



**CITY COUNCIL AND LOCAL CONTRACT REVIEW BOARD AGENDA
Monday, April 6, 2015 - 6:00 P.M.
Council Chambers**

The meetings of the Newport City Council and the Local Contract Review Board will be held on Monday, April 6, 2015, at 6:00 P.M. The meetings will be held in the Council Chambers of the Newport City Hall, located at 169 S.W. Coast Highway, Newport, Oregon 97365. A copy of the agenda follows.

The meetings location is accessible to persons with disabilities. A request for an interpreter for the hearing impaired, or for other accommodations for persons with disabilities, should be made at least 48 hours in advance of the meeting to Peggy Hawker, City Recorder at 541.574.0613.

The City Council reserves the right to add or delete items as needed, change the order of the agenda, and discuss any other business deemed necessary at the time of the meeting.

**CITY COUNCIL MEETING AGENDA
Monday, April 6, 2015
Council Chambers**

Anyone wishing to speak at a Public Hearing or on an agenda item should complete a Public Comment Form and give it to the City Recorder. Public Comment Forms are located at the entrance to the City Council Chambers. Anyone commenting on a subject not on the agenda will be called upon during the Public Comment section of the agenda. Comments pertaining to specific agenda items will be taken at the time the matter is discussed by the City Council.

- I. Pledge of Allegiance**
- II. Call to Order and Roll Call**
- III. Public Comment**
This is an opportunity for members of the audience to bring to the Council's attention any item not listed on the agenda. Comments will be limited to three (3) minutes per person with a maximum of 15 minutes for all items. Speakers may not yield their time to others

IV. Proclamations, Presentations, and Special Recognitions

Any formal proclamations or recognitions by the Mayor and Council can be placed in this section. Brief presentations to the City Council of five minutes or less are also included in this part of the agenda.

- A. Proclamation Honoring Rick Bartow
- B. Proclamation - Day of Recognition for National Service

V. Consent Calendar

The consent calendar consists of items of a repeating or routine nature considered under a single action. Any Councilor may have an item on the consent agenda removed and considered separately on request.

- A. Approval of City Council Minutes from City Council Executive Session of March 16, 2015 and Regular Meeting of March 16, 2015 (Hawker)
- B. Confirmation of Mayor's Appointment of Jeff Schrantz to the Parks and Recreation Committee for a Term Expiring 12/31/16

VI. Public Hearing

This is an opportunity for members of the audience to provide testimony/comments on the specific issue being considered by the City Council. Comments will be limited to three (3) minutes per person.

- A. Public Hearing on Whether to Make Newport Parks Smoke Free Zones

VII. Communications

Any agenda items requested by Mayor, City Council Members, City Attorney, or any presentations by boards or commissions, other government agencies, and general public will be placed on this part of the agenda.

- A. From Destination Newport Committee - Recommendation to Approve Tourism Marketing Grant for 2015 Flippers, Feathers, and Fins 5K

VIII. City Manager Report

All matters requiring approval of the City Council originating from the City Manager and departments will be included in this section. This section will also include any status reports for the City Council's information.

- A. Approval of Seismic Rehabilitation Grant Program Contract for the Newport Fire Station
- B. Approval of Amendment No. 1 to the Intergovernmental Agreement with the State of Oregon for Motor Vehicle Fuel Dealer Tax Collection
- C. Report from City Manager on Community Visioning Process
- D. Authorizing a Letter of Support for Homeporting two U.S. Coast Guard Fast Response Cutters

IX.

LOCAL CONTRACT REVIEW BOARD

A. Call to Order

B. Notice of Award for the Installation of a Granular Activated Carbon (GAC) Tank at the Water Treatment Facility to James W. Fowler Co.

C. Adjournment

X. **Report from Mayor and Council**

This section of the agenda is where the Mayor and Council can report any activities or discuss issues of concern.

XI. **Public Comment**

This is an additional opportunity for members of the audience to provide public comment. Comments will be limited to five (5) minutes per person with a maximum of 15 minutes for all items. Speakers may not yield their time to others.

XII. **Adjournment**

**A PROCLAMATION
RECOGNIZING ARTIST RICK BARTOW
ON HIS 40TH RETROSPECTIVE
“THINGS YOU KNOW BUT CANNOT EXPLAIN”
AT THE JORDAN SCHNITZER MUSEUM OF ART IN EUGENE, OREGON**

WHEREAS, Rick Bartow is a Native American artist, from Newport, skilled in various media including sculpture, print, etching, monotype, ceramics, mixed media, and painting; and

WHEREAS, Bartow’s work can be found in museums and galleries across the globe; and

WHEREAS, During Bartow’s career, he has received a commission from the Smithsonian National Museum of the American Indian to create a wood sculpture that is currently on display at the Museum in Washington, D.C.; and

WHEREAS, On April 17, 2015, a 40-year retrospective exhibit of Bartow’s work, entitled “Things You Know But Cannot Explain,” will be on display at the Jordan Schnitzer Museum of Art in Eugene, Oregon until August 9, 2015; and

WHEREAS, accompanying the exhibition is a fully illustrated catalog with essays by co-curators Jill Hartz, executive director, and Danielle Knapp, McCosh Associate Curator, at the Jordan Schnitzer Museum of Art, and Lawrence Fong, former curator of American and regional art at the museum; and

WHEREAS, rather than follow a chronological survey, the exhibition explores such themes as “Gesture,” “Self,” “Dialogue,” “Tradition,” “Transformation,” and “New Work,” and will include over 120 paintings, drawings, sculpture, and prints; and

WHEREAS, the City of Newport is privileged to have Bartow as a member of the community.

NOW, THEREFORE, I, Sandra N. Roumagoux, Mayor of the City of Newport, do hereby recognize and honor Bartow for his commitment to the arts, for the pride he has brought to the community through his art, and for his 40-year retrospective at the Jordan Schnitzer Museum of Art, “Rick Bartow: Things You Know But Cannot Explain.”

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Seal of the City of Newport to be affixed this 6th day of April, 2015.

Sandra N. Roumagoux, Mayor



A PROCLAMATION HONORING NATIONAL SERVICE RECOGNITION DAY

WHEREAS, service to others is a hallmark of the American character, and central to how we meet our challenges; and

WHEREAS, the nation's mayors are increasingly turning to national service and volunteerism as a cost-effective strategy to meet city needs; and

WHEREAS, in 2015, the Americorps National Civilian Community Corps Pacific Region has deployed a team of young people to serve with the Oregon Parks and Recreation Department - Coastal Region to assist in forest restoration; planting of native trees; wetland restoration; and beach clean-up; and

WHEREAS, national service participants address some of the most pressing challenges facing our cities, from disaster relief and recovery; environmental stewardship; energy conservation; urban and rural development; and infrastructure improvement; and

WHEREAS, national service represents a unique public-private partnership that invests in community solutions and leverages non-federal resources to strengthen community impact and increase the return on taxpayer dollars; and

NOW, THEREFORE, I, Sandra Roumagoux, Mayor of the City of Newport, do hereby proclaim April 7, 2015, as National Service Recognition Day, and encourage residents to recognize the positive impact of national service in our city; to thank those who serve; and to find ways to give back to their communities.

Sandra N. Roumagoux, Mayor

March 16, 2015
5:15 P.M.
Newport, Oregon

The City Council of the City of Newport, met in a special meeting, on the above date in the Council Chambers of the Newport City Hall. On roll call, Allen, Swanson, Sawyer, Engler, Saelens, and Busby were present. Roumagoux was excused.

MOTION was made by Allen, seconded by Swanson, to excuse Roumagoux due to illness. The motion carried unanimously in a voice vote.

Staff present was City Manager Nebel, City Recorder Hawker, Public Works Director Gross, Fire Chief Miranda, and Human Resources Coordinator James.

MOTION was made by Allen, seconded by Swanson, to enter executive session pursuant to ORS 192.660(2)(d) for labor negotiator consultations with the IAFF, the Newport Employee's Association, and the Newport Police Association. The motion carried unanimously, and Council entered executive session at 5:22 P.M.

Busby read the executive session rules of engagement.

MOTION was made by Sawyer, seconded by Swanson, to return to leave executive session and return to the special meeting. The motion carried unanimously in a voice vote, and Council exited executive session at 6:05 P.M.

Having no further business, the meeting adjourned at 6:05 P.M.

Margaret M. Hawker, City Recorder

Ralph Busby III, Council President

March 16, 2015
6:35 P.M.
Newport, Oregon

The City Council of the City of Newport, met in a special meeting, on the above date in the Council Chambers of the Newport City Hall. On roll call, Allen, Swanson, Sawyer, Engler, Saelens, and Busby were present. Roumagoux was excused.

Staff present was City Manager Nebel, City Recorder Hawker, Community Development Director Tokos, Public Works Director Gross, Parks and Recreation Director Protiva, and Police Chief Miranda.

PLEDGE OF ALLEGIANCE

Council, staff, and the audience participated in the Pledge of Allegiance.

PUBLIC COMMENT

Nyla Jebousek addressed Council regarding disabled parking for the new swimming pool. She inquired as to whether the pool would have an ionizer, and gross reported that the pool will use a standard chlorination system as that is more effective than the ionization process.

CONSENT CALENDAR

The consent calendar consisted of the following:

- A. Approval of City Council minutes from the regular meeting of March 2, 2015;
- B. Acceptance of the resignation of Martha Adcox, from the Senior Citizen's Advisory Committee, whose term would expire on December 31, 2015;
- C. Confirmation of the Mayor's appointments to the Senior Citizen's Advisory Committee of Ann Way, for a term expiring December 31, 2016, and Nancy Warneke for a term expiring December 31, 2015.

MOTION was made by Allen, seconded by Swanson, to approve the consent calendar as presented. The motion carried unanimously in a voice vote.

PUBLIC HEARINGS

Public Hearing and Possible Approval of the City Council Goals for Fiscal Year 2014/2015. Hawker introduced the agenda item. Nebel reported that at the March 2 meeting of the City Council, the Council proposed the adoption of goals for the 2015/2016 fiscal year.

Nebel reported that the City Council met in its annual goal setting session on February 23, 2015 to hear reports from departments, advisory committees, and the public on possible goals for the 2015/2016 fiscal year. He stated that throughout the

course of the day, members of the City Council identified various projects for potential Council goals for the next fiscal year. He added that fourteen goals were prioritized by the City Council for inclusion in the 2015/2016 goals. He noted that in addition, Council discussed the possibility of proceeding with some sort of community visioning process during the next fiscal year. He stated that Council has requested a report on the community visioning matter which will be presented at the April 6 City Council meeting.

Busby opened the public hearing on the proposed 2015/2016 fiscal year City Council goals at 6:42 P.M. He called for public comment.

Nyla Jebousek suggested including someone from the Oregon State Parks Department on the Urban Renewal Advisory Committee.

Nyla Jebousek requested that Council consider implementing a low income assistance water rate program. She noted that the City of Albany administers a similar program through the Community Services Consortium. Sawyer asked that Murzynsky report on the Albany plan in the next few weeks.

Nyla Jebousek suggested that the water bills be revised so that the various charges are delineated.

Nyla Jebousek reported that she was pleased to see that one of the lesser Council goals was to institute an event similar to that which occurs at Shore Acres State Park during the holiday season. She suggested using local natural resources to further promote tourism.

Hearing no additional comment, Busby closed the public hearing at 6:47 P.M. for Council deliberation.

Allen noted that Jebousek's remarks regarding the low income water assistance program are a good reminder that this issue needs to be investigated. He added that another item that the Infrastructure Task Force discussed was to include additional information on the water bills showing where the money was going. Saelens noted that he appreciated Jebousek's reminder that the program is important. Nebel reported that he plans to talk with the Budget Committee about a water rate study. Engler noted that the city does not have jurisdiction over Yaquina State Park; adding that it would difficult for the city to host a Shore Acres type event. She suggested that perhaps the Aquarium's holiday lighting program could be expanded. Allen noted that the intent behind the goal is to start a discussion with the state parks for consideration of a Shore Acres-type program. Saelens noted that an issue that has arisen with advisory committees is what happens to the committee recommended goals if they have not been identified as priority Council goals. Nebel noted that the committees may work toward their goals throughout the next year. He added that he would follow up with the advisory committees.

MOTION was made by Swanson, seconded by Engler, to adopt the 2015/2016 fiscal year goals for the City of Newport. The motion carried unanimously in a voice vote.

Public Hearing on Petition by Jim and Dee Reeb - Petition to Initiate the Nuisance Process as Provided in the Newport Municipal Code. Hawker introduced the agenda item. Nebel reported that Jim and Dee Reeb reside at 705 SW Alder Street in Newport which is located on the corner of Alder and 7th Streets. He stated that the Reeb's submitted a complaint regarding property conditions at 447 SW 7th Street to the Police Department in September 2014. He noted that former Community Service Officer Dustin

Kittel met twice with Mr. and Mrs. Reeb. He added that this was at the time that Kittel was completing his tenure with the city, and as a result, this matter remained unresolved following the initial contact with the department. He noted that Mr. Reeb forwarded the complaint to him, but due to an extended absence created by illness, he did not have an opportunity to forward this complaint to Chief Miranda in a timely fashion. He stated that the Reeb's opted to use the provision in the Municipal Code that provides that if a nuisance remains in place for 30 days without any action by the city, that person may petition the City Council to initiate the nuisance process. He added that since this time, he has met with Mr. Reeb and coordinated a meeting with the new Community Service Office, Jim Folmar, and Lt. Jason Malloy. He noted that Folmar indicated that he would initiate contact with the landlord immediately. He stated that it is hoped that current efforts will work concurrently with the public hearing to address the significant property issues occurring at 447 SW 7th Street.

Busby opened the public hearing at 6: 55 P.M.

He called for public comment.

Jim Reeb reported that this started last fall when he spoke with former Community Service Officer Kittel. He stated that he provided photos for Kittel, but nothing happened. He added that he took more photos later in the year. He stated that he met with Nebel in February and submitted a series of photos, and provided the latest photos from yesterday. He added that since Nebel and Folmar have become involved, there has been some improvement, but that he would like to see it continue and speed up, particularly in regard to the property between the houses.

Rocky Green reported that he is the main handyman for the property at issue. He stated that the mess cannot be seen from anywhere outside. He added that he is easy to get along with, and that he would have preferred to have been notified about this issue before it got to this point. He stated that he will do his best to keep the property picked up. He noted that he works on bikes, boats, and rafts, and has a fire pit, and believes that it is unfair asking him to live by the neighbor's standards in his yard. He reported that he only became aware of this matter within the past few weeks.

Busby closed the public hearing at 7:02 P.M. for Council deliberation.

Allen asked whether, since it appears that things are moving forward in a positive fashion, Council needed to initiate any process, or whether the matter might be resolved informally. Nebel reported that there is a positive history of progress. He added that this is an issue that fell through the cracks, but that steps are being taken to adequately address the issue. He stated that Folmar is working with both parties to bring the issue to an appropriate conclusion. He added that both parties have been cooperative, and that the city will work with them until the issue is satisfactorily addressed. Busby asked Reeb whether he is satisfied with the progress. Reeb reported that progress has been made in the back yard, but nothing has been done on the side yard. Allen noted that the direction to City Manager and Police Chief is to look into issues more proactively, and if one does rise to the level of a potential nuisance, the City Manager has the discretion to bring the matter to the City Council. Nebel noted that staff understands what it needs to do. It was the consensus of Council that no Council action is needed at this time.

Public Hearing and Possible Adoption of Ordinance No. 2077 Readopting Ordinance No. 2074 Withdrawing Territory from the Seal Rock Water District. Hawker introduced the agenda item. Nebel reported that the city entered into an Intergovernmental

Agreement (IGA) with the Seal Rock Water District in 2007 that expanded the city's water service area to include much of South Beach. He stated that the IGA evidenced both parties' recognition of the fact that the city is better positioned to provide water service to developing properties in the area. He noted that the IGA contemplated, but did not affect, the withdrawal of the served properties from the District's territory.

Nebel reported that after the city took over water service responsibilities within the City Service Area (CSA) on January 1, 2008, the District secured approval of a General Obligation Bond for improvements to its water system. He added that these bonds were drawn upon in 2011 and 2012 to finance improvements to the District's system that do not benefit properties within the CSA. He stated that because properties within the CSA remain within the District boundaries, these properties are subject to District property taxes, and are paying for their proportionate share of the post-2008 issued bonds.

Nebel reported that upon recognizing the inequities of this situation for CSA property owners, the city and District adopted Amendment No. 1 to the IGA on May 8, 2014, to evidence the parties' intent that, when CSA territory is withdrawn from the District, those properties will only be subject to General Obligation Bond debt incurred prior to January 1, 2008, the date the city began providing water service within the CSA.

Nebel reported that ORS 222.520 authorizes cities to withdraw territory from a service district once it has been annexed. He stated that the process that must be followed, outlined under ORS 222.524, requires that the governing body of a city fix a date, time, and place for a public hearing to hear any objections to the withdrawal and determine whether such withdrawal is in the best interest of the city. He added that notice of the hearing must be published in a newspaper once a week, for two consecutive weeks prior to the date of the hearing. He noted that after the hearing, the governing body may, by ordinance, declare the annexed territory withdrawn from the district, but that such an ordinance is subject to referendum.

Nebel reported that on October 20, 2014, the City Council set a public hearing for 6 P.M. on November 17, 2014 in the City Hall Council Chambers (169 SW Coast Hwy, Newport) as the date, time and place for the public hearing. He added that notice of the hearing was published in the Newport News-Times on November 7, 2014, and November 14, 2014, satisfying the statutory notice requirement.

Nebel reported that the City Council, after considering the evidence and argument presented at the public hearing and in the record, determined that it was in the city's best interest to withdraw the territory annexed to the city and located within the CSA from the Seal Rock Water District, and adopted Ordinance No. 2074 on December 1, 2014.

Nebel reported that subsequent to the adoption of Ordinance No. 2074, the city was advised by the Oregon Department of Revenue, that for it to complete a review of the withdrawal, several technical changes to the manner in which the withdrawn property is described should occur. He stated that because these are technical changes, there is no change to the numbers and locations of the properties as described in Ordinance No. 2074.

Nebel reported that in order to allow sufficient time for the Oregon Department of Revenue to complete its review so that taxpayer relief can occur as envisioned in Ordinance No. 2074, an emergency ordinance is necessary.

Busby opened the public hearing at 7:18 P.M.

Busby called for public comment. There was none.

Busby closed the public hearing at 7:19 P.M. for Council deliberation.

MOTION was made by Allen, seconded by Sawyer, that Ordinance No. 2077, which withdraws territory from the Seal Rock Water District, be read, by title only, and placed for final passage. The motion carried unanimously in a voice vote. Hawker read the title of Ordinance No. 2077. Voting aye on the adoption of Ordinance No. 2077 were Sawyer, Saelens, Swanson, Busby, Engler, and Allen.

COMMUNICATIONS

From the Visual Arts Center Steering Committee - Presentation of a Management Plan for the Visual Arts Center. Hawker introduced the agenda item. Nebel reported that on June 2, 2014, the City Council unanimously approved a motion requesting the development of a strategic plan for the Visual Arts Center including the following elements: 1. A governance model; 2. A financial plan to shift financial support from the city to a shared responsibility between the city and the visual arts community over a period of five years; and 3. To expand the use and programs offered in the Visual Arts Center over time. He noted that the motion required that the Council be provided this report by December 1, 2014, and that Council later approved an extension to March of 2015. He stated that since he was unable to be present at the March 2 meeting, he asked that the Steering Committee have materials prepared for the March 16 City Council meeting. He noted that the Steering Committee has worked collaboratively with the various stakeholders at the Visual Arts Center and has identified a series of goals to address the criteria outlined by the City Council at the June 2, 2014 Council meeting. He stated that the report is included in the packet.

Nebel reported that he had the opportunity to work with the Steering Committee since June 2014 to develop a realistic plan to make the Visual Arts Center more self-supporting and to address general governance issues among the stakeholders for this facility. He stated that he has been impressed with the dedication of the group of people that have worked diligently to get through this process. He added that he believes that the Visual Arts Center will be much more actively managed, and with the recommendation in place, the oversight of the Visual Arts Center will be much more transparent and visible in the future.

Catherine Rickbone, Executive Director of the OCCA, and Tom Webb, VAC Manager, appeared before Council. Rickbone reported that Webb will be moving from the manager position into the VAC director position. She added that he has had an opportunity to participate in this process. She introduced and recognized Mike Kloeck, a member of the VAC Steering Committee, and asked that other Steering Committee members present stand. Rickbone noted that many community members participated in this effort.

Rickbone reported that the reports contained in the packet represent months of work and thinking about the process. She acknowledged the Yaquina Arts Association and Coastal Arts Guild. She stated that the executive summary relates back to the resolution. She thanked Nebel for his assistance.

Webb reviewed the VAC as a facility and its community usage. He reported that the facility draws 19,000 visitors annually, and has an estimated economic impact of \$111,000 annually. He noted that efforts are being made to grow the usage and diversity of the building.

Rickbone reviewed the financials noting that the operating subsidy for the VAC was recently \$85,224 which is a modest amount of money compared to the community benefit. Webb reviewed the financial action plan, noting that it looks at current revenue streams, adds new revenue streams, and reminds staff to be open to new opportunities. He added that the goals will be reviewed annually, and include rental income, private donations, and art sales. He noted that newer revenue streams will include increased private patron support, and foundation and sponsor development. He stated that the goals are annually incremental, but in total, over a five-year period, are substantial. He noted that the new support is represented in the plan, and it adds up to around \$129,000 in year five.

Rickbone and Webb responded to Council questions.

MOTION was made by Saelens, seconded by Allen, to accept the report and recommendation from the Visual Arts Steering Committee which includes the governance model, a financial management plan, and goals to expand usage of the building as requested by the City Council. Motion was further made to accept the bylaws which create the governance model for the Steering Committee for the oversight for the Visual Arts Center. Motion was further made to adopt Resolution No. 3709, as presented, establishing rental rates for the VAC effective March 16, 2015. The motions carried unanimously in a voice vote.

From the Parks and Recreation Advisory Committee - Consideration of Designating Newport Parks as Smoke Free Zones. Hawker introduced the agenda item. Nebel reported that the Parks and Recreation Advisory Committee voted, in an eight to two vote, to recommend to the City Council that all of the city-owned parks be designated as smoke free zones. He noted that this item has been discussed over the past six months by the Committee, and if the Council is interested in pursuing this direction, recommended that the Council hold a public hearing that would be scheduled during the April 6 City Council meeting prior to taking action on this recommendation. He added that if at the end of the public hearing, there is a consensus to move forward, an ordinance could be drafted to address the desires of the City Council in regard to this matter.

Saelens reported that the Committee discussed where smokers are supposed to smoke, and noted that, with the current proposal, smoking would still be allowed in parking lots, sidewalks, and on the perimeter of parks.

MOTION was made by Sawyer, seconded by Engler, to set a public hearing on April 6, 2015 to hear public comment on the recommendation of the city's Parks and Recreation Advisory Committee to designate city-owned parks as smoke free zones. The motion carried in a voice vote with Swanson voting no. A discussion ensued regarding enforcement, and it was suggested that Nebel develop a report on enforcement so that a comprehensive assessment could occur. Swanson noted that she would also like to know the costs of signage.

From the Senior Citizen's Advisory Committee - Update on Activities at the 60+ Center by Mike Rickus and Peggy O'Callaghan. Hawker introduced the agenda item. Mike Rickus, Chair of the Senior Advisory Committee, and Peggy O'Callaghan, manager of the facility, made a PowerPoint presentation on activities at the 60+ Center and responded to Council questions. Items reviewed included: hours of operation;

contact information; users of the facility; gift shop, organized activities; usage statistics; volunteer hours; pool parking demands on the city campus; building entrances; Meals on Wheels; rooms available for rent; kitchens; multi-purpose room; lounge/library; education room; pool room; wellness center; group support from the Newport Senior Activity Association; Friends of the Newport Senior Center; Newport 60+ Center Advisory Board; and the vision statement. Rickus recognized the work of Swanson as the Council liaison to the Committee. He stated that the Committee is concerned about the impact on parking created by the pool. He reiterated that this is a major concern that needs to stay in the forefront. Gross agreed to meet with the Committee regarding pool parking.

From the Lincoln County Land Trust - Regarding a Revised Memorandum of Understanding by Bill Hall. Hawker introduced the agenda item. Nebel reported that at the July 21, 2014, City Council meeting, the Council approved an agreement to jointly fund the Lincoln Community Land Trust to hire a full-time staff person with associated administrative support services with each entity contributing \$30,000 a year beginning July 1, 2014 and continuing through June 30, 2017.

Nebel reported that at the joint City Council/County Commission meeting held on January 21, County Commissioner, and Lincoln Community Land Trust Board Member, Bill Hall, informed the Council that efforts to retain a qualified employee for the Trust has been unsuccessful and that the Trust was looking at providing that staffing on a contractual basis through an established community land trust organization. He stated that in the interim, the Trust entered into an operational services and technical assistance agreement with Proud Ground, a Portland-based land trust that serves low and moderate income first-time home buyers through education and counseling; post purchase support; affordable home buying opportunities; and asset management. He added that Proud Ground facilitates the sale of homes to individuals meeting specific income thresholds, which allows the homes to be purchased at \$60,000-\$100,000 below market value. He noted that when the homeowners sell the homes, the same savings is passed along to the prospective buyer, who must also meet the eligibility requirements at that time.

Nebel reported that at the March 2, 2015 City Council meeting, this issue of revising the MOU was discussed and Council had questions regarding the MOU and the agreement between LCLT and Proud Ground. He stated that Council opted to defer action on the issue until the March 16, 2015 City Council meeting at which time those questions were to be addressed.

Nebel reported that at the March 2 City Council meeting, Councilor Allen noted that the agreement between LCLT and Proud Ground caps Proud Ground's fees at \$25,000, and that projecting this amount out to a full year would only be \$50,000. He stated that Allen inquired as to what happens to the remaining \$40,000 contributed by the three jurisdictions, since each agreed to contribute \$30,000 annually for three years. He noted that in an e-mail from Bill Hall (included in the packet), Hall notes that "I said I thought we had deliberately set the first six month dollar amount at a low ceiling, and my review today has confirmed that. In this initial period, we are mainly focused on setting up an operating structure; as we move into actual project development, the expectation is that the hours will increase." Hall added (in this same e-mail), that "I've attached a second revision (to the MOU) adding the words "up to" in front of \$30,000 per year. My

expectation is that Proud Ground would draw down funds proportionately on an as-needed basis, and if not all the money is drawn down, it will be left with the jurisdictions.” Nebel noted that at the March 2 Council meeting, the words “a full time staff person” were recommended to be replaced with “professional staffing.” Both these changes are indicated in the draft revised MOU which is attached to this report.

