

City of Brookings MEETING AGENDA

CITY COUNCIL/URBAN RENEWAL AGENCY

Monday, June 24, 2013, 7:00pm, City Hall Council Chambers, 898 Elk Drive, Brookings, OR 97415

CITY COUNCIL

A. Call to Order

B. Pledge of Allegiance

C. Roll Call

D. Ceremonies/Appointments/Announcements

1. Proclamation – Relay for Life [pg. 3]
2. Appointment of Golf Course Committee

E. Public Hearings/Ordinances/Final Orders

1. Public Hearing and Final Order in the matter of File ANX-1-13, request to annex approximately 155 acres comprised of six tax lots, into the City of Brookings. This will be a quasi-judicial hearing and the City Council will make a decision on this matter. [Planning, Advance Packet]
2. Ordinance amending the City limits and zoning map of the City of Brookings by annexing approximately 155 acres and applying zoning changes. [Planning, Advance Packet]

F. Oral Requests and Communications from the audience

1. Public Comments on non-agenda items – 5 minute limit per person.*

G. Staff Reports

1. Contract with McLennan Excavation for construction of Easy Street Water Line Replacement Project. [Building Official, pg. 4]
 - a. Bid Tabulation [pg. 5]
2. Removal of three trees in vicinity of Stout Mountain Railway at Stout Park. [Parks, pg. 6]
 - a. Map showing trees [pg. 7]
 - b. Letter from Tony Parrish [pg. 8]
3. Contract with CCD Business Development Corporation for Airport Infrastructure Improvements Administrative Support Services. [PW&DS, pg. 9]
 - a. Scope of Work/Fee Schedule [pg. 10]
4. Proposed County Goods Sales Tax Ordinance. [City Manager, pg. 13]
 - a. County 3% Goods Sales Tax Fact Sheet [pg. 18]
 - b. County Retail Sales Tax Revenue Estimate [pg. 19]
 - c. Draft April 2012 Research Brief form LRO [pg. 20]
 - d. Proposed Sales Tax Ordinance [pg. 26]
5. Request for policing services from Port of Brookings Harbor. [City Manager, pg. 41]
 - a. Port District Resolution [pg. 44]
 - b. ORS 181.610(12)(a) and ORS 777.190 [pg. 45]
 - c. Map indicating Brookings Harbor Port District owned properties. [pg. 47]
 - d. Map indicating area to be served by proposed contract. [pg. 48]
 - e. City Attorney memorandum. [pg. 49]
 - f. 2009 letter from Bond Counsel K&L Gates. [pg. 51]
6. Tourism Marketing Advisory Committee recommendation to increase the Off-Season Event Incentive grant limit. [City Manager, pg. 52]

7. Execute Port Orford Landfill Post-Closure Trust Agreement. [City Manager, pg. 53]
 - a. Letter from County Counsel [pg. 54]
 - b. Email from Colleen Carpenter [pg. 56]
 - c. Trust Fund Agreement as updated November 6, 2012 [pg. 57]

H. Resolutions

1. Resolution 13-R-1010, adopting System Replacement Fees for 2013-14, repealing Resolution 13-R-996 and rescinding Resolution 13-R-1008. [F&HR, pg. 70]
 - a. Resolution 13-R-1010 [pg. 71]
2. Resolutions 13-R-1011 through 13-R-1015, transferring appropriations for the 2012-13 fiscal year budget. [F&HR, pg. 72]
 - a. Resolution 13-R-1011 [pg. 74]
 - b. Resolution 13-R-1012 [pg. 75]
 - c. Resolution 13-R-1013 [pg. 77]
 - d. Resolution 13-R-1014 [pg. 78]
 - e. Resolution 13-R-1015 [pg. 80]

I. Consent Calendar

1. Approve Council minutes for June 10, 2013. [pg. 82]
2. Accept Parks & Recreation minutes for January 24 and February 21, 2013. [pg. 85]
3. Approve Mayor to execute 2011 Fund Exchange Agreement #27580, Amendment #2, with the Oregon Department of Transportation. [pg. 88]
4. Approve Highway Maintenance Agreement with Oregon Department of Transportation in the amount of \$12,250 per year and authorize the City Manager to execute agreement. [pg. 93]
5. Receive May 2013 monthly financial report. [pg. 96]

J. Remarks from Mayor and Councilors

K. Adjournment

URBAN RENEWAL AGENCY

A. Call to Order

B. Roll Call

C. Consent Calendar

1. Approve Agency minutes for May 28, 2013. [pg. 102]

D. Public Comments

E. Staff Reports

1. Resolution 13-R-1016, transferring appropriations for the 2012-13 fiscal year budget. [F&HR, pg. 103]
 - a. 13-R-1016 [pg. 104]
2. Discussion and direction regarding Curry Health Network System Development Charges. [City Manager, pg. 105]
 - a. Letter from Curry Health Network [pg. 107]

F. Agency Remarks

G. Adjournment

*Obtain Public Comment Forms and view the agenda and packet information on-line at www.brookings.or.us, at City Hall and at the local library. Return completed Public Comment Forms to the City Recorder before the start of meeting or during regular business hours.

All public meetings are held in accessible locations. Auxiliary aids will be provided upon request with at least ten days advance notification. Please contact 469-1102 if you have any questions regarding this notice.

City of Brookings *Proclamation*

WHEREAS, American Cancer Society is the largest source of nonprofit, nongovernmental cancer research funding in the United States; and

WHEREAS, American Cancer Society fights for lifesaving laws to increase federal research funding, reduce tobacco use, promote early detection of cancers, improve access to care, and support cancer patients; and

WHEREAS, American Cancer Society's Relay for Life is a community gathering where everyone can participate in the fight against cancer; and

WHEREAS, Relay for Life brings together millions of people to raise money to help prevent cancer, save lives, and diminish suffering from the disease; and

WHEREAS, Ceremonies throughout Relay for Life symbolize the hope and perseverance with which we all continue to fight cancer; and

NOW, THEREFORE, I, Ron Hedenskog, Mayor of the City of Brookings, do hereby declare July 13th and 14th, 2013, as

Relay For Life Weekend

AND, BE IT FURTHER RESOLVED, that all citizens are urged to participate in all Relay for Life activities being held at the Brookings-Harbor High School football field, beginning with opening ceremonies at Noon, Saturday July 13th, and closing ceremonies at 8:00 AM, Sunday July 14th.

In Witness Whereof, I, Mayor Ron Hedenskog, do hereby set my hand and cause the official seal of the City of Brookings, Oregon, to be affixed this 24th day of June, 2013.



Mayor Ron Hedenskog



CITY OF BROOKINGS

COUNCIL AGENDA REPORT

Meeting Date: June 24, 2013

Originating Dept: PW/DS



Signature (submitted by)



City Manager Approval

Subject: Bid award for construction of the Easy Street water line replacement project

Recommended Motion: Motion to award the bid in the amount of \$197,620.00 for the Easy Street water line replacement project to McLennan Excavation as the lowest responsible bidder.

Financial Impact: This project was identified as a 2012/13 capital improvement project (CIP) in the amount of \$150,000. The additional \$47,620.00 will be paid for from the 2013/14 CIP water main replacement budget. These funds are SDC and SRF eligible.

Background/Discussion: The existing 6-inch asbestos cement (AC) along Easy Street has experienced multiple breaks in the line over the past 2 years. The pipe is deteriorated and there is concern that the pipe will not handle a mainline flush or hydrant use. The current City Water Master Plan calls for a new 12" transmission line to be installed on Easy Street from Highway 101 to Fern Avenue to loop the piping for the base level zone hydraulics.

The CIP 2012-13 identified \$150,000 for replacement of the Easy Street water main. Once the engineering design progressed, it was determined that the existing water main needs to be replaced the entire length of Easy Street from Highway 101 to 7th Street. Staff added additional replacement to Mardon Court which increased the Engineer's Estimate to \$183,200. The design plans and specifications were completed in-house, and construction management and inspection will also be handled in house thereby reducing additional engineering overhead fees by 20%.

On June 12, 2013, two bids were received;

McLennan Excavation	\$197,620
Freeman Rock	\$230,020

Staff recommends a motion to award to the lowest responsible bidder, McLennan Excavation in the amount of \$197,620.

Attachment(s):

a. Bid Tabulation

BID TABULATION

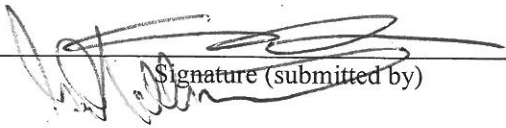
Easy Street Water Line replacement							
City of Brookings							
Brookings, Oregon							
				BIDDER: McLennan Exc, Inc		BIDDER: Freeman Rock, Inc.	
Item	Description	Quantity	Unit	Unit Price	Total	Unit Price	Total
Basic Bid							
1	Construction Facilities And Temporary Control	1	LS	\$9,000.00	\$9,000.00	\$10,000.00	\$10,000.00
2	Demolition and Miscellaneous Work	1	LS	\$5,000.00	\$5,000.00	\$6,500.00	\$6,500.00
3	Foundation Stabilization	50	CY	\$25.00	\$1,250.00	\$20.00	\$1,000.00
4	Subgrade	600	CY	\$25.00	\$15,000.00	\$55.00	\$33,000.00
5	AC Pavement	200	Ton	\$130.00	\$26,000.00	\$170.00	\$34,000.00
6	Restore striping	1	LS	\$700.00	\$700.00	\$8,500.00	\$8,500.00
7	Traffic control	1	LS	\$5,000.00	\$5,000.00	\$7,500.00	\$7,500.00
8	12" Waterline	1,000	LF	\$62.27	\$62,270.00	\$72.00	\$72,000.00
9	12" Valve	5	EA	\$4,000.00	\$20,000.00	\$2,200.00	\$11,000.00
10	8" Waterline	25	LF	\$100.00	\$2,500.00	\$130.00	\$3,250.00
11	8" Valve	2	EA	\$4,000.00	\$8,000.00	\$1,200.00	\$2,400.00
12	6" PVC C900 CL 150	20	LF	\$100.00	\$2,000.00	\$150.00	\$3,000.00
13	6" Valve	4	EA	\$3,200.00	\$12,800.00	\$730.00	\$2,920.00
14	2" Air Valve/Vac Assembly	1	EA	\$4,000.00	\$4,000.00	\$4,500.00	\$4,500.00
15	Fire Hydrant Assembly	3	Each	\$5,300.00	\$15,900.00	\$4,500.00	\$13,500.00
16	1" Service Line Tie Over	10	Each	\$700.00	\$7,000.00	\$1,500.00	\$15,000.00
17	Relocate Utilities	3	EA	\$400.00	\$1,200.00	\$650.00	\$1,950.00
	TOTAL BASIC BID				\$197,620.00		\$230,020.00

CITY OF BROOKINGS

COUNCIL AGENDA REPORT

Meeting Date: 6/24/13

Originating Dept: Parks


Signature (submitted by)

City Manager Approval

Subject: Tree Removal – Stout Park

Motion: To approve the removal of three trees in the vicinity of the Stout Mountain Railway as identified on the map.

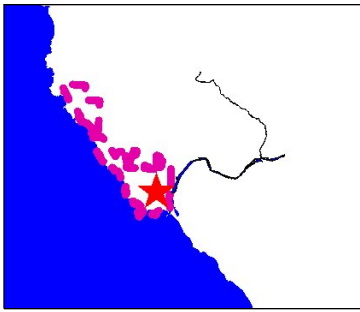
Background/Discussion: Lower Stout Park Committee Chair and Stout Mountain Railway Conductor Tony Parrish made a presentation to the Parks and Recreation Commission regarding the removal of three trees in the vicinity of the Stout Mountain Railway at the top of the knoll. The subject trees are identified on the attached map. The Eucalyptus tree along the north edge of the knoll is in very poor condition and dying. The large Tan Oak in the center of the knoll is surrounded by large Fir Trees and inhibit sun penetration into the area of the Stout Mountain Railway. The second tan oak along the south edge of the knoll is also in poor condition and leaning. The Parks and Recreation Commission has reviewed the request and is forwarding their recommendation to the council to consider the removal of three tan oak trees in the vicinity of the Stout Mountain Railway.

Financial Impact: \$200 and to retain the wood chips for mulch.

Attachment(s):

- a. Aerial map of trees to be removed
- b. Tony Parrish Letter

Stout Park - Tree Removal



Legend

- RIVERS
- ROADS
- URBAN GROWTH BOUNDARY
- OCEAN

0 75 150 225 ft.

Map center: 42° 3' 18.48" N, 124° 16' 47.72" W



Scale: 1:761

This map is a public resource of general information. Use this information at your own risk. Curry County makes no warranty of any kind, expressed or implied, including any warranty of merchantability, fitness for any particular purpose or any other matter.

Dear Tony Baron,

The Stout Mountain Railway Club would like to have a some of trees removed from Stout Park. The Tan Oak that towers over the Railway Garden, a Madrone near the Presbyterian Church that has been on the city's removal list, a Cascara which is leaning on and killing a Fir tree, and another shinny Tan Oak near the sidewalk. Also some light trimming to low hanging limbs from big Fir trees. We have contacted Dezi's Tree service and he would take care of these and chip up any other branches that we had for \$450.00. The Stout Mountain Railway Club is willing to pay half the amount.

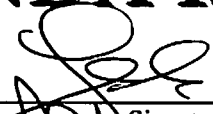
Thank you,
Tony Parrish
President Stout Mountain
Railway Club.

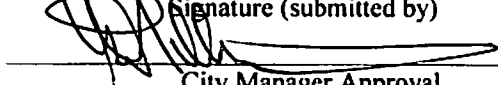
CITY OF BROOKINGS

COUNCIL AGENDA REPORT

Meeting Date: June 24, 2013

Originating Dept: PWDS



Signature (submitted by)


City Manager Approval

Subject: Award of Professional Services contract to CCD Business Development Corporation for grant administration for the Airport Infrastructure Improvement project

Recommended Motion: Motion to authorize the City Manager to execute a professional services contract to CCD Business Development Corporation in the amount of \$30,000 for administrative support for grant compliance for the Airport Infrastructure Improvement.

Financial Impact: The grant provider, Economic Development Agency (EDA) will reimburse 70% of the contract cost or \$21,000 from the \$1,762,740 grant. The remaining City match portion of \$9,000 will be proportioned amongst water and sewer system replacement funds.

Background/Discussion: EDA grant funding requires very strict and detailed record keeping in order to qualify for the grant reimbursement. EDA recommends the services of CCD Business Development Corporation to assist the agency in providing administrative services. CCD Business Development Corporation has extensive experience in providing federally funded contract management services which include; compliance with labor standards, grant accounting, monitor certified payroll to comply with the Davis-Bacon Act, submit timely grant reimbursement documents, provide quarterly and special reports, and maintains all financial transactions.

Staff recommends subcontracting this service to CCD Business Development Corporation to ensure all EDA requirements are satisfied ongoing throughout the project.

Attachment(s):

- a. Scope of Work / Fee Schedule

CCD: Scope of Work for the City of Brookings – Brookings Airport Infrastructure Project

CCD proposes that the scope of work for this project include the following eligible activities.

1. Work with City and funding agency to set up appropriate budgets, schedules and any necessary project amendments.
2. Assist with drafting CCD grant administration contract and assist the City to review engineer and construction contract documents when requested.
3. Set up systems to assure compliance with state and federal program requirements, e.g., labor standards file, grant accounting system, etc.
4. Participate in pre-bid and pre-construction conferences and provide required checklist information to prospective bidders.
5. Work with City, Engineer, and Contractor to ensure disbursement requests are prepared in a timely fashion and consistent with guidelines.
6. Monitor certified payroll reports to ensure compliance with Davis-Bacon/BOLI requirements and monthly on-site payroll interviews if deemed necessary.
7. Assist contractors and subcontractors with new job classifications, corrections to certified payrolls and solutions to problems with documentation.
8. Review all requests for payment from engineer to ensure conformity to contracts and agreements.
9. Monitor project progress against grant contract scope of work and budget, report to City staff and elected officials, as appropriate.
10. Prepare and maintain appropriate records of all financial transactions.
11. Prepare and submit for City review and approval, requests for disbursement of grant and/or loan funds.
12. Prepare and submit for City review and approval, financial and other periodic or special reports required by the funding agency.
13. As necessary, attend City Council meetings, public hearings and conferences with funding and regulatory agencies related to the project.
14. Prepare necessary project completion and/or closeout reports.

Cost

CCD generally charges 2% of the project; however, CCD proposes an amount of \$30,000 for the duration of the project (design and construction). It is understood that the funds for grant and loan administration must come from the loans &/or grants that are obtained and the schedule for payment will coincide with the grant requirements.

The agreement with CCD will include a "not to exceed" clause.

13-020

Other Activities

Other activities as necessary or as requested. It is the goal of CCD and its staff to develop and administer a successful project for the City of Brookings.

Trouble-shooting

On occasion, construction/infrastructure projects develop problems not initially anticipated. CCD staff has broad expertise in this field and are available to consult or assist if requested at no charge to the City.

Supplemental Financing

Also, on occasion, it is deemed necessary to amend the project scope included in the original financing. If requested, CCD staff is also available to assist City staff in working with funding agencies to attempt to secure supplemental financing.

General Project Management Support

While the scope of work provided is necessarily specific, the City can rely on CCD to be available to assist on a variety of potential issues that may arise during the course of the project. While our resources in that regard will be available, the assistance provided will be on request and without cost to the City.

The CCD Board of Directors and staff are committed to assist local agencies in our region with any management or administrative support we can provide that is within our capacity. In that spirit, we look forward to the opportunity to assist the City of Brookings with this project.

EXHIBIT A

STATEMENT OF WORK, COMPENSATION and PAYMENT SCHEDULE

Provide material and labor as per attached Scope of Work proposal.

Total payment shall be in the amount of \$30,000, to be paid upon certification by Project Manager. The services would be paid according to the following schedule:

TOTAL PROJECT COST: \$2,466,910

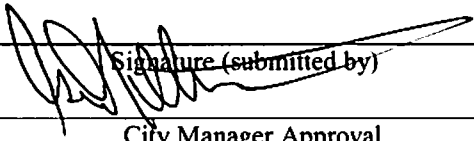
<u>Payment to CCD:</u>		<u>When disbursed funds reach these levels:</u>
Project Admin/Labor Standards	\$5,000	First Draw of Project
Project Admin/Labor Standards	\$5,000	\$ 500,000
Project Admin/Labor Standards	\$5,000	\$1,000,000
Project Admin/Labor Standards	\$5,000	\$1,500,000
Project Admin/Labor Standards	\$5,000	\$2,000,000
Project Admin/Labor Standards	<u>\$5,000</u>	All funds at Final Draw of Project
TOTAL:	\$30,000	

CITY OF BROOKINGS

COUNCIL AGENDA REPORT

Meeting Date: June 24, 2013

Originating Dept: City Manager



Signature (submitted by)

City Manager Approval

Subject: Proposed County Goods Sales Tax

Recommended Motion:

Review and comment on proposed Goods Sales Tax Ordinance; possible vote on specific recommendations and support/opposition.

Background/Discussion:

The Curry County Board of Commissioners has introduced an Ordinance for submission to the voters that would enact a "Goods Sales Tax" on retail transactions occurring in Curry County.

Mayor Hedenskog and councilor McClain attended a meeting with the Commissioners and the Mayors of Gold Beach and Port Orford on June 14, 2013, at which time Commissioners requested that the cities review and comment upon the proposed Ordinance no later than June 26, 2013, at which time the Commission may decide to place the measure before the voters at a special election in September. The Commissioners are also considering placing the matter before the voters in November.

As currently proposed, the Ordinance would:

1. Impose a "Goods Sales Tax" of 3.0 per cent upon all retail transactions occurring in Curry County, with a number of exemptions (see Section 4, A-X for a complete list of exemptions).
2. Provide that merchants would be entitled to retain five per cent of the tax collected to defray the costs of collection and remittance.
3. Establish regulations for administration of the tax collection.
4. Provide that a minimum of two per cent of the net revenue received by the County from the tax be placed in a reserve account/fund "dedicated to capital construction, replacement, maintenance and repair of County facilities, including but not limited to, the County jail."
5. Provide for an annual review of the proceeds of the tax by the Budget Committee who would recommend:
 - a. Whether to increase the amount placed into the capital reserve account/fund.
 - b. Whether to reduce the sales tax rate.
 - c. Whether to reduce the property tax rate.
6. Impose the tax within 120 days of the effective date of the Ordinance.
7. Terminate the tax on June 30, 2021.

There is no statewide Sales Tax in Oregon, and no local jurisdiction has enacted a Sales Tax. Some jurisdictions, such as the City of Ashland, have enacted a tax on prepared food and beverage items served at restaurants.

Enactment of a Sales Tax was among the alternatives included in the Curry County Citizens Committee report submitted to the BOC in February, 2012. That recommendation reads:

"The Committee recommends, by majority, that a County sales tax strategy that excludes groceries and pharmacy purchases be pursued. Implementing a countywide sales tax would increase revenue, spread the tax burden on residents and visitors alike, and provide a dependable revenue stream. However, statutory authorization by the legislature is generally required for a local government to impose a local sales tax increase. The state statutes that authorize local government to create taxes of this type may also set specific conditions or requirements such as a condition that a two-thirds vote of the governing body is required to place a sales tax measure on the ballot. These specific conditions or requirements would need further review and analysis." Recommendation #17.

