

# City of Brookings

## MEETING AGENDA

### CITY COUNCIL

**Monday, March 25, 2024, 7:00pm**

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

#### **A. Call to Order**

#### **B. Pledge of Allegiance**

#### **C. Roll Call**

#### **D. Scheduled Public Appearances**

(Informational presentations to Council on non-agenda items – 10 minute limit per person.)

1. Curry County – Commissioner Alcorn
2. Downtown Merchant Association – Bret Curtis

#### **E. Oral Requests and Communications from the audience**

(\*Public Comments on non-agenda items – five (5) minute limit per person, please submit Public Comment Form in advance)

#### **F. Consent Calendar**

1. Approve Council minutes for March 11, 2024 [Pg. 1]
2. Receive monthly financial report for February 2024 [Pg. 3]

#### **G. Staff Reports/Public Hearings/Ordinances/Resolutions/Final Orders**

1. Waste Water Treatment Plant – Outfall Repair Bid Award [Pg. 9]
  - a. Jacobs Recommendation Letter [Pg. 10]
2. Western Display Fireworks agreement [Pg. 11]
  - a. Display Agreement & Purchase Order [Pg. 12]

#### **H. Informational Non-Action Items**

1. City Manager Recruitment Update

#### **I. Remarks from Mayor, Councilors and City Manager**

#### **J. Adjournment**

\*Public Comment forms and the agenda packet are available on-line at [www.brookings.or.us](http://www.brookings.or.us), and at Brookings City Hall. Return completed Public Comment forms to the City Recorder before the start of the meeting or during regular business hours.

All public meetings are held in accessible locations. Auxiliary aids will be provided upon request with at least 72 hours advance notification. Please contact 541-469-1102 if you have any questions regarding this notice. You can view City Council meetings LIVE on television on Charter PEG Channel 181, or stream/view on the City's YouTube Channel:

<https://www.youtube.com/@cityofbrookingsoregon8039>, or search 'City of Brookings Oregon YouTube' in your

**City of Brookings**  
**CITY COUNCIL MEETING MINUTES**  
City Hall Council Chambers, 898 Elk Drive, Brookings, OR 97415  
**Monday, March 11, 2024**

**Call to Order**

Mayor Isaac Hodges called the meeting to order at 7:00 PM

**Roll Call**

Council Present: Mayor Isaac Hodges, Council President Andy Martin, and Councilors Clayton Malmberg, Phoebe Pereda, and Kristi Fulton; a quorum present

Staff present: Police Chief/Interim City Manager Kelby McCrae, Public Works and Development Services Director Tony Baron and Deputy City Recorder Brooklyn Osterhage

Media Present: 1

Others Present: Approximately 10 audience members

**Oral Requests and Communications from the Audience**

1. Ron Schneirson, 111 Schooner Bay Drive – spoke on updating the Waste Water Treatment Plant

**Consent Calendar**

1. Approve Council minutes for February 26, 2024

**Councilor Malmberg moved, Councilor Fulton seconded, and Council voted unanimously to approve Council minutes for February 26, 2024.**

2. Accept Planning Commission minutes for February 6, 2024

**Councilor Pereda moved, Mayor Hodges seconded, and Council voted unanimously to accept Planning Commission minutes for February 6, 2024.**

3. Approve Liquor Licenses for Wicked Pig

**Councilor Malmberg moved, Councilor Martin seconded, and Council voted unanimously to approve Liquor Licenses for Wicked Pig.**

4. Accept Reappointment of Sage Bruce to the Planning Commission

**Councilor Martin moved, Councilor Malmberg seconded, and Council voted unanimously to accept reappointment of Sage Bruce to the Planning Commission.**

5. Approve Memorandum of Understanding by and between Curry County and City of Brookings

**Councilor Pereda moved, Mayor Hodges seconded, and Council voted unanimously to approve Memorandum of Understanding by and between Curry County and City of Brookings.**

**Staff Reports**

1. Curry Transfer and Recycling Rate Increase

Staff Report presented by Tony Baron and an update on Curry Transfer and Recycling was provided by Luke Pyke and Tiffany Rogde.

**Councilor Pereda moved, Mayor Hodges seconded, and Council voted unanimously to approve a new rate schedule from Curry Transfer and Recycling (CTR) for refuse collection and recycling services per the attached letter and exhibit, effective April 1, 2024.**

## **2. South Coast Community Aquatics Pool Management Agreement**

Staff Report presented by Tony Baron and an update on South Coast Community Aquatics was provided by Val Early.