Nebel stated that this program has solid merit, and noted that it is important that we try to work as a team with the other major governmental entities to make the program move forward.

Bill Hall apologized for not being better prepared at the last meeting. He confirmed that the amount of \$25,000 was deliberately set low because Proud Ground thought there might be less work during the ramp up period. He noted that the second reason is that while Proud Ground has most expertise among its staff, it would have to contract for some services, and that amount is not included in the \$25,000 amount. He added that the revised memorandum of understanding has included the wording “up to” before the \$30,000 figure.

Allen noted that at the last meeting, there was a reference by Tokos regarding CDBG and possibly using the extra money for that which would be outside the scope of services. It was agreed that City Council action would be needed for services outside the scope. Busby stated that he believes that this program gives too much money to too few people. He added that the city is now looking at a new urban renewal district, and spending more money than it is taking in, and that he does not believe the city should be spending money on this program.

MOTION was made by Saelens, seconded by Sawyer, to approve the revised Memorandum of Understanding (MOU) with the Lincoln Community Land Trust, the City of Newport, the City of Lincoln City, and Lincoln County for a commitment to provide up to \$30,000 a year for a three-year period beginning July 1, 2014, to provide financial support to contract for services for the development of workforce housing on a regional basis, and that the MOU include attaching an e-mail communication from Bill Hall, dated March 3, 2015. The motion carried in a voice vote with Busby voting no.

From the Audit Committee - Report on Selecting an Auditor for the City of Newport.

Hawker introduced the agenda item. Nebel reported that the most recent contract for conducting the annual financial audit for the City of Newport and the Newport Urban Renewal Agency expired following the year-end 2014 audit. He noted that in preparation for the upcoming year-end 2015 financial audit, the Finance Department requested proposals, from multiple firms, through a formal competitive Request for Proposal (RFP) process and received proposals from six qualified firms.

Nebel reported that a Selection Review Committee (consisting of Councilor and Audit Committee Member, Laura Swanson, the Finance Director, the Assistant Finance Director, and the Financial Specialist III) reviewed the responses to the RFP. He stated that the results were tabulated into a matrix and were presented to the Audit Committee to decide whether interviews were necessary. He added that based on the review by the Audit Committee, three firms were invited to participate in interviews to further evaluate their suitability for the auditing services contract. He noted that after the interviews, the final results were tabulated and added to the initial matrix. He stated that the apparent successful proposer is the firm, Boldt, Carlisle, and Smith LLC, who was ranked the highest.

Nebel reported that the packet includes a report from Councilor Allen regarding the March 10, 2015 Audit Committee meeting that was held to clarify items associated with the RFP.

Nebel reported that the Audit Committee has reviewed the results and is recommending that the city, and URA, award the contract to Boldt, Carlisle and Smith LLC and have the Finance Director negotiate the contract to be awarded. He stated that once the contract is negotiated, the Finance Director will present the contract to the City Manager for execution. He added that the contract would be for three years with options for two one-year extensions.

Nebel reported that this is a communication only, as action on the selection of an auditor for the City of Newport and the Newport Urban Renewal Agency is on this agenda under "Local Contract Review Board" items for both the city and URA.

CITY MANAGER REPORT

Approval of Second Amendment to the Intergovernmental Agreement with the Seal Rock Water District. Hawker introduced the agenda item. Nebel reported that the city currently has water customers (and city taxpayers) who continue to pay taxes to the Seal Rock Water District since actions have never been taken to remove those properties from the District.

Nebel reported that as part of Amendment No. 1 to the IGA, the city, working with the District, agreed that the city should be responsible for any debt issued prior to 2008 on those properties withdrawing from the district. He added that as of July 1, 2015, this amount will be \$55,322.49. He noted that it was the intent of the parties to forgive any responsibilities, to the extent legally permissible, for debt incurred after January 1, 2008. He stated that it is this issue that the District has since determined cannot be addressed in the way proposed in Amendment No. 1.

Nebel reported that under the revised agreement, this issue is being addressed in a different way. He stated that in the original 2007 IGA, the city is responsible to pay to the District the sum of \$1.8 million in monthly payments of not less than \$5,000 each. He noted that the original IGA also required that bonded indebtedness is satisfied as provided by law for withdrawn properties.

Nebel reported that in order to maintain the original intent of Amendment No. 1, the city's responsibilities will be as follows: (1) The city will continue paying \$5,000/month on the balance of the \$1.8 million original obligation between the city and District; (2) The city will continue being responsible for paying \$55,322.49 of the debt issued prior to 2008 in accordance with Amendment No. 1 by July 31, 2015; (3) Under Amendment No. 2, the city will be responsible for annual payments by June 30 of each year. The first of these payments is estimated at \$9,450 for the 2011 and 2012 debt on withdrawn properties. The total obligation for properties to be withdrawn is estimated, by the agreement, as \$215,000 as of July 1, 2015; (4) The District will issue a credit reducing the balance of the original obligation of the city of \$1.8 million, by any payments made by the city on the 2011 and 2012 debt for withdrawing properties. In the first year, \$9,450 will be credited to the city's current obligations.

Nebel reported that based on limitations with Oregon Law, that this modification will address the issues to maintain the original intent of Amendment No. 1. He stated that while the city is, in effect, accelerating the payoff of the original \$1.8 million obligation,

the amendment eliminates the legal uncertainties that surrounded the city's potential obligations that were part of the original amendment. He added that Amendment No. 2 results in the city being compensated for any obligations relating to the 2011 and 2012 debt obligations.

MOTION was made by Engler, seconded by Saelens, to approve Amendment No. 2 to the Intergovernmental Urban Service Agreement between the City of Newport and Seal Rock Water District and authorize the Mayor to sign said document, as presented. The motion carried unanimously in a voice vote.

Approval of an Intergovernmental Agreement with the State of Oregon for E-Permitting. Hawker introduced the agenda item. Nebel reported that the city implements a building inspection program under authority granted by ORS Chapter 455. He stated that in 2008, the State of Oregon Building Codes Division was charged with implementing a statewide ePermit system that provides individuals in the building trades and members of the general public with the capability of accessing building permit records online. He added that the software is to be made available to municipalities, at no charge, so that they may use it to carry out their building permitting and inspection responsibilities. He noted that the Building Codes Division selected Accela, Inc. as the software vendor. He stated that to date, 18 counties, 34 cities, and a regional Council of Governments have implemented the system, and a list of those agencies is included in the packet. He noted that Lincoln City and Lincoln County use ePermitting, and if Newport implements the program, Lincoln County will be the first in the state where all of the building permitting jurisdictions offer these services.

Nebel reported that if Council is agreeable to implementing the state ePermitting system, it is required to approve an intergovernmental partnership agreement with the State of Oregon, Department of Consumer and Business Services, Business Code Division. He stated that it will take approximately four months for city and state staff to convert data and set-up the software for the city's use. He noted that this would occur late summer or early fall of this year and will position the city so that the software will be available for public use at the beginning of January 2016. Nebel recommended Council approve the intergovernmental partnership agreement.

MOTION was made by Swanson, seconded by Saelens, to approve the regional intergovernmental partnership agreement with the State of Oregon, Department of Consumer and Business Services, Business Code Division, and authorize the City Manager to sign the agreement relating to the implementation of an ePermit System and Services for the City of Newport. The motion carried unanimously in a voice vote.

Approval of Special Event Permit Fee Waiver for the Newport Marathon. Hawker introduced the agenda item. Nebel reported that the Newport Marathon will be held on Saturday, May 30, 2015. He stated that the City Council has developed a process to consider waiving some or all of the expenses incurred by the city to host this type of event. He noted that the costs incurred by the city are from the Police Department of \$4,000; Fire Department of \$500; and Public Works Department of \$425, for a total of \$4,925.

Nebel reported that in the past, Council has authorized a waiver of 35% of the fiscal impact to the city for this event. He stated that a waiver of 35% of the total of \$4,925

would be \$1,723.75, leaving the Newport Marathon with a balance due to the city of \$3,201.25.

Nebel reported that Council may, if it desires, waive the full fiscal impact to the city. He stated that there are two proposed motions, one which waives 35% of the fiscal impact to the city, and one which waives the entire fiscal impact to the city.

MOTION was made Sawyer, seconded by Engler, to approve the special event permit request from the Newport Marathon, in the amount of \$4,925.00, for its event to occur on May 30, 2015, as the event complies with special event permit criteria and guidelines, and to transfer \$4,925 from the Transient Room Tax Fund to the General Fund to reimburse the Police Fire, and Public Works Departments. The motion carried unanimously in a voice vote.

Approval of Special Event Permit Fee Waiver for the Loyalty Days. Hawker introduced the agenda item. Nebel reported that the Loyalty Days parade will be held on Saturday, May 2, 2015. He stated that the City Council has developed a process to consider waiving some or all of the expenses incurred by the city to host this type of event. He noted that the costs incurred by the city are from the Police Department of \$4,000; Fire Department of \$500; and Public Works Department of \$2,355, for a total of \$6,855.

Nebel reported that in the past, Council has utilized a formula authorizing a waiver of 35% of the fiscal impact to the city for the majority of special event permit fee waiver requests. He stated that a waiver of 35% of the total of \$6,855 would be \$2,399.25, leaving the Newport Loyalty Days and Sea Fair Festival Association, Inc. with a balance due to the city of \$4,455.75.

Nebel reported that for the past several years, Council has waived all the fees incurred by the city because the Newport Loyalty Days and Sea Fair Festival Association, Inc. is a non-profit corporation. He added that due to past Council action, there two proposed motions, one which waives 35% of the fiscal impact to the city, and one which waives the entire fiscal impact to the city.

MOTION was made by Swanson, seconded by Sawyer, to approve the special event permit request from the Newport Loyalty Days and Sea Fair Festival Association, Inc., in the amount of \$6,855.00, for its event to occur on May 2, 2015, as the event complies with special event permit criteria and guidelines, and to transfer \$6,855 from the Transient Room Tax Fund to the General Fund to reimburse the Police, Fire, and Public Works Departments. The motion carried unanimously in a voice vote. Melinda Dye and Debra Smith appeared before Council on behalf of this event.

LOCAL CONTRACT REVIEW BOARD

During the course of the regularly scheduled City Council meeting, Busby called the meeting of the City Council, acting as the Local Contract Review Board, to order at 9:02 P.M.

Notice of Intent to Award a Contract for Auditing Services for the City of Newport to Boldt, Carlisle, and Smith, LLC. Hawker introduced the agenda item. Nebel reported that the most recent contract for conducting the annual financial audit expired following the year-end 2014 audit. He stated that in preparation for the upcoming year-end 2015

financial audit, the Finance Department requested proposals from multiple firms, through a formal competitive Request for Proposal (RFP) process, and received proposals from six qualified firms.

Nebel reported that a Selection Review Committee consisting of Laura Swanson, City Councilor and Audit Committee Member, the Finance Director, the Assistant Finance Director, and the Financial Specialist III, reviewed the responses to the RFP. He stated that the results were tabulated into a matrix and were presented to the Audit Committee to decide if interviews were necessary. He added that based on the review by the Audit Committee, three firms were invited to participate in interviews to further evaluate their suitability for the auditing services contract. He noted that after the interviews, the final results were tabulated and added to the initial matrix, and the apparent successful proposer is the firm, Boldt, Carlisle, and Smith, LLC, which was ranked the highest.

Nebel reported that the Audit Committee has reviewed the results and is recommending that the City Council award the contract to Boldt, Carlisle, and Smith, LLC and have the Finance Director negotiate the contract to be awarded. He stated that once the contract is negotiated, the Finance Director will present the contract to the City Manager for execution. He added that the contract would be for three years with options for two one-year extensions.

Nebel recommended that the Local Contract Review Board authorize the Notice of Intent to Award a contract for auditing services to Boldt, Carlisle, and Smith, LLC.

MOTION was made by Swanson, seconded by Sawyer, to authorize a Notice of Intent to Award a contract for auditing services for the City of Newport to Boldt, Carlisle, and Smith, LLC and authorize the City Manager to sign a contract between the City of Newport, with Boldt, Carlisle, and Smith LLC for professional auditing services for three years, with an option to extend the contract for two additional, one-year terms, contingent upon no protest after seven days. The motion carried unanimously in a voice vote with Allen abstaining for reason as in Audit Committee.

RETURN TO CITY COUNCIL MEETING

Council adjourned the Local Contract Review Board meeting and returned to its regular meeting at 9:04 P.M.

REPORT FROM MAYOR AND COUNCILORS

Busby reported that he met with Kevin Greenwood, General Manager of the Port of Newport. He added that he toured the Port facilities; discussed the future of the Port and the airport.

Busby reported that he and Sawyer attended a recent OLCC hearing on what recreational marijuana regulations should be enacted. He added that it was an interesting session that included lots of questions. He noted that OLCC has a tough job ahead of them, and that OLCC will be returning to the legislature requesting changes to existing legislation and new legislation. He stated that OLCC is still accepting comments from the public.

Sawyer reported that he had attended the open house on the Agate Beach Wayside project. He noted that generally, people like it, although a few folks were unhappy.

Sawyer reported that he participated in the KCUP radio show while Nebel was on vacation.

Saelens noted that the preliminary Budget Committee meeting is scheduled for Wednesday. He added that this is the same evening of the opening of the Big 5 Sporting Goods store, and he suggested stopping by the store prior to the meeting.

Swanson reported that the City Center Newport Association is already planning its Decoween event.

Swanson reported that she attended the Fire Department's awards banquet, and that it was great to see people acknowledged for their work.

Swanson reported that she attended the recent Leadership Lincoln session that included a panel of media and communication officers. She noted that Hawker participated on this panel.

Busby reported that he attended the Fire Department's awards banquet, and that it was an excellent evening.

Engler reported that she attended a recent meeting of the Nye Beach Parking Committee. She noted that the group wants to continue with the parking district with a goal of more sustainable parking solutions.

Engler reported that she attended a recent meeting of the Solid Waste Advisory Committee at which Jenny DeMaris, emergency manager for Lincoln County, discussed how debris management fits into the overall emergency management plan for Lincoln County.

Engler reported that she attended a recent meeting of the Library Board. She noted that she toured the Library improvements which were made possible by the Foundation, grants, and a small amount of city money.

Engler reported that she attended a recent meeting of the Nye Beach Merchants Association. She noted that the group is preparing for its upcoming Mystery Weekend. She suggested that the city have a point person for working with the Angell Job Corps for potential volunteer work in the city. Gross reported that he will be attending a luncheon at the Job Corps and will carry the message.

Engler reported that the "Know Your Newport" program, sponsored by the Greater Newport Chamber of Commerce, is coming up, and noted that it is a valuable program for folks in the hospitality industry.

Engler reported that the Paper Arts Festival is coming up at the Visual Arts Center.

Allen reported that he attended the Fire Department's awards banquet and that it was a great event.

Allen reported that he had attended two Audit Committee meetings which were discussed earlier this evening.

ADJOURNMENT

Having no further business, the meeting adjourned at 9:27 P.M.

Margaret M. Hawker, City Recorder

Ralph Busby, Council President

CITY MANAGER'S REPORT AND RECOMMENDATIONS



Agenda #: VI.B.
Meeting Date: April 6, 2015

Agenda Item: Confirmation of Mayor's Appointment to the Parks and Recreation Committee

Background:

The city has received an application from Jeff Schrantz to serve on the Parks and Recreation Committee. Mayor Roumagoux wishes to appoint Jeff Schrantz for the term expiring 12/31/16, subject to ratification by the City Council.

Recommended Action:

I recommend that the City Council ratify the appointment of Jeff Schrantz for the term expiring 12/31/16 to the Parks and Recreation Committee as part of the consent calendar.

Fiscal Effects:

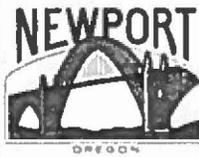
None.

Alternatives:

Do not ratify the appointment or as suggested by the City Council.

Respectfully Submitted,

Spencer R. Nebel
City Manager



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- ▾ Committees
- Committee/Commission Application

Application for Commission/Committee Appointment

Please complete the form below and click the "Submit" button at the bottom of the page.

Date	11/19/2014
List the Commission/ Committee of interest:	Park + Rec
Name:	Jeff Schrantz
Address:	NEWPORT OR 97365
Work Telephone Number:	
Home Telephone Number:	
Email Address:	
Occupation:	insurance
Employer:	State Farm
(1) Why do you want to serve on this committee/commission/board/task force, and how do you believe you can add value?	Previously on Rec Center Task Force
(2) What is a difficult decision you have made concerning issues of bias and/or issues of conflict of interest?	on prior Rec Center task force - difficult recommendations were made as to future to Rec Center
(3) Describe the process of how you make decisions.	Review all sides of issue before decision
(4) What do you think about consensus decision making? What does the consensus decision making process mean to you?	In group setting - majority rule

(5) Describe all other pertinent information/background for this position.

Long time Newport Resident - I'm interested in giving back to community

Thank you in advance for your community spirit in offering to serve!



Write the characters in the image above

Clear the whole form

Send in Application

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City Hall
169 SW Coast Hwy, Newport, Oregon 97365
541.574.0603
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Jim Protiva

Cindy & Peggy,

Please pass this application along to the Mayor for approval at the Council level. He has been interviewed and accepted by the Parks and Rec Advisory Committee(March 18th).

Thanks Jim p.



CITY MANAGER'S REPORT AND RECOMMENDATIONS

Agenda #: VI.A.
Meeting Date: April 6, 2015

Agenda Item: Public Hearing on Whether City Council Should Consider Making Newport Parks Smoke Free Zones

Background:

At the March 16, 2015 City Council meeting, the Council scheduled a public hearing for the April 6 City Council meeting to hear public comments on a recommendation from the city's Parks and Recreation Committee to designate city parks as smoke free zones. The Newport Parks and Recreation Committee recommended that smoking be prohibited in the interior of all parks, including all picnic shelters and playgrounds. Smoking would be permitted in parking lots, on sidewalks, and at the perimeter of all parks. A question was raised at the March 16 City Council meeting as to how this would be enforced within the parks system. Parks Director, Jim Protiva, has indicated that the rules would be posted in the parks and the smoking restrictions would be dealt with the same as other violations of parks rules, which typically is enforced by explaining the rule and asking them to refrain from the activity that violates the rule. These types of rules are often brought to the attention of people in violation by other parks users as well. Following any public comments, the Council can provide direction as to whether language should be developed to amend Ordinance No. 1917 with provisions outlining no smoking zones within city parks system for future review and action by the City Council.

Recommended Action:

I recommend the Mayor conduct a public hearing on the whether City Council should consider making Newport parks smoke free zones.

I further recommend after hearing any public comment that the City Council consider the following motion:

I move to direct the city staff to draft language amending Ordinance No. 1917 to include the addition of City of Newport park property as no smoking zones with this restriction excluding parking lots, and public street sidewalks surrounding park properties.

Fiscal Effects:

The city would incur costs for the printing and placement of signs on park property.

Alternatives:

Do not impose smoking restrictions on park properties, impose restrictions only on those park properties that include sense of youth activity, include playgrounds, ball fields and other areas where there is a high concentration of children, or as suggested by City Council.

Respectfully Submitted,

A handwritten signature in blue ink, appearing to read "S. Nebel", written in a cursive style.

Spencer R. Nebel
City Manager



Agenda Item # VI.A
Meeting Date April 6th, 2015_

CITY COUNCIL AGENDA ITEM SUMMARY
City Of Newport, Oregon

Issue/Agenda Title: Public Hearing on designating Newport Parks as Smoke Free Zones

Prepared By: Protiva Dept Head Approval: JAP__ City Manager Approval:

Issue Before the Council:

A PUBLIC HEARING TO ALLOW CITIZENS THE OPPORTUNITY TO EXPRESS THEIR OPINIONS ON THE POTENTIAL NEW DESIGNATION THAT ALL NEWPORT PARKS WOULD BECOME SMOKE FREE ZONES.

Staff Recommendation:

Staff will support the recommendation of the Newport Parks and Recreation Advisory Committee and the ultimate decision of City Council.

Proposed Motion:

I move to direct staff to construct draft language that amends Ordinance number 1917 to include the addition of Newport Parks as No Smoking Zones and come back before the council for adoption.

Key Facts and Information Summary:

- 80 percent of Lincoln County residents are non-smokers, and 40 percent of Lincoln County smokers have tried to quit in the past year;
- Many non-smokers are offended by second-hand smoke; and
- Studies show there is no safe level of second-hand smoke exposure;

Other Alternatives Considered:

Several ideas about designated locations for smokers were considered. The majority decided that the interior of all parks, including at picnic shelters and on playgrounds should be smoke free. In consideration that some park may users may participate in smoking, it could be allowed in parking lots, on street sidewalks, and at the perimeter of all parks.

City Council Goals:

To provide meaningful opportunities and amenities within the park system that meets the needs of the citizens.

Attachment List:

Fiscal Notes:

The fiscal impacts to the City will be limited to staff time and the cost of changing signs. It was estimated to be approximately \$15.00 per sign to add new verbiage or place a new sign under the existing sign.

In recognition that:

- 80 percent of Lincoln County residents are non-smokers, and 40 percent of Lincoln County smokers have tried to quit in the past year;
- Many non-smokers are offended by second-hand smoke; and
- Studies show there is no safe level of second-hand smoke exposure;

It is the recommendation of the Newport Parks and Recreation Committee to amend Ordinance 1917 to include all city parks in a manner that promotes health while preserving the use of parks by smokers as follows:

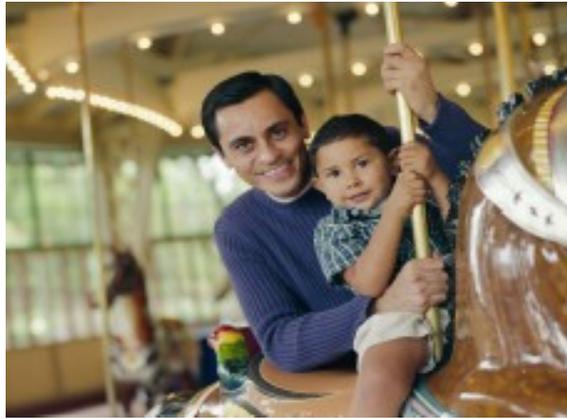
- a. Smoking will be prohibited in the interior of all parks, including at picnic shelters and on playgrounds.
- b. Smoking will be permitted in parking lots, on sidewalks, and at the perimeter of all parks.

It is the position of the Parks and Recreation Commission that by allowing smoking at the perimeter of parks, including parking areas and sidewalks, that no park user will face undue burden or exclusion from the benefit of Newport Parks, while protecting the health and wellbeing of the majority of parks users.



Join the growing list of parks and recreational areas throughout Oregon that have adopted tobacco-free or smokefree policies:

- | | | |
|---------------|--------------|--|
| Ashland | Lake | Bend Parks and Recreation District |
| Bandon | Oswego | |
| Beaverton | Lebanon | Chehalem Parks and Recreation District |
| Coos Bay | Lincoln City | Crook County Parks and Recreation District |
| Corvallis | McMinnville | |
| Dallas | Medford | Hood River Valley Parks and Recreation District |
| Dayton | North Plains | |
| Echo | Pendleton | North Wasco County Parks and Recreation District |
| Forest Grove | Portland | |
| Grants Pass | Rainier | Tualatin Hills Parks and Recreation District |
| Happy Valley | Roseburg | |
| Hermiston | Sherwood | Hood River County |
| Hillsboro | Stayton | |
| Independence | Wilsonville | Benton County |
| John Day | Winston | Oregon Metro |
| Klamath Falls | | Oregon State Parks |



80% of adult Oregonians do not smoke

90% of adult Oregonians say that people should be protected from secondhand smoke

For more information on your local county Tobacco Prevention Program contact:



5 REASONS PARKS ACROSS OREGON ARE GOING SMOKEFREE



Tobacco-free outdoor areas help families promote healthy lifestyles and reinforce the fact that most Oregonians do not smoke.



From: Jim Protiva
Sent: Tuesday, March 31, 2015 4:51 PM
To: Spencer Nebel
Subject: minutes from the March 16th

From the Parks and Recreation Advisory Committee - Consideration of Designating Newport Parks as Smoke Free Zones. Hawker introduced the agenda item. Nebel reported that the Parks and Recreation Advisory Committee voted, in an eight to two vote, to recommend to the City Council that all of the city-owned parks be designated as smoke free zones. He noted that this item has been discussed over the past six months by the Committee, and if the Council is interested in pursuing this direction, recommended that the Council hold a public hearing that would be scheduled during the April 6 City Council meeting prior to taking action on this recommendation. He added that if at the end of the public hearing, there is a consensus to move forward, an ordinance could be drafted to address the desires of the City Council in regard to this matter.

Saelens reported that the Committee discussed where smokers are supposed to smoke, and noted that, with the current proposal, smoking would still be allowed in parking lots, sidewalks, and on the perimeter of parks.

MOTION was made by Sawyer, seconded by Engler, to set a public hearing on April 6, 2015 to hear public comment on the recommendation of the city's Parks and Recreation Advisory Committee to designate city-owned parks as smoke free zones. The motion carried in a voice vote with Swanson voting no. A discussion ensued regarding enforcement, and it was suggested that Nebel develop a report on enforcement so that a comprehensive assessment could occur. Swanson noted that she would also like to know the costs of signage.

EDITORIAL

You can't legislate good behavior unless you educate good behavior

It took six months of deliberation and the involvement of a group of researchers for the Newport Parks and Recreation Advisory Committee to have enough of a consensus among its members (6-2 vote) to present the amendment of Ordinance 1917 before city council.

The amendment would prohibit the smoking of anything on park grounds — cigarettes, e-cigarettes, or marijuana — but would allow smokers the opportunity to proceed to a parking lot, street sidewalk, or border of the park.

