Plan update. She introduced Garth Appanaitis of DKS Associates, who gave a Powerpoint presentation on an overview of the Transportation System Plan work.

There was discussion on the potential impact of future growth in and outside Newberg on the Transportation System Plan, funding alternatives, roadway connectivity, the citizen's advisory committee, the age of evaluation scores in the packet, and disabilities access.

Council members reported on the Trail Summit for Yamhill County held earlier that day in McMinnville, Oregon.

CALL MEETING TO ORDER

Mayor Andrews called the business session of the meeting to order at 7:05 p.m. A moment of silence was held for communities suffering from violence throughout the world.

ROLL CALL

Members Present:	Mayor Bob Andrews Scott Essin	Mike Corey Stephen McKinney	Tony Rourke Lesley Woodruff
Staff Present:	Jacque Betz, City Manager Sue Ryan, City Recorder	Truman Stone, City Attorney Leah Griffith, Library Director	

PLEDGE OF ALLEGIANCE: The Pledge of Allegiance was performed.

CITY MANAGER'S REPORT: City Manager Jacque Betz said the Newberg Community Band would hold a free concert for children on Sunday, March 1, at 2:30 p.m. in Bauman Auditorium at George Fox University. Mayor Andrews reported on the passing of former City Councilor Bob Weaver.

CONSENT CALENDAR:

MOTION: Corey/Rourke moved to accept the Consent Calendar as amended by removing the financial reports, including the January 20 and February 2, 2015 meeting minutes. (6 Yes/0 No)

NEW BUSINESS:

Request for Council Action on TSP: Associate Planner Jessica Pelz said this was a motion to direct staff to pursue inclusion of the "Concept B: Road Diet" option as the preferred option for downtown in the Transportation System Plan update. The Council would be holding hearings on the TSP update in the future. She gave an overview of the options for downtown. Staff thought Concept B was the most flexible and cost effective option. It was a reasonable option for bicycle and pedestrian improvements while still retaining adequate mobility and could be phased in over time as a pilot project and as funds allowed.

Garth Appanaitis, DKS Associates, said this was just a concept level, and there were a number of details that could be tweaked. Parking would be considered in the upcoming downtown planning. He explained the level of service chart and how much traffic would be relieved through downtown with the extension of the Newberg-Dundee bypass which would be comparable to today's traffic.

There was discussion on parking, working with ODOT, and the potential impacts to downtown. Councilors discussed the Downtown Coalition's support of Concept B, whether the timeframe for the option would allow for any real change and when the bypass might reach capacity as well as future plans to finish the bypass to Rex Hill.

MOTION: Corey/Rourke moved to direct staff to pursue inclusion of the “Concept B: Road Diet” option as the preferred option for downtown in the Transportation System Plan update. Motion carried (5 Yes/ 1 No [Woodruff]/ 1 absent [Bacon]).

Ordinance No. 2015-2779: Mayor Andrews called for any abstentions, conflicts of interest, or objections to jurisdiction. There were none.

Library Director Leah Griffith gave the staff report. She explained the current cumbersome process when street closures were planned in the Cultural District for events. The ordinance would establish a process where requests were sent to the permit administrator who would reply to the Cultural District via email whether or not it was approved. The Cultural District would then send an email to all of the affected property owners. She referred to a map of the area passed out by City Attorney Truman Stone.

There was a discussion on access and parking options for the nearby homeowner and application fees for the permits. LD Griffith said the Cultural District was not charging for these events because most of the events were sponsored by the District or Library and they were trying to encourage more use of the space. Fees could possibly be charged in the future.

Mayor Andrews opened and closed public testimony on the Ordinance. There was no public testimony or written correspondence.

MOTION: McKinney/Rourke moved to waive the second reading of Ordinance 2015-2779, An Ordinance establishing a unified, single permit for use of the Cultural District Festival Streets within the City, replacing separate permits required elsewhere in the Newberg Municipal Code. Motion carried (6 Yes/ 0 No/1 Absent [Bacon]).

MOTION: McKinney/Corey moved to adopt Ordinance 2015-2779 read by title only. Motion carried (6 Yes/ 0 No/1 Absent [Bacon]).

Request for Council Action on Enterprise Zone waivers: AP Pelz said waivers to the Enterprise Zone standards were allowed and this proposed resolution would create a process and criteria to allow waivers consistent with ORS 285 C and any additional City conditions. These waivers could be an incentive for keeping the business local even though they were not increasing jobs. The additional conditions staff came up with were geared towards the benefits of workforce training for the future. There was discussion regarding how the City conditions applied.

CM Betz clarified if the exemption criteria were approved and if there was a three year exemption, it would not come to Council but would be handled administratively. It would only come to Council for the extended five years. She would find out when the Enterprise Zone expired.

MOTION: McKinney/Corey moved to direct staff to prepare a resolution creating a process and criteria to allow waivers to the standard Enterprise Zone requirements consistent with ORS 285 C and additional city conditions. Motion carried (6 Yes/ 0 No/1 Absent [Bacon]).

Acceptance of the December 2014 Financial Report: Councilor Essin asked for more information in the staff report on the things that Council should be made aware of. CM Betz said staff would highlight issues of importance or concern.

MOTION: Rourke/Woodruff moved to accept the December 2014 Financial Reports. Motion carried (6 Yes/ 0 No/1 Absent [Bacon]).

COUNCIL BUSINESS:

CA Stone reported on the condition of City Hall and the contract to repair the flooding. Staff was still in their temporary office spaces. He clarified that the Enterprise Zone terminated on June 30, 2024.

EXECUTIVE SESSION: Executive session pursuant to ORS 192.660 (2) (h) relating to an update on the Urban Growth Boundary mediation. The Council entered executive session at 8:45 p.m. The Council re-entered open session at 9:05 p.m.

ADJOURNMENT: The meeting adjourned at 9:06 p.m.

ADOPTED by the Newberg City Council this 2nd day of March, 2015.

Sue Ryan, City Recorder

ATTESTED by the Mayor this _____ day of March, 2015.

_____ Bob Andrews, Mayor

REQUEST FOR COUNCIL ACTION

DATE ACTION REQUESTED: March 2, 2015

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

SUBJECT: Motion to approve lease of the Newberg Animal Shelter to the Newberg Animal Shelter Friends, retroactive to July 1, 2014 and authorizing the City Manager to execute the lease agreement.

Contact Person (Preparer) for this Motion: Truman A. Stone, City Attorney
Dept.: City Attorney's Office
File No.:

RECOMMENDATION:

Approve the Motion authorizing the City Manager to execute the proposed lease agreement between the City and the Newberg Animal Shelter Friends, retroactive to July 1, 2014.

EXECUTIVE SUMMARY:

The City of Newberg is an Oregon municipal corporation that owns an animal shelter. Newberg Animal Shelter Friends (NASF) is an Oregon non-profit corporation that exists to benefit animals in the community and has served as the fund raising organization for building the animal shelter. The City lacks the staff necessary to operate the shelter. NASF has been and intends to operate the shelter as a service and business similarly to other local humane societies.

NASF will operate the shelter, provide animal care, provide adoption, and similar services. NASF will cooperate with Yamhill County as it provides dog-control services through the Sheriff's Department or other designee. NASF will cooperate with the City by providing access and use of kennel space to the City and caring for animals under the jurisdiction of the City.

This lease between the City and NASF creates no partnership or other mutual, business entity between the City and NASF. The relationship of the parties is that of landlord and tenant. Any additional services provided by the City are pursuant to, and in furtherance of, that relationship.

FISCAL IMPACT:

As a budget reduction device, the position of Animal Control Officer was eliminated in the FY 2014-15 budget, leaving no city personnel available to operate the shelter. The NASF will operate the shelter, pay \$1.00 per year as a rental payment, and provide routine maintenance. The City will provide utility services, in a reasonable amount, and remain responsible for maintenance of the building systems.

STRATEGIC ASSESSMENT (RELATE TO COUNCIL GOALS):

This motion is brought at the direction of the Council.

ANIMAL SHELTER LEASE

Date: _____

Between: City of Newberg (“Landlord”)
PO Box 970, Newberg, OR 97132

And: Newberg Animal Shelter Friends (“Tenant”)
901 Brutscher St D PMB 107,
Newberg OR 97132

Recitals

- A. The City of Newberg is an Oregon municipal corporation that owns an animal shelter.
- B. Newberg Animal Shelter Friends (NASF) is an Oregon non-profit corporation that exists to benefit animals in the community and which has served as the fund raising organization for building the animal shelter.
- C. The City lacks the staff necessary to operate the shelter.
- D. NASF intends to operate the shelter as a service and business inside and outside Newberg in a manner similar to other local humane societies.
- E. NASF will operate the shelter, provide animal care, provide adoption services, and similar services.
- F. NASF will cooperate with Yamhill County as it provides dog-control services through the Sheriff’s Department or other designee.
- G. NASF will cooperate with the City by providing access and use of kennel space to the City and caring for animals under the jurisdiction of the City.
- H. This lease between the City and NASF creates no partnership or other mutual, business entity. The relationship of the parties is that of landlord and tenant. Any additional services provided by the City are pursuant to, and in furtherance of, that relationship.

Lease

Landlord leases to Tenant and Tenant leases from Landlord the property described in the following Section 1 (the “Premises”) on the terms and conditions stated below:

Section 1. Lease Terms

- 1.1 Date of Lease:** July 1, 2014
- 1.2 Tenant:** Newberg Animal Shelter Friends
Trade Name: NASF
Premises Address: 1591 S. Sandoz Road
Newberg, OR 97132
Notice Address: Barbara Lipinski, Registered Agent
PO Box 221, Dundee, OR 97132
- 1.3 Landlord:** City of Newberg
Notice Address: c/o City Attorney PO Box 970
Newberg, OR 97132

1.4 Premises: The Newberg Animal Shelter Building (the “Building”) with a street address of 1591 S. Sandoz Road, as generally described on the Site Plan attached hereto as Exhibit A. The Building is located on certain real property Newberg, Yamhill County, Oregon (the “Land”), which real property is more particularly described in Exhibit A.1, attached hereto.

- 1.5 Permitted Use of Premises:** Operation of an Animal Shelter.
- 1.6 Initial Term of Lease:** 48 Months.
Lease Commencement Date: July 1, 2014
Lease Expiration Date: June 30, 2018
- 1.7 Initial Base Rent:** \$1.00 / per Year
- 1.8 Other Consideration:** Operation of the shelter and care of animals under City Jurisdiction.

1.9 Exhibits:

THIS ANIMAL SHELTER LEASE is made and entered into between Landlord and Tenant on the Date of Lease set forth in Section 1.1. The defined terms used in this Lease (“Lease Terms”) have the meanings and definitions given them in Section 1. The Lease Terms, the Exhibits, the Addendum or Addenda described in the Lease Terms, and this Animal Shelter Lease agreement are and will be construed as a single instrument and are hereinafter referred to as the “Lease.”

Now, therefore, for valuable consideration, Landlord and Tenant covenant and agree as follows:

Section 2. Lease of Premises

- 2.1 Lease.** Subject to the terms and conditions of this Lease, Landlord hereby leases to Tenant and Tenant hereby leases from Landlord the Premises.
- 2.2 Term.** The Initial Term of this Lease is set forth in Section 1.6 above.
- 2.3 Delivery of Possession and Commencement.** Landlord will deliver the Premises to Tenant in good condition and repair. By acceptance of possession of the Premises hereunder, Tenant acknowledges that Tenant accepts the Premises “AS-IS, WHERE IS” and as suitable for Tenant’s intended use, in good and sanitary operating order, condition, and repair, and without representation or warranty by Landlord as to the condition, use, or occupancy.

2.4 Renewal. As long as Tenant is not in default under this Lease beyond the applicable cure period, if any, 120 days prior to expiration of the lease, Landlord agrees to enter into good faith negotiations for an extension of, or renewal of this lease.

2.5 City Access to Kennel Space. Landlord shall have access to two (2) kennel spaces for public safety purposes, such kennels to be specifically designated. Tenant agrees to care for the animals in these kennels as part of its normal operation. Landlord may institute policies and procedures for animals in Landlord's custody in these or other kennel spaces. Tenant agrees to follow and abide by such policies and procedures.

Section 3. Rent Payment

3.1 Rent. Tenant will pay to Landlord all Rent for the Premises without demand, deduction, or offset. The term *Rent* as used in this Lease includes Base Rent, Additional Rent (as hereinafter defined), and all other sums due under the Lease. Rent is payable by Tenant in advance on the first day of each month commencing on the Rent Commencement Date. Rent for any partial calendar month will be prorated based on a thirty (30)-day month for the number of days during that partial month the Premises are occupied by Tenant.

Section 4. Use of Premises

4.1 Permitted Use. Tenant may use the Premises for Tenant's Permitted Use and for no other purpose without Landlord's written consent. Tenant will not use the Premises in a manner that obstructs, annoys, or interferes with the rights of others. Tenant will not cause any nuisance nor permit any objectionable fumes, electromagnetic waves, vibration, noise, light, or radiation to be emitted from the Premises.

4.2 Equipment. Tenant will install only such equipment in the Premises as is customary for the Permitted Use and will not overload the floors or electrical circuits of the Premises or Building or change the wiring or plumbing of the Building or Premises. Any equipment, cables, wiring, conduit, additional dedicated circuits, and any additional air conditioning required because of any such equipment installed by Tenant will be installed, maintained, and operated at Tenant's sole expense and in accordance with Landlord's requirements.

4.3 Compliance with Laws. Both parties will give prompt notice to the other of any notice it receives of the violation of any law or requirement of any public authority with respect to the Premises or the use or occupancy thereof. Tenant will, at Tenant's expense, comply with all laws and requirements of any public authorities ("Laws") that, in respect of the Premises or the use and occupancy thereof, or the abatement of any nuisance in, on, or about the Premises, imposes any violation, order, or duty on Landlord or Tenant, arising from (a) Tenant's use of the Premises; (b) the manner of conduct of Tenant's business or operation of its installations, equipment, or other property therein; (c) any cause or condition created by or at the instance of Tenant; or (d) breach of any of Tenant's obligations hereunder.

4.3.1 ADA Law Compliance. Landlord and Tenant acknowledge that the provisions of the Americans with Disabilities Act (the "ADA") allow allocation of responsibility for compliance with the terms and conditions of the ADA in this Lease. Responsibility for compliance with the ADA is allocated as set forth in this Section. Tenant is responsible for

compliance with the applicable provisions of the ADA with respect to all improvements within the Premises except that Landlord represents that any improvements installed by Landlord or its contractors under this Lease will conform to the requirements of the ADA Compliance Guidelines in effect as of the date of substantial completion of the work. Landlord is responsible for compliance with the provisions of Title III of the ADA with respect to the exterior of the Building and the Land including sidewalks and walkways and the like, together with all entrances, lobbies, elevators, common restrooms, and the other common areas of the Building. Neither Landlord nor Tenant is obligated to supervise, monitor, or otherwise review the compliance activities of the other. References in this Lease to “Laws” are deemed to include the ADA.

4.3.2 Environmental Law Compliance. For purposes of this Section, the term *Hazardous Substances* means and includes all hazardous and toxic substances, waste, or materials, any pollutant or contaminant, including, without limitation, PCBs, asbestos, asbestos-containing materials, and raw materials that are included under or regulated by any Environmental Laws. For purposes of this Lease, the term *Environmental Laws* means and includes all federal, state, and local statutes, ordinances, regulations, and rules presently in force or hereafter enacted relating to environmental quality, contamination, and clean-up of Hazardous Substances. References in this Lease to *Laws* are deemed to include Environmental Laws. Landlord represents that to the best of its current actual knowledge, the Building is in compliance with all Environmental Laws respecting Hazardous Substances, and that Landlord has received no notice of any pending or threatened lien, action, or proceeding respecting any alleged violation of Environmental Laws affecting the Building.

4.3.3 Indemnity Regarding Legal Violations. Tenant will indemnify and hold harmless Landlord and all Superior Mortgagees (as defined in Section 18 below) and its and their respective partners, directors, officers, agents, and employees from and against any and all claims arising from or in connection with the violation of Laws including but not limited to the ADA and Environmental Laws, occurring in, at, or about the Building and the Land due to the acts or omissions of Tenant or its partners, directors, officers, agents, and employees, together with all costs, expenses, and liabilities incurred or in connection with each such claim, action, proceeding, or appeal, including, without limitation, all attorney fees and expenses. Landlord will indemnify and hold harmless Tenant and its partners, directors, officers, agents, and employees from and against any and all claims arising from or in connection with the violation of Laws, including but not limited to the ADA and Environmental Laws, occurring in, at, or about the Building and the Land due to the acts or omissions of Landlord or its partners, directors, officers, agents, and employees, together with all costs, expenses, and liabilities incurred or in connection with each such claim, action, proceeding, or appeal, including, without limitation, all attorney fees and expenses.

Section 5. Maintenance and Repair

5.1 Landlord Repairs. Landlord will repair, maintain, and/or replace, where necessary, the Common Areas and the roof, foundation, exterior walls, interior structural walls, all structural components, and all systems such as mechanical, electrical, HVAC, and plumbing systems of or in the Building and the Premises. Tenant expressly waives the benefits of any statute now or later in effect that would otherwise give Tenant the right to make repairs at Landlord’s expense and deduct that cost from Rent owing to Landlord.

5.2 Tenant's Repairs. Except for Landlord Repairs set forth in Section 5.1 above, Tenant will:

(a) maintain all portions of the Premises and fixtures situated within the Premises in good order and repair;

(b) maintain, repair, and replace, if necessary, all special equipment and decorative treatments installed by or at Tenant's request and that serve the Premises only;

(c) make all necessary repairs and replacements to all portions of the Premises and pay Landlord for the repairs or replacements to the Building if any such repairs or replacements are needed because of Tenant's misuse or primary negligence; and

(d) not commit waste to the Premises, Building, Common Areas, or Property. If Tenant fails to perform Tenant's obligations under this Section or under any other Section of this Lease, after ten (10) business days' prior written notice to Tenant, except in an emergency when no notice will be required, Landlord may enter the Premises, perform the obligations on Tenant's behalf, and recover the cost of performance, as Additional Rent payable by Tenant with the next installment of Base Rent, as long as that rate does not exceed the maximum rate then allowed by Law.

5.3 Costs of Repair. Tenant will reimburse Landlord upon demand for the cost of repair incurred by Landlord for damage caused by the negligent or intentional acts or any breach of this Lease by Tenant, its employees, contractors, agents, or invitees.

5.4 Landscaping. Landlord agrees to mow the front and back lawn areas. Tenant will maintain the fenced dog run areas, flowers or other decorative plants.

Section 6. Alterations

6.1 Alterations by Landlord. As long as the modification, alteration, or change does not materially interfere with the operation by Tenant of its business in the Premises, Landlord may modify, alter, or change any improvements in the Building, the parking area, and other Common Areas. Tenant may make written request of Landlord for modifications or the Premises. Upon receipt of such requests, Landlord agrees to enter into discussions concerning such request with Tenant. Landlord is not bound to make any improvements or alterations, but request for improvements or alterations will be subject to the discretion of the Landlord and its budgeting process.