**Mayor Hodges moved, Councilor Fulton seconded, and Council voted unanimously to authorize the Interim City Manager to enter into a management agreement with South Coast Community Aquatics to operate the Brookings Municipal Pool.**

### **Remarks from Mayor and Councilors**

Councilor Fulton brought four organizational items to the Council's attention: whether or not we have an official Council President, Council's goals, the evaluation process for City Manager and Council's effectiveness, and citizen engagement.

Councilor Martin clarified he was appointed Council President. He also provided details on the Pacific Fishery Management Council meeting he recently attended.

Councilor Pereda advised she will be attending a Community Visioning and Strategic Planning training and invited the others. She also would like to discuss short-term rentals and how many should be allowed.

Councilor Malmberg agrees that discussing short-term rentals is a good idea. Tony Baron suggested discussing at a joint Planning Commission and City Council meeting. He also advised Advanced Air is taking over operations of the Crescent City Airport and invited Council to their kickoff event March 18, 2024.

Mayor Hodges thanked City workers for their hard work during the recent storms and ensuring our streets are usable.

### **Adjournment**

Mayor Isaac Hodges adjourned the meeting at 7:37 PM.

Respectfully submitted:

ATTESTED:

this 25<sup>th</sup> day of March, 2024:

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Isaac Hodges, Mayor

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Brooklyn Osterhage, Deputy City Recorder

CITY OF BROOKINGS  
FUND SUMMARY  
FOR THE 8 MONTHS ENDING FEBRUARY 29, 2024

GENERAL FUND

	BUDGET	PERIOD ACTUAL	YTD ACTUAL	REMAINING BUDGET	PCNT
<u>REVENUE</u>					
TAXES	4,026,050.00	134,922.77	3,833,458.93	192,591.07	95.2
LICENSES AND PERMITS	297,000.00	19,939.75	192,354.89	104,645.11	64.8
INTERGOVERNMENTAL	294,500.00	39,351.38	129,550.08	164,949.92	44.0
CHARGES FOR SERVICES	1,109,500.00	28,609.45	315,660.58	793,839.42	28.5
OTHER REVENUE	140,500.00	( 16,783.04)	141,039.72	( 539.72)	100.4
TRANSFERS IN	686,105.00	.00	.00	686,105.00	.0
	6,553,655.00	206,040.31	4,612,064.20	1,941,590.80	70.4
<u>EXPENDITURES</u>					
JUDICIAL:					
PERSONAL SERVICES	38,235.00	3,430.00	27,291.92	10,943.08	71.4
MATERIAL AND SERVICES	12,850.00	341.73	3,475.48	9,374.52	27.1
CAPITAL OUTLAY	.00	.00	.00	.00	.0
	51,085.00	3,771.73	30,767.40	20,317.60	60.2
FINANCE AND ADMINISTRATION:					
PERSONAL SERVICES	423,568.00	27,299.47	377,129.88	46,438.12	89.0
MATERIAL AND SERVICES	228,800.00	12,464.57	252,443.10	( 23,643.10)	110.3
CAPITAL OUTLAY	.00	.00	.00	.00	.0
	652,368.00	39,764.04	629,572.98	22,795.02	96.5
POLICE:					
PERSONAL SERVICES	3,314,004.00	269,245.51	2,111,908.97	1,202,095.03	63.7
MATERIAL AND SERVICES	231,000.00	19,247.27	159,463.71	71,536.29	69.0
CAPITAL OUTLAY	.00	.00	295,861.58	( 295,861.58)	.0
DEBT SERVICE	109,426.00	.00	14,306.95	95,119.05	13.1
TRANSFERS OUT	.00	.00	.00	.00	.0
	3,654,430.00	288,492.78	2,581,541.21	1,072,888.79	70.6
FIRE:					
PERSONAL SERVICES	249,661.00	19,909.36	163,054.02	86,606.98	65.3
MATERIAL AND SERVICES	107,500.00	5,152.86	72,194.67	35,305.33	67.2
CAPITAL OUTLAY	.00	.00	.00	.00	.0
DEBT SERVICE	30,580.00	.00	30,579.01	.99	100.0
TRANSFERS OUT	.00	.00	.00	.00	.0
	387,741.00	25,062.22	265,827.70	121,913.30	68.6