The term "by majority" in the above description indicates that this recommendation was not the consensus opinion of the Citizens Committee, but did receive majority support. The Citizens Committee did not recommend a specific Sales Tax rate.

At the request of Curry County, the State Legislative Revenue Office (LRO) prepared Research Brief estimating potential Sales Tax revenue in Curry County in April, 2012. That report examined current Sales Tax structures and resultant revenues in the states of Washington and California, examined the proposed exemptions in a Curry County Sales Tax, included some economic forecasting and extrapolated the amount of revenue that a 3.0 per cent Sales Tax would produce.

The County has requested a review of the revised Ordinance, which includes additional exemptions, by the LRO to include updated revenue estimates. The County has requested the LRO to provide this information by June 26, 2013.

HOW MUCH REVENUE IS NEEDED?

There continues to be considerable discussion on the topic of how much revenue is needed to support County government and law enforcement in Curry County. The budget prepared by Curry County and that was used as a basis for Measure 8-71 was \$4,524,960 (\$4.5 million) and included 12 Sheriff's Patrol Deputies. The City of Brookings analysis, which also provided for 12 Patrol Deputies, but called for the use of \$810,092 in current General Fund revenues for public safety, produced a new public safety revenue need estimate of \$3,714,868 (\$3.7 million). In his presentation at the May 6, 2013, City Council meeting, Commission Chair David Brock Smith stated that the \$4.5 million had been understated by approximately \$400,000 annually that was needed for communications tower replacement; this would bring the County amended budget to \$4.9 million. None of the budgets include funding replacement of the jail.

Staff earlier recommended that, before a Sales Tax rate is agreed upon, the County and the cities need to reach an agreement on the level of public safety services to be provided (i.e., the number of deputies) and the amount of revenue needed to provide those services. Based upon discussion at the June 14, 2013, meeting, it appears that the Commission majority remains committed to the \$4.5 million budget that was used for developing the Measure 8-71 property tax rate.

At the June 14, 2013, meeting, it was noted that County staff would need to be augmented to administer the collection of the Sales Tax. Commissioners Smith and Itzen, and County Assessor Jim Kolen, estimated that tax administration would require the employment of an additional 3-5 employees in the Assessor's Office at a cost of up to \$500,000 annually. Added to the County public safety budget proposal of \$4.5 million, this brings the total revenue need to \$5.0 million.

CALIFORNIA COMPARISON

In California, the Sales Tax is remitted to the State, which then apportions the local Sales Tax to cities and counties **based upon point of sale**. California has an established system for collection of the Sales Tax, with electronic reporting systems and including an extensive enforcement/auditing staff component. In Curry County, the County will need to set up an entirely new tax collection and enforcement infrastructure, merchants will need to modify existing cash registers and other devices to calculate the tax, and will need to set up systems to remit the tax.

The current Sales Tax rate in Del Norte County is 7.5 per cent. Of this, the State retains most of the revenue and Del Norte County receives 1.0 per cent for sales transactions occurring in the unincorporated area only, generating total general Sales Tax revenues of \$725,000 annually, and also receives an apportionment of a special sales tax for public safety of \$0.25 per cent applied countywide, which generates an additional Sales Tax revenue to the County of about \$1.2 million annually. The County also receives a small amount...about \$200,000...of Sales Tax "in lieu" revenues. Generally, this revenue is apportioned from revenues received by the State from classes of business that are not subject to the point of sale provisions. Thus, Del Norte County, population 28,290 (3,000 of who are incarcerated at Pelican State Prison), receives total Sales Tax revenues of about \$2.0 million annually.

Distribution of the proceeds of the 1.0 per cent local Sales Tax in California is based upon point of sale; i.e., if the sales transaction occurs in the unincorporated area, the County receives the resultant tax proceeds.; if the sales transaction occurs in the City of Crescent City, the City receives the resultant tax proceeds.

The City of Crescent City has budgeted to receive \$950,000 in Sales Tax revenue this year. Brookings would receive no revenue under the Curry County proposal, but the tax would be applicable within the City Limits.

The Sales Tax proposal which is the subject of the Oregon LRO contains a number of exemptions that are not applicable in California. For example, the proposed Curry County Sales Tax exempts motor vehicles from the Sales Tax, while motor vehicle sales in California are subject to the Sales Tax. Other unique exemptions include wholesale timber brokers, boats and some related items. This means that a higher rate would be needed to generate an equivalent amount of tax revenue from fewer sources.

SALES TAX RATE CALCULATOR

Note that the LRO report and the accompanying spreadsheet contain somewhat different estimates on the amount of revenue to be generated by a 3.0 per cent Sales Tax. For example, the LRO report estimates revenue of \$5.4 million for fiscal 2013-14, while the spreadsheet estimates \$5.73 million for that same fiscal year.

Using the spreadsheet...which is the document that the Commissioners were working from at the June 13 meeting...each 1.0 per cent of countywide Sales Tax would generate about \$1.9 million to the County. This extrapolation would result in a tax rate that could be selected from among the following options...or other options...depending upon the agreed-upon revenue need:

- \$4.5 million revenue = tax rate of 2.4 per cent. (Commissioners public safety budget)
- \$3.7 million revenue = tax rate of 2.0 per cent. (City's analysis of public safety need)
- \$5.0 million revenue = tax rate of 2.6 per cent. (Commissioners PS budget + admin.)

Thus, it appears that a Sales Tax rate of 2.5 per cent would be sufficient to pay for the cost of public safety and return \$810,000 to the General Fund as proposed by the Commissioners, **and** pay for the cost of Sales Tax administration. This estimate is subject to further revision of revenue estimates by the LRO.

FINAL CONSIDERATIONS

1. Establish a maximum tax rate that could be reduced as revenue conditions change (proposed at the Council workshop of June 10 and now included in proposed Ordinance).
2. Any rate should be rounded to the nearest quarter-cent to facilitate administrative accuracy.
3. The property tax proposed in Measure 8-71 was intended to be an interim revenue source, with a sunset clause serving as an incentive to developing a long term revenue strategy. The County would have relied upon the existing tax collection system to collect the additional tax. The proposed Sales Tax is an altogether different strategy. It will require significant investment in infrastructure...both at the County and at retail establishments...and the employment of additional staff to implement and administer. The proposed sunset clause is now eight years. The Sales Tax proposal seems to have transitioned from being an interim measure to a long-term solution with substantial investment in infrastructure. Is there a need for a sunset clause, and is it appropriate given the substantial investment in administrative infrastructure?
4. The tax rate should be reviewed annually by the County Budget Committee and the Board of Commissioners.
 - a. When the amount of revenue received from timber tax revenues or federal timber tax in-lieu payments equals or exceeds the amount of revenue generated by a Sales Tax rate of 0.25 per cent or more, the BOC shall equalize the amount of revenue by reducing the Sales Tax rate in increments of 0.25 per cent.
 - b. A reduced Sales Tax rate may be restored to not more than the maximum rate in the same manner that was decreased under (a).
5. A Sales Tax rate of 2.5 per cent would retain a 5.0 per cent difference in the tax rate differential with Del Norte County. Strictly from a marketing perspective, to encourage Del Norte County residents to continue to shop in Curry County, it may be a good strategy to market the perception that Californians can still save five per cent by shopping in Oregon. Staff believes there will be some loss in retail sales as Curry County loses the "no sales tax" distinction, and that this should be a part of the consideration in setting the tax rate.

Finally, note that the City Council took action on March 25, 2013, to request that the BOC place a three-year, \$1.93/0.92 property tax levy measure on the November 2013 ballot.

Attachment(s):

- a. Curry County 3.0 % Goods Sales Tax Fact Sheet.
- b. Curry County Retail Sales Tax Revenue Estimates.
- c. Draft April 2012 Research Brief from Legislative Revenue Office.
- d. Proposed Sales Tax Ordinance.



FACT SHEET

Proposed 3% Goods Sales Tax

With the sunset of Federal Forest payments, the County faces a significant fiscal crisis. The proposed 3% goods sales tax presents an opportunity to generate the revenue for the County to continue delivering the services critically needed by the community.

- ▶ Tax on Non-exempt Purchases made by Residents and Visitors
- ▶ Excludes Most of the Necessities and Basics of Life
- ▶ Only Through Vote of the People can the Tax be Increased
- ▶ Includes a Sunset Clause, Requiring Vote of the People to Continue the Tax

Calculation for Estimated Sales Tax Revenue	Dollars (\$)
Total Retail Sales ^a (2007)	227,000,000
Minus Estimated Exemptions ^{b,c}	- <u>90,200,000</u>
Subtotal	136,800,000
Plus Prepared Meals/Beverage	+ <u>27,000,000</u>
Estimated Taxable Sales	163,800,000
Estimated Sales Tax Revenue	▶ 4,914,000

^a Based on 2010 U.S. Census for Curry County

^b See Exhibit A for detailed list of exemptions (available on Curry County website)

^c Estimated calculations in Research Brief by Oregon Legislative Revenue Officer, Paul Warner

What's a Good? (Examples of Taxable Items)

- ▶ Outdoor Sporting Equipment
- ▶ Furniture
- ▶ Toiletries
- ▶ Bedding and Linens
- ▶ Office Supplies
- ▶ Prepared Foods
- ▶ Clothes

What will NOT be Taxed? (Examples of Exemptions^b)

- × Food × Prescription Medications × Medical items/Supplies × Utilities × Motor Vehicle Fuel
- × Motor Vehicles & Manufactured Dwelling × Sale, Lease or Rental of Real Property
- × Commercial Fishing, Aquaculture or Guide Services × Manufacturing, Timber and Ranching Activities
- × Public Body and Nonprofit Organizations × Prepared Foods by Facilities at No Separate Charge

Curry County Retail Sales Tax Revenue Estimates

<u>Assume 1-1-13 Start FY12-13</u>		<u>FY13-14</u>	<u>FY14-15</u>	<u>FY15-16</u>
	Rate	(in millions)		
1-----	1%	\$0.57	\$1.91	\$2.00
	2%	\$1.15	\$3.82	\$3.99
	3%	\$1.72	\$5.73	\$5.99

Base: Retail trade from Census, plus eating & drinking establishments

Key exemptions: Autos, medical supplies, gas, in-home food, health,
Newspapers

LRO: 3-8-12



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Research Brief

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Research Brief #2-12

April 2012

Estimating Potential Sales Tax Revenue in Curry County

Introduction

Curry County's historic dependence on revenue from federal timber lands and the distinct prospect that the federal Secure Rural Schools Act will be extended in a sharply reduced form or not at all this fiscal year leaves county government in an extremely precarious fiscal situation. In response to the potential loss of a major revenue source, county government must balance its budget using a combination of the following options:

- Reduce expenditures on public services and the personnel that provide those services.
- Increase revenue from existing tax bases (mainly property taxes).
- Explore new tax bases for potential revenue.

This brief focuses on the third option. Specifically, the potential revenue that could be raised from a county retail sales tax applied to goods and restaurant meals purchased in the county. Initial revenue estimates from an untapped tax base present a number of difficulties. Out-of-date secondary data must be used as a starting point. At the local level, these data are highly aggregated, making detailed estimates difficult. Finally, there is the prospect of behavioral changes in response to the imposition of a new tax making even accurate detailed existing data suspect for purposes of preparing estimates. These complications have the effect of increasing the uncertainty around the initial revenue estimates from a new tax base, thereby increasing the margin of error for these estimates. It is important to note that these sources of error are in addition to the typical sources associated with projecting revenue from an existing tax. These sources of error largely stem from the uncertainty of forecasting the economy.

Because of the uncertainty around the initial estimates of revenue from a new tax base, it is recommended that county budget officials leave a portion of the estimated revenue in reserve to protect against downside risks in the first 2 years of implementation.

This brief is divided into three sections. The first section outlines the steps used to estimate the potential Curry County sales tax base. The second section attempts to put those estimates in context by comparing the results with sales tax revenue currently raised in Pacific County, Washington. The final section assesses the risks associated with these estimates.

Estimating the Curry County Tax Base

The starting point for estimating the potential Curry County sales tax base is the U.S. Census Bureau. In addition to its widely known decennial census of the population, the U.S. Census Bureau produces an economic census at 5-year intervals. These data are provided for individual sectors of the economy down to the county level. However, the detail for less populated counties, including Curry County, is limited by federal disclosure laws. The most recent census data available is 2007. The 2012 data are being collected now but will not be available for several years.

The two sectors that comprise the bulk of the sales tax base are the retail trade sector and the service sector. The service sector is limited to food services establishments. The North American Industrial Code (NAICs) for these sectors are # 44 and #45 (retail trade) and #722 (eating and drinking establishments). 2007 data for these sectors are available for Curry County.

The next step is to remove exempt items from the 2007 retail sales data. The components of retail trade that are exempt are motor vehicles, gas stations, health and personal care products and food and beverage stores. These elements are removed from the Curry County data when they are available (not excluded because of disclosure laws). When these data are not available at this level of detail, state proportions are used as an estimate of the size of the exempt sector.

The final step in the initial estimate is to take the 2007 base estimate and bring it forward to the starting point of the new tax—assumed to be January 1, 2013. As part of its forecasting process, the state (through the Oregon Office of Economic Analysis) receives projections on the international, national and state economies from IHS Global Insight Inc. Global Insight provides estimates and projections for retail sales in each state, including Oregon. The growth from 2007 to 2013 is then applied to the 2007 Curry County sales data. As a final step, the growth rate applied to Curry County is reduced to reflect the fact that the county grew at a slower rate than the overall state over the 2007 to 2013 period.

Table 1 lays out the steps taken to derive an initial estimate of the 2013-2015 sales tax base for Curry County.

Table 1: Calculation of Curry County's Potential Sales Tax Base

Tax Base Calculation (in millions)	2007	2009	2013	2014	2015
Curry County Retail Sales (in millions)	\$227.0	\$210.0	\$250.5	\$259.5	\$269.3
Curry County Food Service Sales (in millions)	\$27.0	\$25.0	\$29.8	\$30.8	\$32.0
Total Potential Curry County Base (in millions)	\$254	\$235.0	\$280.3	\$290.2	\$301.3
Sales Tax Exemptions (in millions)	\$90.2	\$83.4	\$99.5	\$103.0	\$107.0
Estimated Sales Tax Base (in millions)	\$163.8	\$151.6	\$180.8	\$187.2	\$194.3
Estimated Revenue @ 3% (in millions)*			\$5.42	\$5.61	\$5.83
<i>Retail Sales Growth (From Previous Column)</i>					
Oregon		-7.4%	26.1%	4.6%	4.9%
Curry County		-7.5%	19.3%	3.5%	3.8%
<i>Sales Tax Base as % of Personal Income</i>					
Curry County Estimate	23.3%	20.7%			
Average Sales Tax Base for States that Impose Sales Tax	46.8%	43.1%			

*Applies to fiscal year.

The economic census estimates that Curry County's retail sales totaled \$227 million in 2007 (NAICs codes 44 and 45). Sales of food services establishments are estimated at \$27 million for 2007 (NAICs code 722). This leaves a potential, no exemptions, tax base of \$254 million for 2007. Exempt items are estimated at \$90.2 million for 2007. The estimated county sales tax base for 2007, derived from subtracting exemptions from the potential base, is equal to \$163.8 million.

The breadth of the sales tax base can be measured by comparing it with total resident personal income. The estimated tax base for Curry County is 23.3% of personal income for 2007. The breadth is influenced by two major factors. The first is the items covered by the tax and the exemptions allowed. The narrower the tax is defined and the more the allowed exemptions, the lower the base will be as a percentage of personal income. A second factor is the amount of taxable purchases made by non-residents. A large amount of purchases by non-residents will increase the percentage of the base relative to personal income. Hawaii, for example, with its tourism dominated economy, has a sales tax base which is greater than 100% of resident personal income. For comparison purposes, Table 1 also includes the average sales tax base as a percent of personal income (46.8%) for all the states that impose a retail sales tax.

The Curry County estimated sales tax base is extended to 2009, based on state data. The 2009 data shows the impact of the Great Recession, which lasted from December 2007 through June of 2009. The county sales tax base declined an estimated 7.5% during this period to \$151.6 million.

The third column in Table 1 extends the estimated county sales tax base into the 2013 calendar year. This estimate is based on statewide retail sales estimates, which are then adjusted downward to reflect lower economic growth in Curry County between 2009 and 2013. The result is an estimated county tax base of \$180.8 million for 2013. This reflects estimated growth of 19.3% between 2009 and 2013, an annual growth rate of 4.5%. This compares with growth of 26.1%, 6.0% annually for the state as a whole.

Tax base growth is then projected into 2014 and 2015. Again, the statewide projection is the basis, with roughly a 1% lower annual growth rate assumed for Curry County. The result is a sales tax base estimate of \$187.2 million in 2015 and \$194.3 million in 2016. This translates into annual growth of 3.5% in 2015 and 3.8% in 2016.

A final adjustment for sales tax revenue estimates is to assume a 6-month collection lag between tax base estimates and actual revenue coming into the county. This means that the tax base estimate for 2013 should be applied to the 2013-14 fiscal year which begins July 1, 2013. The revenue estimate for a 3% sales tax estimate is \$5.4 million for 2013-14 fiscal year, \$5.6 million for 2014-15 fiscal year and \$5.8 million for 2015-16 fiscal year.

Comparison of Curry and Pacific Counties

In order to provide some context for the Curry County tax base estimates, a comparison with Pacific County, Washington is provided. Pacific County occupies the same relative geographic position as Curry County along the southwest coast. In addition, the population of the two counties is nearly identical. However, there are some important differences that will affect the sales tax base for the 2 counties. First, Curry County's personal income was 13% higher than Pacific County in 2009. This means that Curry County would collect more sales tax revenue on a base that is the same percentage of personal income. Moreover, Curry County, bordering a sales tax state, can be expected to attract more non-resident taxable purchases than can Pacific County which borders a non-sales tax state. These two factors indicate that the Curry County base should be larger than the Pacific County base. However, when comparing actual sales tax base numbers for Pacific County, the existing Washington State tax base is used. Because this base is considerably broader than the proposed Curry County base, it is likely that the breadth of the Pacific County base would more than offset the higher resident personal income in Curry County.

Table 2 shows the details of the comparison between the two counties for 2009. The first four rows of the table come from the Bureau of Economic Analysis. The Pacific County sales tax base numbers come from the Washington Department of Revenue.

Table 2: Comparison of 2009 Data for Curry and Pacific Counties

2009*	Curry County	Pacific County
Total Personal Income (in millions)	\$733.5	\$646.7
Population	21,148	21,272
Total Full-Time & Part-Time Jobs	10,819	9,344
Per Capita Income	\$34,683	\$30,403
Washington Sales Tax Base (in millions)	-----	\$201.6**
Estimated Curry County Sales Tax Base (in millions)	\$151.6	-----
Sales Tax Base as % of Personal Income	20.7%	31.2%

*Data from Bureau of Economic Analysis, U.S. Department of Commerce

**Washington Department of Revenue

The actual sales tax base for Pacific County in 2009 was \$201.6 million. This compares with the estimated Curry County base of \$151.6 million for 2009. In terms of resident personal income, the Pacific County tax base is 31.2% of income while the estimated Curry County base is 20.7% for 2009.

Assessing the Risks to the Estimates

As stated in the introduction to this brief, estimating a new tax base necessarily involves considerable uncertainty because of the lack of detailed secondary data and the non-existence of actual tax data. However, going through the detailed estimation process points to plausible areas which may cause the estimates to be too high or too low.

A potential cause of estimates that are too high is the under-estimation of exempt purchases of purchases that are not part of the legal tax base. The lack of detailed retail trade data makes this a distinct possibility. The estimates are based on excluded sectors within the retail trade data such as grocery stores and automobile dealers. However, categories that are included in the estimates are likely to have some portion of sales that are exempt. Another potential source of over-estimation error is the extrapolation from the 2007 Census data up to the 2013 calendar year. The county estimates are based on state level retail sales estimates and projections. While, an attempt was made to adjust the Curry County growth factor down, it is possible that the growth rates were not adjusted down enough leading to an over estimate of the 2013 tax base.

There are also factors which potentially lead to an under-estimate of the county tax base. Most prominent of these is the exclusion from the estimate of other economic sectors which are likely to have some taxable purchases. These sectors were not included because the proportion of their taxable sales is likely to be low and the detailed data to break into fine components of sales is not available. The sectors most likely to generate some taxable sales are wholesale trade and construction. For example, 50% of wholesale trade sales were part of the Washington sales tax base in 2010. Another potential source of downward bias is an under estimate of the actual tax base growth between 2007 and 2013. This would lead to a revenue estimate that was too low in 2013, 2014 and 2015.

This brief does not address the issues of compliance and enforcement of a sales tax at the county level. Compliance and therefore collections are influenced by the credibility of enforcement. In addition, the county's administrative costs of enforcement and collection must be netted against the revenue estimates for budgetary purposes.

Finally, it is important to keep in mind that these risks all pertain to the initial estimate of the county tax base. Going forward, revenue forecasts will always be susceptible to errors caused by economic forecasts that are too high or too low.

In developing these estimates of potential sales tax revenue in Curry County, it is the intent of the Legislative Revenue Office to provide unbiased estimates. This means that it is our opinion that the upside and downside risks roughly offset leading to an estimate that in the middle of a range of plausible outcomes. It is important to recognize that the range of plausible outcomes is greater in the case of estimating revenue from a new tax base. For this reason, we recommend that county policy-makers use considerable caution when developing budgets based on these revenue estimates until this base is established and more predictable.

