



**CITY COUNCIL MEETING**  
**November 9, 2011 – 7:00 pm**  
**(Santiam Travel Station - 750 3rd Street)**

**A G E N D A**

**CALL TO ORDER / FLAG SALUTE**

**ROLL CALL**

**APPROVAL OF CITY COUNCIL MINUTES:** a) Special Session – October 5, 2011  
b) Executive Session – October 5, 2011  
c) Regular Session – October 12, 2011

**CONSENT CALENDAR** - *The following item(s) are considered routine and will be enacted by one motion. There will not be a separate discussion of these items unless a Councilor so requests. In this case, the item(s) will be removed from the Consent Calendar and considered separately.*

**AGENDA:** Lebanon City Council Agenda – November 9, 2011

**BOARD MINUTES:** Library Advisory Board – September 11, 2011

**LIQUOR LICENSE:** New License – The Pit Stop Market, LLC, 3510 S. Santiam Hwy

**CONTRACT:** Award Fifth Street Water Reservoir Design Contract to OBEC Consulting Engineers of Eugene, Oregon

**CITIZEN COMMENTS** – *Citizens may address the Council on any matters that do NOT pertain to scheduled Public Hearings or other items already on the agenda. All comments concerning a Public Hearing must be addressed during that agenda item. As for other items listed on the agenda, the Mayor will ask for input in the order they appear.*

**REGULAR SESSION**

**1) Proposed Amendment (Grandfather Clause) to Drug Paraphernalia Sales Ordinance**

Presented by: Tré Kennedy, City Attorney

Approval/Denial by **ORDINANCE BILL NO. 2011-15, ORDINANCE NO. 2828**

**2) VALIC Amendment**

Presented by: John Hitt, City Manager

*Approval/Denial by MOTION*

**3) Proposed Criteria and Process for City Manager Performance Evaluation**

Presented by: Ginger Allen, Assistant City Manager and Margaret Campbell, City Councilor

*Discussion Only*

**4) Utility Pole Signs (Ordinance and Enforcement)**

Presented by: Tré Kennedy, City Attorney and Police Chief, Mike Schulte

*Discussion Only*

**5) City Manager's Report**

Presented by: John Hitt, City Manager

*Discussion Only*

**ITEMS FROM COUNCIL**

**CITIZEN COMMENTS** – *Another opportunity for citizens to comment on items of City business.*

**ADJOURNMENT**



**LEBANON CITY COUNCIL**  
**MINUTES**  
**October 5, 2011**

**Council Present:** Councilors Bob Elliott, Margaret Campbell, Floyd Fisher, Ron Miller, Wayne Rieskamp and Ray Weldon.

**Staff Present:** City Manager John Hitt, Assistant City Manager Ginger Allen, City Attorney Tré Kennedy, City Clerk Linda Kaser, and Police Lieutenant Ben Silverman.

**CALL TO ORDER / FLAG SALUTE / ROLL CALL**

Council President Bob Elliott called the Special Session to order at noon in the Santiam Travel Station Board Room. Roll call was taken with Mayor Toomb being absent.

**CONSENT CALENDAR – AGENDA:** Lebanon City Council Agenda – October 5, 2011

*Councilor Campbell moved to amend the Agenda by adding another item after the Executive Session, Councilor Rieskamp seconded.*

In response to Councilor Weldon, and confirmed by City Attorney Kennedy, Campbell clarified that she requests to add a proposed Resolution of Censure [Item 2]. Weldon asked for whom the censure was for; Campbell stated that the topic was on the floor and discussion of that topic should take place at that time.

*Rieskamp called the question, Councilor Miller seconded. The motion passed by roll call with 4 yeas [Councilors Campbell, Fisher, Miller and Rieskamp] and 1 nay [Councilor Weldon] to add Proposed Resolution to Censure as Item 2.*

*Council President Elliott temporarily adjourned the regular session at 12:10 p.m. and called for a short recess before convening into an Executive Session.*

**EXECUTIVE SESSION**

- ⇒ Per ORS 192.660(2)(f) To consider information or records that are exempt by law from public inspection.
- ⇒ Per ORS 192.660(2)(h) To consult with legal counsel concerning legal rights and duties of the Council regarding current litigation or litigation likely to be filed.

*Council President Elliott reconvened the regular session at 12:45 p.m.*

**SPECIAL SESSION**

**1) RESPONSE TO PROPOSED INFORMATION DISCLOSURE**

As a result of the Executive Session, Council President Elliott announced that Councilor Miller had a motion to declare.

*Councilor Miller moved, Councilor Campbell seconded, that:*

*Whereas, on or about September 15, 2011 Councilor Ray Weldon demanded documents and information from the City Administrator "as an elected city council member;" and*

*Whereas, the Lebanon City Council governs only through its collective voice and only through a majority vote of its members; and*

*Whereas, individual city councilors do not have the authority to demand that documents and information be provided by the City Administrator absent a majority vote of this council; and*

*Whereas, this council as a body owes the City of Lebanon a fiduciary obligation to avoid the costs and expense, and the monopolization of staff time, that might arise from individual city councilors demands and requests; and*

*Whereas, this Council has grave concerns about the ability or intent that Councilor Ray Weldon has to maintain the confidentiality of the documents and information he has requested; and*

*Whereas, the unauthorized release of confidential information to the public could lead to litigation against the City of Lebanon and subject the City of Lebanon to substantial liability.*

*Therefore, I move that this council instruct the City Administrator to deny Councilor Weldon's request for documents and information as set forth in his September 15, 2011 e-mail.*

*Councilor Elliott called for discussion. Hearing none, the motion passed by roll call vote with 4 yeas [Councilors Campbell, Fisher, Miller and Rieskamp] and 1 nay [Councilor Weldon].*

## 2) PROPOSED RESOLUTION TO CENSURE *(Added Upon Council Consent Calendar Approval)*

Councilor Campbell distributed and read a proposed resolution, thereby moving to **APPROVE A RESOLUTION CENSURING COUNCILMAN RAY WELDON** [to be numbered Resolution No. 2011-32]. *The motion was seconded by Councilor Rieskamp and passed by roll call vote with 4 yeas [Councilors Campbell, Fisher, Miller and Rieskamp] and 1 nay [Councilor Weldon].*

ITEMS FROM COUNCIL - Hearing none, Councilor Elliott asked for Citizen Comments.

## CITIZEN COMMENTS

*Darlene Warner* requested that these meetings, in the future, be when the public can attend; most people are at work this time of day and cannot attend.

*Ralph Gaston* chastised the Council's decision to censure Councilor Weldon, "We elected him to come and talk to you and get the information." After a brief Council admonishment for not having more discussions amongst themselves during council meetings, he challenged the Council to question the ideas that the administration presents. As for denying the records request, "This is wrong and it will fall into litigation. All of you have the right to

say give me the documents I need. What you are doing is stifling the minority."

Gaston stated, "Please do your job, reverse the ordinance [resolution] – remove the censure!"

*Darlene Warner* stated that Ray [Weldon] is a friend and she has never known him to say disparaging things about the Council or Mayor. He is usually griping about policy facts that he does not like.

Warner ended by requesting that Council lift the censorship of Weldon because he is just trying to work for the people.

**ADJOURNMENT** – *Council President Elliott adjourned the meeting at 1:20 p.m.*

*[Meeting recorded and transcribed by Linda Kaser]*

_____	<input type="checkbox"/>
Kenneth I. Toomb, Mayor	<input type="checkbox"/>
Bob Elliott, Council President	<input type="checkbox"/>

ATTEST:

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Linda Kaser, City Clerk/Recorder

**Lebanon City Council  
Executive Session Minutes  
October 5, 2011**

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**Council Present:** Councilor President Bob Elliott and Councilors Margaret Campbell, Floyd Fisher, Ron Miller, Wayne Rieskamp and Ray Weldon.

**Staff Present:** City Manager John Hitt, Assistant City Manager Ginger Allen, City Clerk Linda Kaser, and Police Lieutenant Ben Silverman

**Legal Counsel:** City Attorney Tre' Kennedy and Attorney Dian Rubanoff (Williams, Zografos, and Peck)

**Media Present:** Reporters Emily Menzer (Lebanon Express) and Alex Paul (Albany Democrat Herald)

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Council President Bob Elliott called the Executive Session to order at 12:15 p.m. noon in the Santiam Travel Station Board Room.

**EXECUTIVE SESSION**

- ⇒ Per ORS 192.660(2)(f) To consider information or records that are exempt by law from public inspection.
- ⇒ Per ORS 192.660(2)(h) To consult with legal counsel concerning legal rights and duties of the Council regarding current litigation or litigation likely to be filed.

City Attorney Kennedy discussed the information request sent to City Manager Hitt from Councilor Weldon asking for the complete Human Resources file and all attorney-client privileged communications and reports pertaining to the investigation of Officer Fiala. Weldon made this request as a City Councilor and not as a public records request.

Kennedy introduced Dian Rubanoff from the firm Williams, Zografos, and Peck who represented the City in the Fiala case. Counsel Rubanoff described the law governing the confidentiality of human resource issues.

Kennedy explained that a City Council has authority only as a body and only through majority vote. Individual city councilors have authority only to the extent delegated to them by a vote of the whole council. City councilors have no inherent authority in an individual capacity simply because they are a member of the Council.

City County Insurance Services (CIS) has cautioned the City that if an individual councilor sues the City to force the City to hand over documents, they would not pay the councilor's attorney costs. Likewise, if the councilor does much of anything on his/her own, and claims to be acting "as a councilor," coverage would probably be denied.

CIS legal counsel recently confirmed that a councilor's authority comes from acting as a body; councilors have zero individual authority. The City and CIS have no duty to spend public money defending a Councilor for actions he takes when he knows those actions are outside the scope of his authority as a councilor.

After learning that Officer Fiala and the City signed a separation agreement at the advice of legal Counsel, the Council came to a consensus that these records should remain confidential in order to avoid possible lawsuits.

Council Consensus was that Councilor Weldon was not entitled to the information that he had requested from Mr. Hitt. Councilor Weldon continues to act outside of the scope of his legal authority when it comes to requesting records and that his actions are not in the best interests of the City. These requests often take extensive research wasting staff time and city money.

**ADJOURNMENT**

*Council President Elliott adjourned the Executive Session at 12:40 and called for a short recess before convening into the Special Session.*

*[Meeting transcribed by Linda Kaser]*

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Kenneth I. Toomb, Mayor   
Bob Elliott, Council President

ATTEST:

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Linda Kaser, City Clerk/Recorder

**LEBANON CITY COUNCIL**  
**MINUTES**  
**October 12, 2011**

**Council Present:** Councilors Bob Elliott, Margaret Campbell, Floyd Fisher, Ron Miller, Wayne Rieskamp and Ray Weldon.

**Staff Present:** City Manager John Hitt, Assistant City Manager Ginger Allen, City Attorney Tré Kennedy, Utilities & Engineering Services Manager Dan Grassick, Finance Director Dean Baugh and Lt. Ben Silverman.

**CALL TO ORDER / FLAG SALUTE / ROLL CALL**

Council President Elliott called the Regular Session of the Lebanon City Council to order at 7:00 p.m. in the Santiam Travel Station Board Room. Roll call was taken; Mayor Toomb was absent.

**APPROVAL OF CITY COUNCIL MINUTES**

*Councilor Rieskamp moved, Councilor Campbell seconded, to approve the September 14, 2011 City Council Minutes as presented. The motion passed unanimously by roll call vote.*

**CONSENT CALENDAR** – *The following item(s) are considered routine and will be enacted by one motion. There will not be a separate discussion of these items unless a Councilor so requests. In this case, the item(s) will be removed from the Consent Calendar and considered separately.*

**Agenda:** Lebanon City Council Agenda – October 12, 2011

**Board Minutes:** Bike and Pedestrian Meetings – 3/24, 4/26, 6/2, 7/28 and 8/25/2011  
Planning Commission Meeting – May 25, 2011

*Councilor Fisher moved, Councilor Rieskamp seconded, to approve the Consent Calendar as presented. The motion passed unanimously by roll call vote.*

**PROCLAMATION**

Council President Elliott read the proclamation and declared October 24, 2011 to be “National Food Day.”

**CITIZEN COMMENTS**

Christina Ruck, PO Box 727, Lebanon, announced her candidacy for the Linn County Board of Commissioners and made herself available for questions.

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Alisha Sheets, 1320 Filbert Street, Lebanon, asked how the internal investigation of Sgt. Patrick O'Malley could be finalized when neither she nor her witnesses were questioned. Assistant City Manager Allen informed her that Lt. Silverman conducted a formal investigation that included questioning witnesses. Statements given were contradictory to Ms. Sheets' complaint, so the City feels that its decision was appropriate. Ms. Sheets again asked why she or her witnesses were not interviewed. City Attorney Kennedy stated that she may speak to the Council but this is not the appropriate forum for discussion about the investigation.



Councilor Weldon asked whether Ms. Sheets can appeal the decision to the Council. Kennedy stated that he would have to look into the investigation since he is not familiar with it. Ms. Sheets announced that she also forwarded her complaint to Linn County so they will be addressing it as well.

Responding to Councilor Weldon's question, Allen stated that this was not filed as a complaint and was not followed up on as other complaints are. Councilor Weldon asked why it was not because none of the Councilors were made aware of this. Hitt indicated that the lengthy letter from Ms. Sheets was not filed in the City's system because it was a confidential personnel matter. In response to Councilor Weldon's comment that he thought this was what the new complaint system was for, Hitt explained that personnel investigations are always treated confidentially.

Ms. Sheets announced that she sent two certified letters, stating "please accept this as my formal complaint against Patrick O'Malley," and it took a month for Allen to respond. Allen agreed that everything Ms. Sheets stated was accurate.

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Scott Simpson, 755 W. D Street, Lebanon, expressed a safety concern for workers who climb power poles because of the nails, staples, and other dangerous items used to attach signs. He reported that after he gave photographs of this to Allen, nothing was done. Allen stated that she explained the City's position on the two occasions that Mr. Simpson came to see her and in a letter. At that time, Police Chief Dahle and Enforcement Officer Buchheit felt that there was not enough staff to take the signs down and that it was not a high priority for the Police Department. Mr. Simpson disagreed with the City's position because he believes that there will be millions of dollars in lawsuits. He asked for Kennedy's personal opinion as to the City's risk by not executing on an issue that came before the Council a long time ago. Allen stated that she understands that Mr. Simpson disagrees with the Police Department's choice of priorities, but that this does not mean that she failed to report it or failed in her duties.

Councilor Weldon asked whether this was run through the complaint system. Allen stated that she would have to check, but that is usually what happens when she turns it over to Buchheit. Hitt pointed out that the poles are not owned by the City. With all of those considerations, staff felt that there was not enough time to address this concern in a meaningful way. Councilor Weldon asked whether Allen's letter to Mr. Simpson was put into the system as a follow-up to the complaint. Hitt stated that he does not know if it was put into the complaint system, but a letter was sent. Councilor Weldon asked why the letter would not be in the system. Hitt stated that he does not have a reason why it would not have been. Responding to Councilor Weldon's inquiry, Hitt stated that he does not know how much the complaint system cost. Allen indicated that the system was formed on the City website.

Regarding the lack of funds issue, Mr. Simpson stated that he volunteered to take pictures but was told that this might be too confrontational and was not a good idea. He feels that since the signs contain addresses, it is clear that the City is not properly handling this.

Councilor Miller asked about an ordinance passed 15 or 20 years ago regarding this. Hitt stated that the power company has a requirement that personal signs not be put on the poles. Council could allocate a portion of Buchheit's time or hire an additional staff person to pursue this. He is in partial agreement with Mr. Simpson because of the way it looks, but there were higher priority things to deal with. Councilor Miller reported that when it was passed, it was fully understood that this was not going to be a priority to enforce. It was mainly to help the Police Department with those who chronically put signs up.

Councilor Rieskamp stated that there have been discussions about this over the years. There was communication to the citizens about the potential for injury to pole climbers, in addition to the aesthetics. He agreed that the Police Department has higher priorities. Since Mr. Simpson's concern is valid, he suggested reminding the public not to put signs up. Councilor Weldon added that it would be helpful if they were also informed about where signs are permitted. Kennedy pointed out that power companies may have community awareness programs.

In response to Councilor Campbell's question as to whether the power companies should have some responsibility for this, Hitt stated that he will contact them.

Councilor Rieskamp suggested putting something on every pole advising people not to post signs.

Councilor Fisher thought that imposing a fine may help curb this practice. Councilor Miller stated that he is curious about whether this was included when it was originally passed. Councilor Fisher remarked that the power company may consider doing policing if backed by City ordinance. This could generate the funds to pay for that employee. Kennedy stated that he will bring more information and possible recommendations to the Council.

### **PRESENTATION** – Build Lebanon Trails Status Update

Dr. Thad Nelson announced that he became involved with Build Lebanon Trails (BLT) because his family and friends were impressed with the things that the group accomplished over the last few years. He briefly discussed the Cheadle Lake and Marks Slough improvements that were made possibly by grants. He reported that the last applications were written about 18 months ago and are now coming to fruition.

He explained that he came before the Council two months ago requesting some mechanism, at least on a trial basis, to interact with City administration to allow for further grants to be written. BLT has applied for their 501(c)(3), which may allow them to receive more grants than what is available to them now. The grants currently available have to be applied through the City, but City staff informed him that the time involved in grant writing, even with BLT's help, was not possible because of staffing cuts. The City does not foresee writing any grants within the next year or two, unless the economy changes.

At BLT's request, the City agreed to, at least, explore the idea of creating a task force to work out a plan for the connection piece between the Marks Slough Trail and the Medical Campus. BLT feels that they can provide the grant match. They have a firm commitment of at least \$20,000 through BLT and a tentative plan for at least another \$40,000 worth of work to put in a bridge, etc. This does not include soliciting money from the Hospital and different charitable groups. The group knows that the City needs to be part of the project to make it efficient, but they would like to come up with a mechanism to minimize City staff time. He believes they can get much of the survey work donated and Rod Sell is capable of writing the grant. They need a letter of intent by October 27, 2011. They hope to get a task force together and write the grant, with City input (but hopefully, little City time), by about January 15, [2012]. If the additional backing does not come through, then they will have to look further down the road. But this would be an excellent visible development that a lot of people would be interested in and willing to contribute to.

It would also be nice to have a mechanism to deal with other smaller projects. They tentatively came up with a plan to meet with Hitt to get the obvious things discussed, and then submit a formal proposal. Hitt could decide whether it is important enough to put together a small task force or whether to refer it to the Maintenance Department. He asked for the Council's support in helping them work with City staff. He would like to keep this as simple as possible because he understands the amount of work that staff already has. He hopes that one or two Council members are willing to be on the task force, with a couple of people from BLT or other interested community members, and possibly someone from the Hospital. The task force would also invite other people to come in. He believes that there is much community support for donations of time and work. He knows that not everyone supports multiple-use trails, but in this case, many of those things can be done with little or no cost to the City.

They would like to have many more trails and loops at Cheadle Lake and, someday, a connecting piece through to Grant Street and possibly to the Marks Slough Trail.

Councilor Weldon asked for confirmation that Hitt had previously said that the City has no ties with BLT and could not afford to help them apply for grants. Hitt stated that his main concerns are the matching funds and finding staff time to work on the grants, but he is amending his position because BLT has provided, at least a pathway to, answers to his concerns. He believes that we can get there without having to commit in those areas that the City does not have a lot to commit. Councilor Weldon commented that he does not want BLT to disband or the City not to work with them.

Councilor Weldon asked how things would change if BLT obtains their non-profit status. Hitt stated that the City will continue to work with them. He did not intend to give the impression of not wanting to work with BLT because he has always been appreciative and supportive of the work they have done.

Councilor Rieskamp announced that he appreciates Dr. Nelson's message to the Council and that this gives them an avenue to be successful. This could become more of a partnership with the Medical School and provides something healthy for the City and its citizens. He volunteered to be part of the task force because he would like to be a part of the two groups continuing to work together and to be successful at creating trails.

Dr. Nelson asked that the task force be appointed fairly quickly because part of the role of the task force is exploring ways to minimize the City's time commitment. He believes that community participation is especially important because if the community has ownership in it, they will value it more.

Councilor Weldon suggested that the Councilors on the task force provide updates to the Council.

## **REGULAR SESSION**

### **1) Proposed Smoking Ban in City Parks at Public Events**

Kennedy presented a proposed ordinance that provides an opportunity for organizers of a public event to apply for a permit, as part of the overall permit process for the event, to have a smoking area. He described two exceptions – smoking in vehicles within parks and smoking in the immediate vicinity of their campsite at Gills Landing. He stated that associated costs would include putting up No Smoking signs and an educational campaign.

Councilor Weldon announced that he will vote to approve this ordinance and that something can always be changed later, if it needs to be.

Councilor Campbell asked Kennedy if, in his research of other cities, he found information that addressed the use and disposal of smokeless tobacco. Kennedy stated that the majority were smoking bans dealing mainly with the issue of second-hand smoke, especially around kids at athletic events. There is certainly a disposal issue with smokeless tobacco, as well as the danger to the person using it, but there have not yet been any studies on that. Councilor Campbell stated that this is considered under OSHA blood borne pathogens regulations. Kennedy pointed out that the Council can amend this to say tobacco, as opposed to smoking, but enforcement would be tougher. Councilor Campbell stated that she wondered about this because clean-up is a problem.

