

GENERAL CONSTRUCTION AGREEMENT

This CONSTRUCTION AND SALES AGREEMENT (this "Agreement") is made and entered into as of this 1 day of FEB, 2001 by and between All-Phase Utility Corp, an Oregon Corporation, and City of Newberg, a municipal corporation of the State of Oregon.

WITNESSETH:

WHEREAS, All-Phase Utility Corp is a licensee, grantee, or permittee pursuant to the terms of its contractor's license, CCB# 115163 within the State of Oregon and has the authorization to design, construct, and maintain, a telecommunications system within the State of Oregon.

WHEREAS, City of Newberg desires to contract with All-Phase Utility Corp for the construction of a conduit system, and All-Phase Utility Corp desires to enter into such a contract.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, the parties intending to be legally bound do mutually agree as follows:

ARTICLE 1 JOB DESCRIPTION

1.1 *Work to be Performed*

Pursuant to this Agreement, All-Phase Utility Corp agrees to perform the installation of underground conduit system as identified by Exhibits A, B, and C. All-Phase Utility Corp shall furnish all labor, equipment, warehousing at a shared cost (see terms and conditions exhibit "C") supervision, and services necessary to construct and complete the underground conduit system.

1.2 1.2.1 *System Requirements*

The Work shall be performed by All-Phase Utility Corp in a good and workmanlike manner strictly in accordance within the permit requirements, construction specifications, system testing procedures and other system requirements. These system requirements shall apply to all portions of the system construction:

- 1.2.2 All federal, state, county and local statutes, ordinances and regulations applicable to the work, including, without limitation, the rules and regulations of the Federal Communications Commission.

1.3 *Extent of Work and Projects*

All-Phase Utility Corp shall perform the work in connection with this project upon execution of this Agreement by City of Newberg.

1.4 *Materials*

Outside plant material as will be provided for use in performance of the work as identified in exhibit A and B attached hereto.

ARTICLE 2 COMMENCEMENT AND COMPLETION DATES

2.1 *Completion*

All-Phase Utility Corp estimates that the work shall be completed within the Oregon Department of Transportation's schedule.

2.2 *Construction Schedule*

Work shall commence in accordance to the Oregon Department of Transportation's schedule and of execution of this Agreement.

2.3 *Delays*

2.3.1 *Force Majure*

Should All-Phase Utility Corp be delayed in the prosecution of the work by the act or fault of the City of Newberg or by damage caused by fire, lightning, earthquake, cyclone or for any other causes not due to the fault or neglect of All-Phase Utility Corp, then the completion date for the work set forth on the Construction Schedule shall be extended for such reasonable period of time.

2.3.2. *Unbuildable Ground; Increase in Cost*

Should large or excessive rock, fill, disturbed, unstable or unbuildable soil or other conditions beyond All-Phase Utility Corp's control be found during construction, the cost to remedy the situation, including reasonable profit and overhead shall be addressed on an individual basis.

It is further agreed that in the event there is an increase in cost to All-Phase Utility Corp of any of the component parts of the construction, All-Phase Utility Corp shall have a right to request a revised price for construction, subject to approval of utility. Any cost increases must be substantiated and verifiable.

ARTICLE 3 CONTRACT AMOUNT AND ACCEPTANCE

3.1 3.1.1 *Payment Amount*

Payments will be based on progressive invoices to be submitted on a bi-weekly basis. City shall pay all invoices within 30 days.

3.1.2 *Contract Amount*

All-Phase Utility Corporation agrees to perform the work and the City of Newberg agrees to pay All-Phase for the work in an amount not-to-exceed:

Material's Cost: \$ 6,670.14 (Exhibit "A")

Installation Cost: \$29,525.25 (Exhibit "B" – Table 1)

TOTAL: \$36,195.39

All-Phase shall notify City prior to City incurring any cost above the above-referenced amounts pursuant to any provisions of this contract.

3.2 *Failure of Payment*

In the event of any disputes between the parties, City of Newberg shall be obligated to make all payments due to All-Phase Utility Corp over which there is no good faith dispute. All-Phase Utility Corp shall not, if it receives such payments, stop the work or terminate this Agreement.

3.3 *No Authority to Bind*

All-Phase Utility Corp specifically acknowledges that (1) All-Phase Utility Corp has no actual implied or apparent authority to act as an agent or employee of City of Newberg; (2) to enter into any contractual commitments on behalf of City of Newberg; or (3) to incur any obligations debt or liability for City of Newberg.

**ARTICLE 4
PARTY REPRESENTATIONS**

4.1 *Representations of All-Phase Utility Corp*

All-Phase Utility Corp acknowledges that City of Newberg is entering into this Agreement in part upon reliance on the following representations:

4.1.1. All-Phase Utility Corp represents that it is financially solvent; that it is qualified to do business in the State of Oregon; and that it has all required licenses.

4.1.2. All-Phase Utility Corp represents that it is experienced in the construction and installation of fiber optic and conduit plant covered by this Agreement.