DRAFT

Proposed 3% Sales Tax on Goods Only to Continue General Fund^a Services

- Tax on Goods only to share the contribution to the general fund across residents & visitors alike
- Excludes most of the necessities and services are not taxed
- Only through the vote of the people could any proposed rate increase

WHAT WILL BE TAXED?

What is a Good? (Examples of Taxable Items)

Description	Category of Taxable Items
Basketballs, tents, coolers	Outdoor Sporting Equipment
Towels, blankets, pillows	Bedding and Linens
Couches, file cabinets, chairs, table	Furniture
Paper, staplers, paperclips	Office Supplies
Pants, shoes	Clothes
Cosmetics, shampoo, soap, hairdryer	Toiletries
Meal and non-alcoholic drink at a restaurant	Prepared Foods

What will NOT be Taxed? (Examples of Exemptions)

Description ^b	Category of Non-Taxable Items ^b
Eggs, milk, bread, cereal, rice, unprepared meats	Food or food ingredients
Prescriptions for human or animal use	Prescription medications
Eyeglasses, hearing aids, prosthetics, dentures, artificial	Medical items or supplies
Gas/Gasoline	Motor vehicle fuel
Cars, trucks, motorcycles, airplanes, manufactured homes	Motor vehicles and manufactured dwellings
Electricity, natural gas, water, cable, internet, telephone	Utilities
Commercial fishing activities, river and ocean guides, aquaculture equipment ^c	Commercial fishing, aquaculture, or guide services - activities, equip., and tools
Home builders, gravel/rock production, boat construction ^c	Manufacturing activities, equip., and tools
Logging, plywood mills, timber harvest equipment ^c	Timber activities, machinery, and tools
Ranching, nurseries, cranberries, hay production ^c	Agricultural activities, equipment, and tools
Nonprofit hospitals, schools, 501(c)3s	Sales to or by a public body or a non-profit organization
Purchase from the internet (e.g., Amazon, ebay) or stores outside of the County (e.g., Costco in Medford)	Routine sales of goods brought into the County
Apartment rentals, home sales	Sale, lease or rental of real property
Continental breakfast offered by hotels, meals prepared for hospital patients or assisted living residents	Prepared food provided by facility with no separate charge

^aGeneral fund: supports the existence of constitutional structure of our County (e.g., public safety, elections, tax/assessment). Sales tax would support the continued delivery of these services and any excess would be used to a rainy day fund (i.e., reserve) to maintain local control of our County.

^bSome exceptions apply. See the Curry County Goods Sales Tax Exhibit A for details.

^cThe purchases for production and operations are untaxed; however, the products sold to the end-user are taxed.

**CURRY COUNTY GOODS SALES TAX
EXHIBIT 'A'**

Section 1. Definitions

The following definitions apply to terms used in this Ordinance;

- A. "Board" means the Board of County Commissioners of Curry County, Oregon.
- B. "Business" means any activity, trade, occupation, profession, or pursuit conducted for the purpose of generating revenue, whether for profit or not for profit.'
- C. "Consumer" means a person who purchases a good for personal consumption or use and not for business use.
- D. "County" means Curry County, Oregon and includes any person the County designates as having overall responsibility for administering this Ordinance.
- E. "Prepared food" means food and beverages prepared into consumable form by the merchant such as that typically sold by a restaurant, intermittent temporary restaurant, seasonal temporary restaurant or caterer as defined by state law, grocery store deli or other business, whether for take-out or consumption on or near the premises. Prepared food does not include: prepackaged items prepared off-site such as sold by a limited service restaurant but includes pre-packaged beverages sold in conjunction with the meal: bread, buns or rolls as defined by state law that are packaged by the merchant and sold separately from a meal or alcoholic beverages
- F. "Goods" means tangible personal property that can be seen, weighed, measured, felt, or touched, or that is in any other manner perceptible to the senses. Tangible personal property includes but is not limited to prepared food, prewritten computer software, merchandise, or wares and an extended warranty for which the purchaser pays consideration.
- G; "Health care practitioner" means any person licensed by the State of Oregon to provide health care directly to patients, including animals, and includes but is not limited to a chiropractic physician, physician, podiatric physician and surgeon, naturopath, veterinarian, physician assistant, nurse practitioner, optometrist, dentist, dental hygienist or physical therapist.
- H. "Manufacturer" means a person that manufactures for sale goods by hand or machinery. Manufacturers include, but are not limited to: lumber mills, pulp and paper mills, rock crushing and batch plants,
- I. "Manufacturing" means producing, processing or fabricating, in an industrial context, a good substantially different from and having a distinctive name, character or use from the materials that are the components of the manufactured good. Slight changes in physical properties, such as routine assembly, separating into smaller units for sale, cooling, freezing or packaging are not sufficient to be classified as manufacturing unless performed by a manufacturer as component steps in a larger manufacturing process.
- J. "Merchant" means a person who regularly sells goods from a physical location within Curry County with the intent to make a profit, regardless of whether a profit actually is realized, including a manufacturer. A business providing only the service of

...
assisting an owner of goods in conducting estate or similar sales is not a "merchant" unless the business acquires an ownership interest in the goods. Where the merchant is a corporation, the term merchant shall also include each and every officer of the corporation and member of the Board of Directors of such corporation for the time involved.

K. "Ordinance" means the "Goods Sales Tax Ordinance of Curry County" and any rules and regulations promulgated pursuant to this ordinance.

L. "Person" means any individual, firm partnership, joint venture, association, social club, fraternal organization, fraternity, sorority, public or private dormitory, joint stock company, corporation, estate, trust, business trust, receiver, trustee, syndicate, or any other group or combination acting as a unit...

M. "Price" means the total amount for which tangible personal property is sold or leased, valued in money, whether paid in money, trade-in good or service or otherwise. It shall be rounded to the nearest cent. Price does not include any service gratuity voluntarily paid in conjunction with the sale of prepared food. At auction, the price shall be the successful paid bid. Unless otherwise provided in this ordinance, no deduction shall be made on account of any of the following:

- (1) The cost of the property sold.
- (2) The cost of materials used, labor or service cost, interest charged to the merchant, losses (other than the uncollectable amount on the sale), or any other expenses.
- (3) The cost of transportation, delivery or installation of the property.

"Price" further includes consideration received by the seller from a third party if:

- (1) The seller actually receives consideration from a party other than the purchaser, and the consideration is directly related to a price reduction or discount on the sale;
- (2) The seller has an obligation to pass the price reduction or discount through to the purchaser;
- (3) The amount of the consideration attributable to the sale is fixed and determinable by the seller at the time of the sale of the item to the purchaser; and
- (4) One of the following criteria is met:

(A) The purchaser presents a coupon, certificate, or other documentation to the seller to claim a price reduction or discount where the coupon, certificate, or documentation is authorized, distributed, or granted by a third party with the understanding that the third party will reimburse any seller to whom the coupon, certificate, or documentation is presented;

(B) The purchaser identifies himself or herself to the seller as a member of a group or organization entitled to a price reduction or discount, however a "preferred customer" card that is available to any patron does not constitute membership in such a group; or

(C) The price reduction, rebate or discount is identified as a third party price reduction or discount on the invoice received by the purchaser or on a coupon, certificate, or other documentation presented by the purchaser.

N. "Purchaser" means a person in Curry County who buys goods from a merchant in Curry County.

O. "Sale" means any transfer of title or possession by a merchant of a good for consideration including by exchange or barter, or any other means. "Sale" includes but is not limited to a transfer on installment or other payment terms, a transfer at auction and the lease of a good if the lease provides that the lessee has the opportunity to permanently retain or purchase the property.

P. "Seller" means a person who sells goods in Curry County and includes a merchant.

Q. "Tax" means either the tax payable by the purchaser or the aggregate amount of taxes due from a merchant during the period for which said merchant is required to report collections.

Section 2. Tax Imposed

A. There hereby is imposed and levied a tax upon the sale occurring in Curry County of any good unless specifically exempted by this ordinance or rules adopted under this Ordinance.

B. The tax shall be imposed and levied at a rate of three percent on the total price charged by the merchant for the good. The tax shall be paid-by the purchaser to the merchant at the time of sale, in trust for the County.

C. If the County determines that the price obtained by the merchant in connection with a sale does not represent the reasonable fair market value of the retail sale, the County may treat the reasonable fair market value of the good as the amount subject to the tax. This provision shall not be construed to apply to legitimate discounts, "two for price of one" offers, loss leaders, close-outs or liquidations consistent with customarily accepted business practices. This determination shall be subject to Section 8.

D. A sale of a good occurs in the County if the price is paid and delivery made in Curry County. Except as provided in Section 4. M; a sale occurs in the County regardless of whether a merchant having a physical presence in Curry County actually ships or delivers the good(s) from a factory, warehouse, wholesale or retail store or similar facility of the merchant located outside the County.

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Section 3 Collection of tax by merchant

A. Every merchant selling a good shall collect the tax from the purchaser in trust for the County. The tax collected or accrued by the merchant constitutes a debt owing by the merchant to the County and shall be extinguished only by payment by the merchant to the County. The merchant shall enter the tax on the merchant's records when it is collected if the merchant keeps records on the cash accounting basis and when earned if the merchant keeps records on the accrual accounting basis.

B. The tax shall be due on lease or installment payments at the time the payment is made to the merchant, and the merchant shall not be liable for the tax until credits are paid or deferred payments are made. Adjustments may be made for un-collectables.

C. The merchant shall be responsible for ascertaining that a sale is exempt. It shall not be a defense to collection or prosecution for a merchant to rely on a representation of a purchaser that the sale is exempt unless the merchant establishes that a

reasonable merchant in a similar situation would rely on such representation and the merchant had no basis to reasonably believe that the representation was false or in error.

D. The merchant shall be entitled to retain 5 percent of the tax collected to defray the costs of collection and remittance. This deduction may not be taken if there is any sales tax, penalty or interest due from the merchant for any previous filing period.

Section 4 Exemptions

The following sales are exempt from this tax:

A. Prescription medications for human or animal use or consumption. "Prescription" means an order, formula, or recipe issued in any form by a health care practitioner. This exemption includes medications provided directly to the patient or owner by the practitioner, with or without a prescription, but does not include over the counter medications, vitamins, supplements or other similar goods unless prescribed in writing by a provider, .

B. Medical items or supplies prescribed or provided directly to the patient, or the owner of an animal, by a health care practitioner, including but not limited to eyeglasses, hearing aids, prosthetics, dentures, artificial teeth-crowns, fillings, bridges, retainers, braces, programmable drug infusion devices to be worn on or implanted, wheelchairs, scooters, crutches, bandages, dressings, splints, syringes, medical supplies used by colostomy, ileostomy, and urostomy patients.

C. Medical items, supplies and equipment used by a licensed health care practitioner, including a medical office, hospital, clinic, dental facility or veterinary clinic, directly to treat humans or animals, including but not limited to x-ray machines, scanners, examination or surgical tables and testing equipment. This does not include goods that are only indirectly or tangentially involved in the treatment process, including but not limited to office furnishings, equipment and supplies or janitorial equipment and supplies.

D. Food or food ingredients, other than prepared food sold to a consumer, defined as substances, whether in liquid, concentrated, solid, frozen, dried, or dehydrated form, sold for ingestion or chewing by humans or animals and that are consumed for their taste or nutritional value, including tobacco in any form and alcohol but not including, over the counter medications; vitamins, supplements or other similar goods unless prescribed in writing by a practitioner .. Food that otherwise would be taxed as prepared food shall be exempt to the extent it is purchased with coupons, vouchers or stamps pursuant to the Women's Infant and Child program, the supplemental nutrition assistance program (commonly known as food stamps) administered by the US Department of Agriculture or similar program of a federal agency or the State.

E. Prepared food provided by a hotel, bed and breakfast or similar facility for which no separate charge is made, prepared food prepared by a hospital, hospice, nursing home, assisted living or similar facility and for which no separate charge is imposed.

F. Utilities including, electricity, water, natural gas, cable, internet, telephone or similar items. Oil or propane for home or business use such as heating or cooking is exempt provided it is delivered into a tank with a storage capacity equal to or greater than 30 gallons. Wood for home heating purchased in units of one-half cord or more.

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G. Goods sold for resale to a purchaser whose normal and customary business is the resale of such a good. This exemption does not apply to any good used in any way by the purchaser except resale.

H. Sale, lease or rental of real property, including structures and fixtures sold with the property.

I. Sales to or by a public body or a non-profit organization recognized as such under federal or Oregon income tax statutes and rules.

J. The casual or isolated and infrequent sale of goods no longer of use to a person who is not a merchant. Examples include garage or estate sales, and isolated sales of individual goods through use of classified advertising or similar means, provided, however, that the conduct of such sales do not constitute a regular or more than incidental form of income for the owner of the good, including the heirs of an estate.

K. Interest, financing, and carrying charges resulting from credit extended in connection with the sale.

L. Delivery or installation charges separately stated from the price of the good.

M. Routine and customary sales of goods brought into the County on order from a purchaser ordering the goods through a catalog or internet site if the merchant or seller maintains a center outside the County for taking such orders. This exemption shall not be construed to permit merchants with a physical presence in the County to ship goods from warehouses, factories, retail or wholesale locations of the merchant located outside the County with the intent to avoid a taxable sale.

N. Motor vehicles required to be registered in this State; recreational vehicles, residential trailers, mobile homes, manufactured dwellings all as defined in ORS 446.003 (2011); motor vehicle fuel, marine and aviation fuel that is subject to taxation by the State of Oregon.

O. Construction materials sold by a licensed commercial or residential construction contractor, including but not limited to a specialty contractor, to a consumer or business in conjunction with a contract under which the contractor constructs, renovates, remodels, improves or repairs a structure.

P. Machinery, equipment, supplies and tools directly used in manufacturing, including goods consumed in the manufacturing process and goods, including raw materials, incorporated into or that become an integral ingredient or component of a manufactured good. This exemption does not include goods that are only indirectly or tangentially involved in the manufacturing process, including but not limited to office furnishings, equipment and supplies or janitorial equipment and supplies.

Q. Timber and machinery, equipment, supplies and tools directly used to plant, manage or harvest timber for commercial sale. This exemption includes but is not limited to seedlings, chemicals, cable, saws, feller-bunchers, yarders, skidders and trailers. This does not exempt direct sales to a consumer. This exemption does not include goods that are only indirectly or tangentially involved in the process, including but not limited to office furnishings, equipment and supplies or janitorial equipment and supplies

R. Agricultural equipment, machinery, supplies and tools directly used in the commercial production of agricultural products for human or animal consumption. This includes but is not limited to livestock, poultry, tractors, harvesters, bailers, fencing and cages, feed, chemicals, seeds and seedlings (including grass seed). This exemption does

not include goods that are only indirectly or tangentially involved in commercial agriculture, including but not limited to office furnishings, equipment and supplies or janitorial equipment and supplies. This exemption includes, however: animal feed and livestock or poultry sold to consumers for food or food production.

S. Equipment, materials and supplies directly used in commercial fishing, aquaculture or fishing in conjunction with outfitter and guide or ocean guide services as defined by state law. This includes but is not limited to boats, nets, line, bait, feed, reels, poles, wenchers, pens or traps. This does not include sales, other than food items, directly to consumers. This exemption does not include goods that are only indirectly or tangentially involved in fishing, including but not limited to office furnishings, equipment and supplies or janitorial equipment and supplies.

T. Airplanes, boats or personal watercraft, other than a kayak, raft or a canoe.

U. Newspapers.

V. Sales from vending machines. "Vending machine" means a mechanical, electronic or similar device that, upon the insertion of tokens, money or another form of payment, dispenses a good.

W. Personal care items sold primarily to address or manage incontinence whether in children or adults, including but not limited to diapers; absorbent underwear, shields, pads or personal care wipes.

X. Any good exempt from local sales taxation under State or Federal law. This includes any good if taxation would preclude or limit County or State participation in a federal assistance program or eligibility for funding.

Section 5 Merchant Registration

Every person engaging in business as a merchant having a physical location within the County shall register with the County. Merchants engaged in business at the time the tax is declared to be imposed must register not later than twenty calendar days after the effective date of such declaration. Merchants starting business after the effective date of the declaration must register within twenty calendar days after commencing business. The privilege of registration after the date of imposition of such tax shall not relieve any person from the obligation of payment or collection of tax on sales prior to registration or otherwise regardless of registration. Registration shall set forth the name under which a merchant transacts or intends to transact business, the location or places of business in the County, a contact person responsible for overall compliance and other information to facilitate the collection of the tax as the County may require. The registration shall be signed by the merchant. The County shall, within 15 business days after registration, issue without charge a certificate of authority to each registrant to collect the tax from the purchaser, together with a duplicate thereof for each additional place of business of each registrant. Certificates shall be non-assignable and nontransferable and shall be surrendered immediately to the County upon the cessation of business at the location named or upon its sale or transfer. Each certificate shall state the place of business to which it is applicable and shall be prominently displayed therein so as to be seen and come to the notice readily of all purchasers.

1. The certificate shall, among other things, state the following:

- A. The name of the business;
- B. The address of the business;
- C. The date upon which the certificate was issued;

D. "This GOODS TAX REGISTRATION CERTIFICATE signifies that this merchant has fulfilled the requirements of the GOODS TAX ORDINANCE OF CURRY COUNTY, OREGON, by registering with the County for the purpose of collecting from purchasers the tax imposed by the County and remitting the tax to the County. This certificate does not authorize any person to conduct any unlawful business or to conduct any lawful business in an unlawful manner, or to operate a business without strictly complying with all local applicable laws, including but not limited to those requiring a permit from the County. This certificate does not constitute a permit.

The Sales Tax is due at the time of purchase. Unless the sale is exempt, failure to pay the tax is an offence and may subject the purchaser or merchant to prosecution. Report any violations to Curry County at (county contact information)".

Section 6 Due date - returns and payments

A. The tax imposed by this ordinance shall. be paid at the point of sale. All taxes collected by any merchant, except the percentage authorized to be retained for administrative costs, are due and payable to the County on a quarterly basis, on the fifteenth day of the following month for the preceding three months (April, July, October and January), and are delinquent on the last day of the month in which they are due. The initial return may be for less than the three months preceding the due date; thereafter, returns shall be made for the applicable quarterly period.

B. A return shall be filed with the taxes paid to the County. The return shall be filed in such form as the County may prescribe.

C. Returns shall show the amount of tax collected or otherwise due for the related period. The County may require returns to show the total sales on which tax was collected or otherwise due gross receipts of merchant for such period and an explanation in detail of any discrepancy between such amounts, and the amount of sales exempt, if any.

D. The merchant filing the return shall deliver the return, together with the remittance of the amount of the tax due, to the County, either by personal delivery or by mail. If the return is mailed, the postmark shall be considered the date of delivery for determining delinquencies.

E. For good cause, the County may extend in writing for not to exceed one month, the time for making any return or payment of tax. No further extension shall be granted. Such an extension does not extend the due date of the tax for purposes of interest charges. The merchant shall pay interest at the rate of one percent per month on the amount of tax due with a pro-ration for a fraction of a month. If a return is not filed, and the tax and interest due is not paid by the end of the extension granted, the merchant shall be liable for penalties as provided in Section 7.

F. The County may, in its sole discretion require a merchant to provide returns and payment of taxes for other than quarterly periods if it determines it necessary to ensure payment or to facilitate collection of the amount of taxes.

G. Payments received shall first be applied to any penalty, then to interest

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accrued, then to the oldest tax due.

Section 7 Penalties and interest

A. Any merchant who fails to remit any portion of any tax imposed by this ordinance or fails to file a return within the time required shall pay a penalty often (10) percent of the amount of the tax, in addition to the amount of the tax.

B. Any merchant who fails to pay any delinquent remittance on or before a period of thirty (30) days following the date on which the remittance first became delinquent shall pay a second delinquency penalty of fifteen (15) percent of the amount of the tax due plus the amount of the tax and the 10 percent penalty first imposed.

C. If the County determines that the nonpayment of any remittance due under this ordinance is due to fraud or intent to evade the provisions thereof, a penalty of twenty-five (25) percent of the amount of the tax shall be added thereto in addition to the penalties stated in subsections A and B of this section.

D. In addition to the penalties imposed, any merchant who fails to remit any tax imposed by this ordinance when due shall pay interest at the rate of one percent per month or a fraction thereof on the amount of the tax due, exclusive of penalties, from the date on which the remittance first became delinquent until paid. .

E. Any merchant who fails to remit the tax herein levied within the time herein stated shall pay the penalties herein stated, provided, however, the merchant may petition the County for waiver and refund of the penalty or any portion thereof and the County may, if a good and sufficient reason is shown, waive and direct a refund of the penalty or any portion thereof.

Section 8 Deficiency determinations - fraud, evasion, and merchant delay

A. If the County determines that the returns are incorrect, including that the sales price does not reflect the fair market value, or that a merchant has failed to file a return, the County may compute and determine the amount required to be paid upon the basis of the facts contained in the return or returns, or upon the basis of any information within the County's possession or otherwise obtained by the County. One or more deficiency determinations may be made of the amount due for one, or more than one, period, and the amount so determined shall be due and payable within 15 days of service of notice as herein provided after which the amount determined is delinquent. Penalties on deficiencies shall be applied as set forth in Section 7.