Councilor Fisher remarked that there may be an increase in smokeless residue with the smoking ban, so the issue may have to be revisited. Kennedy noted that all school campuses are tobacco-free and that effective, he believes, January 2012, all college campuses will be tobacco-free, according to State law.

Councilor Rieskamp felt that this ordinance is well thought-out and is applicable to a healthy environment for Lebanon citizens and their guests.

Dr. Mark Burdell, from the audience, stated that it is common knowledge that second-hand smoke is not a good thing. There is no reason why the City should not move forward with this because it is in all citizens' best interest, including those who smoke. Kennedy confirmed for him that the 1.5-hour clean-up time is per park.

Kennedy made note that the definition of smoking does not specifically refer to tobacco. It was made as broad as possible to also cover, for example, clove cigarettes or those fruit-flavored non-tobacco things. Although these may not have the same carcinogenic danger as tobacco, they are certainly as bothersome in a crowded area.

Council President Elliott remarked that smoking offends him since he quit. He now knows why people did not like him smoking around them. Councilor Campbell commented that one of the things that helped her quit smoking was running out of places where it was permitted. Council President Elliott agreed.

*Council President Elliott asked if there was anyone in the audience who wished to speak about this issue.*

Jan Boucot, 36456 Rock Hill Drive, Lebanon, asked whether this ordinance will apply to the Lebanon Farmer's Market because this is a problem. Kennedy stated that it would not cover the Farmer's Market since it is held in a public area; it would only apply to City parks, as defined in the Lebanon Municipal Code. Councilor Campbell suggested finding out if Partners for Progress has regulations regarding this. She asked that Kennedy look into updating the ordinance. In response to Ms. Boucot's suggestion of a City-provided portable sign, Hitt stated that this could be supplied, as long as there is authority to do this.

Councilor Rieskamp commented that this broadens the scope since there are also farmer's markets located at the Elks parking lot and near the Y at Park Street. Councilor Weldon pointed out that the Elk's parking lot is on private property.

Kennedy read the title of **ORDINANCE BILL NO. 2011-14, ORDINANCE NO. 2827**

***Councilor Miller moved, Councilor Campbell seconded, to APPROVE A BILL FOR AN ORDINANCE AMENDING CHAPTER 12.12 OF THE LEBANON MUNICIPAL CODE CONCERNING SMOKING IN PUBLIC PARKS AND DECLARING AN EMERGENCY. The motion passed unanimously by roll call vote.***

## **2) Status Update on Proposed 25 MPH Speed Zone Change on Oak Street**

Utilities & Engineering Services Manager Grassick reported that since a second speed study was discovered subsequent to the last Council meeting, the requested modifications to the 35 mph speed zones on Oak Street must be postponed until ODOT completes an updated study. City staff recommendations were included in the application for the updated study. Its completion date has not yet been determined, but he will keep the Council updated.

*Council President Elliott called for a 10-minute recess.*

## **3) Proposed Bylaws of Cascades West Regional Consortium**

Hitt discussed The Cascades West Regional Consortium and presented a request to approve their Bylaws and appoint the City Manager as the City's primary representative, and the Mayor as the alternate.

Councilor Weldon asked how much of Hitt's time this would entail. Hitt stated that he is not really sure. It has taken about 15 hours of his time over the last six months, but it should be less time-intensive in the future. There may be quarterly meetings at two to three hours per meeting with an hour or two of preparation.

Hitt confirmed for Councilor Weldon that this would be considered as part of his working time, but he pointed out that he does not work a regular 40-hour week. Councilor Weldon expressed concern about this expense since the City said that there is not enough funding for trails. Hitt stated that he does not want to get into a discussion about priorities. He believes that this group has an important agenda – to make the area's industrial lands as readily buildable, with the least delay and most certainty as possible, to enhance economic development. He does not believe that this would entail any cost in the near-term, but if this was to change, it would be part of next year's budget discussion. When he referred to staff time for BLT, he was primarily speaking about the maintenance crew who have been the main ones helping with BLT. It has been more of a challenge for them to find the time to work on streets, parks, and their other responsibilities. BLT has not been a big user of Hitt's time.

Councilor Rieskamp felt that economic development needs the City Manager's time. It does not appear to take a lot of time and it is a high priority. Councilor Fisher stated that this seems like it expands the Enterprise Zone spirit.

Councilor Fisher asked why this includes Lincoln County since there is no city from that county. Hitt stated that additional cities may be added to the consortium, but at this point, no Lincoln County city indicated an interest in joining.

Councilor Miller asked for the rationale for this organization. Hitt stated that he believes COG is seeing this organization as tool to further access economic development grants, particularly with a focus of addressing issues that might relate to delays in permitting.

Councilor Rieskamp asked whether this consortium was formed because there was not enough time or staff, since they focus some effort in that general area. Hitt stated that he thinks the desire is to show it as a broad cross-sectional effort, rather than just the COG operating on its own. Councilor Rieskamp felt that this is a positive thing, in terms of having good representation from those communities with a larger voice and buy-in.

Council President Elliott reported that he has been involved in the primary meetings. He feels that it is important that Lebanon is represented, it is time and money well-spent, and that there is no one better to represent the City than Hitt.

Hitt confirmed for Councilor Campbell that COG provides the primary staffing, city staff are just representatives, and that the meetings are held in the evenings.

Regarding Section 9.3 of Article IX: Budget, Dues, Fiscal Year, Councilor Campbell asked whether the consortium has had any discussion about the annual membership fee. Hitt stated that they have not, at this point. There was discussion about realizing matching funds in order to acquire some of the grants. If there is a high probability of obtaining the grant, they would determine a financial assessment from each city. He clarified for Councilor Campbell that the financial assessment would be in the form of annual dues.

Councilor Campbell suggested naming Council President Elliott as co-representative with Hitt since he has shown a great deal of interest, has developed a base of knowledge, and has attended the meetings. Councilor Weldon remarked that he is surprised that the consortium does not include developers, land owners, or realtors since they have more invested in this than the City. Hitt stated that this could change over time. Councilor Miller pointed out that they would not have access to grants.

Councilor Miller asked whether this is competing, in a sense, with John Pascone's Enterprise Zone. Hitt stated that he does not believe it is. Councilor Miller asked whether this consortium can tap into resources that COG cannot. Hitt stated that this is the idea and it gives COG a group to work with on this one particular issue (industrial lands development, especially wetlands). Councilor Weldon agreed that this may cause competition between the groups. Councilor Fisher pointed out that this benefits the whole area and was the idea behind expanding the Enterprise Zone.

Hitt agreed with Councilor Campbell's comment that her understanding, from the meeting she attended, is that a big goal is to establish some wetlands banks, which would be very attractive to developers. Councilor Miller stated that he understands that the wetlands issue has been a frustrating factor, so it is worth the effort if the consortium can help solve that. Councilor Rieskamp stated that a wetlands bank will certainly shorten the process and will make it much more attractive to developers. This should be a high priority for most, if not all, communities.

Councilor Rieskamp stated that he supports the intent and the focus directed towards this, but he expressed concern about the possible dollar amount of Lebanon's eventual participation. Hitt confirmed that cities would have a choice at that time.

*Councilor Miller moved, Councilor Campbell seconded, to approve entering into The Cascades West Regional Consortium and naming the City Manager and Council President as the City's representatives (City Manager as primary and the Council President as the alternate).*

Responding to Councilor Weldon's inquiry, Hitt stated that he believes Mayor Toomb will be able to resume his normal duties in the near future.

*The motion passed unanimously by roll call vote.*

#### 4) Recreational Immunity When Allowing Public Use on Unimproved ROWs

Finance Manager Baugh presented a resolution to opt in to a recreational immunity from liability, as recommended by City County Insurance Services. The City has several trails located in easements and unimproved ROWs. The immunity lends favorable consideration to the continued public use of the existing trails and any future ROWs made available for similar uses. There is some uncertainty as to whether this immunity would actually be upheld against a constitutional challenge in a claim against public employees or volunteers, but since the right to use the trails is a benefit to the users, the immunity would reasonably be upheld. Even if it was not, there appears to be no disadvantage to opting in.

He confirmed for Councilor Campbell that it would not affect the City's insurance premium.

In response to Councilor Miller's question, Grassick stated that the Boys Scouts maintain the trail at Gill's Landing.

Baugh explained for Councilor Campbell that this provides immunity for the City and for owners of property abutting the trail. There was a brief discussion about areas that would be covered by this resolution.

Kennedy read the title of **RESOLUTION NO. 2011-32.**

*Councilor Rieskamp moved, Councilor Miller seconded, to approve A RESOLUTION OF THE CITY OF LEBANON OPTING IN TO THE RECREATIONAL IMMUNITY PROVIDED BY HB 2865 WHEN ALLOWING PUBLIC USE OF UNIMPROVED RIGHTS OF WAY (ROWs). The motion passed unanimously by roll call vote.*

#### 5) City Manager's Report – Hitt gave a brief report on the following:

*City Council Schedule* – After a brief discussion, the Council decided to hold their Goal Review/Setting session prior to a Council meeting, beginning no earlier than 4:30 pm. Hitt stated that he will discuss, with staff, having the session on December 14 [2011] and will communicate the final date and time.

*NW URD Changes* – Staff will be working on the the NW URD project list, which will come before the Council for possible amendment in February or March with the idea of issuing a fairly large taxable bond.

*Comp NW* – Hitt was pleased to hear that almost all of the 60 students being interviewed were staying at local hotels. Students are interviewed at least once a month, so this should boost tourism.

*FY 10/11 Audit* – Baugh stated that the hope is that the auditor's report will be ready for the November or December Council meeting.

*Lebanon Express Editorial* – Hitt addressed his personal opinion regarding an October 12, 2011 Lebanon Express editorial. His comments are specific and not general, and he has no comment regarding the editor's basic thrust in her editorial. Regarding the statement of "it's Weldon versus City administration along with others," he personally categorically rejects such characterizations. He is not speaking for anyone else. He recognizes Councilor Weldon as he recognizes all of the other Councilors. And as such, he has attempted to meet Councilor Weldon's information request and other needs, whether it be for his own interest or for that of somebody living in his Ward, whenever possible. It is always his desire to meet what Councilors, as elected officials, need in order to govern the City effectively and efficiently. Even though they may profoundly disagree, in Hitt's mind, it is never him versus any other Councilor. Sometimes it may not look as though everyone is on the same team, but he is willing to do whatever he can. He welcomed suggestions as to how to become a better team player who supports each Councilor effectively.

Regarding the editor's comment about Council deliberations, he agrees that it is a good thing. He takes no offense to anyone saying that they do not agree with his recommendations or to any ideas on a better way of doing things.

Hitt also addressed the editor's questioning of the cost and time of employee investigations. He reiterated that employee investigations are complex, often with many difficult and different allegations and counter-allegations. They sometimes involve a lot of people and can very quickly become involved. Legal counsel representing those involved in the investigation can, and often, delay required meetings and interviews. It is often hard to reach and schedule meetings with those involved. The due process requirements imposed by law and the State arbitrators, and the body of decisions they have made over the decades is complex and exacting. Those due process procedures and policies must be followed with very careful attention to detail. He and Allen are highly motivated to have the employee investigations be conducted as quickly and as inexpensively as possible. Any suggestions, either in general or during a specific employee investigation, to make the investigations quicker and more cost effective are welcome.

### **ITEMS FROM COUNCIL**

Councilor Weldon asked why there is no available computer or printer for Kennedy to look up rules right away, instead of having to wait for him to do research. Kennedy stated that he could look it up on his phone, but he would prefer to listen to the discussion. It is usually not that easy of an answer because there are a lot of different things to consider. He strongly believes that an opinion should not be given until he knows it is correct.

Regarding Councilor Weldon's comment that former City Attorney McHill used to carry the Codes with him, Kennedy stated that McHill started using his Smartphone instead.

Hitt stated that staff can look into providing computer and printer access with a recommendation at the next meeting.

Councilor Rieskamp's opinion was that the Council should be paying attention to the discussion with citizens and staff, so he does not know if he would want his or other's time being refocused on a computer. Councilor Weldon commented that this is common with many City Councils. Allen stated that after hearing City Clerk Kaser's report on other municipalities, only one Councilor elected to receive the agenda electronically. Councilor Fisher stated that he declined the electronic version because he is unable to clearly print some of the material. Allen stated that computers could be purchased with funds in next year's budget, if that is what the Council wishes to do.

Councilor Miller commented that he believes the Council is primarily there to listen to people. If Kennedy misses something important because he is researching something, then he would have to listen to the audio later. Sometimes watching the emotion and seeing the demeanor of the person testifying is just as important as their words. He believes that the discussion could go off on tangents or that meetings will become much longer if research has to be done. During his short time on the Council, he has found that Kennedy comes back with very good data because he sorts through all of it ahead of time. He and Councilor Fisher agreed that there is value to Kennedy's thinking about all of the complexities and nuances.

Councilor Rieskamp stated that he would rather not have the temptation to do research. Councilor Fisher pointed out that the ultimate form of respect is giving someone their full attention. He is not in favor of using computers if it dehumanizes this body. Councilor Miller agreed. Councilor Campbell stated that as simple and as straightforward as an ordinance may be, there could be a number of other issues that are also affected. So she would expect Kennedy to bring back a comprehensive picture of the situation.

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Councilor Campbell stated that she appreciates Dr. Nelson's comments about BLT and their efforts. She recognized the Northwest Steelheaders for their efforts with the pump in Cheadle Lake, since it was not a BLT project. The Steelheaders have demonstrated an equally strong commitment to the development of Cheadle Lake.

Regarding BLT and their request for a task force, she adhere asked that they abide by the ordinance regarding City committees.

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Councilor Campbell announced that during ENTEK's expansion and at meetings with utility companies, banks and other entities, they have received a number of positive comments about the advantages they have of being located in Lebanon. A number of comments specifically said that Hitt was the best city manager in the State.

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Councilor Weldon asked why the attorney was present for last month's special meeting. Hitt explained that this attorney composed most of the personnel investigation report under question. He asked her to attend in case the Council had questions, during executive session, about the investigation report or how the investigation was conducted. He confirmed for Councilor Weldon that she was compensated for attending. Councilor Weldon asked why this lawyer, in addition to Kennedy, was present. Hitt stated that this attorney began working on the report well before a contract with Kennedy's firm was signed.

Responding to Councilor Weldon's comment about the amount of attorney fees, Kennedy stated that it was appropriate that the attorney be present to answer questions that he would not have been able to answer.

In response to Councilor Weldon's question as to whether this attorney always settles the City's disputes, Hitt answered no.



CITIZEN COMMENTS – *There were none.*

ADJOURNMENT – *Council President Elliott adjourned the meeting at 9:10 p.m.*

*[Meeting recorded and transcribed by Ginger Allen & Donna Trippett]*

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Kenneth I. Toomb, Mayor   
Bob Elliott, Council President

ATTEST:

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Linda Kaser, City Clerk/Recorder

DRAFT



**LEBANON PUBLIC LIBRARY**  
Advisory Committee Meeting Minutes  
September 14, 2011

The Library Advisory Committee meeting was called to order at 5:35 p.m. by Chairperson Garry Browning. Attending were Garry Browning, Harlan Mastenbrook, Kathy Pointer, Sue Spiker and Library Services Manager Denice Lee. Absent were Cathy Benneth, Margaret Campbell, and Sharon Follingstad.

Minutes of the July 13, 2011 meeting were unanimously approved.

**Manager's Report:**

**Circulation:**

August	2011	17,069	YTD 2011	33,429
August	2010	15,740	YTD 2010	31,700

**Summer Reading Program:**

Response to the Summer Reading Program this year was very good. Compared to the same time last year, there are twice as many children and adults attending the programming events. There were two parts to the program: first, a passport with prizes for minutes read was developed to encourage reading for library patrons of all ages. This year there was a total of 6,104 minutes read. This is about double what was read last summer. Staff had to order more incentive prizes because the level of participation exceeded our estimates. The reading portion of the Summer Reading Program started June 1 and continued through August 18. The second part of the summer reading program was the event programming held on Wednesdays at 11 a.m. from June 22 through July 27. We had a total of 959 people in attendance for the 6 events. This is a 71% increase over last year. Funding for the Summer Reading Program came from the Ready to Read Grant, the Friends of the Library, and private donations.

**Borders:**

The library manager reported that various staff have been purchasing steeply discounted library materials from Borders, a book store in Corvallis and Salem that is going out of business.

**Fall Preschool Storytime Schedule:**

The storytime schedule was presented to the Advisory Committee for the Preschool Storytime sessions which started September 8<sup>th</sup>.

**Window Tinting:**

A tinting film has been added to the windows on the west and south side of the library. The purpose of the tinting is to reduce glare on the computers and reduces cooling costs during the summer months.

### **Computer User Only Card:**

On September 6<sup>th</sup> the library transitioned from “guest passes” to Computer User Only cards. Patrons wanting to use the public access computers will need to have either a regular library card or a computer user only card. Staff will have a number of preloaded computer user cards for traveling people stopping at the library to use the computers. The purpose of the change is to reduce staff time spent generating the guest passes each morning, eliminate the slips of paper that end up all over the library and the parking lot, and reduce computer use problems requiring extensive staff time. The library manager reported that so far the transition has been smooth.

### **LSTA Grant Update:**

The LSTA (Library Sciences and Technology Act) grant for the second year of the non-resident library card funding has been approved. The grant will fund 75% of a non-resident household card for people living outside the city limits who haven't had a library card recently. The first year of the grant funded 90% of the cost of a card. Lebanon issued 350 cards, Sweet Home 200 and Scio 70. This is the second of what will hopefully be a three year project.

### **Acceptable Behavior Posted:**

As requested at the last committee meeting, the Prohibited Behavior Policy has been posted on the library's public bulletin board, in the three study rooms, and has been incorporated in the updated general information flyer patrons receive when they get a new library card.

### **Adult/YA Programming:**

There are several adult programming events in the planning stages: October 11, Oregon's Poet Laureate, Paulann Petersen, will speak at the library at 7 p.m.; Jaime Oakeson is planning another local author series for adults. Also, for the young adults, the third week in October is “Teen Read Week”. The library will be planning several young adult events for the month of October and will end with Alton Chung, who will tell stories at the library October 28<sup>th</sup>. The first 45 minutes will be “soft” scary stories followed SCARY stories for teens and adults the last 45 minutes. The younger children will do crafts in the community meeting room for the last 45 minutes.

### **Friends Report:**

Harlan Mastenbrook, president of the Friends of the Library, reported that last month the Friends banked over \$800 from their monthly book sale, the online book sales and the special “Text” book sale held August 27<sup>th</sup>. Harlan will be the Friends Representative to the Library Advisory Committee.

### **Unfinished Business:**

The Committee continued reviewing the Library's Policy Manual to make necessary changes and updates. The Committee worked through pages 10 to 24 making the following changes:

- Page 22, paragraph one will strike the following phrase, “roughly equivalent to what households within the city pay in taxes” thus changing that sentence to read “Therefore, it is necessary to charge non-city residents a fee to support the library.
- Page 22, paragraph one will reflect the name change from Library Advisory Board to Library Advisory Committee.

Kathy Pointer made a motion to approve the preceding changes to the Policy Manual. Sue Spiker seconded the motion. The motion passed unanimously. Next meeting the Committee will go from page 25 – 30 of the manual.

Committee membership will remain on the agenda as “Unfinished Business” for the time being.

**New Business:**

Lost and Found Policy: The Library Services Manager presented the Advisory Committee with a draft of a Lost and Found Policy. The Committee read through the draft and after a brief discussion approved the draft as written. Sue Spiker made the motion and Harlan Mastenbrook seconded the motion to approve the addition of the Lost and Found policy to the Library Policy Manual.

Cell phones: In response to ongoing problems with cell phone use in the library, staff has developed a “business card” to hand to patrons using cell phones in the library. The card says:

Lebanon Public Library  
Cell Phone Courtesy  
Please set cell phones to a nonaudible setting  
upon entering the library.  
Please move any necessary cell phone  
conversations to one of the designated cell  
phone areas in the north or south entries  
between the two sets of double doors

**Adjournment:**

The meeting was adjourned at 6:35 p.m.