4.2 *Representations of All-Phase Utility Corp*

City of Newberg acknowledges that All-Phase Utility Corp is entering into this Agreement in part upon reliance on the following representations:

4.2.1. City of Newberg represents that it is financially solvent; and has the ability to perform the requirements and obligations contractual in this Agreement.

**ARTICLE 5
WARRANTY MAINTENANCE PROGRAM**

All-Phase Utility Corp warrants and guarantees that the work shall be free from defects in workmanship and materials and shall conform to and meet the system requirements. Any portion of the work that does not meet these requirements shall be considered defective. All-Phase Utility Corp. warranty maintenance shall extend for a period of one (1) year from the date of the issue of the Notice of Completion and Acceptance.

**ARTICLE 6
GENERAL PROVISIONS**

6.1 *Terms*

Unless sooner terminated as provided herein, this Agreement shall terminate upon completion and acceptance of all the work.

6.2 *Entire Agreement*

The Agreement, including Exhibits contains the full and complete understanding between the parties with reference to the subject matter hereof, and supersedes all prior agreements and understanding whether written or oral, pertaining thereto, and cannot be modified except by written instruments signed by the appropriate officers of the parties. Each of the parties acknowledges that no representation or promise not expressly contained in this Agreement has been made by the other party or by any agent, employee or representatives thereof.

6.3 *Applicable Law*

This Agreement shall be construed, and the relationship between the parties incorporated, in accordance with the laws of the State of Oregon, applicable to agreements to be made and performed in such state. All disputes between the parties hereto relating to this Agreement, the work, and the business relationship established hereby shall only have jurisdiction and venue in the courts of the State of Oregon and the United States district Court for the district which has jurisdiction and venue of the involved Counties.

6.4 *No Waiver*

The waiver by either party of a breach of any provision of this Agreement shall not operate as, nor be construed as, a waiver of any subsequent breach of the same provisions or of any other provision of this Agreement.

6.5 *Severability*

If one or more of the provisions contained in this Agreement shall be for any reason held unenforceable under the law of any state or of the United States, such unenforceable provision or provisions shall not affect the enforceability of this Agreement.

6.6 *Null and Void*

Failure of City of Newberg to pay within thirty (30) days, all invoices over which there is no good faith dispute shall cause this Agreement to be null and void. The City shall be entitled to written notice of such failure prior to the Agreement being null and void unless All-Phase Utility Corp and City of Newberg agree in writing to extend the time within which to make such payments.

6.7 *Arbitration and Attorney Fees*

Any controversy or claim arising out of, or relating to, this Agreement, or the making, performance, or interpretation of this Agreement, shall be settled by arbitration in accordance with applicable procedural provisions of Oregon law, and judgment on the arbitration award may be entered in any court having jurisdiction over the subject matter of the controversy. The prevailing party in the arbitration shall be entitled to its reasonable costs and attorney fees in connection therewith. The determination of who is the prevailing party, what are reasonable costs, and the amount of attorney fees to be paid to the prevailing party shall be decided by the arbitrator(s) (with respect to all recoverable attorney fees incurred prior to and during the arbitration proceedings) and by the court or courts, including any appellate court, that hears any exceptions made to an award submitted to it for confirmation as a judgment (with respect to attorney fees incurred in such proceedings.)

6.8 *Binding Effect*

This Agreement shall be binding upon and inure to the benefit of both parties and their respective successors and assigns. Neither this Agreement nor any rights hereunder may be assigned by either party without the express written consent of the other party.

6.9 *Counterparts*

This Agreement may be executed in counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

6.10 *Pronouns*

As the context may require in this Agreement, the use of any gender (male, female or neuter) shall include any other gender, and the singular shall include the plural and the plural the singular. As used in this Agreement, the term "person" includes individual, partnership, joint venture, trust, corporation, association or any other entity or agency.

6.11 *Captions*

The captions heading the sections and subsections of this Agreement are inserted for convenience of reference only, and are not to be used to define, limit, construe or describe the scope or intent of any term, provision or section of this Agreement.

6.12 *Modifications*

This Agreement may not be amended or modified except by written agreement executed by all of the parties hereto.

IN WITNESS WHEREOF, the parties have executed multiple copies of this Agreement as of the date first above written.

All-Phase Utility Corp

By: Dan R Bradley 2-1-01
Date

Name: Dan R Bradley

Title: President

City of Newberg

By: Duane R. Cole 8/26/2001
Date

Name: Duane R. Cole

Title: City Manager/City Recorder

By: Mike Soderquist 1/29/01

Name: Mike Soderquist

Title: Community Development Director

APPROVED AS TO FORM AND CONTENT:

Terrence D. Mahr
Terrence D. Mahr, City Attorney
By: DM

Exhibit A

(Page 1 of 1)

Contract between City of Newberg and All-Phase Utility Corporation
Installation of Street Light Underground Infrastructure
North Side of Hancock Street from Main Street to River Street
Newberg Joint Utility Trench

Materials Costs

Materials-Includes shipping, receiving and management of all materials.