6.2 Alterations by Tenant. Tenant will not make any alterations, additions, or improvements to the Premises or the Building that require a local government building permit, or install any wall or floor covering therein without obtaining Landlord's prior written consent, which consent Landlord may withhold in Landlord's sole discretion. If Landlord consents in writing to any proposed alteration of the Premises, Tenant will (i) contract only with a Landlord-approved contractor for the performance of the alterations, (ii) obtain all necessary governmental permits and approvals and deliver copies thereof to Landlord, and (iii) cause all alterations to be completed in compliance with Landlord-approved plans and specifications with all due diligence. Except for removable machinery and unattached movable trade fixtures, all improvements, alterations, wiring, cables, or conduit installed by Tenant will immediately become part of the Premises, with title vested in Landlord. Landlord may require that Tenant remove any such improvements, alterations, wiring, cables, or conduit installed by or for Tenant and restore the Premises to good condition and repair upon expiration or earlier termination of this Lease. Any contractor used by Tenant for any work in the Premises will be subject to review and approval by

Landlord, and Landlord may post notices of nonresponsibility in connection with any work being performed in the Premises by or at the request of Tenant. All work in the Premises by or at Tenant's request must comply with all applicable Laws. Tenant will not permit any liens to attach to the Building or Tenant's interest in the Premises as a result of any work performed by or at Tenant's request.

Section 7. Utilities and Services

7.1 General. Landlord will furnish water, sewer service, gas, and electricity to the Building at all times and will furnish heat, ventilation, and air conditioning (if the Building is air conditioned), at Building standard levels. Landlord will be responsible for garbage service. Tenant will furnish phone, internet, and security monitoring services.

Unless caused by the negligence or intentional misconduct of Landlord, interruption of any service or utility will not render Landlord liable to Tenant for damages, relieve Tenant from performance of Tenant's obligations under this Lease, or be deemed an eviction or disturbance of Tenant's use and possession of the Premises.

7.2 Extra Utilities. If, in Landlord's reasonable determination, giving due regard for any changes in use, Tenant's use of utilities or services of any kind is excessive (as compared to prior experience by Landlord of operation of this building recognizing that the shelter has not yet been fully operational), Landlord may impose a reasonable charge for supplying those extra utilities or services consumed by Tenant, which charge Tenant will pay Landlord monthly as Additional Rent.

7.3 Security. Landlord may, but will have no obligation to, provide security service or adopt any security measure concerning the Premises and the Building, and Tenant will abide by all reasonable security measures adopted by Landlord. Landlord will continue to make security badges for Tenant.

Section 8. Signs and Other Installations

No signs, awnings, or other apparatus will be painted on or attached to the Building or anything placed on any glass or woodwork of the Premises or positioned so as to be visible from outside the Premises, without Landlord's written consent, and Landlord's approval of design, size, location, and color. All signs installed by Tenant will comply with Landlord's standards for signs and all applicable codes. All signs and sign hardware will be removed by Tenant, at Tenant's sole cost and expense, upon termination of this Lease, with the sign location restored to its former state unless Landlord elects to retain all or any portion thereof.

Section 9. Insurance

Tenant, at its expense, will maintain at all times during the Term of this Lease, commercial general liability insurance in respect of the Premises and the conduct or operation of business therein, naming Landlord, as additional insureds, with a combined single limit of not less than one million and no/100 dollars (\$1,000,000.00). All such insurance will insure the performance by Tenant of the indemnity agreement with regard to liability for bodily injury to, illness of, or death of persons and damage to property set forth in this Lease. Tenant will deliver to Landlord and any additional insured the fully paid-for policies or certificates of insurance, in form reasonably satisfactory to Landlord, issued by the insurance company or its authorized agent, at least ten (10) days before the Lease Commencement Date. Tenant will procure and pay

for renewals of the insurance from time to time before the expiration thereof, and Tenant will deliver to Landlord and any additional insured the renewal policy at least thirty (30) days before the expiration of any existing policy. All the policies will contain a provision prohibiting cancellation or modification unless Landlord and any additional insured are given at least thirty (30) days prior written notice of the cancellation or modification. All insurance policies required to be carried by Tenant hereunder will be issued by responsible insurance companies authorized to issue insurance in the State of Oregon and rated B+ VIII or higher by Best's Insurance Rating Service.

Section 10. Indemnity

10.1 By Tenant. Tenant will indemnify, defend, and hold harmless Landlord and its managing agents and employees from any claim, liability, damage, or loss, or any cost or expense in connection therewith (including reasonable attorney fees), whether suffered directly or from a third-party claim arising out of (a) any damage to any person or property occurring in, on, or about the Premises, the Building, or the Property, (b) use by Tenant or its agents, invitees, or contractors of the Common Area and the Premises, and/or (c) Tenant's breach or violation of any term of this Lease.

10.2 Survival. The provisions of this Section 10 will survive the termination of this Lease.

Section 11. Eminent Domain

If the entire Building or any portion of the Premises is permanently taken under any right of eminent domain, or any transfer in lieu thereof, and the taking renders the Premises unsuitable for Tenant's use, then either party may terminate this Lease by giving thirty (30) days' prior written notice to the other party, and the termination will be effective on the date possession of the Building or Premises is delivered to the condemning authority. If this Lease is not so terminated, Landlord will repair and restore the Premises, and this Lease will continue, but, commencing with the date on which Tenant is deprived of the use of any portion of the Premises or of any rights under this Lease, Base Rent will be proportionately abated or reduced, based on the extent to which Tenant's use of the Premises is impaired. Any and all awards payable by the condemning authority in connection with a taking will be the sole property of Landlord; however, nothing contained herein will prevent Tenant from prosecuting a separate claim for the value of its interest, as long as that award does not diminish the award that Landlord would otherwise be entitled to as a result of the taking.

Section 12. Fire or Casualty

12.1 Major Damage. In case of Major Damage, Landlord or Tenant may elect to terminate this Lease by notice in writing to the other party within thirty (30) days after the date of the Major Damage. *Major Damage* means damage by fire or other casualty to the Building or the Premises (i) that causes the Premises or any substantial portion of the Building to be unusable, (ii) the repair of which will cost more than twenty-five percent (25%) of the replacement value of the Building, or (iii) that is not required under this Lease to be covered by insurance. If neither Landlord nor Tenant terminates this Lease after any Major Damage, or if damage occurs to the Building or Premises that is not Major Damage, Landlord will promptly restore the Premises to the condition existing immediately before the damage, and this Lease will continue in full force

and effect. In the event of any damage to the Building or Premises from a fire or other casualty, Tenant will promptly repair and restore all tenant improvements or alterations installed or paid for by Tenant or pay the cost of the restoration to Landlord if Landlord performs the restoration. In the event the Premises are damaged by any casualty, Rent will be reduced in proportion to the unusable portion of the Premises from the date of damage until the date restoration work to the Premises is substantially complete.

12.2 Waiver of Subrogation. Both parties will secure an appropriate clause in, or an endorsement on, each property insurance policy obtained by it and covering or applicable to the Premises or the personal property, fixtures, and equipment located therein or thereon, under which the insurance company waives subrogation or permits the insured, before any loss, to agree with a third party to waive any claim it might have against the third party without invalidating the coverage under the insurance policy. The waiver of subrogation or permission for waiver of any claim will extend to the parties and their respective agents and employees. Each party releases the other and its agents and employees in respect of any claim (including a claim for negligence) that it might otherwise have against the other party or its agents or employees for loss, damage, or other casualty (including rental value or business interest, as the case may be) occurring during the Term of this Lease and normally covered under a special form property insurance policy in the form normally used in respect of similar property in Portland, Oregon.

Section 13. Assignment and Subletting

Tenant will not sell, assign, sublet, or otherwise transfer by operation of law or otherwise this Lease or any interest in this Lease or any portion of the Premises, without the prior written consent of Landlord, nor will Tenant encumber or permit any lien to be placed on the Tenant's interest in this Lease or the Premises, voluntarily or by operation of law. Any sale, assignment, encumbrance, subletting, occupation, lien, or other transfer of this Lease that does not comply with the provisions of this Section 13 will be void.

Tenant will not assign, transfer, or encumber its interest under this Lease or sublet all or any portion of the Premises without having first obtained Landlord's written consent, except in the following circumstances:

13.1 Successors. No consent of Landlord will be required in connection with an assignment or sublease with an entity that is an affiliate or subsidiary of Tenant or in connection with a merger or change in control of Tenant.

Section 14. Default

14.1 Events of Default. Each of the following is an Event of Default by Tenant under this Lease:

14.1.1 Failure by Tenant to pay Rent or any other charge due under this Lease within five (5) days after receipt of written notice from Landlord that the same is then due.

14.1.2 Failure by Tenant to comply with any other obligation of this Lease within twenty (20) days following written notice from Landlord specifying the failure (except in the case of emergency, in which event Landlord will be required to give only such notice as is reasonable under the circumstances); however, if the nature of Tenant's default requires more than twenty (20) days to correct, Tenant will not be deemed in default of this Lease as long as Tenant commences the cure of the failure within the twenty (20)-day period and thereafter proceeds in

good faith and with all diligence to complete the cure as soon as possible but in no event later than ninety (90) days after the date of Landlord's notice of default.

14.1.3 Tenant's abandonment of the Premises or failure by Tenant to occupy the Premises within twenty (20) days after notice from Landlord.

14.1.4 Assignment or subletting by Tenant in violation of Section 13.

14.1.5 Tenant's failure to timely execute and deliver to Landlord the documents described in Sections 18 or 22 within ten (10) days of written notice from Landlord.

14.1.6 Tenant's insolvency, business failure, or assignment for the benefit of its creditors. Tenant's commencement of proceedings under any provision of any bankruptcy or insolvency law or failure to obtain dismissal of any petition filed against it under such laws within the time required to answer, or the appointment of a receiver for all or any portion of Tenant's properties or financial records, also constitutes and Event of Default.

14.2 Remedies for Default. Upon the occurrence of an Event of Default described in Section 14.1, Landlord may exercise the following remedies as well as any other remedies at law or in equity, by statute or as set forth in this Lease:

14.2.1 Landlord may terminate this Lease, reserving all rights to damages resulting from Tenant's breach. Whether or not Landlord terminates this Lease, Landlord may retake possession of the Premises by any legal means including self-help and any relet or use of the Premises by Landlord will not be deemed a surrender or waiver of Landlord's right to damages.

14.3 Landlord's Right to Cure Default. Landlord may, but will not be obligated to, make any payment or perform any obligation under this Lease that Tenant has failed to perform, as and when required hereunder. Tenant will pay Landlord for all expenditures and costs incurred by Landlord in performing any obligation of Tenant, upon demand, with interest thereon at the rate of nine percent (9 %) per month, but in no event at a rate in excess of that allowed by Law. Landlord's right to cure any Tenant default is for the sole protection of Landlord and in no event will Tenant be released from any obligation to perform all of Tenant's obligations and covenants under this Lease, and the contents of this Section will not be deemed a waiver by Landlord of any other right that Landlord may have arising from any default of this Lease by Tenant, whether or not Landlord exercises its rights under this Section.

14.4 Landlord's Default. Landlord will not be deemed to be in default of the performance of any obligation required to be performed by Landlord hereunder unless and until Landlord fails to perform the obligation within twenty (20) days after written notice by Tenant to Landlord specifying the nature of Landlord's alleged default; however, if the nature of Landlord's alleged default is such that more than twenty (20) days are required for its cure, then Landlord will not be deemed to be in default if Landlord commences performance within the twenty (20)-day period and thereafter diligently prosecutes the same to completion. In the event of any default by Landlord, Tenant may exercise any and all rights and remedies available at law or in equity.

14.5 Dispute Resolution.

14.5.1 Informal Discussion with City Manager. Landlord designates the City Manager as contact person under this Lease. Tenant shall designate a contact person, In the event of any problems under this Lease then the designated contact people shall communicate for the purpose of trying to resolve the problem. This step must be taken before any other dispute resolution steps hereunder. As a means of reducing potential conflict, the two contacts will meet annually to discuss any adjustment or modification that either party wishes to discuss.

14.5.2 Disputes Subject to Mediation and Arbitration. Any dispute between the parties relating to the interpretation of their rights and obligations under this Lease or in which the amount in controversy is a liquidated sum of less than \$50,000 will be resolved solely by mediation and arbitration in accordance with the provisions of this Section 14.5.

14.5.3 Initial Mediation. With respect to any dispute between the parties that is to be resolved by arbitration as provided in Section 14.5.3 below the parties will attempt in good faith first to mediate the dispute and use their best efforts to reach agreement on the matters in dispute. In the event that the parties are unable to resolve the dispute or controversy within thirty (30) days of the date a controversy arises, either party may, by delivering five (5) days written request to the other party, employ the services of a third person mutually acceptable to the parties to conduct and commence mediation within fifteen (15) days of the employment. If the parties are unable to agree on such a third person, or, if on completion of such mediation, the parties are unable to agree and settle the dispute, then the dispute will be referred to arbitration in accordance with Section 14.5.3 below.

14.5.4 Arbitration. Any dispute between the parties that is to be resolved by arbitration as provided in this Section 14.5.3 will be settled and decided by arbitration conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association as then in effect (the "Arbitration Rules"), except as provided below. Any such arbitration will be held and conducted in the city in which the Building is located, before one (1) arbitrator who will be selected by mutual agreement of the parties; if agreement is not reached on the selection of an arbitrator within fifteen (15) days of receipt of a written demand for arbitration as set forth below, then an arbitrator will be appointed by the presiding judge of the Circuit Court of the County in Oregon in which the Building is located. The provisions of the Arbitration Rules will apply and govern the arbitration subject, however, to the following:

14.5.3.1 Any demand for arbitration must be in writing and must be made within ninety (90) days after the claim, dispute, or other matter in question has arisen. The arbitration proceeding must commence within thirty (30) days of appointment of the arbitrator, and all document exchange and other discovery of evidence must be completed within twenty (20) days of the appointment.

14.5.3.2 The arbitrator appointed must be a former or retired judge or practicing attorney with at least ten (10) years experience in real property and municipal matters.

14.5.3.3 The arbitrator will resolve the controversy in accordance with the Arbitration Rules, applicable Law, and the terms and conditions of this Lease. Thereafter, the arbitrator will prepare in writing and provide to the parties his or her decision, including factual findings and reasons on which the decision is based.

14.5.3.4 The arbitration proceeding must be conducted and completed within five (5) days after its commencement, and the decision of the arbitrator must be made within sixty (60) days from the date of receipt of the written demand for arbitration.

14.5.3.5 The prevailing party will be awarded reasonable attorneys' fees, expert and nonexpert witness costs and expenses, and other costs and expenses incurred in connection with the arbitration, unless the arbitrator, for good cause, determines otherwise.

14.5.3.6 Costs and fees of the arbitrator will be borne by the non-prevailing party.

14.5.3.7 The decision of the arbitrator, which may include equitable relief, will be final, and judgment may be entered on the decision in accordance with applicable Law in any court having jurisdiction over the matter.

Section 15. Notices

All notices, demands, consents, approvals, and other communications provided for herein will be invalid unless set forth in a writing and delivered by facsimile transmission, overnight air courier, personal delivery, or registered or certified U.S. mail with return receipt requested to the appropriate party at its address as set forth in Section 1.2 for Tenant and Section 1.3 for Landlord.

Addresses for notices may be changed from time to time by written notice to all other parties. Any communication given by facsimile transmission must be confirmed within forty-eight (48) hours by overnight air courier. If any communication is given by mail, it will be effective upon the earlier of (a) forty-eight (48) hours after deposit in the U.S. mail, with postage prepaid, or (b) actual receipt, as indicated by the return receipt; if given by facsimile, when sent; and if given by personal delivery or by overnight air courier, when delivered.

Section 16. Access; Moving Procedures

16.1 Access. Tenant will have access to the Premises 24 hours per day, 7 days per week, and 52 weeks per year. During times other than normal Building hours, Landlord may require that Tenant's employees, officers, and invitees identify themselves or display Building passes to enter the Building. Subject to any federal or state security regulations, Landlord will not be liable to Tenant for permitting or refusing to permit access to the Premises by anyone. After reasonable notice to Tenant, Landlord may enter upon the Premises with its passkey or other reasonable means to assess compliance with this Lease, perform required or necessary services, maintenance, repairs, alterations, or services to the Building or the Premises, and post appropriate notices, and during the last three months of the Lease Term, show the Premises to any potential future tenant. Except in case of emergency, all entry to the Premises will be at times and in a manner that minimizes interference with Tenant's use of the Premises.

Section 17. Nonrecourse Lease

Tenant will look only to Landlord's estate and property in the Land and the Building (or the proceeds thereof) for the satisfaction of Tenant's remedies, including the collection of an arbitration award, a judgment, or another judicial process requiring the payment of money by Landlord in the event of any default by Landlord hereunder, and no other property or assets of Landlord or its partners or principals, disclosed or undisclosed, will be subject to levy, execution, or other enforcement procedure for the satisfaction of Tenant's remedies under or with respect to this Lease, the relationship of Landlord and Tenant hereunder, or Tenant's use or occupancy of the Premises.

Section 18. Subordination, Notice to Superior Lessors and Mortgages

18.1 Subordination. Any mortgage, deed of trust, or ground lease to which this Lease is, at the time referred to, subject and subordinate is called a "Superior Mortgage," and the holder of a Superior Mortgage, or its successor in interest, at the time referred to, is called a "Superior Mortgagee." This Lease, and all rights of Tenant, will be subject and subordinate to all mortgages that may now or hereafter affect the Land and the Building, whether or not the mortgages also cover other lands and buildings, to each and every advance under such mortgages, and to all renewals, modifications, replacements, and extensions of such mortgages. This Section is self-

operative, and no further instrument of subordination will be required. In confirmation of the subordination, Tenant will promptly execute, acknowledge, and deliver any instrument that Landlord or any Superior Mortgagee may reasonably request to evidence the subordination.

18.2 Notice. If any act or omission of Landlord would give Tenant the right, immediately or after lapse of a period of time, to cancel or terminate this Lease, or to claim a partial or total eviction, Tenant will not exercise the right: (i) until it has given written notice of the act or omission to Landlord and each Superior Mortgagee whose name and address previously has been furnished to Tenant; and (ii) until a reasonable period of time for the parties to cure the condition has passed.