CITY OF BROOKINGS  
FUND SUMMARY  
FOR THE 8 MONTHS ENDING FEBRUARY 29, 2024

GENERAL FUND

	BUDGET	PERIOD ACTUAL	YTD ACTUAL	REMAINING BUDGET	PCNT
PLANNING AND BUILDING:					
PERSONAL SERVICES	240,456.00	18,331.62	128,135.01	112,320.99	53.3
MATERIAL AND SERVICES	93,700.00	3,298.08	32,488.21	61,211.79	34.7
CAPITAL OUTLAY	.00	.00	.00	.00	.0
TRANSFERS OUT	.00	.00	.00	.00	.0
	334,156.00	21,629.70	160,623.22	173,532.78	48.1
PARKS & RECREATION:					
PERSONAL SERVICES	287,161.00	19,152.75	182,404.68	104,756.32	63.5
MATERIAL AND SERVICES	137,900.00	8,044.92	66,939.25	70,960.75	48.5
CAPITAL OUTLAY	.00	.00	891.90	( 891.90)	.0
DEBT SERVICE	9,981.00	.00	9,980.00	1.00	100.0
TRANSFERS OUT	.00	.00	.00	.00	.0
	435,042.00	27,197.67	260,215.83	174,826.17	59.8
GOLF COURSE:					
PERSONAL SERVICES	.00	.00	.00	.00	.0
MATERIAL AND SERVICES	900,000.00	.00	.00	900,000.00	.0
CAPITAL OUTLAY	.00	.00	.00	.00	.0
	900,000.00	.00	.00	900,000.00	.0
SWIMMING POOL:					
PERSONAL SERVICES	102,122.00	.00	65,350.30	36,771.70	64.0
MATERIAL AND SERVICES	66,700.00	428.14	31,333.16	35,366.84	47.0
CAPITAL OUTLAY	.00	.00	.00	.00	.0
	168,822.00	428.14	96,683.46	72,138.54	57.3
NON-DEPARTMENTAL:					
MATERIAL AND SERVICES	175,600.00	12,886.41	85,626.70	89,973.30	48.8
CAPITAL OUTLAY	.00	.00	.00	.00	.0
TRANSFERS OUT	575,000.00	.00	.00	575,000.00	.0
CONTINGENCIES AND RESERVES	829,411.00	.00	.00	829,411.00	.0
	1,580,011.00	12,886.41	85,626.70	1,494,384.30	5.4
	8,163,655.00	419,232.69	4,110,858.50	4,052,796.50	50.4
	( 1,610,000.00)	( 213,192.38)	501,205.70	( 2,111,205.70)	31.1

CITY OF BROOKINGS  
FUND SUMMARY  
FOR THE 8 MONTHS ENDING FEBRUARY 29, 2024

STREET FUND

	BUDGET	PERIOD ACTUAL	YTD ACTUAL	REMAINING BUDGET	PCNT
<u>REVENUE</u>					
INTERGOVERNMENTAL	500,000.00	48,687.53	322,711.18	177,288.82	64.5
OTHER REVENUE	22,000.00	2,392.94	25,715.73	( 3,715.73)	116.9
TRANSFER IN	100,000.00	.00	.00	100,000.00	.0
	<u>622,000.00</u>	<u>51,080.47</u>	<u>348,426.91</u>	<u>273,573.09</u>	<u>56.0</u>
<u>EXPENDITURES</u>					
EXPENDITURES:					
PERSONAL SERVICES	244,962.00	18,044.77	180,565.73	64,396.27	73.7
MATERIAL AND SERVICES	319,700.00	21,929.71	152,381.87	167,318.13	47.7
CAPITAL OUTLAY	15,000.00	.00	.00	15,000.00	.0
DEBT SERVICE	4,409.00	367.38	2,939.12	1,469.88	66.7
TRANSFERS OUT	234,087.00	.00	.00	234,087.00	.0
CONTINGENCIES AND RESERVES	118,842.00	.00	.00	118,842.00	.0
	<u>937,000.00</u>	<u>40,341.86</u>	<u>335,886.72</u>	<u>601,113.28</u>	<u>35.9</u>
	<u>937,000.00</u>	<u>40,341.86</u>	<u>335,886.72</u>	<u>601,113.28</u>	<u>35.9</u>
	<u>( 315,000.00)</u>	<u>10,738.61</u>	<u>12,540.19</u>	<u>( 327,540.19)</u>	<u>4.0</u>