<i>Item</i>	<i>Quantity</i>	<i>Unit Price</i>	<i>Total Cost</i>
3 X 20 PVC-40 UL Conduit pipe	2910 LF	\$1.37 per foot	\$3986.70
3 X 20 PVC-40 UL Conduit Pipe 90 Degree Sweeps	42	\$11.80 each	\$ 495.60
1" Non-Metallic Duct	136 LF	\$ 0.69 per foot	\$ 93.84
17" X 30" X 18" D Junction Box	2	\$167.00 each	\$ 334.00
13" X 24" X 18" D Junction Box	16	\$110.00 each	\$1760.00
TOTAL			\$6670.14

Exhibit B

(Page 1 of 2)

Contract between City of Newberg and All-Phase Utility Corporation
Installation of Street Light Underground Infrastructure
North Side of Hancock Street from Main Street to River Street
Newberg Joint Utility Trench

Installation Costs

All installation costs include project management, traffic control, and as-built provided and P.E. stamped. Price does not include any contaminants or handling of them.

Joint Utility Trench - City of Newberg Cost Share

Price includes: Surveying, excavate trench (2' wide X 6' deep); haul off and dispose of trench spoils, install base ditch conduits, bed in sand backfill with compact select fill, proof conduits, install mule tape, remove and repair sidewalks, and remove and repair asphalt for crossings.

Extra depth adder:

Provide depth in excess of 36" of cover where required for grade cuts.
Additional costs to be split by joint utility partners.

City of Newberg Trench - Laterals

Price includes: Surveying, excavate trench (1' wide X 36" deep); haul off and dispose of trench spoils, install base ditch conduits, bed in sand backfill with compact select fill, proof conduits, and install mule tape.

Removal and remove and repair of sidewalks and/or asphalt areas in this area of trenching is an itemized cost in Table 1.

Extra depth adder:

Provide depth in excess of 36" of cover where required for grade cuts.
Additional cost to be paid for by the City of Newberg.

Junction boxes.

Unit price includes: Surveying, excavation, haul off and disposal of spoils, 6" crushed rock base, installation of vault, backfill with compacted select material. All vaults will be set to match existing grade. Final adjustment of lids to final grade is not included.

Exhibit B

(Page 2 of 2)

TABLE 1

<i>Item</i>	<i>Quantity</i>	<i>Unit Price</i>	<i>Total Cost</i>
3 X 20-PVC-40 UL Conduit pipe (joint trench)	2805 LF	\$ 6.00 per foot	\$ 16830.00
3 X 20 PVC-40 UL Conduit pipe (City trench)	105 LF	\$13.50 per foot	\$ 1417.50
R and R of sidewalk/asphalt	525 SF	\$8.95 per SF	\$ 4698.75
3 X 20 PVC-40 UL Conduit Pipe 90 Degree Sweeps	42	\$ 0.00 each	\$ 0.00 ¹
1" Non-Metallic Flex Duct	34 LF	\$13.50 per foot	\$ 459.00
17" X 30" X 18" D Junction Box	2	\$ 660.00 each	\$ 1320.00
13" X 24" X 18" D Junction Box	16	\$ 300.00 each	\$ 4800.00
TOTAL			\$ 29525.25

¹ Included in price of trench cost.

Exhibit C

(Page 1 of 1)

Newberg Joint Trench

Terms and Conditions

1. All-Phase Utility Corp and other utilities will provide the following materials:
Quad duct, PVC conduit, couplers, sweeps, glue, mule tape, string, rope,
plugs, manholes with ring and casting, and handholes.

Please check one

☒ All-Phase to provide

☐ Utility to provide

2. All-Phase Utility Corp and other utilities will store all materials at a storage yard with forklift near the project.
3. All depth of cover will be 36 inches from existing grade.
4. All involved utilities will provide an inspector to insure correct number of conduits are placed.
5. All conduits will be bedded in sand with adequate spacing.
6. Hours of work will be Monday through Friday 7:00 am to 5:00 pm. No work will be performed on nights or weekends.
7. Lane closures- two lanes of traffic in both directions will be maintained at all times. In the Hancock section of the project, both parking strips will be closed and traffic shifted south to maintain two lanes westbound. In the 99W section of the project, the center median will be closed to maintain two lanes in both directions.
8. All driveways and accesses will be kept open at all times with steel plates.
9. All-Phase will not be required to pay for repairs to any traffic loop detectors that may need to be cut.
10. Existing sidewalk and roadway material that is removed may be recycled at an offside facility and utilized as trench backfill if economically viable.
11. Our bid does not include prevailing wages.
12. Subcontractor (Sorenson Construction) will provide certificates of insurance naming All-Phase Utility Corp and Oregon Department of Transportation as additional insured.
13. Subcontractors (Sorenson Construction) will provide a permit performance bond to Oregon Department of Transportation in the amount of \$100,000.00. All work performed under this permit bond will be by Sorenson Construction.
14. All-Phase invoicing will be done on a weekly basis by completed footage.
15. An Acceptable contract will be entered into between All-Phase Utility Corp and other utility construction.
16. If design or running line changes per ODOT or City that causes additional labor and materials, costs will be equally shared with all participants.