1. In making a determination the County may offset overpayments, if any, previously made for a period or periods against any deficiency for a subsequent period or periods, or against penalties and interest on the deficiency. The interest on the deficiency shall be computed in the manner set forth in Section 7 D.

2. The County shall give to the merchant written notice of the County's determination.

3. Except in the case of fraud or intent to evade, including failure to file a return, every deficiency determination shall be made and notice thereof mailed within three years after the last day of the month following the close of the quarterly period for

which the amount is proposed to be determined or within three years after the return is filed, whichever period expires later.

4. Any determination shall become due and payable immediately upon receipt of notice and shall become final within 15 days after the County has given notice; provided, however, the merchant may petition for redetermination and refund if the petition is filed before the determination becomes final as herein provided.

B. If any merchant willfully fails or refuses to collect the tax or to make within the time provided in this ordinance any return and remittance of the tax or any portion thereof required by this ordinance, or makes a fraudulent return or otherwise willfully attempts to evade this ordinance, the County shall proceed in such manner as the County may deem best to obtain facts and information on which to base an estimate of the tax due. The County shall proceed to determine and assess against such merchant the tax, interest and penalties provided for by this ordinance. The County shall provide written notice of the amount so assessed. Such determination and notice shall be made and mailed within three years after discovery by the County of any fraud, intent to evade or failure or refusal to collect said tax, or failure to file return. Any determination shall become due and payable immediately upon receipt of notice and shall become final within 15 days after the County has given notice thereof; provided, however, the merchant may petition for redetermination and refund if the petition is filed before the determination becomes final as herein provided.

C. If the County concludes that the collection of any tax or any amount of tax required to be collected and paid to the County will be jeopardized by delay, or if any determination will be jeopardized by delay, the County shall make a determination of the tax or amount of tax required to be collected, noting the fact upon the determination. The amount so determined as herein provided shall be immediately due and payable, and the merchant shall immediately pay the amount of the determination to the County after service of notice thereof; provided, however, the merchant may petition, after payment has been made, for redetermination and refund, if the petition is filed within 15 days from the date of service of notice by the County.

A. Any merchant against whom a determination is made under Section 8, or any person directly interested, may petition for a redetermination and refund within the time required in Section 8A. The petition must state the basis for the requested relief. If a petition for redetermination and refund is not filed within the time required in Section 8A, the determination becomes final at the expiration of the allowable time.

B. If a petition for redetermination and refund is filed within the allowable period, the County shall reconsider the determination.

C. The County may decrease or increase the amount of the determination and if an increase is determined such increase shall be payable immediately upon issuance of the redetermination.

D. The order or decision of the County upon a petition for redetermination becomes final 15 days after service upon the petitioner of notice thereof, unless appeal of such order or decision is filed within the 15 days after service of such notice.

Section 9 Redeterminations

Section 10 Security and Action for collection of tax

A. The County, whenever it deems it necessary to ensure compliance with this ordinance, may require any merchant to deposit with the County such security in the form of cash, bond, or other security as the County may determine. The amount of the security shall be fixed by the County but shall not be greater than twice the merchant's estimated average quarterly liability, determined in such manner as the County deems proper, or fifty thousand dollars (\$50,000.00), whichever is less. The amount of the security may be increased or decreased by the County subject to the limitations herein provided.'''

B. At any time within three years after any tax or any amount of tax required to be collected becomes due and payable or at any time within three years after any determination becomes final, the County may bring an action in the courts of this state, or any other state, or of the United States to collect the amount delinquent together with penalties and interest. The prevailing party in a collection action shall be entitled to its attorney fees and costs, including on appeal.

C. The County may retain the services of a collection agency to pursue any amount due.'

Section 11 Credit and Refunds

A. A merchant is entitled to a credit or refund of sales taxes previously paid on bad debts, as that term is used in 26 U.S.C. Sec. 166, as that section exists on the effective date of this ordinance or for the amount paid or credited by the merchant to the purchaser on goods returned to the merchant. For purposes of this section, "bad debts" do not include: amounts due on property that remains in the possession of the seller until the full purchase price is paid; expenses incurred in attempting to collect debt and the fair market value of repossessed property. If a credit or refund of tax is taken for a bad debt and the debt is subsequently collected in whole or in part, the tax on the amount collected must be paid and reported on the return filed for the period in which the collection is made.

B. If the amount of any tax, penalty or interest has been paid to the County more than once or has been erroneously collected or received by the County, as a result of a bad debt or a refund provided to the purchaser or for a similar reason not reasonably anticipated during the determination and redetermination period, it may be refunded, provided a verified claim in writing documenting the basis for claiming the refund or credit is filed with the County within three years from the date of the tax payment. The claim shall be made on forms provided by the County. If the claim is approved by the County, the excess amount collected or paid may be refunded or may be credited on any amounts then due and payable from the merchant from whom it was collected or by whom paid and the balance may be refunded to such merchant or the merchant's administrators, executors or assigns.

C. No refund shall be paid under the provisions of this section unless the claimant established the right by written records showing entitlement to such refund. Merchants owing sales tax, penalties or interest shall be entitled to a credit only.

Section 12 Precondition to filing for redetermination or refund. Interest.

A. No petition for redetermination, credit or refund or appeal therefrom shall be considered or effective for any purpose unless the merchant has first paid in full the amount of tax at issue and otherwise complied with the provisions of this ordinance.

B. No interest shall be due from the County on any overpayment, credit or refund unless it is determined to have been caused by the sole negligence of the County. Interest due from the County shall be calculated at the rate earned by the County on the funds.

Section 13 Administration

A. Every merchant shall keep records of sales and accounting books sufficient to demonstrate compliance with this ordinance. All records shall be retained by the merchant for a period of three years and six months after they come into being.

B. The County may examine during normal business hours the books, papers and accounting records relating to sales of any merchant, including income tax returns, after notification to the merchant liable for the tax, and may investigate the business of the merchant to verify the accuracy of any return made, or if no return is made by the merchant, to ascertain and determine the amount required to be paid.

C. Except as otherwise required by law, the County shall not divulge, release, or make known in any manner any financial information submitted or disclosed to the County under the terms of this ordinance. Nothing in this ordinance shall prevent:

1. The disclosure or examination of records to another County official, employee or agent for the sole purpose of administering or enforcing any provisions of this ordinance;

2. The disclosure, after the filing of a written request to that effect, to the taxpayer, receivers, trustees, executors, administrators, assignees, and guarantors, if directly interested, of information as to any paid tax, any unpaid tax or amount of tax required to be collected, or interest, and penalties; further provided, however, that the County may refuse to make any disclosure referred to in this subsection when in the County's opinion the public interest would suffer thereby;

3. The disclosure of the name and address of any merchant to whom a tax registration certificate has been issued;

4. The disclosure of general statistics regarding taxes collected or business done in the County in a form that would prevent the identification of financial information regarding an individual merchant.

D. Any decision or notice required by this ordinance to be served by the County shall be in writing and may be served in person or by first class mail with the United States Postal Service. For mailed notices or documents, the date of mailing shall be considered the date of service.

E. The County may adopt a written order modifying the reporting or manner of payment obligations otherwise imposed under this ordinance for a particular merchant or class of merchants, or relating to a particular good or class of good if, in its sole discretion and for good cause, doing so is in the public interest by aiding the efficient administration of this ordinance or promoting sound commercial practices. Nothing in this provision shall be construed as authorizing a merchant to otherwise avoid payment of the tax or that gives an inequitable advantage to any merchant or class of merchants.

Section 14 Appeals from County Determinations

A. Any person aggrieved by a redetermination, refund or credit decision of the County may appeal the decision to the Board of Commissioners by filing a notice of appeal within 15 days of the serving or mailing of the notice of a decision given by the County. The County shall fix a time and place for hearing such appeal and shall give the appellant not less than 15 days written notice of the time and place of hearing.

B. The Board may hear and determine such appeals itself, or may appoint a hearings officer, or committee to hear such appeals. In the review of the County's decision or order, the hearings authority may conduct an informal proceeding and consider such evidence and make such investigation as it deems appropriate. The hearings authority may affirm, modify or reverse the County's decision and shall adopt written findings memorializing its decision. The findings of the hearings authority shall be final and conclusive and shall be served on the appellant. Any amount found to be due shall be immediately due and payable upon service of the decision.

C. An appeal to the Board is a precondition to filing an action in any court or with any other body.

Section 15 Rule Making

A. The Board may adopt rules and regulations to clarify and otherwise administer and enforce the terms of this ordinance consistent with its provisions. This may include, but is not limited to, additional exemptions, lowering the tax rate, a rule providing that merchants are not obligated to collect or pay the sales tax for individual sales of a good below a specified amount, or that merchants with aggregate retail sales below a specified amount are not obligated to collect or pay the sales tax, or to pay the tax less frequently than quarterly.

B. Except as provided paragraph F of this Section, prior to the adoption, amendment, or repeal of any rule, the County shall give notice of intended rulemaking by mailing (by ordinary or electronic mail) copies of the notice of intended rulemaking to those persons whose names are on the mailing list described in paragraph G of this Section. The County shall also provide notice of the proposed action by publication in a newspaper of general circulation in the County.

C. The notice shall provide least two weeks to comment on the proposed rulemaking prior to adoption. The notice shall describe the proposed action, indicate where a copy of the proposed rule may be obtained, and describe how affected persons may provide written comments on the proposed rule.

D. The County, in its sole discretion, may hold a public hearing on the proposed action.

E. Prior to adopting, amending or repealing a rule, the Board shall consider the written comments, and any information provided at a public hearing if held. Adoption, amendment or repeal of a rule shall be accompanied by a summary explanation of the authority and rationale for the rulemaking and its effective date.

F. Notwithstanding the foregoing, the Board may without notice, comment or hearing adopt, amend or suspend a rule for up to 180 days if the Board finds that prompt action is appropriate to protect the public interest or avoid unfair treatment.

G. No less than once each year, the County shall publish a notice advising that any person desiring notice of rulemaking may request to be placed on a notification list. This information also shall be on the merchant registration form. Any person properly filing a completed form with County shall be placed on the mailing list promptly, and shall thereafter be given notice of any proposed rulemaking, other than temporary rulemaking under subparagraph G of this section. Persons on the list also shall receive notice of the final decision on rulemaking, including temporary rules adopted under subparagraph G of this section.

H. The County may prescribe and make available such forms and informal guidance as it deems appropriate in connection with the administration and payment of the sales tax. The making or filing of any return, statement or other document or a copy thereof, shall constitute a certification by the individual doing so that the statements contained therein are true and that any copy filed is a true copy.

Section 16 Violation - Penalty

A. Any merchant or other person who shall fail or refuse to register as required herein, or who shall fail or refuse to furnish any return, supplemental return or other data required herein or by the County, or, with intent to defeat or evade the determination of any amount due hereunder, shall make, render, sign or verify any false or fraudulent report, or who willfully fails to pay all amounts due commits a violation of this ordinance.

B. Any person who purchases a good representing that it is purchased in the ordinary course of the person's business for resale uses the good in any way other than for resale, or a person who falsely represents to the merchant that the person or sale is exempt, shall be liable for the unpaid tax and commits a violation of this ordinance. In addition to prosecution, the County may bring an action against the purchaser for the full amount of any unpaid tax, penalties and interest in the amounts provided for a merchant. Nothing in this section shall be construed as limiting the merchant's obligations to collect the tax or otherwise comply with this ordinance.

C. Violations of this ordinance shall be prosecuted as provided in Article 10 of the Curry County Code and shall be classified as a Class 'B' violation. Each sale or purchase in violation of this ordinance and each day of noncompliance is a separate violation.

Section 17 Rules of Construction

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A. The provisions of this ordinance relating to the persons and transactions that are subject to the sales tax shall be liberally construed. Provisions relating to exemptions, credits and deadlines shall be narrowly construed.

B. There is a rebuttable presumption that any good or sale that may reasonably be treated as subject to the sales tax is subject to the tax, and a person seeking to limit or avoid imposition of the tax shall have the burden of establishing that the good or sale is not taxable.

Section 18 IGA With State

Pursuant to ORS 305.620 (2011), the County may enter into an intergovernmental agreement with the State of Oregon for the collection; enforcement, administration or distribution of this sales tax on such terms and conditions as the County deems appropriate including in the same manner as a tax on income and to the enforcement and collection of any tax due from a specified taxpayer or class of taxpayers. The intergovernmental agreement may provide that the provisions of state law and the administrative rules adopted by the Department of Revenue shall supersede any conflicting terms of this ordinance and govern the collection, enforcement, administration or distribution of the tax imposed herein.

Section 19. Tax Reserve and Annual Review

A. A minimum of 2% of the net revenue received by the County under this ordinance shall be placed in a reserve account or fund dedicated to capital construction, replacement, maintenance and repair of County facilities, including but not limited to, the County jail.

B. Each year, in conjunction with the County's budget process, the County budget committee shall conduct one or more public hearings to evaluate this Ordinance in light of the revenue generated by this Ordinance and other sources, and the County's fiscal condition and outlook. The budget committee shall then make recommendations to the Board of Commissioners, including, but not limited to:

- a. Whether to increase the amount placed into the reserve account or fund established in paragraph 1 of this Section;
- b. Whether to reduce the sales tax rate;
- c. Whether to reduce the property tax

Section 20. Date of Imposition

The tax provided for in this ordinance shall be imposed on the date provided by Board Order which shall be no less than 30 or more than 120 days after the effective date of this ordinance. The order shall be published in a newspaper of general circulation in the County.

Section 21. Sunset Clause

This sales tax will sunset on June 30, 2012

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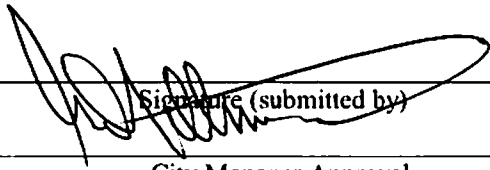
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CITY OF BROOKINGS

COUNCIL AGENDA REPORT

Meeting Date: June 24, 2013

Originating Dept: City Manager



Signature (submitted by)

City Manager Approval

Subject: Contract Police Service Request from Port of Brookings Harbor

Recommended Motion:

1. Authorize the City Manager, Public Safety Director and City Attorney to develop a feasibility plan and draft agreement for contracting law enforcement services to the Brookings Harbor Port District.
2. Authorize City Manager to work with Port District management in preparing an application for annexation of Port District-owned property into the City of Brookings.

Financial Impact:

To be determined. City would seek to recover the cost of providing this service through an intergovernmental agreement.

Background/Discussion:

The City has received a Resolution from the Board of Directors of the Brookings Harbor Port District requesting the development of an agreement whereby the City would provide law enforcement services on properties owned by the District.

Conceptually, the Port District would exercise its authority under ORS 181.610(12)(a) and ORS 777.190 to create a port police department and then contract with the City of Brookings to provide that the Brookings Police Department would perform this function.

The Port District would pay the City for the cost of providing this service.

If authorized by the City Council, City staff and the City Attorney would:

1. Develop an operations/staffing plan and budget for providing police services to the area as indicated in attachment (e).
2. Develop a draft intergovernmental agreement and work with District staff in coming to a mutually-agreeable contract.
3. Review all applicable State regulations relating to this matter.

The Port District Resolution also provides that the Port will explore possible annexation of the District-owned property into the City Limits.

The City Manager and City Attorney have conferred concerning the possible annexation of the Port District property into the City. A major issue relating to annexation south of the Chetco

River in the past has been the application of Brookings Charter Chapter XI Section 42 which provides, in part:

“The right to furnish the inhabitants of said City with water shall be forever vested in the City of Brookings, and no franchise, right or privilege shall hereafter be granted to or contract made with any person or corporation by said City to furnish or supply the said City or its inhabitants with water, without the authorization of the legal voters of said City.”

Chapter XI of the Charter was enacted in 1988 to authorize the City to sell bonds to finance water system improvements. The reason for the restrictive language was to provide bond holders with security for repayment; to prevent the City from contracting or franchising the operation of the City water system to a third party and therefore surrendering its ability to collect user fees for bond repayment. Those bonds have been paid off for a number of years. The Charter form of security is no longer required as a condition of bonding and Bond Counsel found that this provision is no longer operative or relevant in 2009. Nonetheless, the voters have twice rejected repeal of this Charter provision.

Past legal counsel held that this provision prohibited the City from annexing territory that is not served by the City water system. As the Harbor Water District serves much of the area south of the Chetco River, this was seen as a barrier to annexation.

In light of the public safety service request from the Port District, the City Manager and City Attorney have conferred anew on the application of Chapter XI, Section 42, to annexation south of the Chetco River. City Attorney Martha Rice has issued a new written opinion concerning this matter which, essentially, acknowledges that, while the City has the exclusive “right” to provide water within its boundaries, the City can also chose not to exercise that right. And, further, by the Harbor Water District continuing to serve customers such as the Port and within the boundaries of the City, there is no requirement for the City to take action to “contract” or “franchise” the provision of water service.

Thus, staff believes that the City could annex the Port district property into the City Limits by simply including in the final order that it acknowledges that the Harbor Water District would continue to provide water service and that the City would not exercise its right to provide water service so long as the Harbor Water District continues to do so.

Like the Brookings Airport property owned by the County, the Port District property is exempt from property tax. However, some property tax is generated by the private activity that takes place on the Port District property. Staff has not yet requested this data from the County Assessor. Additionally, staff would propose that the District pay an additional annual amount, to be determined, as a property tax in-lieu fee...replacing the contract service fee...to the City as a condition of annexation.

The process of annexation requires approximately 90-120 days to complete. Thus, it is the staff recommendation that, if the City Council wishes to move forward with providing law enforcement services to the Port property and to ultimately annex the Port property into the City, that the City proceed with an interim intergovernmental agreement to be followed by an annexation.

Policy Considerations:

This would be a somewhat unique arrangement whereby the City would be exercising law enforcement authority within an unincorporated area under the authority of a special district. Initial research indicates that similar intergovernmental agreements exist between cities and tribal governments in Oregon and California.

Attachment(s):

- a. Port District Resolution
- b. ORS 181.610(12)(a) and ORS 777.190
- c. Map indicating Brookings Harbor Port District owned properties.
- d. Map indicating area to be served by proposed contract.
- e. City Attorney memorandum.
- f. 2009 letter from Bond Counsel K&L Gates.

PORT OF BROOKINGS HARBOR
CURRY COUNTY, OREGON
RESOLUTION NO. 439
A RESOLUTION REGARDING PORT SECURITY

WHEREAS, The Port of Brookings Harbor has experienced a large increase in theft, vandalism, drug related crimes and other misdemeanors and,

WHEREAS, the Port District is in need of a more pro-active approach to law enforcement than has historically or is currently received through the Curry County Sheriff's Department, and

WHEREAS, It is in Port District's strong interest to address these issues as they directly affect Tourism and other economic activities vital to the Port and surrounding community and,

WHEREAS, the Port has the legal authority to form its own law Enforcement entity

NOW THEREFORE, BE IT RESOLVED, that the Port of Brookings Harbor address these issues by;

1. Instructing the Executive Director to secure Port premises through the use of appropriate fencing and gates that will allow for appropriate entry for those who have need to enter as well as judicious use by the general public.
2. Instructing the Executive Director to finish the deployment of Security video cameras as deemed necessary.
3. Researching, in appropriate legal order, the potential formation of the Port of Brookings Harbor Police Department.
4. Instructing the Executive Director to initiate discussions with the City of Brookings and Curry County for the purpose of contracting for law enforcement services for the real property that exists in the name of the Port District that lies adjacent to the Chetco river Bridge and proceeds to Sport Haven beach on the South and bounded by Lower Harbor road on the east and by the boat basins on the west. This service would be 24/7 Enforcement of all applicable statutes, ordinances and regulations.
5. Instruct the Executive Director to research the most efficient and cost effective way of obtaining these services including possible annexation of Port property to the City of Brookings.

ADOPTED by the Port of Brookings Harbor Commission this 18th day of June, 2013.

Roy C. Davis, Chairman

ATTEST

Jim Relaford, Secretary/Treasurer

(10) Family or household members has the meaning given that term in ORS 107.705 (Definitions for ORS 107.700 to 107.735).

(11) Fire service professional means a paid or volunteer firefighter, an officer or a member of a public or private fire protection agency that is engaged primarily in fire investigation, fire prevention, fire safety, fire control or fire suppression or providing emergency medical services, light and heavy rescue services, search and rescue services or hazardous materials incident response. Fire service professional does not mean forest fire protection agency personnel.

(12) Law enforcement unit means:

- (a)** A police force or organization of the state, a city, university that has established a police department under ORS 352.383 (University police departments and officers), port, school district, mass transit district, county, county service district authorized to provide law enforcement services under ORS 451.010 (Facilities and services provided by service districts), tribal government as defined in section 1, chapter 644, Oregon Laws 2011, that employs authorized tribal police officers as defined in section 1, chapter 644, Oregon Laws 2011, the Criminal Justice Division of the Department of Justice, the Department of Corrections, the Oregon State Lottery Commission or common carrier railroad the primary duty of which, as prescribed by law, ordinance or directive, is one or more of the following:
 - (A)** Detecting crime and enforcing the criminal laws of this state or laws or ordinances relating to airport security;
 - (B)** The custody, control or supervision of individuals convicted of or arrested for a criminal offense and confined to a place of incarceration or detention other than a place used exclusively for incarceration or detention of juveniles; or
 - (C)** The control, supervision and reformation of adult offenders placed on parole or sentenced to probation and investigation of adult offenders on parole or probation or being considered for parole or probation;
- (b)** A police force or organization of a private entity with a population of more than 1,000 residents in an unincorporated area the employees of which are commissioned by a county sheriff;
- (c)** A district attorneys office; or
- (d)** A private, nonprofit animal care agency that has maintained an animal welfare investigation department for at least five years and has had officers commissioned as special agents by the Governor.