CITY OF BROOKINGS  
FUND SUMMARY  
FOR THE 8 MONTHS ENDING FEBRUARY 29, 2024

WATER FUND

	BUDGET	PERIOD ACTUAL	YTD ACTUAL	REMAINING BUDGET	PCNT
<u>REVENUE</u>					
SOURCE 03	.00	.00	.00	.00	.0
CHARGES FOR SERVICES	2,039,000.00	143,351.17	1,351,238.54	687,761.46	66.3
OTHER INCOME	48,000.00	8,692.60	83,789.87	( 35,789.87)	174.6
TRANSFERS IN	.00	.00	.00	.00	.0
	<u>2,087,000.00</u>	<u>152,043.77</u>	<u>1,435,028.41</u>	<u>651,971.59</u>	<u>68.8</u>
<u>EXPENDITURES</u>					
WATER DISTRIBUTION:					
PERSONAL SERVICES	432,204.00	31,129.86	292,746.32	139,457.68	67.7
MATERIAL AND SERVICES	183,800.00	33,218.29	156,788.24	27,011.76	85.3
CAPITAL OUTLAY	50,000.00	3,586.12	8,721.17	41,278.83	17.4
DEBT SERVICE	28,154.00	2,147.40	19,563.63	8,590.37	69.5
TRANSFERS OUT	24,000.00	.00	.00	24,000.00	.0
	<u>718,158.00</u>	<u>70,081.67</u>	<u>477,819.36</u>	<u>240,338.64</u>	<u>66.5</u>
WATER TREATMENT:					
PERSONAL SERVICES	30,042.00	1,990.02	28,636.65	1,405.35	95.3
MATERIAL AND SERVICES	574,515.00	45,021.95	354,730.51	219,784.49	61.7
CAPITAL OUTLAY	10,000.00	.00	.00	10,000.00	.0
DEBT SERVICE	2,386.00	.00	2,384.49	1.51	99.9
TRANSFERS OUT	742,572.00	.00	.00	742,572.00	.0
CONTINGENCIES AND RESERVES	174,327.00	.00	.00	174,327.00	.0
	<u>1,533,842.00</u>	<u>47,011.97</u>	<u>385,751.65</u>	<u>1,148,090.35</u>	<u>25.2</u>
DEPARTMENT 24:					
CAPITAL OUTLAY	.00	.00	.00	.00	.0
	<u>.00</u>	<u>.00</u>	<u>.00</u>	<u>.00</u>	<u>.0</u>
	<u>2,252,000.00</u>	<u>117,093.64</u>	<u>863,571.01</u>	<u>1,388,428.99</u>	<u>38.4</u>
	<u>( 165,000.00)</u>	<u>34,950.13</u>	<u>571,457.40</u>	<u>( 736,457.40)</u>	<u>346.3</u>

CITY OF BROOKINGS  
FUND SUMMARY  
FOR THE 8 MONTHS ENDING FEBRUARY 29, 2024

WASTEWATER FUND

	BUDGET	PERIOD ACTUAL	YTD ACTUAL	REMAINING BUDGET	PCNT
<u>REVENUE</u>					
SOURCE 03	( 4,500.00)	.00	.00	( 4,500.00)	.0
CHARGES FOR SERVICES	3,566,300.00	275,579.02	2,340,247.00	1,226,053.00	65.6
OTHER REVENUE	15,000.00	11,504.54	76,294.44	( 61,294.44)	508.6
TRANSFER IN	.00	.00	.00	.00	.0
	<u>3,576,800.00</u>	<u>287,083.56</u>	<u>2,416,541.44</u>	<u>1,160,258.56</u>	<u>67.6</u>
<u>EXPENDITURES</u>					
WASTEWATER COLLECTION:					
PERSONAL SERVICES	675,298.00	48,423.26	428,948.89	246,349.11	63.5
MATERIAL AND SERVICES	290,500.00	5,953.70	102,343.64	188,156.36	35.2
CAPITAL OUTLAY	15,000.00	.00	3,637.00	11,363.00	24.3
DEBT SERVICE	28,154.00	2,147.22	19,562.23	8,591.77	69.5
TRANSFERS OUT	226,533.00	.00	.00	226,533.00	.0
	<u>1,235,485.00</u>	<u>56,524.18</u>	<u>554,491.76</u>	<u>680,993.24</u>	<u>44.9</u>
WASTEWATER TREATMENT:					
PERSONAL SERVICES	45,461.00	2,985.06	42,954.86	2,506.14	94.5
MATERIAL AND SERVICES	1,219,029.00	87,667.27	676,227.68	542,801.32	55.5
CAPITAL OUTLAY	15,000.00	.00	.00	15,000.00	.0
DEBT SERVICE	2,386.00	.00	2,384.49	1.51	99.9
TRANSFERS OUT	1,237,643.00	.00	.00	1,237,643.00	.0
CONTINGENCIES AND RESERVES	256,296.00	.00	.00	256,296.00	.0
	<u>2,775,815.00</u>	<u>90,652.33</u>	<u>721,567.03</u>	<u>2,054,247.97</u>	<u>26.0</u>
	<u>4,011,300.00</u>	<u>147,176.51</u>	<u>1,276,058.79</u>	<u>2,735,241.21</u>	<u>31.8</u>
	<u>( 434,500.00)</u>	<u>139,907.05</u>	<u>1,140,482.65</u>	<u>( 1,574,982.65)</u>	<u>262.5</u>