Given how long it took the advisory committee to come to a 6-2 vote on the issue, the public can assume that the committee has done a considerable amount of research on the subject.

However, the primary reasons and motivations presented for amending the ordinance at this week's council meeting were less than compelling. Second-hand smoke and cigarette butts don't make for the most convincing argument, which might be the more likely reason why it took the committee a half of a trip around the sun to push the idea in front of council in the first place.

There is no disputing that smoking is bad for us. So is texting and driving and not wearing our seatbelts — both laws in Oregon but possibly more importantly, both coupled with timely and effective public awareness campaigns.

The reason for the campaign is simple — legislation of this type is unenforceable. A fact that Newport Parks and Recreation Director Jim Protiva recognized this week when he told the News-Times that “the resources are just not there to have a police officer roaming the parks at all times looking for smokers.”

We do not dispute that smoking should be banned from public parks, but the fact is that one can't simply legislate good behavior — they must also educate good behavior. In our opinion, the Newport Parks and Recreation Committee should couple this recommendation with a small campaign that educates the residents of Lincoln County on the cost savings of tobacco-free policies, and our seasonal guests about the benefit to the environment.

This may be a message that will more likely receive unanimous appeal.

— JAMES RAND

Smokeless parks discussion coming

BY JAY OMAR
Of the News-Times

NEWPORT — There is a debate coming for the residents of Newport, and at the end, no smoking signs may have a new place to hang.

At the April 6 Newport City Council meeting, a public hearing is set to discuss the amendment of city ordinance 1917, or the topic of making all of Newport parks “smoke free” zones.

The ban put forth would prohibit the smoking of anything on park grounds — cigarettes, e-cigarettes, or marijuana — but would allow smokers the opportunity to proceed to a parking lot, street sidewalk, or border of the park to indulge.

The ordinance would not include Newport-area beaches, which are not covered by the city’s parks and recreation department, but it would render all 12 of the local city parks completely smokeless.

“The driving factor behind the idea is the dangers of secondhand smoke, and whether or not those attending a Newport park should be exposed,” Parks and Recreation Director Jim Protiva said. “Other benefits are there, as well, such as less pollution. Cigarette butts are a huge problem, and a smoking ban would hopefully help on that front.”

The debate over the issue has already begun, as it took the Parks and Rec Advisory Committee nearly six months to push the topic to the city council, and was finally approved by a 6-2 vote.

A subcommittee was also assembled to dig deeper into the issue and report back to the advisory committee, as the department attempted to completely vet the topic.

If the amendment to the ordinance passes, implementation will be a tricky situation.

“The resources are just not there to have a police officer roaming the parks at all times looking for smokers,” Protiva said when asked about enforcement. “But if someone was inconvenienced enough to ask someone to stop, and

NEWPORT on Page A7

NEWPORT

Continued from page 1

they didn’t, they could call the police and maybe get an officer to help with the situation.”

Rachel Peterson, the health and promotion program manager for Lincoln County, originally proposed the rule change over six months ago.

A list of numbers and information was submitted with the proposal, including the fact that 80 percent of all Lincoln County residents are nonsmokers, and 40 percent of Lincoln County smokers have tried to quit in the last year.

Studies were also put forth regarding the harms of second hand smoke, and how no safe level has ever been determined.

Numbers will inevitably be tossed around during public

discussion, as well arguments about rights and inconvenience.

The dynamic of the debate and the multiple stances each resident can take is what makes this situation unique, according to Protiva.

“It isn’t a divided table of wrong versus right. Both sides of the argument have merit, and I think that will show when the conversation gets going,” he said. “I believe this is a great opportunity for community members to voice their opinion for what they believe is the right decision. This affects people in different ways — whether they are a nonsmoker, smoker, or have a family member that smokes — they have opinion on what should be done.”

Newport is not alone in its push for smokeless parks, as a number of Oregon cities,

including Lincoln City, McMinnville, Corvallis, Coos Bay, and Portland, have all paved the way.

Moving forward the topic will pick up steam, starting with the council meeting on April 6.

The community is encouraged to come out and voice their opinion, and to be a part of a debate about the future of all 12 Newport parks.

“The advisory committee didn’t decide on this topic quickly, and I don’t expect an easy decision to be reached by the council or the community,” Protiva said. “A large number of towns and cities have instituted a smoking ban on their parks recently, and we believe it is time for Newport to give it a try. The parks and recreation department believes this is in the best interest of our city.”



CITY MANAGER'S REPORT AND RECOMMENDATIONS

Agenda #: VII.A.
Meeting Date: April 6, 2015

Agenda Item:

Communication from the Destination Newport Committee - Recommendation to Approve Tourism Marketing Grant for 2015 Flippers, Feathers, and Fins 5K

Background:

The Destination Newport Committee has reviewed a request for a tourism marketing grant for the 2015 Flippers, Feathers, and Fins 5K. This event is being sponsored by the Oregon Coast Aquarium. The funds requested will be used to target runners from the Willamette Valley, Portland and Bend markets. In 2014 there were 239 participants in this fun run of which over half travel more than 50 miles to get to Newport. This year they are targeting 500 to participate in the event. This is the first time that city funding will be used for advertising this event.

Recommended Action:

I recommend that the City Council consider the following motion:

I move approval of a tourism marketing fund grant as recommended by the Destination Newport Committee for assistance with marketing and advertising for the 2015 Flippers, Feathers, and Fins 5K in the amount of \$2,500.

Fiscal Effects:

\$20,000 was initially appropriated for tourism marketing grants funding for the 2014-15 Fiscal Year. If this appropriation is approved there will be a remaining balance of \$3,000 for potential additional grants.

Alternatives:

None recommended.

Respectfully Submitted,

Spencer R. Nebel
City Manager



Agenda Item # VII.A
Meeting Date 4-6-15

CITY COUNCIL AGENDA ITEM SUMMARY
City Of Newport, Oregon

Issue/Agenda Title: Consideration of Award for the Tourism Marketing Grant for Oregon Coast Aquarium for the 2015 Flippers, Feathers, and Fins 5 K

Prepared By : C. Breves Dept Head Approval: Nebel City Mgr Approval:

Issue Before the Council: The issue before Council is consideration of a tourism marketing grant application from the Oregon Coast Aquarium, in the amount of \$2,500, for assistance with marketing for the 2015 Flippers, Feathers, and Fins K5 expansion.

Staff Recommendation: The Destination Newport Committee recommends approval of the tourism marketing grant for the 2015 Flippers, Feathers, and Fins K5.

Proposed Motion: I move to approve the tourism marketing grant fund application, submitted by the Oregon Coast Aquarium, for assistance with marketing and advertising for the 2015 Flippers, Feathers, and Fins 5K, in the amount of \$2,500.

Key Facts and Information Summary: The Oregon Coast Aquarium has requested \$2,500 to assist with marketing efforts and event promotion for the 2015 Flippers, Feathers, and Fins 5K. This is a 5K race and Kids Dash that runs through the aquarium. This event is designed to encourage healthy lifestyle and bring people to Newport and the Oregon Coast. Last year of the 239 participates, 159 traveled more than 50 miles to participate. This year the goal is to increase participation to 500. In order to achieve the increased participation the Oregon Coast Aquarium will work with Portland Running Company who will sponsor the race and assist with the execution. Due to the races early start time runners will need to stay the night before the race increasing the need for rooms. The organizers estimates about 100 rooms will be used by race participates. Each participate receives a free pass to the aquarium for the day, which encourages participates to stay longer and bring their families. Additional sponsors are News-Times, Samaritan Health Services, Portland Running Company and a pending sponsorship with Big 5 Sporting Goods. All proceeds from this event benefit animal care programs at the Oregon Coast Aquarium. The Destination Newport Committee discussed the request and is forwarding a positive recommendation.

Other Alternatives Considered: None

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

Attachment List: Tourism Marketing Grant Fund Application submitted by the Oregon Coast Aquarium

Fiscal Notes: If approved, this funding would come from the \$20,000 in Transit Room Tax monies that have been set aside for Tourism Marketing Grants. The remaining balance would be \$3,000.



CITY OF NEWPORT
169 SW Coast Highway
Newport, Oregon 97365
541.574.0603
c.breves@newportoregon.gov

TOURISM MARKETING GRANT FUND APPLICATION

The purpose of the grant program is to promote tourism and increase stays in lodging establishments within the city limits of Newport. Funding for events/activities scheduled for the off and/or shoulder seasons, September 15 through June 15 will be given priority. Funding may not be provided for well established events/activities, although funding may be provided for expansion or changes of existing events if the city determines the changes will increase tourism.

Applications for grant funds must be submitted two months prior to an event to allow sufficient time for review by the Destination Newport Committee and the City Council at their regularly scheduled meetings.

The regular Destination Newport Committee meetings are held on the third Thursday of the month. Applications will be reviewed by the Destination Newport Committee and forwarded to the City Council with a recommendation for approval or denial. Applications must be submitted to the City Manager's Office.

The city reserves the right to grant all or a portion of a request; deny a request; or recommend no award regardless of availability of funds.

Please read the rules instructions on page 5. prior to completion.

General Information:

Name of Applicant Organization: Oregon Coast Aquarium

Mailing Address: 2820 SE Ferry Slip Rd

City, State, Zip: Newport, OR, 97365

Telephone: 541-867-3474 Fax: 541-867-6846

E-Mail Address: contact@aquarium.org

Principal Contact (If different from Applicant): Lance Beck

Mailing Address (If different from Applicant): _____

City, State, Zip: _____

Telephone: _____ Fax: _____

E-Mail Address: lance.beck@aquarium.org

Date(s) and Time(s) of Event: 5/16/2015

Description of Event or Activity*: Come for a race, stay for an aquarium adventure. Every participant in the

3rd annual Flippers, Feathers & Fins 5k & Kids' Dash will not only take part in a fun race, they will receive free entry to the Oregon Coast Aquarium for the rest of the day

This 5K (3.1 mile) route will start and end at the Oregon Coast Aquarium and includes running through the Aquarium to the finish line. This event is perfect for the speedy, the slow and everyone in between.

The Flippers, Feathers & Fins 5k seeks to promote healthy lifestyles on the coast and proceeds will benefit animal care programs at the Oregon Coast Aquarium.

Nature of Event or Activity:

Single Day Event Yes

Multi-night local lodging event _____ days

Extended calendar event. _____ days

Amount of Funding Requested: \$ 2500.00

Total Event/Activity Budget: \$ 13380.00

What specific marketing expenditures will the granted funds be used for?*

We plan to use \$1500 on targeting runners in the Willamette Valley, Portland DMA and Bend markets on Facebook.

We plan to use \$1000 to make a buy with the Portland Running Company to reach their 95,000 subscribers using direct email and on-site promotions at various running events.

List event/activity supporters or partners*: Newport News-Times has committed to sponsor the event and in addition provide local advertising

Samaritan Health Services has committed to sponsoring the event and in addition will be offering a discounted registration rate to their entire employee network both on the coast and in the Willamette valley

Portland Running Company has agreed to sponsor the race by assisting with the execution. We also have a pending sponsorship with Big 5 Sporting Goods.

Applicant/organization must be a non-profit corporation. Attach a copy of the IRS determination letter.

Has applicant received funding in prior years from the city for this event/activity? If yes, when:

No we have not.

Projected Event/Activity Impact:

Describe how the event/activity will affect the Newport economy (e.g., room nights, number of visitors/attendees, restaurant sales, retail sales, etc.):

In 2014 we doubled our number of runners from 2013 and had a total of 239 participants. Of those 239, 159 traveled more than 50 miles to get to Newport.

We are expecting that we will see our numbers grow yet again with the support of our sponsors and are planning to see the event reach 500 runners in 2014.

Due to the early start time of the race most runners will need to travel to Newport the night before. A conservative estimate on this would amount to 100 room nights at local hotels.

In addition to lodging, the participants will most likely need to eat a minimum of 1-2 meals at local restaurants.

Furthermore, by offering complimentary entry to the Oregon Coast Aquarium, runners have additional funds to potentially spend at local retail establishments.

INSTRUCTIONS AND PROCEDURES FOR EVENT/ACTIVITY GRANT APPLICATION

1. Complete the prepared application for event/activity grant funding. The forms can be obtained from the city manager's office at the Newport City Hall or on the city website at www.newportoregon.gov. Use only the city form when preparing an application.
2. Applications for grant funds should follow this timeline:

Applications must be submitted a minimum of two months prior to the scheduled event. The Destination Newport Committee will consider applications at their regular monthly meetings. Applications for events that have already occurred will not be accepted.
3. Applications for funding will be reviewed by the Destination Newport Committee and recommendations will be forwarded to the City Council for final approval. Incomplete applications will be returned to applicant for correction, and may not be considered if the delay creates a late application.
4. The applicant, or applicant's representative, may attend the Destination Newport Committee meeting at which the application will be considered. No applicant presentation is required, but applicant should be prepared to respond to questions.
5. Applications submitted after an event/activity occurs will be rejected.
6. Applicants are required to provide the city with a final report summarizing the results of the event/activity (e.g., attendance, local and regional publicity, lodging occupancy resulting from the event, closing revenue and expenditure report, etc.). This information must be submitted to the city manager's office no later than one month from the final day of the event/activity. Samples of all marketing materials and acknowledgements should be attached to this report. Failure to provide a final report to city shall jeopardize future applications
7. The purpose of the grant program is to promote tourism and increase stays in lodging establishments within the city limits of Newport. Funding for events/activities scheduled for the off and/or shoulder seasons, September 15 through June 15 will be given priority. Funding may not be provided for well established events/activities, although funding may be provided for expansion or changes of existing events if the city determines the changes will increase tourism.
8. Preference will be given to events/activities that have taken place for three years or less, or new components/improvements to existing events/activities.

9. Events/activities may not be considered for funding more than three times. Applicant should plan for other funding sources beyond the third request.
10. Funding is contingent upon available monies, and the process is competitive. There is no guarantee that funding, if granted, will be available for an event/activity in subsequent years.
11. Acknowledgement must be given to the City of Newport in all promotional materials, and programs associated with the event/activity.



CITY MANAGER'S REPORT AND RECOMMENDATIONS

Agenda #: VIII.A.
Meeting Date: April 6, 2015

Agenda Item:

Approval of a Seismic Rehabilitation Grant Program Contract for the Newport Fire Station Seismic Rehabilitation with the Oregon Infrastructure Finance Authority

Background:

In 2014-15 the city conducted a preliminary geotechnical investigation to determine the feasibility for seismic rehabilitation of the Newport Fire Station. Based on this preliminary evaluation, it appeared the Fire Station would be a candidate for seismic rehabilitation. As a result, an application for funding was made to the Oregon Infrastructure Finance Authority in the amount of \$1,491,223 to proceed with a seismic rehabilitation project for the Fire Station. The city was very pleased that it was city awarded this grant. The grant will pay 100% of the cost for rehabilitating the Fire Station up to the grant amount of \$1,491,223. I appreciate the efforts of Public Works Director, Tim Gross, Fire Chief Rob Murphy, and our consultants Chase Park Grants in securing this money in order to address a critical need for the emergency response facility.

Recommended Action:

I recommend that the City Council consider the following motion:

I move approval of a contract with the Oregon Infrastructure Finance Authority for the seismic rehabilitation grant program for \$1,491,223 of funding for the seismic rehabilitation of the Newport Fire Station.

Fiscal Effects:

There is no local match for this project. The city will be appropriating the grant funds, as well as the construction expenses for completing this project in the fiscal year budget of 2015-16. If engineering services are retained prior to the end of the fiscal year, then a small appropriation will be needed to cover any expenses that would be incurred prior to the beginning of the 2015-16 fiscal year.

Alternatives:

None recommended.

Respectfully Submitted,

Spencer R. Nebel
City Manager



Agenda Item # VIII.A.
Meeting Date April 6, 2014

CITY COUNCIL AGENDA ITEM SUMMARY
City Of Newport, Oregon

Issue/Agenda Title: Approval of Seismic Rehabilitation Grant Program Contract for the Newport Fire Station Seismic Rehabilitation with the Oregon Infrastructure Finance Authority

Prepared By: TEG Dept Head Approval: TEG City Manager Approval:

Issue Before the Council:

Approval of Seismic Rehabilitation Grant Program Contract for the Newport Fire Station Seismic Rehabilitation with the Oregon Infrastructure Finance Authority

Staff Recommendation:

Approve the contract

Proposed Motion:

I move to approve the Seismic Rehabilitation Grant Program Contract for the Newport Fire Station Seismic Rehabilitation with the Oregon Infrastructure Finance Authority in the amount of \$1,491, 223 and authorize the Mayor to execute the contract on behalf of the City of Newport.

Key Facts and Information Summary:

In fiscal year 2014-15, the City invested \$30,000 to conduct a preliminary geotechnical investigation, preliminary engineering report, and grant application services to apply for a grant with the Seismic Rehabilitation Grant Program administered by the Infrastructure Finance Authority for the Newport Fire Station located on NW 10th Street. This grant pays for structural modifications to the structure to allow it to be immediately inhabitable after a seismic event. The City was awarded \$1,491,223 to complete these improvements.

The City Attorney has reviewed the attached contract for this grant award as has no recommended changes.

The attached grant application summarizes the proposed structural changes to the structure. The first step in this project will be the selection of an engineering consultant to design the improvements. The specific details of the proposed structural changes will be addressed as part of this design contract.

Other Alternatives Considered:

None

City Council Goals:

N/A

Attachment List:

- Notice of award letter from IFA
- Seismic Rehabilitation Grant Program Grant Application
- Seismic Rehabilitation Grant Program Contract for the Newport Fire Station Seismic Rehabilitation

Fiscal Notes:

The grant award as part of this contract is for \$1,491,223. There is no City match as part of this award.



December 18, 2014

Timothy Gross, Public Works Director
City of Newport
169 SW Coast Highway
Newport, Oregon 97365

RE: Award for Seismic Rehabilitation Grant Program, Newport Fire Station

Dear Mr. Gross:

Congratulations! The above referenced project was chosen for funding in this round of Seismic Rehabilitation Grant awards. The bond sale to fund the 2014 awards is scheduled for February 2015. After the sale you will be receiving a grant of \$1,491,223.

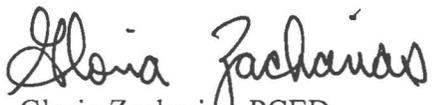
The legal obligations for funding and for reimbursement of project expenses are subject to execution of a contract between your school district and the State of Oregon acting by and through the Oregon Business Development Department – Infrastructure Finance Authority.

Once the bond sale has been completed contract documents will be delivered to you for your review and signature. Funds cannot be spent for any project activity that will be using the grant funding until the contract has been fully executed.

We are pleased to be able to offer this assistance to your fire district and the community. Please notify us of any event celebrating your project so we can participate if possible.

We look forward to partnering with you to complete this vitally important project. If you have any questions or need any further information please contact me at gloria.zacharias@oregon.gov or by telephone at (503) 986-0132.

Sincerely,


Gloria Zacharias, PCED
Program and Policy Coordinator



775 Summer St NE, Suite 200
Salem, OR 97301-1280

Seismic Rehabilitation Grant Application

Application Number:

Application Year: 2014

A. Applicant Information

1. Name of Applicant

City of Newport, Oregon

2. Type of Applicant

State Government
Local Government
School District
Community College
Oregon University System
Private Non-Profit
Other

3. If Private Non-Profit, describe the legal status, function and facilities owned:

N/A

4. State Tax Number: (e.g. 11-111111)

0512001-3

5. Federal Tax Number:

93-6002222

6. Has applicant's jurisdiction received a voter approved levy for building maintenance or renovation?

Yes No

7. Is the applicant delinquent on any state or federal debt? If yes, type explanation:

Yes No

B. Contact Information

1. Point of Contact Information

Timothy A. Gross
First Name Middle Initial Last Name

Public Works Director/City Engineer
Title

City of Newport Public Works Department
Agency/Organization

169 SW Coast Highway
Address 1

Address 2

Newport OR 97365
City State ZIP

Phone 541-574-3369

Fax 541-265-3301

Email t.gross@newportoregon.gov

2. Alternate Point of Contact

Robert Murphy
First Name Middle Initial Last Name

Fire Marshall
Title

Phone 541-265-9461

Fax 541-265-9463

Email R.Murphy@newportoregon.gov

C. Community Information

1. Please provide the pertinent information for the community that will benefit from this mitigation activity.

Community Name	Area Served (sq miles)	Population Served	State Legislative District	US Congressional District
City of Newport	10.59	10,160	10	5
Rural Fire Protection District (Includes the communities of South Beach, Lost Creek, Thiel Creek, Moolack Beach, and Beverly Beach)	appx. 25.92	2,100	10	5

2. Is the community located in a distressed or impoverished community (see Guidance for definition)?

Yes No

3. Does community have a FEMA approved natural hazard mitigation plan?

Yes No Year adopted The City's FEMA-approved natural hazard mitigation plan expired on 7/22/2014. However the City is an appendix to Lincoln County's FEMA-approved plan and is currently working with the county to update the plan and the City of Newport's appendix portion.

4. Describe any community-wide mitigation or awareness efforts and other mitigation projects occurring in the community.

The City of Newport is very active in its hazard mitigation outreach and preparedness activities. Most recently, the Oregon State University Hatfield Marine Science Center designated the City as a "Tsunami Ready Community." In addition, the City's fire and police departments routinely collaborate with the Lincoln County Emergency Services Department (LCES) and local chapters of the Local Emergency Planning Committee (LEPC) and the local Community Emergency Response Team (CERT). Some examples of these activities include:

- The Safe Haven Hill Project created a tsunami evacuation route to the top of Safe Haven Hill – the only high ground in the South end of the City. Interpretive signage provides important evacuation information along the route.
- The annual Emergency Readiness Fair features information and demonstrations to help citizens prepare for a variety of disaster scenarios. In 2013 more than 200 people attended the fair.
- In 2013, members of Newport's fire department, along with other city officials, collaborated with the Oregon Department of Geology and Mineral Industries (DOGAMI) to help prepare new tsunami warning and inundation maps. This work culminated with a Tsunami Readiness Rally at which the new maps were highlighted and preparedness information was shared with the community.

D. RVS Information

Enter the DOGAMI Rapid Visual Screening (RVS) details for the project. Details can be found at: <http://www.oregongeology.org/sub/projects/rvs/county/county-sites.htm>. If your building does not have an RVS or has an incorrect RVS then complete these fields after running your Benefit Cost Analysis.

1. Building Unique ID	Linc_fir07A
2. Seismicity Zone	Very High
3. Soil Type	D
4. RVS Building Type	C2, PC1, W2
5. RVS Final Score	2.1
6. Collapse Potential	Low
7. Latitude	44.64352
8. Longitude	124.0552
9. Does the building have a basement?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

10. What is the shape of the building when viewed from above? (e.g. rectangle, L-shaped)	L
11. Are there changes in elevation when the building is viewed from the side?	No
12. Are there unreinforced chimneys, parapets or heavy cladding?	No

E. Mitigation Activity Information

1. Preliminary Engineering Report Completed & Attached?

Yes

2. What is the ASCE 41 performance level of this project?

Immediate Occupancy

3. Describe any structural or non-structural seismic mitigation measures previously conducted, including the date:

None.

F. Scope of Work

1. What are the deficiencies of the building as outlined in your engineering assessment?

Overall, the evaluation of Fire Station 3200 indicates that rehabilitation is necessary to meet the ASCE's Immediate Occupancy requirements. Specifically, the following seismic deficiencies were identified:

- The front and back walls of the apparatus bays are wood framed. Wood framing is not allowed to support the induced seismic forces from the tilt-up walls.
- The roof and floor diaphragms are not properly attached to the shear walls for inplane and out-of-plane loading.
- The large apparatus door framing is not properly supported for out-of-plane loading.
- The existing plywood shear walls do not have adequate capacity to support code prescribed loads
- The concrete tilt panels around the apparatus bay have a thickness to height ratio exceeding the prescribe values
- The panel to panel connection to resist overturning are made with welded plates. These connections are typical for tilt-up panel construction; however, they are susceptible to non-ductile failure during a seismic event.
- The storage mezzanine found within the apparatus bay does not have a lateral load resisting system along the west wall line.
- The original construction documents do not indicate holdown devices between the second floor and first floor walls.
- Wood post to beam connections were not evident.
- The original construction documents did not indicate sill anchor bolts for all walls.
- The roof diaphragm spans are unblocked and larger than allowed per the Tier 1 quick checks.
- The covered walkway around the north, west and south sides of the building is not properly attached to the main building structure.
- Decay of the wood posts around the exterior canopy was observed.
- The jointing material between the panels was starting to deteriorate.

In addition, it was determined that the building is underlain by sandy fill installed with little to no compactive effort. These fills are susceptible to liquefaction during a seismic event. This can lead to larger than normal differential settlements, which can hinder the functionality of the building after a seismic event.

2. What are the proposed fixes and do they address all known seismic deficiencies? If not, please describe how your proposal is the most cost effective approach to rehabilitation for your building.

The BCA score of 1.937, combined with the findings of the structural engineering and geotechnical assessments have led to the following recommendations to remediate the City of Newport's main fire station:

- Per the recommendations of FEI the existing foundations shall be underpinned using cross grade beams and micropile evenly spaced.
- New CMU or cast-in-place concrete shear walls will be added along the front and back walls of the apparatus bay to provide adequate in-plane shear capacity.
- Blocking will be added between the existing open web joists to properly attach the floor and roof diaphragms to the shear walls below.
- Additional blocking will be added at the roof level to properly attach to the front and back walk of the

apparatus bay to the roof structure for out-of-plane loading.