FORCE

Road Co. v. Robbins, 22 Barb., N.Y., 667; Temple Lumber Co. v. Living, Tex.Civ.App., 289 S.W. 746, 749; Hafner Mfg. Co. v. City of St. Louis, 262 Mo. 621, 172 S.W. 28, 34.

Unlawful violence. It is either *simple*, as entering upon another's possession, without doing any other unlawful act; *compound*, when some other violence is committed, which of itself alone is criminal; or *implied*, as in every trespass, rescous, or disseisin. Lambert v. Helena Adjustment Co., 69 Mont. 510, 222 P. 1057, 1058.

It may mean either exact pressure times exact area to which the pressure is applied, or it may mean simply an operative physical power without taking account of the exact quantity applied. Hydraulic Press Corporation v. Coe, 77 U.S.App.D.C. 251, 134 F.2d 49, 56.

Such display of physical power as is reasonably calculated to inspire fear of physical harm to those opposing possession of premises by trespasser. Smith v. Sinclair Refining Co., Tex.Civ.App., 77 S.W.2d 894, 895.

Terms "violence" and "force" are synonymous when used in relation to assault. People v. James, 9 Cal.App.2d 162, 48 P.2d 1011, 1012.

Power statically considered; that is at rest, or latent, but capable of being called into activity upon occasion for its exercise. Efficacy; legal validity. This is the meaning when we say that a statute or a contract is "in force."

As used in divorce statute, "force" or "coercion" are synonymous. Santer v. Santer, 115 Pa.Super. 1, 174 A. 651, 652.

In old English law, a technical term applied to a species of accessory before the fact.

In Scotch law, coercion; duress. Bell.

—Of force. See that title.

FORCE AND ARMS. A phrase used in declarations of trespass and in indictments, but now unnecessary in declarations, to denote that the act complained of was done with violence. 2 Chit.Pl. 846, 850.

FORCE AND FEAR, called also "*vi metuque*," means that any contract or act extorted under the pressure of force (*vis*) or under the influence of fear (*metus*) is voidable on that ground, provided, of course, that the force or the fear was such as influenced the party. Brown.

FORCE MAJESTURE. Includes lightnings, earthquakes, storms, flood, sunstrokes, freezing, etc., wherein latter two can be considered hazards in contemplation of employer within Compensation Act. Fogg v. Van Saun Coal Co., N.J.Dept. Labor, 12 N.J.Misc. 680, 174 A. 419, 420.

FORCE MAJEURE. Fr. In the law of insurance, superior or irresistible force. Emerig. Tr. des Ass. c. 1^o

FORCED HEIRS. Those persons whom the testator or donor cannot deprive of the portion of his estate reserved for them by law, except in cases where he has a just cause to disinherit them. Civil Code La. art. 1495. And see Crain v. Crain, 17 Tex. 90; Hagerty v. Hagerty, 12 Tex. 456; Miller v. Miller, 105 La. 257, 29 So. 802.

FORCED SALE. In practice, a sale made at the time and in the manner prescribed by law, in virtue of execution issued on a judgment already rendered by a court of competent jurisdiction; a sale made under the process of the court, and in the mode prescribed by law. Sampson v. Williamson, 6 Tex. 110, 55 Am.Dec. 762.

A sale against the consent of the owner. The term should not be deemed to embrace a sale under a power in a mortgage. Patterson v. Taylor, 15 Fla. 336.

FORCES. The military and naval power of the country.

FORCHEAPUM. Pre-emption; forestalling the market. Jacob.

FORCIBLE DETAINER. Exists where one originally in rightful possession of realty refuses to surrender it at termination of his possessory right. Sayers & Muir Service Station v. Indian Refining Co., 266 Ky. 779, 100 S.W.2d 687, 689.

The offense of violently keeping possession of lands and tenements, with menaces, force, and arms, and without the authority of law. 4 Bl.Comm. 148; 4 Steph.Comm. 280.

Forcible detainer may ensue upon a peaceable entry, as well as upon a forcible entry; but it is most commonly spoken of in the phrase "forcible entry and detainer."

FORCIBLE ENTRY. Violently taking possession of lands and tenements with menaces, force, and arms, against the will of those entitled to the possession, and without the authority of law. 4 Bl. Comm. 148; 4 Steph. Comm. 280; Code Ga. 1882, § 4524 (Pen. Code, 1910, § 344). Accompanied with circumstances tending to excite terror in the occupant, and to prevent him from maintaining his rights. Barbee v. Winnsboro Granite Corporation, 190 S.C. 245, 2 S.E.2d 737, 739. Angry words and threats of force may be sufficient. Calidino Hotel Co. of San Bernardino v. Bank of America Nat. Trust & Savings Ass'n, 31 Cal.App. 2d 295, 87 P.2d 923, 931.

Every person is guilty of forcible entry who either (1) by breaking open doors, windows, or other parts of a house, or by any kind of violence or circumstance of terror, enters upon or into any real property; or (2) who, after entering peaceably upon real property, turns out by force, threats, or menacing conduct the party in possession. Code Civil Proc.Cal. § 1159.