18.3 Attornment. For the purposes of this Section, the term "Successor Landlord" means the Superior Mortgagee if the same succeeds to the rights of Landlord under this Lease, whether through possession or foreclosure action or delivery of a new lease or deed, or any third party that succeeds to the rights of Landlord under this Lease by virtue of having purchased the Land and the Building at a foreclosure sale. The Successor Landlord will accept Tenant's attornment, assume Landlord's obligations under the Lease, and will agree in writing not to disturb Tenant's quiet possession of the Premises. Tenant will attorn to and recognize the Successor Landlord as Tenant's Landlord under this Lease, and Tenant and the Successor Landlord will promptly execute and deliver an instrument reasonably acceptable to the parties to evidence the attornment and non-disturbance. Upon the attornment, this Lease will continue in full force and effect as a direct lease between the Successor Landlord and Tenant on all of the terms, conditions, and covenants as are set forth in this Lease except that the Successor Landlord will not: (i) be liable for any previous act or omission of Landlord under this Lease; (ii) be subject to any offset, deficiency, or defense that has accrued to Tenant against Landlord; (iii) be bound by any previous modification of this Lease or by any previous prepayment of more than one (1) month's Base Rent, unless the modification or prepayment has been expressly approved in writing by the Superior Mortgagee; or (iv) be liable for the return of any security deposit that was not actually transferred to the Successor Landlord.

Section 19. Termination

Tenant may terminate this Lease upon the giving of 60 days notice. This right to terminate shall be unrestricted other than the obligation of Tenant to remove all animals from the facility and leave it in broom clean condition, wear and tear expected.

Section 20. Surrender; Holdover

Upon expiration or earlier termination of this Lease, Tenant will surrender the Premises and, at Landlord's option, all improvements and alterations therein, vacuumed, swept, and free of debris and in good and serviceable condition, subject to ordinary wear and tear. Tenant will remove all of its personal property and any conduits, wiring, cables, or alterations if required by this Lease and will repair all damage to the Premises and the Building resulting from that removal. If Tenant fails to remove any such personal property or alterations, those items will be deemed abandoned, and Landlord may remove or dispose of the items without liability to Tenant or others. Upon demand, Tenant will reimburse Landlord for the cost of such removal.

If Tenant fails to surrender the Premises and remove all its personal property as set forth herein, Landlord may either: (i) recognize Tenant as a month-to-month tenant at sufferance, and such tenancy will be subject to all terms of this Lease, except that Rent will be \$3,000/month,

and all options or other rights regarding extension of the term or expansion of the Premises will automatically terminate; or (ii) evict Tenant from the Premises and recover all damages resulting from Tenant's wrongful holdover.

Section 21. Hazardous Materials

Neither Tenant nor Tenant's agents or employees will cause or permit any Hazardous Material, as hereinafter defined, to be brought, stored, used, generated, released into the environment, or disposed of on, in, under, or about the Premises, Building, or Common Areas, except reasonable quantities of cleaning supplies and office supplies necessary to or required as part of Tenant's business that are generated, used, kept, stored, or disposed of in a manner that complies with all laws regulating any such Hazardous Materials and with good business practices. Tenant covenants to remove from the Premises (or the Building or Common Areas, if applicable), upon the expiration or sooner termination of this Lease and at Tenant's sole cost and expense, any and all Hazardous Materials brought, stored, used, generated, or released on, in, or into the environment by Tenant, its agents, employees, or invitees during the term of this Lease. To the fullest extent permitted by law, Tenant hereby agrees to indemnify, defend, protect, and hold harmless Landlord, Landlord's managing agent, their respective agents and employees, and their respective successors and assigns, from any and all claims, judgments, damages, penalties, fines, costs, liabilities, and losses that arise during or after the term directly or indirectly from the use, storage, disposal, release, or presence of Hazardous Materials by Tenant, its agents, employees, or invitees on, in, or about the Premises, the Building, or the Common Areas that occurs during the term of this Lease. To the fullest extent permitted by law, Landlord hereby agrees to indemnify, defend, protect, and hold harmless Tenant, its agents and employees, and its respective successors and assigns, from any and all claims, judgments, damages, penalties, fines, costs, liabilities, and losses that arise during or after the term directly or indirectly from the use, storage, disposal, release, or presence of Hazardous Materials by Landlord, its agents, employees, or contractors on, in, or about the Premises, the Building, or the Common Areas. Tenant will promptly notify Landlord of any release of Hazardous Materials in, on, or about the Premises, the Building, or Common Areas that Tenant, or Tenant's agents or employees, becomes aware of during the Term of this Lease, whether caused by Tenant, Tenant's agents or employees, or any other persons or entities.

As used herein, the term *Hazardous Material* means any hazardous or toxic substance, material, or waste that is or becomes regulated by any local governmental authority, the state of Oregon, or the United States government. The term *Hazardous Material* includes, without limitation, any material or substance that is (i) defined as a "hazardous waste," "extremely hazardous waste," "restricted hazardous waste," "hazardous substance," "hazardous material," or "waste" under any federal, state, or local law, (ii) petroleum, and (iii) asbestos. The provisions of this Section 20, including, without limitation, the indemnification provisions set forth herein, will survive any termination of this Lease.

Section 22. Attorney Fees

If suit or action is instituted in connection with any controversy arising out of this Lease, including any bankruptcy proceeding and arbitration proceeding, the prevailing party will be entitled to recover, in addition to costs, such sums as the court may adjudge reasonable as attorney fees at trial and on all appeals or petitions for review arising out of the suit or action. If

Landlord engages a collection agency to pursue any delinquent amounts owed by Tenant, Tenant will pay all collection agency fees charged to Landlord, in addition to all other amounts payable under this Lease.

Section 23. Estoppel

At any time and from time to time upon not less than ten (10) day's prior notice from either party, the other party will execute, acknowledge, and deliver to the requesting party a certificate certifying that this Lease is in full force and effect and unmodified or, if there are any modifications, that the Lease is in full force and effect as modified; that Tenant is in possession of the Premises; the dates to which Rent has been paid in advance and the amount of any Security Deposit or prepaid Rent; and such other matters as may be reasonably requested.

Section 24. Quiet Enjoyment

Landlord warrants that as long as Tenant complies with all terms of this Lease, Tenant will have quiet and peaceful possession of the Premises free of disturbance by Landlord or others claiming by or through Landlord.

Section 25. Force Majeure

If the performance by either party of any provision of this Lease (other than the payment of rent) is prevented or delayed by any strikes, lockouts, labor disputes, acts of God, government actions, civil commotions, fire or other casualty, or other causes beyond the reasonable control of the party from whom performance is required, the party will be excused from such performance for the period of time equal to the time of that prevention or delay up to a maximum of 180 days.

Section 26. Brokers

Each party represents that, it has not had any dealings with any real estate broker, finder, or other person with respect to this Lease. Each party agrees to indemnify and hold the other party harmless from and against any and all costs, expenses, or liability for commissions or other compensation or charges claimed by or awarded to any broker or agent resulting from a breach of the representation set forth above in this section.

Section 27. Governing Law

This Lease will be construed and interpreted and the rights of the parties determined in accordance with the laws of the state of Oregon (without reference to the choice-of-law provisions of Oregon law). Regarding matters of law concerning the internal corporate affairs of any corporate entity that is a party to or the subject of this Lease, the law of the jurisdiction under which the entity derives its powers will govern.

Section 28. Nonwaiver

No delay by either party in promptly enforcing any right or remedy set forth in this Lease will be deemed a waiver thereof, and that right or remedy may be asserted at any time after the delaying party becomes entitled to the benefit of the right or remedy notwithstanding the delay.

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Section 29. Captions

The Section headings of this Lease are for descriptive purposes only and in no way define, limit, or describe the scope, intent, or meaning of this Lease.

Section 30. Consent

Except where otherwise specifically provided in this Lease to the contrary, whenever a party’s consent is required under this Lease, the party will not unreasonably withhold its consent.

Section 31. Time of the Essence and Holidays

Time is of the essence of each and every provision hereof. If the final date of any period of time set forth herein occurs on a Saturday, Sunday, or legal holiday, then the expiration of the period of time will be postponed to the next day that is not a Saturday, Sunday, or legal holiday.

Section 32. Complete Agreement; No Implied Covenants

This Lease and the attached Exhibits and schedules, if any, contain the entire agreement of the Landlord and Tenant concerning the Premises, Building, Common Areas, and Land, and all prior written and oral agreements and representations between the parties are void. Landlord and Tenant agree that there are no implied covenants or other agreements between the parties except as expressly set forth in this Lease. Neither Landlord nor Tenant is relying on any representations of the other party except those expressly set forth herein.

Section 33. Successors

This Lease will bind and inure to the benefit of the parties, their respective heirs, successors, and permitted assigns.

IN WITNESS WHEREOF, the duly authorized representatives of the parties have executed this Lease:

LANDLORD:

TENANT:

By: Jacque M. Betz

By: _____

Title: City Manager

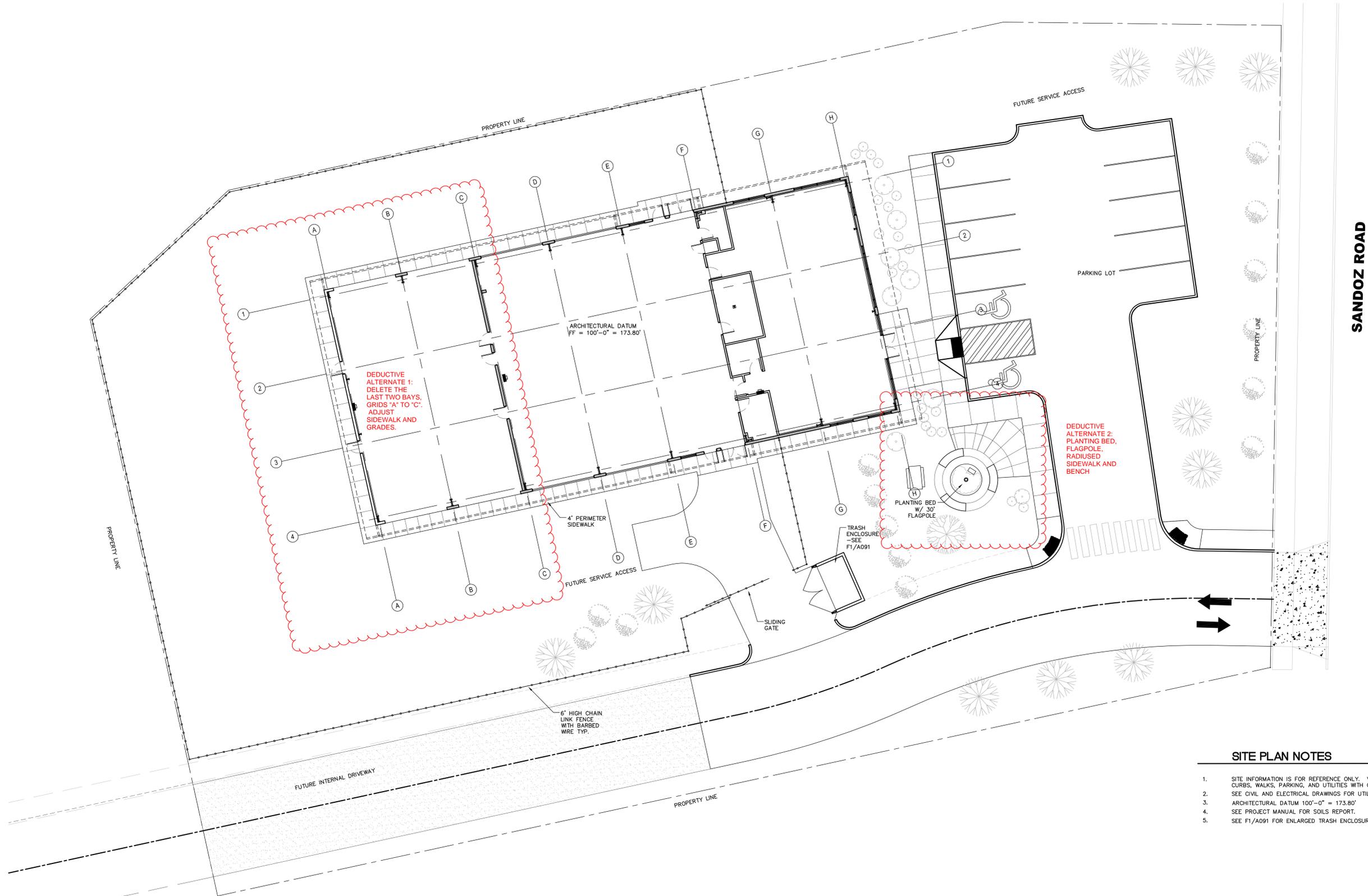
Title: _____

Date: _____

Date: _____

Approved as to form:

Truman A. Stone, City Attorney



**CITY OF
 NEWBERG
 ANIMAL
 SHELTER -
 SHELL/
 MINI-CORE
 NEWBERG, OREGON**

PROJECT NO.: 10108
 FILE:
 DRAWN: MWJ
 DATE: APRIL 11 2011 - BID ISSUE
 REVISION: DESCRIPTION:

SITE PLAN NOTES

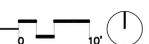
1. SITE INFORMATION IS FOR REFERENCE ONLY. VERIFY GRADING, CURBS, WALKS, PARKING, AND UTILITIES WITH CIVIL DRAWINGS.
2. SEE CIVIL AND ELECTRICAL DRAWINGS FOR UTILITY INFORMATION.
3. ARCHITECTURAL DATUM 100'-0" = 173.80'
4. SEE PROJECT MANUAL FOR SOILS REPORT.
5. SEE F1/A091 FOR ENLARGED TRASH ENCLOSURE PLAN.

REPRODUCTION OF THIS DRAWING IS EXPRESSLY PROHIBITED WITHOUT THE WRITTEN PERMISSION OF C2K ARCHITECTURE INC. THE USER ASSUMES ALL LIABILITY FOR ANY AND ALL DAMAGES OF ANY KIND, INCLUDING REASONABLE ATTORNEY'S FEES, ARISING FROM THE USE OF THIS DRAWING OR ANY INFORMATION, WHETHER FROM THESE DRAWINGS OR ANY OTHER SOURCE, AND AGREES TO INDEMNIFY AND HOLD HARMLESS C2K ARCHITECTURE INC. FROM AND AGAINST ALL SUCH DAMAGES AND COSTS, INCLUDING REASONABLE ATTORNEY'S FEES.

SHEET TITLE:
SITE PLAN

SHEET NO.:
A101

F1 SITE PLAN
 1" = 10'-0"



REQUEST FOR COUNCIL ACTION

DATE ACTION REQUESTED: March 2, 2015

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

SUBJECT: Green4Growth Grant Opportunity

Contact Person (Preparer) for this
Informational: Jacque M. Betz
Dept.: City Manager
File No.:

HEARING TYPE: No public hearing is required.

RECOMMENDATION:

This item is for informational purposes only.

EXECUTIVE SUMMARY:

Several months ago Waste Management and Yamhill County announced the Green4Growth Community Partnership Grant Program. A total of \$150,000 will be awarded to cities within Yamhill County through this special program sponsored by Waste Management. Each of the 10 cities is eligible for a \$15,000 grant, which must strengthen or stimulate economic development through business, industry, education, recreation, culture, the arts, stewardship or innovation. The criteria is broad by design so communities can determine for themselves how to invest the funds, which means they will not be denied the grant.

The application must be submitted by April 1, 2015. The grants will be awarded in the spring; applications must be submitted by the City to Yamhill County; and the grants may be used for a single project, part of a larger project, or more than one project.

Green4Growth Grant Proposal

As you are aware from previous City Manager Reports, in September 2014 Frontier Communications launched the “*America’s Best Communities Contest*” (ABC) at the Chehalem Cultural Center. This is a nationwide contest sponsored by both Frontier Communications and Dish Network where cash prizes up to \$3 million will be awarded to various communities over the next three years to inspire the kinds of economic creativity and innovation that transform communities and result in long term growth. Frontier chose Newberg to kick-off this program primarily because of its uniqueness and vibrancy. They are only accepting one application per community which means that there are many stakeholders in Newberg that have been meeting on a weekly basis to prepare the application. The original deadline was January 12, 2015 however that has since been extended to mid-March. The Mayor will provide a letter of endorsement before the application is submitted.

The ABC contest is an opportunity for Newberg and Dundee to transform our vision into a reality by providing financial incentives. It is about encouraging collaboration and cooperation among individuals and organizations that share the same goal; to increase economic development and create positive change within our community.

The lead applicant must have a non-profit status and between three to five local businesses must directly benefit from the public-private partnership. The Chehalem Chamber of Commerce (Chamber) was chosen as the applicant. The cross-sector team (stakeholders) consists of local business people, nonprofits, and local government including The City of Newberg, Chamber, George Fox College, City of Dundee, Newberg Providence Medical Center, Dennis Lewis (Video, Audio), Chehalem Parks and Recreation District, Loni Parrish, Climax, A-Dec, Newberg Downtown Coalition and Chehalem Cultural District. Below is a breakdown of the process.

QUARTER-FINALIST ROUND (APRIL 29, 2015)

As many as 50 quarter-finalists will receive:

- **\$35,000** and support to bring their plans to life, to define their vision and to develop a plan to put into motion
- A GoPro camera to share their stories along the way

The Requirements Include:

- Complete a Community Revitalization Plan focused on economic development
- Obtain \$15,000 of community matching funds
- Present a 7-month budget outlining the use of cash award and community matching funds
- Create a budget proposal of \$100,000 for possible 11-month implementation of the Community Revitalization Plan.
- Provide video and blog submissions to report progress
- Complete a Winner's Agreement that meets the requirements for this round of competition
- In addition, to the extent possible, at least half of the selected Quarter-Finalists will represent rural communities across the Frontier Communications Service Area.

SEMI FINALIST ROUND (JANUARY 2016)

- Up to 15 Semi-Finalists will receive:
- Invitation to the America's Best Communities Summit where the strongest plans will be presented to the judges
- Airfare and accommodation for up to three Applicant Team members to present their plans

The Requirements Include:

- Attend America’s Best Communities Summit
- Provide a public 15-minute presentation of their Community Revitalization Plan to a panel of esteemed judges
- Complete a Winner’s Agreement that meets the requirements for this round of competition
- In addition, to the extent possible, based on the submissions, at least half of the 15 Semi-Finalists will come from rural communities.

FINALIST ROUND (APRIL 2016)

- Up to 8 Finalists will be awarded **\$100,000** to bring their plans to life
- In-kind awards from the ABC Prize sponsors
- 11 months to implement the tactics outlined in the Community Revitalization Plan

The Requirements Include:

- 10 unedited, raw GoPro video content uploads documenting project progress
- 3 quarterly updates indicating progress on their plan, including metrics and expenditures
- Final report capturing progress made during the 11-month time frame
- Commit to storytelling over the implementation period of 11 months, including press releases, press events, and more
- Complete a Winner’s Agreement that meets the requirements for this round of competition

WINNER ROUND (APRIL 2017)

- 3 Grand Prize winners will receive the following cash awards:
 - First Place: **\$3 million**
 - Second Place: **\$2 million**
 - Third Place: **\$1 million**
- An original outdoor mural depicting the vibrancy and resiliency of their community painted by a locally identified artist
- A sign identifying the city as an America’s Best Communities winner

The Requirements Include:

- Commit to 12 additional months of storytelling, including press releases, press events, and participation in other PR opportunities, and to share best practices with other US communities
- Complete a Winner's Agreement that meets the requirements for this round of competition

The application is very complex and has required a great deal of collaboration, time, and cohesiveness with all of the organizations involved. To date we have reviewed 13 different "visionary" or "master" plans and decided which information will best suffice for the application (we have word limits for each question). We are completing final edits and the application will be submitted on time. To date, it appears that there are only 68 cities nationwide with open applications and, with 50 quarter finalists being announced, our chances of advancing are favorable.