- Where the existing plywood shear walls are not adequate either additional nailing will be provided or an additional layer of plywood will be added on the inside face to provide the necessary strength.
 - A spandrel beam will need to be added at the storage mezzanine level to provide adequate out-of-plane strength of the tall apparatus bay tilt-up panels.
 - The panels will need to be further evaluated to determine the actual demands on the panel-to-panel joints for over turning. Additional panel-to-panel joint hardware may be required to meet the code prescribed loading demands.
 - New shear walls shall be added under the west storage mezzanine in strategic locations to properly support the seismic demands.
 - New back-to-back holdown devices shall be added at the second floor to first floor levels.
 - All wood posts to beam or foundation element connections shall have new post installed connection hardware
 - All load bearing and non-load bearing walls shall be attached to the slab or wood floor diaphragm. The walls supported on the slab on grade shall be attached using post installed concrete anchors and the the walls over the second floor shall be fastened with a minimum of (2) 16d @ 16" O.C..
 - Further evaluation of the floor and roof diaphragms is needed to determine the adequacy of blocking. If further evaluation determines blocking is necessary it shall be installed.
- For the purpose of the construction estimate outline in section 5.0 of this report we have included a price to block both the floor and roof diaphragms.
- The covered walkway roof structure shall be attached to the main building.
 - The emergency generator shall be attached to the concrete slab on grade.
 - All piping found within the building that is greater than 12" from structure shall be properly attached and braced.
 - Any mechanical equipment weighing over 20 pounds shall be attached and properly braced.
 - The suspended ceiling over the corridors shall be upgraded and fully braced to meet the current prescribed installation methods utilized for suspended ceilings.

The proposed fixes will adequately address all known seismic deficiencies. Furthermore, the benefits and feasibility of the proposed project has been evaluated and approved by the City and its technical advisors.

3. Is the project ready to begin? Describe what planning, design, etc, has been completed to date.

Yes, the project is ready to begin. Thus far the City has conducted a seismic evaluation report and preliminary design, which was completed by a structural engineering firm with expertise in seismic rehabilitation of buildings. In addition, the City has conducted a geotechnical evaluation (see Appendix F in the Preliminary Engineering Report), including exploratory drilling, a site-specific geotechnical hazard study, and an analysis of alternative options conducted by the fire chief, public works director, and city engineer. Both studies were completed in September 2014.

4. Project Management Milestones

Briefly identify milestones by quarter, with start and end dates, which will be achieved within the 24 month performance period.

Quarter	Milestone	Start Date	End Date
1	Grant Award Announcement - Manage Contracting Process	Jan. 2015	Mar. 2015
2	Bond Sales, Notice to Proceed - Selection of Design Consultant	Apr. 2015	Jun. 2015
3	Start Rehabilitation Design / Destructive Investigation / Materials Testing / Geotech Exploration / Hazmat Survey	Jul. 2015	Sept. 2015

4	Continue Rehabilitation Design	Oct. 2015	Dec. 2015
5	Finalize Rehabilitation Design / Select Contractor / Permit Submittal / Hazmat Mitigation	Jan. 2016	Mar. 2016
6	Procurement of Long Lead Construction Items / Start Construction	Apr. 2016	Jun. 2016
7	Finalize Construction of Rehabilitation Design	Jul. 2016	Sept. 2016
8	Finalize As-built Documentation / Project Closeout	Oct. 2016	Dec. 2016

G. Property Information	
1. Project name	Newport Fire Station 3200 Seismic Remediation
2. Project address	245 NW 10th Street, Newport OR 97365
3. Legal description of property	Oceanview; Block 1, Lots 6-10; Block 2, Lots 1-10; Block 13, Lots 6-10 and portion of 1 and portions of VACSTS and alleys, MF 661510 and MF 325-0985
4. Year built	1980
5. Building use	Fire Station
6. Foundation type	Tie-up concrete panel
	If other foundation type, please specify:
7. Date of initial construction	1980
8. Date of most recent major remodel	August 2012. Additional walls were added to divide a room.
9. Square feet	12,530
10. Number of stories	2
11. Type of construction	Type 2 (concrete tilt-up)
12. Current replacement cost of structure	\$3,759,000
13. Replacement cost of contents stored in the building	\$342,542
14. Replacement cost of vehicles stored in the building	\$2,409,542
15. Is this building listed on the National Register of Historic Places?	No.
16. Is this building over 50 years old?	No.
17. Are you planning to use the building as it is currently used for the next 50 years? If no, please explain.	Yes.
18. Is the building located in a hazard area? (e.g., tsunami, flood, landslide)	No.
19. Number of natural hazard losses	1
	Describe:
	Due to a strong storm in winter 1996 part of the fire station roof was blown off. Roof was replaced.
20. Provide photos showing the building from all sides (label each photo), provide close up photos of any vertical irregularities, and any connection points for additions attached to the original building. Minimum of 4 photos.	Photos attached: <input checked="" type="checkbox"/> Yes

21. Describe this building's value to the community. Does it have historical value? Is it utilized for uses outside of its primary function (such as a designated Red Cross Shelter)? Why is this building important to the community?

The City of Newport's Fire Station 3200 has tremendous value to the community. First, it serves the primary functions of providing: fire suppression, hazardous materials response, fire prevention and risk reduction, and disaster planning and mitigation. On average, more than 80% of calls are dispatched to Fire Station 3200.

In addition to its primary function as the main fire station in Newport, the building is integral to other public services. Specifically:

- Storing and protecting the City's disaster supply cache.
- Serving as temporary shelter in time of disaster.
- Serving as the headquarters for the City's local ambulance company in the event of a large-scale disaster.
- Serving as an integral part of the City's emergency and disaster services plan.
- Holding various training sessions, group meetings, and public tours. Annually, an average of 150 events are conducted at the Fire Station 3200 building. Last year, the building was used to host 64 training and certification courses for local staff, volunteers and firefighters from around the region; 18 public tours; and 69 meetings for various groups including staff (e.g., fire department, police department, EMS), boards (e.g., Fire Defense Board), and associations (e.g., ASRC, COCTOA).
- Providing public assistance for installing child safety seats.

H. Cost Estimate	
Category	Cost Estimate
Architectural	\$
Engineering	\$175,976.00
Construction Management	\$22,951.00
Construction Labor/Materials	\$1,092,884.00
Permitting/Inspection	\$41,858.00
Insurance	\$21,858.00
Testing	\$10,000.00
Relocation Costs	\$7,500.00
Other	\$118,196.00
Total Cost Estimate:	\$ 1,491,223.00
Total Amount Requested from SRGP:	\$ 1,491,223.00

If you would like to make any comments on the cost estimate, please enter them below.

The Engineering category includes costs associated with structural engineering and geotechnical consulting. The Construction Management category represents costs associated with construction management and owner representation. The Permitting/Inspection category includes costs associated with special inspections and permitting fees. The Insurance category includes costs for bonding and insurance. The Testing category is specific to costs associated with materials testing. The Other category encompasses costs associated with interior design consulting, structural observation, and profit and overhead.

I. Match Sources		
Source	Funding Type	Amount
N/A		\$
		\$

		\$
Grand Total: \$		
J. Cost Effectiveness Information		
<p>1. Attach the Benefit Cost Analysis (BCA) completed for this project. Provide comments regarding the information sources used to obtain the occupancy and budgetary information necessary for the BCA</p> <p>The information sources used to obtain the information for the BCA included operational and finance data from City records, as well as administrative data from Fire Department personnel. When possible the information for the BCA was based on actual data, however in cases where actual data was not available, estimates were used.</p>		
<p>2. Benefit Cost Analysis Score: 1.937</p>		
<p>3. Average Occupancy: 6.339</p>		
<p>4. Annual Operating Budget: \$ 1,715,741.00</p>		
K. Maintenance Schedule & Costs		
<p>Identify entity that will perform any long-term maintenance and provide substantiating documentation that shows that the entity is accepting performance and budget responsibility:</p>	<p>The City of Newport will perform long-term maintenance of the rehabilitated building. A copy of the City's adopted FY2015 budget for the Fire Station showing the maintenance line item is provided (Newport Fire Station FY2015 Budget.pdf).</p>	

L. Applicant Signature(s) and Certification		
<p>I (we) certify The City of Newport (applicant organization) supports the proposed project, has the legal authority to pledge matching funds (if providing match), and has the legal authority to apply for Seismic Rehabilitation Grant funds. I further certify that any matching funds are available or will be available for proposed project. I understand that all state rules for contracting, auditing, and payment will apply to this project. I (we) certify that the information provided on the application materials is accurate.</p>	<p>_____</p> <p>Signature</p>	<p>_____</p> <p>Date</p>
	<p>_____</p> <p>Signature</p>	<p>_____</p> <p>Date</p>

Please mail **1** hard copy and **1** CD of application materials to:

Attention: Gloria Zacharias
 Seismic Rehabilitation Grant Program
 Business Oregon
 775 Summer Street NE, Suite 200
 Salem, Oregon 97301

Or if delivering application materials in person or via FedEx/UPS:

Attention: Gloria Zacharias
 Seismic Rehabilitation Grant Program
 Business Oregon
 775 Summer Street NE, Suite 200
 Salem, Oregon 97301

Faxed grant applications will not be accepted.

**SEISMIC REHABILITATION GRANT PROGRAM
GRANT CONTRACT**

Project Name: Newport Fire Station Seismic Rehab

Project Number: EM1506

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

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

Exhibit A: General Definitions

Exhibit B: Project Description

Exhibit C: Project Budget

SECTION 1 - KEY TERMS

The following capitalized terms have the meanings assigned below.

"Estimated Project Cost" means \$1,491,223.

"Grant Amount" means \$1,491,223.

"Project Closeout Deadline" means 90 days after the earlier of the Project Completion Date or the Project Completion Deadline.

"Project Completion Deadline" means 24 months after the date of the issuance of the Bonds to fund this Contract, which issuance date is 4 March 2015.

SECTION 2 - FINANCIAL ASSISTANCE

The IFA shall provide Recipient, and Recipient shall accept from IFA, a grant (the "Grant") in an aggregate amount not to exceed the Grant Amount. This Grant is made from the net proceeds from the sale of the Bonds.

SECTION 3 - DISBURSEMENTS

A. Reimbursement Basis. The Grant will be disbursed to Recipient on an expense reimbursement or costs-incurred basis. The Recipient must submit each disbursement request for the Grant on an IFA-provided or IFA-approved disbursement request form ("Disbursement Request").

B. Financing Availability. The IFA's obligation to make, and Recipient's right to request, disbursements under this Contract terminates on the Project Closeout Deadline.

SECTION 4 - CONDITIONS PRECEDENT

- A. Conditions Precedent to IFA's Obligations. The IFA's obligations are subject to the receipt of the following items, in form and substance satisfactory to IFA and its Counsel:
- (1) This Contract duly signed by an authorized officer of Recipient within 60 days of Recipient's receipt of this Contract document.
 - (2) A copy of the ordinance, order or resolution of the governing body of Recipient authorizing the Project and the execution, delivery and performance of this Contract.
 - (3) Such other certificates, documents, opinions and information as IFA may reasonably require.
- B. Conditions to Disbursements. As to any disbursement, IFA has no obligation to disburse funds unless all following conditions are met:
- (1) There is no Default or Event of Default.
 - (2) The representations and warranties made in this Contract are true and correct on the date of disbursement as if made on such date.
 - (3) The IFA, in the reasonable exercise of its administrative discretion, has sufficient funding, appropriations, limitations, allotments, allocation and other expenditure authority to make the disbursement.
 - (4) The IFA (a) has received a completed Disbursement Request, (b) has received any written evidence of materials and labor furnished to or work performed upon the Project, itemized receipts or invoices for payment, and releases, satisfactions or other signed statements or forms as IFA may require, (c) is satisfied that all items listed in the Disbursement Request are reasonable and that the costs for labor and materials were incurred and are properly included in the Costs of the Project, and (d) has determined that the disbursement is only for costs defined as eligible costs under the Act and any implementing administrative rules and policies.
 - (5) The Recipient has delivered documentation satisfactory to IFA that, in addition to the Grant, Recipient has available or has obtained binding commitments for all funds necessary to complete the Project.
 - (6) Any conditions to disbursement elsewhere in this Contract are met.

SECTION 5 - USE OF FINANCIAL ASSISTANCE

- A. Use of Proceeds. The Recipient shall use the Grant (and any interest earned by Recipient on the Grant) only for the activities described in Exhibit B and according to the budget in Exhibit C. The Recipient may not transfer Grant proceeds among line items in the budget without the prior written consent of IFA.
- B. Costs of the Project. The Recipient shall apply the Grant to the Costs of the Project in accordance with the Act and Oregon law, as applicable. The Grant cannot be used for costs in excess of one hundred percent (100%) of the total Costs of the Project and cannot be used for pre-Award Costs of the Project, unless permitted by Exhibit B.
- C. Costs Paid for by Others. The Recipient may not use any of the Grant to cover costs to be paid for by other financing for the Project from another State of Oregon agency or any third party.

- D. Federal Tax Law Limits. Expenditures submitted for reimbursement under this Agreement are limited to expenditures for the Project that would qualify as capital expenditures for federal income tax purposes.

SECTION 6 - REPRESENTATIONS AND WARRANTIES OF RECIPIENT

The Recipient represents and warrants to IFA:

- A. Estimated Project Cost. Funds for Repayment. A reasonable estimate of the Costs of the Project is shown in section 1, and the Project is fully funded.
- B. Organization and Authority.
- (1) The Recipient is an eligible applicant under the Act, and validly organized and existing under the laws of the State of Oregon.
 - (2) The Recipient has all necessary right, power and authority under its organizational documents and under Oregon law to (a) execute and deliver this Contract, (b) incur and perform its obligations under this Contract, and (c) receive financing for the Project.
 - (3) This Contract has been duly authorized and executed by Recipient, and when executed by IFA, is legal, valid and binding, and enforceable in accordance with its terms.
- C. Full Disclosure. The Recipient has disclosed in writing to IFA all facts that materially adversely affect the Project, or the ability of Recipient to perform all obligations required by this Contract. The Recipient has made no false statements of fact, nor has it omitted information necessary to prevent any statements from being misleading. The information contained in this Contract is true and accurate in all respects.
- D. Pending Litigation. The Recipient has disclosed in writing to IFA all proceedings pending (or to the knowledge of Recipient, threatened) against or affecting Recipient, in any court or before any governmental authority or arbitration board or tribunal, that, if adversely determined, would materially adversely affect the Project or the ability of Recipient to perform all obligations required by this Contract.
- E. No Defaults.
- (1) No Defaults or Events of Default exist or occur upon authorization, execution or delivery of this Contract.
 - (2) The Recipient has not violated, and has not received notice of any claimed violation of, any agreement or instrument to which it is a party or by which the Project or its property may be bound, that would materially adversely affect the Project or the ability of Recipient to perform all obligations required by this Contract.
- F. Compliance with Existing Agreements and Applicable Law. The authorization and execution of, and the performance of all obligations required by, this Contract will not: (i) cause a breach of a material agreement, indenture, mortgage, deed of trust, or other instrument, to which Recipient is a party or by which the Project or any of its property or assets may be bound; (ii) violate any provision of the charter or other document pursuant to which Recipient was organized or established; or (iii) violate any laws, regulations, ordinances, resolutions, or court orders related to Recipient, the Project or its properties or operations.
- G. Governmental Consent. The Recipient has obtained or will obtain all permits and approvals, and has made or will make all notifications, declarations, filings or registrations, required for the making and performance of its obligations under this Contract and undertaking and completion of the Project.

SECTION 7 - COVENANTS OF RECIPIENT

The Recipient covenants as follows:

- A. Notice of Adverse Change. The Recipient shall promptly notify IFA of any adverse change in the activities, prospects or condition (financial or otherwise) of Recipient or the Project related to the ability of Recipient to perform all obligations required by this Contract.
- B. Compliance with Laws. The Recipient shall comply with all applicable laws, rules, regulations and orders of any court or governmental authority that relate to this Contract and the Project. These laws, rules, regulations and orders are incorporated by reference in this Contract to the extent required by law. In particular, but without limitation, Recipient shall comply with the following, as applicable:
- (1) State procurement regulations found in the Oregon Public Contracting Code, ORS chapters 279A, 279B and 279C.
 - (2) Seismic Rehabilitation Grant Program rules found in Oregon Administrative Rules chapter 123, division 51.
 - (3) State labor standards and wage rates as required by ORS chapter 279C.
- C. Project Obligations. The Recipient shall:
- (1) Provide financial status reports to IFA for each calendar quarter of the Project. Reports are due no later than the end of the month following each quarter. Reports must be in a format provided by IFA and completed in a manner determined acceptable by IFA.
 - (2) Provide performance/progress status reports to IFA for each calendar quarter of the Project. Reports are due no later than the end of the month following each quarter. Reports must be in a format provided by IFA and completed in a manner determined acceptable by IFA.
 - (3) Provide final financial status and performance/progress status reports to IFA about completion of the Project, due no later than the Project Closeout Deadline. The final reports must include totals of all Project expenditures; Recipient's certification that the Project is complete and all payments have been made; and a copy of a certificate of substantial completion or occupancy; provided however, for the purposes of this Contract, IFA will be the final judge of the Project's completion. Reports must be in a format provided by IFA and completed in a manner determined acceptable by IFA.
 - (4) Complete the Project according to the Project Description in Exhibit B and the Project Budget in Exhibit C, unless otherwise allowed in writing in advance by IFA.
 - (5) Complete the Project, including any cost overruns, using its own fiscal resources or money from other sources to pay for any Costs of the Project in excess of the total amount of financial assistance provided by IFA through this Contract.
 - (6) Complete the Project no later than the Project Completion Deadline, unless otherwise permitted by the IFA in writing.
 - (7) Permit IFA to conduct field engineering and inspection of the Project at any time.
 - (8) Obtain and maintain as-built drawings for all facilities constructed as part of the Project.
- D. Professional Responsibility. A professional engineer or architect, as applicable, registered and in good standing in Oregon, will be responsible for the design and construction of the Project. All service providers retained for their professional expertise must be certified, licensed, or registered, as appropriate, in the State of Oregon for their specialty. The Recipient shall follow standard construction practices, such as bonding requirements for construction contractors, requiring errors and omissions

insurance, and performing testing and inspections during construction. Recipient shall cause the work on the Project to be done so that at completion of the Project the Project's seismic safety performance level will be at immediate occupancy as defined in OAR 123-051-0200(13).

- E. Use of Project. Until ten years after the Project Completion Date, the Project must be used for its existing purposes. In the case of sale, lease, exchange, abandonment, transfer or other disposition of any substantial portion of or interest in the Project to another party, Recipient shall include, in any contract or instrument that transfers interest in the Project, language in form and substance satisfactory to IFA, that requires such continued use.
- F. Operation and Maintenance of the Project. Until ten years after the Project Completion Date, Recipient shall operate and maintain the Project in good repair and operating condition so as to preserve the long term public benefits of the Project, including making all necessary and proper repairs, replacements, additions, and improvements. On or before the Project Closeout Deadline, Recipient shall adopt a plan acceptable to IFA for the on-going operation and maintenance of the Project without reliance on IFA financing and furnish IFA, at its request, with evidence of such adoption. The plan must include measures for generating revenues sufficient to assure the operation and maintenance of the Project during the usable life of the Project.
- G. Insurance, Damage. Until ten years after the Project Completion Date, the Recipient shall maintain, or cause to be maintained, insurance policies with responsible insurers or self-insurance programs, insuring against liability and risk of direct physical loss, damage or destruction of the Project, at least to the extent that similar insurance is customarily carried by governmental units constructing, operating and maintaining similar facilities. Nothing in this provision precludes Recipient from exerting a defense against any party other than IFA, including a defense of immunity. If the Project or any portion is destroyed, any insurance proceeds will be paid to IFA, not to exceed the Grant Amount, unless IFA agrees in writing that the insurance proceeds may be used to rebuild the Project.
- H. Sales, Leases and Encumbrances. Until ten years after the Project Completion Date, unless specifically described in Exhibit B, Recipient shall not sell, lease, exchange, abandon, transfer or otherwise dispose of any substantial portion of or interest in the Project, unless worn out, obsolete, or, in the reasonable business judgment of Recipient, no longer useful in the operation of the Project. Nevertheless, IFA may consent to such disposition if it has received 90 days' prior written notice from Recipient. Such consent may require payment of IFA's costs related to such consent and be conditioned upon receipt by IFA of an opinion of Bond Counsel to the effect that such disposition complies with applicable law and will not adversely affect the exclusion of interest on any State Bonds from gross income for purposes of federal income taxation under Section 103(a) of the Code. The term "Bond Counsel" means a law firm determined by IFA to have knowledge and expertise in the field of municipal law and whose opinions are generally accepted by purchasers of municipal bonds. In the case of sale, lease, exchange, transfer or other disposition of any substantial portion of or interest in the Project, Recipient shall, within 30 days of receipt of any proceeds from such disposition, pay such proceeds to IFA, not to exceed the Grant Amount, unless IFA agrees otherwise in writing. If Recipient abandons the Project, Recipient shall repay the Grant Amount immediately upon demand by IFA, unless otherwise agreed by IFA.
- I. Condemnation Proceeds. Until ten years after the Project Completion Date, if the Project or any portion is condemned, within 30 days of receipt of any condemnation proceeds, Recipient shall pay such proceeds to IFA, not to exceed the Grant Amount, unless IFA agrees otherwise in writing.
- J. Financial Records. The Recipient shall keep accurate books and records for the use of the Grant, and maintain them according to generally accepted accounting principles established by the Government Accounting Standards Board in effect at the time.

- K. Inspections: Information. The Recipient shall permit IFA and any party designated by IFA: (i) to inspect, at any reasonable time, the property, if any, constituting the Project; and (ii) at any reasonable time, to inspect and make copies of any accounts, books and records, including, without limitation, its records regarding receipts, disbursements, contracts, investments and any other related matters. The Recipient shall supply any related reports and information as IFA may reasonably require.
- L. Records Maintenance. The Recipient shall retain and keep accessible all books, documents, papers, and records that are directly related to this Contract, the Project or the Grant until the date that is three years following the later of the final maturity of the Bonds or the final maturity or redemption date of any obligation, or series of obligations, that refinanced the Bonds, or such longer period as may be required by other provisions of this Contract or applicable law. Such documentation includes, but may not be limited to, all documentation necessary to establish the uses and investment of the Grant, all construction contracts and invoices detailing the costs paid from the Grant, and all contracts related to the uses of the Project, including leases, management contracts and service contracts.
- M. Economic Benefit Data. The IFA may require Recipient to submit specific data on the economic development benefits of the Project and other information to evaluate the success and economic impact of the Project, from the date of this Contract until six years after the Project Completion Date. The Recipient shall, at its own expense, prepare and submit the data within the time specified by IFA.
- N. Minority, Women & Emerging Small Business. ORS 200.090 requires all public agencies to “aggressively pursue a policy of providing opportunities for available contracts to emerging small businesses...” The IFA encourages Recipient in any contracting activity to follow good faith efforts as described in ORS 200.045. Additional resources are provided by the Director of Economic & Business Equity at <http://www.oregon.gov/gov/MWESB/Pages/index.aspx>. Also, the Office of Minority, Women, and Emerging Small Business at the Oregon Business Development Department maintains a list of certified firms and can answer questions. Search for certified MWESB firms on the web at: <https://oregon4biz.diversitysoftware.com/FrontEnd/VendorSearchPublic.asp>.
- O. Notice of Default. The Recipient shall give IFA prompt written notice of any Default as soon as any senior administrative or financial officer of Recipient becomes aware of its existence or reasonably believes a Default is likely.
- P. Indemnity: Release. To the extent authorized by law, Recipient shall defend (subject to ORS chapter 180), indemnify, save and hold harmless the State, IFA, the Grant Selection Committee and their officers, employees, members and agents from and against any and all claims, suits, actions, proceedings, losses, damages, liability and court awards including costs, expenses, and attorneys’ fees incurred related to any actual or alleged act or omission by Recipient, or its employees, agents or contractors; however, the provisions of this section are not to be construed as a waiver of any defense or limitation on damages provided for under Chapter 30 of the Oregon Revised Statutes or under the laws of the United States or other laws of the State of Oregon.
- Further, Recipient hereby releases the State, IFA, the Grant Selection Committee and their officers, employees, members and agents from and against any and all claims of liability for providing funding for seismic rehabilitation that Recipient may have, including but not limited to any claims for costs, expenses, and attorneys’ fees incurred by Recipient.
- Q. Further Assurances. The Recipient shall, at the request of IFA, authorize, sign, acknowledge and deliver any further resolutions, conveyances, transfers, assurances, financing statements and other instruments and documents as may be necessary or desirable for better assuring, conveying, granting, assigning and confirming the rights, security interests and agreements granted or intended to be granted by this Contract.

R. Exclusion of Interest from Federal Gross Income and Compliance with Code.

- (1) The Recipient shall not take any action or omit to take any action that would result in the loss of the exclusion of the interest on any Bonds from gross income for purposes of federal income taxation, as governed by Section 103(a) of the Code. IFA may decline to disburse the Grant if it finds that the federal tax exemption of the Bonds cannot be assured.
- (2) The Recipient shall not directly or indirectly use or permit the use of any of the Grant or any other funds, or take any action or omit to take any action, which would cause any Bonds to be “arbitrage bonds” within the meaning of Section 148(a) of the Code.
- (3) The Recipient shall not cause any Bonds to be treated as “federally guaranteed” for purposes of Section 149(b) of the Code, as may be modified in any applicable rules, rulings, policies, procedures, regulations or other official statements promulgated or proposed by the Department of the Treasury or the Internal Revenue Service with respect to “federally guaranteed” obligations described in Section 149(b) of the Code. For purposes of this paragraph, any Bonds will be treated as “federally guaranteed” if: (a) all or any portion of the principal or interest is or will be guaranteed directly or indirectly by the United States of America or any agency or instrumentality thereof, or (b) five percent (5%) or more of the proceeds of the Bonds will be (i) used in making loans if the payment of principal or interest is guaranteed in whole or in part by the United States of America or any agency or instrumentality thereof, or (ii) invested directly or indirectly in federally insured deposits or accounts, and (c) none of the exceptions described in Section 149(b)(3) of the Code apply.
- (4) Upon IFA’s request, Recipient shall furnish written information regarding its investments and use of the Grant, and of any facilities financed or refinanced therewith, including providing IFA with any information and documentation that IFA reasonably determines is necessary to comply with the arbitrage and private use restrictions that apply to the Bonds.
- (5) Notwithstanding anything to the contrary, so long as is necessary to maintain the exclusion from gross income for purposes of federal income taxation of interest on any Bonds, the covenants contained in this subsection will survive the payment of the Bonds, and the interest thereon, including the application of any unexpended Grant proceeds. The Recipient acknowledges that the Project may be funded with proceeds of the Bonds and that failure to comply with the requirements of this subsection could adversely affect any exclusion of the interest on the Bonds from gross income for federal income tax purposes.