(13) Parole and probation officer means:

2011 ORS § 777.190¹

Ordinances for policing or regulating of port property

A port may by ordinance in accordance with ORS 198.510 (Definitions for ORS 198.510 to 198.600) to 198.600 (Penalty for violation of regulations) make, modify or abolish regulations to provide for the policing, control, regulation and management of property owned, operated, maintained or controlled by the port. A port, for the purpose of enforcing such ordinances, may appoint peace officers who shall have the same authority, for the purpose of the enforcement of the ordinances, as other peace officers. [1955 c.699 §§2,3,4; 1959 c.255 §1; 1971 c.268 §21; 1971 c.728 §42]

...

Notes of Decisions

Port districts powers are limited to those delegated by legislature either expressly or by necessary implication. *Brusco Towboat v. State Land Bd.*, 30 Or App 509, 567 P2d 1037 (1977), *affd* as modified 284 Or 627, 589 P2d 712 (1978)

§§ 777.105 (Bay, river and harbor improvement) to 777.210 (Port may engage in certain port management activities)

Atty. Gen. Opinions

The ports authority to interfere with the states proprietary rights in its submerged or submersible lands, (1972) Vol 36, p 150

§§ 777.005 (Definitions for ORS 777.005 to 777.725 and 777.915 to 777.953) to 777.725 (Borrowing money to pay bonus)

Law Review Citations

Property owned by Port of Brookings Harbor



Data is only current as of 6/1/12 and was collected from Curry County GIS. For Internal Use Only.

NAD83 OR South; Bing Maps; Curry County
GIS: Brookings GIS; 12/27/12 jf

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Port of Brookings-Harbor

*Brookings Police Department
Contract Service Area*



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NAD83 OR South, Bing Maps,
Curry County GIS, Brookings GIS, 6/13/13 jf

LEGAL MEMORANDUM

TO: Mayor Hedenskog; Brookings City Council; City Manager

From: Martha D. Rice, City Attorney *MR*

Date: June 24, 2013

RE: Annexation of the Port of Brookings under the Brookings City Charter

A. Background

Recently the Port of Brookings Harbor expressed an interest in entering into an intergovernmental agreement with the City of Brookings for the provision of law enforcement services in the Port. As a result this discussion, the question of potentially annexing the Port into the City of Brookings was raised. The Port is currently served by the Harbor Water District. If the Port were annexed into the City, it is anticipated that the HWD would continue to supply water to the Port. ORS 222.520(1) states that when less than an entire district is annexed into a City, the annexed territory may remain a part of the district. Therefore, as far as the HWD is concerned, the annexed territory would continue to be served as it is today. The key question then becomes whether a vote of the electorate is required under the City Charter (Chapter XI, Section 42) since the proposed annexed territory will be receiving water service from an entity other than the City.

B. Legal Analysis

The Brookings City Charter, Chapter XI, Section 42 states,

The right to furnish the inhabitants of said City with water shall be forever vested in the City of Brookings, and no franchise, right or privilege shall hereafter be granted to or contract made with any person or corporation by said City to furnish or supply the said City or its inhabitants with water, without the authorization of the legal voters of said City.

A careful reading of the language of this section is critical to determining whether the voters must approve the annexation of the Port into the City of Brookings or whether the annexation can be processed as any other annexation. The language of Section 42 requires the approval of the voters only when the City will (1) **grant** a franchise, right or privilege or

(2) ***contract with*** a person or corporation to furnish or supply water to the City or its “inhabitants.” Either scenario requires affirmative action on the part of the City to allow the other “person or corporation” to furnish the annexed territory with water service. For purposes of simplification, this analysis can be broken down into two questions.

1. ***If the Port is annexed into the City, will the City grant a franchise, right, or privilege to the Harbor Water District to serve the City (Port) or its inhabitants with water?***
2. ***If the Port is annexed to the City, will the City contract with the Harbor Water District to serve the City (Port) or its inhabitants with water?***

The answer to both questions is ***no***. Annexing a portion of the Harbor Water District, i.e., the Port, would not require the City of Brookings to grant a franchise, right or privilege to the HWD, or to contract with the HWD, in order for the HWD to continue providing water service to the annexed territory. Therefore, neither of the circumstances requiring voter approval under Section 42 of Chapter XI of the Brookings City Charter would be triggered by the annexation of the Port into the City of Brookings.

C. Conclusion

If the City of Brookings were to annex the Port, which is part of the Harbor Water District, the HWD could continue to provide water service to the Port without any affirmative action on the part of the City (whether by grant of franchise, right or privilege or by contract). Therefore, the annexation of the Port of Brookings Harbor into the City of Brookings would not require the approval of the city voters under Section 42 of the Brookings City Charter.

K&L|GATES

K&L Gates LLP
222 SW Columbia Street
Suite 1400
Portland, OR 97201-6682
T 503.226.3200 www.klgates.com

November 20, 2009

Harvey W. Rogers
D (503) 226-5721
harvey.rogers@klgates.com

VIA E-MAIL

Ms. Janell Howard
Administrative Services Director
City of Brookings
898 Elk Drive
Brookings, OR 97415

Re: Chapters XI and XII of the Brookings City Charter

Dear Ms. Howard:

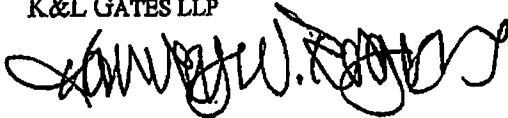
You have asked whether the City of Brookings may request its voters to repeal Chapters XI and XII of the City Charter. Chapter XI of the City Charter authorized the City to issue \$1.3 million of bonds to finance the City's water system. Chapter XII of the City Charter authorized the City to issue \$3.2 million of bonds to finance the City's wastewater system. Those chapters also grant the City certain powers in connection with its utility systems. Existing statutes currently grant the city equivalent powers.

You have advised us that the bonds described in Chapters XI and XII have all been issued and have all been repaid.

Chapters XI and XII do not grant the City any continuing authority that is not duplicated by statute. Chapters XI and XII of the City Charter may therefore be repealed.

Very truly yours,

K&L GATES LLP



By
Harvey W. Rogers

HWR:kel

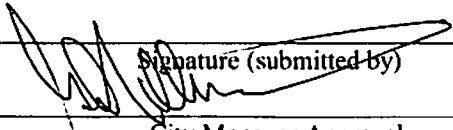
J:\CITIES\Brookings\Letter on Chapters XI and XII of the charter (FINAL).doc

CITY OF BROOKINGS

COUNCIL AGENDA REPORT

Meeting Date: June 24, 2013

Originating Dept: City Manager



Signature (submitted by)

City Manager Approval

Subject: Increase Off-Season Event Grant Maximum

Recommended Motion:

Motion to approve increase in maximum grant for tourism off-season event incentives to \$4,000.

Financial Impact:

Reduces the number of potential grants available to incentivize special events.

Background/Discussion:

The City Council earlier approved a proposal by the Tourism Promotion Advisory Committee (TPAC) to set aside \$10,000 in the current fiscal year to offer incentives to organizations or individuals who develop special events that would attract visitors during the "off-season."

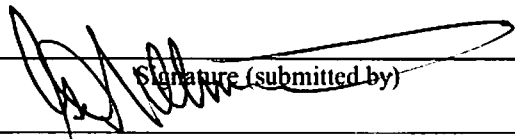
As recommended by TPAC, the maximum grant amount per event was set at \$1,000. At its meeting of May 30, 2013, the TPAC voted to request an increase in the maximum grant amount to \$4,000 per event. The TPAC has had preliminary discussion with several potential event organizers who have indicated that larger grant amounts would be needed to help fund start-up costs.

CITY OF BROOKINGS

COUNCIL AGENDA REPORT

Meeting Date: June 24, 2013

Originating Dept: City Manager



Signature (submitted by)

City Manager Approval

Subject: Port Orford Landfill Trust Fund Agreement

Recommended Motion:

Motion to adopt and authorize the Mayor to execute a new Port Orford Landfill Post-Closure Trust Fund Agreement replacing the 1993 Trust Agreement as Amended and appointment as successor trustee.

Financial Impact:

None.

Background/Discussion:

Please see the attached letter from County Counsel M. Gerald Herbage and the email from County Legal Assistant Colleen Carpenter. The City entered into an agreement in 1993 appointing a trustee in connection with a post-closure fund that has been established for the Port Orford Landfill. This landfill served as a principal landfill for the disposal of solid waste for Curry County communities for many years.

The Oregon Department of Environmental Quality (DEQ), which provides general oversight of the landfill post-closure, has requested a new agreement changing the trustee from South Valley Bank and Trust to Oregon Pacific Bank.

The City Attorney has reviewed the Agreement, which has been modified consistent with her suggestions.

Attachment(s):

- a. Letter from M. Gerald Herbage
- b. Email from Colleen Carpenter
- c. Trust Fund Agreement as updated November 16, 2012



Curry County Counsel

M. Gerard Herbage, County Counsel
94235 Moore Street, Suite 123
Gold Beach, Oregon 97444
(541) 247-3291
(541) 247-2718 Fax

MEMORANDUM

To: Michael Murphy, Jodi Fritts, Gary Milliman

mm

From: M. Gerard Herbage, Curry County Legal Counsel

Date: May 10, 2013

Re: Adoption of New Port Orford Landfill Post-Closure Trust Fund Agreement
Replacing the 1993 Trust Fund Agreement as Amended, and Appointment
of Successor Trustee

The Oregon Department of Environmental Quality (DEQ) has required Curry County to replace the current Port Orford Landfill Trust Agreement with the above-referenced agreement, in part to comply with OAR 340-095-0095(5). This would require approval by each of the cities in the county, as well as the County. The cities and County are grantors under the agreement.

Gary Milliman has requested that I send to him a couple of paragraphs explaining this action so that he can include that in the staff report to the City Council. Jodi Fritts has asked for a copy of the past agreement(s). Within this memo is an explanation of the County's request, and attached to the E Mail is a PDF of the prior agreements.

The original Port Orford Landfill agreement was adopted on March 8, 1993, with Curry County, and Brookings, Gold Beach and Port Orford as grantors, with First Interstate Bank of Oregon as Trustee, and with DEQ as a party (beneficiary). The purpose of the trust was to provide financial resources to be held by the Trustee for the Grantors to use the fund for the closure and post closure of the Port Orford Landfill. The funding came from collection rates approved by the grantors, and the closure account was to be for a period of 3 years from April 1, 1993, and the post-closure account for a period of 10 years from April 1, 1993.

The first amendment to the Port Orford Landfill Agreement was fully signed by the parties in July of 2002. This document provided that the successor trustee was Wells Fargo Bank. It eliminated references to the closure phase of the landfill as the landfill was in the post-closure phase. Of importance, the Trust Agreement provided in part: "Based upon the solid waste rates approved by the Grantors, franchisee shall collect amounts for the Post-Closure Account (at the rate of \$1.53 per ton) for a period of twenty years from April 1, 2003..." That is the current commitment of the grantors. The new agreement does not alter this commitment.

The second amendment to the Port Orford Landfill Agreement was for the purpose of allowing the resignation of Wells Fargo Bank as trustee and the appointment of South Valley Bank and Trust as successor trustee. It did not amend any provision regarding the amount of the fund to be collected, or its duration.

The document before you represents a new trust fund that will replace the old one, and which will recognize Oregon Pacific Bank as the successor trustee. It does not provide for any different amount of the fund to be collected, or alter the duration for which it is to be collected. I have included some language on the collection rate for this trust fund under Section 3, "Establishment of the Fund".

Thank you for your cooperation in working with me on this project regarding the Port Orford Landfill Trust Agreement. Should you have any questions regarding this matter, please let me know.

Gary Milliman

From: Colleen Carpenter [CarpenterC@co.curry.or.us]
Sent: Friday, May 10, 2013 11:49 AM
To: ESCH David; Patricia Riley; Gary Milliman; jfritts@goldbeachoregon.gov; Mike Murphy
Cc: mrice@attyblack.com; Jerry Herbage; Gary Short
Subject: Revised PO Landfill Post Closure Trust Fund Agreement
Attachments: Port Orford Trust Revised Agreement 51013.pdf; Memo from CC with Port Orford Trust Prior Agreements.pdf

Please find attached the new proposed "Adoption of New Port Orford Landfill Post-Closure Trust Fund Agreement Replacing the 1993 Trust Agreement as Amended and Appointment of Successor Trustee", along with a Memorandum from County Counsel, Jerry Herbage, which explains the background for this requested change and also has the prior agreements attached.

We have made changes as suggested by Brookings City Attorney, Martha Rice. We have also made the changes requested by Oregon Pacific Bank regarding the status of the previous trustee bank, South Valley Bank & Trust. In addition, we have inserted language to reflect the amount to be collected and the duration of time for that collection (page 3 – Section 3. – Added a third paragraph) . One other slight change was to remove the Trust Fund Account Number (page 11) and replace it with the following language "On file in the Office of County Counsel", as this agreement will be filed with County Clerk as a permanent record.

Please either email or give us a call at (541) 247-3291 if you have any questions, comments or concerns. If you would, please reply by next Friday, May 17th, as DEQ has asked that we move this along.

Thank you very much for your patience during this process and your help in moving this forward.

Sincerely,

Colleen Carpenter
Legal Assistant
(541) 247-3291

**ADOPTION OF NEW PORT ORFORD LANDFILL POST-CLOSURE
TRUST FUND AGREEMENT REPLACING THE 1993 TRUST
AGREEMENT AS AMENDED AND APPOINTMENT OF SUCCESSOR
TRUSTEE**

This agreement is agreed upon and entered into as of this date _____ by and among Curry County, a political subdivision of the State of Oregon, and the Cities of Brookings, Gold Beach, and Port Orford, all municipal corporations of the State of Oregon, (Grantors), and Oregon Pacific Bank, an Oregon state-chartered member bank, assignee and successor in interest for South Valley Bank & Trust, formerly an Oregon state-chartered non-member bank, (Trustee) and the Oregon Department of Environmental Quality, an agency of the State of Oregon.

Whereas, a Port Orford Landfill Post-Closure Trust Agreement was created in March of 1993, and amended in May of 2002 and December of 2004. The Grantors of the Trust were Curry County and the Cities of Brookings, Gold Beach, and Port Orford; and

Whereas, the Oregon Department of Environmental Quality (hereinafter "DEQ"), pursuant to OAR 340-095-0095(5) is requiring Curry County to replace the current trust agreement with a new trust fund agreement with wording approved by DEQ; and

Whereas, South Valley Bank & Trust assigned its rights, title and interest as trustee of the Port Orford Landfill Post-Closure Trust Agreement to Oregon Pacific Bank retroactive to September 26, 2012; and

Whereas, Oregon Pacific Bank has indicated to Curry County that it is willing to serve as successor trustee to the above-referenced trust; and

Whereas, all of the parties concur that the 1993 Port Orford Landfill Post-Closure Trust Agreement should be replaced in accordance with OAR 340-095-0095(5), and that Oregon Pacific Bank should be appointed successor trustee to South Valley Bank & Trust; and

Whereas, the past trust has been, and the new trust will be, funded from a component of the collection and disposal fees as specifically authorized by Curry County and the municipal authorities within Curry County (the Grantors). It is understood that Curry Transfer and Recycling (CTR) (the current franchisee) has consented by separate contract to collect such fees; and

Whereas, DEQ, an agency of the State of Oregon, has established certain regulations in OAR 340 Divisions 93 and 95 applicable to the Grantor, requiring that an owner or operator of a solid waste land disposal site or groups of sites must demonstrate financial responsibility for all costs of properly closing the site and providing post-closure care according to the closure or post-closure plan and solid waste permit requirements, and for corrective action according to a remedial action option developed and selected pursuant to OAR 340 Division 40; and

Whereas, the Grantors have elected to establish a Trust Fund to assure all of such financial responsibility for the facilities identified herein; and

Whereas, the Grantors, acting through their duly authorized officers, have selected the Trustee to be the trustee under this agreement, and the Trustee is willing to act as trustee; and

Whereas the Trustee is authorized to perform the duties of a trustee under the laws of the State of Oregon;

Now, therefore, the Grantors and the Trustee agree as follows:

Section 1. Definitions. As used in this Agreement:

- (a) The term "Grantors" means Curry County and the Cities of Brookings, Gold Beach, and Port Orford who enter into this Agreement and any successors or assigns of the Grantors;
- (b) The term "Trustee" means Oregon Pacific Bank which enters into this Agreement and any successor Trustee;
- (c) The term "Beneficiary" means DEQ; and
- (d) The term "Permittee" means Curry County

Section 1.5

- (a) This trust agreement shall replace and supersede the 1993 Port Orford Landfill Post-Closure Trust Agreement as amended.
- (b) South Valley Bank & Trust assigned its rights, title and interest as trustee of the Port Orford Landfill Post-Closure Trust Agreement to Oregon Pacific Bank retroactive to September 26, 2012.
- (c) Oregon Pacific Bank shall serve as successor trustee retroactive to September 26, 2012, with all rights, duties and responsibilities as outlined in this agreement.

Section 2. Identification of Facilities. This agreement pertains to the facility identified in Schedule A which is attached hereto and by this reference incorporated herein.

Section 3. Establishment of Fund. The Grantors and the Trustee hereby establish a Trust Fund (hereinafter, the "Fund") for the benefit of the State of Oregon acting by and through its Department of Environmental Quality. The purpose of the Fund is for post-closure and environmental control monitoring of the site. The Grantors and Trustee intend that no third party have access to the Fund except as herein provided.

The Fund is established initially as consisting of the property, which is acceptable to the Trustee, and described in Schedule B, which is attached hereto and by this reference incorporated herein. Such property and any other property subsequently transferred to the Trustee is referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantors, any payments necessary to discharge any liabilities of the Grantors established by DEQ.

Based upon the solid waste rates approved by the Grantors, franchisee will collect amounts for the post-closure account (at the rate of \$1.53 per ton) for a period of ten years from April 1, 2013. For purposes of this agreement, and unless otherwise amended, the post-closure account including income earned thereon shall be deemed fully funded at the end of the above-referenced ten year period, provided however, that income from the account after this ten year period shall not be considered to be excess for purposes of the trust solely by operation of this section.

Section 4. Payment. The Trustee shall satisfy a claim by making payments from the Fund only upon receipt of the following document:

(a) Certification from one or more Grantors that the claim should be paid. The certification must be worded as follows:

Certification of Valid Claim

The undersigned, as Grantor/s, hereby certify that the claim arising from providing post-closure care or required corrective action at Permittee's solid waste land disposal site should be paid in the amount of \$_____.

[Signature/s]

Grantor/s

The Grantor submitting the certification shall submit a copy of the certification to the other grantors.

Grantor/s shall provide the DEQ Director a copy of the certification in paragraph (a) of this section concurrently with the submittal thereof to Trustee. Trustee shall not pay the claim until 30 days have elapsed since the date of the Certification of Valid Claim and the DEQ Director shall not have objected in writing to the payment within this period.

Section 5. Payments Comprising the Fund. Payments made to the Trustee for the Fund shall consist of cash or securities acceptable to the Trustee.

Section 6. Trustee Management. The Trustee shall invest and reinvest the principal and income, in accordance with general investment policies and guidelines which a majority of the Grantors may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge his/her duties with respect to the Fund solely in the interest of the Beneficiary and with the care, skill, prudence, and diligence under the circumstance then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims, except that:

- (i) Securities or other obligations of the Grantor, or any other owner or operator of the facilities, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2.(a), shall not be acquired or held unless they are securities or other obligations of the Federal or a State government;
- (ii) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the Federal or State government; and
- (iii) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 7. Commingling and Investment. The Trustee is expressly authorized in its discretion:

- (a) To transfer from time to time any or all of the assets of the Fund to any common commingled, or collective trust fund created by the Trustee in which the fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and
- (b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 81a-1 et seq., including one

which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Section 8. Express Powers of Trustee. Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

- (a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;
- (b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;
- (c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;
- (d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the Federal or State government; and
- (e) To compromise or otherwise adjust all claims in favor of or against the Fund.

Section 9. Taxes and Expenses. All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements of the Trustee shall be paid from the Fund.

Section 10. Annual Valuations. The Trustee shall annually, at least 30 days prior to the anniversary date of establishment of the Fund, furnish to the Permittee and to the DEQ Director a statement confirming the value of the Fund. Any securities in the Fund shall be valued at market value -- as of no more than 60 days prior to the anniversary date of establishment of the Fund. The failure of the Permittee to object in writing to the Trustee within 90 days after the statement has been furnished to the Permittee and the DEQ Director shall constitute a conclusively binding assent by the Permittee barring the Permittee from asserting any claim or liability against the Trustee with respect to matters disclosed in the statement.

Section 11. Advice of Counsel. The Trustee may from time to time consult with counsel, who may be counsel to the Permittee with respect to any question arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 12. Trustee Compensation. The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Permittee.

Section 13. Successor Trustee. The Trustee may resign or the Grantors may replace the Trustee, but such resignation or replacement shall not be effective until the Grantors have appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantors cannot or do not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in a writing sent to the Grantors, the DEQ Director, and the present Trustee by certified mail 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this section shall be paid as provided in Section 9.