In many states, an entry effected without consent of rightful owner, or against his remonstrance, or under circumstances which amount to no more than a mere trespass, is now technically considered "forcible," while a detainer of the property consisting merely in the refusal to surrender possession after a lawful demand, is treated as a "forcible" detainer, the "force" required at common law being now supplied by a mere fiction. See Vernon's Tex. Ann.Civ.St. art. 3975; Goldsberry v. Bishop, 2 Duv., Ky. 144; Wells v. Darby, 13 Mont. 504, 34 P. 1092; Willard v. Warren, 17 Wend., N.Y. 261; California Products v. Mitchell, 52 Cal.App. 312, 198 P. 646.

FORCIBLE ENTRY AND DETAINER. A summary proceeding for restoring to possession of land one who is wrongfully kept out or has been wrongfully deprived of the possession. Wein v. Albany Park Motor Sales Co., 312 Ill.App. 357, 38 N.E.2d 556, 559.

The title cannot be inquired into for any purpose. Davis v. Robinson, 374 Ill. 553, 30 N.E.2d 52, 54. The inquiry is confined to the actual and peaceable possession of the plaintiff and the unlawful or forcible ouster or detention

REQUEST FOR COUNCIL ACTION

DATE ACTION REQUESTED: 2000, August 21

Ordinance ____ Resolution ____ Motion X Information ____
No. No.

Date Submitted: August 4, 2000

**SUBJECT: Purchasing Policy - Highway 99W
Street Lights**

Contact Person (Preparer):

David Beam

Dept.: Community Development

File No.: G-64-00

(if applicable)

RECOMMENDATION: Authorize staff to enter into partnership agreements with Oregon Department of Transportation (ODOT) and All-Phase Utility Corporation to install the underground infrastructure for period street lights: (1) on the north side of Hancock Street/Portland Road from Main Street to the "Y" intersection of Highway 219 (Rocket Park); and, (2) on the south side of Hancock Street from Main Street to River Street. The ODOT portion of the work would be in conjunction with the Brutscher to Main Street Project.

BACKGROUND:

1. ODOT's Brutscher to Main Street Project will involve the relocation of utility infrastructure along Highway 99W. Staff has been exploring opportunities to underground power lines: (1) along Hancock Street between its intersections with Main Street and with River Street; (2) along Portland Road between its intersections with River Street and with the "Y" intersection of Highway 219 (Rocket Park); and, (3) along First Street between its intersections with River Street and with Meridian Street. Undergrounding of the overhead power lines will provide a more aesthetically pleasing environment, will lower long-term maintenance costs, and will provide more reliable electrical service. This will also allow the city to lease period street lights from PGE, which will improve the appearance of the downtown and advance the revitalization of the downtown area. PGE will install the street lights at their expense and then charge a monthly fee to the City for the lights. This will be in addition to the monthly electricity usage charges.
2. The Community Development Department proposes that the Public Works Division install the underground infrastructure for the street lights on First Street from its intersection with River Street and its intersection with Meridian Street and along the south side of the Portland Road from its intersection with River Street to Rocket Park.

3. Prior to ODOT beginning their construction next year, All-Phase Utility Corporation will be placing a fiber optic line underground on the north side of the Hancock/Portland Road section between Main Street and Rocket Park. Also, ODOT will be placing an underground electrical line on the south side of Hancock Street from Main Street to River Street during the project to service their signal lights along Hancock Street. ODOT will hire a contractor to perform this work as part of the Brutscher to Main Project.
4. All-Phase has offered to install the underground infrastructure necessary for street lights within the same trench as their fiber optic cable on the north side of the road. The estimated cost to the City for this work in conjunction with All-Phase is \$36,000. The estimated cost for the City to underground this infrastructure as a stand alone project through a contractor is \$60,000.
5. ODOT has also agreed to install the underground infrastructure needed for the street lights in the same trench that they are placing the signal light electrical line on the south side of Hancock. Based on recent commitments by ODOT, the estimated cost to the City for this ODOT work is \$8,500. The estimated cost for the City to underground this infrastructure as a stand-alone project (through a contractor) is \$51,000.

FISCAL IMPACT: The estimated total cost to the City to install the street light underground infrastructure in conjunction with the ODOT and All-Phase undergrounding projects is \$44,500. The estimated total cost for the City to underground the same infrastructure as a stand-alone project (through a contractor) is \$101,000. Thus, performing the subject work in conjunction with the ODOT and All-Phase undergrounding projects will save the City an estimated \$56,500.

STRATEGIC ASSESSMENT:

The planned undergrounding activities by ODOT and All-Phase present a unique opportunity for the City to underground the existing above-ground power lines for the street lights along the subject street corridors at relatively low cost. To perform the same work in the future as a stand-alone project (through a contractor) would be much more expensive. Therefore, staff recommends that the City secure agreements with ODOT and All-Phase to perform the subject work.

The project would be financed with funds received from ODOT for the purchase of City rights-of-way associated with the Brutscher to Main Project..