Next Meeting: Wednesday, October 12, 2011 @ 5:30 p.m.  
Lebanon Public Library  
Community Meeting Room

DATE SENT FOR STAFF RECOMMENDATION: 11/1/2011

New Outlet:

Renewal:

LIQUOR LICENSE APPLICATION FOR: The Pit Stop Market, LLC

Business Address: 3510 S Santiam Hwy

Applicant: Lebanon, OR 97355

New Owner of Existing Business:  Previous Owner (If applicable)

Type of License(s): Full On-Premises Sales   
Brewery-Public House   
Certificate of Approval

Lmtd. On-Premises Sales   
Winery   
Distillery

Off-Premises Sales   
Brewery   
Growers Sales Privilege

Department	Official	Approval	Denial	Date	Additional Comments or Conditions of Approval
Building	Jason Bush	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<i>[Signature]</i>
Fire	Mark Wilson	<input checked="" type="checkbox"/>	<input type="checkbox"/>	10/21/11	<i>[Signature]</i>
Planning	Walt Wendolowski	<input checked="" type="checkbox"/>	<input type="checkbox"/>	10/24/11	<i>[Signature]</i>
Police	Mike Schulte	<input checked="" type="checkbox"/>	<input type="checkbox"/>	10/25/11	

*\* All recommendations for denial must be accompanied by supporting documentation. Upon completion of investigation, return this form and any supporting documentation to the City Clerk's Office.*

CITY COUNCIL RECOMMENDATION DATE:

LIQUOR LICENSE RECOMMENDATION TO OLCC					
Department	Official	Approval	Denial	Additional Comments or Conditions of Approval	
City Clerk	Linda Kaser	<input type="checkbox"/>	<input type="checkbox"/>		



# OREGON LIQUOR CONTROL COMMISSION LIQUOR LICENSE APPLICATION

Application is being made for:

<b>LICENSE TYPES</b> <input type="checkbox"/> Full On-Premises Sales (\$402.60/yr) <input type="checkbox"/> Commercial Establishment <input type="checkbox"/> Caterer <input type="checkbox"/> Passenger Carrier <input type="checkbox"/> Other Public Location <input type="checkbox"/> Private Club <input type="checkbox"/> Limited On-Premises Sales (\$202.60/yr) <input checked="" type="checkbox"/> Off-Premises Sales (\$100/yr) <input type="checkbox"/> with Fuel Pumps <input type="checkbox"/> Brewery Public House (\$252.60) <input type="checkbox"/> Winery (\$250/yr) <input type="checkbox"/> Other: _____	<b>ACTIONS</b> <input type="checkbox"/> Change Ownership <input checked="" type="checkbox"/> New Outlet <input type="checkbox"/> Greater Privilege <input type="checkbox"/> Additional Privilege <input type="checkbox"/> Other _____
---	--

**90-DAY AUTHORITY**  
 Check here if you are applying for a change of ownership at a business that has a current liquor license, or if you are applying for an Off-Premises Sales license and are requesting a 90-Day Temporary Authority

**APPLYING AS:**  
 Limited Partnership     Corporation     Limited Liability Company     Individuals

**CITY AND COUNTY USE ONLY**

Date application received: \_\_\_\_\_

The City Council or County Commission: \_\_\_\_\_  
 (name of city or county)

recommends that this license be:  
 Granted     Denied

By: \_\_\_\_\_ (signature)    \_\_\_\_\_ (date)

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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**OLCC USE ONLY**

Application Rec'd by: cm Swanson

Date: 10 12 11

90-day authority:  Yes     No

- Entity or Individuals applying for the license: [See SECTION 1 of the Guide]  
 ① Change of Ownership    ③ \_\_\_\_\_  
 ② The Pit Stop Market, LLC    ④ \_\_\_\_\_
- Trade Name (dba): The Pit Stop    cell 541-207-4018
- Business Location: 3510 S. Santiam Hwy, Lebanon, Linn OR 97355  
 (number, street, rural route)    (city)    (county)    (state)    (ZIP code)
- Business Mailing Address: SAME  
 (PO box, number, street, rural route)    (city)    (state)    (ZIP code)
- Business Numbers: (541) 258-2179    (541) 405-4128  
 (phone)    (fax)
- Is the business at this location currently licensed by OLCC?  Yes     No WAS RECENTLY WITHDRAWN BY
- If yes to whom: Michelle Bolander Mullet Enterprises, Inc.    Type of License: OFF-PREMISES SALES
- Former Business Name: Mullet Enterprises, Inc.    PLEASE SEE ATTACHMENT "B"
- Will you have a manager?  Yes     No    Name: \_\_\_\_\_  
 (manager must fill out an Individual History form)
- What is the local governing body where your business is located? City of Lebanon  
 (name of city or county)
- Contact person for this application: Pamela C. Swanson    (541) 258-2179  
 (name)    (phone number(s))  
3510 S. Santiam Hwy    (541) 405-4128    pitstop.market@gmail.com  
 (address)    (fax number)    (e-mail address)

I understand that if my answers are not true and complete, the OLCC may deny my license application.

Applicant(s) Signature(s) and Date:

① Pamela C. Swanson    Date 9/27/11    ③ \_\_\_\_\_    Date \_\_\_\_\_  
 ② \_\_\_\_\_    Date \_\_\_\_\_    ④ \_\_\_\_\_    Date \_\_\_\_\_

RECEIVED

OREGON LIQUOR CONTROL COMMISSION  
 SEP 27 2011  
 Date

100.00    pd 10/12/11 MS    RA 118926

OREGON LIQUOR CONTROL COMMISSION  
LIMITED LIABILITY COMPANY QUESTIONNAIRE



Please Print or Type

LLC Name: The Pit Stop Market, LLC Year Filed: 2011  
Trade Name (dba): N/A - "The Pit Stop"  
Business Location Address: 3510 S. Santiam Hwy  
City: Lebanon ZIP Code: 97355

List Members of LLC:

Percentage of Membership Interest:

- |  |             |
|--|-------------|
| 1. <u>PAMELA C. SWANSON</u><br>(managing member) | <u>100%</u> |
| 2. _____<br>(members)                            | _____       |
| 3. _____   | _____       |
| 4. _____   | _____       |
| 5. _____   | _____       |
| 6. _____   | _____       |

(Note: If any LLC member is another legal entity, that entity must also complete an LLC, Limited Partnership or Corporation Questionnaire. If the LLC has officers, please list them on a separate sheet of paper with their titles.)

Server Education Designee: PAMELA C SWANSON DOB: 04/24/1964

I understand that if my answers are not true and complete, the OLCC may deny my license application.

Signature: Pamela C Swanson (name) President (title) Date: 9/27/11



OREGON LIQUOR CONTROL COMMISSION  
INDIVIDUAL HISTORY

1. Trade Name The Pit Stop Market, LLC 2. City Lebanon  
 3. Name Swanson PAMELA C.  
 (Last) (First) (Middle)  
 4. Other names used (maiden, other) McLEAN - WEIKER  
 5. ~~\_\_\_\_\_~~  
 (State or Country) (mm) (dd) (yyyy)

\*SOCIAL SECURITY NUMBER DISCLOSURE: As part of your application for an initial or renewal license, Federal and State laws require you to provide your Social Security Number (SSN) to the Oregon Liquor Control Commission (OLCC) for child support enforcement purposes (42 USC § 666(a)(13) & ORS 25.785). The OLCC will refuse a license to any applicant or licensee who fails to provide his/her SSN. Your SSN will be used only for child support enforcement purposes unless you sign below.

Based on our authority under ORS 471.311 and OAR 845-005-0312(6), we are requesting your voluntary consent to use your SSN for the following administrative purposes only: to match your license application to your Alcohol Server Education records (where applicable), and to ensure your identity for criminal records checks. OLCC will not deny you any rights, benefits or privileges otherwise provided by law if you do not consent to use of your SSN for these administrative purposes (5 USC § 552(a)). If you consent to these uses, please sign here:

Applicant Signature: Pamela C Swanson

9. ~~\_\_\_\_\_~~ 10. State OR  
 11. Residence Address ~~\_\_\_\_\_~~ Lebanon  
 (number and street) (city) (state) (zip code)  
 12. Mailing Address (if different) \_\_\_\_\_  
 (number and street) (city) (state) (zip code)  
 13. Contact Phone (541) 207-4018 14. E-Mail address (optional) \_\_\_\_\_  
 15. Do you have a spouse or domestic partner?  No  Yes  
 If yes, list his/her full name: Scott E. Swanson  
 Will this person work at or be involved in the operation or management of the business?  No  Yes  
MAY OCCASSIONALLY help out with cashier duties ... but RARELY.  
 16. List all states, other than Oregon, where you have lived during the past ten years:  
N/A

17. In the past 12 years, have you been convicted ("convicted" includes paying a fine) in Oregon or any other state of driving a car with a suspended driver's license or driving a car with no insurance?  
 No  Yes  Unsure If yes, list the date(s), or approximate dates, and type(s) of convictions.  
 If unsure, explain. You may include the information on a separate sheet.

? 2005 Suspended for unpaid fines. I WAS NOT AWARE the fines were not paid.

18. In the past 12 years, have you been convicted ("convicted" includes paying a fine) in Oregon or any other state of a misdemeanor or a felony?  No  Yes  Unsure  
 If yes, list the date(s), or approximate dates, and type(s) of convictions. If unsure, explain. You may include the information on a separate sheet.

Resolved immediately  
Fines had been Paid prior to



19. Trade Name The Pit Stop Market, LLC 20. City LEBANON

21. Do you have any arrests or citations that have not been resolved?  No  Yes  Unsure  
If yes or unsure, explain here or include the information on a separate sheet.

22. Have you ever been in a drug or alcohol diversion program in Oregon or any other state? (A diversion program is where you are required, usually by the court or another government agency, to complete certain requirements in place of being convicted of a drug or alcohol-related offense.)  No  Yes  Unsure  
If yes, list the date(s), or approximate dates. If unsure, explain. You may include the information on a separate sheet.

JAN 2011 - SEE ATTACHMENT "A"

23. Do you, or any legal entity that you are a part of, currently hold or have previously held a liquor license in Oregon or another US state? (Note: a service permit is not a liquor license.)  No  Yes  Unsure  
If yes, list the name(s) of the business, the city (or cities) and state (or states) where located, and the date(s) of the license(s). If unsure, explain. You may include the information on a separate sheet.

24. Have you, or any legal entity that you are a part of, ever had an application for a license, permit, or certificate denied or cancelled by the OLCC or any other governmental agency in the US?  
 No  Yes  Unsure If yes, list the date(s), or approximate dates. If unsure, explain. You may include the information on a separate sheet.

Questions 25 and 26 apply if you, or any legal entity that you are part of, are applying for a Full On-Premises, Limited On-Premises, Off-Premises, or Brewery-Public House license. If you are not applying for one of those licenses, mark "N/A" on Questions 25 and 26.

25. Do you have any ownership interest in any other business that makes, wholesales, or distributes alcohol?  N/A  No  Yes  Unsure If yes, list the date(s), or approximate dates. If unsure, explain. You may include the information on a separate sheet.

26. Does, or will, a maker, wholesaler, or distributor of alcohol have any ownership interest in your business?  
 N/A  No  Yes  Unsure If yes or unsure, explain:

Question 27 applies if you, or any legal entity that you are part of, are applying for a Brewery, Brewery-Public House, Distillery, Grower Sales Privilege, Warehouse, Wholesale Malt Beverage & Wine, or Winery license. If you are not applying for one of those licenses, mark "N/A" on Question 27.

27. Do you, or any legal entity that you are part of, have any ownership interest in any other business that sells alcohol at retail in Oregon?  N/A  No  Yes  Unsure If yes or unsure, explain:

You must sign your own form (you can't have your attorney or a person with power of attorney sign your form). I affirm that my answers are true and complete. I understand the OLCC will use the above information to check my records, including but not limited to, criminal history. I understand that if my answers are not true and complete, the OLCC may deny my license application.

Applicant Signature: Pamela C Swanson

OSP/DMV  
Date: 9/27/11 Searched  Indexed  Completed



## MEMORANDUM

### *Engineering Services*

**To:** Dan Grassick, Manager Utility & Engineering Services      **Date:** November 1, 2011  
**From:** Ron Whitlatch, Senior Engineer *RW*  
**RE:** MOTION TO AWARD CONTRACT  
Engineering Design Services – Fifth Street Water Reservoir Upgrades  
Project No. 11708

#### Recommendation

This memo requests a City Council motion to award the Engineering Design Services contract for the Fifth Street Water Reservoir Upgrades Project to OBEC Consulting Engineers of Eugene, Oregon.

#### Background

As of 2010, the City of Lebanon water system is deficient water storage by approximately one to two million gallons. The Water Systems Capital Improvement Program Plan calls for additional storage to meet current standards and mitigate the storage deficiency. Additional storage capacity will help relieve the strain off of the existing water plant, until the new plant is constructed.

In August 2011, City Staff requested proposals from three Engineering Firms to design a two million gallon reservoir and rehab/replacement of the existing reservoir at the South Fifth Street site. Staff reviewed and scored each of the three proposals and determined that OBEC Engineering Consultants provided the best options for completing the design of the project.

Based on OBEC's schedule, construction of the new storage tank and rehab/replacement of the existing tank will begin in August of 2012. Staff will provide the proposed construction drawings to City Council for review and approval in early summer of 2012.

City Staff is currently negotiating a contract price with OBEC for completing the design of a new reservoir and rehab/replacement of the existing reservoir. The estimated contract price is approximately \$350,000.00. A final contract price will be presented to City Council at the November Meeting.

Engineering Services

**OBEC Consulting Engineers**  
**Design and Construction Engineering Services**  
**Summary of Estimate for Services**  
**5th Street Water Reservoir Upgrades, Project No. 11708**  
**City of Lebanon**

**Design Engineering**

**OBEC Direct Salary Costs**

<u>Personnel</u>	<u>Hours</u>	<u>Rate of Pay</u>	<u>Estimated Cost</u>
Principal	36	\$ 173.94	\$ 6,261.84
Principal	8	\$ 168.51	\$ 1,348.08
Project Manager	184	\$ 148.59	\$ 27,340.56
Senior Project Engineer	496	\$ 135.90	\$ 67,406.40
Construction Group PM	0	\$ 125.04	\$ -
Assistant Project Manager	0	\$ 109.25	\$ -
Project Engineer 3	262	\$ 103.27	\$ 27,056.74
Senior Design Tech	0	\$ 90.61	\$ -
CAD Manager	40	\$ 96.05	\$ 3,842.00
Senior CAD Tech	654	\$ 81.54	\$ 53,327.16
Survey Group Manager	9	\$ 130.47	\$ 1,174.23
Senior Project Surveyor	60	\$ 93.31	\$ 5,598.60
Survey Tech 3	165	\$ 84.27	\$ 13,904.55
Administrative Assistant 3	15	\$ 90.61	\$ 1,359.15
	1,893	<b>Subtotal Salary Costs</b>	<b>\$ 208,619</b>

**Other OBEC Direct Expenses & Outside Consultant Costs**

a. <u>OBEC Expenses</u>	<u>\$ 357</u>
b. <u>Outside Consultants</u>	
Black & Veatch	\$ 51,190
Foundation Engineering	\$ 36,103
Cascade Earth Sciences	\$ 5,254
Universal Field Services	\$ 12,754
Intertech	\$ 5,320

**Total Design Engineering \$ 319,597**

**Contingency Design Engineering**

**OBEC Direct Salary Costs**

<u>Personnel</u>	<u>Hours</u>	<u>Rate of Pay</u>	<u>Estimated Cost</u>
Principal	0	\$ 173.94	\$ -
Principal	0	\$ 168.51	\$ -
Project Manager	0	\$ 148.59	\$ -
Senior Project Engineer	20	\$ 135.90	\$ 2,718.00
Construction Group PM	0	\$ 125.04	\$ -
Assistant Project Manager	0	\$ 109.25	\$ -
Project Engineer 3	88	\$ 103.27	\$ 8,881.22
Senior Design Tech	40	\$ 90.61	\$ 3,624.40
CAD Manager	0	\$ 96.05	\$ -
Senior CAD Tech	190	\$ 81.54	\$ 15,492.60
Survey Group Manager	8	\$ 130.47	\$ 1,043.76
Senior Project Surveyor	56	\$ 93.31	\$ 5,225.36
Survey Tech 3	36	\$ 84.27	\$ 3,033.72
Administrative Assistant 3	5	\$ 90.61	\$ 453.05
	441	<b>Subtotal Salary Costs</b>	<b>\$ 40,472</b>

**Other OBEC Direct Expenses & Outside Consultant Costs**

a. <u>OBEC Contingency Expenses</u>	<u>\$ 1,125</u>
b. <u>Outside Consultants (No Contingencies)</u>	
Black & Veatch	\$ 5,850
Foundation Engineering	\$ -
Cascade Earth Sciences	\$ -
Universal Field Services	\$ -
Intertech	\$ -

**Total Contingency Design Engineering \$ 47,447**



## Legal

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John Kennedy, City Attorney

### MEMORANDUM

**To:** Lebanon City Council **Date:** 11/1/2011  
**From:** John Kennedy  
**Subject:** Amending Drug Paraphernalia Statute

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During the July, 2011 City Council meeting, the Council approved amendments to the Drug Paraphernalia Licensing Ordinance. At that time, it was my understanding that no business was selling drug paraphernalia within 1000 feet of a school. During the licensing process for one local business, it was determined that the business was just within 1000 feet of a school campus.

Although restricting the sale of drug paraphernalia for prospective businesses is a relatively simple matter, it becomes much more complicated for businesses already involved in sales at the time the ordinance is passed. Enforcement could subject the city to litigation and potential liability.

As a result I have prepared an amendment to LMC 5.20.040 which provides a "grandfather clause" for businesses within the 1000 foot limitation.

**A BILL FOR AN ORDINANCE AMENDING )  
CHAPTER 5.20.040 OF THE LEBANON MUNICIPAL )  
CODE CONCERNING LICENSING OF )  
BUSINESSES THAT SELL DRUG )  
PARAPHERNALIA )**

**Ordinance Bill No. 2011-15**

**Ordinance No. 2828**

**WHEREAS**, the City of Lebanon adopted new and amended ordinances regarding the licensing of business that sell drug paraphernalia; and

**WHEREAS**, it was the intent of the City of Lebanon at that time that the distance requirement contained in Chapter 5.20.040 would not apply to any existing businesses, but only prospective businesses; and

**WHEREAS**, the Lebanon City Council finds that it is in the best interests of the City of Lebanon to amend Chapter 5.20.040 to clearly articulate the prospective intent of that section;

**NOW, THEREFORE, THE CITY OF LEBANON ORDAINS AS FOLLOWS:**

Section 1. 5.20.040 is hereby amended to read as follows:

**5.20.040 Prohibition of Sale in Proximity to Schools.**

It is unlawful to sell or offer to sell any drug paraphernalia as defined by ORS 475.525 within 1,000 feet of the real property comprising a public or private elementary, secondary or career school attended primarily by minors, excepting businesses who otherwise comply with this Chapter and who were legally conducting business on or before the effective date of this section.

Passed by the Lebanon City Council by a vote of \_\_\_ for and \_\_\_ against and approved by the Mayor on this \_\_\_ day of \_\_\_\_\_, 2011.

CITY OF LEBANON, OREGON

\_\_\_\_\_  
Kenneth I. Toomb, Mayor   
Bob Elliott, Council President

ATTEST:

\_\_\_\_\_  
Linda Kaser, City Recorder



## MEMORANDUM

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### *Administration*

**To:** Mayor and City Council

**Date:** November 9, 2011

**From:** John Hitt, City Manager

**Subject:** City Council Agenda Item #2 – “VALIC Amendments”

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The attached documents from the VALIC Corporation are technical amendments to one of the city sponsored, but nevertheless individual retirement plans. (Special Pay Plan, approved and inaugurated in 2002) The various purposes and requirements of these amendments are described on pages 1-5 (VALIC in bold print on the upper left of each page). The actual amendments are on pages A – F, attached.

These changes have, at most, minimal impact on current city employees and in no way obligate the city to funding the referenced retirement plan. Hence there is no “downside” to approving the proposed amendments.

July 29, 2011

CITY OF LEBANON  
JOHN E HITT  
CITY MANAGER  
925 MAIN STREET  
LEBANON OR 97355  
GA# 64069 Pln# 03

**Re: Required update for PPA, HEART Act and WRERA legislation**

Dear Retirement Plan Sponsor/Administrator:

VALIC is pleased to provide you with ongoing plan document services. As part of those services, we are committed to ensuring that your plan is in compliance with federal tax laws as well as IRS and Department of Labor regulations, as applicable.

The purpose of this correspondence is to notify you of a required amendment (the "Amendment"), which you may make elections to conform to the manner in which your plan has been operated. This Amendment includes changes to the volume submitter plan to reflect recent IRS guidance regarding the Pension Protection Act ("PPA") of 2006 and the Heroes Earnings Assistance and Relief Tax Act of 2008 (the "HEART Act") and to reflect certain provisions of the Worker, Retiree and Employer Recovery Act of 2008 ("WRERA"). We strongly urge you to review this Amendment with your legal counsel.

**What action must Plan Sponsors take at this time?**

If the default provisions are consistent with the manner in which your plan has been operated (and the manner in which you intend to operate in the future), **you must execute the Amendment by the deadline noted below.** On the other hand, if you wish to override one or more of the default provisions, **you must complete Article II of the Amendment and execute the Amendment by the deadline noted below.**

**When must the Amendment be adopted?**

Under the tax laws, qualified plans are required to be amended periodically for changes in the law or the regulations affecting the qualification requirements. Plans generally have a period of time, known as a "remedial amendment period," during which they may adopt "retroactive" amendments to conform their plans to these changes in the law. **The enclosed amendment applies to Money Purchase, Profit Sharing, 414(h) and grandfathered 401(k) plans sponsored by governmental employers.** This Amendment is to comply with the provisions of PPA, HEART, and WRERA legislation and **must be adopted by the last day of the first plan year beginning on or after January 1, 2011. Therefore, you should execute the Amendment by the last day of the 2011 plan year (i.e., by December 31, 2011, for calendar year plans.)**

Please note that if VALIC provides document services for any other plan(s) maintained by your organization, a separate Amendment for any such plan will be provided under separate cover.

**What documents are enclosed and which do I need to execute and/or return to VALIC?**

- Amendment for PPA, HEART and WRERA (may require adoption; see enclosure)
- Resolution regarding adoption of the Amendment (may require adoption)
- PPA, HEART and WRERA Explanation (a section-by-section explanation of the Amendment)

Once you have executed the enclosed Amendment, please attach it to your plan document for future reference (including participant requests for a copy of the document), and return a photocopy of the fully-executed Amendment (and Resolution if applicable) to VALIC. **A self-addressed return envelope is enclosed for your convenience.**

VALIC's priority is serving the needs of our highly valued clients. Should you have any questions about the Amendment or the deadline for adoption, please contact our Plan Sponsor Service Team at 1-888-478-7020 or your Account Manager.