Section 14. Instructions to the Trustee. All orders, requests, and instructions by the Grantors to the Trustee shall be in writing, signed by such persons as are designated in the attached Schedule C or such other designees as the Grantors may designate by amendments to Schedule C. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantors' orders, requests, and instructions. All orders, requests, and instructions by the DEQ Director to the Trustee shall be in writing, signed by the DEQ Director or his/her designees, and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or DEQ hereunder has occurred. The Trustee shall have no

duty to act in the absence of such orders, requests, and instructions from the Grantors and/or DEQ, except as provided for herein.

Section 15. Notice of Payment. If a payment is made under Section 4 of this Agreement, the Trustee shall notify the Permittee and DEQ of such payment and the amount(s) thereof within five (5) working days.

Section 16. Amendment of Agreement. This Agreement may be amended by an instrument in writing executed by the Grantors, the Trustee, and the DEQ Director, or by the Trustee and the DEQ Director if the Grantors cease to exist.

Section 17. Irrevocability and Termination. Subject to the right of the parties to amend this Agreement as provided in Section 16, this Agreement shall be irrevocable and shall continue until terminated in writing by the Grantors, the Trustee, and the DEQ Director, or by the Trustee and the DEQ Director, if the Grantors cease to exist. Upon termination of this Agreement, all remaining Fund property, less final Fund administration expenses, shall be delivered to the Grantors. The disbursement of assets by Grantors shall be distributed to reduce the rates that persons within the grantors' jurisdictional area are charged for solid waste collection services as defined by ORS 459.005(3). Said rate reductions shall be made on an equal basis for Grantors' ratepayers provided each jurisdiction charges its ratepayers an equal amount for the fund. If any such jurisdiction charges more or less for the fund than other contributing jurisdictions, the rate adjustment shall be proportionally adjusted.

The DEQ Director will agree to termination of this Agreement when the Grantor substitutes alternate financial assurance as specified by Division 95 of OAR, Chapter 340.

Section 18. Immunity and Indemnification. The Trustee shall not incur any liability of any nature in connection with any act or omission, made in good faith, and in accordance with this Agreement, in the administration of this Agreement, or in carrying out any directions by the Grantors or the DEQ Director issued in accordance with this Agreement subject to the limitations within the Oregon Tort Claims Act and the Oregon Constitution. The Trustee shall be indemnified and saved harmless by the Grantors from and against any and all liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity related to this Agreement, including all expenses reasonably incurred in its defense in the event the Grantors in their sole discretion choose not to provide such defense; provided however that the Trustee shall not be entitled to be indemnified for any liability arising from its own gross negligence or willful misconduct or the gross negligence or willful misconduct of its officers, employees or agents.

Section 19. Choice of Law. This Agreement shall be administered, construed, and enforced according to the laws of the State of Oregon.

Section 20. Interpretation. As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

[This space intentionally left blank; Signature Pages to Agreement follow]

In Witness Whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and attested as of the date first above written.

GRANTORS:

Curry County

By: _____
Signature Printed Name
Title: _____

Attest: _____
Signature Printed Name
Title: _____

City of Brookings

By: _____
Signature Printed Name
Title: _____

Attest: _____
Signature Printed Name
Title: _____

City of Gold Beach

By: _____
Signature Printed Name
Title: _____

Attest: _____
Signature Printed Name
Title: _____

City of Port Orford

By: _____
Signature Printed Name
Title: _____

Attest: _____
Signature Printed Name
Title: _____

SUCCESSOR TRUSTEE:

Oregon Pacific Bank

By: _____
Signature Printed Name

Title: _____

Attest: _____
Signature Printed Name

Title: _____

**STATE OF OREGON, acting by and through the
DEPARTMENT OF ENVIRONMENTAL QUALITY**

By: _____
Signature Printed Name

Title: _____

Attest: _____
Signature Printed Name

Title: _____

SCHEDULE A

Facility Name: Port Orford Disposal Site

Facility Address: 42750 Arizona Street
Port Orford, OR 97465

DEQ Solid Waste Permit Number: 210

Current Closure Cost Estimate/s: N/A

Current Post-Closure Cost Estimate/s: \$152,685

Current Corrective Action Cost Estimate/s: N/A

SCHEDULE B

Type of Financial Instrument:	Trust Fund
Executed by:	Oregon Pacific Bank P.O. Box 1784 Medford, OR 97501
Date of Trust Fund Execution:	June 19, 2013
Trust Fund Account Number:	On file in Office of Curry County Counsel
Trust Fund Amount:	\$212,910.47 (through December 31, 2012)

SCHEDULE C

GRANTOR - CURRY COUNTY

Name: _____

Title: _____

Signature: _____

GRANTOR - CITY OF BROOKINGS

Name: _____

Title: _____

Signature: _____

GRANTOR - CITY OF GOLD BEACH

Name: _____

Title: _____

Signature: _____

GRANTOR - PORT ORFORD

Name: _____

Title: _____

Signature: _____

BENEFICIARY

Name: _____


Title: _____

Signature: _____

CITY OF BROOKINGS

COUNCIL AGENDA REPORT

Meeting Date: June 24, 2013


Signature (submitted by)

Originating Dept: Finance & HR

City Manager Approval

Subject: Adopting System Replacement Fees for 2013-14, repealing Resolution 13-R-996 and rescinding Resolution 13-R-1008.

Recommended Motion:

Adopt Resolution 13-R-1010, adopting System Replacement Fees for 2013-14.

Financial Impact:

None.

Background /Discussion:

Resolution 13-R-1008 was adopted on May 28, 2013. That resolution inadvertently stated that it "repealed Resolution 13-R-983" which was already repealed by Resolution 13-R-996 in January 2013, for the increase in fees due to the storm damage in November 2012. Resolution 13-R-1010, repeals Resolution 13-R-996, as originally intended, and rescinds Resolution 13-R-1008.

Attachment:

Resolution 13-R-1010 System Replacement Fees

CITY OF BROOKINGS

RESOLUTION 13-R-1010

A RESOLUTION ADOPTING FEES AND CHARGES FOR SYSTEM REPLACEMENT FOR THE WATER SYSTEM, WASTEWATER SYSTEM, STREET SYSTEM, AND STORM WATER SYSTEM, AND ESTABLISHING AN ANNUAL INFLATIONARY ADJUSTMENT FOR REPLACEMENT CHARGES, REPEALING RESOLUTION 13-R-996, AND RESCINDING RESOLUTION 13-R-1008.

WHEREAS, Ordinance 87-O-419 provides for adoption of System Replacement Charges and Ordinance 06-O-574 provides for all future revisions to System Replacement Charges to be adopted by resolution of the City Council; and

WHEREAS, the collection of reasonable charges are necessary to finance capital replacement, non-capacity increasing extension, and non-capacity increasing expansion of municipal utility facilities, including the acquisition of land or rights-of-way thereto; and

WHEREAS, the City Council desires to have the monthly user charges for City of Brookings Utilities System Replacement be increased or decreased annually at July 1, in accordance with the Consumer Price Index for all urban consumers (CPI-U), March to March; and

WHEREAS, the CIP-U increased 1.5% from March 2012 to March 2013;

NOW, THEREFORE, BE IT RESOLVED: by the Mayor and City Council of the City of Brookings, Curry County, Oregon, that effective July 1, 2013, the following Utilities System Replacement Charges are replacing the current Utilities System Replacement Charges:

<u>CHARGE</u>	<u>RATE</u>
Street System Replacement	\$2.94
Water System Replacement	\$2.90
Wastewater System Replacement	\$3.72
Stormwater System Replacement	\$4.07

BE IT FURTHER RESOLVED that Resolution 13-R-996 is repealed in its entirety.

PASSED by the City Council June 24, 2013.

Attest:

Mayor Ron Hedenskog

City Recorder Joyce Heffington

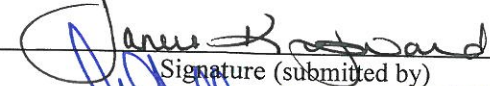
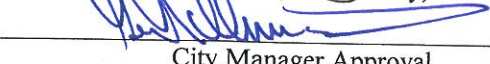
Date:

CITY OF BROOKINGS

COUNCIL AGENDA REPORT

Meeting Date: June 24, 2013

Originating Dept: Finance and HR


Signature (submitted by)

City Manager Approval

Subject: Transfer of Appropriations for FY 2012-13 Budget.

Recommended Motion:

- Adopt Resolution 13-R-1011 approving appropriation transfers for insurance proceeds received.
- Adopt Resolution 13-R-1012 accepting grants and donations and appropriating those funds.
- Adopt Resolution 13-R-1013 transferring appropriations from contingency to Legislative/Administration and Parks and Recreation.
- Adopt Resolution 13-R-1014 approving appropriation transfers in the General Fund, Wastewater Fund and the Technology Reserve Fund
- Adopt Resolution 13-R-1015, approving appropriation transfers in the Streets System Replacement Fund, Water System Replacement Fund, Wastewater System Replacement Fund, and Stormwater System Replacement Fund.

Financial Impact:

There is no net impact to the 2012-13 budget; additional revenues equaled additional expenditures, expenditure increases netted against expenditure decreases.

Background /Discussion:

Oregon local budget law allows municipalities to make transfers of appropriations through a resolution adopted by the governing body, and accept donations and grants, and appropriate through a resolution; accept and appropriate insurance proceeds; appropriate loan proceeds, and transfer up to 15% of fund expenditures from contingency. Appropriation transfers are for the following funds:

General Fund – Legislative/administrative - Transfer \$20,000 of appropriations from contingency to the legislative/administration. Accept \$5,000 donation from ICMA for management training. *Police*;- accept and appropriate grants for \$12,696 from ODOT for Pedestrian Safety and DUII Enforcement. *Parks and Recreation* – Transfer \$20,000 of appropriations from contingency to parks and recreation; accept insurance proceeds of \$635 for damage to Azalea Park; accept grant from West Family Foundation for \$10,000. *Finance and Human Resources* – increased personal services \$35,000 from transfer in from Technology Reserve Fund. *Non-departmental* - accept grant for electronic entry lock system for city hall for \$10,200.

Streets Fund – Accept insurance proceeds of \$2,494 for damage to a public works truck.

Wastewater Fund – Personal services increased \$80,000 while capital outlay decreased by \$80,000.

Technology Reserve Fund – Materials and services decreased by \$47,000 while capital outlay increased by \$12,000 and Transfers to the General Fund increased by \$35,000.

Special Police Fund – Accepted insurance proceeds of \$2,844 for injury to city canine.

System Replacement Funds – Increased resources from Loan Proceeds totaling \$850,000 and appropriating capital outlay.

Attachments:

Resolution 13-R-1011 Appropriate insurance proceeds

Resolution 13-R-1012 Accept and appropriate grants and donations

Resolution 13-R-1013 Appropriation transfer from contingency

Resolution 13-R-1014 Appropriation transfers

Resolution 13-R-1015 Appropriation transfers, loan proceeds

CITY OF BROOKINGS

RESOLUTION 13-R-1011

A RESOLUTION OF THE CITY OF BROOKINGS APPROVING APPROPRIATION TRANSFERS IN THE GENERAL FUND AND STREETS FUND FOR INSURANCE PROCEEDS RECEIVED .

WHEREAS, the City of Brookings ("City") is a municipal corporation which is subject to Oregon Budget Law; and

WHEREAS, ORS 294.450 allows for a transfer of appropriation if authorized by the governing body; and

WHEREAS, the City needs to accept insurance proceeds from damage to property at Azalea Park, to a Public Works' vehicle, and an injury suffered by a city canine, and

NOW, THEREFORE, BE IT RESOLVED THAT the City Council of the City of Brookings hereby authorizes a transfer of appropriation pursuant to ORS 294.338.

BE IT FURTHER RESOLVED THAT that for the fiscal year beginning July 1, 2012, and for purposes shown below are hereby revised by the City Council as follows:

General Fund

Resources:		
Other Revenue	\$	635
Requirements:		
Materials and services	\$	635

Streets Fund

Resources:		
Other Revenue	\$	2,494
Requirements:		
Materials and services	\$	2,494

Special Police Fund

Resources:		
Other Revenue	\$	2,844
Requirements:		
Materials and services	\$	2,844

Passed by the City Council June 24, 2013, and made effective the same date.

Attest:

Mayor Ron Hedenskog

City Recorder Joyce Heffington

Res 13-R-1011, City budget transfers Insurance Proceeds

CITY OF BROOKINGS

RESOLUTION 13-R-1012

A RESOLUTION OF THE CITY OF BROOKINGS ACCEPTING SPECIFIC PURPOSE GRANTS AND DONATIONS AND APPROPRIATING THOSE FUNDS

WHEREAS, the City of Brookings ("City") is a municipal corporation which is subject to Oregon Budget Law; and

WHEREAS, ORS 294.338 allows the governing body to accept and appropriate specific purpose donations in the year of receipt, and

WHEREAS, the City Council accepts a grant of \$10,000 from the West Family Foundation for backstops at Bud Cross Park, and

WHEREAS, the City Council accepts a grant of \$10,200 from City County Insurance Services, for the purchase of an electronic entry lock system for city hall, and

WHEREAS, the City Council accepts a grant of \$12,696 from Oregon Department of Transportation, for Pedestrian Safety Enforcement and DUII Enforcement, and

WHEREAS, the City Council accepts a grant of \$4,896 from Oregon Department of Transportation, for speed equipment, and

WHEREAS, the City Council accepts a donation of \$5,000 from the International City/County Manager's Association, for management training, and

NOW, THEREFORE, BE IT RESOLVED THAT the City Council of the City of Brookings hereby accepts grants and appropriates funds pursuant to ORS 294.338.

BE IT FURTHER RESOLVED THAT that for the fiscal year beginning July 1, 2012, and for purposes shown below are hereby revised by the City Council as follows:

General Fund

Resources:	
Donations	\$ 5,000
Grants	32,896
Requirements:	
Legislative/administration	\$ 5,000
Police	12,696
Parks	10,000
Non-departmental	10,200

Special Police Fund

Resources:	
Donations	4,896
Requirements:	
Capital Outlay	4,896

Passed by the City Council June 24, 2013, and made effective the same date.

Attest:

Mayor Ron Hedenskog

City Recorder Joyce Heffington

CITY OF BROOKINGS

RESOLUTION 13-R-1013

A RESOLUTION OF THE CITY OF BROOKINGS TRANSFERRING APPROPRIATIONS FROM GENERAL FUND CONTINGENCY TO LEGISLATIVE/ADMINISTRATION AND PARKS AND RECREATION.

WHEREAS, the City of Brookings ("City") is a municipal corporation which is subject to Oregon Budget Law; and

WHEREAS, ORS 294.463(2) allows the governing body to transfer from Contingency to other appropriations category, up to 15% of the total appropriations of the fund, and

WHEREAS, expenditures will be more than expected in the General Fund Legislative/Administration Division than anticipated due to increased legal and professional services fees and due to the Parks and Recreation department being restructured since the budget was adopted, and

WHEREAS, the City Council approves transferring those funds from Contingency, and

NOW, THEREFORE, BE IT RESOLVED THAT the City Council of the City of Brookings hereby transfers \$40,000 from General Fund Contingency to the Legislative/Administration, and Parks and Recreation, pursuant to ORS 294.463(2).

BE IT FURTHER RESOLVED THAT that for the fiscal year beginning July 1, 2012, and for purposes shown below are hereby revised by the City Council as follows:

General Fund

Requirements:

Legislative/Administrative	\$ 20,000
Parks and Recreation	20,000
Contingency	\$ (40,000)

Passed by the City Council June 24, 2013, and made effective the same date.

Attest:

Mayor Ron Hedenskog

City Recorder Joyce Heffington

CITY OF BROOKINGS

RESOLUTION 13-R-1014

A RESOLUTION OF THE CITY OF BROOKINGS APPROVING APPROPRIATION TRANSFERS IN THE GENERAL FUND, WASTEWATER FUND, AND TECHNOLOGY RESERVE FUND.

WHEREAS, the City of Brookings ("City") is a municipal corporation which is subject to Oregon Budget Law; and

WHEREAS, ORS 294.463(3) allows for a transfer of appropriation if authorized by the governing body; and

WHEREAS, the City anticipates higher resources from transfers in, in the General Fund and higher personal services expenditures in the Finance and Human Resources Division, and

WHEREAS, the City anticipates higher personal services expenditures and lower capital expenditures in the Wastewater Fund, and

WHEREAS, the City anticipates lower materials and service expenditures and higher capital expenditures and higher transfers out, in the Technology Reserve Fund, and

NOW, THEREFORE, BE IT RESOLVED THAT the City Council of the City of Brookings hereby authorizes a transfer of appropriation pursuant to ORS 294.463(3).

BE IT FURTHER RESOLVED THAT that for the fiscal year beginning July 1, 2012, and for purposes shown below are hereby revised by the City Council as follows:

General Fund

Resources:

Transfers In	\$ 35,000
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Requirements:

Finance and Human Resources	\$ 35,000
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Wastewater Fund

Requirements:

Personal services	\$ 80,000
Capital Outlay	(80,000)

Technology Reserve Fund

Requirements:

Materials and services	\$ (47,000)
Capital Outlay	12,000
Transfers Out	35,000

Passed by the City Council June 24, 2013, and made effective the same date.

Attest:

Mayor Ron Hedenskog

City Recorder Joyce Heffington

CITY OF BROOKINGS

RESOLUTION 13-R-1015

A RESOLUTION OF THE CITY OF BROOKINGS APPROVING APPROPRIATION TRANSFERS IN THE STREETS SYSTEM REPLACEMENT FUND, THE WATER SYSTEM REPLACEMENT FUND, THE WASTEWATER SYSTEM REPLACEMENT FUND, AND THE STORMWATER SYSTEM REPLACEMENT FUND.

WHEREAS, the City of Brookings ("City") is a municipal corporation which is subject to Oregon Budget Law; and

WHEREAS, ORS 294.338(4) allows for a transfer of appropriation if authorized by the governing body; and

WHEREAS, the City received loan proceeds of \$850,000 during fiscal year 2012-13, to make infrastructure repairs and improvements due to the November 2012 storm, and

WHEREAS, the City anticipates higher capital expenditures in the Streets System Replacement Fund, the Water System Replacement Fund, the Wastewater System Replacement Fund, and the Stormwater System Replacement Fund, and

NOW, THEREFORE, BE IT RESOLVED THAT the City Council of the City of Brookings hereby authorizes a transfer of appropriation pursuant to ORS 294.338(4).

BE IT FURTHER RESOLVED THAT that for the fiscal year beginning July 1, 2012, and for purposes shown below are hereby revised by the City Council as follows:

Streets System Replacement Fund

Resources:

Loan Proceeds \$ 43,302

Requirements:

Capital Outlay \$ 43,302

Water System Replacement Fund

Resources:

Loan Proceeds \$ 25,146

Requirements:

Capital Outlay \$ 25,146

Wastewater System Replacement Fund

Resources:

Loan Proceeds \$ 301,757

Requirements:

Capital Outlay \$ 301,757

Stormwater System Replacement Fund

Resources:

Loan Proceeds \$ 479,795

Requirements:

Capital Outlay \$ 479,795

Passed by the City Council June 24, 2013, and made effective the same date.

Attest:

Mayor Ron Hedenskog

City Recorder Joyce Heffington

City of Brookings

CITY COUNCIL MEETING Minutes

City Hall Council Chambers, 898 Elk Drive, Brookings, OR 97415

Monday, June 10, 2013

Call to Order

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

Roll Call

Council Present: Mayor Ron Hedenskog, Councilors Bill Hamilton, Brent Hodges, Jake Pieper and Kelly McClain; a quorum present.

Staff Present: City Manager Gary Milliman, Finance & Human Resources Director Janell Howard, Public Works & Development Director Loree Pryce, Fire Operations Chief Jim Watson, City Attorney Martha Rice and City Recorder Joyce Heffington.

Others Present: Pilot Reporter Jane Stebbins and 10 others.

Councilor Pieper moved, a second followed and Council voted unanimously to add agenda item D-4 [under Ceremonies/Appointments/Announcements, to consider approval for the Mayor to meet with the County Commissioners on June 11th, 2013].

Ceremonies/Appointments/Announcements

Mayor Hedenskog proclaimed June 9th through June 15th as Supreme Americanism Week.

Mayor Hedenskog introduced new Public Works Utility Employees, Timothy Brush and Dennis Tippetts (Parks).

Mayor Hedenskog announced June Yard of the Month Awards:

- Best Residential – Melanie Eaton, 311 Maple Street
- Best Commercial – Chiman & Meenaxi Patel, Westward Inn, 1026 Chetco Ave

Mayor's meeting with County Commissioners regarding the proposed sales tax measure.

Mayor Hedenskog said the meeting was the result of a Council approved letter to the Commission from the three mayors requesting a joint meeting to discuss the tax levy.

Councilor Hodges said it was an open meeting and any Council member could attend.

City Attorney Rice said she would not recommend more than two Council members attending but she would look into any possible exceptions, one of which might be a noticed meeting by another public body.

City Recorder Heffington said the pertinent issue relating to public meeting law was whether or not Council would be discussing something with the Commission which may later come up for a vote before Council and Rice said she would get back to the Council on the matter.