SECTION 8 - DEFAULTS

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

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

SECTION 9 - REMEDIES

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

SECTION 10 - MISCELLANEOUS

- A. Time is of the Essence. The Recipient agrees that time is of the essence under this Contract.
- B. Relationship of Parties; Successors and Assigns; No Third Party Beneficiaries.
- (1) The parties agree that their relationship is that of independent contracting parties and that Recipient is not an officer, employee, or agent of the State of Oregon as those terms are used in ORS 30.265.
 - (2) Nothing in this Contract gives, or is to be construed to give, directly or indirectly, to any third persons any rights and benefits greater than those enjoyed by the general public.
 - (3) This Contract will be binding upon and inure to the benefit of IFA, Recipient, and their respective successors and permitted assigns.

I. Choice of Law; Designation of Forum; Federal Forum. The laws of the State of Oregon (without giving effect to its conflicts of law principles) govern all matters arising out of or relating to this Contract, including, without limitation, its validity, interpretation, construction, performance, and enforcement.

Any party bringing a legal action or proceeding against any other party arising out of or relating to this Contract shall bring the legal action or proceeding in the Circuit Court of the State of Oregon for Marion County (unless Oregon law requires that it be brought and conducted in another county). Each party hereby consents to the exclusive jurisdiction of such court, waives any objection to venue, and waives any claim that such forum is an inconvenient forum.

Notwithstanding the prior paragraph, if a claim must be brought in a federal forum, then it must be brought and adjudicated solely and exclusively within the United States District Court for the District of Oregon. This paragraph applies to a claim brought against the State of Oregon only to the extent Congress has appropriately abrogated the State of Oregon’s sovereign immunity and is not consent by the State of Oregon to be sued in federal court. This paragraph is also not a waiver by the State of Oregon of any form of defense or immunity, including but not limited to sovereign immunity and immunity based on the Eleventh Amendment to the Constitution of the United States.

J. Integration. This Contract (including all exhibits, schedules or attachments) constitutes the entire agreement between the parties on the subject matter. There are no unspecified understandings, agreements or representations, oral or written, regarding this Contract.

K. Execution in Counterparts. This Contract may be signed in several counterparts, each of which is an original and all of which constitute one and the same instrument.

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



STATE OF OREGON
acting by and through the
Oregon Infrastructure Finance Authority



CITY OF NEWPORT

By: _____
Lynn Schoessler,
IFA Executive Director

By: _____
The Honorable Sandra Roumagoux
Mayor of Newport

Date: _____

Date: _____

APPROVED AS TO LEGAL SUFFICIENCY IN ACCORDANCE WITH ORS 291.047:

/s/ Cynthia Byrnes, as per email dated 5 February 2015
Cynthia Byrnes, Assistant Attorney General

EXHIBIT A - GENERAL DEFINITIONS

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

“Act” means ORS 401.910, as amended.

“Award” means the award of financial assistance to Recipient by IFA dated 17 December 2014.

“Bonds” means the bonds issued pursuant to Article XI-M and Article XI-N of the Oregon Constitution for seismic rehabilitation.

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

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

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

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

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

“ORS” means the Oregon Revised Statutes.

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

EXHIBIT B - PROJECT DESCRIPTION

The Recipient shall complete a seismic rehabilitation project at its Newport Fire Station 3200 to bring the station to immediate occupancy standards, including but not limited to the following upgrades:

- The existing foundations will be underpinned using cross grade beams and micropiles evenly spaced.
- New CMU or cast-in-place concrete shear walls will be added along the front and back walls of the apparatus bay to provide adequate in-plane shear capacity.
- Blocking will be added between the existing open web joists to properly attach the floor and roof diaphragms to the shear walls below.
- Additional blocking will be added at the roof level to properly attach to the front and back wall of the apparatus bay to the roof structure for out-of-plane loading.
- Additional nailing will be provided or an additional layer of plywood will be added on the inside face where the existing plywood shear walls are not adequate to provide the necessary strength.
- A spandrel beam will be added at the storage mezzanine level to provide adequate out-of-plane strength of the tall apparatus bay tilt-up panels.
- New shear walls will be added under the west storage mezzanine in strategic locations to properly support the seismic demands.
- New back-to-back holdown devices will be added at the second floor to first floor levels.
- All wood posts to beam or foundation element connections will have new post installed connection hardware.
- All load bearing and non-load bearing walls will be attached to the slab or wood floor diaphragm.
- The covered walkway roof structure will be attached to the main building.
- The emergency generator will be attached to the concrete slab on grade.
- All piping found within the building that is greater than 12" from structure will be properly attached and braced.
- All mechanical equipment weighing over 20 pounds will be attached and properly braced.
- The suspended ceiling over the corridors will be upgraded and fully braced to meet the current prescribed installation methods utilized for suspended ceilings.

Exhibit C: Project Budget

	IFA Funds	Other / Matching Funds
Activity	Approved Budget	Approved Budget
Engineering	\$175,976	
Construction Management	22,951	
Construction Labor / Materials	1,092,884	
Permitting / Inspection	41,858	
Insurance	21,858	
Testing	10,000	
Relocation Costs	7,500	
Contingency	118,196	
Total	\$1,491,223	



CITY MANAGER'S REPORT AND RECOMMENDATIONS

Agenda #: VIII.B.
Meeting Date: April 6, 2015

Agenda Item:

Approval of Amendment No 1 to the Intergovernmental Agreement with the State of Oregon for Motor Vehicle Fuel Dealer Tax Collection

Background:

The City of Newport initially entered into an agreement with the State of Oregon to collect the local gas tax from dealers located within the city. The State collects this tax with the State gas taxes, and then remits the local share to the city. The changes to the original agreement include changing the termination date from October 1, 2015 to October 1, 2020, and modifications to the liability provisions of the original agreement. The terms of the original agreement otherwise remain in place. This has been an effective way for the city to collect the local gas tax it applies to dealers within the City of Newport.

Recommended Action:

I recommend that the City Council consider the following motion:

I move approval of amendment No. 1 to the Intergovernmental Agreement for Motor Vehicle Fuel Dealer Tax Collection between the State of Oregon and the City of Newport dated November 5, 2009, and authorize the City Manager to execute the agreement on behalf of the City of Newport.

Fiscal Effects:

There are no changes in the reimbursement or costs for the city to utilize the State to collect the local fuel tax.

Alternatives:

None recommended.

Respectfully Submitted,

A handwritten signature in blue ink, appearing to read "S. R. Nebel".

Spencer R. Nebel
City Manager

**AMENDMENT NUMBER 01
INTERGOVERNMENTAL AGREEMENT
Motor Vehicle Fuel Dealer Tax Collection
City of Newport**

This is Amendment Number 01 to Agreement No. 26253 between the **State of Oregon**, acting by and through its Department of Transportation, hereinafter referred to as "ODOT," and the City of Newport, acting by and through its elected officials, hereinafter referred to as "City," who entered into an Agreement on November 5, 2009.

It has now been determined by ODOT and City that the Agreement referenced above shall be amended to update language, extend the termination date and update ODOT contact information.

1. **Effective Date.** This Amendment shall become effective on the date it is fully executed and approved as required by applicable law.

2. **Amendment to Agreement.**

a. **TERMS OF AGREEMENT, Paragraph 2, Page 2, which reads:**

2. The term of this Agreement shall begin on the date all required signatures are obtained and shall terminate on October 1, 2015, unless extended by an amendment to this Agreement.

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

2. The term of this Agreement shall begin on the date all required signatures are obtained and shall terminate on October 1, 2020, unless extended by an amendment to this Agreement.

b. **ODOT OBLIGATIONS, Paragraph 7, Page 3 which reads:**

7. ODOT'S Project Manager responsible for this Agreement is ODOT Fuels Tax Manager or designee, PUC Building 550 Capitol St NE Basement, Salem OR 97301-2530.

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

7. ODOT'S Project Manager responsible for this Agreement is ODOT Fuels Tax Manager or designee, located at the Oregon Department of Transportation, Fuels Tax Group MS #21, 355 Capitol ST NE, Salem OR 97301-3871

c. **GENERAL PROVISIONS, Paragraphs 7 through 10, pages 4 and 5, which read:**

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

8. Both parties shall, to the extent permitted by the Oregon Constitution and the Oregon Tort Claims Act, indemnify, defend, save, and hold harmless each other, their officers, employees, and agents from any and all claims, suits, and liabilities which may occur in their respective performance of this Project.
9. Notwithstanding the foregoing defense obligations under the paragraph above, neither party nor any attorney engaged by either party shall defend any claim in the name of the other party or any agency/department/division of such other party, nor purport to act as legal representative of the other party or any of its agencies/departments/divisions, without the prior written consent of the legal counsel of such other party. Each party may, at anytime at its election assume its own defense and settlement in the event that it determines that the other party is prohibited from defending it, or that other party is not adequately defending its interests, or that an important governmental principle is at issue or that it is in the best interests of the party to do so.
10. City acknowledges and agrees that ODOT, the Secretary of State's Office of the State of Oregon, the federal government, and their duly authorized representatives shall have access to the books, documents, papers, and records of City which are directly pertinent to the specific agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of three years after final payment. Copies of applicable records shall be made available upon request. Payment for costs of copies is reimbursable by ODOT.

Shall be deleted in their entirety and replaced with the following:

7. All employers, including the Parties, that employ subject workers who work under this Agreement in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage unless such employers are exempt under ORS 656.126. Employers Liability insurance with coverage limits of not less than \$500,000 must be included. The Parties shall ensure that each of its subcontractors complies with these requirements.
8. If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third Party Claim") against State or Agency with respect to which the other Party may have liability, the notified Party must promptly notify the other Party in writing of the Third Party Claim and deliver to the other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Each Party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by a Party of the notice and copies required in this paragraph and meaningful opportunity for the Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to that Party's liability with respect to the Third Party Claim.
9. With respect to a Third Party Claim for which State is jointly liable with Agency (or would be if joined in the Third Party Claim), State shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in

settlement actually and reasonably incurred and paid or payable by Agency in such proportion as is appropriate to reflect the relative fault of State on the one hand and of Agency on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of State on the one hand and of Agency on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. State's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if State had sole liability in the proceeding.

10. With respect to a Third Party Claim for which Agency is jointly liable with State (or would be if joined in the Third Party Claim), Agency shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by State in such proportion as is appropriate to reflect the relative fault of Agency on the one hand and of State on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of Agency on the one hand and of State on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. Agency's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if it had sole liability in the proceeding.

11. The Parties shall attempt in good faith to resolve any dispute arising out of this Agreement. In addition, the Parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation.

12. City acknowledges and agrees that ODOT, the Oregon Secretary of State's Office, the federal government, and their duly authorized representatives shall have access to the books, documents, papers, and records of City which are directly pertinent to the specific agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of six (6) years after final payment. Copies of applicable records shall be made available upon request. Payment for costs of copies is reimbursable by ODOT.

d. **GENERAL PROVISIONS, Paragraphs 11 and 12 shall be hereinafter re-numbered as Paragraphs 13 and 14.**

3. **Counterparts.** This Amendment may be executed in two or more counterparts (by facsimile or otherwise) each of which is an original and all of which when taken together are deemed one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart.

4. **Original Agreement.** Except as expressly amended above, all other terms and conditions of the original Agreement are still in full force and effect. Recipient certifies that the representations, warranties and certifications in the original Agreement are true and correct as of the effective date of this Amendment and with the same effect as though made at the time of this Amendment.

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

City of Newport, by and through its elected officials

STATE OF OREGON, by and through its Department of Transportation

By _____

By _____

Title _____

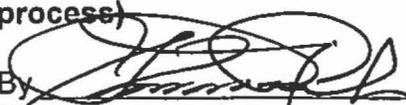
Fuels Tax Group Manager

Date _____

Date _____

APPROVED AS TO LEGAL SUFFICIENCY (If required in City's process)

APPROVED AS TO LEGAL SUFFICIENCY

By  _____
Counsel

By David B. Hatton _____
Assistant Attorney General

Date 3/3/2015 _____

City Contact:
Steven E. Rich, City Attorney
169 SW Coast Highway
Newport, OR 97365
541-574-0607
s.rich@newportoregon.gov

ODOT Contact:
Doug Kleeb, Fuels Tax Group Manager
ODOT Financial Services
Fuels Tax Group
355 Capitol St. NE MS 21
Salem, OR 97301
503-378-5773
Douglas.J.KLEEB@odot.state.or.us

**INTERGOVERNMENTAL AGREEMENT
Motor Vehicle Fuel Dealer Tax Collection**

THIS AGREEMENT is made and entered into by and between THE STATE OF OREGON, acting by and through its Department of Transportation, hereinafter referred to as "ODOT"; and the City of Newport, hereinafter referred to as "City", collectively referred to as "Parties".

RECITALS

1. By the authority granted in ORS 190.110 and 283.110, state agencies may enter into agreements with units of local government or other state agencies for the performance of any or all functions and activities that a party to the agreement, its officers, or agents have the authority to perform.
2. By the authority granted in ORS 802.010, ODOT shall perform all of the duties, functions, and powers with respect to the administration of the laws relating to the motor vehicle fuel license tax, aircraft fuel license tax and use fuel license tax including ORS Chapter 319.
3. By the authority granted in ORS 802.110, the monies received under this Agreement shall be deposited in the Department of Transportation Driver and Motor Vehicle Suspense Account with the State Treasurer.
4. For purposes of this Agreement, duties of the tax administrator shall be defined as administration, including licensing of dealers, collecting and enforcing of motor vehicle fuel tax.

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

TERMS OF AGREEMENT

1. The City of Newport Code, Ordinance No. 1984 attached as Exhibit A, and by this reference made a part hereof, (hereinafter referred to as "Ordinance 1984"), authorizes the collection and use of a \$.0.01 per gallon motor vehicle fuel license tax (hereinafter referred to as "tax") on motor vehicle fuel dealers that sell, use or distribute fuel in the City. City desires that ODOT act as the tax administrator for the tax. This \$.01 per gallon tax is effective from November 1 through May 31, of each year. The applicable tax rate per gallon for June 1 through October 31 of each year is \$.03 per gallon.

2. The term of this Agreement shall begin on the date all required signatures are obtained and shall terminate on October 1, 2015, unless extended by an amendment to this Agreement.

CITY OBLIGATIONS

1. The costs incurred by ODOT as tax administrator, plus any refunds authorized by this Agreement shall be paid from the Department of Transportation Driver and Motor Vehicle Suspense Account with the State Treasurer.
2. City's Project Manager responsible for coordinating the administrative requirements of this Agreement is the City Attorney or designee.

ODOT OBLIGATIONS

1. Upon the effective date of Ordinance 1984, the ongoing fee charged to the City for activities performed by ODOT required or necessary for the implementation of City Ordinance 1984 shall be at a rate of \$55.00 per hour not to exceed 50 hours (hereinafter referred to as "start up costs"). The \$55.00 per hour, 50 hour cap applies only to start up costs incurred by ODOT staff. Start up costs include but are not limited to programming charges, service and supplies, travel, Attorney General costs, and ODOT staff time and are in addition to the ongoing fee for administering the Ordinance. In no event will total start up costs be less than \$2,200 nor shall they exceed \$7,500.
2. Costs incurred by ODOT for administration of this Agreement shall be paid from the Department of Transportation Driver and Motor Vehicle Suspense Account with the State Treasurer. Administration includes, but is not limited to, processing reports and payments; entering data into system; resolving errors and discrepancies; managing records; responding to licensee inquiries, and auditing.
3. ODOT will deduct refunds, costs of administration and collection for the month, and the balance will be transferred to the City's Local Government Investment Pool Account with the state treasurer no later than the 15th day of the month following the month of collection.
4. ODOT shall be responsible for all aspects of tax administration as it pertains to Ordinance 1984 and as further defined in this Agreement. ODOT **will not** act as tax administrator for purposes of declaring the effective date of the tax, or commencing and prosecuting lawsuits to final determination in any court. ODOT will provide administrative support in the event of a lawsuit.
5. ODOT may, at its sole discretion, determine what action shall be taken to enforce Ordinance 1984 for purposes of tax administration. In exercising its discretion, ODOT shall provide a level of service comparable to the level of service it provides

in the administration of the Oregon motor vehicle fuel tax statutes. Audits will be limited to motor vehicle fuel dealers that are also licensed under ORS Chapter 319.

6. If the City requests and ODOT agrees, or if ODOT deems it necessary to vary substantially from the standard level of service, a supplemental Agreement shall be entered into between the parties before services are performed.
7. ODOT's Project Manager responsible for this Agreement is ODOT Fuels Tax Manager or designee, PUC Building 550 Capitol St NE, Basement, Salem, OR 97301-2530.
8. Beginning in 2010 and no later than March 15 each year thereafter, ODOT shall provide a written report for the preceding calendar year to City showing the total revenue collected, refunds paid, the expenses incurred for administration and collection of the tax, and any other information ODOT deems pertinent to this Agreement. In the annual report, ODOT may also make recommendations concerning amendments to the code, ordinance, procedures, and policies in administration of the tax, or other related matters.
9. ODOT and the City shall coordinate all necessary announcements to the public so as to facilitate effective administration of the tax and maintain consistency in public announcements and information. This includes notifying licensees of their obligations under Ordinance 1984.
10. ODOT will maintain all databases and records created or received by ODOT under this Contract for not less than the period of time which ODOT maintains records for its administration of ORS Chapter 319. ODOT will make all such information available to City in the same format as the format used by ODOT. Such information shall include, but not be limited to, information concerning the identity, business operations and tax payment history of all fuel dealers who are subject to Ordinance 1984. Upon termination of this Agreement for any reason, ODOT will provide City with copies of all of the data described above, in electronic format, if possible, or in the form otherwise existing within ODOT's databases.

GENERAL PROVISIONS

1. In order to ensure consistency in the administration of the tax, each Party shall notify the other in writing of any change in Ordinance 1984, and in state or local regulations or rulings related to the tax at least thirty (30) days prior to the effective date of such change.
2. This Agreement may be terminated by either party upon 90 days' notice, in writing and delivered by certified mail or in person.

3. ODOT may terminate this Agreement on 30 days notice to the extent permitted by law, effective upon delivery of written notice to City or at such later date as may be established by ODOT, under any of the following conditions:
 - a. If Federal or State laws, regulations or guidelines are modified or interpreted in such a way that either the work under this Agreement is prohibited or if ODOT is prohibited from paying for such work from the planned funding source.
 - b. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
5. The Parties agree to comply with all federal, state, and local laws, regulations, executive orders and ordinances applicable to the work under this Agreement, including, without limitation, the provisions of ORS 279B.220, 279B.225, 279B.230, 279B.235 and 279B.270 incorporated herein by reference and made a part hereof; Without limiting the generality of the foregoing, Agency expressly agrees to comply with (i) Title VI of Civil Rights Act of 1964; (ii) Title V and Section 504 of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659A.142; (iv) all regulations and administrative rules established pursuant to the foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.
6. The Parties shall perform the service under this Agreement as an independent contractor and shall be exclusively responsible for all costs and expenses related to its employment of individuals to perform the work under this Agreement including, but not limited to, retirement contributions, workers compensation, unemployment taxes, and state and federal income tax withholdings.
7. All employers, including the Parties, that employ subject workers who work under this Agreement in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage unless such employers are exempt under ORS 656.126. The Parties shall ensure that each of its subcontractors complies with these requirements.
8. Both parties shall, to the extent permitted by the Oregon Constitution and the Oregon Tort Claims Act, indemnify, defend, save, and hold harmless each other, their officers, employees, and agents from any and all claims, suits, and liabilities which may occur in their respective performance of this Project.
9. Notwithstanding the foregoing defense obligations under the paragraph above, neither party nor any attorney engaged by either party shall defend any claim in the name of the other party or any agency/department/division of such other party, nor purport to act as legal representative of the other party or any of its agencies/departments/divisions, without the prior written consent of the legal

counsel of such other party. Each party may, at anytime at its election assume its own defense and settlement in the event that it determines that the other party is prohibited from defending it, or that other party is not adequately defending its interests, or that an important governmental principle is at issue or that it is in the best interests of the party to do so.

10. City acknowledges and agrees that ODOT, the Secretary of State's Office of the State of Oregon, the federal government, and their duly authorized representatives shall have access to the books, documents, papers, and records of City which are directly pertinent to the specific agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of three years after final payment. Copies of applicable records shall be made available upon request. Payment for costs of copies is reimbursable by ODOT.
11. This Agreement may be executed in several counterparts [facsimile or otherwise] all of which when taken together shall constitute one agreement binding on all parties, notwithstanding that all parties are not signatories to the same counterpart. Each copy of this Agreement so executed shall constitute an original.
12. This Agreement and attached exhibits constitute the entire agreement between the parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either party unless in writing and signed by both parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of State to enforce any provision of this Agreement shall not constitute a waiver by State of that or any other provision.

IN WITNESS WHEREOF, the Parties hereto have set their hands as of the day and year hereinafter written.

The Oregon Transportation Commission on June 18, 2003, approved Delegation Order No. 2, which authorizes the Director to approve and execute agreements for day-to-day operations. Day-to-day operations include those activities required to implement the biennial budget approved by the Legislature, including activities to execute a project in the Statewide Transportation Improvement Program.

On September 15, 2006, the Director of the Oregon Department of Transportation approved Subdelegation Order No. 2, Paragraph 1, in which authority is delegated to the Deputy Director, Central Services to approve and sign agreements over \$75,000 when the work is related to a project included in the Statewide Transportation Improvement Program or in other system plans approved by the Oregon Transportation

City of Newport/ODOT
Agreement No. 26253

Commission such as the Oregon Traffic Safety Performance Plan, or in a line item in the biennial budget approved by the Director.

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the Deputy Director, Central Services approved Subdelegation Order No. 9, in which the Deputy Director, Central Services delegates the authority to the Manager to approve and execute agreements over \$75,000 when the work is related to a project included in the Statewide Transportation Investment Program or in other system plans approved by the Oregon Transportation Commission or in a line item in the legislatively adopted biennial budget.

City of Newport

By *Jim Voithy*
Title City Manager
Date 10/6/09

**APPROVED AS TO LEGAL
SUFFICIENCY**

By *Penelope McCarthy*
Counsel
Date 10/6/09

Agency Contact:
Penelope McCarthy
City Attorney
City of Newport

STATE OF OREGON, by and through
its Department of Transportation

By *Lana Youngs*
Date Nov 5, 2009

APPROVAL RECOMMENDED

By *Clayton Flower*
Date 10-27-09

By _____
Date _____
By _____
Date _____

**APPROVED AS TO LEGAL
SUFFICIENCY**

By *Dale K. Hudson*
Assistant Attorney General
Date: 10/29/09

EXHIBIT A

ORDINANCE NO. 1984

AN ORDINANCE ESTABLISHING A BUSINESS LICENSE
TAX ON MOTOR VEHICLE FUEL DEALERS, PROVIDING FOR
ADMINISTRATION, ENFORCEMENT AND COLLECTION OF THE TAX

THE CITY OF NEWPORT ORDAINS AS FOLLOWS:

Section 1.

Section 3.10 is added to the Newport Municipal Code to read as follows:

CHAPTER 3.10 MOTOR VEHICLE FUEL TAX

3.10.010 Definitions

The following definitions apply to this chapter.

A. City. The City of Newport, Oregon.

B. Dealer. Any person who:

1. Imports or causes to be imported motor vehicle fuel for sale, use or distribution in the City, but "dealer" does not include any person who imports into the City motor vehicle fuel in quantities of 500 gallons or less purchased from a supplier who is licensed as a dealer hereunder if that dealer assumes liability for the payment of the applicable license tax to the City; or
2. Produces, refines, manufactures or compounds motor vehicle fuels in the city for use, distribution or sale in the City; or
3. Acquires in the city for sale, use or distribution in the city motor vehicle fuels with respect to which there has been no license tax previously incurred.

C. Distribution. In addition to its ordinary meaning, the delivery of motor vehicle fuel by a dealer to any service station or into any tank, storage facility or series of tanks or storage facilities connected by pipelines, from which motor vehicle fuel is withdrawn directly for sale or for delivery into the fuel tanks of motor vehicles whether or not the service station, tank or storage facility is owned, operated or controlled by the dealer.

D. Highway. Every way, thoroughfare and place of whatever nature, open for use of the public for the purpose of vehicular travel.

- E. **Motor Vehicle**. All vehicles, engines or machines, movable or immovable, operated or propelled by the use of motor vehicle fuel that operates on highways, roadways and streets.
- F. **Motor Vehicle Fuel**. Includes gasoline, diesel, mogas, methanol and any other flammable or combustible gas or liquid, by whatever name such gasoline, diesel, mogas, methanol, gas or liquid is known or sold, usable as fuel for the operation of motor vehicles, except gas, diesel, mogas, methanol or liquid, the chief use of which, as determined by the tax administrator, is for purposes other than the propulsion of motor vehicles upon the highways roadways and streets.
- G. **Person**. Includes every natural person, association, firm, partnership, corporation, joint venture or other business entity.
- H. **Service Station**. Any place operated for the purpose of retailing and delivering motor vehicle fuel into the fuel tanks of motor vehicles.
- I. **Tax Administrator**. The city manager, the city manager's designee, or any person or entity with whom the city manager contracts to perform those duties.
- J. **Weight Receipt**. A receipt issued by the Oregon Department of Transportation, stating the combined weight of each self-propelled or motor-driven vehicle.

3.10.020 Tax Imposed

The following applies to taxes imposed.

- A. A business license tax is hereby imposed on every dealer. The tax imposed shall be paid monthly to the tax administrator. The tax administrator is authorized to exercise all supervisory and administrative powers with regard to the enforcement, collection and administration of the business license tax, including all powers specified in ORS 319.010 to 319.430.