CITY OF BROOKINGS  
FUND SUMMARY  
FOR THE 8 MONTHS ENDING FEBRUARY 29, 2024

URBAN RENEWAL AGENCY FUND

	BUDGET	PERIOD ACTUAL	YTD ACTUAL	REMAINING BUDGET	PCNT
<u>REVENUE</u>					
TAXES	724,170.00	10,247.95	727,750.65	( 3,580.65)	100.5
INTERGOVERNMENTAL	.00	.00	.00	.00	.0
OTHER REVENUE	2,000.00	8,814.99	52,255.58	( 50,255.58)	2612.8
TRANSFERS IN	.00	.00	.00	.00	.0
	<u>726,170.00</u>	<u>19,062.94</u>	<u>780,006.23</u>	<u>( 53,836.23)</u>	<u>107.4</u>
<u>EXPENDITURES</u>					
GENERAL:					
PERSONAL SERVICES	.00	.00	.00	.00	.0
MATERIAL AND SERVICES	185,256.00	3,350.00	33,806.16	151,449.84	18.3
CAPITAL OUTLAY	1,460,914.00	128,560.00	193,203.55	1,267,710.45	13.2
DEBT SERVICE	.00	.00	.00	.00	.0
TRANSFERS OUT	.00	.00	.00	.00	.0
CONTINGENCIES AND RESERVES	.00	.00	.00	.00	.0
	<u>1,646,170.00</u>	<u>131,910.00</u>	<u>227,009.71</u>	<u>1,419,160.29</u>	<u>13.8</u>
DEPARTMENT 20:					
CAPITAL OUTLAY	.00	.00	.00	.00	.0
	<u>.00</u>	<u>.00</u>	<u>.00</u>	<u>.00</u>	<u>.0</u>
DEPARTMENT 22:					
MATERIAL AND SERVICES	.00	.00	.00	.00	.0
DEBT SERVICE	.00	.00	.00	.00	.0
	<u>.00</u>	<u>.00</u>	<u>.00</u>	<u>.00</u>	<u>.0</u>
DEPARTMENT 24:					
CONTINGENCIES AND RESERVES	.00	.00	.00	.00	.0
	<u>.00</u>	<u>.00</u>	<u>.00</u>	<u>.00</u>	<u>.0</u>
	<u>1,646,170.00</u>	<u>131,910.00</u>	<u>227,009.71</u>	<u>1,419,160.29</u>	<u>13.8</u>
	<u>( 920,000.00)</u>	<u>( 112,847.06)</u>	<u>552,996.52</u>	<u>( 1,472,996.52)</u>	<u>60.1</u>

# CITY OF BROOKINGS

## COUNCIL AGENDA REPORT

Meeting Date: March 25, 2024

Originating Dept: PW/DS

  
\_\_\_\_\_  
Signature (submitted by)  
  
\_\_\_\_\_  
City Manager Approval

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Subject: Waste Water Treatment Plant – Outfall Repair Bid Award

Recommended Motion: Authorize the City Manager to enter into an agreement with Global Diving and Salvage, Inc in the amount of \$74,627 for Wastewater Treatment Plant Outfall Repairs and authorize City Manager to purchase materials for the outfall repair project in the amount of \$69,330.

Financial Impact: \$69,330 funded from sanitary sewer SRF fiscal year 2023-24. \$74,627 funded from sanitary sewer SRF fiscal year 2024-25 for a total of \$143,957

Background/Discussion:

The City's waste water treatment plant discharges its treated effluent through a pipe that extends nearly 700 feet into the ocean at Chetco Cove. In December of 2021 Jacobs contracted with Rubicon Applied Divers to perform a visual inspection of the diffusers at the end of that line. Upon completion of the inspection, it was determined that a variety of parts to the system are in need of replacement.

Council, at the December 11, 2023 meeting, authorized Jacobs to prepare bid documents and solicited bids from qualified contractors. We received four qualified bids listed in the attached Jacobs recommendation letter. The lowest bidder is Global Diving and Salvage, Inc. Based on the recommendation from Jacobs, staff recommends awarding the bid to Global and authorizing the purchase of the parts required for the project as they have a substantial lead time. Purchasing the parts now will ensure that Global will be able to do the work on the outfall during the month of September 2024.