Councilor Pieper said he was okay with the Mayor meeting with the Commissioners as long as the Mayor did not state a City position.

Mayor Hedenskog said he would only be supporting the citizen's right to have this on a ballot.

Councilor McClain said he was for establishing a lower rate with rounding to a ¼ cent and that the Commission should not be forced to allocate everything to public safety. He also said

more time was needed before the measure was put on the ballot and that November made more sense.

Councilor Hamilton said he would also like to see the measure on the November ballot and was against putting a sunset on the tax.

Councilor Hodges said he was okay with the Mayor attending the meeting.

Councilor McClain said implementation of a Transient Occupancy Tax should be included in the measure to reduce the burden of the sales tax and that he was still not 100% convinced that a sales tax was the right thing to do.

Councilor Pieper cautioned the Mayor that having input into the measure could be construed by the County as a strong indication of endorsement, and by association, be seen as having the support of the Council.

Councilor McClain said the most important point was that the citizens were being rushed.

Councilor Pieper moved, a second followed and Council voted unanimously to approve the Mayor meeting with the Commissioners [on June 11, 2013 regarding the proposed tax measure].

Staff Reports

Status of various State and legislative regulatory matters.

City Manager Milliman provided an update on the outcome of the Chetco River Rulemaking and current status of House Bills 2186, 2206 and 3453, and Senate Bill 173.

Councilor Hamilton said the state would have trouble enforcing the Chetco River rule.

Renewal of amended Intergovernmental Agreement with the Upper Chetco Rural Fire Protection District (UCFPD).

City Manager Milliman gave the staff report.

Chief Watson reported on the work being done to attract volunteers and on the station itself. The City's equipment being stored there, he said, is routinely exercised and used in training.

Councilor Pieper moved, a second followed and Council voted unanimously to renew a three-year Intergovernmental Agreement between the City of Brookings and the Upper Chetco Rural Fire Protection District with the addition of Section 4.05, Volunteer Recruitment, to commence July 1, 2013.

Consent Calendar

- Approve Council minutes for May 28, 2013.
- Accept May 2013 Vouchers in the amount of \$415,270.53.

Councilor Hodges moved, a second followed and Council voted unanimously to approve the Consent Calendar as written.

Remarks from Mayor and Councilors

Councilor McClain said he wanted to reiterate to the County that Brookings is interested in finding a good solution to the fiscal crises.

Adjournment into Executive Session

Mayor Hedenskog moved, a second followed and Council voted unanimously by voice vote to adjourn at 7:44 PM into Executive Session in the City Manager's office, under authority of

ORS 192.660(2)(f), "to consider information or records that are exempt by law," and under the authority of ORS 192.660 (2)(e), "to conduct deliberations with persons designated by the governing body to negotiate real property transactions."

Respectfully submitted:

ATTESTED:

this _____ day of _____ 2013:

Ron Hedenskog, Mayor

Joyce Heffington, City Recorder

MINUTES
BROOKINGS PARKS AND RECREATION COMMISSION
January 24, 2013

CALL TO ORDER

Vice Chair Don Vilelle called the meeting to order followed by the Pledge of Allegiance

ROLL CALL

Present: Commissioners Don Laque, Garth Richey and Don Vilelle

Also present: Parks/Tech Services Supervisor Tony Baron

Absent: Chairperson Patricia Brown

APPROVAL OF MINUTES

A. Motion made to approve the minutes of December 13, 2012 as written; motion seconded and Commission voted; the motion carried unanimously.

PUBLIC APPEARANCES

Resident of Chetco River Resort was in the audience and was curious about the Park Model caretaker proposal at Azalea Park. She stated that she volunteers with the Azalea Park Foundation and believes it would be a deterrent for vandals if a caretaker was in the park.

REGULAR AGENDA

- Azalea Park Caretakers Residence - Tony Baron discussed the history and current proposal for a caretaker at Azalea Park to deter vandalism in the park. Presented police log of call outs to Azalea Park demonstrating the need for a presence in the park. He advised the position could be made responsible for some park duties, reducing time/costs for PW crews and the facility could include a storage building that would alleviate the need for transporting park equipment. Commissioners questioned the costs, location, responsibilities, and availability of funds. Commissioner Vilelle commented that he could not justify the cost and did not believe it would reduce the problems as a caretaker cannot be in all places at once and believes it might become a game for the juveniles to dodge the caretaker. Tony advised it might work to first try installing more lighting and cameras to alleviate problem. Commissioner Richey believes that live-in park hosts do somewhat deter extracurricular activity from going on but uncertain if it would deter determined vandals. Also was suggested to develop a volunteer patrol program. Commissioners recommended first step of installing additional cameras and lighting to see if that deterred vandalism. **Commissioner Ritchey made a motion to install extra cameras and increase lighting in Azalea Park; motion seconded and Commission voted; the motion carried unanimously.** Tony Baron to forward recommendation to the City Council.

INFORMATION UPDATES/DISCUSSION ITEMS

- Parks Capital Improvement List - Tony distributed in agenda packet capital improvement list and requested Commissioners prioritize items and return data to him for compilation for the upcoming budget process. Some suggested additional items to be considered included:
 - security camera system at Bud Cross Park and City pool to deter vandalism
 - resurfacing tennis courts and swimming pool
 - replace azaleas at Bankus Fountain
 - park land acquisition at Dawson Tract, Bud Cross, Lundeen Lane to expand parksCommissioners to return lists and Tony to compile the data.
- Parks Maintenance Matrix - Tony presented the park maintenance matrix identifying the amount of time and costs for park maintenance which shows where a lot of time is spent in the parks to establish budgeting, time management in parks and employee responsibility for the

past six months. Indicates parks have been maintained at a basic level fairly well.

- Unleashed Dog Areas - Tony presented idea to provide unfenced unleashed dog areas in approved park areas for dog owners, which could be an inexpensive way to provide dog owners a dog park, as no fencing would be required would provide an alternative area for dog owners to use rather than the ball fields. Suggested park areas included an area of Stout Park, Bud Cross Park and Azalea Park. Back areas of Stout and Azalea Park are already being used by dog owners. Commissioner Leque and Richey questioned city's liability if dogs bite in a park labeled area and the responsibility of dog owners. The Municipal Code language would have to be changed to accommodate designated unleashed areas and signage would be required. Commission interested in the idea, Tony to bring proposed municipal code language changes to next meeting and proposed rules and regulations.
- Festival of the Arts at Stout Park - Tony presented Park Use Permit request from Pelican Bay Artists Association to host the Festival of the Arts at Stout Park in August. Applicants have covered requirements by the city and have addressed parking with neighbors in the area, they will be required to pay fees and submit festival details and maps. No objections from the Commission.

STAFF UPDATES

- Progress on Parks Projects
 - *Bud Cross Park* - 95% done, fencing, sidewalks, final details finishing up.
 - *Mill Beach* - design and bidding process scheduled for May, slated for construction this summer.
- *Trail Grant* - have applied for a recreational trail grant for the Harris Beach trail to tie into the ODOT Dawson trail currently in planning.
- Scheduling of February meeting - Tony advised he would like to schedule a February meeting with the commission to finalize and vote on the Capital Improvement List and budgeting. Meeting scheduled for Thursday, February 21, 2013 at 7pm.

COMMISSIONER REPORTS/COMMENTS

Commissioner Richey - advised that his term expires February 1 and would like to reapply. Will submit paperwork.

ADJOURNMENT

With no further business before the Commission, the meeting adjourned at 8:21pm. Next meeting is scheduled for February 21, 2013.

Respectfully submitted,

Don Vilella - acting chair
Patricia Brown, Chair
(approved at February 21, 2013 meeting)

MINUTES
BROOKINGS PARKS AND RECREATION COMMISSION
February 21, 2013

CALL TO ORDER

Chair Patricia Brown called the meeting to order followed by the Pledge of Allegiance

ROLL CALL

Present: Commissioners Garth Richey, Don Vilelle and Chair Patricia Brown

Also present: Parks/Tech Services Supervisor Tony Baron *Absent:* Commissioner Don Leque

APPROVAL OF MINUTES

- A. Motion made by Commission Vilelle to approve the minutes of January 24, 2013 as written; motion seconded and Commission voted; the motion carried unanimously.**

PUBLIC APPEARANCES

None

REGULAR AGENDA

- A. Unleashed Dog Areas - Tony Baron presented proposed BMC revisions to designate areas for future unleashed dog areas in City parks. **Commissioner Ritchey made a motion to accept the suggested revisions to BMC 8A and 12.25.012, Rules and Regulations specific to City owned parks regarding unleashed dogs except in designated areas; motion seconded and Commission voted; the motion carried unanimously.**
- B. Parks Capital Improvement List - Tony Baron presented the completed Parks Capital Improvement List. Commissioner Vilelle and Ritchey questioned the need for a caretakers residence at Azalea Park and requested it be pulled from the list and that further security costs be put into camera and lighting upgrades. Commissioner Ritchey questioned Easy Manor Park maintenance costs and Mill Beach access improvement funds, which Tony explained. Commissioners had no further projects to add. **Commissioner Vilelle made a motion to accept the Parks Project Top 15 with the subtraction of the Azalea Park Caretakers residence for \$82,000; motion seconded and Commission voted; the motion carried unanimously.**

INFORMATION UPDATES/DISCUSSION ITEMS

- A. Safety of large fir tree behind backstop at Azalea Ball Field #2 - Tony Baron believes the tree may be unsafe and has the potential to do property damage and/or physical damage. Would like to get the professional opinion of an arborist as to the trees condition. Commission agreed.

STAFF UPDATES

- Met with ODOT regarding Chetco Bridge area maintenance. Costs and details are still being determined, an intergovernmental maintenance agreement is being pursued.

COMMISSIONER REPORTS/COMMENTS

Chair Brown - Bud Cross Park looking great with handicapped access and improvements.

ADJOURNMENT

With no further business before the Commission, the meeting adjourned at 7:34pm.

Respectfully submitted,



Patricia Brown, Chair

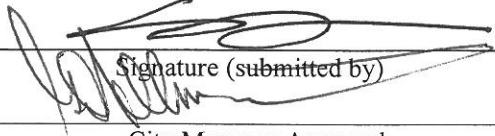
(approved at May 23, 2013 meeting)

CITY OF BROOKINGS

COUNCIL AGENDA REPORT

Meeting Date: June 24, 2013

Originating Dept: Public Works


Signature (submitted by)

City Manager Approval

Subject: Amended Oregon Department of Transportation (ODOT) Fund Exchange Agreement

Recommended Motion:

Authorize the Mayor to execute Amendment #2 to Oregon Department of Transportation, 2011 Fund Exchange Agreement #27580.

Financial Impact:

The City will receive \$210,528.04 in State funds in exchange for \$223,666 in Federal funds.

Background/Discussion:

The City is eligible to receive \$223,666 in Federal funds for sidewalk improvement projects. Due to the high administrative costs associated with the use of Federal funds, many local agencies exchange Federal funding for State funding, which has lower administration costs. City staff has worked with ODOT staff to develop a fund exchange agreement that will provide the City with \$210,528.04 in State funds in exchange for \$223,666 in Federal funds. The City had entered into an earlier agreement regarding this matter, but additional funding has become available necessitating an amendment to the agreement.

Funds will be used for sidewalk improvements adjacent to Bud Cross Park along Ransom Avenue.

Policy Considerations:

By approving this fund exchange, more funding will be made available for actual construction.

Attachment(s):

- a. Amendment #2 to ODOT, 2011 Fund Exchange Agreement #27580

AMENDMENT NUMBER 02
2011 FUND EXCHANGE AGREEMENT
Bud Cross Park Sidewalk Improvements
City of Brookings

The **State of Oregon**, acting by and through its Department of Transportation, hereinafter referred to as "State," and the **City of Brookings**, acting by and through its elected officials, hereinafter referred to as "Agency," entered into an Agreement on July 19, 2011, and Amendment Number 01 on May 25, 2012. Said Agreement covers Agency's fund exchange project.

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

TERMS OF AGREEMENT, Paragraph 3, Page 1, which reads:

3. To assist in funding the Project, Agency has requested State to exchange 2011 & 2012 federal funds, which have been allocated to Agency, for state funds based on the following ratio:

\$94 state for \$100 federal

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

3. To assist in funding the Project, Agency has requested State to exchange 2011, 2012 & 2013 federal funds, which have been allocated to Agency, for state funds based on the following ratio:

\$94 state for \$100 federal

TERMS OF AGREEMENT, Paragraph 4, Page 1, which reads:

4. Based on this ratio, Agency wishes to trade \$144,097 federal funds for \$135,450.24 state funds.

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

4. Based on this ratio, Agency wishes to trade \$223,666 federal funds for \$210,528.04 state funds.

TERMS OF AGREEMENT, Paragraph 5, Page 1, which reads:

5. The term of this Agreement will begin upon execution and will terminate two (2) years after all required signatures are obtained unless extended by an executed amendment.

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

5. The term of this Agreement will begin upon execution and will terminate three (3) years after all required signatures are obtained unless extended by an executed amendment.

TERMS OF AGREEMENT, Paragraph 6, d, Page 2, which reads:

6. The Parties agree that the exchange is subject to the following conditions:
 - d. This Fund Exchange shall be on a reimbursement basis, with state funds limited to a maximum amount of \$135,450.24. All costs incurred in excess of the Fund Exchange amount will be the sole responsibility of Agency.

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

6. The Parties agree that the exchange is subject to the following conditions:
 - d. This Fund Exchange shall be on a reimbursement basis, with state funds limited to a maximum amount of \$210,528.04. All costs incurred in excess of the Fund Exchange amount will be the sole responsibility of Agency.

TERMS OF AGREEMENT, Paragraph 6, i, Page 3, which reads:

6. The Parties agree that the exchange is subject to the following conditions:
 - i. Agency, shall submit invoices to State on a monthly basis, for actual costs incurred by Agency on behalf of the Project directly to State's project manager for review and approval. Such invoices will be in a form identifying the Project, the agreement number, the invoice number or account number or both, and will itemize all expenses for which reimbursement is claimed. Under no conditions shall State's obligations exceed \$135,450.24, including all expenses. Travel expenses will not be reimbursed.

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

6. The Parties agree that the exchange is subject to the following conditions:

- i. Agency, shall submit invoices to State on a monthly basis, for actual costs incurred by Agency on behalf of the Project directly to State's project manager for review and approval. Such invoices will be in a form identifying the Project, the agreement number, the invoice number or account number or both, and will itemize all expenses for which reimbursement is claimed. Under no conditions shall State's obligations exceed \$210,528.04, including all expenses. Travel expenses will not be reimbursed.

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

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

Agency/State
Agreement No. 27580-02

CITY OF BROOKINGS, by and through

By _____

Date _____

By _____

Date _____

**APPROVED AS TO LEGAL
SUFFICIENCY**

By _____
Counsel

Date _____

Agency Contact:

Anthony Baron
Parks & Technical Services Supervisor
898 Elk Drive
Brookings, OR 97415
541-469-1159
abaron@brookings.or.us

State Contact:

Jeanette Denn
Interim Agreement Coordinator
3500 NW Stewart Parkway
Roseburg, OR 97470
541-957-3508
Jeanette.m.denn@odot.state.or.us

STATE OF OREGON, by and through
its Department of Transportation

By _____

Region 3 manager

Date _____

APPROVAL RECOMMENDED

By _____

Interim Agreement Coordinator

Date _____

**APPROVED AS TO LEGAL
SUFFICIENCY**

By _____

Assistant Attorney

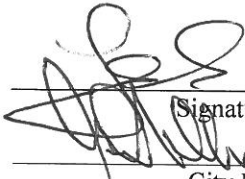
Date: _____

CITY OF BROOKINGS

COUNCIL AGENDA REPORT

Meeting Date: June 24, 2013

Originating Dept: PWDS



Signature (submitted by)

City Manager Approval

Subject: Oregon Department of Transportation Highway Maintenance Agreement

Recommended Motion: Motion to authorize the City Manager to execute a Highway Maintenance Agreement with Oregon Department of Transportation for reimbursement to the City of Brookings in the amount of \$12,250 per year for maintenance duties.

Financial Impact: Oregon Department of Transportation (ODOT) has agreed to reimburse the City of Brookings \$12,250 per year for the maintenance services. The funding would cover the entire cost of the City to hire a 1,000 hour a year part time temporary support staff.

Background/Discussion:

It had been an ongoing concern that our City's appearance could be improved by increased street sweeping and weed abatement along Highway 101 whereas ODOT is willing to enter into a reimbursement agreement for the City to provide these services. ODOT can thereby reduce travel costs to Brookings and they are offering the full cost to provide these services to Brookings in an annual reimbursement to the City.

The proposed terms of the reimbursement maintenance agreement will include;

- Brush mowing at least twice a year in City limits
- Grass mowing in City limits and south Chetco River bank pocket area at least twice a year
- Street sweeping from Carpinterville Road to Benham Road at least every other month
- Storm drain vactoring at least twice a year

Staff will use the reimbursement funding to hire additional part time temporary support to perform these services much more regularly in the City limits thereby accomplishing a higher standard of appearance for the highway 101 corridor.

Attachment(s):

- a. ODOT Agreement 22489

WATJEN Brian

From: WATJEN Brian
Sent: Tuesday, May 07, 2013 7:38 AM
To: WATJEN Brian
Subject: Work Request Form.doc

EXHIBIT B
WORK REQUEST
 Agreement No. 22489

Under the terms of the State of Oregon, Department of Transportation (ODOT) and City of Brookings, acting by and through its elected officials, Agreement dated 7/01/13 referenced above and the terms and conditions of that Agreement which will ultimately control performance and interpretation of the Work Request, which is herein incorporated, the following project for equipment repair and services is authorized:

Project Name: Flexible Maintenance Services _____

ODOT Work Request Coordinator: Brian Watjen TMM _____

The Total Authorized Amount of this Work Request is \$12,250.00. If an individual, or all, Work Request(s) under this Agreement exceed \$150,000 the Department of Justice must approve for legal sufficiency.

Work Request Start Date: 7/01/13 _____ Work Request End Date: 6/30/14 _____

Effective Date:	Totals
A. Amount authorized for this Work Request	\$12,250.00
B. Amount authorized on prior Work Request s	\$NA
C. Total Amount authorized for all Work Request s (A+B=C)	\$12,250.00
D. Agreement Not-to-Exceed amount	\$ 12,250.00
E. Amount remaining on Agreement (D-C=E)	\$-----

STATEMENT OF WORK:**ACTIVITY (132-133) BRUSHING**

Services to be provided by the City of Brookings and reimbursed by ODOT:
 Brush Mowing including shoulders of Hwy 101 ~ Twice annually.

ACTIVITY (130M) GRASS MOWING

Services to be provided by the City of Brookings and reimbursed by ODOT:
 Grass mowing and weed abatement include all areas in the City and South side of the bridge.

ACTIVITY (116-117) SWEEPING

Services to be provided by the City of Brookings and reimbursed by ODOT:
 Street sweeping from Carpenterville to Benham road ~ bi-monthly

ACTIVITY (121) DRAINAGE

Services to be provided by the City of Brookings and reimbursed by ODOT:
 Vactor ODOT ROW in City limits, provide traffic control ~ Twice annually

5/7/2013

In the event City of Brooking determines that it is unable to reasonably perform such work, it shall inform ODOT's Project Manager, or approved designee, within 48 hours of receipt of the Work Request of such decision.

ACCEPTANCE OF TERMS AND ACTION APPROVED BY STATE: I acknowledge and certify that the work in this Work order authorization is within the scope of work of the original Agreement.