3.10.030 Amount and Payment

In addition to any fees or taxes otherwise provided for by law, every dealer engaging in the city in the sale, use or distribution of motor vehicle fuel, shall:

- A. Not later than the 25th day of each calendar month, render a statement to the tax administrator on forms prescribed, prepared and furnished by the tax administrator of all motor vehicle fuel sold, used or distributed by him/her in the city as well as all such fuel sold, used or distributed in the city by a purchaser thereof upon which sale, use or distribution the dealer has assumed liability for the applicable license tax during the preceding calendar month.
- B. Pay a license tax computed on the basis of:

1. \$.01 (one cent) per gallon of such motor vehicle fuel so sold, used or distributed as shown by such statement in the manner and within the time provided in this code, plus
 2. beginning June 1st and ending October 31st of each year, an additional \$.02 (two cents) per gallon of such motor vehicle fuel so sold, used or distributed as shown by such statement in the manner and within the time provided in this code.
- C. On or before May 1st of each year, the license tax computed pursuant to 3.10.030 (B) (1) or 3.10.030 (B) (2) may be increased or decreased after a public hearing and a vote of approval by City the Council, but in no case shall any increase or decrease to 3.10.030 (B) (1) or 3.10.030 (B) (2) exceed \$.02 (two cents) per gallon per year.

3.10.040 License Requirements

No dealer shall sell, use or distribute any motor vehicle fuel until he/she has secured a dealer's business license as required herein.

3.10.050 License. Applications and Issuance

- A. Every person, before becoming a dealer in motor vehicle fuel in this city, shall make application to the tax administrator for a license authorizing such person to engage in business as a dealer.
- B. Applications for the business license shall be made on forms prescribed, prepared and furnished by the tax administrator.
- C. Applications shall be accompanied by a duly acknowledged certificate containing:
 1. The business name under which the applicant transacts business.
 2. The address of applicant's principal place of business and location of distributing stations in and within three miles of the city.
 3. The name and address of the managing agent, the names and addresses of the several persons constituting the firm or partnership or, if a corporation, the name under which the corporation is authorized to transact business and the names and addresses of its principal officers and registered agent, as well as primary transport carrier.
- D. If an application for a dealer for a business license is complete and accepted for filing, the tax administrator shall issue to the dealer a license in such form as the tax administrator may prescribe to transact business in the city. A license issued hereunder is not assignable, and is valid only for the dealer in whose name it is issued.

- E. The tax administrator shall retain all completed applications with an alphabetical index thereof, together with a record of all licensed dealers.

3.10.060 Failure to Secure License

- A. If a dealer sells, distributes or uses any motor vehicle fuel without first filing the certificate and obtaining the license required by Section 3.10.050 of this ordinance, the license tax on all motor vehicle fuel sold, distributed or used by that dealer shall be immediately due and payable.
- B. The tax administrator shall proceed forthwith to determine, from as many available sources as the tax administrator determines reasonable, the amount of tax due, shall assess the dealer for the tax in the amount found due, together with a penalty of 100 percent of the tax, and shall make its certificate of such assessment and penalty. In any suit or proceeding to collect the tax or penalty or both, the certificate shall be prima facie evidence that the dealer therein named is indebted to the city in the amount of the tax and penalty stated.
- C. Any tax or penalty assessed pursuant to this section may be collected in the manner prescribed in this ordinance with reference to delinquency in payment of the fee or by an action at law.
- D. In the event any suit or action is instituted to enforce this section, if the City is the prevailing party, the City shall be entitled to recover from the person sued reasonable attorney's fees at trial or upon appeal of such suit or action, in addition to all other sums provided by law.

3.10.070 Revocation of License

The City or its authorized agent shall revoke the license of any dealer refusing or neglecting to comply with any provision of this ordinance. The City or its authorized agent shall mail by certified mail addressed to such dealer or at his last known address appearing on the files, a notice of intention to cancel. The notice shall give the reason for the cancellation. The cancellation shall become effective without further notice if within 10 days from the mailing of the notice the dealer or fuel-handler has not made good its default or delinquency.

3.10.080 Cancellation of License

- A. The tax administrator may, upon written request of a dealer, cancel a license issued to that dealer. The tax administrator shall, upon approving the dealer's request for cancellation, set a date not later than 30 days after receipt of the written request, after which the license shall no longer be effective.
- B. The tax administrator may, after 30 days' notice has been mailed to the last known address of the dealer, cancel the license of dealer upon finding that the dealer is no longer engaged in the business of a dealer.

3.10.090 Remedies Cumulative

The remedies provided in this Ordinance are cumulative. No action taken pursuant to those sections shall relieve any person from the penalty provisions of this code.

3.10.100 Payment of Tax and Delinquency

- A. The business license tax imposed by Sections 3.10.020 to 3.10.050 of this chapter shall be paid to the tax administrator on or before the 25th day of each month.
- B. Except as provided in subsections (C) and (E) of this section, if payment of the license tax is not paid as required by subsection (A) of this section, a penalty of 1 percent of such license tax shall be assessed and be immediately due and payable.
- C. Except as provided in subsection (E) of this section, if the payment of the tax and penalty, if any, is not made on or before the 1st day of the next month following that month in which payment is due, a further penalty of 10 percent of the tax shall be assessed. Said penalty shall be in addition to the penalty provided for in subsection (B) of this section and shall be immediately due and payable.
- D. If the license tax imposed by Sections 3.10.020 to 3.10.050 of this code is not paid as required by subsection (A) of this section, interest shall be charged at the rate of .0329 percent per day until the tax, interest and penalties have been paid in full.
- E. Penalties imposed by this section shall not apply if a penalty has been assessed and paid pursuant to Section 3.10.060. The tax administrator may for good cause shown waive any penalties assessed under this section.
- F. If any person fails to pay the license tax, interest, or any penalty provided for by this section, the tax, interest, and/or penalty shall be collected from that person for the use of the city. The tax administrator shall commence and prosecute to final determination in any court of competent jurisdiction an action at law to collect the same.
- G. In the event any suit or action is instituted to collect the business license tax, interest, or any penalty provided for by this section, if the City is the prevailing party, the City shall be entitled to recover from the person sued reasonable attorney's fees at trial or upon appeal of such suit or action, in addition to all other sums provided by law.

3.10.110 Monthly Statement of Dealer

Every dealer in motor vehicle fuel shall provide to the tax administrator on or before the 25th day of each month, on forms prescribed, prepared and furnished by the tax administrator, a statement of the number of gallons of motor vehicle fuel sold, distributed or used by the dealer during the preceding calendar month. The statement shall be signed by the dealer or the dealer's agent.

3.10.120 Failure to File Monthly Statement

If a dealer fails to file any statement required by Section 3.10.110, the tax administrator shall proceed forthwith to determine from as many available sources as the tax administrator determines reasonable the amount of motor vehicle fuel sold distributed or used by such dealer for the period unreported, and such determination shall in any proceeding be prima facie evidence of the amount of fuel sold, distributed or used. The tax administrator shall immediately assess the dealer for the license tax upon the amount determined, adding thereto a penalty of 10 percent of the tax. The penalty shall be cumulative to other penalties provided in this code.

3.10.130 Billing Purchasers

Dealers in motor vehicle fuel shall render bills to all purchasers of motor vehicle fuel. The bills shall separately state and describe the different products sold or shipped there under and shall be serially numbered except where other sales invoice controls acceptable to the tax administrator are maintained.

3.10.140 Failure to Provide Invoice or Delivery Tag

No person shall receive and accept motor vehicle fuel from any dealer, or pay for the same, or sell or offer the motor vehicle fuel for sale, unless the motor vehicle fuel is accompanied by an invoice or delivery tag showing the date upon which motor vehicle fuel was delivered, purchased or sold and the name of the dealer in motor vehicle fuel.

3.10.150 Transporting Motor Vehicle Fuel in Bulk

Every person operating any conveyance for the purpose of hauling, transporting or delivering motor vehicle fuel in bulk shall, before entering upon the public highways of the city with such conveyance, have and possess during the entire time of the hauling or transporting of such motor vehicle fuel, an invoice, bill of sale or other written statement showing the number of gallons, the true name and address of the seller or consignor, and the true name and address of the buyer or consignee, if any, of the same. The person hauling such motor vehicle fuel shall, at the request of any officer authorized by law to inquire into or investigate such matters, produce and offer for inspection the invoice, bill of sale or other statement.

3.10.160 Exemption of Export Fuel

- A. The license tax imposed by Section 3.10.020 shall not be imposed on motor vehicle fuel:
1. Exported from the city by a dealer; or
 2. Sold by a dealer for export by the purchaser to an area or areas outside the city in containers other than the fuel tank of a motor vehicle, but every dealer shall be

required to report such exports and sales to the city in such detail as may be required.

- B. In support of any exemption from business license taxes claimed under this section other than in the case of stock transfers or deliveries in the dealer's own equipment, every dealer must execute and file with the tax administrator an export certificate in such form as shall be prescribed, prepared and furnished by the tax administrator, containing a statement, made by some person having actual knowledge of the fact of such exportation, that the motor vehicle fuel has been exported from the city, and giving such details with reference to such shipment as the tax administrator may require. The tax administrator may demand of any dealer such additional data as is deemed necessary in support of any such certificate, and failure to supply such data will constitute a waiver of all right to exemption claimed by virtue of such certificate. The tax administrator may, in a case where the tax administrator believes no useful purpose would be served by filing of an export certificate, waive the filing of the certificate.
- C. Any motor vehicle fuel carried from the city in the fuel tank of a motor vehicle shall not be considered as exported from the City.
- D. No person shall, through false statement, trick or device, or otherwise, obtain motor vehicle fuel for export as to which the City tax has not been paid and fail to export the same, or any portion thereof, or cause the motor vehicle fuel or any portion thereof not to be exported, or divert or cause to be diverted the motor vehicle fuel or any portion thereof to be used, distributed or sold in the City and fail to notify the tax administrator and the dealer from whom the motor vehicle fuel was originally purchased of his/her act.
- E. No dealer or other person shall conspire with any person to withhold from export, or divert from export or to return motor vehicle fuel to the City for sale or use so as to avoid any of the fees imposed herein.
- F. In support of any exemption from taxes on account of sales of motor vehicle fuel for export by the purchaser, the dealer shall retain in his/her files for at least three years, an export certificate executed by the purchaser in such form and containing such information as is prescribed by the tax administrator. This certificate shall be prima facie evidence of the exportation of the motor vehicle fuel to which it applies only if accepted by the dealer in good faith.

3.10.170 Sales to Armed Forces Exempted

The license tax imposed by Section 3.10.020 shall not be imposed on any motor vehicle fuel sold to the Armed Forces of the United States, including the U. S. Coast Guard and the Oregon National Guard, for use in ships, aircraft or for export from the city; but every dealer shall be required to report such sales to the tax administrator in such detail as may be required. A certificate by an authorized officer of such Armed Forces shall be

accepted by the dealer as sufficient proof that the sale is for the purpose specified in the certificate.

3.10.180 Fuel in Vehicles Coming Into City Not Taxed

Any person coming into the City in a motor vehicle may transport in the fuel tank of such vehicle, motor vehicle fuel for his/her own use only and for the purpose of operating such motor vehicle without securing a license or paying the tax provided in Section 3.10.020 or complying with any of the provisions imposed upon dealers herein, but if the motor vehicle fuel so brought into the City is removed from the fuel tank of the vehicle or used for any purpose other than the propulsion of the vehicle, the person so importing the fuel into the City shall be subject to all the provisions herein applying to dealers.

3.10.190 Refunds

- A. Refunds of tax on motor vehicle fuel will be made pursuant to any refund provisions of Chapter 319 of the Oregon Revised Statutes, including but not limited to ORS 319.280 and 319.831. Claim forms for refunds may be obtained from the Tax Administrator's office.
- B. A holder of a weight receipt that certifies to the City that the motor vehicle fuel upon which the tax was imposed will be used only for fueling vehicles subject to the State of Oregon's weight-mile tax, may apply for a refund of 80 percent of the tax imposed by Section 3.10.020 on motor vehicle fuel purchased in bulk for distribution at the weight receipt holder's facility located within the City. This subsection applies only to motor vehicle fuel purchased by the weight receipt holder on or after February 23, 2005.
- C. All claims for refund under subsection (B) of this section shall be filed within 15 months of the date that the fuel was purchased and may not be filed more frequently than quarterly. The minimum claim for refund filed under subsection (B) of this section shall be not less than \$25.00.

3.10.200 Examinations and Investigations

The tax administrator, or duly authorized agents, may make any examination of accounts, records, stocks, facilities and equipment of dealers, service stations and other persons engaged in storing, selling or distributing motor vehicle fuel or other petroleum product or products within this City, and such other investigations as it considers necessary in carrying out the provisions of Sections 3.10.020 through 3.10.050. If the examinations or investigations disclose that any reports of dealers or other persons theretofore filed with the tax administrator pursuant to the requirements herein, have shown incorrectly the amount of gallonage of motor vehicle fuel distributed or the tax accruing thereon, the tax administrator may make such changes in subsequent reports and payments of such dealers or other persons, or may make such refunds, as may be necessary to correct the errors disclosed by its examinations or investigation. The dealer shall reimburse the City for the reasonable costs of the examination or

investigation if the action discloses that the dealer paid 95 percent or less of the tax owing for the period of the examination or investigation. In the event that such an examination or investigation results in an assessment by and an additional payment due to the City, such additional payment shall be subject to interest at the rate of .0329 percent per day from the date the original tax payment was due.

3.10.210 Limitation on Credit for or Refund of Overpayment and on Assessment of Additional Tax

- A. Except as otherwise provided in this code, any credit for erroneous overpayment of tax made by a dealer taken on a subsequent return or any claim for refund of tax erroneously overpaid filed by a dealer must be so taken or filed within three years after the date on which the overpayment was made to the City.
- B. Except in the case of a fraudulent report or neglect to make a report, every notice of additional tax proposed to be assessed under this code shall be served on dealers within three years from the date upon which such additional taxes become due, and shall be subject to penalty as provided in Section 3.10.100.

3.10.220 Examining Books and Accounts of Carrier of Motor Vehicle Fuel

The tax administrator or duly authorized agents of the tax administrator may at any time during normal business hours examine the books and accounts of any carrier of motor vehicle fuel operating within the City for the purpose of enforcing the provisions of this code.

3.10.230 Records to be Kept by Dealers

Every dealer in motor vehicle fuel shall keep a record in such form as may be prescribed by the tax administrator of all purchases, receipts, sales and distribution of motor vehicle fuel. The records shall include copies of all invoices or bills of all such sales and shall at all times during the business hours of the day be subject to inspection by the tax administrator or authorized officers or agents of the tax administrator.

3.10.240 Records to be Kept Three Years

Every dealer shall maintain and keep, for a period of three years, all records of motor vehicle fuel used, sold and distributed within the City by such dealer, together with stock records, invoices, bills of lading and other pertinent papers as may be required by the tax administrator. In the event such records are not kept within the state of Oregon, the dealer shall reimburse the tax administrator for all travel, lodging, and related expenses incurred by the tax administrator in examining such records. The amount of such expenses shall be assessed in addition to the tax imposed by Section 3.10.020.

3.10.250 Use of Tax Revenues

- A. For the purpose of this section, net revenue shall mean the revenue from the tax and penalties imposed under this chapter remaining after providing for the cost of administration and any refunds and credits authorized herein.
- B. The net revenue shall be used exclusively for services and materials associated with the design, construction, reconstruction, improvement and repair of roads, streets, bike and pedestrian pathways and other multi-modal transportation systems for which the City owns, operates and maintains, desires to own, operate or maintain, is contractually or legally obligated to operate and maintain, or for which the City has accepted responsibility under intergovernmental agreement. Net revenues shall be not used for City administration costs, City fuel tax administration costs or City personnel costs. Specific projects that are fully or partially funded with revenues received under this Chapter shall be identified and approved by the City Council as a part of the City's annual budget process.

3.10.260 When Tax Shall Take Effect

The tax imposed pursuant to Section 3.10.020 shall take effect October 1, 2009 and only after the Tax Administrator has developed the necessary forms and documents to administer the tax. The Tax Administrator shall declare when the tax shall take effect, and give not less than 15 days notice of the date before the tax may take effect. The Tax Administrator's decision as to the effective date of the tax and the type of notice to provide shall be final and not subject to preview.

3.10.270 Severability

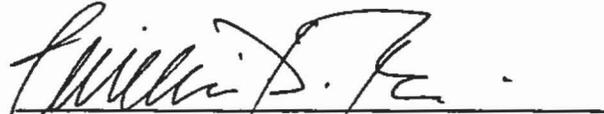
If any portion of this ordinance is for any reason held invalid or unconstitutional by a court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions of this ordinance.

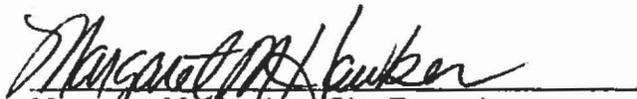
Section 2. Effect Date of Ordinance. This Ordinance shall become effective September 3, 2009.

Section 3. Termination Clause. Beginning July 2015 and every two years thereafter, the City Council shall hold a public hearing to consider the discontinuance of this Chapter.

Adopted By The City Council This Third Day Of August, 2009.

Approved By The Mayor This Third Day Of August, 2009.


William D. Bain, Mayor


Margaret M. Hawker, City Recorder



CITY MANAGER'S REPORT AND RECOMMENDATIONS

Agenda #: VIII.C.
Meeting Date: April 6, 2015

Agenda Item: Report from the City Manager on Community Visioning Process

Background:

As I shared with the Council at our February 23 goal setting session, I have heard from a number of citizens that Newport is lacking a common vision to guide the community in working towards a common long term direction, developments, initiatives, and projects that will enhance the livability and sustainability of Newport. These issues go beyond the actual role of the city, and include other public and private stakeholders of greater Newport area. In reviewing this matter, I have discovered that a community visioning process was completed in February 2005. Please note that the city has done a thorough job on comprehensive planning and initiated a thorough review of infrastructure needs for the community.

The Council may want to initiate a discussion with other stakeholders about conducting a broad-based greater community effort to provide guidance, and create a vision that explores opportunities for a viable and growing Newport in years to come. This type of process typically goes well beyond the City itself, and should include other major institutional players within this community, as well as residents of the City of Newport. If there is concurrence about a long-term vision of where people want the City of Newport to be in 20 or 30 years, it empowers various stakeholders within the community to work towards those long-term goals that have been accepted by the community.

The Newport 2020 plan, completed in 2005, was an effort coordinated by the Greater Newport Chamber of Commerce, with participation of various stakeholders and a copy was provided to the Council as part of the binder for the February goal setting process.

Upon acceptance of the goals for the 2015-16 fiscal year, the City Council requested a report on updating community vision for the April 6 City Council meeting. Community Development Director Derrick Tokos estimates from conversations with planning consultants that a facilitated master planning process for the City of Newport could run anywhere from \$40,000 to \$100,000 depending on the processes that would be included as part of this effort. For example, issues that would push the cost up would be if a statistical accurate community survey was conducted as part of this process, utilization of online presence for collecting data, video work and other similar components. While we have certain capabilities at a staff level to facilitate aspects of a visioning process, we likely do not have adequate staff time to conduct a highly engaged process with high citizen involvement, and carry-on with other obligations that the Council has identified for us to complete without the assistance of a consultant. In checking with the City Manager's listserv, I did get specific information about costs and firms utilized by a number of communities, which included; Monmouth, who was working with Barney and Worth at a

cost of \$45,000; the City of Dallas, which conducted a 2030 vision in 2013 at a cost of \$50,000 utilizing Zenn Associates; and Lebanon who has budgeted \$50,000 to conduct a 2040 vision utilizing a BDS Planning and Development. In addition, The Dalles is applying for funds through the RARE Program to get a graduate student to work on a main street vision for that community at a cost of about \$22,000 for their share of the graduate student and the City of Donald has used University of Oregon Green Cities Class to do some visioning work for that community.

Prior to embarking on a comprehensive visioning process, it would be very important for the City Council, along with the various stakeholders, to have a common understanding of how this vision is going to be used; not only by the city, but by the various stakeholders that would be involved in developing this vision. It is also very important that a vision be developed that would transcend political changes that may occur on the Council or within other stakeholder organizations for a vision to effectively guide the community.

Once a community vision is adopted, it serves as a guideline for the continued processes of reviewing and adapting the city's Comprehensive Plan to make sure it is consistent with the vision. It would guide the annual goal setting process for the departments and the Council to continue moving the city towards realizing this vision.

Furthermore, a vision for a community needs to be a living document that has flexibility and is easily updated. A community vision should be reviewed annually by the City Council and other key stakeholders, particularly at the time of goal setting and/or budgeting for those organizations to make sure that the direction of those organizations is complementing the vision of where Newport wants to be at some point in the future. I believe that the final document should not be a highly technical document, but should convey a sense of those areas where there is community buy-in for moving the City of Newport in a forward direction. Overtime, the Comprehensive City Plan should provide the roadmap to direct the community toward those concepts that have been accepted through this process.

The City of Newport has a lot of very positive things going for it. The successful effort of the community to attract the NOAA facility, the announcement last year of OSU creating an undergraduate marine studies program in Newport at the Hatfield Marine Science Center, OMSI establishing a coastal discovery camp in South Beach, the community's effort to retain the U.S. Coast Guard Air Facility, and other efforts show how closely this community can work together on common goals. Newport can be very proud of fostering this type of culture within the community. I believe that a community vision would foster further direction and cooperation to move the community forward in other areas as well.

I believe it would be appropriate for the City Council to establish a work group to address a number of issues that I have outlined in this report so there will be a clear understanding of what we are trying to accomplish through the visioning process, and to ensure there is buy in from the key stakeholders towards this end. I would suggest a working group be appointed which would include a couple members from the City Council, the Chamber of Commerce, the Port, the Planning Commission, as well as a citizen member. The charge of this working group would be to bring a report back to the City Council by July 15, 2015,

that would clearly outline the expectations of a community vision process for the city. At that time, the committee could make a recommendation to the City Council regarding whether or not to proceed with a visioning process during the 2015-16 fiscal year. Furthermore if a recommendation is received to proceed with a visioning process, then the specific goals, time tables, and preliminary processes could be provided to the City Council for the Council's review. This would be an ambitious project, and if done properly it would be a very exciting project for the City of Newport. I have included a report from ICMA on the importance of community visioning matters for your review.

Recommended Action:

I recommend that the City Council consider the following motion:

I move that a work group be established that will be staffed by the City Manager and Community Development Director that will include two representatives from the City Council, one representative from the Newport Chamber of Commerce, one representative from the Planning Commission, one representative from the Port, and one citizen named by the City Council and charge that work group with providing a report and recommendation to the City Council by July 15, 2015, on whether or not to proceed with a comprehensive community visioning process during the 2015-16 fiscal year and if the recommendation is to proceed outlining the specific goals, parameters, and processes that would be included in a community visioning process for the City of Newport.

Fiscal Effects:

An allowance will be included in the proposed budget if the Council should choose to initiate this effort in the 2015-16 fiscal year.

Alternatives:

Do not proceed with a comprehensive visioning process at this time or as suggested by City Council.

Respectfully Submitted,



Spencer R. Nebel
City Manager

ICMA Publications / PM Magazine / Archives

OCTOBER 2013 · VOLUME 95 · NUMBER 9

PMPLUS

Why Community Vision Matters

"There is no power for change greater than a community discovering what it cares about."

—Margaret Wheatley, author and management consultant, *Turning to One Another: Simple Conversations to Restore Hope to the Future*. Berrett-Koehler, Inc., San Francisco, California, 2002, p. 55.

In April 2011, a devastating outbreak of tornadoes inflicted severe damage to several communities in Alabama. In one small town, a powerful EF 5 tornado with 210 mile-an-hour winds tore a half-mile swath through the heart of the community. Nearly half of the homes, most of the businesses, and schools were either completely destroyed or heavily damaged in Hackleburg. Seventeen residents lost their lives.

When a community has experienced such a calamity, where do residents and leaders start? The immediate needs seem overwhelming. In any disaster of this magnitude, there are short-, medium-, and long-term needs. Rescue and stabilization are the obvious first priorities.

After a few weeks, the Federal Emergency Management Agency (FEMA) long-term recovery staff approached the mayor and council of Hackleburg to encourage them to establish a committee to begin working on a long-term recovery plan. This action would allow elected officials to continue concentrating on immediate needs.

The recovery committee, assisted by FEMA staff, met and began planning for a series of public workshops. Establishing a vision for a reconstructed community and a subsequent recovery plan were the objectives. As the date for the first meeting neared, there was considerable speculation whether anyone would show up, given all the individual needs of residents.

But come they did. Well over 100 attended the first meeting held two months after the storm in the multipurpose room of the one church that survived. Residents were introduced to the vision process and invited to participate in smaller group discussions with facilitators. Participants were encouraged to begin looking past the immediate destruction and consider the long term.

In spite of the tragedy, residents visualized a brighter future. Ideas flowed freely as conversations ensued with fellow residents. The meetings not only produced ideas, but also proved cathartic for a traumatized public. Opportunities were identified to address long-standing community deficiencies.

The recovery committee eventually became a nonprofit organization that networked with the city, region, state, and other entities during the community recovery process. The community identity and destination vision, coupled with the plan and project champions, were a powerful combination in the recovery effort of Hackleburg.

TYPES OF COMMUNITY VISION

A community vision can take many shapes and forms. Two common types are identity vision and destination vision (see Figure 1).

An identity vision is more existential and is oriented toward shared values. It deals with such fundamental questions as, who are the residents, what are their strengths, and what do they value. A destination vision is largely a means to an end. It describes a future state of

being and is more concerned with charting a course or solving a problem.

IDENTITY VISION

With all of the changes in modern society, communities, like individuals, must constantly respond and adapt. According to Margaret Wheatley, "When an organization (community) knows who it is, what its strengths are, and what it is trying to accomplish, it can respond intelligently to changes from its environment. The presence of a clear identity makes the organization (community) less vulnerable to its environment; it develops a greater freedom to decide how it will respond."

Creating an identity vision is very much a discovery process for the community. It brings people together to find out who they are collectively. It takes residents outside of their individual world and opens them to the idea of collective possibilities.

One community I worked for is known for its excellent school system. This reputation has been consistently identified as the community's most important public asset and easily manifested itself in the identity vision. The community was also facing significant growth pressures.

The response resulted in determining the optimal rate of growth that would work most favorably for the school district. Once that rate was identified, a growth management system was formulated that allowed development to proceed at the optimal rate. This way, the community's most important identity asset was protected and enhanced as growth pressures were addressed.

DESTINATION VISION

Pursuing a destination vision is also important for many reasons. It helps clarify a future destination in order to help work toward a common objective. A destination vision is all about change. In times of rapid change, however, it can be even more important to spend some time identifying what should not change.