Sincerely,

A handwritten signature in black ink, appearing to read 'Carolyn Gutierrez', written in a cursive style.

Carolyn Gutierrez  
Vice President, Institutional Services

UPS Certified Mail



## PPA (Pension Protection Act), HEART (Heroes Earnings Assistance and Relief Tax Act) and WRERA (Worker, Retiree and Employer Recovery Act) Amendment Explanation

### ARTICLE I – PREAMBLE

#### Section 1.1: Effective date of Amendment.

This section establishes the intent of the Amendment to facilitate plan compliance with recent law changes. It also provides that the Amendment will be effective on various dates as reflected throughout the Amendment.

#### Section 1.2: Superseding of inconsistent provisions.

This section is a reminder that the Amendment will supersede any provisions of your plan to the extent those provisions are inconsistent with the Amendment.

#### Section 1.3: Employer's election.

This section clarifies that, unless the Employer elects otherwise in Section 2.2, the Employer is adopting all of the default provisions of the Amendment.

#### Section 1.4: Construction.

This section clarifies that all references to a "Section" number are references to the sections of the Amendment, not sections of the plan.

#### Section 1.5: Effect of restatement of Plan.

This section provides that this Amendment will survive any subsequent restatement of the Plan (*i.e.*, if the Plan is restated, the Employer does not need to re-adopt this Amendment). However, any future restatements of the Plan may also incorporate (or change) the provisions of this Amendment under the terms of the restated Plan.

### ARTICLE II – ELECTIVE PROVISIONS

This Article provides for elective provisions. If the Plan Sponsor intends to utilize all of the default provisions, these questions should be skipped. Otherwise, the Plan Sponsor needs to complete the questions in Section 2.2 through 2.9 in order to override the default provisions.

#### Section 2.1: Default Provisions.

This section lists the default provisions of the Amendment. These defaults will apply unless alternatives are elected in sections 2.2 through 2.9.

- Non-spousal beneficiary rollovers are allowed effective for distributions made after December 31, 2006.
- Hardship distributions for expenses of a beneficiary are allowed effective as of August 17, 2006.
- The option to permit in-service distributions at age 62 (with respect to amounts attributable to a money purchase pension plan, target benefit plan, or any other defined contribution plan that has received a transfer of assets from a pension plan) is not adopted.
- Qualified Reservist Distributions are not allowed.
- Continued benefit accruals pursuant to the Heroes Earnings Assistance and Relief Tax Act of 2008 (HEART Act) are not provided.
- Differential wage payments (DWPs) are treated as Compensation for all Plan benefit purposes.
- The Plan **does not** permit distribution of elective deferrals to individuals performing qualified military service on account of their "deemed" severance of employment.
- Required Minimum Distributions (RMDs) for 2009 shall continue for Participants or Beneficiaries receiving distributions in the form of installment payments (unless such Participant or Beneficiary elects otherwise), but shall be suspended for all other Participants and Beneficiaries.

#### Sections 2.2 – 2.8 PPA HEART ACT Provisions.

This section should be completed if the Employer wishes to change one or more of the "default" provisions that relate to the PPA, the HEART Act and WRERA, and wishes to apply alternative elections. The Employer should ensure that any elections reflect the actual operation of the Plan.

**In lieu of the default provision regarding the allowance of non-Spousal rollovers as permitted under the PPA and the HEART Act (the default is to provide for such non-spousal rollovers), the Plan Sponsor may choose one of the following:**

- **Select 2.2a.** to not permit non-spousal rollovers until the first day of the 2010 Plan Year.
- **Select 2.2b.** to permit non-spousal rollovers as of an effective date between January 1, 2007 and December 31, 2009.

**IF NO ELECTION IS MADE IN THIS SECTION OF THE AMENDMENT, THE DEFAULT PROVISION WILL APPLY, SUCH THAT NON-SPOUSAL ROLLOVERS ARE ALLOWED UNDER THE PLAN FOR PLAN YEARS BEGINNING AFTER JANUARY 1, 2007**

**In lieu of the default provision regarding the Hardship distributions for expenses of Beneficiaries (the default is to allow for these hardship distributions to be effective August 17, 2006), the Plan Sponsor may choose one from the following:**

- **Select 2.3a.** to not permit Hardship distributions for beneficiary expenses or
- **Select 2.3.b.** to allow such hardship distributions as of an effective date after August 17, 2006.

**IF NO ELECTION IS MADE IN THIS SECTION OF THE AMENDMENT, THE DEFAULT PROVISION WILL APPLY, SUCH THAT HARDSHIP DISTRIBUTIONS FOR BENEFICIARY EXPENSES SHALL BE ALLOWED BEGINNING AFTER AUGUST 17, 2006.**

**In lieu of the default provision regarding in-service distributions at age 62 on amounts attributable to money purchase pension plans, target benefit plans, or any other defined contribution plan that has received a transfer of assets from a pension plan, (the default is to not allow) the Plan Sponsor may choose the first option and one from the following:**

- **Select 2.4.a.1.** to allow such in-service distributions at age 62 as of an effective date later than January 1, 2007, and
- **Select 2.4.a.2** to apply the same restrictions that apply to other in-service distributions under the plan, or
- **Select 2.4.a.3.** to allow such in-service distributions at age 62 with no limitations, or
- **Select 2.4.a.4.a.** to allow such in-service distributions at age 62 with a minimum distribution amount (not to exceed \$1,000.00), and/or

- **Select 2.4.a.4.b** to limit the number of allowable in-service distributions at age 62, and/or
- **Select 2.4.a.4.c** to only allow distributions from fully vested accounts, and/or
- **Select 2.4.a.4.d** to allow such in-service distributions at age 62 with additional restrictions (must be determinable and not subject to discretion).

IF NO ELECTION IS MADE IN THIS SECTION OF THE AMENDMENT, THE DEFAULT PROVISION WILL APPLY, SUCH THAT IN-SERVICE DISTRIBUTIONS AT AGE 62 WILL NOT BE ALLOWED.

**In lieu of the default provision regarding the Qualified Reservists Distributions (the default is to not allow), the Plan Sponsor may choose the following:**

- **Select 2.5.a.** to allow such Qualified Reservists Distributions as of an effective date at the Plan Sponsors discretion (may not be earlier than September 12, 2001).

IF NO ELECTION IS MADE IN THIS SECTION OF THE AMENDMENT, THE DEFAULT PROVISION WILL APPLY, SUCH THAT QUALIFIED RESERVISTS DISTRIBUTIONS WILL NOT BE ALLOWED.

**In lieu of the default provision regarding continued benefit accruals pursuant to the HEART Act (the default is to not provide for such benefit accruals), the Plan Sponsor may choose the following:**

- **Select 2.6.a.** to allow such benefit accruals where an individual who dies or becomes disabled while performing military service shall be treated as if the participant had resumed employment on the day preceding death or disability and terminated on the actual date of death or disability, and
- **Select 2.6.a.1** to provide for continued benefit accruals, as permitted under HEART, effective as of the first day of the 2007 Plan Year, or
- **Select 2.6.a.2** to provide for continued benefit accruals, as permitted under HEART, effective as of a date later than the first day of the 2007 plan year (Date must be inserted in blank), or
- **Select 2.6.a.3** to establish a date beyond which the plan will no longer provide for continued benefit accruals, as permitted under HEART (if the Employer had previously elected to provide for such benefit accruals).

IF NO ELECTION IS MADE IN THIS SECTION OF THE AMENDMENT, THE DEFAULT PROVISION WILL APPLY, SUCH THAT THE PLAN WILL NOT PROVIDE FOR CONTINUED BENEFIT ACCRUALS.

**In lieu of the default provision regarding differential wage payments (the default is to treat these payments as Compensation for all purposes under the Plan, and for this provision to be effective for Plan Years beginning after December 31, 2008), the Plan Sponsor may choose one from the following:**

- **Select 2.7b.1.** to include DWPs as Compensation for all purposes as of a date later than the first plan year beginning after December 31, 2008. (Date must be inserted in blank), or
- **Select 2.7b.2.** to include DWPs as Compensation **only** for purposes of making Elective Deferrals, or
- **Select both 2.7.b.1. and 2.** to include DWPs as Compensation **only** for purposes of making Elective Deferrals, as of a date later than the first Plan Year beginning after December 31, 2008. (Date must be inserted in blank).

The HEART Act provides that any compensation that is paid to individuals on military leave (also known as "differential wage payments" or DWPs) must generally be treated as "compensation" for plan purposes. **However, subsequent IRS guidance has clarified that although DWPs must be treated as "compensation" for purposes of the limit on annual additions under Code Section 415 (which is the lesser of \$49,000 or 100% of compensation), DWPs may, but are not required to be, treated as compensation for purposes of allocations or benefits. Thus, plan sponsors may elect whether to treat DWPs as compensation for purposes of elective deferrals (i.e., whether to allow those in the military to make elective deferrals from DWPs), and (separately) whether to treat DWPs as compensation for purposes of employer contributions (i.e., whether employer matching or profit sharing contributions should be made with respect to DWPs).**

The enclosed amendment has been drafted such that the "default" provision is to **include** DWPs in compensation for **all purposes** (for both deferrals and employer contributions), and for this provision to be **effective as of the first day of the 2009 plan year**. **However, by completing Article II and executing the Amendment, you may elect not to include DWPs in compensation for purposes of employer contributions, or you may elect not to include DWPs in compensation (for purposes of employer contributions) until a date later than the first day of the 2009 plan year.** [Note that prior to the HEART Act, DWPs were not considered 415 compensation *unless* the plan document specifically provided for their inclusion in 415 compensation, and because few plans treated DWPs as 415 compensation, few plans treated them as compensation for purposes of deferrals or employer contributions.] **If your plan did not treat DWPs as "compensation" for purposes of employer contributions during the 2009 plan year, you may elect to delay the effective date of that provision until 2011 or later. Alternatively, if you do not wish to include DWPs in compensation (for purposes of employer contributions) going forward, you may elect to treat DWPs as compensation *solely* for purposes of elective deferrals.**

The amendment also clarifies that not only are the survivors of a Participant who dies while performing qualified military service entitled to any additional benefits that the Participant would have received had the Participant returned to employment before he/she died, but the Plan must also credit the Participant's qualified military service as service for vesting purposes.

IF NO ELECTION IS MADE IN THIS SECTION OF THE AMENDMENT, THE DEFAULT PROVISION WILL APPLY, SUCH THAT DWPS SHALL BE TREATED AS COMPENSATION FOR ALL PURPOSES UNDER THE PLAN FOR PLAN YEARS BEGINNING AFTER DECEMBER 31, 2008.

**In lieu of the default provision regarding distributions on account of the "deemed" severance from employment of individuals performing qualified military service (the default is that the Plan shall NOT permit such distributions), the Employer may choose one of the following:**

- **Select 2.8c.** to permit distributions on account of "deemed" severance of employment (as of January 1, 2007), or
- **Select 2.8d.** to permit distributions on account of "deemed" severance of employment as of a date later than January 1, 2007. (Date must be inserted in blank)

The subsequent IRS guidance regarding the HEART Act also clarified that, **although participants on military leave are "deemed" to have**

**severed employment** (for purposes of the withdrawal restrictions applicable to elective deferrals), **such that they may legally take a distribution of their elective deferral accounts, plans are not required to allow such distributions.** Therefore, you (the plan sponsor) may elect to allow such distributions as of January 1, 2007 (or as of a date later than the January 1, 2007 effective date of the rule) by completing Article II of the Amendment and executing the Amendment.

IF NO ELECTION IS MADE IN THIS SECTION OF THE AMENDMENT, THE PLAN WILL NOT PERMIT DISTRIBUTIONS BASED ON "DEEMED" SEVERANCE OF EMPLOYMENT.

### **Section 2.9 WRERA (RMD Waivers for 2009)**

This section should be completed if the Employer wishes to change the default provision in Section 2.1 regarding 2009 Required Minimum Distributions. The default is that 2009 RMDs continued to be made for Participants and Beneficiaries receiving installment payments (unless the Participant or Beneficiary elected otherwise), but were suspended for all other Participants.

In lieu of the default, the Employer may choose one of the following:

- **Select 2.9a.** to indicate that RMDs for 2009 continued for all Participants and Beneficiaries **unless** elected otherwise by the Participant or Beneficiary, or
- **Select 2.9b.** to indicate that RMDs for 2009 continued for all Participants and Beneficiaries, **but only** those Participants or Beneficiaries receiving installments could elect otherwise, or
- **Select 2.9c.** Other: Insert method used for handling RMDs in 2009.

IF NO ELECTION IS MADE IN THIS SECTION, THE PLAN WILL PROVIDE THAT **2009 RMDs** WERE CONTINUED FOR THOSE INDIVIDUALS RECEIVING INSTALLMENT PAYMENTS (UNLESS THEY ELECTED OTHERWISE), BUT WERE SUSPENDED FOR ALL OTHERS.

### **Treatment of 2009 RMDs as eligible rollover distributions**

If the Employer does not check options 2.9d. or e., the Plan will provide that Participants were offered a direct rollover option only with respect to amounts that would otherwise have been "eligible rollover distributions" without regard to the 2009 waiver. Thus, **unless the Employer elects options 2.9d. or e.**, the Plan will provide that Participants were not offered a "direct rollover" option for any payment that was part of a series of payments that were scheduled to last for the life or life-expectancy of the Participant, or for a period of more than 10 years, and that they were not offered a direct rollover option for the portion of any other distribution that would have been a 2009 RMD. In lieu of this "default" provision, the Employer may choose one of the following:

- **Select 2.9d.** to indicate that **2009 RMDs and installment payments that included 2009 RMDs were treated** as eligible rollovers, or
- **Select 2.9e.** to indicate that **2009 RMDs were treated** as an eligible rollovers, but **only** if they were paid with additional amounts that were eligible for rollover without regard to the 2009 waiver.

IF NO ELECTION IS MADE IN THIS SECTION, THE PLAN WILL PROVIDE THAT A DIRECT ROLLOVER OPTION WAS OFFERED ONLY FOR AMOUNTS THAT WOULD HAVE BEEN "ELIGIBLE ROLLOVER DISTRIBUTIONS" WITHOUT REGARD TO THE 2009 WAIVER.

## **ARTICLE III – PARTICIPANT DISTRIBUTION NOTIFICATION**

### **Section 3.1: 180 day notification period.**

For distribution notices issued in plan years beginning after December 31, 2006, the maximum notice period will be 180 days instead of 90 days.

## **ARTICLE IV – ROLLOVER OF AFTER-TAX/ROTH AMOUNTS**

### **4.1: Direct Rollover to qualified plan/403(b) plan.**

This section of the amendment provides that for taxable years after December 31, 2006, a participant may elect to transfer employee after-tax or Roth contributions by means of a direct rollover to a qualified plan or a 403(b) plan. The recipient plan must agree to separately account for the transferred amounts, including the amount includible in gross income and the amount not includible in gross income.

## **ARTICLE V – DIRECT ROLLOVER OF NON-SPOUSAL DISTRIBUTION**

### **5.1: Non-spouse beneficiary rollover right.**

This amendment section provides that for distributions after **December 31, 2009** (and, unless an election to the contrary was made in section 2.2, for distributions after December 31, 2006), a non-spouse beneficiary **may** roll over an eligible rollover distribution to an inherited IRA.

### **5.2: Certain requirements not applicable.**

Section 5.2 clarifies that although section 5.1 permits the rollover of certain distributions by a non-spouse beneficiary, such distributions made prior to January 1, 2010 are not subject to the direct rollover requirements of Code Section 401(a)(31), the notice requirements of Code Section 402(f) or the mandatory withholding requirements of Code Section 3405(c). Further, the distribution is not eligible for a "60-day" rollover.

### **5.3: Trust beneficiary.**

Section 5.3 provides that if the participant's beneficiary is a trust, the plan may make the direct rollover to an IRA on behalf of the trust, provided that the trust satisfies the requirements to be a designated beneficiary.

### **5.4: Required minimum distributions not eligible for rollover.**

This section clarifies that required minimum distributions are not eligible for rollover. However, if the participant dies prior to the required beginning date and the non-spouse beneficiary rolls over the maximum amount eligible for rollover, the beneficiary may elect either the 5-year rule or the life expectancy rule in determining required minimum distributions from the IRA.

## **ARTICLE VI – DISTRIBUTION BASED ON BENEFICIARY HARDSHIP**

### **6.1: Beneficiary-based distribution.**

Unless otherwise elected in Section 2.3, effective August 17, 2006, a participant's hardship event for purposes of the safe harbor provisions of the Treasury regulations **includes an immediate and heavy need of the participant's primary beneficiary that would constitute a hardship event if it occurred with respect to the participant's spouse or dependent.** Such hardship events are limited to educational expenses, funeral expenses and certain medical expenses. For this purpose, a primary beneficiary is an individual who is named as a beneficiary under the plan and has an unconditional right to all or a portion of the Participant's account balance under the plan upon the participant's death.

## **ARTICLE VII – IN-SERVICE PENSION DISTRIBUTIONS**

## **7.1: Age 62 distributions**

This section provides for in-service distributions at age 62 for pension plans. Section 7.1 of the amendment provides that, if elected in Section 2.4.a, and beginning on the effective date specified in that section, **if the plan is a money purchase pension plan, a target benefit plan, or any other defined contribution plan that has received a transfer of assets from a pension plan**, a participant who has attained age 62 and who has not separated from employment may elect to receive a distribution of their vested account balance (or, in the case of a transferee plan, of the transferred account balance).

## **ARTICLE VIII – DIRECT ROLLOVER TO ROTH IRA**

### **8.1: Roth IRA rollover.**

For distributions made after December 31, 2007, a participant may elect to roll an eligible rollover distribution directly to a Roth IRA.

## **ARTICLE IX – DOMESTIC RELATIONS ORDER**

### **9.1: Permissible DROs**

Effective April 6, 2007, a domestic relations order that otherwise meets the requirements for a qualified domestic relations order (DRO) will not fail to be a DRO solely because the order is issued after or revises another domestic relations order or DRO, or solely because of the time at which the order is issued, including issuance after the annuity starting date or after the participant's death.

### **9.2: Other DRO requirements apply.**

A domestic relations order described in Section 9.1 is subject to the same requirements and protections that apply to all DROs.

## **ARTICLE X – QUALIFIED RESERVIST DISTRIBUTION**

### **10.1: 401(k) distribution restrictions.**

Section 10.1 provides that if elected in Section 2.5.a, and beginning on the effective date specified in that section, the plan permits a participant to elect a Qualified Reservist Distribution.

### **10.2: Qualified Reservist Distribution defined.**

A Qualified Reservist Distribution is defined as any distribution to an individual ordered or called to active duty after September 11, 2001, if (1) the distribution is from amounts attributable to elective deferrals in a 401(k) plan, (2) the individual was, by reason of being a member of a reserve component, ordered or called to active duty for a period in excess of 179 days or for an indefinite period, and (3) the plan makes the distribution during the period beginning on the date of such order or call and ending at the close of the active duty period.

## **ARTICLE XI – HEART ACT PROVISIONS**

### **Section 11.1: Death benefits.**

This section clarifies that, **pursuant to the HEART Act, the survivors of a Participant who dies while performing qualified military service are entitled to any additional benefits** (other than benefit accruals relating to the period of qualified military service) provided under the Plan as if the Participant had resumed employment and then terminated employment on account of death. (Thus, for example, if the Plan provides for 100% vesting upon death prior to termination of employment, the Beneficiary of a partially vested Participant who dies while performing military service will be entitled to 100% of the Participant's account balance.) In addition, **the Plan must credit the Participant's qualified military service as service for vesting purposes.**

### **Section 11.2: Benefit accrual.**

This section is intended to **clarify that continued benefit accruals pursuant to HEART are optional. The Employer may elect to provide for such accruals, and may elect the effective date of this provision**, but the Employer is not required to do so (and the default is not to apply the provisions of this section).

If the Employer elects, in Section 2.6, for this provision to apply, then for purposes of benefit accruals, the Plan **shall** treat an individual who dies or becomes disabled while performing qualified military service as if the individual had resumed employment on the day preceding death or disability and terminated employment on the actual date of death or disability.

The Plan will then determine the amount of employee contributions and elective deferrals (of an individual treated as reemployed under this provision) on the basis of the individual's average actual employee contributions or elective deferrals for the lesser of (i) the 12-month period of service immediately prior to qualified military service or (ii) the actual length of continuous service with the Employer.

### **Section 11.3: Differential wage payments (DWPs).**

This section clarifies that, for years beginning after December 31, 2008, (i) **an individual receiving a DWP is treated as an employee of the Employer making the payment**, and (ii) **the DWP must be treated as Compensation for purposes of the Code Section 415 limit** (and for purpose of plan provisions, such as the determination of HCEs and the minimum top-heavy contribution, that are based on 415 compensation). Unless the Employer elects otherwise (in Section 2.7b), DWPs will be treated as compensation for all plan purposes (including for purposes of allocations or benefits), and the Plan will not be treated as failing to meet the requirements of any of the provisions described in Code Section 414(u)(1)(C) or any corresponding provision of the plan (such as the plan provisions relating to the ADP and ACP tests) by reason of any contribution or benefit that is based on the DWP. In addition, in applying those provisions and/or performing those tests, the Employer may operationally determine whether to take into account any deferrals or matching contributions that are attributable to DWPs. The Employer may elect, in Section 2.7b., to include DWPs as compensation for purposes of allocations or benefits as of a date later than the first plan year beginning after December 31, 2008, to include DWPs' as compensation solely for purposes of making Elective Deferrals, or both.