In deciding how to best utilize the Green4Growth Grant of \$15,000 I met with Chamber Executive Director Sheryl Kelsh and Newberg Downtown Coalition Director Mike Ragsdale to discuss options for Newberg. It was unanimous that we use the grant for the match requirement for the ABC application (which also happens to be \$15,000). This of course is contingent upon our application progressing to the quarter-finalist round. Should the City not advance to the next phase of the ABC Grant process then we would ask Waste Management for an amendment to our Green4Growth application to use the funds toward a wayfinding signage consultant as part of the downtown transformation process, which all three of us agreed would be our second choice.

After the application: What does it mean to be a quarter-finalist?

As outlined above, we will receive a prize of \$35,000 contingent on a commitment to raise matching funds of \$15,000 cash (Green4Growth Grant). The prize award and matching funds will be spent to develop a Community Revitalization Plan during this round of competition.

The Community Revitalization Plan is a requirement where the Applicant Team leads a community visioning and planning process that will outline a strategic plan for community revitalization and economic growth. The plan will include a report of progress made since receiving the Quarter-Finalist prize of \$35,000, the community vision and an identified set of projects and programs to be implemented with the Finalist prize award of \$100,000 if the Applicant Team is selected.

I did not put a copy of the ABC application in the Council packet because it is not complete and it would become a public document. Council will get a copy of the final application once it has been approved by the stakeholders group. For purposes of this report I will share two excerpts. The first is:

Describing the five (5) most pressing challenges or key barriers to our community's revitalization and economic growth:

Transportation

Both Newberg and Dundee are challenged with an overcapacity state highway choking our downtowns with semi-trucks, discouraging pedestrians and backing up more than a mile at peak times. Local street maintenance is also a challenge caused by declining tax revenues.

Downtown

In part because of the congestion, Newberg's downtown has struggled for decades with multiple vacancies and high business turnover. Dundee's downtown is underdeveloped and is almost completely divided by the state highway. Both need to strengthen their retail core to attract residents and tourists.

Increase Tourism

Our community is a burgeoning destination for wine tourism, yet we lack the marketing budgets and infrastructure to support the growth. With just 780 hotel rooms in all of Yamhill County, an estimated 3,000 room nights are annually sent out of the community. The community's \$50,000 marketing budget is dwarfed by Portland's annual \$18 million. More high-quality restaurants are also needed.

Workforce Development & Employment Diversification

Leading research finds that longer individual commutes erode social ties and local civic engagement. More than 75% of our workforce commutes to work outside of Newberg and Dundee, with many residents traveling an hour into Portland. Although strong in agriculture, manufacturing and education, our cities lack any technology industry.

Housing

Beyond single-family housing, we need to ensure there is adequate housing for a diverse population, including affordable housing for a growing population of college students, as well as employees in the agriculture, tourism, and hospitality industries. Additional specialized housing is needed for an aging population.

The second, highlight what changes or improvements that have been considered or implemented in the past five (5) years to address those challenges and barriers?

Transportation

The Newberg-Dundee bypass will significantly reduce congestion. Regional bus service has been added. Local streets are being improved with the addition of local taxes and fees.

Downtown Revitalization

Newberg Downtown Coalition was formed in 2010 as part of the community-revitalization Main Street program. More than \$7 million was spent constructing Chehalem Cultural District, which hosts the Farmers Market, Tunes on Tuesday and a community Christmas tree. A \$200,000 state planning grant will fund transportation growth management for downtown Newberg in 2015. Several new restaurants have opened in both downtowns.

Tourism

Chehalem Valley Chamber of Commerce opened a new visitor center with a wine education tasting room, created new print pieces, and updated a promotional website. Dundee has rebranded with new signage, a new website and increased social media presence. A local family privately funded the world-class Allison Inn. A consultant has been engaged to pursue a mid-level hotel for the community.

Workforce Development & Employment Diversification

In 2011 a community college opened in Newberg to provide trade education to support local manufacturing businesses. George Fox University has expanded its professional programs in engineering, nursing, physical therapy and design. Newberg added an Enterprise Zone to encourage business recruitment and retention.

Housing

Both cities have proposed new riverfront neighborhoods with mixed-use commercial and residential areas. Dundee's plan would add 1,000 homes. Newberg has 450 acres inside city limits designated for housing development. Newberg has encouraged affordable housing by reducing minimum lot sizes, rezoning areas to higher density and given incentives for high-density construction. Apartment complexes are being built.

Other questions being finalized relate to what local resources were allocated to the improvements mentioned above, what roles the applicant team members play in bringing about those changes or the consideration of those improvements; current economic development initiatives that are supporting local businesses; challenges and/or barriers the programs address for local businesses; success of the initiatives to attract, retain and grow the local infrastructure or population, identifying novel ways to harness local resources, stimulate additional investment or utilize new technologies; outline our future initiatives that are needed to attract, retain and grow the local infrastructure or population; and what our current and future vision for Newberg-Dundee is.

The City Manager will submit the Green4Growth application before the April 1, 2015 deadline.

FISCAL IMPACT:

There is no fiscal impact to the City in applying for the Green4Growth Grant funds.

STRATEGIC ASSESSMENT:

The City's Comprehensive Plan identifies a goal of developing a diverse and stable economic base. General Policies for Economic Development include some of the following:

- a) In order to increase the percentage of persons who live in Newberg and work in Newberg, the City shall encourage a diverse and stable economic base. Potential methods may include, but are not limited to, lane use controls and capital improvement programs.
- b) The City shall encourage economic expansion consistent with local needs.
- c) The City will encourage the creation of a diversified employment base, the strengthening of trade centers and the attraction of both capital and labor intensive enterprises.
- d) Newberg will encourage the development of industries, which represent the most efficient use of existing resources including land, air, water, or land resource quality of the planning area.

- e) The City shall encourage business and industry to locate within the Newberg City limits.
- f) Yamhill County history, products and activities should be promoted.
- g) The City shall encourage tourist-related activities and services such as motor inns, restaurants, parks and recreation facilities, a visitor center, conference and seminar activities.
- h) The City shall strive to develop and promote a high quality of life in the community in order to attract and retain a diverse and highly skilled workforce.
- i) The City shall foster an environment of business innovation so that the community may remain economically competitive.

REQUEST FOR COUNCIL ACTION

DATE ACTION REQUESTED: March 2, 2015

Order ___ Ordinance ___ Resolution XX Motion ___ Information ___
No. No. No. 2015-3181

SUBJECT: Establish a program to allow waivers to the employment provision of the standard enterprise zone requirements

Contact Person (Preparer) for this
Motion: Jessica Pelz, AICP
Dept.: Community Development
File No.: G-14-001

RECOMMENDATION: Adopt Resolution No. 2015-3181, establishing a program to allow waivers to the standard enterprise zone requirements consistent with ORS 285C.

EXECUTIVE SUMMARY: Enterprise zones (EZ) are primarily governed by Oregon Revised Statute (ORS) 285C and Oregon Administrative Rules (OAR) 123-668 and 123-674. The rules and statutes spell out the provisions of standard EZ requirements:

For a three-year exemption:

- Increase full-time, permanent employment of the firm inside the enterprise zone by the greater of one new job or 10% (or less with special-case local sponsor waivers);
- Generally have no concurrent job losses outside the zone boundary inside Oregon;
- Maintain minimum employment level during the exemption period;
- Enter into a first-source agreement with local job training providers; and
- Satisfy any additional local conditions, which vary for each zone.

For an extended exemption (four or five years – approved by City Council):

- Fulfill the criteria for the three-year enterprise zone exemption;
- The compensation of new employees must be at or above 150% of the county average wage;
- There must be local government approval by resolution and a written agreement entered into with the local zone sponsor (city, port and county, or tribe) and applicant; and,
- The company must meet any additional requirements that the local zone sponsor may reasonably request.

The OAR and ORS allow a local enterprise zone to grant a waiver of the employment increase requirement in certain circumstances. Such a waiver must be adopted by resolution, and in the interest of transparency and consistency, the rules encourage it be applicable to other similar qualified businesses. Oregon statute allows an employment waiver under the following circumstances:

- The firm *either* completes an investment of \$25 million or more in qualified property *or* the firm fulfills the requirements of ORS 285C.205 and the employment of the firm does not decrease below the annual average employment of the firm. [ORS 285C.200(2)(b)(A) & (B), summarized]
- The firm demonstrates at least a 10% increase in productivity no later than 18 months following January 1 of the assessment year for which the exemption is claimed, and the firm maintains or exceeds the 10% increase in productivity as an annual average rate for each subsequent year of the exemption period. [ORS 285C.205, summarized]

In addition, the city has the authority to identify any other reasonable conditions for a waiver, as defined by OAR 123-668-2300. In general, reasonable conditions are not arbitrary, are consistently applied to all qualified businesses unless businesses are differentiated based on definable characteristics, may entail economic costs, and may not require anything outside of normal business practices. Staff has outlined

potential additional conditions the council could consider if they choose to move forward with allowing a waiver to the employment requirement. In addition to the statutory requirements of ORS 285C.200 and 285C.205, as summarized above, the following conditions could apply:

- Only one waiver per qualified firm would be granted per exemption period (whether 3-year or 5-year).
- The firm is required to coordinate with local schools and/or Worksource Oregon to continuously support an internship program at the firm.
- The firm would be required to help fund the Newberg School District STEM (Science, Technology, Engineering, Math) program by annually donating an amount earmarked to STEM that is equivalent to 10% of the tax savings associated with the property tax abatement.

From a practical standpoint, a waiver could be an incentive to encourage or assist a business in staying local, and enhanced productivity is always a plus from the business side. The main consideration is whether the local area is also getting an adequate benefit from the tax exemption if jobs are not being created. The additional conditions suggested by staff are geared toward the local area still realizing a benefit in terms of workforce training for the future.

FISCAL IMPACT: Property tax abatements do not reduce existing tax revenue. Allowing a waiver to the standard enterprise zone criteria would start allowing property tax abatements related to qualified investments without a corresponding increase in local jobs. However, employment must at least stay steady during the abatement period, so there would be no loss of local jobs associated with the waiver. Additionally, the local area may realize a benefit in increased workforce training from the added conditions for a waiver. The amount of taxes to be abated would be determined on a case by case basis in collaboration with the Yamhill County Assessor and based on the amount of approved investment by the firm.

STRATEGIC ASSESSMENT (RELATE TO COUNCIL GOALS): The proposed resolution would meet the council goal to “foster and encourage economic development in the community” by adding one more tool to the economic development toolbox to incentivize local business investment.

**A RESOLUTION ESTABLISHING A PROGRAM TO ALLOW WAIVERS TO
THE STANDARD ENTERPRISE ZONE EMPLOYMENT REQUIREMENTS
CONSISTENT WITH ORS 285C**

RECITALS:

1. On April 25, 2014, Business Oregon approved the establishment of the Newberg Enterprise Zone. Enterprise zones (EZ) are primarily governed by Oregon Revised Statute (ORS) 285C and Oregon Administrative Rules (OAR) 123-668 and 123-674, which contain standards for three-year exemptions and extended (four or five year) exemptions. The ORS does allow a waiver to the standard employment increase requirement for a three- or five-year exemption, under certain circumstances, and where locally adopted by resolution.
2. ORS 285C states the requirements for an employment waiver, where a firm must: *either* complete an investment of \$25 million or more in qualified property *or* fulfill the requirements of ORS 285C.205 and the employment of the firm does not decrease below the annual average employment of the firm [ORS 285C.200(2)(b)(A) & (B), summarized]; *and* demonstrate at least a 10% increase in productivity no later than 18 months following January 1 of the assessment year for which the exemption is claimed, and the firm maintains or exceeds the 10% increase in productivity as an annual average rate for each subsequent year of the exemption period. [ORS 285C.205, summarized]
3. In addition to the statutory requirements for a waiver, the city has the ability to place additional reasonable conditions on a waiver request per OAR 123-668-2300. Allowing a waiver could be an incentive to encourage or assist a business in staying local, and increased productivity is generally positive for the business. Additional conditions will help the local area realize an adequate benefit from the tax exemption even when no jobs are being created.

THE CITY OF NEWBERG RESOLVES AS FOLLOWS:

1. A program is established to allow waivers to the standard enterprise zone employment increase requirements. A qualified business within the Newberg Enterprise Zone may apply for a waiver to the employment requirement along with their enterprise zone authorization application. Waivers will be granted consistent with the requirements of ORS 285C, where a firm must: *either* complete an investment of \$25 million or more in qualified property *or* fulfill the requirements of ORS 285C.205 and the employment of the firm does not decrease below the annual average employment of the firm [ORS 285C.200(2)(b)(A) & (B), summarized]; *and* demonstrate at least a 10% increase in productivity no later than 18 months following January 1 of the assessment year for which the exemption is claimed, and the firm maintains or exceeds the 10% increase in productivity as an annual average rate for each subsequent year of the exemption period. [ORS 285C.205, summarized] In addition to the statutory requirements for an employment waiver, the following additional city conditions will apply:
 - A. Only one waiver will be granted per qualified firm per exemption period (regardless of additional investment within the exemption period).

- B. The firm is required to coordinate with local schools and/or Worksource Oregon to continuously support an internship program at the firm during the exemption period.
- C. The firm would be required to help fund the Newberg School District STEM (Science, Technology, Engineering, Math) program by annually donating an amount earmarked to STEM that is equivalent to 10% of the tax savings associated with the property tax abatement.

➤ **EFFECTIVE DATE** of this resolution is the day after the adoption date, which is: March 3, 2015

ADOPTED by the City Council of the City of Newberg, Oregon, this 2nd day of March, 2015.

Sue Ryan, City Recorder

ATTEST by the Mayor this 5th day of March, 2015.

Bob Andrews, Mayor

REQUEST FOR COUNCIL ACTION

DATE ACTION REQUESTED: March 2, 2015 , 2015

Order ___ Ordinance ___ Resolution XX Motion ___ Information ___
No. No. No. 2015-3174

SUBJECT: Consider approval of the Newberg-Dundee Public Safety Association Collective Bargaining Agreement effective upon execution, which is retroactive to July 01, 2014.

Contact Person (Preparer) for this Motion: Chris Bolek
Dept.: Police
File No.:

HEARING TYPE: No public hearing is required.

RECOMMENDATION:

Adopt Resolution No. 2015- 3174 to ratify the Collective Bargaining Agreement between the City and the Newberg-Dundee Public Safety Association (NDPSA) who is represented by Private Labor Attorney Darryl Garretson.

EXECUTIVE SUMMARY:

The City management team has been negotiating with the Newberg-Dundee Public Safety Association to finalize a contract. The City's management team and members of the Newberg-Dundee Public Safety Association have been in contract renewal negotiations since May 2, 2014. The current Collective Bargaining Agreement expired June 30, 2014. Negotiations concluded in January of 2015 with no external expert representation hired to represent the City or the Newberg-Dundee Public Safety Association.

Based on varying circumstances on the part both the City and the Association, the process to reach this agreement was extended. Some of these circumstances include changes in key leadership positions within the City, difficulty coinciding schedules of negotiation team members and delays in obtaining necessary information.

It is the City's intent to hire external expert representation to negotiate a three year agreement beginning July 01, 2015 – June 30, 2018.

The contract period is from execution of the contract, which will occur immediately, if this resolution is approved, through June 30, 2015. The contract allows for a 2% COLA for all members retroactive to July 01, 2014. The contract also allows for a 5% increase for the assignment of Canine Handler. Funding for both increases are in the current 2014-2015 budget. Currently, the department has only one person holding the assignment of Canine Handler.

The City was notified on January 25, 2015, that the Association members had ratified the Collective Bargaining Agreement ("Agreement"), with an overwhelming majority voting yes.

The areas of economic impact in the contract are primary compensatory (COLA and some minor wage-driven benefits), which are summarized as follows:

- Wages: Cost of living (COLA) and wage-driven benefits have been estimated under Fiscal Impact-
 - **2% COLA**
- Other compensatory items that changed are as follows:
 - 5% Canine Handler Assignment Pay during the time they serve in this assignment

FISCAL IMPACT:

The following table outlines what the estimated fiscal impact will be with accepting the Newberg-Dundee Public Safety Association Collective Bargaining Agreement.

<u>Police Association Payroll</u>	Estimate at 2% COLA 2014-15
Wages Association	\$44,412
Wage Driven Benefits (FICA, PERS)*	\$13,622
Total Association Payroll	\$58,034

*based upon a 2% increase

STRATEGIC ASSESSMENT:

In the interest of the community, the contract ensures that valuable and long-term employees are retained. By the City guaranteeing certain fiscal benefits, experienced employees will receive a fair compensation for their public safety services.



RESOLUTION No. 2015-3174

A RESOLUTION APPROVING THE COLLECTIVE BARGAINING AGREEMENT BETWEEN THE CITY AND THE NEWBERG-DUNDEE PUBLIC SAFETY ASSOCIATION (NDPSA); AGREEMENT WILL BE EFFECTIVE RETROACTIVELY TO JULY 01, 2014; AUTHORIZING THE MAYOR AND CITY MANAGER TO EXECUTE THE AGREEMENT; AND DELEGATING THE AUTHORITY TO THE CITY MANAGER TO MAKE AMENDMENTS AND INTERPRETATIONS OF THE AGREEMENT ON BEHALF OF THE CITY

RECITALS:

1. City staff has been negotiating with the Newberg-Dundee Public Safety Association (“Association”) through their Association members for the contract period July 01, 2014 through June 30, 2015.
2. The City has been notified that the Association members on January 25, 2015 have ratified the Collective Bargaining Agreement (“Agreement”) with an overwhelming yes vote.

THE CITY OF NEWBERG RESOLVES AS FOLLOWS:

1. The City approves the Agreement between the City and the Association, which is attached hereto as Exhibit “A” and by this reference incorporated.

The initial contract period commences July 01, 2014 and runs through June 30, 2015.

2. The mayor and city manager are authorized to execute the Agreement with the Association on behalf of the City. It is the City’s intent to negotiate a three year contract, with the contract beginning July 01, 2015.
3. The city manager is further delegated the authority to approve minor amendments to the Agreement; interpret language of the Agreement on behalf of the City; enter into memorandums of understanding concerning the interpretations and disputes arising under the Agreement; and negotiate settlements of disputes.
4. The city attorney has reviewed and approved the Agreement as to legal sufficiency.

➤ **EFFECTIVE DATE** of this resolution is the day after the adoption date, which is: March 3, 2015.

ADOPTED by the City Council of the City of Newberg, Oregon, this 2nd day of March, 2015.