SUBMITTED BY:

APPROVED BY:

Michael Soderquist, P.E., P.L.S., DEE
Community Development Director

Duane Cole
City Manager

Attachment: A. - Project Cost Estimates (developed by Paul Chiu, Civil Engineer)
B. - Sample Street Light

MINUTES FOR THE NEWBERG CITY COUNCIL MEETING

MONDAY, AUGUST 21, 2000

7:00 P.M. MEETING

PUBLIC SAFETY BUILDING - TRAINING ROOM

I. CALL MEETING TO ORDER

Mayor Cox called the meeting to order.

II. ROLL CALL

Roger Currier (RC)
Donna McCain (DM)
Lisa Helikson (LH)

Noelle Wilson (NW)
F. Robert Weaver (RW)
Brett Veatch (BV)

Staff

Present: Duane R. Cole, City Manager (DRC)
Terrence D. Mahr, City Attorney (TDM)
Mike Soderquist, Community Development Director
Barton Brierley, Planning Director
Kathy Tri, Finance Director
Chief Tardiff, Police Chief
Fire
Norma Alley, Recording Secretary

Others

Present: Darlyn Adams, Bob Larson,

III. PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was performed.

PUBLIC MEETING SECTION

IV. PUBLIC COMMENTS

Darlyn Adams, 131 Johanna Ct., passed around pictures for the council to look at. The goal for the festival was 1000 and they raised 1702 dollars. 6403 dollars for a grand total as of today. Reported that they are looking for an architect. Barney Davis designed Oregon humane shelter in Portland offered to draw the plans for free.

RW asked if the pads of the feet got hot. Darlyn said not at all. There wasn't dog that had a problem.

Bob Larson, 1100 N. Meridian, Newberg, commended the staff on their work on the budget and the reports (specifically DRC and Kathy Tri). He thanked the city staff and the fire

chief and the police chief. The department heads who cooperated to come up with a balanced budget.

V. PUBLIC HEARING

1. Public hearing on petition for Relief from City Fees related to Sign Relocation - Dr. Ron Hatfield.

Conflict of Interest: Councilor RC announced that his wife works in the building but does not work for Dr. Hatfield He works for Dr. Lipe.

Mike Soderquist gave the staff report. **Recommend to deny his request.** Reviewed the background of the staff report. The fee is a function of the cost of the project. In 1998 the council established the fees and they are to cover the expense of the cost brought to the city. The sign code is not allowed for variances. Portions of the fees go to the state and county. The relocation of each sign staff effort is required. Business' that have signs that must be relocated have been compensated by ODOT. They can buy back the sign at salvage price. We could lose 10,000 dollars in revenue.

DRC said this is a change in the Council change. This is a transfer of costs.

RC asked are you firm on these numbers. Was the sign paid for and the fees?

Soderquist said we understand the understanding that ODOT paid for the costs of moving it.

RW said he doesn't understand why the city has to get involved.

RC said how much is the cost of the fees we pay the county and state and how much staff time is there involved and what does the work consist of, and how much time is the inspection going to take?

Soderquist replied that the fees that are charged on the fee schedule has to do with different types of signs. I don't know how much time is spent on this issue.

Barton said it is a 7% surcharge on the building fee to be paid to the state and county.

Ron Hatfield, General Dentist, 201 N. Washington, Newberg, said it is impossible to write an ordinance to every issue. I was paid for the sign and I bought it back.

Mayor Cox said it is important to see if all the fees were paid for by ODOT. We need to do some kind of work on our fee schedule. We have a problem satisfying you tonight.

Mr. Hatfield said I felt this is unreasonable and that is why he protested it.

RW said any law that we make has to be humanistic and realistic. Here is a unique situation that we are going to be in for a couple of years. If any of you would take a look at Ron's sign it seems unrealistic to have a sign that is not humanistic. Our Ordinance is going to have to bend and be realistic. You must take in the whole picture.

DRC said this is a classic case that this is a small sign that has two holes and is just to be moved back. That is something to think about. There is not discretion for staff. They must talk with City Council.

Council Deliberation:

RC said it is a loss of 10,000 dollars to the city. It is something we are trying to do to keep the businesses going. The question I ask the council is do you want to look at considering a temporary amendment to the ordinance for two years that apply to non-electrical, non-concrete, etc. for a minimal fee? This would have a moratorium for the two to three years.

DM said this particular case on Hancock are forced upon businesses to move that we don't have control over. Can we do something that we have a case by case situation. If it looks like there is going to be a cost to us then we charge that.

LH said I am uncomfortable with the conversation is going. They are being compensated for them to do that. Is the fee too high. This is an Ordinance in place so we are going to have to go back and evaluate the entire Ordinance. This is a law that shouldn't be changed for each person. We are doing a disservice finding variances.

NW said every person that has to move that sign is going to be thinking that they are a unique situation. The fees are justified that we are not making money off this. The city passed this Ordinance almost two years ago. It costs staff time involved and that is where the fees come in. This isn't a punishment for moving the sign

RC said the only thing is that the cost of service. How much does it take to pull a form out and changed the form to the proper measurements and have someone inspect that. Is that \$250 worth it.