### **Section 11.4: Deemed Severance.**

This section clarifies that, **for purposes of determining when elective deferrals may legally be distributed to a Participant who has not terminated employment**, an individual is "treated" as having severed employment if the individual is performing qualified military service for a period of more than 30 days. However, the Plan is not required to allow distributions to such individuals (and the default is not to allow such distributions). **If the employer elects, in Section 2.8, to allow such distributions, and if a Participant elects a distribution based on his/her "deemed" severance, Elective Deferrals or employee contributions shall be suspended for 6 months beginning on the date of the distribution.**

## **ARTICLE XII – WAIVER OF 2009 REQUIRED DISTRIBUTIONS**

### **Section 12.1: Continuation of RMDs for Participants or Beneficiaries receiving installment payments (unless otherwise elected by the Participant or Beneficiary); Suspension of RMDs for all other Participants or Beneficiaries.**

This section sets forth the “default” provision regarding 2009 RMDs, and applies unless the Employer elects, in Section 2.9, to apply one of the optional provisions. Under the default provision, the Plan continued to make RMDs in 2009 for Participants or Beneficiaries who had previously elected to receive installment payments (unless they elected not to take such distributions), but suspended RMDs for all other participants. The Amendment is designed to reflect the manner in which required minimum distributions (“RMDs”) for 2009 were handled by VALIC and your plan (and your plan participants). **If your plan was operated in this manner, you do not need to change the Amendment in any way.** However, if your plan continued to *require* participants (other than those receiving installment payments) to take RMDs for 2009, then you need to check the appropriate option in Article II of the Amendment and execute the Amendment (to reflect how your plan was actually administered). If (during 2009) you continued to require distribution of RMDs to participants who were not taking installment payments, you should also indicate whether you allowed individual participants to elect otherwise (i.e., whether individual participants could elect *not* to take the RMD for 2009).

**This section does not apply if Section 2.9a. b., or c. is elected.**

### **Section 12.2: Continuation of RMDs for all Participants or Beneficiaries, unless otherwise elected by the Participant or Beneficiary.**

**If an election is made under Section 2.9a. to apply this Section 12.2,** then the Plan provides that RMDs for 2009 continued for all Participants or Beneficiaries, unless otherwise elected by the Participant or Beneficiary.

### **Section 12.3: Continuation of RMDs for all Participants or Beneficiaries (unless otherwise elected by Participants or Beneficiaries receiving installment distributions).**

**If an election is made under Section 2.9b to apply this Section 12.3,** then the Plan provides that RMDs for 2009 continued for all Participants or Beneficiaries **but only** Participants or Beneficiaries receiving installments had the option to elect otherwise.

### **Section 12.4: Direct Rollovers**

This section provides that, **unless the Employer elects otherwise in Section 12.3,** a direct rollover was offered (during 2009) only for distributions that were eligible rollover distributions without regard to the 2009 waiver of RMDs under Code Section 401(a)(9)(H). Thus, unless the Employer elects otherwise in Section 2.9, the plan will provide that, during 2009, participants were only provided a direct rollover option for distributions (or the portion of a distribution) that was not the 2009 RMD, and that was not part of a series of payments for the life or life expectancy of the Participant (or for a period of more than 10 years).

### **EMPLOYER SIGNATURE**

The Employer must insert the Employer’s name, the name of the Plan, execute (sign), and date the Amendment to demonstrate compliance with this legislative update.

**AMENDMENT FOR PENSION PROTECTION ACT, HEART ACT AND  
WORKER, RETIREE, AND EMPLOYER RECOVERY ACT**

**ARTICLE I  
PREAMBLE**

- 1.1 **Effective date of Amendment.** The Employer adopts this Amendment to the Plan to reflect recent law changes. This Amendment is effective as indicated below for the respective provisions.
- 1.2 **Superseding of inconsistent provisions.** This Amendment supersedes the provisions of the Plan to the extent those provisions are inconsistent with the provisions of this Amendment.
- 1.3 **Employer's election.** The Employer adopts all the default provisions of this Amendment except as otherwise elected in Article II.
- 1.4 **Construction.** Except as otherwise provided in this Amendment, any reference to "Section" in this Amendment refers only to sections within this Amendment, and is not a reference to the Plan. The Article and Section numbering in this Amendment is solely for purposes of this Amendment, and does not relate to any Plan article, section or other numbering designations.
- 1.5 **Effect of restatement of Plan.** If the Employer restates the Plan, then this Amendment shall remain in effect after such restatement unless the provisions in this Amendment are restated or otherwise become obsolete (e.g., if the Plan is restated onto a plan document which incorporates PPA provisions).

**ARTICLE II  
EMPLOYER ELECTIONS**

The Employer only needs to complete the questions in Sections 2.2 through 2.9 below in order to override the default provisions set forth in Section 2.1 below. I

- 2.1 **Default Provisions.** Unless the Employer elects otherwise in this Article, the following defaults will apply:
  - a. **Nonspousal beneficiary rollovers are allowed effective for distributions made after December 31, 2006.**
  - b. **Hardship distributions for expenses of a beneficiary are allowed effective as of August 17, 2006.**
  - c. **The option to permit in-service distributions at age 62 (with respect to amounts attributable to a money purchase pension plan, target benefit plan, or any other defined contribution plan that has received a transfer of assets from a pension plan) is not adopted.**
  - d. **Qualified Reservist Distributions are not allowed.**
  - e. **Continued benefit accruals pursuant to the Heroes Earnings Assistance and Relief Tax Act of 2008 (HEART Act) are not provided.**
  - f. **Differential wage payments are treated as "Compensation" for all Plan benefit purposes.**
  - g. **The Plan does not permit distributions pursuant to the HEART Act on account of "deemed" severance of employment.**
  - h. **Required Minimum Distributions (RMDs) for 2009 shall continue in accordance with the terms of the Plan for Participants or Beneficiaries receiving distributions in the form of installment payments (unless such Participant or Beneficiary elects otherwise), but shall be suspended for all other Participants and Beneficiaries.**
- 2.2 **Non-spousal rollovers (Article V).** Non-spousal rollovers are allowed after December 31, 2006 unless a. or b. is elected below (Article V provides that such distributions are always allowed after December 31, 2009):
  - a.  Non-spousal rollovers are not allowed prior to January 1, 2010.
  - b.  Non-spousal rollovers are allowed effective \_\_\_\_\_ (not earlier than January 1, 2007 and not later than December 31, 2009).

- 2.3 **Hardships (Article VI).** Hardship distributions for expenses of beneficiaries will be allowed effective as of August 17, 2006, unless a. or b. is elected below (applies only for 401(k) or profit sharing plans that allow hardship distributions):
- Hardship distributions for beneficiary expenses are not allowed.
  - Hardship distributions for beneficiary expenses are allowed effective as of \_\_\_\_\_ (may not be earlier than August 17, 2006).
- 2.4 **In-service distributions at age 62 (Article VII).** In-service distributions at age 62 will not be allowed unless a. is elected below:
- In-service distributions will be allowed for Participants at age 62 (generally applies only for money purchase plans, but may apply to any other defined contribution plans that have received a transfer of assets from a pension plan) effective as of the first day of the 2007 Plan Year unless another date is elected below:
    - \_\_\_\_\_ (may not be earlier than the first day of the 2007 Plan Year).

**AND, the following limitations apply to in-service distributions:**

    - The Plan already provides for in-service and the restrictions set forth in the Plan (e.g., minimum amount of distributions or frequency of distributions) are applicable to in-service distributions at age 62.
    - N/A. No limitations.
    - The following elections apply to in-service distributions at age 62 (select all that apply):
      - The minimum amount of a distribution is \$\_\_\_\_\_ (may not exceed \$1,000).
      - No more than \_\_\_\_\_ distribution(s) may be made to a Participant during a Plan Year.
      - Distributions may only be made from accounts that are fully vested
      - In-service distributions may be made subject to the following provisions:  
\_\_\_\_\_ (must be definitely determinable and not subject to discretion).
- 2.5 **Qualified Reservist Distributions (Article X).** Qualified Reservist distributions will not be allowed unless a. is elected below:
- Qualified Reservist Distributions are allowed effective as of \_\_\_\_\_ (may not be earlier than September 12, 2001).
- 2.6 **Continued benefit accruals (Article XI).** Continued benefit accruals for the HEART Act (Amendment Section 11.2) will not apply unless elected below:
- The provisions of Amendment Section 11.2 apply effective as of: (select one)
    - the first day of the 2007 Plan Year
    - \_\_\_\_\_ (may not be earlier than first day of the 2007 Plan Year).
- However, the provisions no longer apply effective as of: (select if applicable)
- \_\_\_\_\_
- 2.7 **Treatment of Differential Pay (Article XI).** Differential wage payments (as described in Amendment Section 11.3) will be treated, for Plan Years beginning after December 31, 2008, as compensation for all Plan benefit purposes unless b. is elected below:
- In lieu of the above default provision, the employer elects the following (select all that apply; these selections do not affect the operation of Amendment Section 11.3(ii)):
    - the inclusion is effective for Plan Years beginning after \_\_\_\_\_ (may not be earlier than December 31, 2008).
    - the inclusion only applies to Compensation for purposes of Elective Deferrals.
- 2.8. **Distributions for deemed severance of employment. (Article XI)** The Plan does not permit distributions pursuant to Amendment Section 11.4 unless otherwise elected below:
- The Plan does permit such distributions.
  - The Plan permits such distributions effective as of \_\_\_\_\_ (may not be earlier than January 1, 2007).
- 2.9 **WRERA (RMD waivers for 2009).** (Article XI) The provisions of Amendment Section 12.1 apply (RMDs continue in accordance with the terms of the Plan for Participants or Beneficiaries receiving installment payments unless such Participant or Beneficiary elects otherwise, whereas RMDs are suspended for all other Participants

and Beneficiaries) unless otherwise elected below:

- a.  The provisions of Amendment Section 12.2 apply (RMDs continue in accordance with the terms of the Plan for all Participants and Beneficiaries, unless otherwise elected by a Participant or Beneficiary).
- b.  The provisions of Amendment Section 12.3 apply (RMDs continue in accordance with the terms of the Plan for all Participants and Beneficiaries, but only Participants or Beneficiaries receiving installment payments may elect otherwise).
- c.  Other: \_\_\_\_\_

For purposes of Amendment Section 12.4, the Plan will also treat the following as eligible rollover distributions in 2009: (If no election is made, then a direct rollover will be offered only for distributions that would be eligible rollover distributions without regard to Code §401(a)(9)(H)):

- d.  2009 RMDs (as defined in Article IV of this Amendment) and installment payments that include 2009 RMDs.
- e.  2009 RMDs (as defined in Article IV of this Amendment) but only if paid with an additional amount that is an eligible rollover distribution without regard to Code §401(a)(9)(H).

### ARTICLE III PARTICIPANT DISTRIBUTION NOTIFICATION

- 3.1 **180-day notification period.** For any distribution notice issued in Plan Years beginning after December 31, 2006, any reference to the 90-day maximum notice period prior to distribution in applying the notice requirements of Code §402(f) (the rollover notice) will become 180 days.

### ARTICLE IV ROLLOVER OF AFTER-TAX/ROTH AMOUNTS

- 4.1 **Direct rollover to qualified plan/403(b) plan.** For taxable years beginning after December 31, 2006, a Participant may elect to transfer employee (after-tax) or Roth elective deferral contributions by means of a direct rollover to a qualified plan or to a 403(b) plan that agrees to account separately for amounts so transferred, including accounting separately for the portion of such distribution which is includible in gross income and the portion of such distribution which is not includible in gross income.

### ARTICLE V DIRECT ROLLOVER OF NON-SPOUSAL DISTRIBUTION

- 5.1 **Non-spouse beneficiary rollover right.** For distributions after December 31, 2009, and unless otherwise elected in Section 2.2 of this Amendment, for distributions between January 1, 2007 and December 31, 2009, a non-spouse beneficiary who is a "designated beneficiary" under Code §401(a)(9)(E) and the regulations thereunder, by a direct trustee-to-trustee transfer ("direct rollover"), may roll over all or any portion of his or her distribution to an individual retirement account the beneficiary establishes for purposes of receiving the distribution. In order to be able to roll over the distribution, the distribution otherwise must satisfy the definition of an eligible rollover distribution.
- 5.2 **Certain requirements not applicable.** Although a non-spouse beneficiary may roll over directly a distribution as provided in Section 5.1, any distribution made prior to January 1, 2010 is not subject to the direct rollover requirements of Code §401(a)(31) (including Code §401(a)(31)(B), the notice requirements of Code §402(f) or the mandatory withholding requirements of Code §3405(c)). If a non-spouse beneficiary receives a distribution from the Plan, the distribution is not eligible for a "60-day" rollover.
- 5.3 **Trust beneficiary.** If the Participant's named beneficiary is a trust, the Plan may make a direct rollover to an individual retirement account on behalf of the trust, provided the trust satisfies the requirements to be a designated beneficiary within the meaning of Code §401(a)(9)(E).
- 5.4 **Required minimum distributions not eligible for rollover.** A non-spouse beneficiary may not roll over an amount which is a required minimum distribution, as determined under applicable Treasury regulations and other Revenue Service guidance. If the Participant dies before his or her required beginning date and the non-spouse beneficiary rolls over to an IRA the maximum amount eligible for rollover, the beneficiary may elect to use either the 5-year rule or the life expectancy rule, pursuant to Treas. Reg. §1.401(a)(9)-3, A-4(c), in determining the required minimum distributions from the IRA that receives the non-spouse beneficiary's distribution.



**ARTICLE VI  
DISTRIBUTION BASED ON BENEFICIARY HARDSHIP**

- 6.1 **Beneficiary-based distribution.** Unless otherwise elected in Amendment Section 2.3, then effective as of August 17, 2006, a Participant's hardship event, for purposes of the Plan's hardship distribution provisions, includes an immediate and heavy financial need of the Participant's primary beneficiary under the Plan, that would constitute a hardship event if it occurred with respect to the Participant's spouse or dependent as defined under Code §152 (such hardship events being limited to educational expenses, funeral expenses and certain medical expenses). For purposes of this Article, a Participant's "primary beneficiary under the Plan" is an individual who is named as a beneficiary under the Plan and has an unconditional right to all or a portion of the Participant's account balance under the Plan upon the Participant's death.

**ARTICLE VII  
IN-SERVICE PENSION DISTRIBUTIONS**

- 7.1 **Age 62 distributions.** If elected in Amendment Section 2.4a., then beginning as of the date specified in such Section, if the Plan is a money purchase pension plan (or a profit sharing plan that has received a transfer of assets from a pension plan), a Participant who has attained age 62 and who is 100% vested in his or her Account under the Plan, but who has not separated from employment, may elect to receive a distribution of up to the entire amount credited to his or her Account (or, in the case of a transferee plan, of up to the entire amount attributable to such transferred assets).

**ARTICLE VIII  
DIRECT ROLLOVER TO ROTH IRA**

- 8.1 **Roth IRA rollover.** For distributions made after December 31, 2007, a participant may elect to roll over directly an eligible rollover distribution to a Roth IRA described in Code §408A(b).

**ARTICLE IX  
DOMESTIC RELATIONS ORDERS**

- 9.1 **Permissible DROs.** Effective April 6, 2007, a domestic relations order ("DRO") will not fall to be a DRO: (i) solely because the order is issued after, or revises, another domestic relations order or DRO; or (ii) solely because of the time at which the order is issued, including issuance after the annuity starting date or after the Participant's death.
- 9.2 **Other DRO requirements apply.** A domestic relations order described in Section 9.1 is subject to the same requirements and protections that apply to DROs.

**ARTICLE X  
QUALIFIED RESERVIST DISTRIBUTION**

- 10.1 **401(k) distribution restrictions.** If elected in Amendment Section 2.5a., then effective as of the date specified in such Section, the Plan permits a Participant to elect a Qualified Reservist Distribution, as defined in this Article X.
- 10.2 **Qualified Reservist Distribution defined.** A "Qualified Reservist Distribution" is any distribution to an individual who is ordered or called to active duty after September 11, 2001, if: (i) the distribution is from amounts attributable to elective deferrals in a 401(k) plan; (ii) the individual was (by reason of being a member of a reserve component, as defined in section 101 of title 37, United States Code) ordered or called to active duty for a period in excess of 179 days or for an indefinite period; and (iii) the Plan makes the distribution during the period beginning on the date of such order or call, and ending at the close of the active duty period.

ARTICLE XI  
HEART ACT PROVISIONS

- 11.1 Death benefits.** In the case of a death occurring on or after January 1, 2007, if a Participant dies while performing qualified military service (as defined in Code §414(u)), the Participant's Beneficiary is entitled to any additional benefits (other than benefit accruals relating to the period of qualified military service) provided under the Plan as if the Participant had resumed employment and then terminated employment on account of death. Moreover, the Plan will credit the Participant's qualified military service as service for vesting purposes, as though the Participant had resumed employment under USERRA immediately prior to the Participant's death.
- 11.2 Benefit accrual.** If the Employer elects in Amendment Section 2.6 to apply this Section 11.2, then effective as of the date specified in Amendment Section 2.6a., for benefit accrual purposes, the Plan treats an individual who dies or becomes disabled (as defined under the terms of the Plan) while performing qualified military service with respect to the Employer as if the individual had resumed employment in accordance with the individual's reemployment rights under USERRA, on the day preceding death or disability (as the case may be) and terminated employment on the actual date of death or disability.
- a. Determination of benefits.** The Plan will determine the amount of employee contributions and the amount of elective deferrals of an individual treated as reemployed under this Section 11.2 for purposes of applying paragraph Code §414(u)(8)(C) on the basis of the individual's average actual employee contributions or elective deferrals for the lesser of: (i) the 12-month period of service with the Employer immediately prior to qualified military service; or (ii) the actual length of continuous service with the Employer.
- 11.3 Differential wage payments.** For years beginning after December 31, 2008: (i) an individual receiving a differential wage payment, as defined by Code §3401(h)(2), is treated as an employee of the employer making the payment; (ii) the differential wage payment is treated as compensation for purposes of Code §415(c)(3) and Treasury Reg. §1.415(c)-2 (e.g., for purposes of Code §415, top-heavy provisions of Code §416, determination of highly compensated employees under Code §414(q), and applying the 5% gateway requirement under the Code § 401(a)(4) regulations); and (iii) the Plan is not treated as failing to meet the requirements of any provision described in Code §414(u)(1)(C) (or corresponding plan provisions, including, but not limited to, Plan provisions related to the ADP or ACP test) by reason of any contribution or benefit which is based on the differential wage payment. The Plan Administrator operationally may determine, for purposes of the provisions described in Code §414(u)(1)(C), whether to take into account any deferrals, and if applicable, any matching contributions, attributable to differential wages. Differential wage payments (as described herein) will also be considered compensation for all Plan purposes unless otherwise elected at Amendment Section 2.7.
- Section 11.3(iii) above applies only if all employees of the Employer performing service in the uniformed services described in Code §3401(h)(2)(A) are entitled to receive differential wage payments (as defined in Code §3401(h)(2)) on reasonably equivalent terms and, if eligible to participate in a retirement plan maintained by the Employer, to make contributions based on the payments on reasonably equivalent terms (taking into account Code §§410(b)(3), (4), and (5)).
- 11.4 Deemed Severance.** Notwithstanding Section 11.3(i), if a Participant performs service in the uniformed services (as defined in Code §414(u)(12)(B)) on active duty for a period of more than 30 days, the Participant will be deemed to have a severance from employment solely for purposes of eligibility for distribution of amounts not subject to Code §412. However, the Plan will not distribute such a Participant's account on account of this deemed severance unless (i) the Employer elects in Amendment Section 2.8.c or 2.8.d to allow such distributions and (ii) the Participant specifically elects to receive a benefit distribution hereunder. If a Participant elects to receive a distribution on account of this deemed severance, then the individual may not make an elective deferral or employee contribution during the 6-month period beginning on the date of the distribution. If a Participant would be entitled to a distribution on account of a deemed severance, and a distribution on account of another Plan provision (such as a qualified reservist distribution), then the other Plan provision will control and the 6-month suspension will not apply.