Sue Ryan, City Recorder

ATTEST by the Mayor this 3rd day of March, 2015.

Bob Andrews, Mayor

**COLLECTIVE BARGAINING
(LABOR) AGREEMENT**

BY AND BETWEEN

THE CITY OF NEWBERG, OREGON

AND

THE NEWBERG-DUNDEE PUBLIC SAFETY ASSOCIATION

July 1, 2014– June 30, 2015

TABLE OF CONTENTS

PREAMBLE	7
<u>ARTICLE 1. RECOGNITION.</u>	7
1.1 <u>BARGAINING AGENT AND BARGAINING UNIT.</u>	7
1.2 <u>MANAGEMENT RIGHTS.</u>	7
1.3 <u>LABOR-MANAGEMENT ADVISORY TEAM.</u>	7
1.4 <u>MATTERS NOT COVERED.</u>	8
<u>ARTICLE 2. ASSOCIATION SECURITY AND CHECK-OFF OF DUES.</u>	8
2.1 <u>DUES DEDUCTIONS.</u>	8
2.2 <u>FAIR SHARE DEDUCTION.</u>	8
2.3 <u>EMPLOYER NOTICE TO ASSOCIATION OF ALL EMPLOYEES AND THEIR STATUS.</u>	8
2.4 <u>INDEMNIFICATION BY ASSOCIATION; CORRECTION OF ERRORS.</u>	8
<u>ARTICLE 3. CONTINUATION OF WORK.</u>	8
3.1 <u>NO STRIKE PROVISION.</u>	8
3.2 <u>ASSOCIATION'S RESPONSE TO WORK STOPPAGE AND CAUSE FOR EMPLOYEE TERMINATION.</u>	9
<u>ARTICLE 4. EMPLOYEES</u>	9
4.1 <u>REGULAR EMPLOYEE.</u>	9
4.2 <u>REGULAR PART-TIME EMPLOYEE.</u>	9
4.3 <u>TEMPORARY EMPLOYEE.</u>	9
4.4 <u>EMPLOYEE EVALUATIONS.</u>	9
<u>ARTICLE 5. PROBATIONARY PERIOD.</u>	9
5.1 <u>PROBATIONARY PERIOD.</u>	9
5.2 <u>PROMOTIONAL PROBATIONARY PERIOD.</u>	10

<u>ARTICLE 6. SENIORITY</u>	10
6.1 <u>SENIORITY STATUS</u>	10
6.2 <u>LAYOFF AND REHIRE</u>	10
6.3 <u>PROMOTION</u>	10
6.4 <u>BREAK IN SENIORITY</u>	10
6.5 <u>SAME DATE OF OBTAINMENT OF STATUS</u>	10
6.6 <u>SENIORITY LIST</u>	10
<u>ARTICLE 7. HOURS OF WORK AND OVERTIME</u>	11
7.1 <u>HOURS OF WORK – REGULAR FULL TIME</u>	11
7.2 <u>HOURS WORKED</u>	12
7.4 <u>CALL OUT & COURT CALL BACK</u>	13
7.5 <u>COMPENSATORY TIME OFF</u>	14
7.6 <u>STAND-BY</u>	14
7.7 <u>TRAINING</u>	14
7.8 <u>WORKING IN A HIGHER CLASSIFICATION</u>	15
7.9 <u>SHIFT TRADES</u>	15
7.10 <u>MEAL PERIODS AND REST BREAKS</u>	16
<u>ARTICLE 8. HOLIDAYS</u>	17
8.1 <u>HOLIDAY BANK</u>	17
8.2 <u>PAYMENT FOR HOLIDAY BALANCE AT TERMINATION</u>	19
8.3 <u>FOUR-TEN</u>	19
8.4 <u>BEREAVEMENT DAYS</u>	19
<u>ARTICLE 9. VACATIONS</u>	19
9.1 <u>VACATION ACCRUAL AND CARRY OVER</u>	19

9.2	<u>VACATION DAYS EARNED</u>	20
9.3	<u>PART-TIME</u>	20
9.4	<u>PAYMENT</u>	21
9.5	<u>VACATION SCHEDULES</u>	21
<u>ARTICLE 10. SICK LEAVE</u>		21
10.1	<u>ACCRUAL</u>	21
10.2	<u>UTILIZATION</u>	21
10.3	<u>INTEGRATION WITH WORKERS COMP</u>	22
10.4	<u>NOTIFICATION OF USE</u>	23
10.5	<u>TRANSFER OF ACCRUED LEAVE</u>	23
10.6	<u>SICK LEAVE INCENTIVE</u>	23
10.7	<u>SICK LEAVE ABUSE</u>	24
10.8	<u>FMLA</u>	25
<u>ARTICLE 11. COMPENSATION SCHEDULE</u>		25
11.1	<u>SALARY SCHEDULE</u>	25
11.2	<u>ON CALL PAY</u>	26
11.3	<u>PAY PERIODS</u>	26
11.4	<u>MOTOR OFFICERS</u>	26
11.5	<u>DOG HANDLERS</u>	26
11.6	<u>BILINGUAL PAY</u>	27
11.7	<u>DETECTIVE ASSIGNMENT PAY</u>	27
11.8	<u>PRIMARY FIELD TRAINING OFFICER ASSIGNMENT PAY</u>	27
11.9	<u>PRIMARY CAD MAINTENANCE ASSIGNMENT PAY</u>	27
11.10	<u>CERTIFICATION PAY</u>	27
11.11	<u>LONGEVITY PAY</u>	27

11.12	<u>CLOTHING ALLOWANCE FOR DETECTIVES</u>	28
11.13	<u>CLEANING OF CONTAMINATED CLOTHING</u>	28
	<u>ARTICLE 12. ASSOCIATION ACTIVITIES</u>	28
12.1	<u>ANTI-DISCRIMINATION AGAINST ASSOCIATION MEMBERS</u>	28
12.2	<u>NEGOTIATIONS</u>	28
	<u>ARTICLE 13. GRIEVANCE AND DISPUTE RESOLUTION</u>	29
13.1	<u>PROCEDURE</u>	29
13.2	<u>ARBITRATION</u>	29
13.3	<u>TIME LIMITS</u>	30
13.4	<u>ARBITRATION OF ASSOCIATION DISCRIMINATION CLAIMS OR EEO CLAIMS</u>	30
	<u>ARTICLE 14. HEALTH & WELFARE</u>	30
14.1	<u>HEALTH BENEFITS</u>	30
14.2	<u>LIFE INSURANCE BENEFITS</u>	31
14.3	<u>DISABILITY BENEFITS</u>	31
	<u>ARTICLE 15. EMPLOYEE DISCIPLINE/TERMINATION</u>	31
15.1	<u>DISCIPLINARY MEASURES</u>	31
15.2	<u>ASSOCIATION REPRESENTATION IN DISCIPLINE PROCESS</u>	31
15.3	<u>GENERAL PROCEDURES</u>	32
15.4	<u>FAIRNESS AND DUE PROCESS</u>	33
15.5	<u>AVOIDANCE OF EMBARRASSMENT</u>	34
15.6	<u>DISCIPLINARY RECORDS RETENTION</u>	34
	<u>ARTICLE 16. SAVING CLAUSE</u>	34

ARTICLE 17. RETIREMENT.34

 17.1 EMPLOYEE CONTRIBUTION UNDER PERS.34

 17.2 EMPLOYEE'S CONTRIBUTION WITH CURRENT CITY
RETIREMENT PLAN......35

 17.3 UNUSED SICK LEAVE.35

ARTICLE 18. TERM OF AGREEMENT......35

ARTICLE 19 – DRUG TESTING PROVISIONS.35

SCHEDULE “A” FOR ARTICLE 11.1 (SALARY SCHEDULE)39

PREAMBLE

A working Agreement entered into by and between the **CITY OF NEWBERG, OREGON**, hereinafter called the "City" and the **NEWBERG-DUNDEE PUBLIC SAFETY ASSOCIATION**, hereinafter called the "Association."

ARTICLE 1. RECOGNITION.

1.1 BARGAINING AGENT AND BARGAINING UNIT.

The City recognizes the Association as the exclusive bargaining agent in all matters of wages, hours, and conditions of employment for all police officers, communication officers, , records & evidence technician, and regular part-time employees, excluding temporary employees (employees hired to work a period not to exceed 90 days), Captains, Sergeants, Support Services Manager, Chief of Police, Chief's Secretary, and any other confidential and supervisory employees, hereafter called "employees."

1.2 MANAGEMENT RIGHTS.

Except as otherwise specifically limited by the terms of this Agreement, the City retains all of the customary, usual and exclusive rights, prerogatives, functions and authority connected with, or in any way incident to, its responsibility to manage the affairs of the City or any part of it. The Association recognizes the prerogatives of the City to operate and manage its affairs in all respects in accordance with its responsibilities and powers of authority. Without limitation, but by way of illustration, the exclusive prerogatives, functions and rights of the City will include the following:

To direct and supervise all operations, functions and policies of the divisions in which the employees in the bargaining unit are employed;

To schedule work most advantageous to the parties, consistent with requirements of municipal employment, the public safety, and consistent with this Agreement;

To manage and direct the work force, including but not limited to, the right to determine the methods, equipment, uniforms, processes, and manner of performing work; the determination of the duties, qualification of job classifications, the right to hire, promote, train, demote, transfer, evaluate performance and retain employees; the right to discipline or discharge for proper cause; the right to layoff for lack of work or funds; the right to abolish positions or reorganize the department or work; the right to schedule employee vacations; the right to purchase, dispose and assign equipment or supplies; and

To implement new and to revise or discard, wholly or in part, procedures, materials, equipment, facilities and standards after discussion with the Association Representatives.

1.3 LABOR-MANAGEMENT ADVISORY TEAM.

The Chief of Police will continue to hold regular meetings of the Labor-Management Advisory Team. The purpose of the Labor-Management Advisory Team is to identify and review issues of concern to department personnel, to review department policies, to consider and resolve issues and to make recommendations to the Chief of Police. The Team will be comprised of the Association President and

one Executive Board member together with designated management representation. Of the two Association members, one will be a police officer and one will be a communications officer. The meetings, will be attended by on-duty personnel subject to call and without loss of pay.

1.4 MATTERS NOT COVERED.

In matters not covered by specific language of this Agreement, the City retains the exclusive right to take action(s) and such action(s) will not be subject to the grievance procedure contained herein, except as provided by law.

ARTICLE 2. ASSOCIATION SECURITY AND CHECK-OFF OF DUES.

2.1 DUES DEDUCTIONS.

The City agrees to deduct the Association membership dues or fair share amount from the pay of each member of the bargaining unit. The amount to be deducted will be certified to the City by the Association. The aggregate deduction of those members will be remitted together with an itemized statement to the Association by the tenth (10th) day of the succeeding month after such deductions are made. An initiation fee will be deducted by the City from each new member's pay check during the first four months of employment, through four equal installment payments beginning with the first paycheck.

2.2 FAIR SHARE DEDUCTION.

Employees that are in the bargaining unit that are covered by this Agreement who are not members of the Association, will make a fair share payment in lieu of dues to the Association.

2.3 EMPLOYER NOTICE TO ASSOCIATION OF ALL EMPLOYEES AND THEIR STATUS.

The Employer will furnish to the Association, on a current basis, notice of all regular employees and part-time employees as defined in Article 4 who have been hired, rehired, laid off or terminated.

2.4 INDEMNIFICATION BY ASSOCIATION; CORRECTION OF ERRORS.

The Association agrees to defend, indemnify, save and hold the City harmless from, for and against any and all claims arising from the application of this Article. The Association and employees will cooperate to correct withholding and payroll errors.

ARTICLE 3. CONTINUATION OF WORK.

3.1 NO STRIKE PROVISION.

The City and the Association agree that the public interest requires efficient and uninterrupted performance of all Police services and to that end pledge their best efforts to avoid or eliminate any conduct to the contrary of this objective. Specifically, during the term of this Agreement the Association will not cause or condone any work stoppage, slow-down, refusal to perform any

customarily assigned duties, sick leave absence which is not bona-fide, or other interference with Police functions by employees of the bargaining unit under this Agreement. Should same occur, the Association agrees to take appropriate steps to end such interference.

3.2 ASSOCIATION'S RESPONSE TO WORK STOPPAGE AND CAUSE FOR EMPLOYEE TERMINATION.

Upon notification in writing by the City to the Association that any of the Association's members are engaged in work stoppage, the Association will, immediately, in writing, order such members to immediately cease engaging in such work stoppage and will provide the City with a copy of such order. In addition, the Association will use their best efforts to end such interference. Any violation of this Article on the part of an employee in the bargaining unit will be cause for disciplinary action, up to and including termination.

ARTICLE 4. EMPLOYEES

4.1 REGULAR EMPLOYEE.

A Regular Employee is one who is hired to work at least 40 hours a week.

4.2 REGULAR PART-TIME EMPLOYEE.

A Regular Part-time Employee is one who is hired to regularly work more than 85 hours per month.

4.3 TEMPORARY EMPLOYEE.

A temporary employee is one who is hired for 90 calendar days or less and has no entitlement to benefits or seniority rights, and is paid an established hourly rate. Any extension requires the approval of the City and the Association.

4.4 EMPLOYEE EVALUATIONS

A member's evaluations shall be completed within sixty (60) days of the members anniversary / hire date. The evaluation shall only encompass performance during that one (1) year period unless it is an ongoing issue. Performance issues falling outside of the evaluation period shall be addressed on the employee's subsequent evaluation.

It is understood that there may be exceptions to meeting this sixty (60) day requirement due to extraneous issues. This could include sickness, vacation, extended training, internal investigation, officer's portion not being returned with timeliness, etc. If this were to occur, the evaluating supervisor will note the reason(s) on the officers evaluation.

ARTICLE 5. PROBATIONARY PERIOD.

5.1 PROBATIONARY PERIOD.

The probationary period will be 18 months for all employees. The probationary period may be extended for an additional six (6) months with mutual agreement between the City, the Association and the Employee. Prior to completion of the probationary period, employees may be discharged with or

without cause and such discharge is not subject to Article 13, related to grievance and dispute resolution.

5.2 PROMOTIONAL PROBATIONARY PERIOD.

All promotions will be subject to a 12-month "probationary period." If performance is not satisfactory during or at the completion of this period, the employee who is or was covered by this Agreement, will be returned to his/her former classification. Employees who are or were members of the bargaining unit and are serving a promotional probationary period will retain seniority rights. For purposes of this Article, promotional positions are Sergeant and Communications Supervisor.

ARTICLE 6. SENIORITY.

6.1 SENIORITY STATUS.

An employee will establish seniority when he/she becomes a regular employee of the bargaining unit. An employee acquires seniority status based upon his/her first date of employment or re-employment.

6.2 LAYOFF AND REHIRE.

Seniority by classification for a regular employee will prevail in the case of layoff or rehire where qualifications are equal. The last employee hired will be the first employee laid off and the last employee laid off will be the first employee rehired. If there is any question of any senior employee being qualified to perform the work available in the case of layoff and rehire, the City must show cause for not rehiring or laying off such senior employee.

6.3 PROMOTION.

Where qualifications are equal, promotions will be based on performance and evaluations.

6.4 BREAK IN SENIORITY.

A break in seniority will occur if an employee resigns or is discharged for cause. A break in seniority will also occur if an employee has a total lapse of employment of 12 months due to non-occupational illness or injury; or 12 months or more due to an authorized leave of absence or layoff.

6.5 SAME DATE OF OBTAINMENT OF STATUS.

In the event two (2) or more employees reach regular status on the same date, the date of written application of such employee filed with the City for the position involved will establish seniority.

6.6 SENIORITY LIST.

On or by January 15th of each year of this Agreement, the City/Department and the Association will meet to review and agree upon a list of police officers and a list of communications officers showing the respective officers' seniority in the department from the highest seniority police officer and communications officer to the lowest seniority.

ARTICLE 7. HOURS OF WORK AND OVERTIME.

7.1 HOURS OF WORK – REGULAR FULL TIME.

The basic work week will be 40 hours, exclusive of overtime. The intent will be to maintain regularly scheduled workdays of not less than eight (8) hours per day for regular full-time employees. The workday will be defined as a calendar day on which the employee's scheduled shift begins. The work week will be defined as a calendar week, beginning on Sunday at 0001 Hours and continuing through the following Saturday at midnight. The starting and expiration times will be consistent with the schedule outlined by the Chief of Police. Days off will be consecutive, except during times of normal shift rotations. No overtime will be paid for regularly scheduled Saturday or Sunday work.

Members may propose schedule changes for review by the Management Advisory Team, with the Chief of Police retaining final authority over approving and implementing schedule changes. Other shifts may be implemented by the Chief of Police; nothing in this Agreement will preclude the City and an employee (or employees) from agreeing to a temporary modification of the employee(s) regular shift.

Nothing in this Agreement precludes the City from mandating overtime work.

The Department will make best efforts to contact an employee for shift changes occurring with less than seventy-two (72) hours notice by cell phone or message left on cell or home voicemail if needed. Shift changes for regular employees with less than 48-hours notice will implement the call out provisions in paragraph 7.4 of the Agreement, except those shift changes required to cover an absence due to injury or illness. Shift changes made to cover an injury or illness will only implement the call out provision if less than two (2) hours notice is given.

Upon mutual agreement of the employees involved, the City may shift a workweek by one day, grant an additional day off at the end of the preceding days off, and reduce the concluding days off by one (or make other similar arrangements).

For patrol officers with forty-eight (48) hours notice or more, the City may adjust the start time of a shift or extend the shift. When a shift extension or "early call in" is necessary with less than forty eight (48) hours notice, the employee will be paid at the overtime rate for hours of work not normally scheduled unless the change is mutually agreed.

For Communications Officers, when a shift change is required, and with forty-eight (48) hours notice or more, the City may adjust the shift a maximum of four (4) hours forward or as a holdover.

When Communications Officers are asked to sign up for an overtime shift, the City will not thereafter adjust that overtime shift in a manner that reduces the Communications Officer's anticipated overtime opportunity, with less than forty-eight (48) hours notice, or an otherwise mutually agreed upon arrangement between the involved employees and the City.

If an employee assigned the anticipated overtime does not wish to give up the anticipated overtime, the employee who first requested the time off that precipitated the overtime, will be required to take the time off he or she originally requested.

If an employee works over 40 hours in a work week and the employee wishes to take comp time off during that week that has not been scheduled for at least 48 hours, that time off will be handled as a shift adjustment commensurate to the amount of the actual number of overtime hours worked, not the expanded hours. EXAMPLE: A CO works 12 hours on Thursday and on their Friday, wishes to leave four hours early that had not been previously scheduled. The four hours worked on Thursday will be traded for the four hours taken off on Friday. No overtime or comp time is earned by the employee and the city does not pay overtime or comp time for hours not worked.

7.2 HOURS WORKED.

The following will be regarded as hours worked for the purpose of computing overtime hours for employees: time off in lieu of holidays; compensatory leave; vacation leave; and time on the job.