Attachments:

- a. Jacobs Recommendation Letter



1100 NE Circle Blvd  
Suite 300  
Corvallis, OR 97330  
United States  
T +1.541.752.4271  
[www.jacobs.com](http://www.jacobs.com)

Tony Baron  
City of Brookings Public Works  
905 Wharf Street  
Brookings, OR 97415

March 13, 2024

**Subject: Wastewater Treatment Plant Outfall Diffuser Inspection and Repair Contractor Recommendations**

Dear Tony,

The City of Brookings solicited cost proposals from four bidders on February 22, 2024 in response to the Wastewater Treatment Plant (WWTP) Diffuser Inspection and Repair Request for Proposal (RFP) for the WWTP Outfall Diffuser in the Pacific Ocean near Chetco Point. All bidders participated in a mandatory pre-bid teleconference. Jacobs reviewed four bids received on March 7, 2024 in response to the RFP. The table below summarizes the bids received. Note: the Base Bid includes pre-mobilization support, a lump sum for cleaning and inspection of the diffusers, unit prices for 10 days of construction, and a \$10,000 allowance (reimbursable with markups) for additional materials procurement (if required).

Bidder	Base Bid Total Cost
Advanced American Construction, Inc. (Portland, Oregon)	\$104,900
Ballard Marine Construction, LLC (Washougal, Washington)	\$81,450
Global Diving and Salvage, Inc. (Seattle, Washington)	\$74,627
Rubicon Applied Divers (Conroe, Texas)	\$153,324

We recommend awarding the contract to Global Diving and Salvage, Inc. on the basis of the lowest cost bid. If you have any questions, please contact Jessica Penetar (541-768-3282 or [jessica.penetar@jacobs.com](mailto:jessica.penetar@jacobs.com)).

Sincerely,  
Jacobs Engineering Group Inc.

Jessica Penetar, PE  
Project Manager

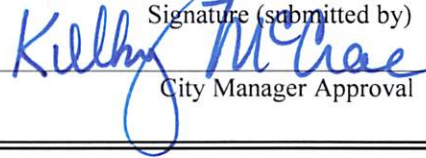
# CITY OF BROOKINGS

## COUNCIL AGENDA REPORT

Meeting Date: March 25, 2024

Originating Dept: Finance & Admin

Signature (submitted by)

  
City Manager Approval

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Subject:

Western Display Fireworks agreement

Recommended Motion:

Authorize the City Manager to enter into an agreement with Western Display Fireworks for the July 4, 2024 fireworks in the amount of \$30,000.

Financial Impact:

\$29,544 from funds raised by Love Your 4<sup>th</sup> and the remainder from the Tourism Fund.

Background/Discussion:

For the 2023 fireworks, the City of Brookings committed to being the responsible party for the contract with Western Display Fireworks for 4<sup>th</sup> of July fireworks. Love Your 4<sup>th</sup>, a great group of volunteers, led by Henry Johnson and Leslie Wilkinson, raised funds, promoted, and organized the fireworks display in 2022 and 2023.

Again, for this year, the City verbally committed to enter into an agreement with Western Display Fireworks for a fireworks show at the Port of Brookings Harbor on July 4, 2024. Attached is that agreement.

Attachment:

- a. Agreement – Western Display



## DISPLAY AGREEMENT AND PURCHASE ORDER

**THIS AGREEMENT** ("Agreement") is entered into on \_\_\_\_\_ by and between Western Display Fireworks, Ltd., an Oregon corporation, whose address is set forth above, ("Western") and Harbor Fire Association, whose address is PO Box 2001, Brookings, OR 97415 ("Sponsor"). Western and Sponsor are sometimes individually referred to as a "Party" and collectively as the "Parties."