ARTICLE XII  
WAIVER OF 2009 REQUIRED DISTRIBUTION

- 12.1 **Continuation of RMDs for Participants receiving installment payments (unless otherwise elected by Participant); Suspension of RMDs for all other Participants.** This paragraph does not apply if the Employer elected Amendment Section 2.9a., b., or c. Notwithstanding the provisions of Code §401(a)(9)(H), a Participant or Beneficiary who would have been required to receive required minimum distributions for 2009 but for the enactment of Code §401(a)(9)(H) ("2009 RMDs"), and who would have satisfied that requirement by receiving distributions that are one or more payments in a series of installments (that include 2009 RMDs), will continue to receive those distributions for 2009 unless the Participant or Beneficiary chooses not to receive such distributions. Participants and Beneficiaries described in the preceding sentence will be given the opportunity to elect not to receive the distributions that include 2009 RMDs. For all other Participants and Beneficiaries, the requirement to receive the 2009 RMD shall be suspended in accordance with Code Section 401(a)(9)(H).
- 12.2 **Continuation of RMDs for all Participants unless otherwise elected by the Participant.** This paragraph applies if Amendment Section 2.9a. is selected. Notwithstanding the provisions of Code §401(a)(9)(H), a Participant or Beneficiary who would have been required to receive required minimum distributions for 2009 but for the enactment of Code §401(a)(9)(H) ("2009 RMDs"), and who would have satisfied that requirement by receiving distributions that are either (1) equal to the 2009 RMDs or (2) one or more payments in a series of installments (that include 2009 RMDs), will receive those distributions for 2009 unless the Participant or Beneficiary chooses not to receive such distributions. Participants and Beneficiaries described in the preceding sentence will be given the opportunity to elect to stop receiving the distributions described in the preceding sentence.
- 12.3 **Continuation of RMDs for all Participants (unless otherwise elected by Participants receiving installment distributions).** This paragraph applies if Amendment Section 2.9b. is selected. Notwithstanding the provisions of Code Section 401(a)(9)(H), a Participant or Beneficiary who would have been required to receive required minimum distributions for 2009 but for the enactment of Code §401(a)(9)(H) ("2009 RMDs"), and who would have satisfied that requirement by receiving distributions that are either (1) equal to the 2009 RMDs or (2) one or more payments in a series of installments (that include the 2009 RMDs), will receive those distributions for 2009. However, Participants and Beneficiaries receiving installments will be given the opportunity to elect not to receive the distributions that include 2009 RMDs.
- 12.4 **Direct Rollovers.** Notwithstanding the provisions of the Plan relating to required minimum distributions under Code §401(a)(9), and solely for purposes of applying the direct rollover provisions of the Plan, certain additional distributions in 2009, as elected by the Employer in Amendment Section 2.9, will be treated as eligible rollover distributions. If no election is made by the Employer in Amendment Section 2.9, then a direct rollover will be offered only for distributions that would be eligible rollover distributions without regard to Code §401(a)(9)(H).

\*\*\*\*\*

This Amendment has been executed this \_\_\_\_\_ day of \_\_\_\_\_.

Name of Plan: \_\_\_\_\_

Name of Employer: \_\_\_\_\_

By: \_\_\_\_\_

EMPLOYER



The Variable Annuity Life Insurance Company  
P.O. Box 15648  
Amarillo, TX 79105

October 31, 2011

T2-69\*\*\*\*\*AUTO\*\*ALL FOR AADC 970  
CITY OF LEBANON  
JOHN E HITT  
CITY MANAGER  
925 S MAIN ST  
LEBANON OR 97355-3213  
GA#64069.PLN#01



**Re: Updated 457(b) Specimen Document for Governmental Employers – Action Required**

Dear Retirement Plan Administrator:

The purpose of this correspondence is to notify you of certain required changes to your governmental 457(b) plan in accordance with recent federal tax legislation including the Pension Protection Act of 2006 ("PPA"), the Heroes Earnings Assistance and Relief Tax Act of 2008 (the "HEART Act"), the Worker, Retiree and Employer Recovery Act of 2008 ("WREERA") and the Small Business Jobs Act of 2010 (the "Jobs Act").

In an effort to expedite delivery and provide easy access to our Plan Sponsors, an updated VALIC specimen section 457(b) Plan is now available via our website at [www.valic.com](http://www.valic.com), on the home page under the *News and Noteworthy* section.

**What action must be taken by Plan Sponsors?**

We would encourage you to review the specimen document with your legal counsel and/or tax advisor. Please note that if you choose not to adopt a VALIC specimen document, then you should consult an alternative document provider to obtain the needed updates and provide us a copy of your executed updated plan document for our files.

**By what date is an updated document required?**

Governmental 457(b) plans must generally be amended to comply with the PPA legislative changes described above by **not later than the last day of the 2011 plan year** (i.e., December 31, 2011, for calendar year plans).

**What are some of the changes required under these new laws?**

- The HEART Act provides that an individual who is performing qualified military service for a period of more than 30 days is "treated as" having severed employment (for purposes of the statutory provision that generally prohibits distributions from a Section 457(b) plan prior to severance from employment or attainment of age 70½). **However, the IRS has clarified that plans are not required to allow participants performing military service to receive a distribution from the plan solely because they are on military leave.** The specimen document provides (in Section 2.22) that individuals on military leave are "deemed" to have severed employment for purposes of the withdrawal restrictions of Code Section 457(d)(1)(A). Section 6.13 of the specimen document provides that the plan sponsor may elect, in the Adoption Agreement, whether to allow such distributions. Section 6.13 also provides (as required by the HEART Act) that a participant who elects to take a distribution solely on account of such "deemed" severance cannot make pre-tax or Roth after-tax salary deferrals to the plan for a six-month period (measured from the date of the distribution).

- The Jobs Act allows (if the Employer elects in the Adoption Agreement) designated Roth contributions and in-plan Roth conversions.
- The PPA allows (if the Employer elects in the Adoption Agreement), an eligible retired public safety officer to elect to have up to \$3,000 from any plan distribution(s) paid directly to the provider of an accident or health insurance plan or a qualified long-term care insurance contract and any such amounts will be excluded from the participant's gross income.
- WRERA provided for a one year moratorium on required minimum distributions ("RMDs") from defined contribution plans for the 2009 plan year. Subsequent IRS guidance confirmed that the moratorium was elective, meaning Plan Sponsors could suspend RMDs, require participants to take RMDs, or allow individual participants to elect whether to take RMDs.

**What should I do if I decide to utilize the updated VALIC document?**

Should you choose to adopt the VALIC updated document, a copy of the executed Adoption Agreement and Resolution (if applicable) should be returned to the following address:

VALIC  
Attn: Implementation, L11-40  
2929 Allen Parkway  
Houston, Texas 77019

We suggest that you retain a signed copy of the updated document (and Resolution if applicable) with your Plan records.

VALIC's priority is serving the needs of our highly valued clients. Should you have any questions about the specimen document or the deadline for adoption, please contact our Plan Sponsor Service Team at 1-888-478-7020.

Sincerely,



Carolyn Gutierrez  
Vice President, Institutional Services

**SPECIMEN**  
**SECTION 457(b) DEFERRED COMPENSATION PLAN**  
**GOVERNMENTAL EMPLOYERS**

This specimen plan document (which includes both an Adoption Agreement and a Basic Plan Document) is intended to meet the requirements of an eligible deferred compensation plan under Section 457(b) of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder, that is sponsored by a governmental employer, as defined thereunder. This document has not been approved by the Internal Revenue Service and is provided for consideration by the employer and its legal counsel. Modifications may be required depending on the specific facts and circumstances of the employer, including any applicable state or local laws, rules or regulations regarding deferred compensation or retirement benefits for governmental employees. VALIC cannot and does not provide legal or tax advice.

**ADOPTION AGREEMENT**  
**SECTION 457(b) DEFERRED COMPENSATION PLAN**  
**(Governmental)**

The undersigned employer hereby adopts or restates, as applicable, this Plan. This Plan shall comprise both (1) this Adoption Agreement and (2) the Basic Plan Document. Article and section references in this Adoption Agreement refer to articles and sections of the Basic Plan Document unless otherwise indicated.

Employer Name: \_\_\_\_\_

Employer Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Plan Name: \_\_\_\_\_

1. Plan Effective Date. ("Effective Date.") (Check one.)

This Plan is being established by the Employer as a new Plan, effective \_\_\_\_\_, \_\_\_\_\_.

This Plan amends and restates the Plan previously established by the Employer and is effective Nov. 9, 2011. The Plan was originally established by the Employer effective Jan 2, 2002.

2. Eligible Employees. (Check one.)

All Employees shall be eligible to participate.

The Employer, in its sole discretion, shall determine each Plan Year which Employees shall be eligible to participate in the Plan.

All Employees shall be eligible to participate except the following Employees (specify which Employees shall not be allowed to participate in the Plan):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3. Roth Contributions. (Check one.)

Designated Roth Contributions are not permitted, and Section 4.10 shall not apply to this Plan.

Participants may make Designated Roth Contributions (as described in Section 4.10) in lieu of or in addition to pre-tax Elective Deferral Contributions, effective Nov. 9, 2011 (insert date not earlier than the later of January 1, 2011 or the date of the Employer's resolution adopting Designated Roth Contributions).

4. Employer Contributions. (Check one.) Note: Employer Contributions are combined with Elective Deferral Contributions and Designated Roth Contributions in applying the contribution limits described in Section 2.18.

There shall be no Employer Contributions under this Plan.

Discretionary Employer Contribution. The Employer may, in its absolute discretion, make an Employer Contribution to the Plan, and may determine, in its absolute discretion, how any such Employer Contribution shall be allocated among Plan Participants. This Discretionary Employer Contribution may be a matching or non-matching contribution.

FICA Opt-out Contribution. As described in Section 4.11, the Employer shall make FICA Opt-out Contributions (contributions other than Elective Deferral Contributions or Designated Roth Contributions) on behalf of the following Employees in lieu of paying/withholding FICA taxes for such Employees and in the amounts indicated below (check applicable box and fill in blanks for required contribution percentages):

All Employees

Part-time, seasonal and temporary Employees only

Other (indicate which Employees shall be eligible for the FICA Opt-out Contributions):

\_\_\_\_\_

\_\_\_\_\_

The required FICA Opt-out Contribution shall consist of the following types of contributions (which must total 7.5% or more of the Participant's Compensation):

Employer Contribution = \_\_\_\_\_% of Compensation

Mandatory Employee Contribution = \_\_\_\_\_% of Compensation

Other: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

5. Loans. (Check one.)

Yes, loans are allowed and Article IX shall apply to this Plan.

No, loans are not allowed and Article IX shall not apply to this Plan.

6. Unforeseeable Emergency Withdrawals. (Check one.)

Yes. Withdrawals under Section 6.08 shall be available under this Plan. (Check one.)

Withdrawals on account of an illness, accident or need to pay for the funeral expenses of the Participant's primary Beneficiary shall be available effective the later of (a) August 17, 2006, (b) the original effective date of the Plan or, if applicable, (c) \_\_\_\_\_, \_\_\_\_\_ (insert date that this option was first available, if such date was later than August 17, 2006).

Withdrawals on account of an illness, accident or need to pay for funeral expenses of the Participant's primary Beneficiary shall not be available.

No. Withdrawals under Section 6.08 shall not be available under this Plan.

7. Participant's Election to Receive In-Service Distribution. A Participant may elect to receive an in-service distribution of his account balance as described in Section 6.10. (Check one.)

Yes, if the total amount payable to a Participant under the Plan does not exceed the dollar amount under Code Section 411(a)(11)(A) (currently \$5,000).

No. Section 6.10 shall not apply to this Plan.

8. Distribution without Participant's Consent. Small accounts of certain inactive Participants may be distributed without the Participant's consent as described in Section 6.11. (Check one.)

Yes, if the total amount payable to a Participant under the Plan does not exceed \$1,000. Such amount will be paid in cash to the Participant.

No. Section 6.11 shall not apply to this Plan.

9. Distributions to Individuals in Uniformed Services. (Check one.)

The Plan does not permit distributions to individuals who are deemed to have a Severance from Employment solely on account of their performing services in the uniformed services and Section 6.13 shall not apply to this Plan.

Participants who are deemed to have a Severance from Employment on account of their performing services in the uniformed services for a period of 30 days or more may elect to receive a distribution of all or a portion of their Account (subject to the post-distribution restrictions described in Section 6.13).

10. In-plan Roth Conversions. (Check one.) (Note: Employer cannot allow in-plan Roth conversions unless it also elects to allow Designated Roth Contributions under Section 3, above, of this Adoption Agreement.)

In-plan Roth conversions are not permitted, and Section 6.12 shall not apply to this Plan.

Participants may convert certain pre-tax amounts to Roth contributions in an "in-plan" rollover/conversion described in Section 6.12, but only if such amounts are currently distributable under the terms of the Plan, effective Nov. 9, 2011 (insert date not earlier than the later of January 1, 2011 or the date of the Employer's resolution adopting in-plan Roth conversions).



11. Deductions from Distributions to Eligible Retired Public Safety Officers. (Check one.)
- For distributions after December 31, 2006, an Eligible Retired Public Safety Officer may elect, pursuant to Section 6.14, to have up to \$3,000 of the distribution deducted and paid directly to the provider of an accident or health insurance plan or qualified long-term care insurance plan.
  - The Plan does not allow elections by Eligible Retired Public Safety Officers under Section 6.14.
12. Non-spousal Beneficiary Rollovers. As described in Section 8.03, non-spousal Beneficiary rollovers are allowed after December 31, 2006, unless elected otherwise below. (Note: Such distributions are required by law to be allowed after December 31, 2009.)
- Non-spousal Beneficiary rollovers are not allowed prior to January 1, 2010.
  - Non-spousal Beneficiary rollovers are allowed effective Dec. 31, 2009 (insert date not earlier than January 1, 2007 and not later than December 31, 2009).
13. Required Minimum Distributions for 2009. (Check one of the boxes in each of subsections (a) and (b) below. If none of the boxes in a subsection is checked, the first option shall apply to the Plan.)
- (a) For purposes of 2009 required minimum distributions:
- This option reflects VALIC standard operations during 2009.** The provisions of Section 6.05(a) apply (Required Minimum Distributions continue in accordance with the terms of the Plan for Participants or Beneficiaries receiving installment payments unless such Participant or Beneficiary elects otherwise, whereas Required Minimum Distributions are suspended for all other Participants and Beneficiaries).
  - The provisions of Section 6.05(b) apply (Required Minimum Distributions continue in accordance with the terms of the Plan for all Participants and Beneficiaries, unless otherwise elected by a Participant or Beneficiary).
  - The provisions of Section 6.05(c) apply (Required Minimum Distributions continue in accordance with the terms of the Plan for all Participants and Beneficiaries, but only Participants or Beneficiaries receiving installment payments may elect otherwise).
  - Other: \_\_\_\_\_
- 
- Not applicable (Plan established as a new Plan after 2009). (Do not complete subsection (b) below.)
- (b) For purposes of Section 6.05(d), the Plan will treat the following as eligible rollover distributions in 2009:
- This option reflects VALIC standard operations during 2009.** A direct rollover option shall be offered only for distributions that would be eligible rollover distributions without regard to Code Section 401(a)(9)(H).
  - Eligible rollover distributions shall include 2009 Required Minimum Distributions and installment payments that include 2009 Required Minimum Distributions.
  - Eligible rollover distributions shall include 2009 Required Minimum Distributions, but only if paid with an additional amount that is an eligible rollover distribution without regard to Code Section 401(a)(9)(H).
14. Optional Benefit Accruals under HEART Act. (Check one.)
- The optional benefit accrual provisions described in Section 4.12 for individuals who die or become disabled while performing qualified military service shall not apply.
  - The optional benefit accrual provisions described in Section 4.12 for individuals who die or become disabled while performing qualified military service shall apply effective \_\_\_\_\_, \_\_\_\_\_ (insert date not earlier than first day of 2007 Plan Year).
15. Governing Law. This Plan shall be construed under the laws of the State/Commonwealth of Oregon (insert State/Commonwealth). This Plan shall be subject to any applicable State, county or local deferred compensation rules and regulations.

The Employer hereby causes this Adoption Agreement to be executed by its duly authorized representative on the date specified below.

Employer (Please Print): \_\_\_\_\_

Employer's Signature: \_\_\_\_\_

Name (Please Print): \_\_\_\_\_

Title: \_\_\_\_\_ Date: \_\_\_\_\_



The Variable Annuity Life Insurance Company  
P.O. Box 15648  
Amarillo, TX 79105

**SECTION 457(b) DEFERRED COMPENSATION PLAN  
(For Governmental Employers)  
EXPLANATION OF  
ADOPTION AGREEMENT**

**Item 1 - Plan Effective Date**

This section indicates whether the Plan is a new plan (in which case Employer should check the first box and indicate the effective date of the plan) or a restated plan (in which case the Employer should check the second box and indicate both the effective date of the restatement and the original effective date of the plan). Any amendment and restatement should generally be effective as of a date that is not earlier than the first day of the calendar year in which the Adoption Agreement is executed nor later than the last day of the plan year in which the legislative change is required. Note that certain plan provisions are retroactively effective to dates as early as January 1, 2007 (in order to comply with recent statutory changes to Section 457(b)).

**Item 2 - Eligible Employees**

This section allows the Employer to indicate which Employees shall be allowed to participate in the Plan. However, the Employer may also elect to determine each year which Employees will be allowed to participate in the Plan.

**Item 3 - Roth Contributions**

Under recent legislation, governmental 457(b) plans may now allow participants to designate all or a portion of their elective contributions to the Plan as after-tax "Roth" contributions. However, plans are not *required* to allow Roth contributions. The Employer must check the appropriate box if it wishes to allow Participants to make designated Roth contributions under the Plan.

**Item 4 - Employer Contributions**

The Employer should indicate whether it will make Employer Contributions to the Plan. If the Employer simply wishes to retain the discretion to make Employer Contributions, it should check the second box under this item. If the Employer intends for the plan to be a "FICA opt-out" or "FICA replacement" plan for some or all of its Employees, it should check the third box and indicate whether the required contribution (7.5% of Compensation) will be achieved or made through Employer Contributions or through "Mandatory Employee Contributions" (or some combination of both).

**Item 5 - Loans**

This section allows the Employer to indicate whether Participants will be allowed to borrow from their account under the Plan.

**Item 6 - Unforeseeable Emergency Withdrawals**

The Employer may elect whether in-service withdrawals on account of unforeseeable emergency will be allowed under the Plan. If unforeseeable emergency withdrawals are allowed, then the Employer may also elect whether to allow unforeseeable emergency withdrawals on account of illness, accident or need to pay for funeral expenses of a Participant's primary Beneficiary. If unforeseeable emergency withdrawals on account of illness, accident or need to pay for funeral expenses of a Participant's primary Beneficiary have been allowed only since a date later than August 17, 2006 (or the original effective date of the Plan, if later), then the Employer should insert that date in the space provided. See Section 6.08 of the Basic Plan Document for the requirements for an unforeseeable emergency withdrawal.

**Item 7 - Participant's Election to Receive In-Service Distribution**

The Employer may elect whether Participants with small (\$5,000 or less) account balances (who have not made any deferrals under the Plan for at least two years) will be allowed to elect an in-service distribution of their account balance under the Plan.

**Item 8 - Distribution Without Participant's Consent**

The Employer may elect whether Participants with account balances that do not exceed \$1,000 (and who have not made any deferrals under the Plan for at least two years) may be cashed out (by the Employer) without the Participant's consent.

**Item 9 - Distributions to Individuals in Uniformed Services**

The Employer may elect whether Participants on military leave will be permitted to take a distribution of their account balance under the Plan (as permitted, but not required, under the HEART Act).

**Item 10 - In-plan Roth Conversions**

Under the 2010 Small Business Jobs Act, 457(b) plans that allow participants to make designated Roth contributions may also allow in-plan Roth conversions. If (and only if) the Employer has elected (in Item 3) to allow Roth contributions, the Employer may elect to allow in-plan Roth conversions of amounts that are otherwise distributable under the terms of the Plan.

# VALIC

The Variable Annuity Life Insurance Company  
P.O. Box 15648  
Amarillo, TX 79105

## **Item 11 - Deductions from Distributions to Eligible Retired Public Safety Officers**

Under the Pension Protection Act, Participants who qualify as “eligible retired public safety officers” may elect to have a portion of an otherwise taxable distribution paid directly to the provider of an accident or health insurance or qualified long-term care insurance contract and such amount will be excluded from the Participant’s gross income. If the Employer wishes to allow such deductions, the Employer should check the first box.

## **Item 12 - Non-spousal Beneficiary Rollovers**

The Pension Protection Act also changed the distribution rules to permit non-taxable rollovers by non-spouse Beneficiaries after 2006. However, plans were not *required* to allow such distributions before 2010. The Employer should indicate whether rollovers by non-spouse Beneficiaries were permitted prior to 2010 and, if so, whether those distributions were first allowed as of January 1, 2007, or as of a later date (that is not later than January 1, 2010).

## **Item 13 - Required Minimum Distributions for 2009**

Under the Worker, Retiree and Employer Recovery Act of 2008, governmental 457(b) plans were not *required* to make “minimum distributions” for the 2009 calendar year. VALIC’s standard procedure for 2009 was as follows: Participants who were receiving installment payments (where all or a portion of the payment was a “2009 required minimum distribution”) continued to receive those payments unless they specifically elected otherwise, but no other Participants received minimum distributions for that year. If the plan followed VALIC standard procedure, the Employer should check the first box. If the plan did not follow VALIC’s standard procedure with respect to 2009 minimum distributions, the Employer should check one of the other boxes, as appropriate.

## **Item 14 - Optional Benefit Accruals under HEART Act**

Under the HEART Act, governmental 457(b) plans may, but are not required to, treat certain Participants who die or become disabled while on active duty in the uniformed services as if they had returned to work on the day before their date of death or disability (such that they would be entitled, under USERRA, to any additional benefit accruals attributable to their period of military service). If the Employer wishes to provide for this “optional” benefit accrual, the Employer should check the appropriate box.

## **Item 15 - Governing Law**

The Employer should indicate what State or Commonwealth's laws shall govern the operation of the Plan and the interpretation of the Plan document.