7.3 **OVERTIME.** Overtime which has been specifically authorized by supervisory or command personnel and is performed in excess of forty (40) hours in an employee's work week will be paid at the overtime rate of one and one-half (1-1/2) times the employee's regular rate computed in accordance with the FLSA. Voluntary shift trades do not affect hours of work in accord with the FLSA. Regular rate equals base pay plus all additions to pay which the employee is entitled to under this contract. Under no condition will overtime compensation be received twice for the same hours worked.

Employees attending scheduled department meetings or events during their off-duty time will be paid at the overtime rate for hours present at the meeting or event, applicable to the employees' forty- (40-) hour work week. In all cases, attendance and subsequent overtime must be with prior approval. A meeting or event with less than forty-eight (48) hours notice will implement the call out provision in paragraph 7.4.

If overtime is scheduled for an employee and the employee voluntarily goes home early, overtime stops. If the employee is mandated to go home, overtime continues through the remainder of the scheduled overtime period.

If with less than forty-eight (48-) hours notice, an employee is mandated to return to work from a previously scheduled vacation, comp, or holiday time taken off, the employee will earn overtime in addition to the vacation, comp or holiday time taken, or can opt to reduce the number of hours the employee returned to work from the employee's time taken bank. It is expected that the employee make reasonable efforts to contact the court in advance of planned vacation, comp, holiday or sick time.

If an employee is on approved FMLA/OFLA time off and is subpoenaed to court, the employee is not eligible for overtime. Rather, the employee will be permitted to take additional time off commensurate with the time spent in court.

Employees cannot make themselves available for an overtime opportunity or otherwise earn overtime by taking vacation, comp or holiday bank time, unless it is mutually agreed upon by the employee and department.

The health and safety of the employees of this Department is of utmost importance to the city and police administration. It is also recognized that investigations and circumstances in the field of emergency services can dictate hours worked to accomplish the goals of the investigation and department. To that end, the City/Department will make every effort to ensure that employees have a

minimum of eight (8) consecutive hours off between shifts or, either before or after court appearances, subject to the operational needs of the Department.

Additionally, if an employee works more than 16 hours during a single block of time, the employee has the option of taking all hours worked in excess of 16 hours at the overtime rate of pay or adjusting time out commensurate with the time worked in excess of the 16 hours in accordance with the operational needs of this Department.

7.4 CALL OUT & COURT CALL BACK.

Employees who are called to return to work after leaving their duty station for the day will receive three (3) hours pay at the overtime rate. A "call out" is a call to return to work and its duration will not exceed the requirements for the call out. This section will not apply to early "call in" of less than two (2) hours preceding the start of a regular shift or up to two (2) hours after the end of the shift.

Employees who are subpoenaed to court will receive three (3) hours pay at the overtime rate of pay. A "court call back" is a call to appear at any court and its duration will not exceed the requirements of the call back. This section will not apply if the "court call back" is less than two (2) hours preceding the start of a regular shift or up to two (2) hours after the end of a shift.

Members are responsible to call the court schedule recording and check the Circuit Court and Municipal Court schedule board after 5:00 p.m. on the preceding day or forfeit all rights to call out pay for court if canceled.

Employees subpoenaed to court at the Yamhill County Courthouse who live outside McMinnville city limits will start their court call back time 30 minutes prior to their subpoenaed court time. Employees who live within the city limits of McMinnville who are subpoenaed to court at the Yamhill County Courthouse will start their court call back time 15 minutes prior to their subpoenaed court time.

Employees subpoenaed to court in another county for a court appearance will start court call back time when departing from the police department, or when departing from the personal residence if that is closer to the courthouse than the Police Department.

Employees who are subpoenaed to Newberg Municipal Court or Dundee Municipal Court will start their court call back time at the time listed on the subpoena.

A second (and any additional subpoenas) court call back or court appearance within the applicable three hour minimum calculated from the ending of the preceding court appearance, will be considered a single call back.

Meetings or events scheduled in excess of forty-eight (48) hours that are to be held on an employee's off-duty time will be paid at the overtime rate of pay, applicable to the employees' forty (40) hour work week and not the "call out" rate of pay.

Regarding DMV Hearings, the Department encourages officers to attend DMV hearings in person. However, if an officer attends DMV hearings by phone, that testimony is paid for on a "time-for-time" basis, rounded to the nearest one-quarter (1/4) hour, not at the "court call out" rate of pay.

7.5 COMPENSATORY TIME OFF.

If an employee elects to accrue compensatory (“comp”) time in lieu of overtime pay, the comp time will accrue at the rate of time and one-half (1/2). No employee may accrue more than sixty (60) hours of comp time. Use of Compensation Leave will be approved by the Chief of Police or his designee subject to the operational needs of the Department. Requests for comp time off must be submitted to the supervisor within a reasonable time keeping in mind the supervisor's availability to respond to the request.

The City will be under no obligation to grant comp time off if to do so will require coverage by another employee accruing comp time. Employees who elect to accrue comp time do so with full understanding and acceptance of this requirement in the City comp time procedure, and with full understanding of employees’ entitlement to be paid in full for overtime hours at the overtime rate in the applicable pay period. The parties’ intend that comp time will be accrued and taken only in accordance with the understandings of this paragraph.

When an employee takes comp time off and coverage is provided by a second and/or third employee, the coverage hours will be paid as overtime wages and not taken in accrued comp time. Comp time off requests will not be approved if it will cause the second and/or third employee to be paid at the “penalty rate” of overtime* applies when there is less than 48 hours notice.

Denials of comp time off are not subject to grievance.

* Penalty rate of overtime is equivalent to the “call back” rate or an automatic three (3) hours of overtime regardless if worked three (3) hours or one (1) hour. Scheduled overtime with more than forty-eight (48) hours notice is time worked in excess of forty (40) hours.

7.6 STAND-BY

Any employee who does not receive “On Call” pay under Article 11.2 of this Agreement and who is required to be on “Stand-By” will be compensated one dollar (\$1.00) for every hour so acting. A person on call is required to carry a phone and be able to respond to calls and return to work within forty-five (45) minutes. Stand-By status is directed by the City for a specific duration.

7.7 TRAINING.

All required training time will be counted as time worked. The City will reimburse, per City Personnel Rules and Regulations, the cost of meals during training required by the City, but not department sponsored training in the greater Newberg-Dundee area. The City may place an employee on an administrative five (5) days of eight (8) hour shifts in conjunction with non-department sponsored training of more than four (4) days' duration. This clause shall not apply to any employee required to attend the DPSST police or communications academy necessary for the employee’s ability to become a certified police or communications officer in this state. In these events, required or voluntary training time in excess of forty (40) hours in the work week, will be paid at the overtime rate of pay but must have prior supervisory authorization to attend.

MANDATORY TRAINING: All employees required to travel outside the corporate city limits of Newberg or Dundee for training or other reason shall have all such time considered as hours worked regardless of whether the employee was a passenger or a driver. The City will make efforts to provide

a City owned vehicle for travel. If the City cannot provide a vehicle, mileage reimbursement will be made as per IRS rules. If a City owned vehicle is offered and the employee chooses to use his/her personal vehicle, no mileage reimbursement will be offered or authorized.

Mandatory training is defined as training that is mandated by the Chief of Police or his/her designee or training required to maintain necessary certification(s) for employment within the employee's discipline for which he or she is employed as required by DPSST, APCO, or other entity recognized by both the City and the Association.

VOLUNTARY TRAINING: All employees who request to travel outside the corporate city limits of Newberg or Dundee for training or otherwise, shall have such time considered as hours worked regardless of whether the employee was a passenger or a driver. The employee will adjust his/her work schedule to a mutually agreed upon date and time to avoid incurring overtime or comp time arising from the training and/or travel. It is expected that both the City and employee will work to mutually agree upon shift adjustments sincerely and in good faith. The City will make efforts to provide a City owned vehicle for travel. If the City cannot provide a vehicle, mileage reimbursement will be made as per IRS rules. If a City owned vehicle is offered and the employee chooses to use his/her personal vehicle, no mileage reimbursement will be offered or authorized.

Additionally, if mutually agreed upon, an employee and the City may enter into a specific, non-precedent setting agreement to attend training.

If the mutually agreed upon shift adjustments cannot be accomplished within 30 days from the end of the training, the time will be credited to the employee's comp bank or paid to the employee, at the employee's choice. In either case, time will be earned at straight time.

7.8 WORKING IN A HIGHER CLASSIFICATION.

Any employee who is required to work in a higher classification beyond ten (10) consecutive working days will receive their regular rate of pay or the base rate of pay for the work being performed whichever is higher. In the event the employee works beyond ten (10) working days, the higher rate of pay will be retroactive back to the first day worked in that position. A higher classification is defined as that of a higher rank; or a classification requiring different and higher skills than the employee's normal classification and whose wage schedule is higher than the employee's normal wage schedule.

7.9 SHIFT TRADES.

Non-probationary employees in the same job classification may trade shifts in accordance with this section provided that the trade does not require work on multiple shifts on the same workday, provided however that a Communications Officer may trade one half shift with another employee. In no case may an employee pay back a trade on a work day if the scheduled shift and the pay-back hours combine to greater than twelve (12). The trade will be documented in advance on a shift trade request form provided by the City, submitted to and approved by the supervisor at least two (2) days in advance unless an exception is permitted by the supervisor for cause which is reasonable under the circumstances. The shift trade form will reflect the date when the parties have agreed to pay back the trade.

The time records will reflect hours of work regularly scheduled by the participants in the trade, each of whom will be paid accordingly. If a trade participant works hours in excess of the traded shift on the

same workday, such hours will be paid at the overtime rate to the employee who performed the overtime work. Arrangements related to the payback of a trade are the sole responsibility of the trade participants and the City will bear no responsibility for a failure to payback. Once a trade is approved by a supervisor, the employee who agrees to trade assumes full responsibility to work the shift. Trade and payback scenarios will not involve more than two trade participants, and a trade of a shift acquired by trade will not be permitted; trades will not be permitted if the trade scenario results in an employee working more than seven (7) consecutive days.

An arrangement to trade an entire shift rotation may be documented by the parties in writing and submitted to a supervisor at least thirty (30) days prior to the rotation. At the end of the traded shift rotation, the employees revert to their regular place in the rotation, unless otherwise assigned.

7.10 MEAL PERIODS AND REST BREAKS.

A. Communications Officers, and Police Officers,

Communications Officers and Police Officers, provide services in emergency situations which may preclude taking a break or meal period altogether or delay them. Breaks and meal periods are paid time, and, if missed, no additional compensation will be due the employee. Employees and supervisors will devote best efforts to facilitating that breaks and meal periods are taken within the shift.

Employees working an eight (8) hour shift or ten (10) hour shift will have two paid fifteen (15) minute breaks during the shift approximately half way through each half of the shift.

The eight (8) and ten (10) hour shift will have a thirty (30) minute paid lunch period.

Provisions of the subsection will not apply to employees attending approved training or educational programs. In such cases, any rest periods or lunch breaks will be as designated by the person(s) in charge of the program.

B. Police Records Clerks/Evidence Technician(s):

Police Records Clerks and Evidence Technicians will be scheduled to work Monday through Friday, 8 a.m. – 5 p.m. and, except for emergency situations, will receive two (2) paid fifteen (15) minute breaks during the shift approximately half way through each half of the shift and a one (1) hour unpaid lunch period, or as mutually agreed. During meal periods no work will be performed.

C. BOLI Rules Not Applicable:

The rules promulgated by the Bureau of Labor and Industries Commissioner pursuant to ORS 653.261(1) do not apply to employees covered by this Agreement, which prescribes rules herein pertaining to conditions of employment, including meal periods and rest periods, as provided in this Article. The exclusive remedy for any alleged violation of these provisions will be through Article 13 Grievance and Dispute Resolution.

ARTICLE 8. HOLIDAYS.

8.1 HOLIDAY BANK.

(A) CERTAIN HOLIDAYS SUBJECT TO HOLIDAY BANK.

All holidays will be placed in a holiday bank except for the following holidays, which are considered to have significant family orientation:

- a. Thanksgiving Day
- b. The Day after Thanksgiving Day
- c. Christmas Eve
- d. Christmas Day

These holidays will be paid in the manner previously paid for holidays and time worked during holidays in accordance with paragraph C of this section for holidays of significant family-orientation.

All other holidays (8 holidays) will be placed in the holiday bank.

(B) HOLIDAY BANK OPERATION.

The Chief of Police and the City has authorized eighty (80) hours of time be credited to each member employee's holiday bank beginning January 1st of each year. This is consistent with the monthly accrual amount of six and sixty-seven hundredths (6.67) hours per month.

It is the responsibility of the member employee to be aware of his/her holiday bank balance. An employee cannot use more than eighty (80) hours of holiday bank time in a calendar year.

Time used from an employee's holiday bank may be taken for any day an employee chooses. Time off using holiday bank time will be granted in accordance with Article 9.5 of this Agreement. Requests and uses of time from an employee's holiday bank must be for a minimum of one full work shift or more. For this, an employee must take one full work shift and can, if desired, take a portion of their next immediately scheduled work shift. Next immediately scheduled work shift means that shifts cannot be separated by an otherwise scheduled day off. An employee cannot take a portion of a shift first and then one full shift the next scheduled work day.

In the event the member employee leaves the employment of the City and has not used his/her holiday bank consistent with the hours accrued at six and sixty-seven hundredths (6.67) hours per month at the time of separation, the City will pay the employee the balance of the unused time in the employee's final paycheck.

Such holiday hours if not taken by the member will be paid in December's pay check of each year.

An employee may not use holiday bank time that has not yet been accrued.

Example: If a member takes Labor Day off, they would be paid for Labor Day and that time could be deducted from their holiday bank time if the employee chooses, or the employee could have the time taken from accrued vacation time or available comp time. If they work on Labor Day, they would be paid, their regular salary, and no time would be deducted from their holiday bank. At the end of the year, they would be paid for that holiday when their holiday bank is paid. This means that they would be paid twice for working on Labor Day—once for the work they performed and once for their holiday bank.

If they take a holiday off work, the members may choose to use accrued vacation hours and/or available comp time for that holiday thus maintaining their holiday bank, which would be paid to them in the December paycheck.

C. MANNER OF HOLIDAY PAY FOR CERTAIN HOLIDAYS An employee who is assigned to shift work on a 5/8 schedule plan will be paid his/her regular wages for those hours worked on a holiday for which the holiday has been placed in the Holiday Bank as defined in this article, subsection A. An employee who is assigned to shift work on a 4/10 schedule plan, will be paid at his/her regular wages for those hours worked on a holiday for which has been placed in the Holiday Bank, as defined above.

An employee who is assigned to shift work, (5/8's or 4/10's) and who has a holiday of significant family orientation, as stated in this Article, Subsection A, fall on his/her regularly scheduled work day will be paid at his or her regular wages for all hours actually worked on that holiday.

In addition to the above an employee who is assigned to shift work, (5/8's or 4/10's) and who has a holiday of significant family orientation, as stated in this Article, Subsection A, fall on his/her regularly scheduled work day will be paid at the rate of one and one-half (1 ½) times the employee's regular wages for all hours worked or receive comp time at one and one-half (1 ½) time for all hours actually worked.

Shift work employees whose regular day off falls on any holiday of significant family orientation, will be paid their regular rate of pay, eight (8) or ten (10) hours, whichever is applicable.

Holidays as defined, for shift work employees will be observed on the actual calendar holiday.

Employees normally scheduled Monday through Friday, 8 a.m. – 5 p.m. or similar, are not considered shift workers. Those employees not scheduled to work shift work, at the discretion of the Chief of Police or his/her designee, will normally be scheduled off for any holiday. Holidays for non-shift work employees will be observed on a date consistent with City Policy.

All regular part-time employees, as defined in Article 4.2 will receive holidays and holiday compensation for each holiday worked or that falls on a regularly scheduled day off. Regular part-time employees who work less than eight (8) hours per work day will receive a pro-rated holiday allowance equal to the hours worked.

For shift work employees, the City reserves the right to reduce staffing numbers on holidays subject to the operational needs of the department. The selection process for this reduction in staffing will be made by seniority. The highest seniority employee has first option to work or take the holiday day off, the second highest employee in seniority has the second option to work or take the holiday day off, and

so on. This selection process will be used for both police officers and communications officers, but the two divisions are separate and the reduction in staffing will be done independent of each other.

Requests to take certain holidays off must be made a minimum of seven (7) days prior to the requested holiday. Time off requests for these certain holidays will be granted on a first-come first-serve basis. If there is a dispute as to whose request was submitted first, the City will grant the time off request based on the involved employee's seniority. The City will provide a time stamp machine. Employees are required to time stamp their time off request prior to submission to the supervisor.

If a holiday(s) are imbedded into a vacation request of one full work week or more, the vacation request will trump the individual holiday(s) request.

Finally, as per Article 7.3, under no condition will overtime compensation be received twice for the same hours worked.

8.2 PAYMENT FOR HOLIDAY BALANCE AT TERMINATION.

Employees will be compensated for accrued but unused holidays at termination of employment at the employee's final hourly rate. If the member employee leaves the employment of the City and has used more holiday hours than would have been accrued at the rate of six and sixty-seven hundredths (6.67) hours per month at the time of separation, the employee will be required to pay the city for those hours used from any of the employee's other time accruals (vacation, comp, sick), or from the employee's final paycheck.

8.3 FOUR-TEN.

For an employee working a 4/10 plan, a paid day off will constitute a ten (10) hour day. Therefore, to account for an entire paid day off, ten (10) hours of the employee holiday bank will be utilized by the employee.

8.4 BEREAVEMENT DAYS.

All members of the Association will receive paid personal emergency leave for a death in the immediate family of three (3) days. This personal emergency leave is not deductible from the members accrued sick leave, vacation or comp time. Pay will be at his/her regular wage. Immediate family includes current spouse, children, stepchildren, stepparent, mother, father, mother-in-law, father-in-law, sister, brother and grandparents.

ARTICLE 9. VACATIONS.

9.1 VACATION ACCRUAL AND CARRY OVER.

The City recognizes the employee's last date of hire or rehire as the anniversary date for vacation accrual time. Vacation hours are accrued monthly. All employees are encouraged to take their vacation during the year it is awarded. Carryover of vacation from month to month will be limited to

two (2) times the annual vacation accrual an employee may earn in any given twelve (12) month period.

9.2 VACATION DAYS EARNED

Vacation awards depend on the employee's years of continuous employment with the City determined as of their vacation anniversary date. Vacation is awarded and accrued according to the following chart:

VACATION CHART

Vacation award key: (1) Hours earned for each calendar month worked (96 hours)
 (2) Days earned per calendar month worked
 (3) Days earned annually

Length of Service Based on Anniversary Date	Vacation Award	Maximum Vacation Accrual Award
Up to 5 Years	(1) 8 hours per month (2) 1 day per month (3) 12 days annually	192 Hours
5 years but less than 10 years	(1) 10 hours per month (2) 1.25 days per month (3) 15 days annually	240 hours
10 years but less than 15 years	(1) 12 hours per month (2) 1.5 days per month (3) 18 days annually	288 hours
15 years but less than 20 years	(1) 13.28 hours per month (2) 1.66 days per month (3) 20 days annually	320 hours
20 years or more	(1) 14.666 hours per month (2) 1.833 days per month (3) 22 days annually	352 hours

No vacation days will be accrued during a leave of absence without pay. Employees will earn no vacation during their first six (6) months of employment. When the employee receives credit for the vacation earned in the seventh (7th) month of employment, the employee will also be credited with vacation accruals for the first six (6) months of employment which will not be deemed "earned" until that time.