In consideration of the mutual terms and conditions set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Proposal.** Western agrees to supply, and Sponsor agrees to pay for, a fireworks display on the following designated date(s) and location: July 4, 2024 shot from the South Jetty at 16035 Boat Basin Rd, Harbor, OR 97415, as detailed in Proposal #24-7573, which is attached hereto and incorporated herein by this reference, (the "Display") in accordance with the program approved by both Parties.
2. **Price and Payment Terms.** Total price of THIRTY THOUSAND DOLLARS AND NO/100 (\$30,000.00) is to be paid as follows: 25% of the total price, \$7,500.00 is due by MARCH 1, 2024; 25% of the total price, \$7,500.00 is due by JUNE 4, 2024; the remaining balance of the price, \$15,000.00, is due in full on or before July 14, 2024. Interest will accrue at 1½% per month (an annual percentage rate of 18% per annum) on all unpaid amounts from the date on which the payment was due.
3. **Western Duties.** As part of the total price Western agrees to the following:
  - a. To supply all shells and other pyrotechnics listed on the Proposal;
  - b. Mortars, firing equipment and all other required materials necessary to perform its services hereunder;
  - c. Proper delivery, set-up, firing and presentation by pyrotechnic operator and crew covered under workers compensation insurance;
  - d. To remove all equipment and spent pyrotechnic devices and clean up debris from the immediate Display site. Sponsor acknowledges that additional debris may remain in the fallout zone after Western's responsibilities of Display site cleanup have been completed; and
  - e. To comply with all local and federal guidelines and obtain any necessary permits to perform the Display, unless otherwise notes in Sponsor duties.
4. **Sponsor Duties.**
  - a. Sponsor shall comply with all duties as detailed under the Compliance with Laws/Sponsor Responsibilities portion of this Agreement;
  - b. Sponsor agrees to allow Western to stage an equipment trailer at the launch site for approximately one week before and after July 4th; and
  - c. Sponsor to supply three RV spaces at the Beachfront RV park for the nights of 7/3-7/6.
5. **Insurance.** Western agrees to provide, at its expense, commercial general liability insurance coverage in an amount not less than \$5,000,000. If requested in writing, Western shall provide Sponsor with a certificate of insurance within two weeks of the Display. All entities/individuals listed on the certificate of insurance will be deemed as additional insured pursuant to this Agreement.



6. **Indemnification.** Western agrees to indemnify, defend, and hold harmless the Sponsor, its agents and employees, and those entities/individuals listed on the certificate of insurance, from and against all claims, costs, judgments, damages and expenses, including reasonable attorney fees that directly arise from the performance of the fireworks to the extent that such are occasioned by an act or omission of its agents and employees from and against all claims, costs, judgments, damages and expenses, including reasonable attorney fees that arise from the performance of the fireworks to the extent that such are occasioned by any act or omission of Sponsor, its agents and employees. Each Party agrees to give the other Party prompt notice of any claims. Neither Party shall be responsible for consequential damages.
7. **Compliance with Laws.**
- a. Sponsor Responsibilities: SPONSOR agrees to perform their requirements in accordance with NFPA 1123 OUTDOOR DISPLAY OF FIREWORKS 2022 Edition (National Fire Protection Association) 8.1 General Requirements. The sponsor of the display shall make provisions for fire protection for the display. 8.1.1 The sponsor shall consult with the AHJ, the local responding fire department (if different from the AHJ) and the operator (the licensed pyrotechnic operator employed by Western) to determine the level of fire protection required. 8.1.2 The following shall apply to crowd control: (1) Monitors whose sole duty is the enforcement of crowd control shall be located around the display site and at other locations as determined by the sponsor. (2) The AHJ and the operator shall approve the provisions for crowd control. 8.1.2.1 Monitors shall be positioned around the display site to prevent spectators or any other unauthorized persons from entering the discharge site. 8.1.2.2 Where required by the AHJ, approved delineators or barriers shall be used to aid in crowd control. 8.1.2.3 Portions of the display site, other than the discharge site(s), shall be permitted to be open to the public prior to the display as long as the provisions of 4.2.2.2 are maintained. 8.1.2.4 Unescorted public access to the discharge site shall not be permitted where pyrotechnic materials are present during the period before the display. 8.1.2.5 The discharge site shall be restricted throughout the display and until the discharge site has been inspected after the display (see Exhibit A – Display Site Map).
- b. Western's Responsibilities: Western shall secure and maintain any and all licenses, permits or certificates that may be required by any regulatory body having jurisdiction over the materials or performance of the services herein contemplated unless otherwise noted above in Sponsor duties. Western shall exercise full and complete authority over its personnel, shall comply with all workmen's compensation, employer's liability and other federal, state, county and municipal laws, ordinances, rules and regulations required of an employer performing such services, and shall make all reports and remit all withholdings or other deductions from the compensation paid its personnel as may be required by any federal, state, county or municipal law, ordinance, rule or regulation. Western is responsible to insure that all materials and services supplied under this Agreement comply with all laws, rules and regulations of the State and the federal government relating thereto.
8. **Cancellation/Rescheduling by Sponsor.** If the Display is cancelled by the Sponsor after receipt of this signed Agreement, Sponsor agrees to pay 25% of the total price (\$7,500.00) for restocking and costs incurred. If the Display is cancelled by the Sponsor within 30 days of the scheduled Display date, Sponsor agrees to pay 50% of the total price (\$15,000.00). If the Display is cancelled by the Sponsor on the date of the Display, Sponsor agrees to pay 100% of the total price (\$30,000.00). By providing notice of not less than 30 days from the original Display date, Sponsor may elect to reschedule the Display to a mutually agreeable date. This date must be within 90 days of the original display date. Western agrees to facilitate



this rescheduling and Sponsor agrees to reimburse Western for new permits and other additional costs associated with this change. Sponsor understands that permitting requirements, burn bans and other factors beyond Western's control may prohibit rescheduling of a display. If these factors prohibit the rescheduled Display from taking place then the standard cancellation schedule applies.