RW said it is a blanket \$250 dollars no matter what the sign. You look at an electrical huge sign compared to a small wooden sign. We must reevaluate this sign.

DRC said on page 5 there is a fee schedule. 6th fee down explains where the fee comes from. If you want to change the fee you must change the DC. The building permit varies by value of the sign.

RW said he is pleased that the problem comes to them tonight. This ordinance is not flexible.

RC said I would look to a Bratcher to Main amendment to that process.

Cox said if this is wrong on the Bratcher to Main project then it is going to be wrong on other projects.

TDM said the discussion that Dr. Hatfield has brought up does not address the criteria in the Development Code. He addressed the ordinance fee schedule. When you talk about the ordinance. The Development code does not address and comply with a variance. The sign code does not have a variance in it.

DM said the old crutch of this matter is the forcing of a person to move a sign. When we did this

Ordinance I don't think that we thought we would run into this problem. We need to be lenient because it is a State issue. We should review this and come back with an answer. We should review some of this.

LH said the issue is if we have a flaw in the Ordinance then we should look at the flaw. This is not a flaw because ODOT paid him for these fees. If they weren't adequately paid for by ODOT then it would be an entirely different issue.

RW said it isn't a matter of a fee. It is a moving a sign over a couple of feet.

NW said I don't think that we should set a precedence that if there is a problem they should come to the council and oppose it.

RC said taking this into a different light is the residential businesses. What if he elected that he didn't like his sign in the location then moved it.

DRC said what the council could do is make a motion to stick with the existing fee schedule, assign it to the sign committee. There are a different assignments here. To over do those is to send it to the sign committee.

MOTION:	RC/DM - to table for further review of the sign committee. (4 yes/2 no [NW/BV]). Motion Carried.
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2. **Resolution No. 2000-2259** approving Supplemental Budget #1 for fiscal year 2000-2001.

Kathy Tri gave the staff report. The finance committee did not approve the change and now you have changes in the resolution., this splits the cost of the community center from the police budget.

What was the budget amount for that?

Tri said about 90,000. It is almost 20,000 dollars increase. There are many factors.

MOTION:	RW/NW - to approve Resolution No. 2000-2259 approving Supplemental Budget #1 for fiscal year 2000-2001. (Unanimous). Motion Carried.
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3. Continued Public Hearing on budget 2001-2002 - Impacts of Ballot Measures.

Mr. George Lewis, 1013 James St., Newberg, said he is here to speak to the council and the voters of Newberg to ask to consider the effects of the state wide ballot measure. These create a cascading effect. They slash cost to state money and slash the local budget. Mr. Sizemore and McIntyre have been promoting this and this is going to preconditions that will come. Everyone is paying more in fees. If passes you are looking at reduction in the budget and the police dept. I enjoy the current level of service to the community.

Tri gave the staff report. This is reviewing the impact of the last ballots failing. She reviewed the staff report. If ballot measure 93, 91 or 8 would create 8½ positions. Both the Chiefs are looking at what kinds of service would be impacted.

DRC said we are at a 2 position reduction right now. If 93 passes then we are at a different cenario. We would have to come with risky types of depostions. We would have to drain our general budget funds and then have to finance the budget at a different level. PGE AND other funds are not going to fund costs. There will be litigation costs, an could create a property tax increase. Alternative two is a wild risk. Alternative three this would impact 4.3 positions. Alternative 4 we have 6.3 positions. If we go with alternative four we would come up with the key question is what does it mean to the residences of Newberg to have these reductions.

RC asked for clarification between table 2 and alternative 4.

DRC said 4 said it isn't as bad as table two but they are giving different veiws. We progressed in our thinking.

Tri said now that they are on the ballot. There are mnay attorney's looking at this and we can define and determine better the issues. The questions is how do we inform the public if these issues.

BUSINESS MEETING SECTION

VI. CONTINUED BUSINESS

1. Public contracting and adoption of **Ordinance No. 2000-2531** pertaining to public contracts and repealing Ordinance No. 96-2454.

Kathy Tri gave the staff report. When she was here last time since we have not raised the dollar limits and now they are simply State regulations and keeping up to standards of the state. The only change is that we will allow electronic mail for bids. This brings us up-to-date to the times.

RC said I am happy to see that the fees have gone back down. I am concerned with the comment for the Atty. General model rules. What are they.

Tri said they are about an inch thick and you take the statutes and make rules on the biding and pruchaseing. They give the timelines nad the forms at times.

TDM siad htey have the model rules and they are to be followed at that time. All the contractors know those rules and they know what to follow them. We did follow them but it wasn't mandated that we do it.

RW said all governmental bodies must comply with ORS ch. 2 sect

MOTION:	RW/RC - to approve Ordinance No. 2000-2531 pertaining to public contracts and repealing Ordinance No. 96-2454. TDM read by title only. (Unanimous). Motion Carried.
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ROLL CALL VOTE:	(Unanimous). Motion Carried.
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VII. NEW BUSINESS

1. **Resolution No. 2000-2258** approving the purchase of an ambulance from Hughes Fire Equipment, Inc., as budgeted in the 2000-01 Budget.