9.3 PART-TIME.

Regular part-time employees will earn one (1) vacation day, eight (8) hours, per month, prorated to their percentage of full time of employment.

9.4 PAYMENT.

Discharged employees who have completed six (6) months of service will be paid for all accrued and prorated vacation time.

9.5 VACATION SCHEDULES.

An employee with a vacation balance of eighty (80) hours or more on January 21st and at the time of the bid, will bid and use at least forty (40) vacation hours during the calendar year.

Vacation schedules will be approved by the Chief of Police subject to the operational needs of the department. Seniority vacation requests must be made between December 20th of the year prior to the dates requested and up to and including February 28th of each year and will be determined based on classification seniority. If there is a conflict between employees who have requested vacation scheduling during January and February as to the date requested, preference will be given to the employee with the most seniority, provided however, that a single employee's requests for multiple vacation blocks will be granted in priority order in relation to other employees' multiple requests. (For example, three (3) employees request two (2) blocks of vacation.

The first preference will be granted based on all bidders' first preference request based on classification seniority. Then, remaining second priority bids will be awarded based on seniority of those with two (2) bids. Such preferences may be granted only for vacation scheduled prior to February 28th only once during the term of this Agreement and for one (1) block of time not to exceed 80 hours during June, July, and August. Exceptions may be made to the 80 hour block rule by the Chief of Police. All approved vacations requested before February 28th will be posted by March 15th in the schedule books. Thereafter, preference will be given in order of employee request for all other vacation time off on a first come first serve basis, provided however that vacation requests of a block of forty (40) hours or more will be given preference over time off requests of shorter duration. A request for vacation time off for a full work shift or more will trump any holiday or comp time request. Vacation requests of less than an employee's full shift, will be treated the same as a comp time off request.

ARTICLE 10. SICK LEAVE.

10.1 ACCRUAL.

All regular employees earn sick leave at the rate of 8 hours for each full calendar month of service to a maximum of 1,000 hours. The following formula will be used to calculate paid sick leave earned by regular part-time employees: 8 hours will be multiplied by the budgeted percentage of full-time equivalent of the employee. For example, if the employee is budgeted at 50% of a full-time equivalent then 8 hours will be multiplied by 50%, resulting in 4 hours of earned paid sick leave each month. Sick

10.2 UTILIZATION.

Sick leave may be used for non-occupational illness or injury or other reasons consistent with state law or for medical appointments. It may also be used for care of an immediate family member living with the employee.

An employee may use time from the employee's comp., vacation, or holiday time banks, in lieu of sick time as long as the following conditions are met:

- It does not cost overtime for the city to cover the sick employee's shift or any portion of the sick employee's shift.
- If vacation or holiday bank is used, it must be for an entire shift, not a portion of a shift. *Example:* If an employee goes home five hours into his/her shift, the employee can only use sick or comp time; the employee cannot use vacation or holiday bank.
- This does not apply wherein FMLA/OFLA is instituted.

10.3 INTEGRATION WITH WORKERS COMP.

When an employee is absent from work because of an on-the-job injury covered by Workers Compensation, the time off will not be charged to sick leave, except as provided below.

The employee may select one of the following options:

- a) The employee will only receive his/her Workers Compensation payments; or
- b) An employee may voluntarily turn in his/her first and all subsequent Workers Compensation payments and in turn will receive a regular paycheck.
- c) Under option (b), the following will occur:

- 1) First 180 days of absence because of on-the-job injury – For the first 180 days of absence (including the three day waiting period for Workers Compensation to apply), the City will make additional payment for integration with the employees' Workers Compensation payments in order to receive their gross wages. This additional payment will not be charged against any leave the employee may have accrued, provided that the on-the-job injury was not due to the employee's negligence and/or failure to follow proper department procedures. "Employee negligence" will be determined through a review of the event leading up to the claim by Administration (Human Resources, City Attorney's Office, and a police captain) in consultation with an Association Representative for a determination to be made. If the Association disagrees with the determination, an appeal can be filed, following the grievance process.

The City may, within 10 days of the injury, notify the employee of the City's determination of negligence/or failure to follow proper department procedures in which case the employee will use available leave for integration with the Workers Compensation payments in order to receive their gross wages, first exhausting sick leave, and then other paid leaves as permitted by FMLA/OFLA. This provision is only applicable for as long as the Association remains with City County Insurance Services (CIS) on workers' compensation insurance because CIS nor can the City guarantee such utilization of sick leave as a form of salary continuation.

- 2) After the first 180 days of absence – After the 180th day of absence, employee will use available leave for integration with their Workers Compensation payments in order to receive their gross wages, first exhausting sick leave, and then other paid leaves as permitted by FMLA/OFLA.

3) Integration and Notice –Section 10.3 is only applicable for as long as the Association remains with CIS for Workers Compensation insurance coverage because CIS allows such utilization (integration) of sick leave as a form of salary continuation with the Workers Compensation payment in order for employees to receive their gross wages. However, the City cannot guarantee that such utilization of sick leave, as a form of salary continuation, will be allowed pursuant to other insurance providers' contracts. The City will notify the Association of change of Workers Compensation insurance carrier and discuss with them such change.

4) Available leave necessary – After the first 180 days of absence because of on-the-job injury or determination of employee negligence, a full pay check will only be received if the employee has available sick leave or other paid leave as permitted by FMLA/OFLA.

- d) Under both options (a & b), a healthcare provider certification that the employee is not able to perform job functions will be required prior to approval of such payments.
- e) The city may require a healthcare provider's approval for an employee to return to work after such injury.

10.4 NOTIFICATION OF USE.

In the event an employee is ill and cannot report as scheduled, the employee must report the reason for their absence at least two (2) hours prior to the beginning of the scheduled workday, unless physically unable to do so. Employees will report to an on-duty supervisor the general nature of the condition which precludes work and estimate the duration. In the event an on-duty supervisor is not available, the next available supervisor, once made aware of the absence, will contact the employee. Employees on such leave will call their supervisor daily; after the second day of such leave the City may require medical verification. The City will safeguard privacy related to employee medical information.

10.5 TRANSFER OF ACCRUED LEAVE.

An employee may request through the Chief of Police that some of the employee's paid sick leave be transferred to another employee who is absent from work for an extended period of time because of an injury, unexpected illness, or other reason for which the use of paid sick leave would normally be allowed. The Chief of Police will pass the request, with the Chief of Police's recommendation to the City Manager for approval. The employee receiving a donation of paid sick leave must be non-probationary and must first have used all available paid leave and vacation time. Employees transferring paid sick leave must have accrued a minimum of two-hundred (200) hours of paid sick leave. All donated leave will be used in the order received. Any paid sick leave not used by the employee receiving the paid sick leave will be returned to the donor employee, if the total paid sick leave is under the allowable maximum.

10.6 SICK LEAVE INCENTIVE.

If a Sick Leave Incentive program is offered to City employees in general the Association members shall also be eligible for that program. There will be no retroactive compensation or benefit paid for this program.

10.7 SICK LEAVE ABUSE.

(A) HIGH ABSENTEEISM PROGRAM.

The ability to attend work regularly and with reliability is regarded as a job requirement. The City may examine the total sick leave usage of each employee periodically, as reported on the Administrative Time Keeper's Report of "Hours to Date, Vacation, Sick and Compensatory" Report. This Report also will be supplied to each Supervisor and the Association. If there is a reasonable belief based on objective and articulable facts that the use of sick time by an employee appears excessive, the City may examine the employee's sick leave reports and conduct an investigation pursuant to Article 15 in order to identify the cause(s) of the sick leave. When there is probable cause to believe that an employee's pattern of sick leave usage appears excessive, the City may require the employee to furnish a health care provider's certificate for each incident of sick leave use that occurs in the future. This requirement will be for a designated period of time not to exceed ninety (90) days and may be renewed if there is probable cause to believe that there continues to be a pattern of sick leave misuse by an employee.

(B) HIGH ABSENTEEISM CRITERIA.

Employees' use of sick leave under a combination of the following factors of illustrative criteria may indicate a pattern of high absenteeism (subject to consideration of extenuating circumstances, such as family illness) and may constitute a reasonable belief as described in Section A above:

1. A zero balance of sick leave or unexplained sudden decline in a stable reserve balance.
2. Amount of usage above the yearly average for department personnel.
3. Employee return to work after showing signs of outdoor recreation (tan, wind or sun burns).
4. When incidents of usage indicate a pattern in conjunction with regular days off, vacation, comp time and holidays or other specific pattern usage, including absence in conjunction with undesirable tasks or in retaliation.
5. Employee's reasons are consistently vague or general; colds, flu, backache or upset stomach.
6. Frequency of absences, unreported absences, one (1) day absences, one (1) hour (short) leave blocks at the start or end of the shift.
7. Factors not to be considered as excessive absenteeism are:
 - a. Pregnancy, surgery and/or health care provider-ordered confinement.
 - b. Workers' Compensation, or non-compensable, City service connected occupational illness.

- c. Authorized leaves, unless the particular leave appears to be based on an inappropriate use of characterization of illness or disability.

(C) EMPLOYEES' RESPONSIBILITY UNDER NOTIFICATION OF POSSIBLE MISUSE.

An employee who has been served with a notice of excessive absenteeism may be required to do the following:

1. Upon returning to work, certify in writing that the employee was ill or injured and unable to perform routine job functions, or facts upon which the claim of entitlement for sick leave is based.
2. Remain at home, at the location of treatment or therapy, or en route between these locations, unless released by the City for greater activity due to the nature of the illness or injury. Be available for call or visit by a supervisor.
3. Submit to a City-paid health care provider evaluation by a health care provider to determine the fitness for duty and the bona fides of the illness, injury or disability and/or prognosis for return to work at full or limited duty.
4. For incidents of sick leave, the employee will provide to the City a health care provider's certificate for each incident of illness as requested. Employees who fail to provide a health care provider's certificate upon return to work from sick leave are subject to disciplinary action.

(D) DISCIPLINARY ACTION.

Pursuant to Article 15, appropriate disciplinary action available under this Agreement for the misuse of sick leave may be imposed. The parties recognize that, notwithstanding the City's sick leave plan, the ability of an employee to attend work regularly is a job requirement.

10.8 FMLA.

The City will administer FMLA rights in accordance with federal and Oregon family leave laws.

ARTICLE 11. COMPENSATION SCHEDULE.

11.1 SALARY SCHEDULE.

(A) ADVANCEMENT WAGE SCHEDULE.

For the first year of this Agreement (July 01, 2014 through June 30, 2015) the City agrees that bargaining unit employees' wages will be adjusted by a two percent (2%) increase in wages.

The adjustment in wages will be made retroactive to July 01, 2014 upon the agreement of this contract.

An employee will advance one (1) step annually on the salary schedule on the employee's anniversary date provided the employee obtains an overall satisfactory performance evaluation.

However, for the first, second and subsequent year of this Agreement, advancement for police officers from PO 1, step "A" to step "C" will be automatic upon successful completion of the basic academy (or receipt of DPSST Basic Police Certification), field training, and being designated as solo qualified by the officer's supervisor. Advancement to step "C" will be no longer than eighteen (18) months from the date of hire. Step D occurs at the employee's second anniversary. All subsequent step increases will be on an annual basis, described in the above paragraph.

11.2 ON CALL PAY.

Any employee required to carry a cell phone provided by the City will receive forty dollars (\$40) per month. An employee required to carry a smart phone will receive a monthly stipend of \$45. Depending on assignment and department need, some employees may be required to carry one or both. An employee receiving "on call" pay may be directed to "stand-by" status under Article 7.6 of this Agreement and in such event will not be entitled to "stand-by" pay under Article 7.6. Payment for callouts provided for in Article 7.4 applies whether or not the employee is receiving "on call" pay

11.3 PAY PERIODS.

There will be one monthly pay period per month. However, an employee may have a regularly scheduled draw on the 15th of each month. Such regularly scheduled draw will be scheduled annually, or whenever the employee's rate of pay changes and such draw will not exceed 40% of pay.

11.4 MOTOR OFFICERS.

Officers assigned as Motor officers will normally be scheduled to work thirty-eight (38) hours in shift work per week and two (2) hours for bike maintenance. The reduced work hours will not apply in weeks when the officer is not using the motorcycle.

11.5 DOG HANDLERS.

Officers assigned as dog handlers will receive an additional five (5%) assignment pay adjustment during the time they serve in this assignment. Dog Handler canine training activities will be conducted on duty. Dog Handlers accept and may resign from the position voluntarily. Acceptance of the assignment is based upon willingness to care for the animal off-duty as a family pet/household member as provided for in Wage and Hours rules of the US Department of Labor. The parties agree that commuting to work with the dog does not constitute "hours of work" solely because the dog is in the vehicle.

Dogmasters and Dog Handlers will not be entitled to a call back premium when duty concerns emergency care of their animal. Such time will be paid at either straight time or overtime if applicable.

11.6 BILINGUAL PAY.

Employees who are qualified by the department as bilingual in English and Spanish, or a language spoken by over ten percent (10%) of City residents as documented by the most recent U.S. Census, will receive a monthly premium of five percent (5%) of their regular base pay.

11.7 DETECTIVE ASSIGNMENT PAY.

Officers assigned to work a regularly scheduled rotation as a Detective will receive an additional five (5%) assignment pay adjustment during the time they serve in this assignment. Assignments and duration of assignments will be according to department policy and are at the discretion of the Chief of Police.

11.8 PRIMARY FIELD TRAINING OFFICER ASSIGNMENT PAY.

The Police Officer and/or Communications Officer assigned as a Trainee's Primary Field Training Officer (FTO) is the person who performs the duty of reporting on the performance of the trainee using the Daily Observation Report, and will receive an additional five percent (5%) assignment pay adjustment during the time he/she is assigned and performs duties as the Primary FTO. Such assignments and duration of assignments will be according to the department policy and are at the discretion of the Chief of Police. A Senior Communications Officer who works with an advanced trainee who is permitted to work dispatch desk under the general supervision of a lead worker is not paid the FTO premium for being the senior employee on duty.

11.9 PRIMARY CAD MAINTENANCE ASSIGNMENT PAY.

Communications Officer assigned to serve as the Department's primary CAD Maintenance person will receive an additional five percent (5%) assignment pay adjustment during the time he/she serves in this assignment. Assignments and duration of assignments will be according to department policy and are at the discretion of the Chief of Police.

11.10 CERTIFICATION PAY.

(A) Intermediate Certification - Communications Officers and Police Officers who hold an Oregon Department of Public Safety Standards and Training (DPSST) intermediate certificate will receive an additional five percent (5%) pay adjustment during the time they have and maintain their certification while serving in their classification.

(B) Advanced Certification - Communications Officers and Police Officers who hold an Oregon DPSST advanced certificate will receive an additional five percent (5%) adjustment during the time they have and maintain their certification while serving in their classification.

11.11 LONGEVITY PAY.

Each employee who is a member of the bargaining unit, will receive the following additional pay to encourage longevity and employment with the City. Such additional pay will be paid into a deferred compensation plan that is approved by the City.

- An additional forty dollars (\$40) per month beginning the first full month after the ten year anniversary date of employment with the City.

- An additional sixty dollars (\$60) per month beginning the first full month after the fifteenth year anniversary date of employment with the City.
- An additional one-hundred dollars (\$100) per month beginning the first full month after the twentieth year anniversary date of employment with the City.
- The employee receiving such longevity pay will sign the proper authorization forms with the City to enable the City to pay such monies to the employee's deferred compensation pursuant to this ARTICLE.

11.12 CLOTHING ALLOWANCE FOR DETECTIVES.

Police Officers assigned to work regularly scheduled rotation as a Detective will receive a clothing allowance of thirty dollars (\$30.00) per month. This clothing allowance will be paid as a regular part of the employee's wages. It will be the employees' responsibility to account for expenses for purposes of their income tax return.

11.13 CLEANING OF CONTAMINATED CLOTHING.

An employee whose clothing becomes contaminated by blood or other body fluids, will submit the clothing item(s) to the City for cleaning.

ARTICLE 12. ASSOCIATION ACTIVITIES.

12.1 ANTI-DISCRIMINATION AGAINST ASSOCIATION MEMBERS.

It is mutually understood that the City will not in any manner discriminate against any member of the Association as the result of such member's activities on behalf of the Association and in furtherance of the purposes of the Association. Any dispute regarding this section of the Agreement may be processed through the grievance procedure. If not resolved at the City Manager level, the employee/Association may only pursue the matter further to the appropriate State agency for adjudication. The employee/Association may not arbitrate disputes under this section.

12.2 NEGOTIATIONS.

Of the Association representatives who are present at negotiations at least one will be a police officer and one will be a communications officer. If the negotiation session(s) are during their normally scheduled work time, they will be compensated for that time. If they are present during negotiations and it is during a time when they are normally not scheduled for work, they will not be compensated. Employees and the City will cooperate in making shift trade arrangements in order to facilitate Association representative attendance at bargaining sessions. The Association will cooperate in keeping the number of Association members at any negotiation session at a reasonable number, typically no more than four (4) Association members.

ARTICLE 13. GRIEVANCE AND DISPUTE RESOLUTION.

13.1 PROCEDURE.

STEP 1: After first attempting to resolve the grievance informally, the Association or any employee with notice to the Association, may claim a breach of this Agreement in writing to the employee's immediate supervisor within ten (10) days from the occurrence thereof, or fourteen days from when the employee knew, or should have known of the occurrence. The notice will include:

- a) statement of the grievance and relevant facts;
- b) provisions of the Agreement violated; and
- c) remedy sought.

The supervisor will respond to the grievance in writing within ten (10) days, with a copy to the Association.

STEP 2: If still unresolved, the employee may submit the grievance within ten (10) days from the receipt of the supervisor's response to a Captain. The Captain may meet with the aggrieved party, who may request an Association representative at the hearing. The Captain will respond to the grievance in writing within ten (10) days with a copy to the Association. For communications officers, records and evidence personnel, the employee may submit the grievance within ten (10) days from the receipt of the supervisor's response to the Support Services Manager. The Support Services Manager may meet with the aggrieved party, who may request an Association representative at the hearing. The Support Services manager will respond to the grievance in writing within ten (10) days with a copy to the Association.

STEP 3: If still unresolved, the employee may submit the grievance within ten (10) days from the receipt of the Captain's response to the Chief of Police. For communications officers, records and evidence personnel, if still unresolved, the employee may submit the grievance within ten (10) days to the Chief of Police. The Chief of Police may meet with the aggrieved party, who may request an Association representative at the hearing. The Chief of Police will respond to the grievance in writing within ten (10) days with a copy to the Association.