**RESOLUTION AUTHORIZING ADOPTION OF  
PLAN RESTATEMENT**

"WHEREAS, \_\_\_\_\_ (hereinafter, the "Employer") established the \_\_\_\_\_ Deferred Compensation Plan (hereinafter, the "Plan"), effective \_\_\_\_\_, \_\_\_\_\_ for the exclusive benefit of its employees and their beneficiaries;

NOW, THEREFORE, BE IT RESOLVED that the Employer hereby amends and restates the Plan in the form of the Plan attached hereto; and,

RESOLVED, FURTHER, that the appropriate officers of the Employer, or their delegates, are hereby authorized to execute the amendment and restatement of the Plan effective \_\_\_\_\_, \_\_\_\_\_."

★ ★ ★ ★ ★ ★ ★ ★

I, \_\_\_\_\_, do hereby certify that the above and foregoing was adopted by the \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Signature

WITNESS:  
  
\_\_\_\_\_



## MEMORANDUM

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### *Administration Department*

**To:** Mayor Toomb and Lebanon City Councilors      **Date:** November 3, 2011  
**From:** Ginger Allen, Assistant City Manager  
**Subject:** City Manager Evaluation 2011

Councilor Margaret Campbell and I have been working on a specific evaluation format to ensure that Council has the proper information needed to evaluate City Manager, John Hitt. Please keep in mind that an evaluation is as much about the person “evaluating” as it is about the person being “evaluated”. To a certain extent the City Council is responsible for the successes and failures of the City Manager.

The question format will be different than in past years. The questions are designed to invoke “critical thinking” on the part of the evaluator. Both Councilor Campbell and I feel that an evaluation should accomplish two primary objectives:

1. Identify strengths and areas subject to further development.

And

2. Ensure that the Mr. Hitt has a clear and concise understanding of council’s expectations and goals for the City of Lebanon.

The challenge for the “evaluator” is to understand that the success of those you manage depends upon active engagement, the ability to discuss issues, and the ability as a City Council to collectively direct the city manager to success.

The “Evaluation” will become a supporting document to Mr. Hitt and will serve as a tool to enhance his performance and document the discussions concerning your expectations of him as your City Manager.

There are very specific instructions in the evaluation packets. The packets will be distributed and the information reviewed with council at the November 9<sup>th</sup> council meeting. Once the materials are approved the evaluation process will begin.

**Linda Kaser**

**From:** Ginger Allen  
**Sent:** Thursday, November 10, 2011 5:10 PM  
**To:** Margaret Campbell; Ron Miller; Floyd Fisher; Ray Weldon; Ken Toomb; Wayne Rieskamp; Bob Elliott Councilor  
**Cc:** John Tre' Kennedy (admin@jekiii.com); Linda Kaser  
**Subject:** Confidential Email - City Council Evaluations Questions - November 2011 - City Manager John Hitt  
**Importance:** High

Attached please find the evaluations questions for Mr. Hitt's performance evaluations. If you choose to do this evaluation electronically please "highlight" your performance standard in yellow. This will be take the place of having to print a hard copy of the document and "circling" your performance standard selection.

Here is what this process looks like:

November 11, 2011 – Send out Staff Evaluation Questions (Task Completed)  
 November 11, 2011 – Send out electronic version of City Council Evaluation Questions (task completed)  
 November 11, 2011 – Send out email of Project Timeline (task completed)  
 November 16, 2011 – Staff Evaluations of Mr. Hitt due to Human Resources of computation on or before 5:00 p.m.  
 November 21, 2011 – Staff Evaluation Computation Data submitted to City Council to use in council's evaluation process of Mr. Hitt.  
 November 14 – 21st – City Council can submit any additional questions to H.R. concerning the evaluation of Mr. Hitt.  
 November 28, 2011 – City Council submits completed evaluations to Assistant City Manager for computation.  
 November 30, 2011 – Executive Session scheduled for council to Meet and Confer on the evaluation materials.  
 December 1 – 9<sup>th</sup> – Time set aside for any additional tasks regarding the evaluation process.  
 December 14<sup>th</sup> – Mr. Hitt's evaluation preceding the City Council Goal Setting Session – Time tentatively set for 3:00 – 4:15 p.m. to be held at the Santiam Travel Station.

Hope this timeline helps out. Please call me with any questions.  
 Have a great week-end and GO WARRIORS!!!

Ginger Allen  
 Assistant City Manager  
 541-258-4263

11/17/2011

# Lebanon City Manager – John Hitt Evaluation 2011

## Instruction Sheet

The areas of evaluations are listed below.

Supervision	10%
Leadership	15%
Execution of Policy	10%
Community Relations	10%
Administrative Duties	5%
Economic Development	15%
Intergovernmental Relations	5%
City Council Relations	10%
Planning	5%
Financial Management	15%

Each of the areas listed above reflect the percentage of weight given to the area of performance concentration. You will not be giving Mr. Hitt a number score but rather a choice of the following term selections:

- Unsatisfactory
- Needs further development
- Satisfactory
- Excellent
- Superior

Please read carefully the definitions given to the terms listed above:

Unsatisfactory: Work performance is inadequate and inferior to the standards of performance required for the position. Performance at this level cannot be allowed to continue.

Needs further development: The work performance does not *consistently* meet the standards of the position. Serious effort is needed to improve performance.



**Should you find the employee falling into either of the standards listed above (Unsatisfactory or Needs Further Improvement) the following actions should accompany your standard selection:**

- 1. Describe the behavior or technical skills missing that supports your standard selection.**
- 2. Give as many examples of the performance that lead you to your selection.**
- 3. Make suggestions on how to improve.**

Satisfactory: Work performance consistently meets the standards of the position.

Excellent: Work performance is frequently above the level of satisfactory, but has not achieved an overall consistent level of superior performance.

Superior: Work performance is consistently excellent when compared to the standards of the position.

**Again, as the evaluator you will want to give as much feed back as possible to the employee. While an employee works hard to achieve a certain standard of performance they must know what is expected of them in order to successfully comply and sustain the desired performance standards.**

\*\*\* Once you have addressed the questions below, circle one of the performance standards.

Do not hesitate to use an additional piece of paper(s) when addressing the written questions.

## Evaluation Questions

1. Supervision – 10%: Does the City Manager truly “lead” department heads – setting appropriate, timely and reasonable expectations and holding them accountable? Does he/she encourage their initiative, challenging them with clear performance expectations or does he/she vacillate enabling them to act outside of the mandate of their departments or ignore accountability? How do you know this? Provide at least one clear example.

Unsatisfactory      Improvement Needed      Satisfactory      Excellent      Superior

2. Leadership – 15%: Does the City Manager inspire others to succeed? Does he/she actively promote efficiency in operations? Does he/she demonstrate a high regard for personal ethics? Do Department Heads evade the City Manager directly approaching Council members or the media to push their own agendas or do they go through him/her even if both parties disagree, thereby demonstrating respect for the City Manager's leadership?

Unsatisfactory      Improvement Needed      Satisfactory      Excellent      Superior

3. Execution of Policy – 10%: Does the City Manager understand the laws and ordinances of the city and cause them to be fairly enforced? Does he/she exhibit consistency in enforcement decisions? Do Department Heads rely on consistent decision-making or feel confused by inconsistency? Give at least one detailed performance example to support your standard selection.

Unsatisfactory      Improvement Needed      Satisfactory      Excellent      Superior

4. Community Relations – 10%: Does the City Manager work well with citizens and properly handle their complaints? Does he/she give leeway for individuals with personal agendas or mis-informed agendas to focus in a consistent manner on what is best for the City?

Unsatisfactory      Improvement Needed      Satisfactory      Excellent      Superior

5. Administrative Duties – 5%: Does the City Manager properly handle his administrative duties? Do departments exhibit teamwork and appreciation for the demands of each others area of operations? Are staff and union conflicts minimized through effective communication and delegation?

Unsatisfactory    Improvement Needed    Satisfactory    Excellent    Superior

6. Economic Development – 15%: Does the City Manager work well with developers while protecting the city's interests? Does he/she work to increase the city's tax base through economic development? Does he/she demonstrate initiative and creativity in this area?

Unsatisfactory    Improvement Needed    Satisfactory    Excellent    Superior

7. Intergovernmental Relations – 5%: Does the City Manager cooperate cordially with neighboring communities and citizens while looking after the interest and welfare of the City of Lebanon? Are there few, if any conflicts with neighboring jurisdictions? Is the City Manager well informed about the plans and issues of neighboring jurisdictions?

Unsatisfactory      Improvement Needed      Satisfactory      Excellent      Superior

8. City Council Relations – 10%: Does the City Manager work well with the city council in making sure that there is adequate information available prior to meetings? Is he/she willing to meet with council members to deal with individual issues and concerns? Does the City Manager convey a clear understanding of citizen and group issues brought before council which are well-researched and authoritative?

Unsatisfactory      Improvement Needed      Satisfactory      Excellent      Superior

9. Planning – 5%: Does the City Manager involve him or herself in the planning process to the correct degree? Does he/she review the process and look for better ways to handle developmental activities? Does he/she meet with local interest individuals and groups to understand their “stake” in development issues? Is he/she able to present contradictory opinions in a fair manner for council decisions? Is his/her research complete and thorough?

Unsatisfactory      Improvement Needed      Satisfactory      Excellent      Superior

10. Financial Management – 15%: Does the City Manager ensure the budget is prepared and executed in the manner approved by the City Council? Does he/she ensure the city’s monies are managed properly? Is he/she straightforward in communicating financial problems to the council? Does he/she notify the council in a timely manner of potential financial problems, recommending innovative, cost-savings solutions to both the city and it’s citizens? Is he/she pro-active in pursuing grants, funding and suggesting alternative financial arrangements to save the city money?

Unsatisfactory      Improvement Needed      Satisfactory      Excellent      Superior



## JOB DESCRIPTION

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**ORGANIZATION:** City of Lebanon  
**DEPARTMENT:** Administration

**LOCATION:** Lebanon, OR  
**DATE:** October 2010

**JOB TITLE:** City Manager

**JOB STATUS:** Exempt  
**FLSA Exempt:** Yes

---

**PURPOSE OF POSITION:** As the chief executive officer for the City, plan and direct the activities of all City departments, through subordinate department managers and others. Perform various duties as contained within the City Charter. Function as the City officer with full authority for the resolution of personnel issues and departmental actions requiring City Manager approval.

**ESSENTIAL JOB FUNCTIONS/DUTIES & RESPONSIBILITIES:** *The duties listed are intended only as illustrative examples of the various types of work that may be performed by individuals in this classification. Any of the following duties may be performed. These examples are not necessarily performed by all incumbents and do not include all specific essential functions and responsibilities the incumbent may be expected to perform.*

---

1. Maintains regular job attendance and adherence to working hours.
2. Possess and maintain a valid Oregon Drivers License with an acceptable driving record.
3. Ensure satisfactory resolution of personnel issues. Review and determine final decision on hiring, discipline and termination recommendations.
4. Manage and coordinate projects and programs to accomplish goals and objectives of the City Council, including, Enterprise Zone Manager, and City Urban Renewal District(s).
5. Confer with department heads and others on a variety of operating and administrative problems, review departmental plans, programs and procedures, and suggest new innovations or methods to improve the standard of services provided by the City.
6. Review and approve departmental financial needs and estimates; present budget document to City Council budget committee for discussion and approval. Administer approved budget and monitor overall expenditures to ensure budget compliance.
7. Meet with the City Council at special and regular meetings. Provide information and reports covering various aspects of the City's operations. Advise Council members in their deliberations on policy and/or legislative matters. Seek to fulfill all City Council goals.
8. Work with citizens and business groups to encourage and promote economic development. Attend meetings and represent the City in various organizations and groups. Explain City issues and projects and encourage citizen participation and support.
9. Respond to citizen inquiries and resolve complaints or refer to appropriate department when possible; follow through to ensure satisfactory resolution.

10. Maintain professional proficiency by attending conferences and meetings, reviewing reports, reading professional journals, and meeting with others in area served.
11. Follow all safety rules and procedures established for work areas.
12. Maintain work areas in a clean and orderly manner.

**MANDATORY QUALIFICATIONS:****Education & Experience:**

1. A bachelor's degree from an accredited university in a field related to the public sector.
2. Seven years administrative/management experience.
3. Broad knowledge of municipal government organization, authority and functions; inter-and-intra-governmental relationships; principles and practices of public administration, budgeting and management.
4. Other combinations of experience and education which meet the minimum requirements may be substituted.

**Licenses & Certificates:**

1. Ability to receive security clearance from the Criminal Justice Information Services within the first 45 days of employment.
2. Possess or obtain a valid Oregon drivers license within the first 30 days of employment.

**DESIRABLE QUALIFICATIONS:**

1. Masters Degree or higher in management, public administration, or related field.
2. Membership in Oregon City/County Manager Association (OCCMA)

**KNOWLEDGE, SKILLS, AND ABILITIES:** The qualities below reflect the working dynamic of the position.

**Knowledge of:**

1. Principles, practices, and techniques of public administration and City government.
2. Personnel policies and practices.
3. Government budget policies and procedures.
4. Principles and practices of management and supervision.
5. Principles of budget preparation and fiscal accounting.
6. Reporting and disclosure requirements of government entities.
7. Principles and practices and techniques of community and economic development.

**Skill in:**

1. Personnel Supervision.
2. Planning, coordinating, and directing the operations of the Department managers.
3. Interpreting, understanding, and applying technical reports, statutes, rules, and regulations.
4. Evaluating work priorities, procedures, and processes to determine their effectiveness and efficiency.
5. Developing and implementing recommendations regarding work method procedures.
6. Interpreting fiscal and accounting procedures, ensuring conformity to appropriate standards.



2. Planning, coordinating, and directing the operations of the Police Department.
3. Developing and implementing work methods and procedures which promote a safe working environment and ensure staff training in work safety.
4. Interpreting, understanding, and applying technical reports, statutes, rules, and regulations.
5. Evaluating work priorities, procedures, and processes to determine their effectiveness and efficiency.
6. Interpreting fiscal and accounting procedures, insuring conformity to appropriate standards.
7. Providing outstanding customer satisfaction (internally and externally).
8. Use of Microsoft Office

**Ability to:**

1. Communicate orally and in writing in a clear and concise manner.
2. Represent the City professionally and effectively in meetings with others.
3. Establish and maintain effective working relationships.
4. Negotiate effective solutions to complex problems.
5. Handle critical emergency situations in a professional, effective and efficient manner.
6. Analyze facts and exercise sound judgment.

**PHYSICAL DEMANDS OF POSITION:**

1. Employee is required to sit, communicate, reach, and manipulate objects, tools, or controls. The position requires mobility.
2. Position is typically required to move materials weighing up to 10 pounds on a recurring basis.
3. Position may be required to deal with violent and combative individuals requiring considerable physical effort.

**WORKING CONDITIONS:**

1. Work locations are primarily indoors.
2. While performing the duties of this job, the employee occasionally works outdoors at all times of day and in all weather conditions and is occasionally exposed to hazardous situations that may result in injury, death or use of deadly force on others.
3. Noise level in the work environment is usually moderate but the employee may occasionally be exposed to high level noises including but not limited to emergency vehicle sirens, gun fire, shouting and yelling.
4. Must be available for on-call response.
5. Evening meetings and some travel are required.

**SUPERVISORY RESPONSIBILITIES:** Responsible for over 25 FTE, seldom over 50.

**SUPERVISION RECEIVED:** Works under the direction of the City Manager.

7. Providing outstanding customer satisfaction (internally and externally).
8. Use of Microsoft Office.

**Ability to:**

1. Communicate orally and in writing in a clear and concise manner.
2. Represent the City positively and effectively in meetings with others.
3. Establish and maintain effective working relationships with those contacted in the course of work.
4. Negotiate effective solutions to complex problems.
5. Handle critical emergency situations in a professional, effective and efficient manner.
6. Analyze facts and exercise sound judgment.

**PHYSICAL DEMANDS OF POSITION:**

1. Employee is frequently required to sit, communicate, reach, and manipulate objects, tools or controls.
2. Duties involve moving materials, typically weighing up to 10 pounds, on a regular basis and infrequently moving materials weighing up to 30 pounds.
3. Character and flow of work involve coordination of manual dexterity less than 50% of the work period.

**WORKING CONDITIONS:** Usual office working conditions. The noise level in the work environment is typical of most office environments. Even meetings and some travel are required.

**SUPERVISORY RESPONSIBILITIES:** Responsible for over 100 FTE seldom over 125.

**SUPERVISION RECEIVED:** Works under the direction of the City Council.



Approved by Mayor:

October 2010

# City Manager Evaluation John Hitt – November 2011

Phase I – Existing Contract/Compensation Package

Phase II - Anonymous Staff Evaluations

Phase III –City Council Evaluation Questions

Phase IV – Meet and Confer in Executive Session

Phase V – Meeting with City Manager

## Phase I Current Contract/Compensation Package

Please review the current contract and compensation package. If you have any questions please email me or drop by my office at the Justice Center. I will compile all your questions and present your questions and answers to all of the city council prior to the meet and confer date.

**\*\* Note please submit all questions to me on or before Monday, November 28, 2011.**



CITY OF LEBANON  
*It's easier from here.*

## Administration

City Clerk/Recorder

### MEMORANDUM

**To:** Mayor Toombs & City Council **Date:** October 31, 2007  
**From:** Linda Kaser, City Clerk/Recorder  
**Subject:** AMENDED September 12, 2007 City Council Minutes

As you are aware, the September 12, 2007, City Council Minutes were approved on October 10, 2007. While researching these minutes, I found a discrepancy between the approved minutes and the approved contract for City Manager Hitt.

I have revised the minutes to reflect the signed contract to read as follows:

1. Base salary at \$112,200 (not \$112,002)
2. Total first year package at \$118,200 (not \$118,002)

In order to save resources, staff has included only the revised pages containing *Item 7 City Manager's Salary and Contract* for your reference.

Action Needed:

*A motion to approve the amended City Council Minutes.*

/lgk

C: File Copy

## EMPLOYMENT AGREEMENT

THIS AGREEMENT, made and entered into this 15<sup>th</sup> day of October, 2007, by and between the CITY OF LEBANON, a municipal corporation of the State of Oregon, hereinafter called "City", and JOHN E. HITT, hereinafter called "Manager", now therefore,

### WITNESSETH

WHEREAS, the City of Lebanon desires to employ JOHN E. HITT as the City Manager/Administrator of the City of Lebanon to perform the duties of the City Manager/Administrator under the conditions and provisions of the Lebanon Charter; and

WHEREAS, it is the desire of the City to provide certain benefits and to otherwise establish the terms and conditions of JOHN E. HITT'S employment as City Manager; and

WHEREAS, JOHN E. HITT desires to be employed as City Manager of the City of Lebanon,

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties do agree as follows:

1. Duties: The City hereby agrees to employ JOHN E. HITT as City Manager of the City of Lebanon to perform the functions and duties specified in the Lebanon City Charter, and to perform such other duties and functions as the City Council shall, from time to time, assign. John E. Hitt hereby agrees that his full time employment as City Manager for the City of Lebanon commenced May 15, 2000 and shall continue until such time as a termination shall occur in accordance with Section 2 of this agreement.

2. Term: This agreement shall be for an indefinite term, commencing upon the first day of employment with the city of Lebanon. The terms of this agreement shall be reviewed by the parties as least every three years, beginning July 1, 2010.

(a) Nothing in this agreement shall prevent, limit, or otherwise interfere with the right of the City Council to terminate the services of the Manager at any time, subject only to the provisions of this agreement.

(b) Subject only to the notice required by Section 2(b) the Manager may resign at any time.

(c) During the term of this agreement, Manager agrees to remain exclusively employed by the City, and not become employed by any other employer until the effective date of any termination or resignation.

(d) Except in the case of termination for cause or by mutual agreement of the parties, each of the parties agree not to terminate this contract (by either termination as referred to herein or resignation), except upon ninety-(90) days prior written notice.

(e) Except as provided for in Sections 2(b) or 2(h), if the City Council chooses to terminate this contract when the City Manager is willing and able to perform his duties, the Council will provide the Manager a severance package. The severance package will consist of a cash payment equal to nine (9) months of annual base salary (payable one-ninth of each month for nine consecutive months) and will include, for each month of salary payment, medical and dental insurance benefits at the same benefit level and premium co-payment arrangements as when employed; not to exceed nine months. This severance package shall terminate effective upon the date the Manager obtains comparable full-time employment. Any portion of a month shall be prorated. Acceptance of severance by the City

Manager shall constitute a waiver and release of all claims of the City Manager, and any person legally entitled to assert claims, as a result of the City Manager's dismissal.

(f) The Manager shall be considered to have been terminated by the City Council and entitled to severance pay and benefits in accordance with this paragraph if the Manager resigns because the City Council has failed to comply with the terms and conditions of this agreement, or if the City Council at any time during the term of this agreement reduces the salary or other financial benefits of the Manager in a greater percentage than an applicable across-the board reduction for all City employees, or the City Council requests the resignation of the Manager, either formally or informally.

(g) In the event the Manager is terminated by the City Council for cause then the Manager shall not be entitled to severance pay under this provision. Termination for cause, under this provision, shall be for adjudicated violations of local, state, or federal law, or malfeasance in performing the duties of office.

(h) In the event the Manager voluntarily resigns his position while this contract is in effect, then the Manager shall not be entitled to severance pay in accordance with this provision.