9. **Safety / Weather Forced Cancellation.** Western agrees that it shall be the responsibility of the pyrotechnic operator in charge, acting on Western's behalf or the Authority Having Jurisdiction, to cancel or delay the Display if in the operator's judgment circumstances beyond the control of either Party pose an extraordinary risk to the health and safety of any persons or property within the vicinity of the Display.

If the product has been damaged as an attempt to execute the Display and cannot be safely reused, 100% of the price is due and Western has no further obligation under this Agreement. If the product is intact and reusable, Western agrees to store the product and execute the Display on a mutually agreeable future date. Sponsor agrees to reimburse Western for reasonable costs associated with the rescheduling of the event.

10. **Force Majeure.** Sponsor assumes the risks of weather, strike, civil unrest, terrorism, military action, governmental action, and any other causes beyond the control of Western which may prevent the Display from being safely performed on the scheduled date, which may cause the cancellation of the event for which Sponsor has purchased the Display, or which may affect or damage such portion of the Display as must be replaced and exposed a necessary time before the Display.
11. **Product Performance.** Sponsor recognizes and acknowledges that due to the nature of fireworks, an industry accepted level of 3% of the product used in any display may not function as designed and this level of nonperformance is acceptable as full performance.
12. **Limitation on Damages.** In the event that Sponsor claims that Western has breached this Agreement or was negligent in performing its duties hereunder, Sponsor shall not be entitled to claim or recover monetary damages from Western beyond the amount that Sponsor has paid Western under this Agreement and shall not be entitled to a claim for or recover of consequential damages from Western, including, but not limited to, damages for lost income, business, or profits. Additionally, Western's liability for matters covered by the insurance set forth herein shall be limited to the limits of said insurance.
13. **Time.** Time is of the essence in this agreement. The Parties expressly recognize that in the performance of their respective obligations, each Party is relying on timely performance by the other Party and will schedule operations and incur obligations to third parties in reliance upon timely performances by the other Party and may sustain substantial losses by reason of any failure of timely performance.
14. **Independent Contractor/No Joint Venture.** The Parties agree that Western is an independent contractor, and is not an agent or employee of Sponsor for any purpose. It is further agreed that Western's employees shall be, and remain, the employees of Western and not of Sponsor. Nothing in this Agreement or the actions of Western or Sponsor shall be construed as forming a partnership or joint venture between Sponsor and Western.

15. **Attorney Fees.** In the event that either Party to this Agreement shall enforce any of the provisions hereof by any action at law or in equity, the unsuccessful Party to such litigation agrees to pay to the prevailing Party all costs and expenses, including reasonable attorney fees, incurred therein by the prevailing Party.
16. **Jurisdiction.** This Agreement shall be governed in all respects, whether as to validity, construction, capacity, performance or otherwise, by the laws of the State of Oregon applicable to contracts.
17. **Severability.** In the event a court of competent jurisdiction determines that any provision of this Agreement is in violation of any statute, law, rule, regulation, ordinance or public policy, then the provisions of this Agreement that violate such statute, law, rule, regulation, ordinance or public policy shall be stricken or modified to the extent that such provision no longer violates such statute, law, rule, regulation, ordinance or public policy. All provisions of this Agreement that do not violate any statute, law, rule, regulation, ordinance or public policy shall continue in full force and effect for all purposes. Furthermore, any court order striking or modifying any provision of this Agreement shall modify or strike the provision in as limited a manner as possible to give as much effect as possible to the intentions of the Parties to this Agreement.
18. **Survival.** The terms of paragraphs 5, 6, 12, 15, and 16 shall survive the cancellation or termination of this Agreement.
19. **Entire Agreement.** This Agreement sets forth the entire agreement and understanding between the Parties hereto respecting the matters within its scope and may be modified only in writing signed by both of the Parties hereto.

The pricing and product offered in the Proposal shall remain firm if this Agreement is mutually executed by both Parties on or before March 1, 2024.

Sponsor

Western Display Fireworks, Ltd.

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

By: Brent Pavlicek

Its: \_\_\_\_\_

Its: Co-President

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

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