STEP 4: If still unresolved, the employee may submit the grievance within ten (10) days from the receipt of the Chief of Police's response to the City Manager. The City Manager will meet with the aggrieved party, Association representatives and any other party deemed necessary. The City Manager will respond to the grievance in writing within ten (10) days with a copy to the Association. Written reprimands are not subject to arbitration.

STEP 5: If still unresolved, the Association may submit the grievance within ten (10) days of the receipt of the City Manager's response to an arbitrator.

13.2 ARBITRATION.

If a grievance is submitted to arbitration, the arbitrator will be selected by the parties as follows:

- A list of eleven (11) arbitrators from Oregon will be requested from the Employment Relations Board, and the parties will alternately strike one (1) name from the list until

only one (1) is left. The Association will strike the first name. The one remaining will be the arbitrator.

- The arbitrator will render a decision in writing within 30 days of the close of the hearing and receipt of the briefs, if any. The arbitrator will be limited to interpreting this Agreement and determining if a violation has been committed. The arbitrator's decision will be strictly limited to those issues disputed by the parties. The arbitrator will have no authority to add to, subtract from, or modify this Agreement. The decision of the arbitrator will be binding on both parties.
- The costs of the arbitration exclusive of representation costs will be borne by both parties. Each party will be responsible for the cost of presenting its own case to arbitration.

13.3 TIME LIMITS.

Any time limits specified in this grievance procedure may be waived by mutual consent of the parties. "Day" will be defined as calendar day. Failure to submit the grievance in accordance with these time limits without such waiver will constitute abandonment of the grievance. Failure by the City to submit a reply within the specified time will constitute a denial of the grievance. A grievance may be terminated at any time upon receipt of a signed statement from the employee or Association that the matter has been resolved. The parties may defer any potential grievance to consideration of the Labor Management Advisory Team provided for in Article 1.3 of this Agreement.

13.4 ARBITRATION OF ASSOCIATION DISCRIMINATION CLAIMS OR EEO CLAIMS.

EEO claims, will not be subject to the grievance procedure beyond STEP 3 unless the employee first agrees to be bound by the Arbitrator's decision and waives, in writing, in a form acceptable to the City, the right to pursue claims in all other forums including the Bureau of Labor and Industries, the EEOC, and State and Federal Court.

ARTICLE 14. HEALTH & WELFARE.

14.1 HEALTH BENEFITS.

Beginning July 01, 2011 and then for the duration of this Agreement, the City will make available and maintain for the benefit of bargaining unit employees and their families medical, dental and vision insurance benefits identical to that provided to the bargaining unit of the Newberg Fire Department, the "International Association of Fire Fighters" by the "Northwest Firefighters' Relief Association". If, during the duration of this Agreement, the Association is made aware of any real or potential change in insurance benefit(s) and /or cost(s) provided by or associated with that plan, the Association is required to immediately notify the City and the City reserves the right to re-negotiate this portion of the Agreement. If at any time throughout the duration of this Agreement, the Association bargaining unit opts to return to the insurance carrier provided by the City, the Association will be subject to the rules of the City's insurance provider requires to opt back in. A fee to the Association bargaining unit to do so will apply commensurate with the actual costs incurred by the City in personnel costs. The City will contribute to the cost of medical, dental and vision insurance no less than ninety percent (90%),

and the employees in the bargaining unit will contribute the remainder of the full premiums which will be paid by payroll deduction.

The City will contribute to HRA VEBA accounts of each bargaining unit employee one hundred eighty-five dollars (\$185) per month for the duration of the Agreement.

14.2 LIFE INSURANCE BENEFITS.

The City will continue as a minimum, the current life insurance it now maintains for its employees. The amount of the life insurance will be one and a half (1.5) times the base salary of the employee.

14.3 DISABILITY BENEFITS.

The City will maintain the current disability insurance benefit for the employee.

ARTICLE 15. EMPLOYEE DISCIPLINE/TERMINATION.

15.1 DISCIPLINARY MEASURES.

Disciplinary action will be for just cause. Discipline includes the following steps and will normally be progressive as outlined below but the disciplinary process may be entered at any step depending upon the severity of the incident causing the disciplinary action:

- a) Verbal warning or reprimand, including written documentation thereof
- b) Written reprimand
- c) Reduction in pay
- d) Suspension without pay
- e) Demotion
- f) Discharge

The City will not impose a reduction in pay, suspension without pay, demotion or discharge of a non-probationary employee without appropriate pre-disciplinary due process procedures hereinafter defined in this Article. In the event a "reduction in pay" is the disciplinary action taken, the employee will have the option of using vacation time in lieu of suffering a pay reduction.

Verbal warnings and verbal reprimands are not subject to grievance. A written rebuttal may be provided by the employee and filed with the written documentation of the verbal warning or verbal reprimand.

Written reprimands are subject to grievance, however only up to and including Step Three (3) of the grievance process.

15.2 ASSOCIATION REPRESENTATION IN DISCIPLINE PROCESS.

The City acknowledges the right of the employee to request a representative of the Association to be present at any interview where the employee reasonably believes that discipline may result from the interview. Whenever appropriate, it will be sufficient that a supervisor documents that the employee

was advised that the interview will not result in discipline in order to require an employee to proceed in dialog without the presence of an Association representative.

15.3 GENERAL PROCEDURES.

a) Potential Discipline Situations. Any employee who will be interviewed at a disciplinary interview concerning an act which, if proven, could reasonably result in disciplinary action involving loss of pay or dismissal, untruthfulness, unlawful use of force, and/or a violation of civil rights will be afforded the following safeguards:

- (1) The employee and the Association will be informed that a formal investigation is commencing, unless the employee is under investigation for violation of the Controlled Substance Act, or violations which are punishable as felonies or misdemeanors under law, or if doing so would jeopardize either the criminal or administrative investigation.
- (2) At least seventy-two (72) hours prior to a disciplinary interview by the City of an employee, the result of which could be that the City may impose an economic sanction upon the employee as a result of the underlying incident, the employee and the Association will be informed, in writing, of the nature of the investigation and the specific allegations, policies, procedures and/or laws which form the basis for the investigation at that time; the employee will be afforded the opportunity to consult with an Association representative; and the employee and the Association will be provided all available materials the City possesses related to the investigation, unless the City elects to provide a written statement of essential facts which would support any contemplated basis of discipline.

When releasing information to the employee and the Association, the City may place conditions on disclosure of witness statements under circumstances where the conditions are warranted in order to limit risk of claims or aggravation of difficult circumstances in the work place or in the City's relationship with a victim. In such event, the City and the Association will cooperate to meet appropriate investigative and due process needs.

The employee will be allowed the right to have an Association representative present during the interview. The opportunity to have the Association representative present at the interview will not delay the interview more than four (4) hours, except for minor complaints (incidents for which no more than an oral warning may result) which may be handled immediately when a representative is not readily available. However, if in the course of the interview it appears as if a more serious disciplinary problem has developed, the employee will be allowed up to four (4) hours to obtain a representative to be present at the interview, or otherwise as mutually agreed.

- (3) All interviews will take place at Department facilities, or elsewhere if mutually agreed, unless an emergency exists which requires the interview to be conducted elsewhere.
- (4) The City will make a reasonable good faith effort to conduct these interviews during the employee's regularly scheduled shift, except for emergencies. However, where the Chief or the Chief's designee is a party to the interview, the City may schedule the interview outside the employee's regular working hours as long as the appropriate

overtime or irregular hours payments are made to the employee. Where an employee is working on a graveyard shift, the City will endeavor to conduct the interview contiguously to the employee's shift, and the appropriate overtime or irregular hours payments will be made to the employee.

- (5) The employee will be required to answer any questions specifically involving the non-criminal matter(s) under investigation and will be afforded all rights and privileges to which they are entitled under the laws of the State of Oregon or the United States of America. Whenever a Garrity statement is obtained pursuant to this Agreement, this Agreement constitutes a waiver of the Fifth Amendment rights for purposes of giving the compelled statement to the City, and Garrity precludes admissibility of the compelled statement or the fruits thereof in any criminal proceeding which is an independent right not waived hereby. Garrity advice and acknowledgment will be accomplished in writing. The compelled statement will not be provided in any form to the District Attorney or a criminal investigator.
 - (6) The employee will be entitled to such reasonable intermissions as may be requested for personal necessities.
 - (7) All interviews will be limited in scope to activities, circumstances, events, conduct or acts which pertain to the incident which is the subject of the investigation. Nothing in this section will prohibit the City from questioning the employee about information which is developed during the course of the interview.
 - (8) The City will tape record the interview and a copy of the complete interview of the employee will be furnished, upon request, to the Association. If the interviewed employee is subsequently disciplined and the recording is transcribed by the City, the employee and the Association will be provided a copy thereof.
 - (9) Interviews and investigations will be concluded without unreasonable delay.
- b) This article will not prevent informal inquiry by the City or its representative following a critical incident in order to ascertain what occurred. This may include a walk through. Information obtained will be used for administrative purposes only, and the scope will be limited to facilitate the on-scene investigation and scene processing and/or preparation of a public statement. .
 - c) This Article 15.3 relating to general procedures will not apply to a criminal investigation conducted by another law enforcement agency.
 - d) Use of force situations will be governed by the Agreement, police department policy, and the process developed for Yamhill County as required by SB 111.

15.4 FAIRNESS AND DUE PROCESS.

Pre-disciplinary "due process" means written notice of the charges and the facts upon which the charges are based (i.e. date/time/place), notice of the maximum range of discipline under consideration, and an opportunity to meet with the decision maker or his/her designee. If the essential

facts which support the allegations are not described in detail in the written notice, the City will provide the Association and the affected employee with all the documents which are relied upon.

The City's practice is to afford employees the opportunity to consider, accept and/or comment upon all discipline for at least twenty-four (24) hours before final issuance. If the employee's interests are not met, then the employee or the Association may submit a written rebuttal to a documented discipline which will be maintained with the record of discipline.

When discipline is to be imposed and the notice of pre-disciplinary due process is given, documents upon which the City has relied may be provided to the Association and the affected employee in lieu of a description of facts in the notice itself.

15.5 AVOIDANCE OF EMBARRASSMENT.

If the Chief of Police has reason to discipline an employee, the Chief of Police will make a reasonable effort to investigate and impose such discipline in a manner that will not unduly embarrass the employee before other employees or the general public.

15.6 DISCIPLINARY RECORDS RETENTION.

Personnel records will be maintained as prescribed by OAR 166-200-0090 (4) and (7). Any records, if removed, will be retained in a separate system of records in the office of the City Attorney for use in civil litigation response, charges of unevenly applied discipline or failure to represent. Removal upon employee request will be determined by the City based on considerations of accuracy, timeliness and relevance to City purposes.

ARTICLE 16. SAVING CLAUSE.

If any Article or Section in this Agreement, or any addendum thereto, should be held invalid by operation of law or by any tribunal of competent jurisdiction, the Article or provision will not invalidate the entire Agreement, it being the express intention of the parties hereto that all other provisions not declared invalid will remain in full force and effect. The parties will enter into immediate collective bargaining for the purpose of arriving at a mutually satisfactory replacement for such Article or Section that has been declared invalid. If the parties are in disagreement about an item and whether in fact it has been rendered invalid, then this item will be temporarily inoperative pending a resolution of the matter.

ARTICLE 17. RETIREMENT.

17.1 EMPLOYEE CONTRIBUTION UNDER PERS.

The City will pay six percent (6%) PERS pick-up contribution to the Oregon Public Employees Retirement System (PERS) and/or OPSRP in accordance with state law. The City will pay the full contribution provided for by the plan.

17.2 EMPLOYEE'S CONTRIBUTION WITH CURRENT CITY RETIREMENT PLAN.

Those employees who chose not to become members of the Public Employees Retirement System will remain in the current City Retirement Plan. New employees of the bargaining unit will be members of PERS. The City will pay the full contribution provided for by the Plan.

17.3 UNUSED SICK LEAVE.

Upon retirement or disability retirement, the City will report one hundred percent (100%) of the employee's un-used sick leave to PERS so PERS can use the reported amount to calculate employee's retirement allowance in accordance with ORS 238.350 and applicable PERS rules for employees enrolled in PERS; a similar benefit provided for in the City Retirement Plan will be continued in accordance with the Plan document.

ARTICLE 18. TERM OF AGREEMENT.

- (A) This Agreement will be effective and retroactive to July 1, 2014, upon signing by both the City and the Association, and will remain in full force and effect through June 30, 2015. At the end of this period, the City and the Association may agree to extend the Agreement for an additional two years on all matters except for compensation. At the end of this period (July 01, 2014- June 30, 2015), the City and Association will re-negotiate the Agreement as it relates to all matters of compensation.
- (B) This Agreement will automatically be renewed from year to year thereafter, unless either party gives written notice to the other not less than sixty (60) calendar days preceding the above expiration date (June 30, 2015) of its desire to modify the Agreement. The parties will attempt to commence bargaining during March of 2015 for the successor labor agreement.

ARTICLE 19 – DRUG TESTING PROVISIONS.

The Newberg-Dundee Police Department implements the following Substance Abuse Policy to become effective upon execution of the Agreement:

It is the policy of this Department that the critical mission of law enforcement services justifies maintenance of an alcohol and drug-free work environment. Furthermore, the law enforcement profession has several uniquely compelling interests that justify the use of employee alcohol and drug-testing and other reasonable restrictions designed to produce an alcohol and drug-free working environment. The public has a right to expect that those who are sworn to protect them are at all times both physically and mentally prepared to assume these duties. Therefore, in order to ensure the integrity of this Department and to preserve public trust and confidence in an alcohol and drug-free law enforcement profession, this department has adopted the following:

A. Prohibited Conduct:

The following conduct is specifically prohibited:

1. Buying, selling, consuming, distributing or possessing drugs or alcohol during working hours, including rest and meal periods, except in conjunction with the performance of work duties (confiscated evidence, approved undercover operations, etc.)
2. Reporting for work or returning to duty under the influence of alcohol or drugs. An employee while on duty is considered “under the influence” of alcohol if her/his alcohol concentration is .001 BAC or more. Alcohol concentration levels measuring less than .001 BAC are considered a negative result. An employee is considered to be “under the influence” of drugs, if the employee tests positive for having such substances present in his/her body.

In no event will an employee consume any kind of alcoholic beverages within four (4) hours of the time he/she is scheduled to report for work. Where an employee is subject to callout and he/she has consumed alcoholic beverages within the preceding eight (8) hour period, the employee will be required to advise her or her supervisor of that fact, the amount and when the alcohol was consumed.

3. Failing to promptly report arrests, convictions and or/plea bargains for an alcohol or drug related criminal offense to the Chief of Police and/or designee, irrespective of the jurisdiction where such action was taken.
4. Failing or refusing to promptly submit to testing as long as reasonable suspicion is present. An employee may not delay a test by requesting Association representation, due to the dissipation of alcohol or controlled substances over time. However the employee may request to be accompanied to the test site by a witness in addition to the supervisor involved.
5. Giving false, diluted or altered samples or obstructing the testing process.

Drugs include but are not limited to the following controlled substances: opiates, cocaine, marijuana, phencyclidine, amphetamines / methamphetamines, and barbiturates. However, drugs does not include prescription and over-the-counter medications that are lawfully prescribed and used in a manner consistent with a physician’s instructions and/or medication warnings.

Employees who engage in any prohibited conduct will be subject to discipline, including discharge.

B. Disclosure of Medications:

Employees are responsible for consulting with their physician and carefully reviewing medication warnings, including any warning pertinent to the effects of use of a combination of medications. Employees who are using over-the-counter or prescribed medications which have any reported side effects that could reasonably affect their ability to safely perform all essential job duties must notify their supervisor of the substance taken and its side effects before the

employee is allowed to continue her/her job assignment. Employees are eligible to utilize sick leave benefits pending receipt of acceptable verification.

Although the use of prescribed and over-the-counter medication as part of a medical treatment program is not grounds for disciplinary action, failure to fully disclose the use of substances which could reasonably impair the safe performance of essential job duties; illegally obtaining the substance or use which is inconsistent with prescriptions of labels will subject an employee to disciplinary action.

C. Employee Testing:

The City may require employees to submit to breath, urine and blood substance testing in accordance with City policy and in a manner not inconsistent with this Agreement. Tests may be conducted for reasonable suspicion. Reasonable suspicion is based upon articulable observations concerning the appearance, unusual behavior, speech, breath/odor, body symptoms, or other reliable indicators that an employee has consumed drugs and/or alcohol. Reasonable suspicion will include but is not limited to personal involvement in an accident or incident resulting in significant personal injury to self or others, or a traffic accident involving personal injury or property damage in excess of fifteen hundred dollars (\$1500.00). In such event, the employee will be deemed to have consented to the taking of a necessary sample by medical personnel. Tests will be conducted at Providence Newberg Hospital (or a medical facility to which the employee has been transported) under the supervision of a Medical Review Officer qualified for DOT CDL purposes, with appropriate procedures and safeguards which apply to CDL testing. An employee may not delay a test by requesting Association representation, due to the dissipation of alcohol or controlled substances over time. However the employee may request to be accompanied to the test site by a witness in addition to the supervisor involved.

LABOR AGREEMENT

**Between the City of Newberg Police Department
and the Newberg-Dundee Public Safety Association**

For the Period of: July 1, 2014 - June 30, 2015

(39 Total Pages)

SIGNED this _____ day of. _____, **2015**

CITY OF NEWBERG

**NEWBERG-DUNDEE PUBLIC SAFETY
ASSOCIATION**

Jacqueline Betz, City Manager
Adopted by the Newberg
City Council on , 2015
via Resolution No. -----

Financial Treasurer (CEO)

**Daryl S. Garrettson, Attorney at Law
Labor Representative**

**Association Officer or Representative
(Patrol)**

**APPROVED AS TO FORM AND
CONTENT:**

Truman Stone City Attorney

**Association Officer or Representative
(Communications)**

**LABOR AGREEMENT BETWEEN THE CITY OF NEWBERG
AND THE NEWBERG-DUNDEE PUBLIC SAFETY ASSOCIATION**

SCHEDULE "A" for ARTICLE 11.1 (Salary Schedule)

July 1, 2014	Per Hour Step A	Step A	Step B	Step C	Step D	Step E	Step F
Police Association	2.0%						
Communications (CO1)	17.65	3060	3212	3373	3541	3718	3904
Communications (CO2)	18.53	3212	3373	3541	3718	3904	4100
Communications (CO3)	19.46	3373	3541	3718	3904	4100	4304
Records/Evidence Tech	17.65	3060	3212	3373	3541	3718	3904
Police Officer (PO1)	24.10	4178	4387	4606	4838	5079	5334
Police Officer (PO2)	25.31	4387	4606	4838	5079	5334	5600
Police Officer (PO3)	26.57	4606	4838	5079	5334	5600	5880