Fireman gave the staff report. Request premission to buy an ambulance that has been budgeted fro this year. He pointed out that when they purchased an ambulance a year ago the pink ladies donated 70,000dollars. That donation is what is making it possible for us to purchase this one this year.

RC asked this is for a specific ambulace for a specific provider. Where there other providers looked at. Is it written so that only one provider can provide that piece of equipment.

??? the city of salme did use the formal bidding process under compliance with state law. It is appropriate to secify a peice of equipment when there is merit to do that. It would be inappropriate to do that just becasuue you don't have a preference to them. This vendor has a great quality that we have looked at. This is based on merit.

RW asked him about the process he used to thank them. He recommended having a letter signed by the Mayor.

MOTION:	RW/RC - to approve Resolution No. 2000-2258 approving the purchase of an ambulance from Hughes Fire Equipment, Inc., as budgeted in the 2000-01 Budget. (Unanimous). Motion Carried.
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2. Review of Fourth Quarter Financial Report from the Finance Department.

Kathy Tri gave the staff report. General fund ended up 15,000 dollars than 98-99 year. That is not a big expenditure. The revenues came in almost 100%. Revenues 350,000 dollars less than a year ago. This means we are using our cash. We will probably coming back with another supplemental budget. The Permit Center had 64 new building permits. They issued 294 new permits. If we are only growing by fifty or so a year then we must watch our budget. The slow down in growth has effected other funds along with General fund. The street fund we have been cocerned about all year. The increase in gas has not brought in mnay funds. The EMS fund is in much better shape than ayear ago. There could be additional effects with medicare int hefuture. Congrad the engineer staff. They ahve been quite busy with preperation for the river st. Sewer project, brutcher to main, and other projects. We have been saving money todo projects and that is good. We reported this to the finance commitee on July

4.

DM suggested to relay this report to the general public so they can see the effect.

VIII. CONSENT CALENDAR

1. Authorize staff to enter into partnership agreements with ODOT and All-Phase Utility Corporation to install the underground infrastructure for period street lights on Highway 99W.

RC asked for clarification on the the public works department if it was the city's.

Barton said yes.

RC said if we can do that then we are over staffed. They should be doing other things. I don't think the cost savings is that great.

DRC said what I want is the ability to structur the project. The project has not specified what they are doing. They are going to be laying pcb pipe. This is going to happen bang bang bang. If we are not on board than we could delya the project and then the city is liable for the damages. City employees will be down there becuase it is our responsiblity to get things done. I and staff are concerned also. We need the abilbity to obligate them to do it or else I don't see it getting done.

RC asked if ODOT is going tot ake the cotrol boxes out.

RW said I agree that we have man power to do certain chores. Francais Square was built on volunteers. I would like to see lights lining first street and Hancock. Larry at the time city engineer gave hours and hours worth of time.

RC said I agree with that but we are talking about a salery employee. An hourly employee cannot volunteer thie time back to the city.

DM asked are the christmas decorations be accomodated.

Barton said it is likely that it will not but we don't know at this time.

DM it is unfortunate that we don't accomodate this buetification process.

LH said that was a concern that I have also. With a pedestrian lighting they are closer to the ground. This creates a freindlier down-town but they can be used at another place.

MOTION:	RW/DM - to authorize staff to enter into partnership agreements with ODOT and All-Phase Utility Corporation to install the underground infrastructure for period street lights on Highway 99W. (Unanimous). Motion Carried.
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IX. EXECUTIVE SESSION

None

X. ADJOURNMENT

MOITON:	RC/BV - to adjourn at 8:33 p.m. (Unanimous). Motion Carried.
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ADOPTED by the Newberg City Council this ____ day of September, 2000.

Duane R. Cole, City Recorder

ATTEST by the Mayor this ____ day of September, 2000.

Charles B. Cox, Mayor

December last we should have had an evaluation.



CHANGE ORDER REQUEST

Attention: Dave Beam		Location: Hancock - Newberg ST - Light -
From: Rick Nicholas	Date: 2-27-01	

Description
TO Place Concrete/Polymer Vault (AS to Concrete only) TO Accommodate PGE's New Specifications, AS per our Discussion w/ Tracy A. 2-27-01
New Vault Quote for 13x24 is \$169 ³⁴
17x30 is \$241 ²⁸

Date: 2/27/01

Signature: Santa Briley



CHANGE ORDER REQUEST

Attention:		Location:	
Dave Beam		Hancock	
From:	Date:	Newberg	
Rick Nicholas	2-27-01		

Description
Replace 6 - PVC 90° elbows w/ Fiberglass elbows as Required By AGE's specifications Final Design was issued after price quote.
(3 - sections Require These as Design Lengths exceed AGE's 150' limit.)
New 3" Fiberglass Sweeps
Quote @ 60 ⁶²

Date: 2/27/01 Signature: Barta Brinley