State's Brian WALLEN (approp. title) 05/02/13 Date

ACCEPTANCE OF TERMS BY LOCAL AGENCY

Name / Title _____ Date _____

APPROVED AS TO LEGAL SUFFICIENCY: If work exceeds \$100,000, signature required

Asst. Attorney General _____ Date _____

EXHIBIT A

Work Order – Local Agency
Rev. Rev. 02-21-03

cc: District #7 Manager or Transportation Maint. Mgr.
State's Work Order Coordinator
Construction Contracts Section-Support Service for General Files

CITY OF BROOKINGS
FUND SUMMARY
FOR THE 11 MONTHS ENDING MAY 31, 2013

GENERAL FUND

	BUDGET	PERIOD ACTUAL	YTD ACTUAL	REMAINING BUDGET	PCNT
REVENUE					
TAXES	2,537,288.00	23,802.39	2,374,891.91	182,376.09	93.6
LICENSES AND PERMITS	94,500.00	8,779.87	111,143.92	(16,643.92)	117.6
INTERGOVERNMENTAL	589,500.00	19,451.78	320,897.46	268,602.54	54.4
CHARGES FOR SERVICES	177,500.00	5,424.44	114,560.18	62,939.82	64.5
OTHER REVENUE	86,000.00	4,608.31	71,800.32	14,199.68	83.5
TRANSFERS IN	193,929.00	.00	.00	193,929.00	.0
	3,678,697.00	61,866.79	2,993,293.79	685,403.21	81.4
EXPENDITURES					
JUDICIAL:					
PERSONAL SERVICES	14,048.00	1,397.46	11,781.83	2,266.17	83.9
MATERIAL AND SERVICES	8,300.00	334.00	3,688.95	4,611.05	44.5
CAPITAL OUTLAY	2,000.00	.00	.00	2,000.00	.0
	24,348.00	1,731.46	15,470.78	8,877.22	63.5
LEGISLATIVE/ADMINISTRATION:					
PERSONAL SERVICES	158,373.00	12,919.41	160,581.52	(2,208.52)	101.4
MATERIAL AND SERVICES	81,800.00	11,313.96	100,338.02	(18,538.02)	122.7
CAPITAL OUTLAY	.00	.00	.00	.00	.0
	240,173.00	24,233.37	260,919.54	(20,746.54)	108.6
POLICE:					
PERSONAL SERVICES	1,779,367.00	153,452.71	1,663,161.27	116,205.73	93.5
MATERIAL AND SERVICES	150,740.00	15,343.03	112,553.59	38,186.41	74.7
CAPITAL OUTLAY	401,100.00	13,065.94	389,638.19	11,461.81	97.1
TRANSFERS OUT	15,000.00	.00	.00	15,000.00	.0
	2,346,207.00	181,861.68	2,165,353.05	180,853.95	92.3
FIRE:					
PERSONAL SERVICES	168,625.00	11,245.24	144,639.33	23,985.67	85.8
MATERIAL AND SERVICES	122,500.00	4,882.08	59,484.33	63,015.67	48.6
CAPITAL OUTLAY	79,580.00	.00	30,579.01	49,000.99	38.4
TRANSFERS OUT	.00	.00	.00	.00	.0
	370,705.00	16,127.32	234,702.67	136,002.33	63.3
PLANNING AND BUILDING:					
PERSONAL SERVICES	191,352.00	14,383.92	167,717.03	23,634.97	87.7
MATERIAL AND SERVICES	66,000.00	(1,342.53)	4,730.91	61,269.09	7.2
CAPITAL OUTLAY	.00	.00	.00	.00	.0
TRANSFERS OUT	.00	.00	.00	.00	.0
	257,352.00	13,041.39	172,447.94	84,904.06	67.0

CITY OF BROOKINGS
FUND SUMMARY
FOR THE 11 MONTHS ENDING MAY 31, 2013

GENERAL FUND

	BUDGET	PERIOD ACTUAL	YTD ACTUAL	REMAINING BUDGET	PCNT
PARKS & RECREATION:					
PERSONAL SERVICES	54,854.00	17,244.07	147,536.98	(92,682.98)	269.0
MATERIAL AND SERVICES	78,900.00	4,086.19	52,151.01	26,748.99	66.1
CAPITAL OUTLAY	10,000.00	5,985.80	7,918.81	2,081.19	79.2
TRANSFERS OUT	.00	.00	.00	.00	.0
	<u>143,754.00</u>	<u>27,296.06</u>	<u>207,606.78</u>	<u>(63,852.78)</u>	<u>144.4</u>
FINANCE AND HUMAN RESOURCES:					
PERSONAL SERVICES	114,228.00	12,524.90	158,465.35	(44,237.35)	138.7
MATERIAL AND SERVICES	32,600.00	1,570.09	21,142.72	11,457.28	64.9
CAPITAL OUTLAY	.00	.00	.00	.00	.0
	<u>146,828.00</u>	<u>14,094.99</u>	<u>179,608.07</u>	<u>(32,780.07)</u>	<u>122.3</u>
SWIMMING POOL:					
PERSONAL SERVICES	56,449.00	1,488.69	41,737.22	14,711.78	73.9
MATERIAL AND SERVICES	41,180.00	3,553.29	28,356.86	12,823.14	68.9
CAPITAL OUTLAY	10,000.00	431.90	4,310.92	5,689.08	43.1
	<u>107,629.00</u>	<u>5,473.88</u>	<u>74,405.00</u>	<u>33,224.00</u>	<u>69.1</u>
NON-DEPARTMENTAL:					
MATERIAL AND SERVICES	157,500.00	10,665.61	88,847.18	68,652.82	56.4
CAPITAL OUTLAY	.00	.00	.00	.00	.0
TRANSFERS OUT	67,000.00	.00	.00	67,000.00	.0
CONTINGENCIES AND RESERVES	690,201.00	.00	.00	690,201.00	.0
	<u>914,701.00</u>	<u>10,665.61</u>	<u>88,847.18</u>	<u>825,853.82</u>	<u>9.7</u>
	<u>4,551,697.00</u>	<u>294,525.76</u>	<u>3,399,361.01</u>	<u>1,152,335.99</u>	<u>74.7</u>
	<u>(873,000.00)</u>	<u>(232,658.97)</u>	<u>(406,067.22)</u>	<u>(466,932.78)</u>	<u>(48.5)</u>

CITY OF BROOKINGS
FUND SUMMARY
FOR THE 11 MONTHS ENDING MAY 31, 2013

STREET FUND

	BUDGET	PERIOD ACTUAL	YTD ACTUAL	REMAINING BUDGET	PCNT
REVENUE					
INTERGOVERNMENTAL	510,000.00	26,578.44	291,069.63	218,930.37	57.1
OTHER REVENUE	300.00	40.00	3,693.33	(3,393.33)	1231.1
TRANSFER IN	.00	.00	.00	.00	.0
	<u>510,300.00</u>	<u>26,618.44</u>	<u>294,762.96</u>	<u>215,537.04</u>	<u>57.8</u>
EXPENDITURES					
EXPENDITURES:					
PERSONAL SERVICES	121,992.00	9,926.02	107,597.73	14,394.27	88.2
MATERIAL AND SERVICES	195,600.00	21,404.69	89,192.81	108,407.19	45.6
CAPITAL OUTLAY	208,300.00	904.32	125,947.55	82,352.45	60.5
TRANSFERS OUT	24,610.00	.00	.00	24,610.00	.0
CONTINGENCIES AND RESERVES	65,798.00	.00	.00	65,798.00	.0
	<u>616,300.00</u>	<u>32,235.03</u>	<u>322,738.09</u>	<u>293,561.91</u>	<u>52.4</u>
	<u>616,300.00</u>	<u>32,235.03</u>	<u>322,738.09</u>	<u>293,561.91</u>	<u>52.4</u>
	<u>(106,000.00)</u>	<u>(5,616.59)</u>	<u>(27,975.13)</u>	<u>(78,024.87)</u>	<u>(26.4)</u>

CITY OF BROOKINGS
FUND SUMMARY
FOR THE 11 MONTHS ENDING MAY 31, 2013

WATER FUND

	BUDGET	PERIOD ACTUAL	YTD ACTUAL	REMAINING BUDGET	PCNT
REVENUE					
SOURCE 03	.00	.00	.00	.00	.0
CHARGES FOR SERVICES	1,395,000.00	131,841.62	1,235,689.96	159,310.04	88.6
OTHER INCOME	2,000.00	2,189.06	49,214.83	(47,214.83)	2460.7
TRANSFERS IN	.00	.00	.00	.00	.0
	<u>1,397,000.00</u>	<u>134,030.68</u>	<u>1,284,904.79</u>	<u>112,095.21</u>	<u>92.0</u>
EXPENDITURES					
WATER DISTRIBUTION:					
PERSONAL SERVICES	596,281.00	39,752.05	470,716.51	125,564.49	78.9
MATERIAL AND SERVICES	325,250.00	28,082.78	286,536.72	38,713.28	88.1
CAPITAL OUTLAY	68,300.00	10,755.26	43,413.68	24,886.32	63.6
	<u>989,831.00</u>	<u>78,590.09</u>	<u>800,666.91</u>	<u>189,164.09</u>	<u>80.9</u>
WATER TREATMENT:					
PERSONAL SERVICES	.00	.00	.00	.00	.0
MATERIAL AND SERVICES	.00	.00	.00	.00	.0
CAPITAL OUTLAY	.00	.00	.00	.00	.0
TRANSFERS OUT	379,002.00	.00	.00	379,002.00	.0
CONTINGENCIES AND RESERVES	138,667.00	.00	.00	138,667.00	.0
	<u>517,669.00</u>	<u>.00</u>	<u>.00</u>	<u>517,669.00</u>	<u>.0</u>
DEPARTMENT 24:					
CAPITAL OUTLAY	.00	.00	.00	.00	.0
	<u>.00</u>	<u>.00</u>	<u>.00</u>	<u>.00</u>	<u>.0</u>
	<u>1,507,500.00</u>	<u>78,590.09</u>	<u>800,666.91</u>	<u>706,833.09</u>	<u>53.1</u>
	<u>(110,500.00)</u>	<u>57,440.59</u>	<u>484,237.88</u>	<u>(584,737.88)</u>	<u>438.2</u>

CITY OF BROOKINGS
FUND SUMMARY
FOR THE 11 MONTHS ENDING MAY 31, 2013

WASTEWATER FUND

	BUDGET	PERIOD ACTUAL	YTD ACTUAL	REMAINING BUDGET	PCNT
REVENUE					
CHARGES FOR SERVICES	2,650,500.00	311,960.83	2,506,171.23	144,328.77	94.6
OTHER REVENUE	3,000.00	.00	420,357.18	(417,357.18)	14011.
TRANSFER IN	.00	.00	.00	.00	.0
	<u>2,653,500.00</u>	<u>311,960.83</u>	<u>2,926,528.41</u>	<u>(273,028.41)</u>	<u>110.3</u>
EXPENDITURES					
WASTEWATER COLLECTION:					
PERSONAL SERVICES	426,141.00	34,933.01	412,369.94	13,771.06	96.8
MATERIAL AND SERVICES	250,100.00	21,896.87	126,799.80	123,300.20	50.7
CAPITAL OUTLAY	24,900.00	.00	2,384.49	22,515.51	9.6
	<u>701,141.00</u>	<u>56,829.88</u>	<u>541,554.23</u>	<u>159,586.77</u>	<u>77.2</u>
WASTEWATER TREATMENT:					
PERSONAL SERVICES	436,275.00	30,219.91	350,815.71	85,459.29	80.4
MATERIAL AND SERVICES	466,600.00	38,293.88	379,474.26	87,125.74	81.3
CAPITAL OUTLAY	302,400.00	.00	68,426.41	233,973.59	22.6
TRANSFERS OUT	1,075,705.00	.00	.00	1,075,705.00	.0
CONTINGENCIES AND RESERVES	239,379.00	.00	.00	239,379.00	.0
	<u>2,520,359.00</u>	<u>68,513.79</u>	<u>798,716.38</u>	<u>1,721,642.62</u>	<u>31.7</u>
	<u>3,221,500.00</u>	<u>125,343.67</u>	<u>1,340,270.61</u>	<u>1,881,229.39</u>	<u>41.6</u>
	<u>(568,000.00)</u>	<u>186,617.16</u>	<u>1,586,257.80</u>	<u>(2,154,257.80)</u>	<u>279.3</u>

CITY OF BROOKINGS
FUND SUMMARY
FOR THE 11 MONTHS ENDING MAY 31, 2013

URBAN RENEWAL AGENCY FUND

	BUDGET	PERIOD ACTUAL	YTD ACTUAL	REMAINING BUDGET	PCNT
REVENUE					
TAXES	509,838.00	.00	490,436.60	19,401.40	98.2
INTERGOVERNMENTAL	.00	.00	.00	.00	.0
OTHER REVENUE	1,000,500.00	.00	329.05	1,000,170.95	.0
	<u>1,510,338.00</u>	<u>.00</u>	<u>490,765.65</u>	<u>1,019,572.35</u>	<u>32.5</u>
EXPENDITURES					
GENERAL:					
PERSONAL SERVICES	.00	.00	.00	.00	.0
MATERIAL AND SERVICES	70,000.00	28.45	16,357.17	53,642.83	23.4
CAPITAL OUTLAY	1,372,397.00	.00	176,880.67	1,195,516.33	12.9
DEBT SERVICE	.00	.00	.00	.00	.0
TRANSFERS OUT	417,941.00	.00	.00	417,941.00	.0
CONTINGENCIES AND RESERVES	.00	.00	.00	.00	.0
	<u>1,860,338.00</u>	<u>28.45</u>	<u>193,237.84</u>	<u>1,667,100.16</u>	<u>10.4</u>
DEPARTMENT 20:					
CAPITAL OUTLAY	.00	.00	.00	.00	.0
	<u>.00</u>	<u>.00</u>	<u>.00</u>	<u>.00</u>	<u>.0</u>
DEPARTMENT 22:					
MATERIAL AND SERVICES	.00	.00	.00	.00	.0
DEBT SERVICE	.00	.00	.00	.00	.0
	<u>.00</u>	<u>.00</u>	<u>.00</u>	<u>.00</u>	<u>.0</u>
DEPARTMENT 24:					
CONTINGENCIES AND RESERVES	.00	.00	.00	.00	.0
	<u>.00</u>	<u>.00</u>	<u>.00</u>	<u>.00</u>	<u>.0</u>
	<u>1,860,338.00</u>	<u>28.45</u>	<u>193,237.84</u>	<u>1,667,100.16</u>	<u>10.4</u>
	<u>(350,000.00)</u>	<u>(28.45)</u>	<u>297,527.81</u>	<u>(647,527.81)</u>	<u>85.0</u>

City of Brookings

URBAN RENEWAL AGENCY MEETING Minutes

City Hall Council Chambers, 898 Elk Drive, Brookings, OR 97415

Tuesday, May 28, 2013

Call to Order

Chair Hedenskog called the meeting to order at 8:22 PM.

Roll Call

Agency Present: Chair Ron Hedenskog, Directors Bill Hamilton, Brent Hodges, Jake Pieper; a quorum present. Chair Kelly McClain was absent.

Staff Present: Executive Director Gary Milliman, Finance & HR Director Janell Howard, City Attorney Martha Rice and City Recorder Joyce Heffington.

Others Present: No media and approximately 3 others.

Consent Items

Approve Agency Minutes for February 11, 2013.

Director Hodges moved, a second followed and the Agency voted unanimously to approve Agency Minutes for February 11, 2013.

Staff Reports

Public Hearing and adoption of Resolution 13-R-1009, adopting the Urban Renewal Agency budget, declaring tax increment funding, and making appropriations for fiscal year 2013-14.

Finance & HR Director Howard provided the staff report.

The public hearing was opened at 8:24 PM. Hearing no comments, the hearing was closed at 8:25 PM.

Chair Hedenskog moved, a second followed and the Agency voted unanimously to adopt Resolution 13-1009, adopting the Brookings Urban Renewal Agency's budget, declaring tax increment funding as provided under Section 1c, Article IX of the Oregon Constitution and ORS Chapter 457, and making appropriations for the 2013-14 fiscal year.

Adjournment

Chair Hedenskog moved, a second followed and the Agency voted unanimously to adjourn by voice vote at 8:26 PM.

Respectfully submitted:

ATTESTED:

this _____ day of _____ 2013:

Ron Hedenskog, Chair

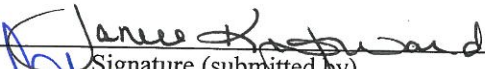
Joyce Heffington, City Recorder

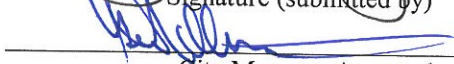
BROOKINGS URBAN RENEWAL AGENCY

AGENDA REPORT

Meeting Date: June 24, 2013

Originating Dept: Finance & HR



Signature (submitted by)


City Manager Approval

Subject:

Transfer of Appropriations for FY 2012-13.

Recommended Motion:

Adopt Resolution 13-R-1016, approving appropriation transfers for the Brookings' Urban Renewal Agency for 2012-13.

Financial Impact:

There is no net impact to the fiscal year 2012-13 budget.

Background /Discussion:

Oregon local budget law allows municipalities to make transfers of appropriations through a resolution adopted by the governing body.

This transfers \$20,000 from capital outlay to materials and service in the General Fund.

Attachment:

Resolution 13-R-1016 budget transfers UR 2012-13.

URBAN RENEWAL AGENCY OF THE CITY OF BROOKINGS

RESOLUTION 13-R-1016

A RESOLUTION OF THE URBAN RENEWAL AGENCY OF THE CITY OF BROOKINGS APPROVING APPROPRIATION TRANSFERS IN THE GENERAL FUND.

WHEREAS, the Urban Renewal Agency of the City of Brookings is a municipal corporation which is subject to Oregon Budget Law, and

WHEREAS, ORS 294.463(3) allows for a transfer of appropriation if authorized by the governing body, and

WHEREAS, the Agency anticipates higher materials and services expenditures and lower capital expenditures, and

NOW, THEREFORE BE IT RESOLVED THAT the Board of the Urban Renewal Agency of the City of Brookings hereby authorizes a transfer of appropriations pursuant to ORS 294.463(3).

BE IT FURTHER RESOLVED THAT the Board of the Urban Renewal Agency of the City of Brookings, Curry County, Oregon, for the fiscal year beginning July 1, 2012, and for purposes shown below are hereby revised as follow:

	<u>General Fund</u>
Requirements:	
Materials and services	20,000
Capital Outlay	\$ (20,000)
50,000	

Passed by the City Council on June 24, 2013, and made effective the same date.

Attest:

Chair Ron Hedenskog

City Recorder Joyce Heffington

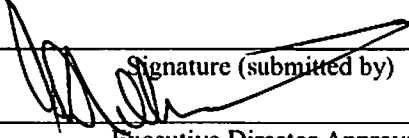
CITY OF BROOKINGS

URBAN RENEWAL AGENCY

AGENDA REPORT

Meeting Date: June 24, 2013

Originating Dept: Executive Director



Signature (submitted by)

Executive Director Approval

Subject: Curry Health Network System Development Charges

Recommended Motion: Discussion of alternatives and direction to staff.

Financial Impact: See discussion below.

Background/Discussion:

In 2010 the Curry Health Network (CHN) requested financial assistance from either the City or the Urban Renewal Agency (URA) in connection with the development of the new clinic in Brookings. At its meeting of May 10, 2010, the City Council and the URA declined to offer any form of financial assistance for the project, but offered to reconsider the matter after the project was approved for occupancy. The City Council indicated that it would consider a reduction in the interest rate on the amount of System Development Charges (SDCs) that were financed through the City.

The clinic building is located within the URA project area. However, because CHN is a public agency, the URA does not receive any property tax increment from this project.

The total amount of SDCs that were financed was \$560,261.52 and the interest rate is 9.0 per cent. CHN has paid a total of \$134,173 in principal and \$149,634 in interest since 2010. The remaining balance is \$429,780 including accrued interest. The term of the financing is 10 years. CHN initially financed the SDCs through the City because they were unable to secure market financing. Current annual payments are \$85,146.

The City has received a letter from CHN requesting that the Urban Renewal Agency assume responsibility for the remaining balance. Though not stated in the letter, CHN management reports that CHN is preparing to undertake an additional financing to undertake improvements/expansion of both the hospital in Gold Beach and the Brookings Clinic. Removing the SDC debt from the District's balance sheet would enhance CHN's ability to move forward with the additional financing.

The 9.0 per cent rate is the statutory rate that governments are required to apply under Oregon state law unless the local government agency has established a different rate. Another reason for having a higher-than-market interest rate is to discourage developers from using the City as a "bank." The City's latest infrastructure borrowing was at an interest rate of 2.58 per cent. There are many factors involved in determining the cost of borrowing, including collateralization, credit history and management stability.

Staff has identified three alternatives for dealing with the CHN request:

1. Maintain the current terms of the financing.

2. Set a lower interest rate for public agencies financing SDCs through the City. The CHN is a public agency. Apply this new interest rate to the remaining CHN balance.
3. Use Urban Renewal tax increment funds to pay a portion of the interest.
4. Authorize the use of tax increment revenues to assume the SDC annual debt service at no interest.

Attachment(s):

- a. Letter dated June 11, 2013, from Curry Health Network.



CURRY HEALTH NETWORK

Curry General Hospital
94220 Fourth Street
Gold Beach, Oregon 97444
541.247.3000

Curry Medical Center
500 5th Street
Brookings, Oregon 97415
541.412.2000

Curry Family Medical
525 Madrona Street
Port Orford, Oregon 97465
541.332.3861

Curry Women's Clinic
94244 Fourth Street
Gold Beach, Oregon 97444
541.247.3506

Curry Medical Practice
94244 Fourth Street
Gold Beach, Oregon 97444
541.247.3155

Brookings Psychiatry
603 Hemlock Street
Brookings, Oregon 97415
541.412.2094

Toll-Free: 800.445.8085
CurryHealthNetwork.com

MISSION

*To provide healthcare
of the highest quality
with genuine caring and
compassion.*

VISION

*That our doctors, staff and
facilities will be recognized
by our patients and
potential patients as the
preferred health care
system because of our
quality, ease of access and
range of services*

June 11, 2013

Gary Milliman
City Manager
898 Elk Drive
Brookings, OR 97415

Re: Debt relief for Curry Health District

In January 2010, Curry Health District signed a \$560,262 note payable agreement with the City of Brookings; which was for the cost of system development charges levied in connection with Curry Medical Center. The interest rate is set at 9%. It was the District's understanding that these charges would be considered part of the Brookings Renewal Plan and could be paid through that fund upon completion and occupancy.

Curry Health District has, so far, invested approximately seventeen million dollars in the Medical Center. The Clinic has been occupied and operating since Feb 2011. There are 55 jobs directly related to this clinic and approximately 22,000 visits per year. The Brookings site is an important part of the District operations, and further investment will be needed.

The balance on the Note at June 1, 2013 is \$421,968.

Curry Health District, seeks to have the remaining balance on the note payable be included in the Brookings Renewal plan and Curry Health District be relieved of the remaining obligation.

Thank you,

Kenneth G. Landau, CPA
Chief Operating Officer and Chief Financial Officer
Direct Line: (541) 247-3167