A destination vision for a community is really a shared vision. It is not the vision of the elected officials, the manager, or the staff; but a vision of community residents.

I remember on one occasion when several councilmembers, a staff member, and I were interviewing architects for a potential community center project. After interviewing three firms, the councilmembers were not satisfied with any of them.

We later found out the reason. They had a completely different vision for a community center than staff. The examples displayed by the architects were dramatically different from their vision. It became readily apparent that we had not taken the time necessary to develop a shared vision for the project.

COOPERATION COMES FIRST

A community vision depends upon cooperation. Cooperation is the organizing principle in human society. Human cooperation, however, has its limits.

According to professor and author Martin Nowak, "Evolutionary simulators indicate that cooperation is intrinsically unstable; periods of cooperative prosperity inevitably give way to defective doom. And yet the altruistic spirit always seems to rebuild itself; our moral compasses somehow realign."

The desire to cooperate can fluctuate in different types of communities, which can best be described in four diagrams (see Figure 2) based upon inside and outside pressures.

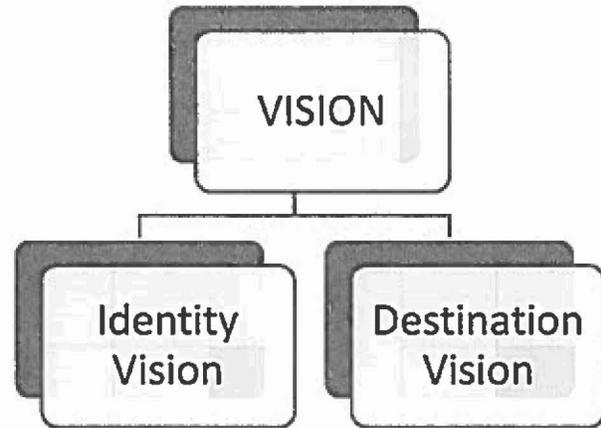


Figure 1. Types of Community Vision.

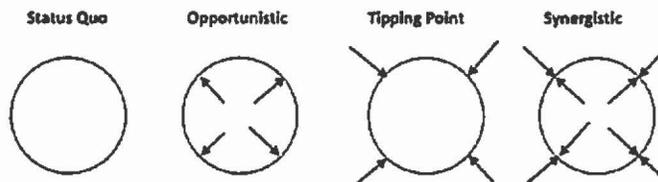


Figure 2. Community Type.

In **status quo communities**, very little change is happening due to minimal outside pressure. Individual pursuits tend to dominate and cooperation is minimal.

In **opportunistic communities**, there may be some minimal outside pressure to change, but change is largely driven from the inside by forward-looking community leaders or residents who are interested in some project or new facility. There may be some interest in cooperation, but it is not necessarily pervasive.

In **tipping point communities**, outside pressures are so significant that some sort of change is inevitable. In these communities, there is general acknowledgement of a need for change; however, there is little desire to take advantage of the opportunities presented. The concern is with lessening impacts.

In **synergistic communities**, outside pressures are happening along with inside pressures. There is a heightened sense of cooperation, and residents are generally easier to engage. A window of opportunity occurs for community leaders to set the stage for community involvement in a powerful way. As outside pressures are combined with inside pressure, collaboration can occur that can result in something better than expected.

In status quo communities, the need for a vision is minimal since there is little pressure for change. Opportunistic communities can benefit from a destination vision, since change is being generated from the inside and is generally limited in scope to a specific project.

Tipping point communities can benefit from an identity vision in order to better respond to the outside pressures. Interacting or synergistic communities can benefit from both identity visions and destination visions, since the change is more pervasive and comprehensive.

ENGAGEMENT FOLLOWS

According to author Peter Block, "the challenge for every community is not so much to have a vision of what it wants to become, or a plan, or specific timetables. The real challenge is to discover and create the means for engaging citizens that brings a new possibility into being."¹

In 2009–2010, I worked in Iraq for a company that had a contract with USAID to provide assistance to newly empowered provincial governments. Iraq had adopted a new constitution that provided real authority to provincial governments for the first time.

One of the first responsibilities of these provincial governments was to adopt a provincial development strategy and subsequent plan. This plan would then provide the basis for guiding capital improvements.

As might be expected, many of these newly elected officials struggled with this responsibility. One of the newly elected provincial governors in our region decided to start this process by inviting the provincial council and leaders in local government, education, utilities, and other segments in the province to a multiday conference.

This type of meeting followed tribal traditions. Several hundred attended. The conference began with the governor welcoming everyone and discussed a vision for the newly empowered province.

During this conference, the participants divided into small groups to talk about needs and priorities. At the end, these groups reported their results to the larger group. Eventually the entire conference reached a consensus on a strategy and plan. This consensus helped this province to move ahead of others in implementing its plan.

MAKING VISION AN ENDURING INFLUENCE

Beyond a single event, how can a vision be an enduring influence in a community? One way is through an annual vision workshop. This essentially consists of a meeting based on the community vision that fosters small-group discussions with key community representatives and local officials.

The meeting can be centered on finding ways to address a community issue consistent with the vision, or an opportunity to discuss what the community can do to bring about the conditions described in the vision.

This meeting can be hosted by a local government or a larger umbrella organization. Representatives from agencies and nonprofit organizations should be invited. Residents from various segments of the community are included.

Mixing these individuals in small-group discussions can generate a synergy that can produce surprising results. As each individual listens to other points of view, a new level of understanding can flourish, leading to new ideas for projects and processes being proposed that are consistent with the vision.

The meeting should be as inclusive as possible of different points of view. Author Steven Covey puts it this way: "When I talk about the 'gift of conflict,' people look sideways at me, but what I mean is that thoughtful people will

always differ from each other—and that if they care enough to express their differences with passion, that’s an offering that ought to be accepted eagerly.”¹

Each small-group discussion can include these steps.

- Discussion begins with an assigned individual conducting a brief explanation of the issue(s) and outside influences. This is sometimes called an environmental scan.
- The next step is to determine the criteria for a successful resolution of the issue consistent with the community vision. Each individual in the group should be encouraged to frame the issue according to his or her understanding of it and then suggest criteria for resolution.
- At this point, the group is encouraged to propose projects and processes that would respond to the issues and the influences that affect it. All participants should be encouraged to share their ideas in the small group.
- The criteria for a successful resolution along with the community vision are then used to evaluate potential projects or processes. The vision can be used as a filter to ensure that actions are consistent with the values of the community.
- Finally, the processes and projects are prioritized and divided into high, medium, and low priority. See Figure 3 for a sample worksheet for this process.

FUTURE ACTION SHEET

Issue:

Action	Criteria Consistency	Vision Consistency	High Priority	Medium Priority	Low Priority
Project					
Process					

Figure 3. Future Action Sheet.

As each small group reports to the entire group, discussion can occur that ultimately leads to priority projects and processes that everyone can agree upon that are consistent with the vision for the community.

A final step in this workshop is to assign champions to high-priority community projects or processes. Champions should be selected from residents who are invited to participate in the workshop. Staff can be selected to work with project champions in taking the next steps toward implementation.

A DIFFICULT, BUT POWERFUL PROCESS

Taking the time to prepare a vision during times of outside and inside pressure can bring a community together in an unprecedented way. Establishing a vision is not for the fainthearted. Almost any significant public process undertaken at times of heightened community awareness can be fraught with controversy and opposition. Outcomes can be difficult to manage or predict.

Engaging the community, however, by developing a vision can be both therapeutic and powerful. A well-thought-out process that invites and involves residents through small-group discussion can produce a compelling community vision to influence decision making. Annual community vision workshops are an effective way to use the vision to influence the local organization over the long term.

ENDNOTES

¹ Wheatley, *Leadership and the New Science, Discovering Order in a Chaotic World*, Berrett-Koehler, 1999, e-book location 1423.
² Nowak, Martin, *Why We Help*, Scientific American, July 2012, p.39.
³ Block, Peter *Community, The Structure of Belonging*, Berret-Koehler Publishers, Inc. 2008, p. 79.
⁴ Covey, Stephen R., *The 3rd Alternative*, Free Press 2011, p. 93.

Visioning Case Study

When I was interviewed to become the first city administrator in Snoqualmie, Washington, in 1988, the city faced considerable challenges. A small logging town located approximately 35 miles east of Seattle, Snoqualmie’s population of only 1,500 had remained constant for the past decade.

With a decaying infrastructure, empty storefronts, and limited fiscal resources, the future did not look promising. To top it off, the city had just been through a huge flood due to its proximity to the Snoqualmie River. Something had to change.

On the other hand, Snoqualmie had many assets. It is a community of strong, resilient residents. It has world-class scenery from the surrounding foothills of the Cascade Mountains. It is the home of Snoqualmie Falls, a 268-foot waterfall on the Snoqualmie River. And it is located in economically robust King County.

During the late 1980s, Weyerhaeuser Real Estate Company proposed to annex 2,000 acres into Snoqualmie and develop a master-planned community that would contain more than 4,000 dwelling units, a PGA golf course, a 400-acre business park, and a 21-acre retail area. As might be expected, the project generated a tremendous amount of interest and considerable opposition from those who moved to the area to escape urbanization.

Two Key Events

At about this time, two important events happened that in hindsight made a huge impact on the future of Snoqualmie. The first was a recession that caused Weyerhaeuser to put its project on hold for several years. The second was a new state law passed in 1990 known as the Growth Management Act, mandating communities in high-growth counties to adopt new comprehensive plans.

The first task in preparing Snoqualmie's plan was to develop a vision for the community. Fortunately, the city had the benefit of extensive resident survey information produced from the Weyerhaeuser development process, along with recent public dialogue

After several public workshops and hearings, the Snoqualmie Community Vision and Plan emerged and later adopted in 1994:

"We, the citizens of Snoqualmie, envision a city that respects and preserves its historical and cultural resources and provides an effective stewardship of its outstanding scenic and natural features; a city that maintains its historic small town identity while encouraging a balanced, cohesive, yet diverse community as it grows; a city that continues to thrive in its location within the floodplain while taking every action possible to alleviate the impacts of flooding; a community where residents various physical, educational, economic and social activities can be pursued in a safe attractive and healthy environment; and finally, a city that has an adequate tax base to provide a high level of service to its residents."

A Synergistic Process

The benefits of having a vision and plan prior to engaging development applications are numerous and became immediately apparent as Weyerhaeuser resumed work on its project the following year. The city was able to ensure that its values, resources, and needs were addressed as the Weyerhaeuser project proceeded. Here are some of the benefits:

- Actions were taken to protect the area's natural, historic, and cultural resources.
- Infrastructure needs in the older city were identified and improvements planned, including infrastructure needs for the newer residents.
- Design standards and affordable housing objectives were adopted.
- Floodplain management activities were identified and planned.
- Parks and recreation standards were adopted and used to establish requirements for new development.
- School needs were identified and projects planned.

The Snoqualmie Community Vision and Plan enabled a synergistic process to unfold that successfully blended this master-planned project's needs with historic community needs. Snoqualmie as a whole is a much richer community with its history preserved, scenic assets protected, and diversity of income and culture welcomed.

Ronald (Kim) Wilde, a retired city manager who resides in Cedar Park, Texas (wilderonald@yahoo.com), has worked for several local governments in addition to working as a FEMA long-term recovery manager and as a governance adviser in Iraq.

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CITY MANAGER'S REPORT AND RECOMMENDATIONS

Agenda #: VIII.D.
Meeting Date: April 6, 2015

Agenda Item:

Authorizing a Letter of Support for Homeporting two U.S. Coast Guard Fast Response Cutters in Newport

Background:

In March the city, along with a number of other stakeholders, were notified that the U.S. Coast Guard is proposing to homeport two Fast Response Cutters (FRC) within the area of responsibility for District 13, which includes the Washington and Oregon Coast. As a result of their preliminary work, they have identified three potential locations for housing these vessels. The locations include the NOAA facility in Yaquina Bay, and two locations in the Astoria area which includes the City Pier and North Tongue Point. The inclusion of Newport as one of the three finalists for housing the U.S. Coast Guard cutters is in response to an earlier request that was made to various ports between Coos Bay, Oregon, and Neah Bay, Washington about potential locations for housing these vessels. The environmental assessment is currently being conducted by a consultant for the U.S. Coast Guard to evaluate these three options in detail.

I have enclosed information on the Fast Response Cutter for your review. The Coast Guard will be replacing the Island Class 110 foot long patrol boats with the Fast Response Cutters, which are 154 feet in length and have a maximum speed of 28 knots. Each vessel will have a compliment of 24 crew members per ship. In addition, there will be 20 administrative positions bringing the total staffing for homeporting these two vessels to 68. The Fast Response Cutter is slated to conduct missions that include port, waterway, and coastal security, as well as fishing patrols, search and rescue, and national defense. These vessels appear tom play more of a Homeland Security function then other Search and Rescue vessels operated by the U.S. Coast Guard. Please note that the cost for each of these vessels is reported to be \$73 million.

The proposed location is consistent with the city development plans for Yaquina Bay, and the upland uses are consistent with the zoning for that site as well. The site has full city services.

It is anticipated that a decision will be made on the homeport location by the summer of 2015. The actual occupation of the site is not scheduled until 2021.

In addition to general community support, the key factor in the Yaquina Bay location will be working through the various details with NOAA and the Port of Newport in order to facilitate these cutters at this location. While there are still a number of issues that are not fully known at this particular point in time, it is important to note that the Port of Newport will have control over a final decision to house this facility on Port property, if this site is selected by the U.S. Coast Guard as the homeport for these two cutters.

At this point of the discussion, I believe it is important to show community support for expanding the U.S. Coast Guard presence in the City of Newport. I have included a draft letter for your review for submission to the Port, who will in turn package it with other letters that will be sent to the consultant for their review.

Recommended Action:

I recommend that the City Council consider the following motion:

I move that the city issue a letter of support for homeporting two Sentinel-class Fast Response Cutters for the U.S. Coast Guard on the Southside of Yaquina Bay in NOAA Marine Operations Center - Pacific and the Port of Newport.

Fiscal Effects:

None by issuing a letter of support. If this proposal is accepted the impact on the community will include 68 full-time U.S. Coast Guard jobs, plus the indirect impact of this added employment and other related economic activities within the City of Newport.

Alternatives:

Do not issue a letter of support or as suggested by City Council.

Respectfully Submitted,

A handwritten signature in blue ink, appearing to read "S. Nebel", is written over the typed name.

Spencer R. Nebel
City Manager



Spencer R. Nebel
City Manager
CITY OF NEWPORT
169 S.W. Coast Hwy.
Newport, OR 97365
s.nebel@newportoregon.gov

April 2, 2015

Erin Hale, Project Manager
AMEC FOSTER WHEELER
7376 SW Durham Rd.
Portland, OR 97224

RE: U.S. Coast Guard Fast Response Cutters, Home Port-Newport, Oregon

Dear Erin Hale:

On Monday, April 6, 2015, the City Council of the City of Newport, Oregon, met to consider the proposed establishment of a home port for two fast response cutters (FRC) in the City of Newport. By unanimous vote, the City Council expressed its formal support for the proposal to host two FRC's at the NOAA's Marine Operations Center-Pacific (MOC-P) facility on Yaquina Bay owned by the Port of Newport.

The City of Newport has had a great history of hosting the U.S. Coast Guard with the Station, Yaquina Bay, and the U.S. Coast Guard Air Facility at the City's Municipal Airport. In recognition of this historic relationship, Congress named the City of Newport as a "Coast Guard City, USA" in 2005. The City of Newport is anxious to continue in growing our relationship with the U.S. Coast Guard.

The City of Newport is a full service city, and the proposed location at the NOAA facility is fully serviced with all major utilities, and city services. It should also be noted that the City is embarking on major street and infrastructure improvements to continue work as part of the Urban Renewal Agency's South Beach improvements. This will include various street, bike paths and utility improvements on both sides of the US Highway 101 corridor. Furthermore, the City has received funding from FEMA to improve the tsunami evacuation site at Safe Haven Hill. The next phase of this work will be underway during the 2015 construction season, with additional work occurring throughout the life of this plan.

The proposed Newport location is a short drive to the Samaritan Pacific Hospital and the Newport Municipal Airport. Newport has a very strong maritime/marine science community, which includes NOAA, the Hatfield Marine Science Center, the Oregon Coast Aquarium, two existing Coast Guard facilities, and a very vibrant commercial fishing fleet. Naming Newport as the home port for the FRC's is a very natural fit. It should also be noted that Oregon State

University has announced plans to create an undergraduate campus in marine studies at the Hatfield Marine Science Center. Also during 2015, construction is slated to begin on a new OMSI Marine Discovery Camp, also located in South Beach. In addition, Newport has a very high quality of life, with many outdoor activities, and a very strong and vibrant performing arts community as well. The City of Newport operates a first class Recreation Center, and in 2016 we will be adding a new municipal swimming pool adjacent to the Recreation Center. Newport is also home to the Oregon Coast Community College, which offers a strong marine science program, among other great course offerings. For a community of 10,000, Newport offers many types of recreational and cultural activities for its residents as well.

The proposed location on Yaquina Bay has been designated by the City's Land Use Plan for further maritime development. Furthermore, the development of facilities on property owned by the Port of Newport, at this location, is fully compatible with the City's current zoning.

Finally, the Port, the City and Lincoln County work very closely together on many community efforts. The Port of Newport is well versed in the complexities of working with Federal agencies as a tenant on Port property. It is the City of Newport's opinion that Yaquina Bay is an excellent candidate for consideration as a home port for the two FRC's that will be located on the Washington/Oregon Coast.

The City Council of the City of Newport, Oregon, enthusiastically supports further exploration of the Port of Newport for housing this facility in conjunction with the NOAA's Marine Operations Center-Pacific on Yaquina Bay. Please feel free to contact City Manager, Spencer Nebel, if additional information is needed from the City of Newport.

Respectfully,

Mayor, Sandy Roumagoux
City of Newport

City Manager, Spencer R. Nebel
City of Newport

cc: Port of Newport
City Engineer, Tim Gross
City Planner, Derrick Tokos



Acquisition Directorate

FAST RESPONSE CUTTER

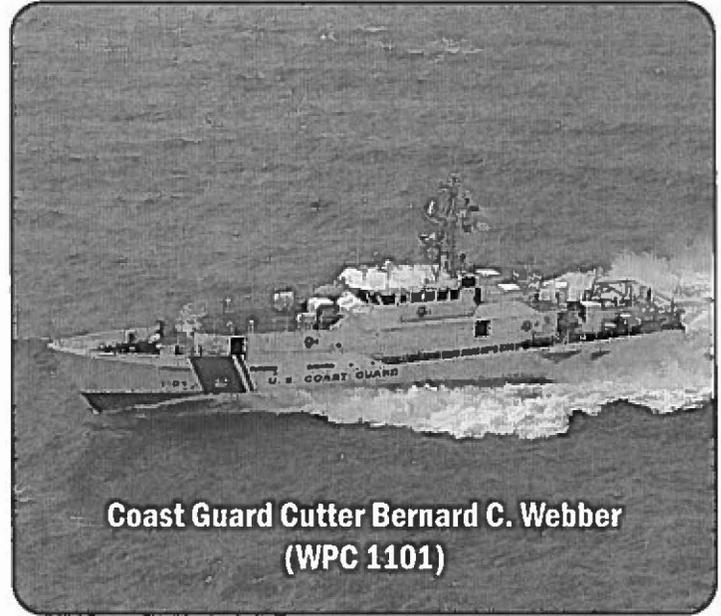
Mission execution begins here.

PROJECT DESCRIPTION:

The Sentinel-class Fast Response Cutter (ERC) is a new Coast Guard patrol boat that is capable of deploying independently to conduct missions that include port, waterways and coastal security; fishery patrols; search and rescue; and national defense. Named after Coast Guard enlisted heroes, the ERCs are replacing the aging Island-class 110-foot patrol boats.

The first six ERCs will be home-ported in Miami. Homeports for the next 28 ERCs have also been announced: Key West, Fla. (6); San Juan, Puerto Rico (6); Pascagoula, Miss. (2); Ketchikan, Alaska (2); Honolulu (2); Portland, Maine (2); Atlantic Beach, N.C. (2); Cape May, N.J. (2); and San Diego (4)

For updates on the FRC, visit the project's website <http://www.uscg.mil/acquisition/frc/default.asp>.



Coast Guard Cutter Bernard C. Webber (WPC 1101)

FEATURES:

- Enhanced response time with a minimum top speed of 28 knots
- Ability to conduct missions on moderate seas up to transit speed for eight hours in all directions
- Ability to survive on very rough seas up to loiter speed for eight hours in all directions
- Armed with a stabilized 25 mm machine gun mount and four crew-served .50-caliber machine guns
- Fully interoperable command and control systems with Coast Guard existing and future assets and with the Departments of Homeland Security and Defense

CHARACTERISTICS:

- Number Planned:** 58
- Length:** 154 feet
- Beam:** 25 feet
- Draft:** 9 feet, 6 inches
- Displacement:** 353 long tons
- Maximum Speed:** 28+ knots
- Range:** 2,950 nautical miles
- Endurance:** five days
- Crew:** 24

"The Sentinel-class of cutters is a tribute not only to the enlisted men and women serving in the Coast Guard today, but the many heroes that preceded them. It will be a critical asset in securing and protecting our nation's maritime environment."

—Adm. Robert J. Papp Jr., Commandant, U.S. Coast Guard



amec
foster
wheeler

March 13, 2015

Derrick Tokos
Community Development Director
City of Newport
169 SW Coast Hwy.
Newport, OR 97365

Dear Interested Party:

The U.S. Coast Guard (CG) proposes to homeport two Fast Response Cutters (FRC) within the CG's Area of Responsibility (AOR) District 13 (D13). The new FRCs are part of an ongoing effort to replace Island-class 110-foot (FT) Patrol Boats that are nearing the end of their service life. The Sentinel-class FRCs (also known as 'Sentinel class cutters') are capable of deploying independently to conduct missions that include port, waterways, and coastal security; fishery patrols; search and rescue; and national defense. These vessels will help reduce the CG's current Patrol Boat gap, allowing the CG to better complete its various missions.

Pursuant to the National Environmental Policy Act (NEPA), the CG intends to prepare an Environmental Assessment (EA) that evaluates the potential effects on the environment of a range of homeporting alternatives, as well as a No Action Alternative. Through this letter, the CG invites public and agency input on the scope of the EA and any relevant environmental concerns. AMEC Foster Wheeler Environment & Infrastructure, Inc. is the contractor acting on the behalf of the CG in the preparation of this document.

The two new FRCs will be in the service of D13; therefore, the cutters must have a homeport location that facilitates efficient travel throughout the District's AOR. The homeport must be geographically located between Neah Bay, Washington and Coos Bay, Oregon. To that end, the CG's Civil Engineering Unit (CEU) Oakland initiated a Homeport Feasibility Study to identify and acquire an appropriate homeport site for the cutters. The outcome of the study led to the identification of the following three possible sites: City Pier in Astoria, Oregon; North Tongue Point in Astoria, Oregon; and National Oceanic and Atmospheric Administration (NOAA), Marine Operations Center, Pacific NOAA (MOC-P) in Newport, Oregon.

The Draft EA is expected to be released for public review in May 2015. The EA will include the purpose and need for the project; a detailed description of alternatives under consideration; the affected environment; environmental consequences of implementation of the alternatives; and cumulative effects of the project. Three action alternatives will be considered and evaluated in detail in

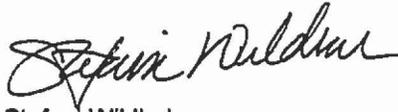
Amec Foster Wheeler Environment & Infrastructure, Inc.
7376 SW Durham Road
Portland, Oregon
USA 97224
Tel+1 (503) 639-3400
Fax+1 (503) 620-7892
www.amecfw.com

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October 21, 2014
Page 2

If you have questions or wish to clarify requirements, you may contact Brent Huizingh at Makers architecture and urban design, who will be able to either answer your questions or direct you to someone who can. Non-technical scheduling, financial, policy or decision-making questions will be referred to a single representative designated by the USCG.