3. Vacation, Sick Leave and Administrative Leave: Manager shall be entitled to vacation and sick leave with accrual, accumulation and use in accordance with City policy applying to Department Heads of the City. The Manager shall, at employment termination be paid in full for any accrued, but unused vacation and/or administrative leave. All such termination pay shall be at the then current pay rate of the City Manager and shall be paid directly into his 401(a) Special Pay Plan within thirty (30) days of termination.

4. Salary and cost of Living Adjustments: Effective October 1, 2007 the City agrees to pay Manager for services rendered pursuant to this agreement the annual base salary of \$118,200, payable in installments at the same time as other employees of the City are paid. Beginning July 1, 2008, City agrees to grant periodic cost of living adjustments to Manager during the term of this agreement, based upon and at the same time and rate as cost of living adjustments granted to non-union employees of the City.

5. Community Involvement: To the extent permitted by his duties as City Manager, the City expects the Manager to be involved in events, civic organizations and some voluntary endeavors in the Lebanon community. In an effort to assist Manager in such involvement, the city will pay all membership expenses, provided however, any such monthly expense in excess of \$125 shall be paid only upon the approval of the City Council and provided further, the City shall not pay membership expenses for any civic clubs or organizations which discriminate on the basis of race, religion, color, nation origin, age or sex.

6. Hours of Work: It is understood and agreed that the Manager must devote a great deal of time outside normal office hours to his duties as City Manager, and Manager is therefore entitled to take time off to such extent as he deems appropriate, during normal office hours provided that the same does not unduly interfere with the performance of the Manager's duties.

7. Deferred Compensation: Manager is authorized to participate in the City's 401(a) Special Pay Plan. The City agrees to contribute \$500 per month to this plan, up to a minimum of \$6,000 annually, payable in monthly installments. This contribution is already calculated into the annual salary of \$118,200.

8. Car Allowance: City agrees to pay the Manager the current IRS rate for any use of his personal vehicle that may be necessary during the conduct of city business.

9. Expense Account: The City recognizes that certain expenses of a non-personal and generally job-related nature are incurred by the Manager and hereby agrees to reimburse him for expense incurred upon receipt of duly executed expense vouchers, receipts, statements, or personal affidavits for expenses incurred in the performance of his duties as City Manager in accordance with the law and City policy.

10. Dues and Subscriptions: City agrees to budget and pay the professional dues and subscriptions of the Manager necessary for his continuation and full participation in national, regional, state and local associations, and organizations necessary and desirable for his continued professional participation, growth, and advancement, and to improve his performance in his duties as City Manager of the City of Lebanon. Provided the City shall not pay professional dues or subscriptions to any organization which discriminates on the basis of race, religion, color, national origin, age, gender, or disability.

11. Professional Development: City agrees to budget and pay registration, travel and subsistence expenses of the Manager in accordance with the law and City policy, for professional and official travel meetings and occasions deemed necessary or desirable to continue the professional development of the Manager and to adequately pursue necessary official and other functions of the City.

12. Performance Appraisal: Effective immediately, the City agrees that it will formally evaluate the performance of the Manager annually, on or about Manager's employment anniversary date with the City. The evaluation will be conducted based on an evaluation process and performance criteria established at the beginning of each performance period. The city may at its discretion informally and formally evaluate the Manager on a more frequent basis.

13. Fringe Benefits and Insurance: Except as otherwise provided herein, Manager shall be entitled to the same benefits and insurance coverage available to city department heads.

14. Retirement Benefits: The city is an Oregon PERS covered employer. Manager shall participate in PERS in accordance with PERS requirements upon employment with the City. City agrees to provide the same retirement benefits as are provided to non-emergency related department heads.

15. Residency Requirement: In accordance with City Charter, Manager agrees to establish residency within the City limits of the City of Lebanon within six (6) months of his date of active employment with the city.

16. Severability: If any provision of this agreement is held to be invalid or unenforceable, the remainder of the agreement shall be deemed severable and shall not be affected, but shall remain in full force and effect.

17. Indemnification: City agrees to defend, hold harmless and indemnify City Manager from any and all demands, claims, suits, actions and legal proceedings brought against City Manager in his official capacity as agent and employee of City, to the extent required pursuant to the Oregon Tort Claims Act, ORS 30.260 to 30.300.



18. Mediation: Should any dispute arise between the parties regarding the terms of this agreement or the terms of any Exhibit or work or services covered thereby, it is agreed that such dispute is required to be submitted to a mediator prior to arbitration. Mediation must be commenced, if at all possible, within thirty (30) days of the act or event giving rise to the dispute. The parties shall exercise good faith efforts to select a mediator who shall be compensated equally by both parties. Mediation will be conducted in Linn County, Oregon, unless both parties agree otherwise. Both parties agree to exercise good faith efforts to resolve disputes covered by this section through this mediation process. If a party requests mediation and the other party fails to respond with ten (10) days, or if the parties fail to agree on a mediator within ten (10) days, a mediator shall be appointed by the presiding judge of the Linn County Circuit Court upon request of either party.

19. Arbitration: In the event the parties have a dispute concerning the terms of this agreement, the terms and conditions of the employment relationship or the violation of any federal, state, or local law relating to the employment relationship (and they have not otherwise resolved the matter through the mandatory mediation process set out in Section 18 above) then the dispute shall be resolved by submitting it to binding arbitration within ninety (90) days of the date mediation process is concluded.

(a) Within thirty (30) days of notice by either party to the other requesting arbitration, CITY and EMPLOYEE shall select an arbitrator from a list of three (3) obtained from the Linn County Circuit Court. The arbitrator shall for purposes of the arbitration proceedings apply the rules of mandatory arbitration as adopted by the Linn County Circuit Court in effect at the time of the arbitration. If the parties fail to select an arbitrator as required above, on application by either party, the arbitrator shall be appointed by the presiding judge of the Linn County Circuit Court.

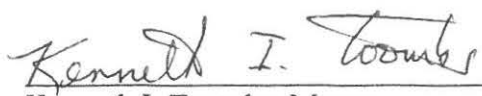
(b) The arbitrator shall determine, after a hearing on the merits and within forty-five (45) days after receipt of the statements his/her findings of the dispute which shall be final and binding.

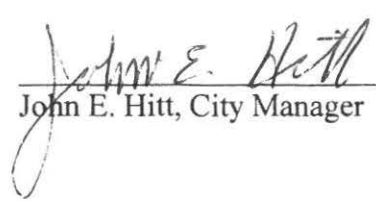
(c) Each party shall bear equally the expense of the arbitrator and all other expense of conducting the arbitration. Each party shall bear its own expenses for witnesses, depositions and attorneys.

*See Page 1 (October 1, 2007) Jsk/Hitt*

20. Effective Date: This agreement shall be effective the \_\_\_\_\_ day of August, 2006.

IN WITNESS WHEREOF, the City of Lebanon has caused this agreement to be signed and executed on its behalf by its Mayor and duly attested by the City Recorder, and the Manager has signed and executed the agreement the day and year first above written.

  
\_\_\_\_\_  
Kenneth I. Toombs, Mayor

  
\_\_\_\_\_  
John E. Hitt, City Manager

ATTEST:  
  
\_\_\_\_\_  
Linda Kaser, City Clerk/Co-City Recorder

## Salary and Compensation

Mr. Hitt is currently receiving a monthly salary of \$9350.00 with an additional \$500.00 going to a Deferred Compensation Account.

# Benefit List

ODS – Medical, Dental and Vision – 10% of premium picked up by employee.

Group Term Life Insurance  
Accidental Death and Dismemberment  
Long and Short Term Disability Insurance  
Employee Assistance Program (4 visits per calendar year)  
10 hours of vacation per month  
8 hours of sick leave per month  
11 Paid Holidays per calendar year  
40 Hours of Administrative Leave  
HRA/VEBA Account

## **Phase II – Anonymous Staff Evaluations**

**Each Department Manager will be requested to participate in a short city manager evaluation.**

**The department manager will circle the term that best suits their opinion regarding the question being asked.**

**The manager will print a hard copy of their questionnaire and send it to the attention of the Assistant City Manager/HR Manager for computation.**

**This data will become part of the City Manager evaluation process used by the Mayor and City Council.**

## Anonymous Staff Evaluations Continued

Any department manager wishing to attach a typed comment sheet to the evaluation questions may do so. Please DO NOT put your name on any of the materials.

**\*\*Note: All evaluations must be turned into H.R. on or before Wednesday, November 16, 2011. The data will be compiled and submitted to the Mayor and City council to use in the evaluation process.**

## Department Manager Evaluation Questions

- **Evaluation Instructions: Please review each question carefully, circling the answer that best represents your opinion of City Manager John Hitt's performance standards.**

## Dept. Manager's Evaluation Questions Continued 1-2

1. In your presence, does Mr. Hitt project a positive public image, is he courteous, keeping his commitments and using criticism of himself or the City in a positive manner?

No      Occasionally      Usually      Always

2. Does Mr. Hitt work well with you and other employees, does he provide assistance when requested, does he keep his commitments to you?

No      Occasionally      Usually      Always

## Dept. Manager's Evaluation Questions Continued 3-4

3. Does Mr. Hitt effectively communicate your areas of strength and areas needing development in a timely and regular basis?

No      Occasionally      Usually      Always

4. Does Mr. Hitt keep you and other city management staff apprised of the information you need to be successful as a manager?

No      Occasionally      Usually      Always



## Dept. Manager's Evaluation Questions Continued 5-6

5. Is Mr. Hitt an effective leader? Does he motivate, delegate, seek to develop teamwork within the organization, while making contributions to your personal success?

No      Occasionally      Usually      Always

6. Does Mr. Hitt demonstrate the ability to control his emotions, use common sense, remain flexible in accepting and adjusting to change and at the same time present a positive attitude?

No      Occasionally      Usually      Always

# Dept. Manager's Evaluation

## Questions Continued 7-8

7. Integrity is the most important characteristic of a true leader. Is Mr. Hitt honest and forthright in his day to day relationships? Does he keep his commitments to you?

No      Occasionally      Usually      Always

8. Does Mr. Hitt work with management staff when it come to fiscal management? Does he provide guidance to staff when preparing the annual budget? Does he control expenditures in accordance with the goals and directives of City Council and Budget Committee ?

No      Occasionally      Usually      Always

# Dept. Manager's Evaluation

## Questions Continued 9-11

9. Can Mr. Hitt make an objective decision? Does he obtain all the available facts, consider possible alternatives and weigh the consequences associated to his decision?

No      Occasionally      Usually      Always

10. Is Mr. Hitt indecisive? Does he vacillate when it comes to making a decision?

No      Occasionally      Usually      Always

11. Does Mr. Hitt seek to promote intergovernmental relations and community needs? Does he respond well to local politics and items of interest to the City?

No      Occasionally      Usually      Always

# Phase III – Evaluation Instruction Sheet

## Lebanon City Manager – John Hitt Evaluation 2011

### Instruction Sheet

The areas of evaluations are listed below.

Supervision	10%
Leadership	15%
Execution of Policy	10%
Community Relations	10%
Administrative Duties	5%
Economic Development	15%
Intergovernmental Relations	5%
City Council Relations	10%
Planning	5%
Financial Management	15%

## Evaluation Instructions Continued

Each of the areas listed above reflect the percentage of weight given to the area of performance concentration. You will not be giving Mr. Hitt a number score but rather a choice of the following term selections:

Unsatisfactory  
Needs further development  
Satisfactory  
Excellent  
Superior

# Evaluation Terms

Please read carefully the definitions given to the terms listed above:

Unsatisfactory: Work performance is inadequate and inferior to the standards of performance required for the position. Performance at this level cannot be allowed to continue.

Needs further development: The work performance does not consistently meet the standards of the position. Serious effort is needed to improve performance.

# Important Notation

Should you find the employee falling into either of the standards listed above (Unsatisfactory or Needs Further Improvement) the following actions should accompany your standard selection:

Describe the behavior and/or technical skills missing that supports your standard selection.

Give as many examples of the performance that leads you to your selection.

Make suggestions on how to improve.

# Evaluation Terms Continued

Satisfactory: Work performance consistently meets the standards of the position.

Excellent: Work performance is frequently or consistently above the level of satisfactory, but has not achieved an overall level of superior performance.

Superior: Work performance is consistently excellent when compared to the standards of the position.



## Closing Evaluation Comments

Again, as the evaluator you will want to give as much feedback as possible to the employee. While an employee works hard to achieve a certain standard of performance they must know what is expected of them in order to successfully comply and sustain the desired performance standards.

\*\*\* Once you have addressed the questions below, circle one of the performance standards.

Do not hesitate to use an additional piece of paper(s) when addressing the written questions.

## Phase IV – Meet and Confer

A tentative executive session date of Wednesday, November 30, 2011 has been set for Phase IV. At this session Council will meet and confer on the evaluation data. Staff present at the executive session will be City Clerk/Recorder, Linda Kaser and the Assistant City Manager/H.R. Manager, Ginger Allen.

The Mayor and Council will discuss the findings and have discussions regarding the evaluation materials.

## Phase V – Meeting with City Manager

The City Manager will announce how he wishes to proceed with his evaluation. Mr. Hitt may choose to have his evaluation administered through an executive session or in a public session. This is his choice, not the choice of the Mayor and City Council.

The evaluation is tentatively scheduled to precede the December 14, 2011 City council meeting.

# Suggested Timeline

Adoption of Evaluation format approved at the November 9, 2011 City Council meeting.

Anonymous Staff Evaluations Due on or before November 16, 2011. Information returned to Mayor and City Council no later than Monday, November 21, 2011.

Mayor and City Council questions submitted to Assistant City Manager/H.R. Manager no later than Monday, November 28, 2011.

Questions and answers compiled and returned to Mayor and City Council at the meet and confer executive session, tentatively scheduled for Wednesday, November 30, 2011, at the Santiam Travel Station at 5:30 p.m.

Evaluation to precede the December 14<sup>th</sup> City Council meeting. Tentatively scheduled to begin at 5:30 p.m.



## MEMORANDUM

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### *Administration*

**To:** Mayor and City Council

**Date:** November 9, 2011

**From:** Tré Kennedy, City Attorney and Police Chief, Mike Schulte

**Subject:** Item #4 – Utility Pole Signs (Ordinance and Enforcement)

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We will be available to discuss the ordinance and enforcement issues on utility pole signs.



## MEMORANDUM

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### *Administration*

**To:** Mayor and City Council

**Date:** November 9, 2011

**From:** City Manager

**Subject:** City Manager's Report

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At the November 9<sup>th</sup> City Council meeting, I will provide an oral report on the following:

- December city council meeting
- Exempt employee compensation
- Police Chief recruitment
- Finance/Utility closure
- Grand opening
- Miscellaneous

## INTRODUCTION

Getting elected to public office is like being hired to do a particular job. Both of these put you in a position to act, but merely being hired or elected does not tell you specifically what you may or may not do. Employees have a job description that describes their job duties. As long as the employee acts within the authority of the job description, they act within the course and scope of their authority. Elected officials have job descriptions too. The description is contained within the Oregon Revised Statutes and our City charter and ordinances.

It is crucial to act within the course and scope of your authority. Staying within these boundaries of authority can shield the City and its officials from claims or lawsuits. Acting outside an official's authority, even accidentally, may take away statutory and insurance protection. Few of us can afford to pay to defend ourselves in a lawsuit and to pay the often-large judgments that juries award. There are four types of power an official may exercise:

*The Power To Legislate* is the power to sponsor and vote on matters before the elected body. There are few limits on this power. Here is your opportunity to fulfill your campaign promises.

*The Power To Administer* allows you to organize the structure of the government and set the budget. However, much of the administrative power is, by charter, delegated to the City Administrator and budgeting with the Budget Committee.

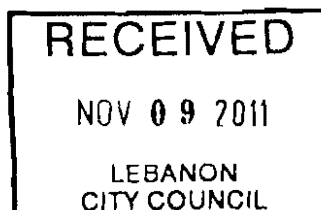
~~\_\_\_\_\_~~  
~~\_\_\_\_\_~~ You must show judicial objectivity by:

- Giving proper notice of all proceedings
- Acting as a fair and impartial judge
- Following all procedural rules
- Confining your deliberations to facts and testimony in the public record and avoiding ex-parte contact (see glossary for "quasi-judicial hearing" and "ex-parte contact").

*Proprietary Power* is the right to engage in commercial activity, such as buying and selling property or contracting for goods and services. Generally, exercise of proprietary powers must meet standards similar to the exercise of those powers in the private sector and is shared with the City Administrator. While you may, as the governing body, be involved in the final decisions, the parameters of your power to influence negotiations or terms of an agreement must not interfere with those given your authority to act.

### *Two Tips*

1. You, as an individual member of the governing body, have no authority to act or make commitments on behalf of the City, or direct the actions of City employees. You



*from Weldon*

RECEIVED

NOV 09 2011

LEBANON  
CITY COUNCIL

## ILLEGAL USE OF LEBANON TAX PAYER'S FUNDS

After receiving a request from a citizen, I examined the Lebanon City Charter and found the following disturbing facts. Rules and regulations that the City Council members took an oath to uphold are not being followed. City funds are being used to illegally hire lawyers by unauthorized city personnel and for purposes they will not reveal. The city council has a responsibility to correct this in a manner that does not conflict with the Lebanon City Charter. As I see it thousands of dollars are being spent without the proper authority.

### **City Council Guide**

#### **Elected Officials' Roles and Responsibilities**

##### *City Attorney*

Both the Municipal Judge and City Attorney report directly to the City Council and are not under the Administrative direction of the City Administrator or each other.

### **Lebanon City Charter: Section 10. Other Officers**

Additional officers of the City shall be a City Recorder, a City Attorney, a City Administrator, and in the discretion of the Council, a Municipal Judge and whatever other officers the Council deems necessary. The Municipal Judge, the City Attorney, and the City Administrator shall be appointed by the Council and be responsible to it and the other additional officers shall be appointed by the City Administrator and be responsible to him/her. The Council, as needs dictate, may appoint one or more pro tem Municipal Judges to serve such term as the Council provides.

### **Lebanon City Charter: Section 6. Where Powers Vested.**

Except as the Charter provides otherwise, all powers of the city shall be vested in the Council.

### **Action needed by the City Council to resolve the following without violating the City Charter:**

There is not a charter provision that gives city employees the authority to hire or assign a task to an attorney.

The City Council members are not city employees, they are elected officials.

This is to provide a separation of power.

The City Administrator (John Hitt) at the October 12, 2011 city council meeting admitted he had hired an attorney on his own.

There is no charter provision that allows the city administrator to retain an attorney?

Any public official that expends public money for a different purpose than legally authorized is personally liable for returning the money (ORS 294.100).



## Lebanon Charter

### ■ Other Officers: Section 10

- Additional Officers of the City shall be
  - City Recorder
  - City Attorney
  - City Administrator
  - Municipal Judge – if the Council deems the position necessary



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## Lebanon Charter

### ■ Other Officers: Section 10 cont.

- Municipal Judge [REDACTED]  
[REDACTED]  
[REDACTED]
- Other additional officers are
  - Appointed by the City Administrator
  - Responsible to the City Administrator
- The Council, as necessary, may appoint one or more pro tem Municipal Judges
- Compensation for all City officers and employee classifications set by Council



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*Legal*

John Kennedy, City Attorney



MEMORANDUM

**To:** Lebanon City Council **Date:** 11/9/2011  
**From:** John Kennedy  
**Subject:** "City Attorney" versus hiring attorneys to represent the City

In several recent Letters to the Editor, Councilor Weldon has criticized the hiring of attorneys to represent the city in various matters. Mr. Weldon suggests that city administration does not have the authority to retain attorneys to represent the city. Mr. Weldon is clearly wrong. Much of Mr. Weldon's confusion stems from a misunderstanding of the public officer position of "City Attorney", as used in the city Charter, and an attorney or firm retained by the city to provide legal services. There is clearly a difference. Mr. Weldon's argument is that any attorney representing the City of Lebanon, in any matter, is the City Attorney. That is not true. There is a single Lebanon City Attorney who is an Officer of the City of Lebanon.

Section 10 of the Lebanon Charter provides that: "Additional officers of the City shall be a . . . City Attorney." In the City Attorney Agreement entered into between the City of Lebanon and the Morley Thomas Law Firm it provides that "John E. Kennedy shall be designated as 'City Attorney' during the term of this Agreement." The other attorneys in the Morley Thomas Law Firm are designated as "Deputy City Attorneys". Thus, John Kennedy is the City Attorney and an officer of the city of Lebanon.

The City Attorney Agreement anticipates that Lebanon will retain outside legal services in a number of areas. For example, the issuance of municipal bonds, labor negotiations or complicated human resources issues benefit from attorneys who specialize in those fields. While these specialists are attorneys hired by the city of Lebanon, they are not the "City Attorney" as that term is used in the Charter

Attorneys retained by Lebanon to provide specialized services are independent contractors. These attorneys are no different than private sector engineers, architects or computer consultants that are retained regularly to assist Lebanon. Certainly, Mr. Weldon would not suggest that the City Manager does not have authority to retain such professionals on behalf of the city. Pursuant to city ordinance (and state law), the City manager or his designated agent has authority to negotiate and enter into personal services contracts with attorneys. Lebanon Ordinance 3.04.070.

It is the opinion of the City Attorney that city administration has not violated the Charter or City ordinances in retaining legal services on behalf of the city of Lebanon.