Sincerely,

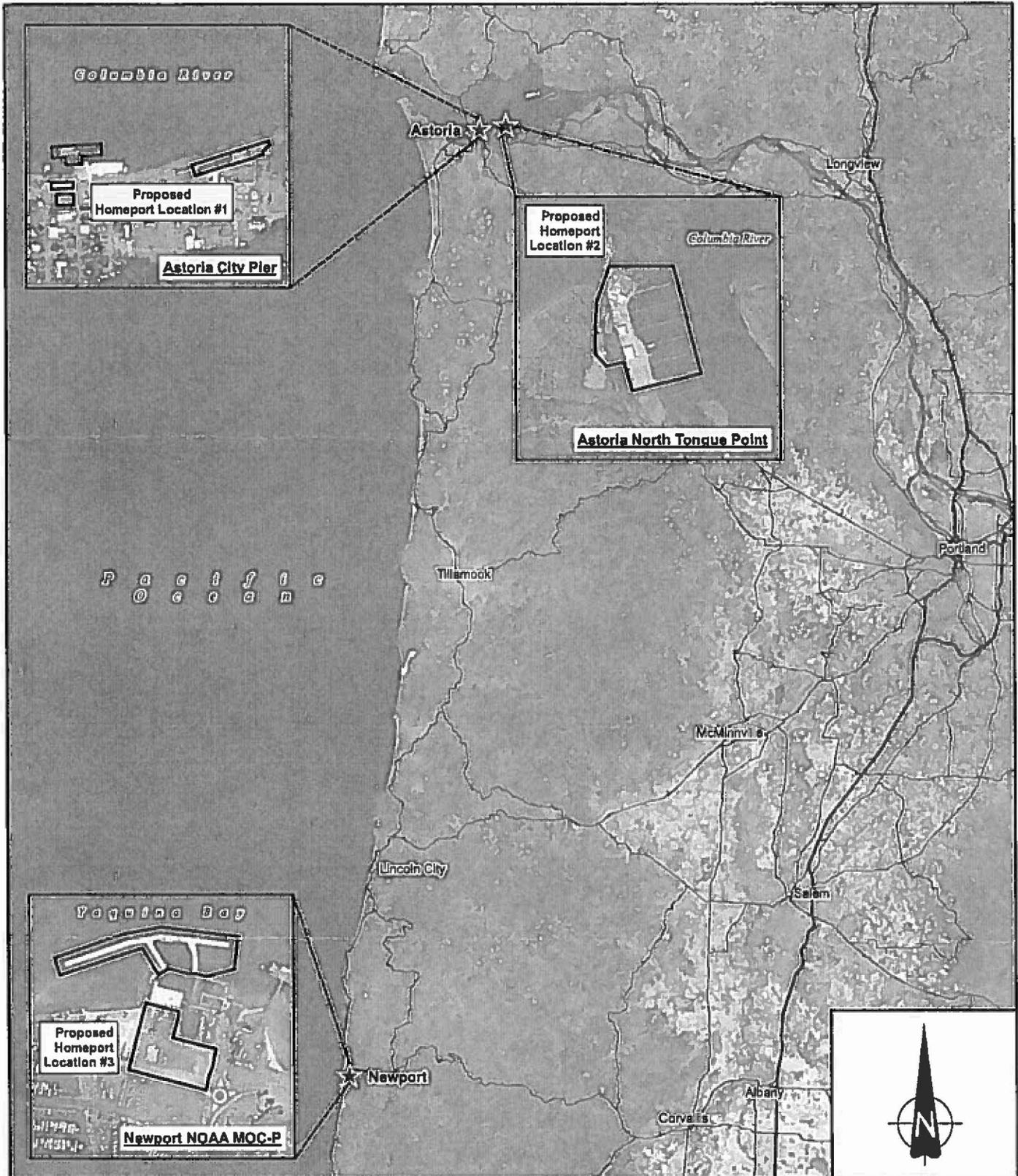


Stefani Wildhaber
Partner
Stefaniw@makersarch.com



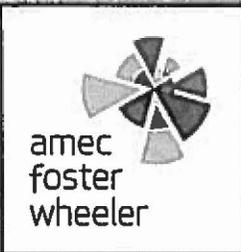
Brent Huizingh
Partner
Brenth@makersarch.com

CC: United States Coast Guard Chief, Planning & Real Property CEU Oakland



**UNITED STATES
COAST GUARD**

Amec Foster Wheeler
Environment & Infrastructure, Inc.
7376 S.W. Durham Road
Portland, OR 97224



**ENVIRONMENTAL ASSESSMENT
HOMEPORTING OF TWO
FAST RESPONSE CUTTERS**

**HOMEPORT LOCATIONS
BEING CONSIDERED**

DATE	MARCH 2015
SCALE	NOT TO SCALE
PROJECT NO.	336010013
FIGURE	1

DRAWN BY: SD CHECKED BY: EM

K:\S\CO - Coast Guard\336010013 Homeport FRC\DWG\Figures - Proposed Homeport Locations.mxd - gattis, mearns - 3/10/2015 - 4:23:18 PM



CITY MANAGER'S REPORT AND RECOMMENDATIONS

Agenda #: IX.B.
Meeting Date: April 6, 2015

Agenda Item:

Notice of Award for the Installation of a Granular Activated Carbon (GAC) Tank at the Water Treatment Facility to James W. Fowler Co.

Background:

Earlier this fiscal year the City Council authorized the purchase of a gravity activated carbon (GAC) vessel for the water treatment plant to improve the operating conditions at the plant. The current plant has the capacity of treating up to 4 million gallons per day of fresh drinking water. Under ideal operating conditions, the GAC vessels work most efficiently at 3.2 million gallons per day. Any water that is produced over the capacity of the GAC vessels is either bypassed which reduces water quality, or is run through the vessels significantly reducing carbon life. Please note the water plant was initially designed for three vessels, but one vessel was eliminated as part of the cost reducing strategy during the initial construction of the plant.

Proposals have been received for installation of the contract at the water plant site with the low bid coming from James W. Fowler Co. of Dallas, Oregon in the amount of \$58,200.

Recommended Action:

I recommend that the City Council, acting as the Local Contract Review Board, consider the following motion:

I move that a notice of award for a Water Filtration Facility Granular Activated Carbon Expansion Project be provided to James W. Fowler Company in the amount of \$58,200 and authorize the City Manager to execute the contract on behalf of the City of Newport.

Fiscal Effects:

Total amount appropriated for this project was \$283,000. With the equipment procurement, engineering, and the installation that is recommended for award tonight, the total cost is estimated to be \$270,525 to complete this project.

Alternatives:

None recommended.

Respectfully Submitted,

A handwritten signature in blue ink, appearing to read "S. Nebel".

Spencer R. Nebel
City Manager



Agenda Item # VIII.B.
Meeting Date April 6, 2015

CITY COUNCIL AGENDA ITEM SUMMARY
City Of Newport, Oregon

Issue/Agenda Title: Notice of Award for the Installation of a Granular Activated Carbon (GAC) Tank at the Water Treatment Facility - James W. Fowler Co.

Prepared By: TEG Dept Head Approval: TEG City Manager Approval:

Issue Before the Council:

Approval of an award to install a GAC tank at the Water Treatment Facility

Staff Recommendation:

Approve the award

Proposed Motion:

I move that the City of Newport Public Works Department issue a Notice of Award for the Water Filtration Facility Granular Activated Carbon Expansion Project to James W. Fowler Company in the amount of \$58,200 and authorize the City Manager to execute the contract on behalf of the City of Newport.

Key Facts and Information Summary:

The gravity activated carbon vessels (GAC) at the water treatment plant manufactured by Calgon Carbon Corporation have a current capacity of approximately 3.2 MGD at ideal operating conditions. The current plant capacity is approximately 3.8 to 4 MGD. Any water that the plant produces over the capacity of the GAC vessels currently is either bypassed which reduces water quality, or the vessels are run past capacity, which significantly reduces the carbon life. Initially the plant was designed with three vessels but one vessel was eliminated as part of the cost reduction strategy for the water plant resulting in our current diminished capacity condition.

The purchase of this vessel increases our GAC capacity to 4.9 MGD which will result in substantially better water quality and much longer life for the carbon before replacement is necessary. This is a sole source procurement since Calgon Carbon is the only vendor that manufactures a unit that is compatible with our existing system.

Since the original design of the plant had included this vessel, the concrete pad and the header piping for water feed and discharge are already in place.

Three quotes were received for this work and are summarized below:

*Granular Activated Carbon Tank Installation
City of Newport Water Treatment Plant
Bids due: Friday, March 20, 2015*

<u>Contractor</u>	<u>Bid amount</u>
<i>JW Fowler</i>	<i>\$58,200</i>
<i>Slayden Construction</i>	<i>\$62,000</i>
<i>Koontz Machine and Welding</i>	<i>\$58,975</i>

JW Fowler Co. was the low responsive bidder in the amount of \$58,200. Because this project was bid under the intermediate procurement process, a 7 day contest period is not necessary.

Other Alternatives Considered:

Not adding another vessel.

City Council Goals:

N/A

Attachment List:

- Draft goods and services agreement - JW Fowler Co.

Fiscal Notes:

This project was budgeted in FY14-15 in the Water Capital Projects Fund in the amount of \$283,000 funded by the Water Revenue Bond. (602-6210-7024-14017) Total cost breakdown on the project are as follows:

Equipment procurement (Calgon Carbon):	\$183,050
Engineering (HDR Engineering):	\$29,275
Installation/Construction (JW Fowler):	<u>\$58,200</u>
	\$270,525

PUBLIC IMPROVEMENT CONTRACT

Water Filtration Facility Granular Activated Carbon Expansion Project

THIS CONTRACT is made this _____ day of _____, 2015, between City of Newport, hereinafter called Owner, and James W. Fowler Co., hereinafter called Contractor. In consideration of mutual covenants hereinafter set forth, the parties agree as follows:

1. **Work**. Contractor shall complete all work as specified in the contract documents, in conformance with all Owner public works design and construction standards, and in accordance with the documents and drawings provided for the Water Filtration Facility Granular Activated Carbon Expansion Project.
2. **Materials**. Contractor will furnish, provide and pay for all materials, supplies, labor, tools, equipment, water, lights, power, transportation, supervision, temporary construction of any nature, and all other services and facilities of any nature whatsoever necessary to execute, complete, and deliver the Work within the specified time.
3. **Contract Time**. The Work will be completed by Contractor within 90 days after the date of Owner's Notice to Proceed, unless the time for completion is extended otherwise by the Contract Documents or by written agreement of the parties.
4. **Contract Price**. Owner shall pay Contractor for performance of the Work in accordance with the Contract Documents.
5. **Compensation**. Owner will pay the Contract Price upon final completion and City's acceptance of Contractor's Work.
6. **Contract Documents**. The term "Contract" or "Contract Documents" means and includes the following:
 - a) Request for Competitive Quote;
 - b) Addenda (if any);
 - c) Contractor's submitted Quotation Form;
 - d) Public Improvement Contract;
 - e) ORS 279C Requirements (attached);
 - f) Notice of Award;
 - g) Notice to Proceed;
 - h) Change Orders (if any);

All Contract Documents are attached hereto, and incorporated herein by this reference. In the event of a conflict, this Contract will prevail over other Contract Documents as modified by any change orders, followed by ORS 279C requirements, the Notice to Proceed, Owner Request for Competitive Quote, then Contractor's

submitted Quotation Form, in that order of precedence.

7. **Materials and Equipment**. Materials and equipment shall be stored so as to ensure the preservation of their quality and fitness for the Work. Stored materials and equipment to be incorporated in the Work shall be located so as to facilitate prompt inspection. All materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned as directed by the manufacturer.
8. **Contractor's Representations**. In order to induce Owner to enter into this Contract, Contractor makes the following representations:
 - a) Contractor has familiarized itself with the nature and extent of the Contract Documents, Work, locality, and with all local conditions and federal, state, and local laws, ordinances, rules, and regulations which, in any manner, may affect cost, progress, or performance of the Work;
 - b) Contractor has studied carefully all reports, investigations, and tests of subsurface and latent physical conditions at the site affecting cost, progress, or performance of the Work which were relied upon in the preparation of the drawings and specifications;
 - c) Contractor has made or has caused to be made examinations, investigations, and tests and studies of such reports and related data in addition to those referred to in (b) which it deems necessary for the performance of the Work, determination of the contract price, completing the building within the contract time in accordance with the other terms and conditions of the Contract Documents; and no additional examinations, investigations, tests, reports, or similar data are or will be required by Contractor for such purposes;
 - d) Contractor has correlated the results of all such observations, examinations, investigations, tests, reports, and data with the terms and conditions of the Contract Documents;
 - e) Contractor has given the Owner's representative written notice of all conflicts, errors or discrepancies which he has discovered in the Contract Documents and the written resolution thereof by the Owner's representative is acceptable to the Contractor.
9. **Insurance**. Before undertaking any work on the project, Contractor shall provide Owner with Certificates of Insurance including comprehensive general liability and other insurance as will provide protection for the claims set out below, which may arise out of or result from Contractor's performance of the Work and Contractor's other obligations under the Contract Documents, whether such performance is by Contractor or any Subcontractor, or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- a) Claims under workers' compensation or other similar employee benefits;
- b) Claims for damages because of bodily injury, occupational sickness or disease or death of Contractor's employees;
- c) Claims for damages because of bodily injury, sickness, disease or death of any person other than Contractor's employees;
- d) Claims for damages covered by personal injury liability insurance, sustained by any person as a result of an offense directly or indirectly related to the employment of such person by Contractor or by any other person for any other reason;
- e) Claims for damages other than to the Work itself because of injury or destruction of tangible property, including loss of use resulting therefrom;
- f) Claims for damages because of bodily injury or death of any person, or property damage arising out of the ownership, maintenance or use of any motor vehicle.

The limits of such liability shall be as follows:

- 1) Comprehensive general liability \$2,000,000
- 2) Automobile \$1,000,000
 - i) Bodily injury \$1,000,000
 - ii) Property Damage \$1,000,000

Owner shall be named as an additional insured on the certificates of insurance. Such policies shall not be canceled or allowed to expire nor material changes permitted, until Contractor has provided at least 30 days written notice to Owner.

- 10. **Changes to the Work and Contract Amendments.** Changes to the Work, price and other contract amendments shall be in writing, signed by both parties and made in accordance with Owner Public Contracting Rules 137-049-0160 and 137-049-0910.
- 11. **Warranty.** This project is warranted against any and all failures for a period of one year from the date of completion. Contractor agrees to be responsible for all such repairs. If Contractor does not perform repairs within 30 days after notice provided by the Owner, the Owner may perform repairs and bill Contractor. Contractor shall be liable for payment of all such sums, as billed.

12. Suspension of Work, Termination Delay.

- a) If Contractor is adjudged as bankrupt or insolvent or if it makes a general assignment for the benefit of its creditors, or if a trustee or receiver is appointed for the Contractor or for any of its property, or if it files a petition to take advantage of any debtor's act or to reorganize under bankruptcy or applicable laws, or if it repeatedly fails to supply sufficient skilled workmen or suitable material or equipment, or if it repeatedly fails to make prompt payments to subcontractors for labor, materials, or equipment, or if it disregards laws, ordinances, rules, regulations, or orders of any public body having jurisdiction of the Work, or if it disregards the authority of the Owner's representative or if it otherwise violates any provision of the contract documents, then the Owner may, without prejudice to any other right or remedy, after giving the Contractor and its surety a minimum of five days' notice from delivery of the written notice, terminate the services of the Contractor and take possession of the Project and all materials, equipment, tools, construction equipment, machinery thereon owned by Contractor and finish the Work by whatever method it may deem expedient. In such case, the Contractor shall not be entitled to receive any further payment until the work is finished. If the unpaid balance of the contract price exceeds the direct and indirect costs of completing the project, including compensation for additional professional services, such excess shall be paid to the Contractor. If the costs exceed such unpaid balances, the Contractor will pay the difference to the Owner. Such costs incurred by the Owner will be determined by the Owner and incorporated in a change order.
- b) Where the Contractor's services have been so terminated by the Owner, the termination shall not affect any right of the Owner against the Contractor then existing or which may thereafter accrue. Any retention or payment of monies by the Owner due the Contractor will not release the Contractor from compliance with the Contract Documents.
- c) After five days from delivery of written notice to the Contractor, the Owner may, without cause and without prejudice to any other right or remedy, elect to abandon the Project and terminate the Contract. In such case, the Contractor shall be paid for all work executed and any expense sustained plus reasonable profit.

13. **Indemnification.** To the fullest extent permitted by law, the Contractor shall indemnify, hold harmless, and defend Owner and its representatives, officers, directors, and employees from any loss or claim made by third parties, including legal fees and costs of defending actions or suits resulting directly or indirectly from Contractor's negligent performance and provision of materials and/or fault of Contractor, its employees, representatives, or subcontractors. If the loss or claim is caused by the joint concurrent negligence or other fault of Owner and Contractor, the loss or claim shall be borne by each in proportion to the degree of negligence or other fault attributable to each.

Contractor shall defend Owner from claims covered under this indemnification section at Contractor's sole cost and expense until such time (1) as an arbitration panel or a court of competent jurisdiction determines that Owner is liable in whole or in part for the loss or claim caused by Owner's negligence or (2) until Owner and Contractor mutually agree to allocate the liability.

14. **Miscellaneous.**

- a) No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the parties sought to be bound; and specifically but without limitation, monies which may become due and monies which are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law) and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.
- b) This Contract shall be binding upon all parties hereto and their respective partners, successors, heirs, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

15. **Arbitration.** If any disputes, disagreements or controversies arise between the parties pertaining to the interpretation, validity, rescission or enforcement of this Contract, the parties shall, upon the request of either party, submit such dispute to binding arbitration. Except as otherwise provided in this Contract, arbitration shall be requested by delivering to the other party a written request for arbitration. Within 10 days of receipt of such request, the parties shall select a mutually agreeable arbitrator and designate mutually agreeable rules of arbitration. If the parties cannot agree upon an arbitrator within 10 days, an arbitrator may be appointed by the Circuit Court for the County in which Owner is located, upon the request of either party submitted in accordance with Oregon's Uniform Arbitration Act, ORS 36.600, et seq. If the parties have not designated mutually agreeable rules of arbitration at such time as the arbitrator is appointed, the arbitrator shall have the discretion to adopt rules for the arbitration, and the arbitrator's decision shall be binding upon the parties. All arbitration shall take place in Lincoln County, Oregon unless the parties both agree to have the matter arbitrated elsewhere.

16. **Attorney Fees.** If suit, action or arbitration is brought either directly or indirectly to rescind, interpret or enforce the terms of this Contract, the prevailing party shall recover and the losing party hereby agrees to pay reasonable attorney's fees incurred in such proceeding, in both the trial and appellate courts, as well as the costs and disbursements. Further, if it becomes necessary for Owner to incur the services of an attorney to enforce any provision of this Contract without initiating litigation, Contractor agrees to pay Owner's attorney's fees so incurred. Such costs and fees shall bear interest at the maximum legal rate from the date incurred until the date paid by losing party.

THIS CONTRACT is effective on the _____ day of _____, 2015.

OWNER:

CONTRACTOR:

Signed by:
 Spencer R. Nebel, City Manager

Signed by:
Name: _____
Title: _____

Address for giving notices:

Address for giving notices:

City of Newport
169 NW Coast Highway
Newport, OR 97365

**BID FORM
CITY OF NEWPORT, OR
WATER FILTRATION FACILITY
GRANULAR ACTIVATED CARBON EXPANSION**

BID OF: James W. Fowler Co.
(Name of Bidder)

1 PRICE - BASE BID

The undersigned, having examined the bid documents and having examined the conditions affecting the Work, hereby propose and agree to furnish all labor, materials, and equipment to perform operations necessary to complete the Work as required by said bid documents for the lump sum price in US dollars, including applicable taxes, fees, and import duties of:

\$ Fifty Eight Thousand Two Hundred ^{00/100}
(Words)

\$ 58,200.00
(numbers)

This offer is open to acceptance and irrevocable for one hundred twenty (120) days from the bid opening date.

SIGNATURE

The undersigned certifies that the bid prices contained herein are firm and not subject to escalation and have been carefully checked, all internal approvals obtained and are submitted as correct and final in accordance with this inquiry and all attachments hereto:

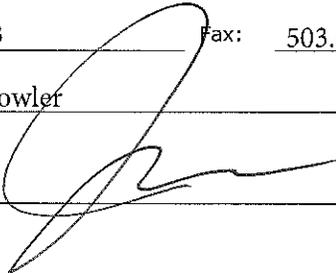
Firm Name: James W. Fowler Co.

Legal Name: James W. Fowler Co.

Address: PO Box 489, 12775 Westview Drive, Dallas, OR 97338

Telephone: 503.623.5373 Fax: 503.623.9117

By: James W. Fowler
(Typewritten)


(Signature)

Title: President

Acknowledgement of Receipt of Addendum #1

Request for Proposals for Construction Services

Newport, Oregon Water Filtration Facility Granular Activated Carbon Expansion

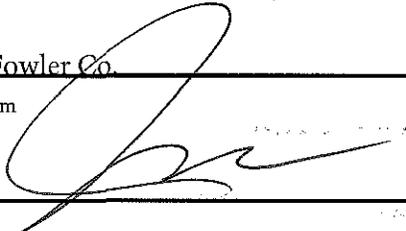
I, James W. Fowler, hereby acknowledge my

Print name of signatory

receipt of Addendum #1 for the RFP and certify that the information in the addendum has been incorporated into our response to the RFP.

James W. Fowler Co.

Print name of Firm



March 20, 2015

Signature

Date

ORS 279C REQUIREMENTS

- 1) Contractor shall pay promptly, as due, all persons supplying labor or materials for the prosecution of the work provided for in the contract, and shall be responsible for such payment of all persons supplying such labor or material to any Subcontractor.
 - a) ORS 279C.580(3)(a) requires the prime contractor to include a clause in each subcontract requiring contractor to pay the first-tier subcontractor for satisfactory performance under its subcontract within ten (10) days out of such amounts as are paid to the prime contractor by the public contracting agency; and
 - b) ORS 279C.580(3)(b) requires the prime contractor to include a clause in each subcontract requiring contractor to pay an interest penalty to the first-tier subcontractor if payment is not made within thirty (30) days after receipt of payment from the public contracting agency.
 - c) ORS 279C.580(4) requires the prime contractor to include in every subcontract a requirement that the payment and interest penalty clauses required by ORS 279C.580(3)(a) and (b) be included in every contract between a subcontractor and a lower-tier subcontractor or supplier.
- 2) Contractor shall promptly pay all contributions or amounts due the Industrial Accident Fund from such Contractor or Subcontractor incurred in the performance of the contract, and shall be responsible that all sums due the State Unemployment Compensation Fund from Contractor or any Subcontractor in connection with the performance of the contract shall promptly be paid.
- 3) Contractor shall not permit any lien or claim to be filed or prosecuted against the public contracting agency on account of any labor or material furnished and agrees to assume responsibility for satisfaction of any such lien so filed or prosecuted.
- 4) A notice of claim on contractor's payment bond shall be submitted only in accordance with ORS 279C.600 and 279C.605.
- 5) Contractor and any Subcontractor shall pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.
- 6) Contractor shall demonstrate to the Public Contracting Agency that an employee drug-testing program is in place within ten (10) days of receiving a Notice of Award.
- 7) If Contractor fails, neglects or refuses to make prompt payment of any claim for labor or materials furnished to the Contractor or a Subcontractor by any person in connection with the contract as such claim becomes due, the public contracting agency may pay such claim to the persons furnishing the labor or material and charge the amount of payment against funds due or to become due Contractor by

reason of the contract. The payment of a claim in the manner authorized hereby shall not relieve the Contractor or his surety from his or its obligation with respect to any unpaid claim. If the public contracting agency is unable to determine the validity of any claim for labor or material furnished, the public contracting agency may withhold from any current payment due Contractor an amount equal to said claim until its validity is determined and the claim, if valid, is paid.

- 8) If the Contractor or a first-tier Subcontractor fails, neglects, or refuses to make payment to a person furnishing labor or materials in connection with the public contract for a public improvement within thirty (30) days after receipt of payment from the public contracting agency or contractor, the contractor or first-tier subcontractor shall owe the person the amount due plus interest charges commencing at the end of the ten (10) day period that payment is due under ORS 279C.580(4) and ending upon final payment, unless payment is subject to a good faith dispute as defined in ORS 279C.580. The rate of interest charged to Contractor or first-tier Subcontractor on the amount due shall equal three times the discount rate on ninety (90) day commercial paper in effect at the Federal Reserve Bank in the Federal Reserve District that includes Oregon on the date that is thirty (30) days after the date when payment was received from the public contracting agency or from the Contractor, but the rate of interest shall not exceed thirty (30) percent. The amount of interest may not be waived.
- 9) If the Contractor or a Subcontractor fails, neglects, or refuses to make payment to a person furnishing labor or materials in connection with the public contract, the person may file a complaint with the Construction Contractors Board, unless payment is subject to a good faith dispute as defined in ORS 279C.580.
- 10) Contractor shall promptly, as due, make payment to any person, co-partnership, association, or corporation, furnishing medical, surgical and hospital care or other needed care and attention, incident to sickness or injury, to employees of such Contractor, of all sums which the Contractor agrees to pay for such services and all monies and sums which the Contractor collected or deducted from the wages of employees pursuant to any law, contract or agreement for the purpose of providing or paying for such service.
- 11) Contractor shall employ no person for more than ten (10) hours in any one day, or forty (40) hours in any one week, except in cases of necessity, emergency, or where public policy absolutely requires it, and in such cases, except in cases of contracts for personal services designated under ORS 279A.055, Contractor shall pay the employee at least time and one-half pay for all overtime in excess of eight (8) hours a day or forty (40) hours in any one week when the work is five (5) consecutive days, Monday through Friday; or for all overtime in excess of ten (10) hours a day or forty (40) hours in any one week when the work week is four (4) consecutive days, Monday through Friday; and for all work performed on Saturday and on any legal holidays as specified in ORS 279C.540.

- 12) The Contractor must give notice to employees who work on this contract in writing, either at the time of hire or before commencement of work on the contract, or by posting a notice in a location frequented by employees, of the number of hours per day and the days per week that the employees may be required to work.
- 13) All employers, including Contractor, that employ subject workers who work under this contract shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. Contractor shall ensure that each of its subcontractors complies with these requirements.
- 14) All sums due the State Unemployment Compensation Fund from the Contractor or any Subcontractor in connection with the performance of the contract shall be promptly so paid.
- 15) The contract may be canceled at the election of public contracting agency for any willful failure on the part of Contractor to faithfully perform the contract according to its terms.
- 16) Contractor certifies that it has not discriminated against minorities, women or emerging small business enterprises in obtaining any required subcontractors.
- 17) Contractor certifies its compliance with the Oregon tax laws, in accordance with ORS 305.385.
- 18) In the performance of this contract, the Contractor shall use, to the maximum extent economically feasible, recycled paper, materials, and supplies.
- 19) Contractor certifies that all subcontractors performing construction work under this contract will be registered with the Construction Contractors Board or licensed by the state Landscaper Contractors Board in accordance with 701.035 to 701.055 before the subcontractors commence work under this contract.
- 20) In compliance with the provisions of ORS 279C.525, the following is a list of federal, state and local agencies, of which the Owner has knowledge, that have enacted ordinances or regulations dealing with the prevention of environmental pollution and the preservation of natural resources that may affect the performance of the contract:

FEDERAL AGENCIES:

- Agriculture, Department of
- Forest Service
- Soil Conservation Service
- Defense, Department of
- Army Corps of Engineers

- Environmental Protection Agency
- Interior, Department of
- Bureau of Sport Fisheries and Wildlife
- Bureau of Outdoor Recreation
- Bureau of Land Management
- Bureau of Indian Affairs
- Bureau of Reclamation
- Labor, Department of
- Occupational Safety and Health Administration
- Transportation, Department of
- Coast Guard
- Federal Highway Administration

STATE AGENCIES:

- Agriculture, Department of
- Environmental Quality, Department of
- Fish and Wildlife, Department of
- Forestry, Department of
- Geology and Mineral Industries, Department of
- Human Resources, Department of
- Land Conservation and Development Commission
- Soil and Water Conservation Commission
- State Engineer
- State Land Board
- Water Resources Board

LOCAL AGENCIES:

- City Council
- County Court
- County Commissioners, Board of
- Port Districts
- Metropolitan Service Districts
- County Service Districts
- Sanitary Districts
- Water Districts
- Fire Protection Districts